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**National Interest Analysis [2008] ATNIA 25
with attachment on consultation**

**Agreement between the Government of Australia and the Government
of the French Republic Regarding Defence Cooperation and Status of Forces,
Done at Paris on 14 December 2006
[2006] ATNIF 29**

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the French Republic Regarding Defence Cooperation and Status of Forces, Done at Paris on 14 December 2006

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Nature and timing of proposed treaty action

1. Article 11 of the proposed Agreement provides that it will enter into force when Australia and France notify each other in writing that domestic procedures necessary for entry into force of the Agreement have been concluded. The Agreement will remain in force for an initial period of twenty years, after which it will continue in force unless terminated by either Party.
2. Subject to the Joint Standing Committee on Treaties' recommendation, it is proposed that notification will occur as soon as practicable after the tabling period and consideration by JSCOT.
3. This treaty action does not terminate any existing treaties upon entry into force. However, it will supersede the non-legally binding Statement of Objectives between the Australian Department of Defence and the French Armed Forces relating to Defence Cooperation, entered into in May 2004.

Overview and national interest summary

4. A Status of Forces Agreement is an internationally recognised method of regulating matters arising from the presence of one country's visiting forces in the territory of another country. The purpose of the proposed Status of Forces Agreement with France is to facilitate a range of defence cooperative activities by establishing standard conditions for the presence of Australian and French visiting forces on issues including legal jurisdiction, legal claims, carriage of arms, immigration requirements, customs duties and communications. The Agreement also identifies cooperative activities that Australia and France may engage in including, but not limited to, military exchanges, joint exercises and training, exchange of space and geospatial information and services and activities to enhance and broaden the interaction of our respective military cultures.
5. Australia and France have an active Defence relationship, primarily focussed on practical cooperation in the Pacific and Southern Oceans. France, in cooperation with Australia and New Zealand, actively contributes to maritime surveillance and humanitarian disaster relief assistance and supports regional defence and policing in the Pacific and Southern Oceans.
6. Australia and France also share concerns over threats to global security. Both countries contribute to international security efforts, including in Afghanistan where Australian forces will work alongside a small French Operational Mentoring and Liaison Team in Oruzgan Province from late 2008. France's capability to undertake high-end coalition expeditionary operations make it a valuable interlocutor and potential future coalition partner for Australia.

7. In addition to cooperating with France to address shared security interests, Australia and France have a significant defence materiel relationship encompassing several major acquisition projects and research initiatives.

Reasons for Australia to take the proposed treaty action

8. This Agreement will facilitate Australia's military and defence cooperation with France by providing a legal framework for visiting personnel sent to the other country to pursue cooperative activities. These cooperative activities, including joint or unilateral training of military personnel, the exchange of defence information and intelligence and the provision of international humanitarian assistance, will enhance the capacity of both Australia and France to contribute to international security and lasting peace in the Pacific region.

9. The Agreement will also benefit Australia by enhancing the quality of, and potential for, further cooperation across a broad range of military and defence areas such as materiel, science and technology, capability planning and logistics support. To facilitate cooperative logistics support, the Agreement provides that the Parties shall negotiate a mutual logistics support instrument which shall, amongst other things, include costing and financial details and the conditions under which various transactions may occur.

10. This Agreement will also benefit Australia by strengthening the overall bilateral defence relationship with France.

Obligations

11. Article 2 states that the Parties shall facilitate defence relations through mutual participation in cooperative activities to be determined pursuant to this Agreement.

12. Article 3 requires coordination of cooperative activities pursuant to this Agreement to be undertaken using the existing mechanisms for military and defence consultations. It also provides for the creation of additional coordination mechanisms as mutually determined.

13. Article 4 creates a mutual obligation on the Parties to provide logistic support on the basis of either reimbursement, exchange in kind or exchange for equal value. The costing and financial details of this obligation, as well as the conditions under which various transactions may occur, will be determined in a mutual logistics support instrument that will be negotiated between the Parties.

14. Article 7 requires that all classified information exchanged or communicated between the Parties in cooperative activities pursuant to this Agreement be protected in accordance with the Agreement between the Government of Australia and the Government of the French Republic relating to the Exchange and Communication of Classified Information which entered into force on 15 July 1985.

15. Article 8 requires each Party to bear its own costs with regards to any cooperative activities that are undertaken pursuant to the Agreement, unless otherwise mutually determined.

16. Annex 1 Section 1 states that the Visiting Personnel (this includes Members of the Visiting Force, Members of the Civilian Component accompanying the Visiting Force and their Dependants) of the Sending State (the State to which the Visiting Force belongs), when in the territory of the Receiving State (the State in whose territory the Visiting Force is located), shall

be subject to the laws and regulations of the Receiving State. Accordingly, Australian personnel sent to France under this Agreement will be subject to and must observe the laws and regulations of France. They shall not be involved in activities that prepare for or execute war operations unless the Parties mutually agree otherwise.

17. Annex 1 Section 2 provides that the Sending State will have exclusive competence regarding disciplinary matters, in accordance with the Sending State's laws and regulations, over Members of the Visiting Force and Civilian Component when in the Receiving State. Accordingly, Australia will have exclusive competence regarding disciplinary matters over members of the Australian Visiting Force and the Civilian Component when they are in France under this Agreement. Where practicable, the Authorities of the Sending State are required to inform the Authorities of the Receiving State of the nature of the possible sanctions before carrying them out if the behaviour is liable to punishment in the Receiving State.

18. Annex 1 Section 3(1) & (2) provides that the Authorities of the Sending State have criminal jurisdiction over its Visiting Personnel who are in the Receiving State and are subject to the law of the Sending State, with respect to offences punishable by the law of the Sending State but not by the law of the Receiving State. Concurrently, the Authorities of the Receiving State have criminal jurisdiction over the Sending State's visiting personnel with respect to offences punishable by the law of the Receiving State but not by the law of the Sending State.

19. Annex 1 Section 3(3) provides that where the right to exercise jurisdiction is concurrent, (for example, where the conduct is an offence under the Sending State's law and the Receiving State's law) the Sending State has the primary right to exercise its jurisdiction when the offences are solely against the security of the Sending State, are solely against the person or property of another member of the Sending State's Visiting Personnel, or are done by a member of the Sending State's Visiting Personnel in the course of official duty. The Receiving State has primary jurisdiction over all other offences. If a Party that has a primary right to exercise jurisdiction decides not to exercise jurisdiction, they are required to notify the authorities of the other party as soon as practicable. Furthermore, the Parties are required to give sympathetic consideration to a request to waive jurisdiction to the other Party where the Requesting Party considers the exercise of jurisdiction by them to be of particular importance.

20. Annex 1, Section 4 requires the authorities of the Receiving and Sending State to assist each other in arresting members of the Visiting Personnel and handing them over to the Authorities of the Party that are entitled under the Agreement to exercise jurisdiction. Furthermore, the Authorities of the Receiving State shall promptly notify the authorities of the Sending State if they arrest a member of the Sending State's Visiting Personnel and the Authorities of both Parties shall assist each other in carrying out investigations and the collection and production of evidence. Pending the conclusion of all judicial proceedings, the Receiving State (in the instance that the Receiving State has jurisdiction) is required to give sympathetic consideration to a request from the Sending State that the Authorities of the Sending State be entrusted with the custody of the member of the Visiting Personnel. The Sending State is required to make this person available for the purposes of investigation and trial. When exercising jurisdiction, the Receiving State is required to give the member of the Sending State's Visiting Personnel entitlement to all generally accepted procedural safeguards no less than those provided to its nationals.

21. Annex 1 Section 4 of the Agreement obliges each Party to take specific steps to expedite the normal entry requirement into their territory.

22. Annex 1 Section 5 provides specific provisions regarding the importation and exportation of goods to and from the Receiving State.

23. Annex 1 Section 6 allows the Visiting Force to possess and carry arms in the Receiving State when they are authorised to do so under orders issued by the Sending State and in circumstances which must be approved by the Receiving State. Section 9 further states that weapons, ammunition and dangerous goods of the Sending State must be transported and stored in compliance with the regulations of the Receiving State.

24. Annex 1 Section 8 provides that, except where the Agreement otherwise provides, the liability of Visiting Personnel for taxes and duties shall be governed by any other agreements entered into by Australia and France for the avoidance of double taxation and the prevention of fiscal evasion.

25. Annex 1 Section 11 directs that both Parties shall cooperate with regards to the security of installations made available to the Sending State. The Receiving State retains responsibility for external security.

26. Annex 1 Section 12 provides for the Sending State to submit requests to the Receiving State for use of any facilities or related services necessary for the visiting force to fulfil its commitments under this Agreement, and the Receiving State shall make reasonable efforts to meet such requests.

27. Annex 1 Section 13 requires the Receiving State to accept the driver's licence of a member of the Visiting Force and exempts official vehicles of the Sending State from having to be registered in the Receiving State.

28. Annex 1 Section 14 directs that the Sending State may only install communications systems with the permission of the Receiving State, and may only use communication frequencies allocated to it by the Receiving State.

29. Annex 1 Section 15 requires the Sending State to submit all appropriate permanent or occasional flight diplomatic clearances. Additionally, the Sending State shall be subject to the same conditions, fees and charges as the Receiving State's armed forces with regards to airports, roads and harbours.

30. Annex 1 Section 16 places an onus upon the Sending State to ensure that all visiting personnel are medically and dentally fit to undertake any activity pursuant to the Agreement. Medical fees (including aeromedical evacuation) for Visiting Personnel incurred by the Receiving State will be fully recoverable from the Sending State.

32. Annex 1 Section 17 states that in the event of the death of a member of the Visiting Personnel the Receiving State will, among other things, issue a death certificate. Subject to the laws of the Receiving State, the Sending State shall have the right to take, retain charge of and make arrangements for the disposition of the remains of the deceased upon notifying the Receiving State. If requested and circumstances permit, the authorities of the Receiving State shall assist with arrangements to return the deceased body to their home country.

33. Annex 2 Section 1 requires Australia and France to waive all claims against each other resulting from damage to property, maritime salvage and injury or death that arose out of, or in the course of, military and civilian personnel performing their official duties. However where

both Parties agree that a claim has arisen out of gross negligence or wilful misconduct of a member of its personnel, the Party to whom the military or civilian personnel belongs will be solely responsible for the claim.

34. Annex 2 Section 2 determines that where a third party claim is brought as the result of an act or omission of military or civilian personnel in the performance of official duty, the claims shall be adjudicated by the Government of the Receiving State's laws, following consultation with the Government of the Sending State. The Government of the Receiving State will make any payments arising from such a claim, and will notify the Government of the Sending State of the payment and propose a distribution of the cost incurred based on the provisions in this Agreement. Under these provisions, if the Government of the Sending State is solely responsible for the damage, injury or death, the Government of the Sending State shall bear 75% of the liability; otherwise the liability shall be distributed equally.

Implementation

35. No new legislation is required to give effect to Australia's obligations under the Agreement. The Agreement will not effect any change to the existing roles of the Commonwealth and the States and Territories. Under Article 2, however, the Agreement will not come into force until both Parties have notified each other (through diplomatic channels) that all domestic procedures for entry into force have been complied with.

Costs

36. The Agreement does not impose any foreseeable direct financial costs or benefits for Australia. Article 8 states that, unless otherwise determined by the Parties, each Party will bear its own costs in any activities that are undertaken pursuant to this Agreement.

Regulation Impact Statement

37. The Office of [Best Practice Regulation, Department of Finance and Deregulation](#), has been consulted and [confirms that a Regulation Impact Statement is not required.](#)

Deleted: Regulatory Review (Productivity Commission)

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FUTURE TREATY ACTION

38. Article 11 provides that the Parties may amend the Agreement at any time by mutual agreement in writing.

39. Article 4 states that the Parties shall negotiate a mutual logistics support instrument, the legal status of which is yet to be determined, for the purpose of clarifying the costing and financial details of the Parties' mutual obligation to provide logistics support to the other, as well as in what circumstances the various transactions may occur.

WITHDRAWAL OR DENUNCIATION

40. Article 11 provides that either Party may unilaterally terminate the Agreement by providing the other Party with 180 days written notice. Both Parties may also agree, in writing, to terminate the Agreement immediately. In the event that the Agreement is terminated, Article 11 preserves the Parties' commitments regarding claims, security of information, disputes and jurisdiction. Additionally, the withdrawal of a Party from the Agreement will not have any effect upon any other agreements or arrangements entered into between the Parties, unless otherwise mutually determined.

CONTACT DETAILS

**North Atlantic and South America Section
International Policy Division
Department of Defence**

ATTACHMENT ON CONSULTATION

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CONSULTATION

41. The States and Territories have been notified of the proposed Agreement through the Standing Committee on Treaties' (SCOT) Schedule of Treaty Action and no comment has been received to date. The Agreement does not require State or Territory cooperation for its domestic implementation.

42. The Departments of Prime Minister and Cabinet; Foreign Affairs and Trade; Attorney General's; Justice and Customs (as then called); Immigration and Multicultural and Indigenous Affairs (as then called); Finance and Administration (as then called); Treasury; Health and Ageing; Transport (as then called); Communications, Information Technology and the Arts (as then called); and the Australian Taxation Office, were consulted during the drafting of the Framework Agreement. The text of the Agreement was agreed by the Executive Council in November 2005.