

Documents tabled on 27 February 2007:

National Interest Analysis [2007] ATNIA 5

with attachment on consultation

**Agreement between the Government of Australia and the
Government of the Republic of Korea on the Protection of Migratory Birds,
and Exchange of Notes, done at Canberra on 6 December 2006
[2006] ATNIF 28**

Background information:

Country political brief and country fact sheet

List of other treaties with that country

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NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes, one at Canberra on 6 December 2006 [2006] ATNIF 28

Nature and timing of proposed treaty action

1. Australia proposes to enter into a bilateral treaty-level agreement with the Government of the Republic of Korea on the protection of migratory birds (the ROKAMBA). The ROKAMBA was signed on 6 December 2006.
2. Paragraph 1 of Article 8 provides that the ROKAMBA shall enter into force on the day upon which both Parties have notified each other, in writing, that their respective legal requirements for entry into force have been complied with. If the Joint Standing Committee on Treaties (JSCOT) recommends that binding treaty action be taken, then the exchange of diplomatic notes will be undertaken as soon as practicable after the required 20 days of tabling in Parliament. Before the exchange of diplomatic notes, the Minister for Environment and Water Resources will, by instrument under Section 209(4) of the *Environment Protection and Biodiversity Act 1999* (EPBC Act), approve the ROKAMBA as an international agreement for the purposes of Section 209(3)(c) of the EPBC Act.

Overview and national interest summary

4. Australia has a strong interest in maintaining biodiversity generally and in protecting migratory species which visit Australia. Australia has existing bilateral agreements similar to the ROKAMBA, the Japan – Australia Migratory Bird Agreement (JAMBA), and the China – Australia Migratory Bird Agreement (CAMBA). Australia has provided strong leadership for the conservation of migratory birds throughout the East Asian – Australasian Flyway through the Asia Pacific Migratory Waterbird Conservation Strategy 1996 – 2005 and continues to do so as one of the initiating Partners of the World Summit on Sustainable Development Type II Partnership for Migratory Waterbirds in the East Asian – Australasian Flyway. Entering into the ROKAMBA will signify Australia's ongoing commitment to the conservation of migratory birds.

Reasons for Australia to take the proposed treaty action

5. The ROKAMBA obliges its Parties to protect bird species which regularly migrate between Australia and the Republic of Korea, and their environment. Article 1(2) provides that the Annex to the ROKAMBA contains the list of species or subspecies of birds for which there is reliable evidence of migration between the two countries.

6. Migratory species are a matter of National Environmental Significance under the EPBC Act. The Republic of Korea provides critical stopover sites for migratory shorebirds during their migration to Australia. The ROKAMBA complements Australia's existing bilateral agreements with China and Japan, providing a formal avenue through which to ensure the protection of important habitat for shorebirds during their migration beyond Australian jurisdiction.

Obligations

7. The ROKAMBA obliges Australia to protect species of migratory birds listed in the Annex to the ROKAMBA and their habitats in a number of ways. Article 2 of the ROKAMBA obliges Australia and the Republic of Korea to prohibit the taking of migratory birds and their eggs except in specified circumstances.

8. Article 3 of the ROKAMBA obliges Australia and the Republic of Korea to encourage the exchange of data and publications relating to migratory birds, the formulation of joint research programs and the conservation of migratory birds.

9. Article 4 of the Convention obliges Australia and the Republic of Korea to endeavour to manage and conserve the habitat of migratory birds through activities such as the designation of conservation areas in its territory.

10. Article 5 of the ROKAMBA obliges Australia and the Republic of Korea to endeavour to take the appropriate measures to conserve and improve the environment of birds protected under the ROKAMBA.

11. The ROKAMBA does not impose any new obligations on Australia, as the species listed in the Annex to the ROKAMBA are all protected as matters of National Environmental Significance under the EPBC Act, by virtue of their inclusion in the Annexes to JAMBA, CAMBA and the Convention on Migratory Species (CMS).

12. The obligations Australia acquires through future additions of species to the Annex to the ROKAMBA will not extend beyond the protection the species will be afforded as listed migratory species under the EPBC Act.

Implementation

13. The ROKAMBA would not require implementing legislation. The EPBC Act enables Australia to give domestic effect to the obligations imposed by the ROKAMBA.

14. The EPBC Act provides for protection of migratory species as a matter of National Environmental Significance. Division 2 of Part 13 of the EPBC Act provides for the preservation,

conservation and protection of migratory species in or on a Commonwealth area, including to the outer limits of the exclusive economic zone, but excluding State and Northern Territory waters.

15. Section 209(3)(c) specifies that the list of migratory species must include all native species from time to time identified in a list established under an international agreement approved by the Minister under subsection (4). Before the ROKAMBA enters into force, the Minister for the Environment and Water Resources will need to sign an instrument under Section 209(4) of the EPBC Act, approving the ROKAMBA as an international agreement relevant to the conservation of migratory species.

16. Division 1 of Part 3 of the EPBC Act prohibits the taking of actions that are likely to have a significant impact on matters of National Environmental Significance without approval from the Minister for the Environment and Water Resources. Under sections 20(1) and 20A(1), a person must not take an action that has, will have, or is likely to have a significant impact on a listed migratory species unless that Minister has given approval. There are exceptions to this prohibition, including those set out in Part 4 of the EPBC Act and an exception for certain actions requiring separate authorisation by an Australian Government agency.

Costs

17. The entry into force of the ROKAMBA is not expected to impose any additional costs on Australia. The species included in the Annex to the ROKAMBA are all protected as matters of National Environmental Significance under the EPBC Act, by virtue of their inclusion in the Annexes to the JAMBA, CAMBA and CMS.

Regulation Impact Statement

18. The Office of Regulation Review (Productivity Commission) has been consulted and has advised that a Regulation Impact Statement is not required.

Future treaty action

19. Article 1(3) provides that the Parties may amend the ROKAMBA by mutual written consent. Any future amendments to the text of the ROKAMBA, or additions to the Annex to the ROKAMBA will constitute a separate treaty action and be subject to the usual domestic treaty making process including the tabling of a National Interest Analysis and consideration by JSCOT and Federal Executive Council.

Withdrawal or denunciation

16. Article 8(2) provides that either Party may, by giving one year's notice in writing, terminate the ROKAMBA at the end of the initial fifteen year period or at any time thereafter. Withdrawal by Australia would also be subject to our domestic treaty making process including the tabling of a National Interest Analysis and consideration by JSCOT and Federal Executive Council.

Contact details

Migratory and Marine Biodiversity Section
Marine and Biodiversity Division
Department of the Environment and Water Resources.

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CONSULTATION

1. The following Australian Government, State and Territory agencies were consulted regarding the ROKAMBA:

- Australian Government Attorney-General's Department
- Australian Government Department of Immigration and Multicultural Affairs
- Australian Government Department of Foreign Affairs and Trade
- Australian Government Department of Communications, Information Technology and the Arts
- Australian Government Department of Industry, Tourism and Resources
- Australian Government Department of Defence
- Australian Government Department of the Prime Minister and Cabinet
- Australian Government Department of Transport and Regional Services
- Australian Government Department of the Treasury
- Australian Government Department of Agriculture, Fisheries and Forestry
- Department of Primary Industries Water and Environment (Tasmania)
- Department of Primary Industries (Victoria)
- Department for Environment and Heritage (South Australia)
- Department of Conservation and Land Management (Western Australia)
- Department of Environment and Conservation (New South Wales)
- Department of Infrastructure, Planning and Natural Resources (New South Wales)
- Environmental Protection Agency (Queensland)
- Department of Natural Resources, Environment and the Arts (Northern Territory)
- Environment ACT

2. In 2002, the then Minister for the Environment and Heritage, the Hon Dr David Kemp, wrote to relevant Federal Ministers and to all State and Territory Ministers, advising them of the intention to create the ROKAMBA. In 2006, the then Minister for the Environment and Heritage, the Hon Ian Campbell, wrote to relevant Federal Ministers and to all State and Territory Ministers to provide them with the final text of the ROKAMBA. Since April 2003, the ROKAMBA has also been included on each of the treaty schedules sent to State and Territory representatives before the biannual meetings of the Commonwealth-State/Territory (Officials) Standing Committee on Treaties (SCOT).

3. The then Department of the Environment and Heritage consulted with the Natural Resource Management Wetlands and Waterbirds Taskforce, which comprises representatives from the state and territory agencies listed above. The Migratory and Marine Biodiversity Section provided papers, and spoke, to the Taskforce meetings in November 2004, July 2005 and May 2006 summarising the state of affairs for Australia's bilateral migratory bird agreements. Each paper included information about the ROKAMBA and progress in its development.

4. No agencies raised any concerns regarding the proposed treaty action.

Political Brief on the Republic of Korea

Political Overview

Korea is a presidential democracy, with government power shared principally by: the executive (headed by a President elected for a single five year term); the legislative (a single-house National Assembly); and the judiciary. The President holds supreme power regarding all executive functions of government, within the constraints of the Constitution, and appoints public officials, including the Prime Minister, Ministers and the heads of other executive agencies, and is also commander-in-chief of the armed forces. Presidents serve a single five-year term, with the next Presidential elections scheduled for December 2007.

Legislative power rests in the unicameral National Assembly, comprising 299 members elected for a four-year term. 243 members are elected by popular vote, with the remaining 56 seats distributed proportionately among political parties according to a second preferential ballot. Next elections are scheduled for April 2008.

Judicial power is vested in the courts, constitutionally an independent branch of government, comprising the district courts, appellate courts and the Supreme Court. The Supreme Court is the final court of appeal. A separate Constitutional Court renders judgements regarding the constitutionality of laws, impeachment cases, jurisdictional disputes between state agencies and the dissolution of political parties. There is also a Family Court, empowered to hear cases involving family matters.

Economic Overview

South Korea has made remarkable economic progress in the last half-century. When the Japanese occupation ended in 1945, the South Korean economy was impoverished and rurally-based. Much of its infrastructure was destroyed during the Korean War, which also had an enormous human cost. As a result, by 1960, South Korea's per capita GDP lagged behind that of Zambia and Bangladesh. Since then, sustained high economic growth has led to South Korea's transformation into a highly industrialised and internationally competitive economy. It is now the 10th largest economy in the world. Economic growth dropped slightly in 2005 to 4 per cent. This followed a recovery in 2004, when the economy grew by 4.8 per cent. Consumer confidence and the external environment are key determinants of growth, with any slowing of growth in the US, Japan and China, South Korea's most important markets, likely to have a negative effect on export earnings. Private sector forecasters expect growth of around 5.5 per cent in 2006, although increased oil prices and an appreciating won could reduce this to 4 per cent.

Bilateral Overview

Australia's relations with the ROK are longstanding and strong, but continue to develop, as demonstrated by the visit of ROK President Roh Moo-hyun in December 2006, during which the Migratory Birds Treaty was signed. Both countries are strong democracies with market orientated economies; have a common strategic outlook; and co-operate well on issues like terrorism. During President Roh's visit, Trade Minister Truss announced the undertaking of a joint non-government level FTA study. The

joint study will be completed by late 2007, and will provide a useful basis for both governments to consider moving towards the commencement of FTA negotiations in the future, which would make a significant development in relations.

Australia's merchandise exports to the ROK grew by 20 per cent in 2005-06 to A\$12 billion, making the ROK Australia's third largest merchandise export market. Raw materials account for 60 per cent of exports, with major items including coal, crude petroleum, iron ore and aluminium. Merchandise imports from the ROK increased by 30 per cent in 2005-06 to A\$6.5 billion, with major items including vehicles, telecommunications equipment and refined petroleum. Services trade is increasingly important, with Australian exports amounting to A\$1.5 billion in 2005-06, up 8 per cent from 2004-05. More than 26,000 South Korean students were enrolled in Australia in 2005, and a record 261,000 South Korean tourists visited Australia in 2005-06.

List of other treaties with the Republic of Korea

- Cultural Agreement with the Government of the Republic of Korea
[1972] ATS 11
- Agreement with the Republic of Korea on the Development of Trade and Economic Relations
[1975] ATS 22
- Agreement with the Government of the Republic of Korea concerning the Cooperation in Peaceful Uses of Nuclear Energy and the Transfer of Nuclear Material
[1979] ATS 5
- Agreement on Fisheries and Exchange of Letters with the Government of the Republic of Korea
[1983] ATS 23
- Convention and Protocol with the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
[1984] ATS 2
- Treaty on Extradition with the Republic of Korea
[1991] ATS 3
- Agreement with the Republic of Korea relating to Air Services
[1992] ATS 16
- Exchange of Notes with the Republic of Korea constituting an Agreement to amend the Schedule to the Agreement relating to Air Services of 26 February 1992
[1993] ATS 33
- Treaty with the Republic of Korea on Mutual Assistance in Criminal Matters
[1993] ATS 34
- Exchange of Notes constituting an Agreement on the Retransfer of Australian Obligated Nuclear Material under the Agreement concerning the Cooperation in Peaceful Uses of Nuclear Energy and the Transfer of Nuclear Material of 2 May 1979
[1997] ATS 26
- Agreement with the Government of the Republic of Korea on Scientific and Technical Cooperation
[2000] ATS 13

- Treaty on Judicial Assistance in Civil and Commercial Matters with the Government of the Republic of Korea.
[2000] ATS 5
- Agreement with the Government of the Republic of Korea on Cooperation in the Fields of Energy and Mineral Resources
[2004] ATNIF 13
- Agreement on Social Security with the Republic of Korea
[2006] ATNIF 27

Treaties of the same type with other countries:

- Agreement with the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment
[1981] ATS 6
- Agreement with the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment
[1988] ATS 22