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The Secretary
Joint Standing Committee on Treaties
House of Representatives
Parliament House
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By email: jsct@aph.gov.au

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Dear Secretary

Dear Joint Standing Committee on Treaties

Re: Inquiry into Nuclear Non-proliferation and Disarmament

Please accept this submission to your inquiry into nuclear non-proliferation and disarmament. The Sydney Centre for International Law is a leading research and policy centre on international legal and policy issues. This submission focuses on how treaty bodies and other international legal instruments can be strengthened to advance Australia's objectives in this field. We previously made a submission to JSCOT's inquiry into the Australia-Russia Nuclear Cooperation Agreement last year.

Since the 1996 Canberra Commission on the Elimination of Nuclear Weapons, Australia has established a reputation for leading developed nations in nuclear non-proliferation and disarmament. However, under the previous government, Australia's contribution to multilateral negotiations diminished as Australia's emphasis shifted to bilateral agreements with partners in uranium trade. To pursue its commitments to global nuclear non-proliferation and disarmament, the Australian government must develop an aggressive, multifaceted approach to nuclear diplomacy at local, regional and international levels. We make the following recommendations for Australian action in this important foreign policy area.

1. Creating a Comprehensive Treaty System

To stimulate the development of comprehensive regulation over time, Australia should:

- i) Advocate for a comprehensive Nuclear Weapons Convention, similar to the Chemical Weapons Convention which led to the elimination of chemical weapons. Australia should utilise its position as co-chair of the International Commission on Nuclear Non-Proliferation and Disarmament to push for this ultimate objective.
- ii) Support restarting multilateral negotiations for a draft *Fissile Material Cutoff Treaty*, beginning with our bilateral links with the US, China and Russia.
- iii) Increase the pressure on non-state parties to join the key existing treaties, including the *CTBT*, and the IAEA *Additional Protocol*.

2. Improving Verification and Monitoring

The major weaknesses of the existing treaty system are verification and credibility issues. The verification system can be strengthened by practical measures, such as those suggested by Shultz et al:¹

- i) Strengthen the means of monitoring compliance with the *NPT*, requiring that all signatories of the *NPT* accede to the IAEA's *Additional Protocols*, to increase the powers of IAEA inspectors.
- ii) Secure the future of the International Monitoring System (IMS) and International Data Centre (IDC), currently run by the independent Comprehensive Test Ban Treaty Organisation, by bringing the *CTBT* into effect.
- iii) Provide further support for technical assistance, resourcing and expertise for international monitoring and verification efforts.

The credibility of the *NPT* has suffered due to the contraventions of certain parties. This issue can only be dealt with through the collective action of the international community to hold these parties to account and deter future violations. In 2006, the United Nations Security Council (UNSC) has passed resolutions to impose trade and financial sanctions against North Korea and Iran.² *Ad hoc* UNSC sanctions may prove to be inadequate to deter further contraventions of the treaties. Australia must help to build an international consensus on ways to deter or respond to attempts by countries to break out of agreements.³

Further work needs to be done to repair and strengthen the *NPT* as a binding, enforceable body of international law. We propose that requirements should be imposed on *NPT* state parties to ratify related agreements on nuclear testing, fissile materials, and safeguards for civilian nuclear technology. In the absence of a complete ban on nuclear weapons and weapons-grade materials, it is essential that existing treaties are linked to establish a comprehensive international legal framework on this issue.

¹ Shultz, Perry, Kissinger, Nunn, 'Toward a nuclear free world' *Wall St Journal*, available at http://online.wsj.com/article/SB120036422673589947.html?mod=opinion_main_commentaries.

² UNSC Resolutions 1695 and 1718 (North Korea) and 1696, 1737, 1747 and 1803 (Iran).

³ Above, n1.

3. Australia's Nuclear Diplomacy

We support the Lowy Institute's proposition that more funding and resources are required in order to maximise Australia's influence in multilateral nuclear diplomacy, especially in the area of arms control specialists. Australia should use its unique trade and political relationships and its place in the Asian region to provide leverage in multilateral negotiations in the following ways:

- i) Urge the Obama administration to ratify the *CTBT* and support the verification systems necessary to establish the *FMCT*.
- ii) Maintain a policy of rejecting uranium deals to countries that have not signed the *NPT*, in spite of the waiver granted by the Nuclear Suppliers' Group in the case of the US-India civilian nuclear pact.
- iii) Insist that India can only negotiate nuclear trade deals if it joins *NPT* and *FMCT* negotiations, and keeps to its moratorium on nuclear testing.
- iv) Enforce safeguards in bilateral uranium export contracts, particularly with China; ensure transparency in use of uranium supplied.
- v) Continue to have an active role in the Proliferation Security Initiative, to obstruct the nuclear ambitions of North Korea and Iran.
- vi) Avoid the hypocritical position of demanding global nuclear restraint while relying on the US nuclear umbrella by partnering with the US government to work towards disarmament.
- vii) Build a region-wide agreement through upcoming summits (such as the ASEAN Regional Forum in early 2009 or the East Asian Summit in Chiang Mai, March 2009), including a broad declaration of regional nuclear restraint.

4. Civilian Nuclear Co-operation and Australia's Uranium Trade

As the source of the world's largest reserves of uranium ore and the second largest exporter of uranium, Australia has an international responsibility to enforce agreements for the safe management of civilian nuclear technologies. Meeting this obligation involves these steps:

- i) Consistently establishing strict, binding legal safeguards in uranium export agreements to ensure that uranium is used for peaceful purposes only.
- ii) Enforcing non-proliferation safeguards by supporting international monitoring of nuclear power processes throughout the fuel cycle.
- iii) Developing more effective non-proliferation technologies to minimise the risk that materials for civilian nuclear power plants are converted for military purposes.
- iv) Ensuring that the international treaty system covers management of the risks involved in the whole nuclear fuel cycle, for example, by lobbying for the expansion of the powers of inspectors under the IAEA *Additional Protocol*.

5. Mitigation of Climate Change

There is little doubt that human-induced climate change, if left uncorrected, will have a serious impact upon Australia and the world. Recent scientific assessments suggest that the concentrations of carbon dioxide equivalent in the atmosphere may have already reached a level where dangerous climate change is inevitable. Global emissions continue to increase.

As Australia holds the world's largest reserves of uranium it is incumbent on the Australian Government to put these reserves to good use in exporting uranium for safe civilian energy production, to address the existential threat of climate change. As a developed country which is 'exceptionally sensitive'⁴ to climate change it is clearly in the national interest to do so.

While we do not wish to downplay the safety concerns associated with the use of nuclear power, these are modest when compared with the benefits that the use of nuclear power can bring as a tool for mitigating climate change. These observations apply with particular force where there are opportunities for Australian uranium to be used in mature and fast developing nuclear power industries such as in Russia, as opposed to other jurisdictions (such as our own) where the possibility of a nuclear industry is somewhat off.

6. Conditionality – Human Rights and Democracy

We do not support any suggestion that treaties for the supply of nuclear material should include conditionality clauses relating to human rights and democracy. Improving human rights and democracy in other countries may well be a valuable goal of Australian foreign policy and diplomacy. However, coupling human rights and democracy standards to an agreement for, inter alia, trade in a natural resource such as uranium is unlikely to be workable in practice and is undesirable on policy grounds.

There are no well established international law standards governing 'democracy', nor is there a human right to democracy established at law. The degree of democracy in a given country is a subjective matter of appreciation which is not susceptible to the application of clear and accepted legal standards. Even the best democracies are vulnerable to the critique that they do not meet best practice standards of democracy; one need only think of electoral controversy in the United States following the 2000 Presidential election; or the substantive disenfranchisement of minorities and indigenous people in many democracies; or critiques about whether particular methods of voting are more or less democratic than others.

While international human rights law standards provide a more certain basis for the evaluation of the situation in a foreign country, here too there is a considerable margin of ambiguity and appreciation. Infringements of human rights occur in all countries, including Australia, and it is a difficult political question to determine when rights violations are sufficiently grave as to require the suspension of a trade agreement. Even if a clear answer is available – for instance, some violations of humanitarian law and human rights in some countries are notorious – the question remains whether conditionality is appropriate.

In our view, it is not. **First**, suspension of supply agreements would be unlikely to have any real effect on changing human rights or democracy in foreign countries. If conditionality is viewed as a bilateral sanction, empirically sanctions are usually only effective when applied uniformly at a *multilateral* level.

⁴ Garnaut Climate Change Review: Interim Report to the Commonwealth, State and Territory Governments of Australia – Executive Summary (2008), 2.

Secondly, Australian suspension would likely encourage foreign countries to seek uranium supplies elsewhere, most likely from countries with less stringent non-proliferation safeguards and less rigorous monitoring and inspection processes.

Thirdly, foreign countries could reciprocally invoke human rights or democracy conditions against Australia to suspend the nuclear agreements, for example, by emphasising the treatment of indigenous people or immigrants in detention in Australia, which are areas of concern frequently highlighted by United Nations human rights bodies.

Fourthly, even if conditionality did somehow improve human rights or democracy in a foreign country, it is not clear that those objectives outweigh the stronger policy objective of mitigating climate change through the provision of nuclear energy.

Finally, the supply of uranium is not itself connected to abuses of human rights or suppression of democracy in foreign countries. Conditionality is understandable, for example, in relation to the provision of military equipment or other goods or services which might be directly used to repress human rights, but the supply of an energy commodity lacks any similar nexus.

7. Storage of Nuclear Waste

To further accelerate the take-up of nuclear power generation worldwide as a key method of tackling climate change, Australia should consider including in the treaties for the supply of uranium, and other bilateral safeguards agreements, provisions allowing for the storage of nuclear waste produced from the use of Australian uranium on Australian territory.

Australia has the unique combination of a stable political system and stable geology which means that it is ideally suited for the safe storage of nuclear wastes. We note that the Switkowski Review in 2006 found that Australia has a number of geologically suitable areas for deep disposal of radioactive waste consistent with international best practice.⁵ The Commonwealth will soon establish a deposit for low level and intermediate level nuclear waste from nuclear activities in Australia including uranium mining, medical and other research, and we recommend that in developing a storage site consideration be given to the capacity of the deposit to receive wastes generated from Australian exported uranium.

While we note that there are legitimate safety concerns surrounding the storage of nuclear waste that can and must be addressed, it bears repeating that such concerns are outweighed by the overriding need to reduce carbon wastes currently being discharged into the atmosphere.

Please be in touch if you require any further information.

Yours sincerely

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⁵ Australian Government, *Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia?* (2006), 56.