

National Interest Analysis [2012] ATNIA 9

with attachment on consultation

**Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research,
Development and Training related to Nuclear Science and Technology
done at Bali on 15 April 2011**

[2011] ATNIF 35

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY SUMMARY PAGE

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Nature and timing of proposed treaty action

1. It is proposed that Australia accept the *Fifth Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology* (“the Fifth Extension Agreement”). The Fifth Extension Agreement extends the *Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology*, done at Vienna on 2 February 1987 (“the 1987 RCA”, [1988] ATS 11), which is due to expire on 11 June 2012, for a further five-year period. The 1987 RCA entered into force on 11 June 1987 and was subsequently extended for five-year periods from 12 June 1992 ([1992] ATS 8), 12 June 1997 ([1997] ATS 31), 12 June 2002 ([2003] ATS 26) and 12 June 2007 ([2009] ATS 10).
2. In accordance with its Article 2(2), the Fifth Extension Agreement entered into force generally on 31 August 2011, following its acceptance by two International Atomic Energy Agency (IAEA) Member States (India and Mongolia). The Fifth Extension Agreement will enter into force for Australia on the date of receipt by the Director General of the IAEA of Australia's instrument of acceptance.
3. Subject to the Joint Standing Committee on Treaties' recommendation, it is expected that Australia's acceptance will be lodged as soon as practicable after Parliamentary tabling requirements have been met and Executive Council approval received.

Overview and national interest summary

4. A regional cooperative agreement is an agreement by IAEA members of a particular region to cooperate in matters of research, development and training related to nuclear science and technology. The 1987 RCA has been continually extended due to its usefulness in providing a regional framework for initiating cooperative projects and coordinated research programming between IAEA Member States in the Asia-Pacific region.
5. Extension of the 1987 RCA for a further five years will have important benefits for Australia from a security, economic and political perspective. As a regional agreement under the aegis of the IAEA, the 1987 RCA is an important mechanism in fulfilling the technical cooperation provisions of the *Treaty on the Non-Proliferation of Nuclear Weapons*, done at London, Moscow and Washington on 1 July 1968 (“the NPT”, [1973] ATS 3). Our participation helps contribute to a non-proliferation regime which has kept our immediate neighbourhood free of nuclear weapons proliferation for the past 40 years. The 1987 RCA also allows Australia to participate in international collaborative projects and to maintain and extend a national capacity in cutting-edge nuclear technologies. Finally, the 1987 RCA facilitates Australian technical and political cooperation with 16 regional countries in nuclear

science and technology, which in turn contributes to maintaining and improving bilateral and multilateral relationships in the Asia-Pacific region.

Reasons for Australia to take the proposed treaty action

6. The 1987 RCA is based on an agreement of the same name concluded in 1972 ("1972 RCA", [1977] ATS 27) and subsequently extended in 1977 ([1977] ATS 27) and again in 1982 ([1982] ATS 17). The provisions of the 1987 RCA follow closely those of the 1972 RCA. The purpose of the 1987 update was to enhance overall coordination and supervision of cooperative projects carried out under RCA arrangements. The 1987 RCA was extended in 1992, 1997, 2002 and 2007. RCA projects are implemented under the auspices of the Technical Cooperation Programme administered by the IAEA.

7. Australia is a designated member of the IAEA Board of Governors, the only such Board member without a civil nuclear power program. Cooperation through the RCA is an important means for Australia to share its recognised leading expertise on civil nuclear research and technology. Australia became a Party to the 1972 RCA in 1977 and became a Party to the 1987 RCA upon its entry into force in that year. The other Parties to the 1987 RCA are: Bangladesh, the People's Republic of China, India, Indonesia, Japan, the Republic of Korea, Malaysia, Mongolia, Myanmar, New Zealand, Pakistan, the Philippines, Singapore, Sri Lanka, Thailand and Vietnam. Pursuant to Article 1 of the Fifth Extension Agreement, the 1987 RCA will continue in force from 12 June 2012. As of February 2012, three states (India, Indonesia and Mongolia) have accepted the Fifth Extension Agreement.

8. Australia has important national interests in maintaining its participation in the 1987 RCA. IAEA-sponsored regional cooperation agreements such as the 1987 RCA provide an important means of fulfilling the technical cooperation provisions of the NPT. The NPT is the centrepiece of the non-proliferation regime which, for more than 40 years, has helped to keep Australia's immediate neighbourhood free of nuclear weapons proliferation. Under the NPT, non-nuclear-weapon States Parties have foresworn nuclear weapons and must accept IAEA safeguards for the purpose of verifying their fulfilment of NPT obligations. All NPT Parties have the right to "develop research, production and use of nuclear energy for peaceful purposes" and undertake to "...facilitate...the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy" (NPT Article IV). Continued membership of the 1987 RCA is one way for Australia to fulfil its undertaking to cooperate with other Parties in the peaceful uses of nuclear energy under the NPT, as the 1987 RCA establishes a framework for Parties to cooperate with each other in respect of research, development and training projects in nuclear science and technology.

9. The 1987 RCA contributes towards effective social and economic development in the region. Through projects which strengthen regional regimes governing the safety and security of radioactive materials, the 1987 RCA also assists in preventing potentially dangerous material and technical know-how from being utilised by terrorist organisations.

10. The 1987 RCA also helps Australia maintain and extend its national capacity in leading-edge nuclear technologies. Examples include medical, industrial, environmental and agricultural technologies. Through its acceptance of the Fifth Extension Agreement, Australia will continue to engage in valuable international collaborative projects that apply nuclear techniques to food and agriculture, human health, industry, water resource

management and the environment - key target areas of the RCA programme - as well as radiation protection and radiation safety activities to underpin a safe environment for the utilisation of these technologies. The Australian Nuclear Science and Technology Organisation (ANSTO) is the designated point of contact for Australia's participation in the 1987 RCA.

11. Over the past 40 years, the successive RCAs have evolved to become an important vehicle for Australia's cooperation with regional countries in nuclear science and technology. They have enabled Australia to participate in mutually beneficial research and training related to nuclear science and technology with 16 countries in the Asia-Pacific region. Such cooperation has had a positive flow-on effect on our bilateral and multilateral relationships in the region, with significant political benefits for Australia.

12. Non-acceptance of the Fifth Extension Agreement would impede Australia's ability to remain constructively engaged in regional nuclear activities and would limit our ability to forge links with regional experts at a time when a significant expansion in nuclear power production is underway or under consideration by a number of countries in our region. It would diminish Australia's standing in international nuclear arms control fora and our ability to influence international nuclear policy developments in accordance with our national economic and security interests.

Obligations

13. Australia's obligations under the Fifth Extension Agreement derive from the 1987 RCA. The 1987 RCA places a number of obligations on the Parties, which are to be implemented within the framework of their national laws. In particular, the 1987 RCA requires that the Parties:

- promote and coordinate cooperative research, development and training projects in nuclear science and technology through their appropriate national institutions (Article I);
- attend meetings to consider, approve and evaluate cooperative projects and conduct other business relating to the 1987 RCA (Article II);
- make available the necessary scientific and technical facilities and personnel for the implementation of cooperative projects in which the Party is participating (Article V(1)(i));
- take reasonable and appropriate steps for the acceptance of scientists, engineers or technical experts designated by other participating governments or by the IAEA to work at designated installations for the purpose of implementing cooperative projects in which the Party is participating (Article V(1)(ii));
- submit to the IAEA an annual report on the implementation of the portion of cooperative projects assigned to it (Article V(2));
- contribute, financially or otherwise, to the implementation of cooperative projects and notify the IAEA annually of any such contributions (Article V(3));

- ensure that the IAEA's safety standards and measures are applied to relevant cooperative projects (Article IX(1)); and
- ensure that any assistance provided to the Party under the 1987 RCA is used only for peaceful purposes, in accordance with the statute of the IAEA (Article IX(2)).

14. The Fifth Extension Agreement simply serves to extend the 1987 RCA by a further five years to 11 June 2017. Australia's obligations remain those accepted in the 1987 RCA. There are no new obligations imposed on Australia by the Fifth Extension Agreement.

Implementation

15. No legislation is required to give effect to the Fifth Extension Agreement.

16. No changes to the existing roles of the Commonwealth or the States and Territories will arise as a consequence of implementing the Fifth Extension Agreement.

Costs

17. Pursuant to Articles V(3) and VIII(1) of the 1987 RCA, Australia has the option of contributing financially and “in-kind” to facilitate the effective implementation of cooperative projects. Financial contributions to project costs will be assessed on a case-by-case basis and provided for through normal budgetary processes.

18. Australia's contributions “in-kind” are given through: the placement of RCA and IAEA fellowship and scientific visitor awardees for study and training in Australia; the provision of courses and experts to provide assistance to the IAEA or to individual RCA Member States on behalf of the IAEA; and the hosting of RCA meetings sponsored by the IAEA. These costs are met by relevant agencies from their existing resources.

Regulation Impact Statement

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

Future treaty action

20. The Fifth Extension Agreement does not provide for the negotiation of future related legally-binding instruments such as protocols or annexes. Given this is the fifth time that the 1987 RCA has been extended, it is likely that a further extension of five years will be proposed around 2016. If this were to occur, Australia would need to consider the merits of agreeing to a sixth extension.

Withdrawal or denunciation

21. The Fifth Extension Agreement does not contain express provisions dealing with withdrawal or denunciation, but it would be possible to withdraw from the Fifth Extension Agreement at any time by consent of all the parties to it (*Vienna Convention on the Law of Treaties*, [1974] ATS 2, Article 54). In addition, it would be possible to withdraw on one year's notice if such a right could be implied from the nature of the Fifth Extension

Agreement (Article 56 of the *Vienna Convention on the Law of Treaties*). Withdrawal by Australia would be subject to our domestic treaty process, including tabling and consideration by the Joint Standing Committee on Treaties.

Contact details

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ATTACHMENT ON CONSULTATION

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[2011] ATNIF 35

CONSULTATION

22. Information on the Fifth Extension Agreement has been provided to the States and Territories through the schedule of treaty actions under negotiation, consideration and review provided biannually to the Commonwealth-State-Territory Standing Committee on Treaties. It will have no effect on the States and Territories.

23. Approval has been obtained from the Minister for Innovation, Industry, Science and Research, the Minister for Foreign Affairs and the Attorney-General for Australia to accept the Fifth Extension Agreement. The Prime Minister has been advised of the proposed treaty action.