

National Interest Analysis [2014] ATNIA 3

with attachment on consultation

**Treaty between the Government of Australia
and the Government of the United Kingdom of Great Britain and Northern Ireland
for Defence and Security Cooperation
(Perth, 18 January 2013)**

[2013] ATNIF 3

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

Treaty between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation (Perth, 18 January 2013) [2013] ATNIF 3

Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Treaty between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation* (the proposed Treaty). Article 13 of the proposed Treaty provides that it will enter into force when the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland (the Parties) notify each other in writing that their respective internal procedures for entry into force have been fulfilled.
2. Subject to the Joint Standing Committee on Treaties' recommendation, it is proposed that notification by Australia would occur as soon as practicable after the tabling period and consideration by the Joint Standing Committee on Treaties (JSCOT).

Overview and national interest summary

3. The purpose of the proposed Treaty is to formalise and bring together the significant and long-standing defence cooperation between the Parties into an overarching legally-binding agreement that will provide strategic direction and emphasis to the relationship. The proposed Treaty also provides a framework to improve the quality of the collaboration between the Parties on defence issues.
4. The proposed Treaty will also drive forward closer cooperation between the Parties to support interoperability with the United Kingdom Armed Forces, including through the auspices of the North Atlantic Treaty Organization (NATO), following transition away from operational cooperation in Afghanistan. The proposed Treaty provides a framework to continue and to deepen cooperation between the defence organisations of the Parties in areas such as military equipment, logistics, science and technology, and capabilities.

Reasons for Australia to take the proposed treaty action

5. Defence engagement with the United Kingdom currently occurs under a range of less-than-treaty-status (non-legally binding) arrangements that cover specific topics including science and technology, capability development, logistics, personnel exchanges and security of information. The proposed Treaty would be binding in international law

and would provide a strategic point of reference for the relationship into the future. It will lift and focus the Parties' historically strong defence relationship and align the Parties' responses to future security challenges.

6. The proposed Treaty re-energises the bilateral cooperation between the Parties on military capabilities and military equipment development. This will be particularly relevant as Australia transitions the priority of its European defence relationships away from operational cooperation through the International Security Assistance Force in Afghanistan towards the preservation of interoperability. The proposed Treaty will also enable closer and more strategic interaction on materiel projects of common interest, particularly where military requirements between the Parties align. There is potential to derive considerable value from cooperation under the proposed Treaty to inform Australia's future defence capabilities. The proposed Treaty will also potentially provide opportunities for collaborative procurement in the future, which could have a number of benefits for the Australian Government, including improved value for money.

7. The proposed Treaty was initially suggested by the former United Kingdom Secretary of State, Dr Liam Fox, during his visit to Australia for Australia-United Kingdom Ministerial (AUKMIN) Consultations in January 2011. The decision of both Parties to proceed with negotiations was motivated by a common acknowledgement that the current economic environment and emerging global security issues required the close cooperation of like-minded states. In this context, it was recognised that the benefits of the historically strong defence relationship between the Parties could be maximised through a formal treaty, in addition to annual Ministerial consultations between Defence and Foreign Ministers. Australia already has similar agreements with two other long-standing defence partners in Europe: France and Turkey.

8. The proposed Treaty does not raise any domestic or international defence policy concerns. However, the Parties have invested significant time, goodwill and effort in the finalisation of the proposed Treaty, and failure to take binding treaty action could raise doubts as to Australia's commitment to the bilateral defence relationship.

Obligations

9. Article 1 outlines the scope and purpose of the proposed Treaty, which is to promote:

- (a) the mutual prioritisation of defence cooperation,
- (b) information exchange on defence and security issues,
- (c) closer engagement on technology, equipment and support matters,
- (d) value for money in defence and security areas, and
- (e) consultation on threats to international peace and security.

10. Article 2 encourages the Parties to build a long-term mutually beneficial defence and security partnership and outlines a range of areas where the Parties will cooperate, where possible. These include:

- (a) sustaining the capacity to operate as partners in future coalition or bilateral operations;
- (b) participating in multilateral security mechanisms, including the Five Power Defence Arrangements;
- (c) exchanging information relating to defence capabilities and operations;
- (d) exchanging strategic documents and views on key strategic issues;
- (e) continuing to cooperate on space and cyber security issues;
- (f) continuing to cooperate on the provision of quality assurance;
- (g) continuing to cooperate on codification data and services;
- (h) promoting military and civilian personnel exchanges;
- (i) commitment to the exchange program LONGLOOK;
- (j) exchanging personnel, material and information to support defence and procurement reform;
- (k) continuing defence industrial and materiel cooperation;
- (l) cooperation and collaboration in defence science and technology;
- (m) promoting the sale or loan of material, equipment and services between the Parties;
- (n) continuing and developing cooperation in logistics; and
- (o) cooperation in other emerging defence or security fields of mutual interest.

11. Article 3 provides for the Parties to enter into written arrangements to implement cooperation under the proposed Treaty. It also provides that the Parties may terminate existing applicable arrangements by mutual, written consent, where such arrangements are obsolete or no longer support the aims and objectives of the proposed Treaty.

12. Article 4 outlines procedures for managing cooperation under the proposed Treaty. It notes that progress will be considered and guidance provided through AUKMIN Consultations. Departmental contacts and their responsibilities for overseeing the activities occurring under the proposed Treaty are also provided under Article 4. These responsibilities include the identification of long-term aims under the proposed Treaty and the settlement of disputes relating to the implementation of cooperation.

13. Article 5 provides arrangements for access to facilities, equipment or support. It notes that the Parties shall inform each other of available facilities, equipment and support functions and provide the other Party with access to these where possible.

14. Article 6 seeks to facilitate the transfer of defence equipment and services between the Parties, and to prevent any move to hinder legitimate access to their markets and government contracts in the field of defence.

15. Article 7 provides that the proportion of costs to be borne by each Party as a result of cooperation under the proposed Treaty will be detailed in separate (non-treaty) arrangements.

16. Article 8 sets out procedures for the protection of information that would be exchanged or communicated between the Parties. It requires that classified information is protected in accordance with the terms of the *General Security Arrangements between the United Kingdom and Australia concerning the Reciprocal Protection of Classified*

Information of Defence Interest, or any applicable successor arrangement or agreement. Article 8 also notes that nothing in the proposed Treaty authorises or governs the release, use, exchange or disclosure of information in which intellectual property rights exist.

17. Article 9 contains provisions on claims and liability relating to cooperative activities occurring under the proposed Treaty. Australia and the UK agree to waive all claims against each other for acts arising in the performance of official duties in connection with the proposed Treaty. Article 9 provides how Australia and the UK will handle and settle third party claims arising from the acts or omission of either Party in connection with the proposed Treaty. Claims arising under contract will be resolved in accordance with the terms of the contract.

18. Article 10 ensures that the proposed Treaty shall not affect the rights and obligations or commitments of the Parties under other defence and security agreements or arrangements.

19. Article 11 contains the procedures for managing disputes. Any dispute arising in relation to the interpretation or application of the proposed Treaty shall be resolved by consultation and negotiation between the Parties. If this approach fails, the Parties may agree to refer the dispute to a dispute settlement mechanism, as agreed between the Parties.

Implementation

20. No changes to national laws, regulations or politics are required to implement the proposed Treaty. The proposed Treaty will not effect any change to the existing roles of the Australian Government or the state and territory governments.

Costs

21. The proposed treaty does not contain any specific financial commitments. Any costs as a result of the cooperative activities pursued under the proposed Treaty shall be borne by each Party in accordance with Article 7. Further detailed arrangements on costs may be entered into under Article 3(1).

Future treaty action

22. Article 12 of the proposed Treaty provides that the Parties may agree in writing to amend the proposed Treaty at any time. Amendments would enter into force when both Parties notified each other that domestic requirements for entry into force had been fulfilled.

23. Any amendment to the proposed Treaty would be subject to Australia's domestic treaty process.

Withdrawal or denunciation

24. Pursuant to Article 13, the proposed Treaty will remain in force until terminated by either Party giving twelve months' written notice to the other Party of its intention to withdraw from the proposed Treaty, or by mutual written consent of the Parties.

25. Termination of the proposed Treaty shall not release either Party from the implementation of its obligations under the proposed Treaty concerning the protection of information including classified information, intellectual property rights, claims and liabilities, and disputes.

Contact details:

Europe, United Nations, Africa and Peacekeeping section
International Policy Division
Department of Defence

ATTACHMENT ON CONSULTATION

**Treaty between the Government of Australia and the
Government of the United Kingdom of Great Britain and Northern Ireland
for Defence and Security Cooperation
(Perth, 18 January 2013)
[2013] ATNIF 3**

CONSULTATION

26. Relevant Australian Government portfolios were consulted on the proposed Treaty through the Secretaries' Committee on National Security. The proposed Treaty was agreed to by the National Security Committee of Cabinet, prior to being approved by the Federal Executive Council in December 2012.

27. Prior to the proposed Treaty being signed, regional countries in the Asia Pacific were advised by the Australian Government that, *inter alia*, the proposed Treaty will formalise the extensive defence cooperation which already occurs between Australia and the UK. No concerns were raised.