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Australian Government

Australian Safeguards and Non-Proliferation Office

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16 September 2008

Mr Kelvin Thomson MP
Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Mr Thomson,

On Monday 1 September 2008, I along with colleagues from the Department of Foreign Affairs and Trade (DFAT) and the Australian Nuclear Science and Technology Organisation (ANSTO) appeared before the Joint Standing Committee on Treaties in relation to the Australia-Russia Nuclear Cooperation Agreement. During the hearing the Committee noted that in an advisory opinion the International Court of Justice (ICJ) found that the use of nuclear weapons, or the threat to use them, would generally be contrary to humanitarian and other international law regulating the conduct of warfare. In this context the Committee asked for an assessment about recent statements by Russian officials with respect to the proposed missile defence base in Poland.

Recently, some senior Russian officials, including Foreign Minister Lavrov on 11 September, are reported to have made statements about the potential for the proposed missile defence base in Poland to come under the scope of Russia's military doctrine on the use of nuclear weapons. The key elements of Russia's military doctrine relevant to the Committee's question are as follows:

The Russian Federation reserves the right to use nuclear weapons in response to the use of nuclear weapons or other weapons of mass destruction against itself or its allies and also in response to large-scale aggression involving conventional weapons in situations that are critical for the national security of the Russian Federation and its allies.

The Russian Federation will not use nuclear weapons against member states of the Treaty on the Non-Proliferation of Nuclear Weapons that do not possess nuclear weapons except in the case of an invasion or any other attack against the Russian Federation, its territory, its armed forces

or other troops, its allies, or a state toward which it has obligations with respect to security, unless that attack is conducted or supported by such a non-nuclear-weapons state together with a nuclear-weapons state or under alliance obligations with a nuclear-weapons state.

The recent statements appear to be consistent with Russia's doctrine on the use of nuclear weapons. Other nuclear-weapon states have similar military doctrines.

In its 1996 Advisory Opinion on *the Legality of the Threat or Use of Nuclear Weapons* the ICJ found that, in relation to a threat to use nuclear force, a signalled intention to use such force may, or may not, be a "threat" depending on the circumstances. In any event, ICJ advisory opinions are not considered to be binding at international law.

While ever nuclear weapons exist, there is always the risk they might be used. For this reason the Government is committed to Australia playing a strong leadership role on nuclear non-proliferation and disarmament. This is reflected in Australia's decision to establish, with Japan, the International Commission on Nuclear Non-proliferation and Disarmament. The Commission's main aim is to reinvigorate international efforts on nuclear non-proliferation and disarmament ahead of the 2010 Nuclear Non-Proliferation Treaty Review Conference and beyond. A wide range of countries has welcomed establishment of the Commission. The first meeting of the Commission will be in Sydney in October 2008.

This issue was raised in the Committee in the context of whether Australia could be confident Russia would comply with its international legal obligations, in particular the proposed Nuclear Cooperation Agreement. As I and my DFAT colleagues have explained in evidence to the Committee, we are confident Russia would comply with its legal obligations arising from the Agreement because, apart from any other considerations, it is clearly in Russia's national interest to do so. Russia has plans for a major expansion of its civil nuclear program so is expected to become increasingly reliant on supply of uranium from major producers such as Australia.

Yours sincerely

John Carlson
Director General