

**National Interest Analysis [2010] ATNIA 20**  
**With attachment on Consultation**

**Agreement between the Government of Australia  
and the Government of the Republic of Korea on the Protection of Classified Military  
Information  
Singapore, 30 May 2009**

**[2009] ATNIF 12**



# NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

## SUMMARY PAGE

**Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information, done at Singapore on 30 May 2009 [2009] ATNIF 12**

### **Nature and timing of proposed treaty action**

1. The *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information* (the proposed Agreement) was signed on 30 May 2009.
2. Article 17 of the proposed Agreement provides that it will enter into force once Australia and the Republic of Korea notify each other in writing that they have completed their domestic requirements for the entry into force of the proposed Agreement. The Republic of Korea provided such notification to the Australian Government on 16 June 2009. The proposed Agreement will therefore enter into force on the date that Australia provides its written notification to the Republic of Korea.
3. Subject to consideration by the Joint Standing Committee on Treaties (JSCOT), it is proposed that the Government of Australia send the above mentioned written notification to the Republic of Korea as soon as practicable after the tabling period expires.

### **Overview and national interest summary**

4. The purpose of the proposed Agreement is to establish a legal framework for the exchange of Classified Military Information between the Government of Australia and the Government of the Republic of Korea. It outlines agreed procedures and protections for exchanging such information between all government departments and agencies in the two countries. This will hold clear benefits for Australia, in particular by improving the sharing of information on important defence capabilities and defence industry cooperation, including our respective Airborne Early Warning and Control aircraft. The proposed Agreement will also facilitate further opportunities for practical defence cooperation in areas such as training and exercising. Finally, it will serve to enhance goodwill between the Defence organisations of both countries.

## **Reasons for Australia to take the proposed treaty action**

5. The proposed Agreement sets out security procedures and practices for the exchange and protection of Classified Military Information between Australia and the Republic of Korea and for visits by personnel of either Party requiring access to Classified Military Information or restricted areas or facilities where Classified Military Information is held. The proposed Agreement will facilitate future cooperation and help strengthen the relationship between Australia and the Republic of Korea. Concluding the proposed Agreement is also a key outcome of the *Joint Statement on Enhanced Global and Security Cooperation* as announced by Prime Minister Rudd and President Lee in March 2009. The proposed Agreement builds on the 2008 Arrangement between the Ministry of National Defense of the Republic of Korea and the Department of Defence of Australia on the Protection of Classified Military Information (the 2008 Arrangement). It is similar to other legally binding information agreements related to the protection of Classified Military Information that Australia has entered into with a wide range of countries.

6. The proposed Agreement ensures that Classified Military Information which the Government of Australia passes to the Government of the Republic of Korea will be afforded protection according to standards of physical and legal protection not less than that which it accords its own information of a corresponding national security classification. Classified Military Information will not be used for a purpose other than that for which it was provided and will not be passed to any third party without the written consent of the Australian Government. Access to Australian Classified Military Information will be limited to those Republic of Korea officers whose official duties require such access. The Australian Defence Security Authority is satisfied that these standards would provide protection to Australian Classified Military Information equivalent to that received under Australian laws, regulations and policies.

7. The Australian Government currently shares Classified Military Information with the Republic of Korea in support of defence capability development. These exchanges occur under the non-legally binding 2008 Arrangement, which was implemented as an interim measure until such time as a legally binding treaty-level agreement could be negotiated. Of particular importance under the 2008 Arrangement is defence industry cooperation on capabilities such as our respective Airborne Early Warning and Control aircraft. The proposed Agreement provides the necessary security assurances to facilitate the exchange of Classified Military Information by ensuring that the information is protected through legally binding obligations.

## **Obligations**

8. The provisions in the proposed Agreement are similar to the other security of classified military information Agreements that Australia has concluded in the past. The proposed Agreement facilitates the exchange of information between the Parties for the purpose of defence cooperation by requiring that the Parties protect each other's Classified Military Information to an agreed equivalent standard. Having examined each other's security policies and standards, both Parties are satisfied that this obligation can be met by the other.

9. The provisions of the proposed Agreement cover the following matters:

- a) An obligation to assign all security Classified Military Information with a national security classification before transmission (Article 4.1 and 4.4).

- c) A requirement that Classified Military Information received from the other Party is accorded a standard of physical and legal protection no less stringent than that which it accords its own Classified Military Information of corresponding national security classification (Article 5.1.4).
- d) An obligation not to disclose Classified Military Information received from the other Party to any third party without the prior written consent of the Originating Party, unless otherwise mutually determined in writing (Article 5.1.5).
- e) A requirement that the Parties shall not permit Classified Military Information to be used for any purpose other than that for which it was provided without prior written consent (Article 5.1.7).
- f) An obligation to return or destroy Classified Military Information that is no longer required for the purpose for which it was provided. Destruction of the information will be in accordance with the procedures of the Receiving Party, who will confirm in writing to the Originating Party that the information has been destroyed (Article 5.2).
- g) An obligation to ensure that access to Classified Military Information be limited to individuals who hold a Personnel Security Clearance to the appropriate level granted under each Party's national laws, regulations and policies (Article 6).
- h) A requirement that Classified Military Information be transmitted through diplomatic channels or channels mutually approved in advance by the National Security Authorities. All information and communications technology systems used to transmit or store exchanged Classified Military Information will be protected to standards agreed to by the National Security Authorities. Notably, a Party may refuse to transmit any of its information (Article 7).
- i) An obligation to ensure that contracts or subcontracts the performance of which requires access to Classified Military Information are concluded and implemented in accordance with the proposed Agreement and relevant national laws, regulations and policies (Article 8).
- j) A requirement that each Party inform the other Party in writing of any changes to its national security standards that would affect the manner in which Classified Military Information is protected under the proposed Agreement (Article 10).
- k) A requirement that visits by representatives of a Party requiring access to Classified Military Information held by the other Party or requiring access to restricted areas or facilities where such information is held shall be undertaken only with prior written approval. All visit requests will be forwarded through diplomatic channels (Article 11).
- l) An obligation to inform the Originating Party immediately of any suspected loss or compromise of classified material. The Receiving Party shall then investigate the circumstances of such loss or compromise and, without delay, inform the Originating Party of the findings of the investigation and the corrective action taken (Article 14).
- m) A requirement that disputes shall be resolved by consultation and negotiation and shall not be referred to any third party for settlement (Article 16).

## **Implementation**

10. No changes to domestic laws or policy are required to implement the proposed Agreement. The proposed Agreement can be implemented in accordance with the Australian Government Protective Security Manual, which sets out procedures for the protection of classified information. The proposed Agreement will not effect any change to the existing roles of the Commonwealth Government or the State and Territory Governments.

11. The National Security Authorities responsible for implementing the proposed Agreement are the Head, Defence Security Authority, Australian Department of Defence and the Director, Intelligence Force Development and Security, Korean Defence Intelligence Agency, Ministry of National Defence ('the National Security Authorities').

12. The proposed Agreement ensures that the Parties can separately negotiate, through their National Security Authorities, supplementary implementing arrangements concerning Classified Contracts. The Parties may also mutually determine any additional measures for the purposes of facilitating the transmission and protection of Transmitted Classified Military Information.

## **Costs**

13. There are no foreseeable financial costs to the Australian Government in the implementation of the proposed Agreement.

## **Regulation Impact Statement**

14. The Office of Best Practice Regulation, Department of Finance and Deregulation has been consulted and has confirmed that a Regulation Impact Statement is not required.

## **Future treaty action**

15. The proposed Agreement does not provide for the negotiation of any future legally binding treaties, although Article 8.3 provides that the National Security Authorities may mutually determine arrangements to effect 'classified contracts' (described in Article 8) between the Parties and an individual, organisation or other entity. (Article 8 provides that supplementary arrangements in relation to classified contracts may be concluded by the National Security Authorities.) Article 5.3 provides that the parties may mutually determine additional requirements for facilitating the transmission and protection of Transmitted Classified Military Information.

16. Article 17.3 provides that the proposed Agreement may be amended by mutual written consent of the Parties. Amendments to the proposed Agreement would be subject to Australia's domestic treaty approval process, including tabling in Parliament and consideration by JSCOT.

## **Withdrawal or denunciation**

17. Article 17.2 provides that the proposed Agreement may be terminated at any time:

- a) By mutual consent in writing; or

b) By either Party giving the other written notice of its intention to terminate (with termination taking effect six months after notification). Termination by Australia would be subject to Australia's domestic treaty process, including tabling in Parliament and consideration by JSCOT.

18. Pursuant to Article 17.4, if the proposed Agreement were terminated, the responsibilities and obligations of the Parties in relation to the protection, disclosure and use of Classified Military Information already exchanged would continue to apply, notwithstanding the termination of this proposed Agreement. Consequently, the ongoing protection of classified material would be ensured, including its destruction or return to the originator when no longer required for the purpose for which it was exchanged.

**Contact details**

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## **ATTACHMENT ON CONSULTATION**

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#### **Consultation**

19. The Minister for Foreign Affairs provided approval for the Department of Defence to be the coordinating authority for the Commonwealth in the implementation of this proposed Agreement. The Department of Defence has consulted with the Department of Prime Minister and Cabinet, the Attorney-General's Department and the Department of Foreign Affairs and Trade throughout the negotiation process and has confirmed that the proposed Agreement meets the requirements of all Australian Government departments and agencies that deal with national security classified information.

20. The States and Territories were advised about the proposed Agreement through the Treaties Schedule provided to the Commonwealth-State-Territory Standing Committee on Treaties'. No State or Territory comment has been received to date. The proposed Agreement does not require State or Territory action for its domestic implementation.