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National Interest Analysis [2009] ATNIA 19

with attachment on consultation

**Agreement Between The Government of Australia and the Government of the
Republic Of Singapore Concerning the Use of Shoalwater Bay Training Area
and the Use of Associated Facilities in Australia**

(Singapore, 31 May 2009)

[2009] ATNIF 11

**NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY
SUMMARY PAGE**

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Republic of Singapore concerning the Use of Shoalwater Bay Training Area and
the Use of Associated Facilities in Australia
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Nature and timing of proposed treaty action

1. The Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Use of Shoalwater Bay Training Area and the Use of Associated Facilities in Australia (the Agreement) was signed by the Parties on 31 May 2009 in Singapore. The proposed Agreement will enter into force when Australia and Singapore exchange Notes pursuant to Article 21 confirming that all domestic requirements to give effect to the Agreement have been met.
2. It is proposed that notification will occur as soon as all necessary domestic treaty processes have been completed.
3. Once in force, the proposed Agreement will replace the previous 2006 Agreement Between the Government of Australia and the Government of the Republic of Singapore Concerning the Use of Shoalwater Bay Training Area and the Use of Associated Facilities in Australia done at Perth on 23 August 2005 (the 2006 Agreement), which expires on 31 December 2009.

Overview and national interest summary

4. Once in force, the proposed Agreement will allow for continuation of the use of Shoalwater Bay Training Area (SWBTA) and the associated facilities by the Singapore Armed Forces (SAF), which has been ongoing since 1995. Access to SWBTA is greatly valued by Singapore given their lack of domestic training areas and is a major element of our contribution to the bilateral relationship. The SAF also have access to RAAF Base Pearce for pilot training, and the Army Aviation Centre at Oakey for helicopter training. Bilateral agreements and arrangements are used to regulate these deployments also.
5. Use of SWBTA under the Agreement is part of Australia's broader policy to allow access to Australian Defence Force (ADF) facilities by the SAF. Permitting access to SWBTA by the SAF benefits Australia by enhancing the bilateral defence relationship with Singapore, improving the effectiveness of the SAF as an exercise and training partner, and promoting Australia's broader policy of increasing regional security.

Reasons for Australia to take the proposed treaty action

6. The training exercises conducted by the SAF at SWBTA under the Agreement are unilateral. However, just as access is vital to the SAF to enable them to develop and maintain their military capability, there are also significant indirect benefits to Australia from the access. The SAF is a significant exercise partner, which possesses highly sophisticated technology, some of which is not in service with the ADF. If the SAF is able to develop their capability through training in Australia, this improves the benefit to Australia in exercising with them. Many of the assets used at SWBTA, in particular aircraft, are employed elsewhere in bilateral and multilateral exercises involving Australia.

7. Heightened SAF capability is also of benefit to Australia in that it makes the SAF more effective as a coalition partner and as a contributor to regional security. Granting access to SWBTA is part of Australia's contribution to the broader bilateral defence relationship with Singapore. Australia gains considerable benefits from this relationship, for example through access to SAF facilities in Singapore and to SAF courses. Providing access by the SAF to SWBTA for these reasons is consistent with Australia's broader policy of regional engagement, whereby positive defence relations with countries in the region are sought. These relationships develop ADF military capability and help to support ADF partnerships in the region, which is vital for the promotion of Australia's strategic objectives. The proposed Agreement will also benefit local industry through increased access to commercial arrangements with the SAF.

8. Due to the ongoing use of SWBTA by the SAF since 1995, non-renewal of the proposed Agreement would undermine Australia's long standing political, defence and trade relationship with Singapore. This is particularly so in light of the fact that the proposed Agreement is broadly similar to the 2006 Agreement. The proposed Agreement will maintain existing requirements under the 2006 Agreement, including those governing notification and approval of a detailed concept of training prior to the planned SWBTA utilisation dates, environmental assessment of training and environmental restoration works on completion of SAF activities, to ensure the sustainable use of SWBTA, and full cost recovery of all Australian expenses related to SAF activity under the Agreement.

9. The proposed Agreement maintains the limit of 6600 SAF troops and allows for a small increase in the number of vehicles that may be deployed to SWBTA, with Australian Department of Defence (ADOD) approval. This number is regarded as being environmentally sustainable by Australian Defence environmental managers. The proposed Agreement maintains the establishment of an Environmental Monitoring Group for the purposes of monitoring adherence to the environmental compliance conditions and also contains provisions on training and workplace safety to formalise current practice. The proposed Agreement also contains provisions on how claims will be handled by the Parties in order to bring the Agreement into line with current practice for agreements of this type.

10. For the above reasons, it is appropriate to bring the proposed Agreement into force, to allow SAF access to SWBTA to continue beyond 31 December 2009, the date that the 2006 Agreement lapses.

Obligations

11. Australia's general obligations under the Agreement are the provision of facilities for the purposes of training, the appointment of liaison personnel and instruction of the SAF as to requirements stipulated in this agreement. Singapore is required to cover most costs associated with Australia's support of SAF use of SWBTA, comply with security, logistical and commercial obligations and inform ADOD of any activities in contravention of this Agreement.

12. Article 3 deals with access to and use of SWBTA. Australia is obliged to provide access to SWBTA to Singapore for one period of not more than 45 days between August and December each calendar year for training. The maximum number of SAF personnel that may deploy in any one allocated period is 6600. The maximum number of vehicles that may deploy is 150 "A" (mostly armoured vehicles) and "C" (soft-skinned combat) vehicles combined; 250 "B" (special purpose engineering) vehicles; 30 "Other vehicles", and 70 Motorcycles. "A vehicles", "B vehicles", "C Vehicles", "Other vehicles", "Motorcycles" and "Vessels" are defined in Article 1 of the proposed Agreement. Australia is required to inform Singapore as soon as possible if SWBTA becomes unavailable during the allocated period, and must use its best endeavours to identify suitable alternative arrangements. Australia will not be responsible for any costs incurred by Singapore should SWBTA become unsuitable or unavailable for SAF training. Article 3 also contains a provision where, if SWBTA were to become unavailable for use by the SAF due to extreme environmental or strategic circumstances, the provisions of the Agreement would be reviewed immediately by both Parties and all activity pursuant to the Agreement would be suspended pending a resolution.

13. Article 4 requires the SAF to provide details of their proposed training each year in the form of a Concept of Training. Once approved, no changes may be made by the SAF without further Australian approval being obtained in writing. The ADOD is required to advise the SAF as soon as practicable if any areas of SWBTA are unavailable for use. SAF training at SWBTA shall be conducted in accordance with the same rules, procedures and limitations applied to ADOD training activities at SWBTA, details of which shall be provided to the SAF. SAF training at SWBTA shall not be undertaken unless compliance with these rules can be assured to the satisfaction of Australia.

14. Article 5 requires the ADOD to allocate support staff to assist the SAF and to coordinate the facilitation of all ADOD planning and support to the SAF. The Government of Singapore shall pay the costs for ADOD support staff travel, subsistence and allowances that are incurred in performing duties specifically related to assisting the SAF.

15. Article 6 requires the ADOD to provide a liaison officer to brief the SAF on relevant ADOD rules and regulations pertaining to the Agreement, Detailed Concept of Training and the Exchange of Notes constituting a Status of Forces Agreement between Australia and Singapore done at Singapore on 10 February 1988 (the SOFA). The liaison officer observes the implementation of the concept of training during the allocated period. The liaison officer shall not intervene in the conduct of a SAF training activity, but may prohibit, suspend or cause to stop immediately the SAF

training activity if in the liaison officer's opinion, in consultation with the relevant SAF commander, it is necessary to do so for reasons of safety or security. Australia will not be responsible for any costs incurred by Singapore in such circumstances. The ADOD shall allow the SAF use of the Operational Technical Facility (OPTEC) at Rockhampton Airport in order to facilitate and support SAF training. If the ADOD is unable to provide the SAF use of OPTEC, the ADOD shall make best endeavours to provide the SAF with suitable alternative facilities. The use of such facilities is subject to cost recovery.

16. Article 7 permits a SAF Army Detachment of a maximum of seven personnel plus their dependants to remain in Australia to supervise the storage and maintenance of vehicles, equipment and ammunition. The SAF are responsible for arranging all necessary support requirements of the SAF Army Detachment and their dependants.

17. Article 8 deals with environmental considerations. Under this Article, the Parties acknowledge that SWBTA is an environmentally sensitive area and notes that all access to and use of the area is dependent on environmental and weather conditions. Such constraints may require cancellation or reduction of the allocated period by the ADOD, or the activity level, or the imposition by the ADOD of environmental compliance requirements additional to those previously advised to the SAF, with which the SAF is obliged to comply. The SAF must ensure that its personnel are appropriately briefed on the ADOD's environmental policy. All SAF training shall be subject to environmental impact assessment, monitoring, and post exercise remediation, restoration, and rehabilitation. The SAF is obliged to provide information to assist Australia to understand the full impact of exercising in the area and to facilitate the assessment process. Singapore shall pay Australia for the cost of all assessments, monitoring and environmental remediation, restoration and rehabilitation. The SAF and ADOD shall also establish and operate an Environmental Monitoring Group for the purposes of monitoring adherence to the environmental compliance conditions. The ADOD and the SAF will jointly inspect the training area before and after the SAF's training to determine the quantum of any environmental damage. The ADOD shall determine the environmental remediation, restoration and rehabilitation works which are required to restore SWBTA to the ADOD's satisfaction, benchmarked on pre-exercise inspections. Singapore is to pay for all environmental studies and restoration that may be required.

18. Article 9 deals with security. All the associated facilities in Australia used by the SAF shall remain at all times subject to Australian security and legal requirements. Singapore shall be responsible for any increased charges incurred by the ADOD as a result of providing security for facilities used by the SAF. The ADOD shall provide details of, and the SAF shall observe, all applicable ADOD security policies and procedures. The SAF must inform the ADOD immediately of any known or suspected security breach or compromise and shall cooperate in relation to any Australian investigation.

19. Article 10 requires the SAF to appoint a Director of Exercise who shall have overall command and control of all SAF personnel present in Australia pursuant to the Agreement. The Director of Exercise will consult with the ADOD Delegate on all matters of mutual concern or interest. The SAF shall require all SAF personnel to adhere to all ADOD directions while present in Australia. The ADOD may request in

writing the removal of SAF personnel, or their dependants, who display behaviour which is considered un-professional or socially unacceptable.

20. Article 11 requires the SAF to notify the ADOD of all safety appointments concerned with the conduct of live fire training in SWBTA. The SAF must notify the ADOD of any accident or incident involving SAF personnel, materiel and equipment in SWBTA. The SAF must ensure that all training is conducted in accordance with the requirements as advised by the ADOD, including applicable Australian laws. The ADOD shall appoint a Workplace Health and Safety consultant to assist the SAF.

21. Article 12 requires all SAF personnel and dependents to be medically and dentally fit prior to arrival in Australia. The SAF must ensure that all relevant Australian laws, including quarantine laws are complied with. The SAF is to advise the ADOD immediately if the activities of the SAF have the potential to introduce an infectious disease into Australia or if there has been an inadvertent breach of these requirements.

22. Article 13 deals with storage, movement and import of SAF vehicles, equipment, ammunition (including explosives) and materiel. This article requires Australia to provide or approve storage facilities for use by the SAF. The movement of vehicles, equipment, weapons and ammunition within Australia are subject to Australian laws and ADOD regulations and security policies, as advised by the ADOD. Ammunition (including explosives) shall be stored and moved only with the written approval of the ADOD. The SAF shall provide to the ADOD a detailed inventory of all vehicles, ammunition (including explosives), equipment and materiel which it intends to store in storage facilities. Any change to the inventory shall require the written approval of ADOD. The SAF shall also advise the ADOD of any proposed importation of ammunition (including explosives) at least 45 days in advance.

23. Article 14 provides that the SAF shall not undertake any building work associated with the storage facilities without the ADOD Delegate's prior approval. The ADOD shall be responsible for arranging contracts for any such building work. All work shall meet applicable Australian standards and the SAF shall be responsible for the full costs of such building work. The Government of Singapore shall be responsible for costs associated with the restoration of facilities provided by the ADOD to their original condition.

24. Article 15 requires Singapore and its contractors to demonstrate a practical commitment to supporting Australian commercial enterprises. The ADOD will determine what companies constitute an Australian commercial enterprise for the purposes of the Agreement. Singapore must also ensure that, where practical, contracting and sub-contracting opportunities are offered to Central Queensland Local Industry Providers (LIPs) as a priority. Commercial support of Australian commercial enterprises or LIPs is subject to SAF quality standard requirements. Article 15 also requires the Parties to protect Commercial-in-Confidence information that is provided by the other Party.

25. Article 16 deals with maintenance support. Singapore is obliged to outsource set minimum levels of maintenance of its vehicles, equipment and weapons to Australian commercial enterprises. The SAF may determine that certain maintenance

tasks are not suitable to be performed by Australian commercial enterprises for reasons of capability, security or prior contractual obligation. In these circumstances the SAF shall advise the ADOD in writing.

26. Article 17 deals with finance and lists the personnel, goods and services which Singapore is required to pay for on a full cost recovery basis. The ADOD will advise the SAF of the estimated costs, based on the SAF's detailed Concept of Training, for the provision of ADOD support and services prior to commencement of SAF training. The SAF will deposit the estimated amount into the bank account nominated by the ADOD prior to the commencement of training with the balance to be paid or refunded as the case may be at the conclusion of the training.

27. Article 18 sets out how claims will be handled by the Parties. The SOFA is to apply subject to a few variations. Singapore will make full compensation in accordance with the applicable law to the Federal, State, Territory or local government concerned for damage to its property. Due to the unilateral nature of the training, the Agreement provides that, with respect to third party claims, Singapore will be liable for 100% of claims for which they are responsible, rather than the 75/25 apportionment provided for in the SOFA. Article 18 also sets out how contractual claims will be handled.

28. Article 19 deals with settlement of disputes and requires that disputes be settled in the first instance by negotiation between the Parties at the Detachment Commander and ADF Liaison Officer level. If unresolvable at this level the dispute will be referred to the SAF Director of Exercise and ADOD Delegate. Disputes which cannot be settled at the working level shall be resolved between the Parties without recourse to any third party.

Implementation

29. No 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.

Costs

30. The Agreement does not impose any foreseeable direct financial costs on Australia, nor does Australia receive any financial benefit under the Agreement, except through the contracting of Australian commercial enterprises. All support provided by Australia to activities under the Agreement is on a full cost recovery basis. Article 17 provides for cost recovery for administrative support, storage facilities, supplies, the provision of liaison officers and the conduct of environmental assessments and reparations. Article 21 ensures that the termination or expiration of the Agreement will not extinguish any debts incurred while the Agreement is in force.

Regulation Impact Statement

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

Future treaty action

32. The Agreement does not provide for the negotiation of any future legally binding instruments. The Agreement may be amended by written agreement between Parties (Article 20). Any amendment to the provisions of the Agreement would be subject to Australia's domestic treaty process, including tabling before Parliament and review by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

33. Unless terminated earlier, the Agreement will remain in force until the removal of all SAF personnel, vehicles, equipment, weapons and explosives associated with the SAF training at SWBTA from Australia by 31 December 2019, or until other arrangements to be mutually determined between the Parties providing for their disposition come into effect, if earlier (Article 21(1)).

34. The Agreement may be terminated by either Party giving written notice of its intention to do so, in which case it shall terminate twelve months after the date of receipt of the notice of termination. The Parties may mutually consent to the termination of the Agreement at any time (Article 21(2)). Any decision to terminate the Agreement will be subject to Australia's domestic treaty process, including tabling before Parliament and review by the Joint Standing Committee on Treaties.

35. The provisions relating to costs and claims shall remain in force until all costs due to either Party, incurred under the Agreement, have been recovered (Article 21(3)). The provisions relating to security and compliance with laws, policies, procedures and directions will remain in force while any SAF personnel, vehicles, weapons, ammunition or equipment associated with SAF training at SWBTA remain in Australia.

Contact Details

South ASEAN and Maritime Security Section
International Policy Division
Department of Defence

ATTACHMENT ON CONSULTATION

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CONSULTATION

36. The States and Territories have been consulted regarding 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 implementation.

37. In addition to consultation through SCOT, the Australian Department of Defence (ADOD) has conducted wider public consultation. In February 2009, a letter was sent to the following interested Parties advising them of negotiations to extend the proposed Agreement and inviting comment:

The Premier of Queensland
Mayor of Rockhampton
Director-General, Department of Tourism, Regional Development and Industry
Mayor, Gladstone Regional Council
Rockhampton Chamber of Commerce
Rockhampton Regional Development Ltd
Rockhampton Enterprise Centre
Federal Member for Capricornia
State Member for Rockhampton
Rockhampton Tourist and Business Information

38. None of the above recipients raised any issues of concern.

Corporate Services &
Infrastructure – SQ

Corporate Services and Infrastructure
South Queensland
Bldg S7 Gallipoli Bks
Enoggera Qld 4003

[Addressee]

You may be aware that the current Agreement between the Governments of Australia and Singapore, which permits the use of Shoalwater Bay Training Area (SWBTA) by the Singapore Armed Forces (SAF), will expire on the 31st of December 2009. The Department of Defence is currently developing a revised agreement for negotiation with Singapore.

Access to the SWBTA is greatly valued by Singapore and is a major element of our two country's bilateral defence relationship. The new agreement will continue to permit the SAF to access and use the SWBTA for a period of 45 days each year from 2010 to 2019, during which time the SAF will conduct exercises involving their ground, air and sea assets. We anticipate that the number of SAF personnel and vehicles able to enter SWBTA will remain the same as under the current Agreement. Under the new agreement the SAF will continue to be required to offer contracting and sub-contracting opportunities to Central Queensland small and medium enterprises as a priority.

Noting the need to protect the sensitive environment at the SWBTA, the new agreement will continue to require the SAF to adhere to all applicable Australian environmental legislation and quarantine regulations. The new agreement also continues to ensure that all SAF activities shall be subject to an Environmental Impact Assessment, that environmental monitoring teams shall oversee adherence to environmental compliance conditions and that any environmental remediation, restoration or rehabilitation occurs on a cost recovery basis at the expense of the SAF. Where concerns on environmental or strategic grounds arise, the Agreement shall be reviewed immediately and Australian Defence Force authorities can suspend all activity within the SWBTA pending a suitable resolution.

My staff and I would be happy to discuss this matter with you should you have any comments or queries. I note also that the Joint Standing Committee on Treaties can call for submissions from interested individuals and organisations as part of their consideration of the agreed text once it has been tabled in the Parliament.

Yours sincerely

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February 2009