

National Interest Analysis [2020] ATNIA 13

with attachment on consultation

**Agreement between the Government of Australia and the Government of the
Republic of Singapore concerning Military Training and Training Area
Development in Australia**

(Canberra and Singapore on 23 March 2020)

[2020] ATNIF 17

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

Agreement between the Government of Australia and the Government of the Republic of Singapore concerning Military Training and Training Area Development in Australia

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Nature and timing of proposed treaty action

1. The proposed treaty action is entry into force of the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning Military Training and Training Area Development in Australia* (the Agreement), which was signed in Canberra and Singapore on 23 March 2020. For the Agreement to enter into force, the Parties must notify each other of the completion of their necessary domestic requirements through an exchange of notes. The Agreement would enter into force on the date of the last note (Article 26(1)). Australia will send its note as soon as practicable following the completion of domestic requirements.

Overview and national interest summary

2. The purpose of the Agreement is to establish a legally binding framework regarding certain unilateral military training activities that Singapore may conduct in Australia, as well as the development of training areas in Australia funded by Singapore. These matters are currently regulated by the *Memorandum of Understanding between the Government of Australia and the Government of the Republic of Singapore concerning Military Training and Training Area Development in Australia*, which came into effect on 13 October 2016 (MOU). The MOU provides that Australia and Singapore will develop the MOU into a treaty, subject to domestic processes. In July 2018, the Minister for Foreign Affairs approved a mandate to negotiate the Agreement to replace the MOU. The MOU will terminate on entry into force of the Agreement (Article 26(2)).
3. The Agreement contributes to Australia's national interest by continuing to strengthen the bilateral defence relationship with Singapore, which is a close defence partner with a shared commitment to regional stability. The Agreement is a key action under Australia's 2015 Comprehensive Strategic Partnership with Singapore, which sets out a longer-term plan to deepen collaboration in all areas of our bilateral relations. The 2020 Force Structure Plan notes that critical infrastructure, including training ranges, are vital enabling capabilities for the Australian Defence Force (ADF) to conduct and sustain military operations. Singapore's conduct of military training in Australia has been a central and positive element of this partnership for almost 30 years. Singapore

would not have exclusive use of the training areas, and training could occur concurrently with ADF training.

4. Singapore's AU\$2.25 billion infrastructure investment in the training areas would also bring economic benefits to Australian businesses in central and north Queensland. Australia would own all land and facilities developed by Singapore.

Reasons for Australia to take the proposed treaty action

5. The Agreement would allow Singapore to expand certain unilateral military training activities in Australia, and facilitate the development of land areas, facilities and infrastructure to support such training. It would build on Singapore's long history of military training in Australia and contribute to the capability of a close and important defence partner. Elevating the previous MOU into a legally binding treaty would align the status of these training and development initiatives with those providing for Singapore's presence at RAAF Base Pearce in Western Australia and the Oakey Army Aviation Centre in Queensland.
6. The Agreement protects Australia's sovereignty and the ability of the ADF to fulfil its training needs, and provides increased opportunities for strengthening the interoperability of the ADF and Singapore forces. It would also provide expanded and improved training areas for use by the ADF.

Obligations

7. The purpose of this Agreement is to detail certain Singaporean unilateral military training that may be conducted in Australia, as well as the land areas, facilities and infrastructure to be developed to support such training (Article 2(1)). The remaining provisions of the Agreement elaborate on this broad purpose. All training and development activities under the Agreement would be subject to Australia and Singapore's respective international obligations and national laws, regulations and policies (Article 2(3)).

Singapore's training activities in Australia

8. The scope of Singapore's training activities under this Agreement is set out in Article 3(1) and Part I of the Annex, noting that Singapore must not conduct (nor embark on or return from) actual military operations under this initiative (Article 3(2)) unless Australia consents.
9. In the 'Initial Training Period', between 13 October 2016 and the start of the 'Main Training Period', Singapore would conduct unilateral training in Australia for up to 45 days a calendar year, increasing up to nine weeks over time. This would involve up to 6,600 Singaporean personnel undertaking specified types of training and the use of a permitted number and range of vehicles, aircraft and ships (Section 2 of the Annex).
10. In the 'Main Training Period', which starts when development at Greenvale Training Area is completed and ends after 25 years, Singapore would conduct certain permitted types of training at Shoalwater Bay or Greenvale training areas. The training would occur for up to 18 weeks a year, and involve up to 14,000 personnel a year and a

permitted range of vehicles, aircraft and ships (Section 3 of the Annex). Detailed planning between the Parties would occur to prepare for all windows of training (Section 4 of the Annex).

11. At all times, Singapore's training activities must not adversely affect the capability or readiness of the ADF, adversely affect the environment of training areas in a manner that jeopardises sustainable use, risk the safety of personnel, cause damage to property, or be precluded by any other 'extraordinary circumstances' (Article 4(1)). 'Extraordinary circumstances' is not defined, but could include unforeseen events, such as a pandemic or a regional conflict. Where such issues arise, the Parties would use their best endeavours to come to alternative arrangements to allow the training to occur (for example, by moving to a different location or time), noting that, if no feasible options exist, the training would remain suspended (Article 4(2) and (3)). Where suspensions exceed three years, the Parties would consult on how to handle expended and remaining development costs.
12. Article 5 sets out regulatory matters relating to the conduct of training. Under the Agreement, Singaporean forces must comply with Australian laws, policies, orders and instructions of authorised Australian Defence personnel when conducting their training (paragraph 1). Any non-compliance needs to be rectified by Singapore (paragraph 2). Paragraph 4 makes it clear that Singapore does not have exclusive control of training areas or facilities, and Australia can access these areas and facilities when in use by Singapore for certain purposes. The provision also regulates: the import, movement, storage and export of Singaporean military assets; camps; accidents; communications; and licensing (paragraphs 6-17).
13. Article 6 deals with supply of goods and services by Australia to support Singapore's training. Australia would provide maintenance of all training areas and facilities (paragraph 1), and must supply certain types of goods or services (for example, explosive ordnance storage) to Singapore because of legal or policy requirements (paragraph 2). Singapore may also request goods and services from Australia via logistics or other channels (paragraph 3). Australian Defence personnel would provide some types of support for the training activities (paragraph 5).
14. Singapore may also procure goods and services to support its training from commercial suppliers (Article 7). Such procurement must be consistent with management of the training areas (paragraph 1(a)). It must also be done via an open and fair tender process (paragraph 1(b) and demonstrate a 'practical commitment' to use of Australian businesses (paragraph 1(c)), taking into account the ability of such businesses to supply Singapore on a commercially competitive basis. Singapore would not be required to use Australian business for specified reasons, including if it would prejudice Singapore's national security or infringe existing maintenance contracts (paragraph 2). Singapore would be required to provide reports on its use of Australian business in this context (paragraph 3).
15. Article 8 sets out how the environment of training areas would be managed and protected. Singapore training would be subject to Australian environmental laws (paragraph 2), and would be closely monitored for its environmental effects (paragraph 3). Singapore would be required to remediate and restore any training areas to the required environmental standards following its training windows (paragraphs 5-6).

Development activities to support training

16. The scope of the land, facility and infrastructure development activities to be undertaken by the Parties is set out in Article 9 and Part II of the Annex.
17. In the 'Initial Development Period' (Section 5 of the Annex), between 13 October 2016 and the start of the 'Further Development Period', the Parties commit to pursue land acquisitions from willing sellers to expand the Shoalwater Bay Training Area and establish the Greenvale Training Area. Much of this land acquisition has now occurred under the MOU. A range of facilities and infrastructure would be built on these training areas and in associated locations to support Singapore's training. The list of these facilities and infrastructure has been agreed and construction is in progress.
18. During the 'Further Development Period', between the completion of the 'Initial Development Period' and the end of the 25 year 'Main Training Period', provision is made for the renewal and disposal of the facilities and infrastructure as necessary (Section 6 of the Annex).
19. Article 10 makes it clear that the development activities would not progress in certain circumstances, including if funding from Singapore was not received or costs incurred by Australia exceeded the funding cap of \$AU2.25 billion, required approvals were not in place, it would impede ADF training, or relevant land or associated rights could not be obtained (paragraph 1(a)-(f)). The development activities would be suspended if impeded for any of these reasons, but the Parties would consult on any alternative arrangements (paragraph 2).
20. Article 11(1) provides that Australia would manage all development activities, including the acquisition of land and entering into contracts for construction of facilities and infrastructure. In doing so, it would give priority to Australian businesses in the vicinity of the training areas (subject to some provisos) and would seek its standard terms from suppliers (paragraph 2). Australian Defence personnel would provide assistance for the planning, design and administration of the development activities, with designs for facilities and infrastructure to be settled with Singapore (paragraphs 3-4).

Financial arrangements

21. Singapore would be responsible for the costs of its training activities under the Agreement, including a proportion of costs for the upkeep of the training areas, facilities and infrastructure it uses (Article 12(1)).
22. Singapore would fund the development activities, including costs for acquisition of land and the construction of facilities and infrastructure via commercial suppliers (Article 13(1)). The overall cap of funding by Singapore for the development activities would be \$AU2.25 billion in 2016 dollars (Article 13(2) and Section 7 of the Annex). Within this overall cap are funding caps for Australian Personnel to manage the developments activities (AU\$120 million in 2016 dollars) (Article 13(3) and Section 8 of the Annex), and for development activities in the 'Further Development Period' (\$AU280 million in 2016 dollars) (Article 13(2) and Section 6(2) of the Annex).

23. Article 14(1)-(3) establishes a system for the Parties to set periodic budgets for the costs of training and development activities, and for Singapore to deposit funds into a specified account managed by Australia. Australia would pay amounts out of that account to meet these costs as they arise. Article 14(4)-(10) sets out other rules for managing the funds, including where there may be overruns or surpluses in budgets, and for auditing of accounts.

General provisions

24. Singaporean personnel training in Australia and their dependants would be subject to the criminal jurisdiction provisions of the 1988 Status of Forces Agreement (1988 SOFA) (Article 15(1)). A Singaporean commander would exercise military discipline over all Singaporean military personnel (Article 15(2)). Singaporean personnel, including dependants, may be removed from Australia for certain behaviour (Article 15(3)-(4)).

25. Australia would own or lease land training areas, facilities or infrastructure that result from the development activities (Article 16(1)). The ADF and third parties (such as other countries' forces) may use these areas and facilities for training consistent with the Agreement, at Australia's cost (Article 16(2)-(4)).

26. Australia would have primary responsibility for the security of training areas and facilities (Article 17(1)). Article 17(2)-(12) deals with compliance with other security matters, and makes it clear that Australia would have a right of entry to facilities used by Singapore for security purposes.

27. Under Article 18, Singapore personnel would need to be medically fit and comply with health and biosecurity requirements while in Australia. Singaporean personnel who were performing ongoing support functions in support of Singapore's training (and their dependants), would be permitted to stay in Australia for up to three years (Article 19(2)). Singapore and its personnel would need to comply with Australian workplace health and safety requirements at training areas and facilities (Article 20). Singaporean personnel and dependants, but not contractors, would be free from taxes and duties in accordance with Australian law and international agreements such as the 1988 SOFA (Article 21).

28. Claims arising under the Agreement would be governed by the claims provisions of the 1988 SOFA, except that the responsibility of Singapore for claims arising from its unilateral training is varied in certain circumstances (Article 23(1)). Handling of claims arising from contracts entered into by one Party on behalf of the other is set out in paragraph 2. Article 24 establishes a dispute resolution escalation process based on consultation and negotiation. Reference of any dispute to a tribunal or court for resolution is not permitted. Article 25 preserves the operation of other agreements and arrangements between the Parties existing at the entry into force of this Agreement, with the exception of the MOU detailed at Article 26(2), which would terminate upon the entry into force of the Agreement. Any matters covered by that MOU are deemed to transition to the Agreement.

Implementation

29. Australia's implementation of the Agreement would be led by the Department of Defence. Implementation of the Agreement does not require changes to Australian laws or regulations and the Agreement expressly states that all Australian Laws, defined as any Commonwealth, State or Territory laws, apply to all training and development activities conducted under the Agreement (Article 5(1)(a)). Further details regarding training, development, finances, and administration would be set out in implementing arrangements to the Agreement that would come into effect upon entry into force of the Agreement

Costs

30. Singapore would be responsible for the costs associated with development and its training under the Agreement (Articles 12, 13, 14 and Parts II and III of the Annex).

Future treaty action

31. The Parties may review or amend the Agreement at any time (Article 26(6) and (7)). Any such amendment would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT. Any amendment would enter into force on the date of the latter exchange of notes between the Parties confirming that each Party has completed its domestic requirements to give effect to the amendment (Article 26(8)).

Termination

32. The Agreement would remain in force until the completion of all training and development activities as set out in the Annex (25 years from the start of the 'Main Training Period'), unless extended by agreement (Article 26(9)).

33. The Parties may agree to terminate the Agreement at any time (Article 27(1)). If demanded by extraordinary circumstances, one Party may temporarily suspend the Agreement or terminate it with 12 months' notice (Article 27(2)). If the period of suspension exceeded three years or notice to terminate was given, a joint committee appointed by the Prime Ministers would be established for up to 12 months to try to end the suspension or avoid termination, or if not resolved, to discuss an equitable treatment of expended development costs upon termination (Article 27(4)).

34. Singapore would remove its personnel and assets from Australia within six months of termination of the Agreement (Article 27(5)).

Contact details:

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ATTACHMENT ON CONSULTATION

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CONSULTATION

State and Territory Governments

35. Significant consultations have occurred with the Queensland Government, particularly in relation to the implementation of the development activities. The Queensland Government is generally supportive of the activities under the Agreement. More broadly, all States and Territories have been kept informed of progress in negotiation of the Agreement by the Australian Government through the bi-annual meeting of the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). No comments were received from the States or Territories. No action would be required from States or Territories to implement the Agreement.

Public Consultation

36. The communities around Shoalwater Bay and Greenvale (including private landholders, traditional landholders, businesses and local governments) have been, and will continue to be, consulted extensively throughout the implementation of the initiative. Consultations have occurred via public meetings, individual meetings, and through local community liaison officers. These communities remain supportive of the presence of the Singaporean forces and the development of both training areas.