

Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields

Introduction

- 10.1 The *Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields* ('the Agreement') formalises and enhances military cooperation between Australia and Turkey. The Agreement also clarifies the status of Australian and Turkish defence personnel and dependants when in the territory of the other.

Background

- 10.2 Representatives from the Department of Defence informed the Committee that the negotiation of the Agreement with Turkey was motivated in part by Turkey's need for a treaty-level agreement in order to cooperate on certain defence matters:

In part [the Agreement] was driven by Turkey's need to have a legally binding agreement; hence the need on our side to seek approval at the treaty level. I understand, with my limited knowledge of Turkish government processes, that the

Turkish armed forces and the Turkish ministry of defence are separate entities under their constitution. If we wish to cooperate on issues such as materiel, which both of those organisations are responsible for, then in order for them to have an arrangement with a foreign country to cover off those issues they need a treaty level agreement.¹

The Agreement

10.3 The Agreement will broadly facilitate cooperation between Australia and Turkey in the following areas:

- Training and education;
- Cooperation between land forces, naval force and air forces;
- Reciprocal high level visits;
- Conduct of military exercises and exchanges of observers for exercises;
- Intelligence
- Logistics, support services and infrastructure fields;
- Defence materiel and equipment, including development, production and industry;
- Communication, electronic and information systems;
- Peacekeeping, operations and armed conflict law training; and
- Social, sports, cultural and historical activities.²

10.4 The provision on defence materiel sharing will continue to develop Australia and Turkey's complementary defence capacities.³ The Department of Defence informed the Committee of previous cooperative efforts:

Turkey has previously sent observers to the annual Air Force exercises, known as Pitch Black. Turkish observers will also be invited to exercise Pitch Black in 2008. Australian

1 Ms Rachel Noble, *Transcript of Evidence*, 22 June 2007, p. 20.

2 National Interest Analysis (NIA), para. 7.

3 NIA, para. 9.

personnel have also attended security courses at the NATO Centre of Excellence: Defence Against Terrorism and the Partnership for Peace Training Centre in Ankara.⁴

- 10.5 Any classified information, documents or material provided under the Agreement must be protected and safeguarded.⁵ The detail of such protection is expected to be defined in future agreements or arrangements.⁶ Classified information exchanged under the Agreement may only be released to third parties if written consent is obtained from the releasing party.⁷

Defence personnel and dependants

- 10.6 One of the key provisions in the Agreement relating to the status of defence personnel provides that the Sending State has exclusive disciplinary jurisdiction over its visiting personnel who are subject to the service law of the Sending State while in the territory of the Receiving State.⁸ The Sending State also has the right to exercise that disciplinary jurisdiction within the territory of the Receiving State.⁹

We have domestic legislation, which is the Defence Force Discipline Act, that our service personnel are subject to. Also, there may be a very small civilian component covered. They are civilians who actually sign up to allow themselves to be subject to service laws, so they are not your ordinary public servants going overseas...If an alleged offence occurs that is covered by that legislation, what this agreement enables, by recognising that each country has their particular service laws, is that even though our people are stationed in Turkey the personnel will come under the jurisdiction of the Australian service laws in Turkey. The Turkish authorities will still have the ability in the initial instance, as we would in Australia in a converse situation, to maybe, if it is necessary, arrest a person. But then they have to immediately inform our authorities that this situation has occurred.¹⁰

4 Ms Rachel Noble, *Transcript of Evidence*, 22 June 2007, p. 19.

5 NIA, para. 12.

6 NIA, para. 12.

7 NIA, para. 12.

8 NIA, para. 14; Article IX, paragraph 2 of the Agreement.

9 NIA, para. 14; Article IX, paragraph 2 of the Agreement.

10 Ms Elizabeth Wilson, *Transcript of Evidence*, 22 June 2007, p. 21.

- 10.7 Under Article VIII of the Agreement, the Sending State must ensure that its defence personnel, both military and civilian, and their dependants, that are sent to visit the other country respect the laws of the Receiving State and do not undertake any activities inconsistent with the Agreement.¹¹ Article VIII also requires the Receiving State to notify the Sending State of the arrest of any personnel or dependent. The Receiving State can also request the Sending State to terminate the activities of a member of its personnel in the event of breaches by a member of the law of the Receiving State.¹²
- 10.8 Under Article XI, the Receiving State has the right to recall its personnel when it deems necessary in accordance with the law of the Receiving State.¹³
- 10.9 Under the Agreement, Australia and Turkey will waive all claims against each other for injury, death or damage to any property owned by it and used by its armed forces where the injury, death or damage occurred during the performance of official duties. This will not be the case where the damage occurred as a result of gross negligence or wilful misconduct. All other claims will be handled in accordance with the law of the receiving state.¹⁴

ANZAC Day

- 10.10 The Committee was informed that the Agreement will facilitate ongoing and enhanced engagement with the Turkish Armed Forces on ANZAC Day remembrance services.¹⁵ This is provided for through Article IV, paragraph J of the Agreement which facilitates cooperation between Australia and Turkey in areas of 'historical activities'.¹⁶
- 10.11 The ANZAC day services that take place at Gallipoli each year are one of the key features of Australia's defence relationship with Turkey:

The cooperation and support of the Turkish armed forces is integral to Australian authorities' planning for and conduct of annual commemoratives services at Gallipoli. The popularity of these services with both Turkish and Australian visitors

11 NIA, para. 13; Article VIII of the Agreement.

12 NIA, para. 13; Article VIII of the Agreement.

13 NIA, para. 16; Article XI of the Agreement.

14 NIA, para. 20; Article XV of the Agreement.

15 NIA, para. 8.

16 NIA, para. 8.

has markedly expanded in recent years, making our efficient operation with the Turkish armed forces, particularly in relation to security, all the more vital. At a practical level, the agreement provides symbolic recognition of the significance of historical cultural activities such as Anzac Day to our defence relationship.¹⁷

Benefits of the Agreement

- 10.12 The Committee was informed by representatives of the Department of Defence that the Agreement would have symbolic, as well as legal, value:

Aside from the legal value of having this agreement, it serves a symbolic purpose by showing that Australia values its defence relationship with Turkey at the highest levels of our government.¹⁸

- 10.13 The Agreement builds the growing defence cooperation relationship between Australia and Turkey:

Turkey is also a strategic operating base for Australian humanitarian operations in the Middle East. For example, Turkey provided valuable assistance during the evacuation of Australian citizens from Lebanon in 2006, both as a base for Australian personnel conducting the evacuation and as a transit point for evacuees. It is therefore important that we are able to work together by being familiar with the operating environment in Turkey and collaborating on common equipment and materiel.¹⁹

Costs and implementation

- 10.14 No new legislation is required to implement the obligations of the Agreement.²⁰ The obligations in Article IX, relating to exclusive

17 Ms Rachel Noble, *Transcript of Evidence*, 22 June 2007, p. 18.

18 Ms Rachel Noble, *Transcript of Evidence*, 22 June 2007, p. 19.

19 Ms Rachel Noble, *Transcript of Evidence*, 22 June 2007, p. 19.

20 NIA, para. 23.

disciplinary jurisdiction, are already met by the *Defence (Visiting Forces) Act 1963* (Cth), which governs the legal status of foreign military forces whilst in Australia.²¹

- 10.15 The Agreement is not expected to have any direct financial costs or benefits for Australia. However, Australia would bear the standard administrative expenses, such as salaries and allowances, for Defence personnel visiting Turkey.²²

Conclusion and recommendation

- 10.16 The Committee considers that the Agreement will formalise current defence cooperation between Australia and Turkey and will also provide important symbolic and legal value.

Recommendation 9

The Committee supports the *Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields* and recommends that binding treaty action be taken.

Dr Andrew Southcott MP

Committee Chair

21 NIA, para. 23.

22 NIA, para. 24.