

Documents tabled on 17 June 2008:

National Interest Analysis [2008] ATNIA 20

with attachment on consultation

**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES
AND THE
GOVERNMENT OF AUSTRALIA ON DEFENCE COOPERATION,
DONE AT ABU DHABI ON 23 APRIL 2007**

[2007] ATNIF 10

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement between the Government of the United Arab Emirates and the Government of Australia on Defence Cooperation, done at Abu Dhabi on 23 April 2007

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Nature and timing of proposed treaty action

1. Article 9 of the proposed Agreement provides that it will enter into force when Australia and the United Arab Emirates exchange written letters through diplomatic channels informing each other of the completion of their relevant domestic and constitutional requirements for entry into force.
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 Joint Standing Committee on Treaties.

Overview and national interest summary

3. The purpose of the Agreement is to enhance bilateral defence engagement by facilitating cooperation in a range of mutually agreed fields including, but not limited to, military training and education, joint military exercises, defence materiel and equipment, security and defence policy and protection from weapons of mass destruction. The Agreement provides that this cooperation will be facilitated by, amongst other things, official visits and bilateral meetings and exchange of military and civilian personnel. In addition to setting out areas and means of cooperation, the Agreement defines the legal status of visiting personnel of one Party when in the territory of the other Party.
4. Australia has a modest defence relationship with the United Arab Emirates which includes Special Forces cooperation, senior-level visits and training courses. This relationship would be strengthened by the cooperation provided for in the Agreement. Australia's interest in cooperation with the United Arab Emirates stems from Australian involvement in the Middle East and the developing potential for defence materiel cooperation.

Reasons for Australia to take the proposed treaty action

5. The Agreement will provide a framework for bilateral defence engagement between Australia and the United Arab Emirates. This Agreement is of significance to Australia as it will facilitate our defence cooperation with the United Arab Emirates in a broad range of areas, including areas of special interest such as defence materiel and counter-proliferation. The Agreement will also benefit Australia by strengthening the overall bilateral defence relationship with the United Arab Emirates, a country located in an important strategic position.

6. The Agreement establishes a Joint Defence Cooperation Committee (JDCC) to facilitate the implementation of the Agreement. The JDCC will meet regularly in both countries and will be composed of representatives of both Parties who will make decisions by consensus. The JDCC will not only encourage and facilitate the cooperation envisaged in the Agreement, but also serve to strengthen the bilateral relationship between Australia and the United Arab Emirates.

7. The Agreement also provides a legal framework for visiting personnel when Australia and the United Arab Emirates mutually arrange to send personnel to the other country.

8. The United Arab Emirates and Australia have invested significant time, goodwill and effort in the finalisation of the Agreement. The Agreement has been a priority for the United Arab Emirates and it would be disappointed if Australia did not ratify the Agreement. Such action would raise doubts as to Australia's commitment to the bilateral defence relationship. This outcome would put at risk the potential benefits listed above.

Obligations

9. Article 1 provides that each Party will encourage, facilitate and develop cooperation in the field of defence on a mutually beneficial basis. Articles 3 and 4 set out the specific fields in which the Parties agree to cooperate and the agreed means to facilitate this cooperation.

10. Article 2 requires both Australia and the United Arab Emirates to create a JDCC the purpose of which is to establish mechanisms to implement the Agreement. Australia is required to nominate one person to be head of its representatives to the JDCC. The JDCC will be hosted in both Australia and the United Arab Emirates and the Party hosting will be responsible for providing meeting facilities and secretarial support.

11. Article 5 provides that each Party must protect and safeguard all information and material provided by the other Party under the Agreement in accordance with its security marking. The details of such protection will be defined in a General Security of Information Agreement or Arrangement that will be concluded under the Agreement.

12. Article 6 provides that the implementation of this Agreement, or any other activities arising thereof, unless otherwise mutually determined in the relevant Memorandum of Understanding or Protocol, each Party shall bear its own costs.

13. Article 7 provides that personnel of a Party, while in the territory of the other Party (host Party), will be subject to and shall observe the laws, rules and regulations of the host Party. Accordingly, Australian personnel sent to United Arab Emirates under the proposed agreement will be subject to and must observe the laws, rules and regulations of the United Arab Emirates. If, however, personnel violate the military laws and regulations of their country, while in the host Party's territory, they will be subject to the military laws and rules of their country.

14. Article 8 provides that the Parties will not refer any disputes concerning the Agreement to any third party, national or international tribunal for settlement. Any such disputes that do arise shall be resolved mutual consultations and direct negotiations between the two nations.

Implementation

15. 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 the Territories.

Costs

16. Article 6 states that the implementation of the Agreement and any other activities involved, each party shall bear its own costs, unless mutually determined in the relevant Memorandum of Understanding or Protocol. The implementation of this Agreement will be an extension of current arrangements for the Australia-UAE bilateral defence relationship where each party bears its own costs for things such as accommodation and airfares. It is expected that the implementation of the Agreement would incur minimal cost to Australia. Implementation costs would be met by the Australian Department of Defence from existing resources.

Regulation Impact Statement

17. The Office of Best Practice Regulation, Productivity Commission has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

18. Article 10 provides that either Party may propose amendments to the Agreement. Any amendments would be subject to Australia's treaty processes, including tabling and consideration by Joint Standing Committee on Treaties. Any revisions or amendments agreed upon in writing by both Parties will enter into force once both Parties have exchanged written notification that all procedures for entry into force have been completed in accordance with their domestic laws.

19. Article 9 provides that the Agreement shall remain in force for a period of five years commencing from the date of its entry into force and it can be renewed for similar periods by written consent of the Parties.

20. The Australian Department of Defence is not considering any future Protocols. The need for further Protocols would be reassessed if required. Future Memorandum of Understanding could cover areas such as counter-terrorism, education and training and information exchange.

Withdrawal or denunciation

21. Article 9 provides that either Party may unilaterally terminate the Agreement by providing the other Party with written notice. The termination would become effective six months from the date of notification. Any termination by Australia would be subject to Australia's treaty processes, including tabling and consideration by Joint Standing Committee on Treaties. In the event that the Agreement is terminated, Article 9 further provides that each Party

shall be obliged to continue to fulfil all the obligations arising there from and Article 5 covers the continued protection of any information or material that has been exchanged.

Contact details

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Government of Australia on Defence Cooperation,
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CONSULTATION

1. 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.
2. The Departments of Foreign Affairs and Trade and the Attorney General's Department, were consulted during the drafting of the Agreement. The text of the Agreement was agreed by the Executive Council on 13 December 2006.
3. The Agreement does not create obligations which impact on industry and accordingly industry has not been consulted. In the event that cooperative activities in relation to 'Defence Industry' or 'Materiel Cooperation' are undertaken (Article 3), industry will be consulted where appropriate.