

Tabling Speech

Tonight I present two reports to the parliament that contain the results of inquiries conducted by the Treaties Committee. Both reports complete the committee's scrutiny of treaties tabled late in the 39th Parliament. The first report relates to four nuclear safeguards treaty actions that were tabled in August 2001: an agreement with the Argentine Republic, an exchange of notes with the USA relating to an agreement on transfers of nuclear material to Taiwan, and agreements with the Czech Republic and the Republic of Hungary on cooperation in peaceful uses of nuclear energy and the transfer of nuclear material. In our report, the majority of the committee expresses its support for each of these treaty actions. There is a dissenting report from one senator.

Consistent with Australia's interest in preventing the proliferation of nuclear weapons, the proposed agreement with Argentina will ensure that the transfers of nuclear material, equipment or technology between Australia and Argentina are subject to nuclear safeguards and appropriate controls. This includes the provision of an appropriately safeguarded option, if required, for the conditioning in Argentina of irradiated fuel from the replacement research reactor at Lucas Heights which is being constructed by an Argentinean company.

The purpose of the proposed agreement between Australia and the United States of America is to facilitate the sale of Australian uranium for use in nuclear power reactors in Taiwan, under conditions consistent with Australia's longstanding uranium export policy and nuclear nonproliferation commitments. Since Australia does not recognise Taiwan as a state, it is not possible to negotiate a bilateral safeguards agreement directly with Taiwan, as Australia's uranium export policy usually requires. [start page 2021]

However, Australia recognises that Taiwan has legitimate energy needs and that it has chosen nuclear power as part of its energy supply mix. The proposed agreement with the United States provides for Australian uranium to be enriched in the United States, after which it would be transferred to Taiwan. In this way, Australian uranium will be covered by nuclear safeguards agreements between Australia and the United States, and between the United States, Taiwan and the International Atomic Energy Agency.

The primary purpose of the proposed agreements with the Czech Republic and Hungary is to facilitate the sale of Australian uranium for use in those countries, consistent with Australia's longstanding uranium export policy and nonproliferation commitments. Australia's uranium export policy provides assurances that exported uranium and its derivatives are used solely for peaceful purposes and cannot be diverted to nuclear weapons or other military programs. These two proposed agreements resemble closely the 15 bilateral safeguards agreements already in place. This network of agreements creates a framework for cooperation in the peaceful uses of nuclear science and technology between Australia and the other signatories. They bring into operation the safeguards applied by the Australian Safeguards and Non-Proliferation Office, which supplement International Atomic Energy Agency safeguards.

The second report, Report 45, on the Statute of the International Criminal Court, contains the results of an examination by the Treaties Committee of the Statute of the

International Criminal Court tabled on 10 October 2000. It also incorporates scrutiny of the exposure drafts of the implementing legislation, which were referred to the committee in August 2001. It is intended that the International Criminal Court will stand as a 'third pillar' beside the United Nations and the International Court of Justice in global efforts to promote peace and security. It will complement the United Nations and provide a permanent mechanism to call to account those individuals who commit the most serious crimes of international concern. The crimes of genocide, crimes against humanity, war crimes and—should a definition be agreed in the future—the crime of aggression will be the concern of this court.

Australia has played an active role in the development of the statute as leader of the like-minded group of nations. Australia signed the statute on 9 December 1998. On 11 April 2002, the statute entered into force when the 60th nation ratified the agreement. Australia is not a foundation member but still has the opportunity, if it is able to complete all legal technicalities before 1 July 2002, to participate in the inaugural meetings of the states which are party to the statute.

The committee received a large number of submissions from the public, a number expressing their opposition to Australia ratifying the statute on grounds such as that it would be unconstitutional; it would result in a loss of Australian sovereignty; Australian citizens would be adversely affected by 'vague' definitions of crimes that come within the jurisdiction of the court; ratification would affect negatively the operations of the Australian Defence Force; or that there could be problems associated with the role of the prosecutor and the accountability of the court. Perhaps the greatest concern centred on the complementarity principle, which many thought would be unworkable and could undermine Australia's national and legal sovereignty. This principle is the cornerstone of the statute and emphasises that the jurisdiction of the court will be complementary to national criminal jurisdictions. It recognises that it is the duty first and foremost of every state to exercise its national criminal jurisdiction over those responsible for international crime.

The committee has considered carefully all these concerns. The doubts are understandable, but the cause is worthy, and thus the committee has concluded that it is in Australia's interest to ratify the statute. In making this decision, we have recommended a number of changes to the proposed legislation. It is important that Australia's primacy of jurisdiction be emphasised in the legislation and in a written declaration by the government to be included in the ratification documents. As a major additional protection, the committee has recommended that the operation of the International Criminal Court be the subject of an annual report by the government to parliament, followed by a public review of the report by the treaties committee assisted by a panel of eminent experts. This monitoring of the International Criminal Court should be particularly focussed on the jurisprudence that may be developed by the court and its potential impact on the Australian legal system and citizens of Australia.

Australia will join with at least 66 nations, including Great Britain, France, Germany, Italy, Canada, New Zealand and the Netherlands, amongst others, in ratifying this treaty. I urge both houses to progress the proposed implementing legislation as quickly as possible to ensure that all the legal requirements are in place to meet the 1 July deadline for Australia's ratification. It is particularly important to assure Australia's participation in the inaugural meetings of the states party to the statute, at which the

officials, the judges and the prosecutors, the rules of procedure and elements of crimes to be covered by the court will be put in place. On behalf of the committee, I thank all those who made oral and written submissions for their assistance, and I extend our thanks and gratitude to the secretariat, particularly Mr Bob Morris, who have ably assisted the committee in both the 39th and the 40th parliaments. I commend the reports to the House.

Source House Hansard, 14 May 2002, p. 2002,