

Treaty between Australia and the French Republic regarding Defence Cooperation and Status of Forces

Introduction

- 8.1 The purpose of the proposed Treaty is to facilitate a range of defence cooperative activities between Australian and French visiting forces through the establishment of standard conditions on issues such as legal jurisdiction, legal claims, immigration requirements, customs duties, carriage of arms, and communications.¹

Background

- 8.2 Australia and France have an active Defence relationship, focussed on practical cooperation in the Pacific and Southern Oceans. France, in cooperation with Australia and New Zealand, contributes to maritime surveillance and humanitarian disaster relief assistance and also supports regional defence and policing in the Pacific and Southern Oceans.²

1 NIA, para. 4.

2 NIA, para. 5.

- 8.3 Australia and France are also both engaged in 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 is believed to be a valuable interlocutor and potential future coalition partner for Australia, due to its capability to undertake coalition expeditionary activities.³
- 8.4 Australia and France also have a notable defence materiel relationship including several major acquisition projects as well as research initiatives.⁴

Obligations

Cooperative Activities

- 8.5 Article 2 sets out the requirement that the Parties shall facilitate defence relations through mutual participation in cooperative activities to be determined by mutual agreement by the Parties.

Logistics Support

- 8.6 Article 4 creates a mutual obligation on the Parties to facilitate logistics support on the basis of either reimbursement, exchange in kind or exchange for equal value.

Laws and Regulations

- 8.7 Annex 1 Section 1 states that the members of a Visiting force, members of the Civilian Component and Dependants of the Sending State when in the territory of the Receiving State, shall be subject to the laws and regulations of the Receiving State.

Disciplinary Matters

- 8.8 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.

Criminal Jurisdiction

- 8.9 Annex 1 Section 3(1) & (2) provides that Authorities of the Sending State have criminal jurisdiction over its Visiting Personnel in the
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3 NIA, para. 6.

4 NIA, para. 6.

Receiving State and are subject to the law of the Sending State, with respect to offences punishable by the law of the Sending State. Likewise, 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.

- 8.10 Annex 1 Section 3(4) requires the authorities of both Receiving and Sending Parties to assist each other in the arrest of members of Visiting Personnel and handing them over to Authority with jurisdiction as stipulated by the Agreement.

Entry and Departure

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

Importation and Exportation

- 8.12 Annex 1 Section 5 provides that official documents under the seal of the Sending State shall not be subject to customs inspection. Section 5 of Annex 1 also stipulates that a member of a Visiting Force, a Member of its Civilian Component or a Dependant, may import, free of duty, reasonable quantities of personal effects and the like.

Carriage of Arms

- 8.13 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.

Training/Exercises

- 8.14 Annex 1 Section 10 provides that Parties may determine to undertake join or unilateral activities for the purposes of training and exercises in each other's country.

Security

- 8.15 Annex 1 Section 11 stipulates that Authorities of both Receiving and Sending States shall cooperate to protect the security of the installations made available to the Visiting Force.

Requests

- 8.16 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.

Future Treaty Action

- 8.17 Article 11 provides that either Party may amend this Agreement at any time by mutual agreement in writing.

Reasons for Australia to take treaty action

- 8.18 This Agreement will facilitate cooperation between Australia and France with respect to military and defence operations by providing a legal framework for visiting personnel sent to the opposite Party to pursue cooperative activities.⁵
- 8.19 In evidence to the Committee, representatives of the Department of Defence stated that the Agreement will build on Australia's already significant linkages with France, providing a framework for closer defence bilateral cooperation in our region.⁶
- 8.20 The Committee also heard from the Defence Department that ratification of this Agreement will 'send a strong signal of our commitment to our strategically important defence relationship and our broader bilateral relationship with France.'⁷

Costs

- 8.21 Article 8 of the Agreement states that each Party shall bear its own costs with relation to activities undertaken pursuant to this Agreement.
- 8.22 According to the NIA, the Agreement will not impose any direct financial costs or benefits for Australia.⁸

5 NIA, para 8.

6 Mr Peter West, *Transcript of Evidence*, 15 September 2008, p. 15.

7 Mr Peter West, *Transcript of Evidence*, 15 September 2008, p. 15.

8 NIA, para. 36.

Withdrawal or denunciation

- 8.23 Article 11 allows for either Party to unilaterally terminate the Agreement by providing the other Party with 180 days notice. Both Parties may agree in writing to terminate the Agreement with immediate effect.
- 8.24 Withdrawal of a Party from the Agreement will have no effect upon any other agreements or arrangements entered into between the Parties unless mutually agreed otherwise.⁹

Other matters

Policy Differences

- 8.25 The Committee was interested in whether there are any defence policy differences between Australia and the French Republic that may present problems into the future. Representatives of the Defence Department noted that while there are two particular divergences in defence policy between the two nations – France’s membership of NATO and its status as an independent nuclear power, neither should be seen as problematic. The Department stated that:
- ...at the moment, in part due to the recent change of government in France, there are no substantive policy divisions between Australia and France.¹⁰
- 8.26 It was suggested that the most significant problem in the defence relationship between the two nations has been French nuclear testing in the Pacific. However, it was noted that France has now signed the Comprehensive Test Ban Treaty.¹¹
- 8.27 The Defence Department stated that rather than arriving out of any particular problems or differences in defence policy between the two Parties, the treaty was motivated by a mutual desire to carry out more activities together:

9 NIA, para. 40.

10 Mr Peter West, *Transcript of Evidence*, 15 September 2008, p. 17.

11 Mr Peter West, *Transcript of Evidence*, 15 September 2008, p. 17.

The fact is that we are both interested in doing more together. I think you could say that perhaps Afghanistan was a catalyst. It pushed us over the edge and we realised it was not just a bilateral thing of going to each country and that there were broader bilateral things we could be doing together.¹²

Conclusion and recommendation

- 8.28 The Committee notes the active defence relationship between France and Australia and considers that ratification of this treaty will send a strong message of Australia's commitment to this strategically important relationship.
- 8.29 The Committee recognises the value of the Agreement to strengthen and build upon our linkages with France and allow greater bilateral cooperation in our region. Both nations' commitment to international counter-terrorism operations is significant and this Treaty will allow for greater cooperation in those vital activities.

Recommendation 11

The Committee supports the *Agreement with the French Republic Regarding Defence Cooperation and Status of Forces* and recommends that binding treaty action be taken.

12 Mr Peter West, *Transcript of Evidence*, 15 September 2008, p. 16.