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The Secretary
Join Standing Committee on Treaties
House of Representatives
Parliament House
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20 June 2008

Dear Secretary

Re: *Agreement between Australia and the Russian Federation on Cooperation in the Use of Nuclear Energy for Peaceful Purposes*

The Sydney Centre for International Law (Sydney Centre) welcomes the opportunity to make a submission to your inquiry into whether the Australian Government should ratify the *2007 Agreement Between the Government of Australia and the Government of the Russian Federation on Cooperation in the Use of Nuclear Energy for Peaceful Purposes* [2007] ATNIF 28 (the *2007 Agreement*). Dr Saul is Director of the Sydney Centre and expert in international security law and Dr Stephens is Director of the Sydney Centre's International Environmental Law Program and expert in climate and environmental law.

In our view Australia should ratify this agreement. There are strong reasons why ratification is in the national interest – principally the benefits that greater use of nuclear power by Russia would bring to the abatement of global greenhouse gas emissions – and no countervailing concerns – such as nuclear proliferation – that have not been adequately addressed in the *2007 Agreement* or by other existing international legal arrangements. We address four issues: proliferation; conditionality; climate change; and nuclear waste.

1. Proliferation Concerns

Australia is currently a party to more than twenty bilateral nuclear safeguards agreements with States that receive nuclear material, principally uranium, from Australia. The *2007 Agreement* is in line with this existing practice (such as the recent agreement with China: see [2007] ATS 4) and would expand Australia's nuclear cooperation with Russia to include the supply of Australian uranium for use in Russia's civilian nuclear facilities.

In broad terms we have sympathy for the views expressed by Professor Don Rothwell in his advice to the Australian Conservation Foundation (ACF) (see submission by the ACF to JSCOT, 11 June 2008) in relation to proliferation issues. As a party to the *1968 Treaty on the Non-Proliferation of Nuclear Weapons* (the *NPT*) Australia is required to work towards the goal of global nuclear disarmament (see Article VI).

We note concerns that Russia is not meeting its obligations under the *NPT* in full. However we note that Russia has concluded a safeguards agreement with the International Atomic Energy Agency together with an additional protocol which entered into force on 16 October 2007. As such we note that any objection on the grounds that the *2007 Agreement* does not adopt the second-generation safeguards standards has now been overcome.

In our view, the combined network of multilateral and bilateral safeguards which would regulate uranium supply between Russia and Australia under the 2007 Agreement reflects world's best practice in this area. While it is impossible to eliminate all risks in this area, appropriate monitoring and enforcement of the safeguards provided should ensure that those risks are contained and minimised as far as possible.

2. 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.

Given the urgent need to control greenhouse gas emissions, we support measures such as the *2007 Agreement* that will assist in mitigation efforts. Russia has a mature civilian nuclear industry that produces around 16 per cent of its current electricity needs. However demand for electricity in Russia is rising sharply and to address this the Russian government plans to build a number of nuclear power generation facilities. This will result in the reduction of greenhouse gas emissions that would otherwise have been generated by more carbon-intensive modes of energy production.

As Australia holds the world's largest reserves of uranium it is incumbent on the Australian Government to put these reserves to good use to address the existential threat of climate change. As a developed country which is 'exceptionally sensitive'¹ 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.

¹ *Garnaut Climate Change Review: Interim Report to the Commonwealth, State and Territory Governments of Australia – Executive Summary* (2008), 2.

3. Conditionality – Human Rights and Democracy

We do not support the suggestion that a treaty 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, Russian violations of humanitarian law and human rights in Chechnya are notorious – the question remains whether conditionality is appropriate.

In our view, it is not. **First**, suspension of the *2007 Agreement* would be unlikely to have any real effect on changing human rights or democracy in Russia. If conditionality is viewed as a bilateral sanction, empirically sanctions are usually only effective when applied uniformly at a *multilateral* level. Given Russia has its own domestic uranium supply, Australian does not have sufficient leverage over Russia for suspension to have any material effect.

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

Thirdly, Russia could reciprocally invoke human rights or democracy conditions against Australia to suspend the *2007 Agreement*, 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 Russia, it is not clear that those objectives outweigh the stronger policy objective of mitigating climate change through the provision of nuclear energy. Failure to mitigate the emissions of a major economy such as Russia will affect the future of all countries and the prospects for human rights protection and democratic governance of all peoples.

Finally, the supply of uranium is not itself connected to abuses of human rights or suppression of democracy in Russia. 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.

4. 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 *2007 Agreement*, 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.² 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. As British scientist James Lovelock has observed:³

An outstanding advantage of nuclear over fossil fuel energy is how easy it is to deal with the waste it produces. Burning fossil fuels processes 27,000 million tons of carbon dioxide yearly, enough...to make, if solidified, a mountain nearly one mile high and with a base twelve miles in circumference. The same quantity of energy produced from nuclear fission reactions would generate two million times *less* waste, and it would occupy a sixteen-metre cube. The carbon dioxide waste is invisible but so deadly that if its emissions go unchecked it will kill nearly everyone.

Please be in touch if you require any further information.

Yours sincerely

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² Australian Government, *Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia?* (2006), 56.

³ James Lovelock, *The Revenge of Gaia: Why the Earth is Fighting Back and How We Can Still Save Humanity* (2006) 91-92.