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Report 44

Four nuclear safeguards treaties tabled in August 2001

Joint Standing Committee on Treaties

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Membership of the Committee

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the Committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the Committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



Recommendations

Agreement on nuclear safeguards with Argentina

The Committee supports the *Agreement between Australia and the Argentine Republic concerning cooperation in peaceful uses of nuclear energy* and recommends that binding treaty action be taken. (Paragraph 2.28)

Agreement on nuclear safeguards with the United States of America

The Committee supports the *Exchange of Notes with the USA relating to an Agreement on transfers of nuclear material to Taiwan* and recommends that binding treaty action be taken. (Paragraph 3.18)

Agreement on nuclear safeguards with the Czech Republic

The Committee supports the *Agreement between the Government of Australia and the Government of the Czech Republic on cooperation in peaceful uses of nuclear energy and the transfer of nuclear material* and recommends that binding treaty action be taken. (Paragraph 4.16)

Agreement on nuclear safeguards with the Republic of Hungary

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Hungary on cooperation in peaceful uses of nuclear energy and the transfer of nuclear material* and recommends that binding treaty action be taken. (Paragraph 4.17)

Introduction

Purpose of the report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of a series of proposed treaty actions tabled on 21 August 2001.¹
- 1.2 Specifically, the report deals with:
- *an Agreement Between Australia and the Argentine Republic concerning cooperation in the peaceful uses of nuclear energy;*
 - *an Exchange of Notes with the USA relating to an Agreement on transfers of nuclear material to Taiwan;*
 - *Agreement between the Government of Australia and the Government of the Czech Republic on cooperation in peaceful uses of nuclear energy and the transfer of nuclear material; and*
 - *Agreement between the Government of Australia and the Government of the Republic of Hungary on cooperation in peaceful uses of nuclear energy and the transfer of nuclear material.*
- 1.3 The Committee began its consideration of these four proposed treaty actions in the 39th Parliament, but decided more time was needed to allow each proposal to be subjected to a more thorough examination. This has

¹ For treaties tabled on 21 August 2001, see *Senate Journal*, 21 August 2001, No. 203, p. 4667 and *House of Representatives Votes and Proceedings*, 21 August 2001, No. 2034, p. 2507.

now occurred and the Committee is ready to make recommendations as to whether binding treaty action should be taken with regard to each.

Availability of documents

- 1.4 The advice in this report refers to, and should be read in conjunction with, the National Interest Analyses (NIAs) prepared for these proposed treaty actions. Copies of the NIAs are available from the Committee website at <http://www.aph.gov.au/house/committee/jsct/index.htm> or obtained from the Committee Secretariat. These documents were prepared by the Government agency responsible for the administration of Australia's responsibilities under each treaty.
- 1.5 Copies of treaty actions and NIAs can also be obtained from the Australian Treaties Library maintained on the Internet by the Department of Foreign Affairs and Trade (DFAT). The Australian Treaties Library is accessible through the Committee's website.

Conduct of the Committee's review

- 1.6 The Committee's review of the treaty actions canvassed in this report was advertised in the national press and on the Committee's website.² In addition, letters inviting comment were disseminated to all State Premiers and Chief Ministers and to individuals who have expressed an interest in being kept informed of proposed actions like these. Fourteen written submissions were received in response to these invitations to comment; individual and agency authors of submissions regarding these four proposed treaty actions are listed at Appendix B.
- 1.7 The Committee also took evidence at public hearings held on 27 August 2001 and 9 April 2002. Lists of witnesses who gave evidence at these hearings are at Appendix C.

2 The Committee's review of the proposed treaty actions was advertised in *The Weekend Australian* on 25/26 August 2001. Members of the public were advised of how to obtain relevant information about proposed treaty actions, and invited to submit their views on these.

- 1.8 Transcripts of evidence are available from the Committee Secretariat or through the Committee's internet site www.aph.gov.au/house/committee/jsct/index.htm.

Proposed treaty with Argentina

Background¹

- 2.1 The conclusion during 2001 of a commercial contract between an Argentine firm INVAP SE and the Australian Nuclear Science and Technology Organisation (ANSTO) for the construction of a replacement research reactor at Lucas Heights is expected to lead to significant cooperation between Australia and Argentina in nuclear technology, both during the construction phase and in later scientific collaboration. The replacement research reactor contract involves transfers of materials, technology and equipment to Australia. There is also the possibility that irradiated fuel may be transferred to Argentina for conditioning and subsequently returned to Australia as waste.
- 2.2 The Government's nuclear safeguards policy requires that Australia have in place a document of treaty status with any country to which nuclear materials will be transferred. While existing policy requires the proposed Agreement to cover only material which is exported from Australia, given the significance of the replacement research reactor project, the Government considers it desirable to put in place a full safeguards agreement also covering material returned to Australia.
- 2.3 At the present time, Australia has 15 bilateral safeguards agreements in place. These complement the International Atomic Energy Agency's

¹ Unless otherwise indicated, the material in this and the following section has been drawn from the National Interest Analysis prepared for the *Agreement between Australia and the Argentine Republic concerning Cooperation in Peaceful Uses of Nuclear Energy*.

(IAEA) safeguards system in assuring the peaceful non-explosive use of Australian nuclear material and serve our nuclear non-proliferation security interests. The proposed Agreement with Argentina is modelled on existing nuclear safeguards agreements, and includes all the essential requirements of Australia's policy for the control of nuclear materials.

Proposed treaty action

2.4 In general, the proposed Agreement with Argentina would:

- (1) create a formal framework for cooperation between Australia and Argentina in nuclear science and technology;
- (2) ensure that all transfers of nuclear material, equipment or technology between Australia and Argentina are subject to nuclear safeguards and appropriate controls and are consistent with Australia's policies to prevent the proliferation of nuclear weapons;
- (3) underpin one element of the Government's spent fuel and radioactive waste management strategy; and;
- (4) allow the export of Australian uranium to Argentina.

2.5 More specifically, the proposed Agreement would oblige Parties:

- to cooperate in the peaceful uses of nuclear energy;
- not to use any nuclear material, equipment or technology (subject to the proposed Agreement) for explosive purposes or related research, or any other military purpose;
- to cooperate in support of the Treaty on the Non- Proliferation of Nuclear Weapons and the IAEA's safeguards activities;
- to ensure that adequate physical protection measures (consistent with the current international standard) cover nuclear material within their jurisdiction;
- to obtain permission from the other Party before transferring nuclear material supplied by it to a third country; and
- to refrain from enriching (to a prescribed level) or reprocessing nuclear material supplied by the other Party without prior written consent of the supplier Party.

- 2.6 Article 12 of the proposed Agreement would also oblige Argentina to make appropriate arrangements, on the request of the Australian Government, for the processing of irradiated fuel from the replacement reactor at Lucas Heights. While the Government's spent fuel and waste management strategy provides for all irradiated fuel to be reprocessed in France under ANSTO's contract with COGEMA (Compagnie Generale des Matieres Nucleaires) , processing facilities in Argentina might need to be used in the event that reprocessing in France was not possible. Australia would be obliged to permit the return to Australia of all waste and other by-products resulting from conditioning or reprocessing under this Article.
- 2.7 The proposed Agreement provides for an Administrative Arrangement to be put in place to facilitate effective implementation of the Agreement; this would parallel the Administrative Arrangements concluded under other Australian bilateral safeguards agreements. This would specify reporting, material accounting and other implementation details.
- 2.8 The proposed Agreement also provides for consultations, at the request of either Party, to ensure the effectiveness of the Agreement, and specifies a mechanism for dispute resolution. The mechanism for dispute resolution consists of provisions for the appointment of a three-member arbitral tribunal, the decisions of which will be binding on the Parties.
- 2.9 Article 18 provides that the proposed Agreement may be amended or revised by agreement between the Parties. Such amendments would require domestic approval before entering into force.

Evidence presented and issues arising

Legality of Agreement in Argentina

- 2.10 The Lucas Heights nuclear reactor has been in the Sutherland Shire Council for over forty years and the replacement facility is to be built there. The Council presented written and oral testimony raising a number of concerns about the proposed treaty action. Chief among these was the argument that Article 12 of the treaty, which allows for the possibility of spent nuclear fuel rods being transported to Argentina for processing and re-processing, represents a breach of a section of Argentina's Constitution proscribing the entry of radioactive wastes into the country.² As one Council witness put it to the Committee:

² Sutherland Shire Council, *Submission No. 1*, p. 4.

...there is a real question as to whether the entry into this agreement would be futile on the part of Australia, and I suppose a second policy issue arises, and that is whether Australia ought to be making agreements with other countries which are fairly obviously in breach of that other country's constitution.³

- 2.11 If spent fuel can be reprocessed, though, it is not regarded as waste. A subsequent submission from the Sutherland Shire Council points out that this distinction is central to the issue of constitutionality in Argentina.⁴ The Council acknowledges that this distinction is common in international practice but contends that, as Argentina has no capacity to reprocess spent fuel, in this case the distinction cannot be sustained.⁵
- 2.12 However, a submission from the Department of Foreign Affairs and Trade notes that the distinction between spent fuel and waste is enshrined in Argentine law. Argentina has the capacity to re-process spent fuel rods, and the Argentine Government has advised the Australian Government that, according to its legal advice, there is no constitutional impediment to the transfer of spent fuel to Argentina. The independent body responsible for the regulation of nuclear matters in Argentina, the Argentine Nuclear Regulatory Authority, has informed the Australian Government that it agrees with this view. The Argentine Ambassador to Australia confirmed, in testimony to the Senate Select Committee for an Inquiry into the Contract for a New Reactor at Lucas Heights, that there is no constitutional impediment to the transfer of spent fuel to Argentina.⁶

Transport of nuclear waste

- 2.13 The Committee also received a number of submissions from member countries of the Latin American 'Rio Group' expressing concern about the possible transportation of nuclear waste to and from Argentina. Submissions from a collective of nongovernment organisations and the Municipality of Punta Arenas in Chile, as well as the Ministry of Foreign Affairs & Trade in Costa Rica, asked the Committee to consider the

3 Timothy Robertson, *Transcript of Evidence*, 27 August 2001, TR45.

4 Sutherland Shire Council, *Submission No. 1.1*, p. 2.

5 Tim Robertson, *Transcript of Evidence*, 27 August, 2001, p. TR47. This same contention is made on page 2 of the Council's Submission 1.1.

6 Department of Foreign Affairs and Trade, *Submission No. 9*, pp. 1-3. The Committee was advised by a witness from the Australian Conservation Foundation that the constitutionality of the proposed treaty action is presently being challenged in a federal court in Buenos Aires. The Committee considers that the resolution of this issue is a matter for the Argentinian legal system.

potential environmental damage a transportation accident could cause, and expressed the hope that:

...the transfer of these hazardous wastes will be carried out in strict accordance with all the international law instruments that are in force...compatible with a rational and efficient environmental management and done in a way that will protect human health and the environment...⁷

- 2.14 At a recent public hearing in Sydney, Greenpeace Australia expressed its empathy with the concerns of the Rio Group countries as well as its opposition to the shipment of spent nuclear fuel anywhere, on the grounds of its riskiness.⁸ Greenpeace asked the Committee to scrutinise closely the agreement between Australia and Argentina to make sure that the treaty would not 'seriously affront' Australia's neighbours, friends and trading partners.⁹
- 2.15 Article 9 of the proposed Agreement obliges Parties to cooperate in support of the Non-Proliferation Treaty and IAEA safeguards activities, and also to put in place alternative arrangements should IAEA safeguards cease to apply for any reason. The Committee understands from evidence presented to it that Argentina is a Party in good standing with the Non-Proliferation Treaty, and also that it has safeguards agreements in place with the IAEA.¹⁰ In addition, both Australia and Argentina are parties to the Convention on the Physical Protection of Nuclear Material, which sets out legally binding obligations in relation to the protection of material in international transport.¹¹
- 2.16 The purpose of the Agreement is, as one witness said, to provide an intergovernmental basis for providing assurances in terms of the transfer of nuclear materials and nuclear technology between Argentina and Australia.¹² The cooperative framework established by the proposed Agreement would, for example, facilitate compliance with the requirements of the *Australian Radiation Protection and Nuclear Safety Act 1998*. This Act applies to Commonwealth entities and contractors of those entities performing work on their behalf at any location, within or outside Australia.¹³

7 Costa Rica's Ministry of Foreign Affairs & Trade, *Submission No. 5*, p. 1.

8 Stephen Campbell, *Transcript of Evidence*, 9 April 2002, p. TR92.

9 *Transcript of Evidence*, 9 April 2002, p. TR89.

10 Bill Paterson, *Transcript of Evidence*, 27 August 2001, p. TR38.

11 Australian Nuclear Science and Technology Organisation (ANSTO), *Submission No. 31*, p. 1.

12 John Rolland, *Transcript of Evidence*, 27 August 2001, p. TR34.

13 *NIA: Agreement between Australia and the Argentine Republic concerning Cooperation in Peaceful Uses of Nuclear Energy*, p. 3.

Nuclear waste disposal

- 2.17 The Agreement refers to the return to Australia of all waste and other by-products resulting from conditioning or reprocessing under Article 12, and for some of the groups presenting evidence to the Committee the question of where, how, and for how long these wastes will be stored animates opposition to this proposed treaty. The Sutherland Shire Council, for example, said:

We have got serious doubts about the proposal because of the lack of safe proposals to deal with the nuclear waste...¹⁴

- 2.18 The Australian Conservation Foundation (ACF) argued that it was ‘unconscionable’ for Australia to be, as it described, ‘exporting the burden of our nuclear waste legacy to other countries’,¹⁵ and not taking responsibility for the management of spent fuel wholly in Australia. The ACF expressed its concern that Australia does not yet have an ‘assured position’ on the long-term management of spent fuel, and argued that the Committee should play a role in informing the community about the legitimate options for the disposal of the spent fuel which is going to be produced for the next 40 years at the new Sydney reactor.¹⁶
- 2.19 Current arrangements for the storing of nuclear wastes – and plans for the future – were outlined to the Committee by witnesses from the Australian Nuclear Science and Technology Organisation (ANSTO) and the General Manager of the Mineral Access and Rehabilitation Branch of the Commonwealth Department of Industry, Science and Resources (DISR). ANSTO said that:

If fuel is processed in Argentina – and I say ‘if’ because it is a fall back arrangement and, as I have indicated to you, ANSTO’s primary arrangements are with the French company COGEMA – then the waste returned is required, under our contract, to be long-lived intermediate level waste which is capable of being handled in Australia. In the first instance the waste would be handled in the national store for long-lived intermediate level waste, and the preferred arrangements for it are in the process of being examined. There is a public discussion paper available in terms of that process at this point in time.¹⁷

14 Councillor McDonnell, *Transcript of Evidence*, 27 August 2001, p. TR44.

15 David Noonan, *Transcript of Evidence*, 9 April 2002, p. TR97.

16 David Noonan, *Transcript of Evidence*, 9 April 2002, p. TR104.

17 John Rolland, *Transcript of Evidence*, 9 April, 2002, p. TR39.

- 2.20 The General Manager of the Mineral Access and Rehabilitation Branch of DISR, Mr J. Harris, confirmed that the Government had prepared a discussion paper on a proposed methodology for selecting a site for the store of long-lived intermediate level waste. According to Mr Harris, it would not be possible to identify a site for the store before late 2002.¹⁸

Conclusions and recommendations

- 2.21 The Committee appreciates the various contributions made to this inquiry by government officials and members of the public. Their testimony has assisted the Committee's deliberations as to whether it is in Australia's national interest for the Committee to recommend binding treaty action with Argentina.
- 2.22 With regard to the contention that the treaty violates a section of the Argentine Constitution, and may possibly be illegal in that country, the Committee is reassured by evidence of the approach taken by the Argentinian Government. The Committee is equally reassured by the finding of the Senate Select Committee for an Inquiry into the Contract for a New Reactor at Lucas Heights, which concluded last year that:
- ...neither INVAP nor ANSTO could have sought, at this stage, any greater assurance as to the validity of their contractual arrangements than they have been given.¹⁹
- 2.23 Neither does the Committee consider that the transport of the spent nuclear fuel represents an unacceptable level of risk. It appreciates that there are well-established multilaterally agreed safety standards developed through the IAEA which apply to such transportation, and that in more than 2400 shipments of spent nuclear fuel, there has never been an incident that has resulted in the release of radioactivity. This kind of transportation is governed by the IAEA's International Regulations for the Safe Transport of Radioactive Material, which are subject to periodic review and updating in order to reflect developments in knowledge about radiation health issues and developments in technology.²⁰
- 2.24 While Committee members question that there is a sound basis in fact for some of the concerns expressed by some witnesses in this inquiry, it is sympathetic to the concerns of those who have expressed impatience

18 Jeffrey Harris, *Transcript of Evidence*, 9 April 2002, p. TR40.

19 Parliament of the Commonwealth of Australia (May 2001), *A New Research Reactor?: Report of the Select Committee for an Inquiry into the Contract for a New Reactor at Lucas Heights*, Commonwealth of Australia, Canberra, p. 202.

20 Australian Nuclear Science and Technology Organisation (ANSTO), *Submission No. 31*, p. 1.

about the time it has taken the Government to formulate a viable, long-term strategy for dealing with the problem of nuclear waste. The Committee notes that the Senate Select Committee that looked at various issues associated with the construction of the new nuclear reactor recommended to the Government that the matter of the safe disposal of spent fuel from the new reactor be satisfactorily resolved before approval for the construction was given.²¹ The Committee understands that, as at the time of the writing of this report, ANSTO is to release a response to the comments it has received on its discussion paper outlining a proposed methodology for selecting a site for the storage of long-lived intermediate level waste. It is in the process of assessing various sites, and expects to be in a position to release a shortlist of these by the end of this year.

- 2.25 The Committee is aware of the level of concern among some members of the public about the construction of the new nuclear reactor at Lucas Heights. This concern was reflected in the report of the Senate Select Committee set up to investigate the need for the new nuclear research reactor, which concluded that a compelling case for a new reactor had not been established by the Government and recommended there be an independent public review of the need for it.²²
- 2.26 However this Committee, like the Senate Select Committee, recognises that the current Government is going ahead with the construction of the proposed reactor ²³. An Argentine firm has won a commercial contract to build this replacement research reactor at Lucas Heights, and a commercial arrangement for the exchange of nuclear technologies and materials now exists between ANSTO and INVAP. The Committee is persuaded that Australia's entering into this proposed treaty action with Argentina would enhance and facilitate this new relationship, and provide an appropriate level of intergovernmental backing to ensure the effective regulation of the research reactor project at Lucas Heights.
- 2.27 Accordingly, the Committee makes the following recommendation.

21 Parliament of the Commonwealth of Australia (May 2001), *A New Research Reactor?: Report of the Select Committee for an Inquiry into the Contract for a New Reactor at Lucas Heights*, Commonwealth of Australia, Canberra, p. 230.

22 Parliament of the Commonwealth of Australia (May 2001), *A New Research Reactor?: Report of the Select Committee for an Inquiry into the Contract for a New Reactor at Lucas Heights*, Commonwealth of Australia, Canberra, p. xxix. The Select Committee was composed of three members of the Australian Labor Party (one of whom was the Chair), two members of the Liberal Party, one member of the National Party, and one from the Australian Democrats.

23 Parliament of the Commonwealth of Australia (May 2001), *A New Research Reactor?: Report of the Select Committee for an Inquiry into the Contract for a New Reactor at Lucas Heights*, Commonwealth of Australia, Canberra, p. xxxii.

Recommendation 1

- 2.28 **The Committee supports the *Agreement between Australia and the Argentine Republic concerning cooperation in peaceful uses of nuclear energy* and recommends that binding treaty action be taken.**

Proposed treaty with the USA

Background¹

- 3.1 Australia has long been a major coal and commodities supplier to Taiwan and there is strong commercial interest amongst Australian uranium producers in supplying uranium to the Taiwan Electric Power Company (Taipower) in competition with other major uranium suppliers. Many of Taipower's existing long-term uranium supply contracts are due to expire over the next few years and Australian uranium suppliers are confident they can secure a portion of the replacement contracts. The Department of Foreign Affairs and Trade estimates that Australian producers can obtain up to 20 per cent of the Taiwan market, which is potentially worth about \$15 million per annum given recent indications of improvement in uranium prices.²
- 3.2 The purpose of the proposed Agreement 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 non-proliferation commitments. Australia's uranium export policy, first enunciated by the Fraser Government in 1977, provides assurances that exported uranium and its derivatives are to be used solely

1 Unless otherwise indicated, the material in this and the following section was drawn from the National Interest Analysis for the *Agreement between the Government of Australia and the Government of the United States of America concerning Cooperation on the Application of Non-Proliferation Assurances*.

2 Bill Paterson, *Transcript of Evidence*, 27 August, 2001, p. TR25.

for peaceful purposes and cannot be diverted to nuclear weapons or other military programs.

- 3.3 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. 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 would be covered by nuclear safeguards agreements between Australia and the United States, and between the United States, Taiwan, and the International Atomic Energy Agency (IAEA). The Department of Foreign Affairs and Trade advised the Committee that the Agreement is consistent with the terms of Australia's recognition of the People's Republic of China in 1972.³
- 3.4 While Taiwan's unusual legal circumstances preclude it from being recognised as a Party to the Nuclear Non-Proliferation Treaty, through its actions Taiwan has made clear its strong commitment to nuclear non-proliferation. Although it is unable to sign a safeguards agreement with the IAEA as a sovereign state, Taiwan has nonetheless cooperated fully with the IAEA in the application of safeguards, and accepted international safeguards on all its nuclear activities. An IAEA 'strengthened safeguards' Additional Protocol is effectively in force in Taiwan, and IAEA inspectors have access to all parts of Taiwan's nuclear sites; inspectors also have access elsewhere in Taiwan for environmental sampling and other verification measures.
- 3.5 At present, Australia has fifteen bilateral safeguards agreements covering the transfer of Australian Obligated Nuclear Material (AONM) to 25 countries.

Proposed treaty actions

- 3.6 To maintain the integrity of Australia's uranium export policy and to ensure that the essential elements of the policy are in place to cover the export of Australian uranium to Taiwan, the proposed Agreement with the United States will replicate the provisions of a bilateral agreement by projecting Australia's uranium export conditions onto all AONM in

3 The Department further advised the Committee that it has kept the Chinese Government fully informed of the proposed Agreement over a number of years, including on 27 July 2001 in the lead up to the signing of the Exchange of Notes.

Taiwan. The system of legal arrangements established by the proposed Agreement mirrors that which has been put in place by Canada, under which it exports uranium to Taiwan.

- 3.7 The proposed Agreement gives effect to all the essential requirements of Australia's uranium export policy, including:
- coverage of transfers of nuclear material by IAEA safeguards from the time this leaves Australia;
 - continuation of coverage of IAEA safeguards for the full life of the material or until it is legitimately removed from safeguards;
 - fallback safeguards in the event that IAEA safeguards no longer apply for any reason;
 - prior Australian consent for any transfer of AONM to a third party, any enrichment of AONM by Taiwan, and any reprocessing of AONM; and
 - effective physical protection measures.
- 3.8 The proposed Agreement sets out the conditions under which Australian uranium can be transferred to the US, either directly or indirectly, for enrichment and subsequent retransfer to Taiwan for use in nuclear reactors for the generation of electricity. These conditions are specified in an Annex which forms an integral part of the Agreement.
- 3.9 The Annex recognises that uranium transferred from Australia to the US for retransfer to Taiwan will be subject to the Peaceful Uses Agreement between the US and Australia. The Annex also recognises that the IAEA applies safeguards to all nuclear facilities in Taiwan.
- 3.10 The Annex also requires that administrative arrangements be put in place to facilitate effective implementation of the proposed Agreement.

Evidence presented and issues arising

- 3.11 The Committee received a small number of written submissions from the public about this proposed treaty action. This evidence was supplemented by the oral testimony of witnesses at two public hearings convened to consider this (and other) proposed treaty actions.
- 3.12 There have been no substantial objections made about this proposed treaty action, but one issue raised by a representative of Friends of the Earth, Australia, warrants acknowledgement and comment.

- 3.13 Friends of the Earth (FoE) expressed concern that the ‘indirectness’ of the agreement might result in inadequate scrutiny of Taiwan’s uses of nuclear materials.⁴ The FoE said they were not wanting to pass judgment on the present Taiwanese government, but rather to make the point that:

The relevant aspect is whether Australia is in a competent position through this treaty to judge, influence or exercise its due process in the case of Taiwan. We would think that Australia is in less of a position to do so than we are with other countries with which we have such treaties, because of the particular status of Taiwan. The Committee should look not only at Taiwan’s intentions and their situation but also at Australia’s capacity to follow through on what we are putting in such treaties.⁵

- 3.14 Representatives from the Department of Foreign Affairs and Trade and the Australian Safeguards and Non-Proliferation Office (ANSO) responded to this issue by noting that, while Australia cannot have formal, direct government-to-government relations with Taiwan, in practice administrative arrangements would allow Australia to properly account for all Australian Obligated Nuclear Material in Taiwan. As an ANSO witness explained to the Committee:

Under our agreements, there is a less than treaty level working document called an ‘administrative arrangement’ concluded between what are called the ‘implementing agencies’, the agencies that are responsible for implementing the agreement. In this particular case, there would be an administrative arrangement concluded between the Australian Commerce and Industry Office and the Taiwan Economic and Cultural Office, and that arrangement would designate my office, the Australian Safeguards and Non-Proliferation Office, and the Taiwan Atomic Energy Council, as the implementing agencies. The practical effect would be that my office and the Atomic Energy Council would exchange information and we would have the ability to visit Taiwan as necessary in pursuance of the operation of the overall arrangements.⁶

4 Bruce Thompson, *Transcript of Evidence*, 9 April 2002, p. TR135.

5 Bruce Thompson, *Transcript of Evidence*, 9 April, 2002, p. TR137.

6 John Carlson, *Transcript of Evidence*, 9 April 2002, p. TR32.

Conclusions and recommendations

- 3.15 The Committee recognises that Taiwan has legitimate energy needs and that it has chosen nuclear power as part of its energy supply mix. The Committee is satisfied that, despite the fact that Australia is not in a position to negotiate a bilateral safeguards agreement directly with Taiwan, the tripartite mechanisms proposed in this treaty action will be adequate for the appropriate safeguarding of nuclear materials transiting between Australia, the US, and Taiwan.
- 3.16 This Committee is not opposed to facilitating the sale of Australian uranium for use in nuclear power reactors in Taiwan, given that this is to be done under conditions consistent with Australia's uranium export policy and nuclear non-proliferation commitments.
- 3.17 Accordingly, the Committee makes the following recommendation:

Recommendation 2

- 3.18 **The Committee supports the *Exchange of Notes with the USA relating to an Agreement on transfers of nuclear material to Taiwan* and recommends that binding treaty action be taken.**

Proposed treaties with the Czech Republic and the Republic of Hungary

Background¹

- 4.1 The primary purpose of the proposed Agreements is to facilitate the sale of Australian uranium for use in the Czech Republic and the Republic of Hungary, in a way which is consistent with Australia's longstanding uranium export policy and non-proliferation commitments. These provide assurances that exported uranium and its derivatives will be used solely for peaceful purposes and not be diverted for the production of nuclear weapons or other military uses.
- 4.2 The proposed Agreements were negotiated due to the interest of Energy Resources of Australia Ltd and WMC (Olympic Dam Corporation) Pty Ltd, Australia's two largest uranium producers, in selling uranium for use in Czech and Hungarian nuclear power reactors. Producers believe they could capture up to 20 percent of the uranium markets in the Czech Republic and Hungary, realising new export earnings of approximately \$A10 million and \$A5 million per annum, respectively.

1 Unless otherwise indicated, the material in this and the following section is drawn from the National Interest Analyses for the *Agreement between the Government of Australia and the Government of the Czech Republic on Cooperation in Peaceful Uses of Nuclear Energy and the Transfer of Nuclear Material* and the *Agreement between the Government of Australia and the Government of the Republic of Hungary on Cooperation in Peaceful Uses of Nuclear Energy and the Transfer of Nuclear Material*. The full text of these analyses may be found in the Committee's website at www.aph.gov.au/house/committee/jsct/.

- 4.3 The Department of Foreign Affairs and Trade advised the Committee that the sale of Australian uranium to the Czech Republic and Hungary is consistent with Australia's non-proliferation commitments.² Both the Czech Republic and Hungary are parties to the Treaty on the Non-Proliferation of Nuclear Weapons (the NPT), and members in good standing with international non-proliferation regimes. Full-scope IAEA safeguards apply to all their nuclear activities. IAEA-strengthened safeguards measures are in effect in Hungary, and the Czech Republic has signed an additional, necessary protocol with the IAEA and is presently working towards bringing this into force.

Proposed treaty actions

- 4.4 At present, Australia has fifteen bilateral nuclear safeguards agreements in place, covering the transfer of Australian Obligated Nuclear Material (AONM) to 25 countries. In common with these fifteen bilateral nuclear safeguards agreements, the proposed Agreements contain all the essential requirements of Australia's uranium export policy. These include:
- coverage of transfers of nuclear material by IAEA safeguards from the time they leave Australia;
 - continuation of coverage of IAEA safeguards for the full life of the material or until it is legitimately removed from safeguards;
 - fallback safeguards in the event that IAEA safeguards no longer apply for any reason;
 - prior Australian consent for any transfer of AONM to a third party, any enrichment to 20 percent or more in the isotope uranium-235, and reprocessing of AONM; and
 - adequate and effective physical protection measures.
- 4.5 The key broad obligations on the Parties to these Agreements are to cooperate in the peaceful uses of nuclear energy, and to ensure that no nuclear material transferred under the proposed Agreement is ever used for, or diverted to, any military purpose including nuclear weapons, explosive devices or depleted uranium munitions.
- 4.6 The proposed Agreements require the conclusion of an Administrative Arrangement between the Australian Safeguards and Non-Proliferation Office and its counterpart agencies in the Czech Republic and Hungary, to
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2 Bill Paterson (DFAT), *Transcript of Evidence*, 27 August, 2001, p. TR26.

establish and implement the nuclear material accountancy and reporting requirements applying to nuclear material subject to the proposed Agreements.

Evidence presented and issues arising

- 4.7 Representatives of Friends of the Earth, Australia (FoEA) raised the issue of the safety of the Soviet-designed nuclear reactors that would be using Australian-exported uranium.³ Hungary has four power reactors located at PAKS, which provide 40 percent of Hungary's electricity, and the Czech Republic has five operating power reactors, and also a new one at Temelin which has yet to commence commercial operations.
- 4.8 Friends of the Earth pointed out that the European Parliament had criticised the Czech Republic's nuclear program, in particular the Temelin Nuclear Power Plant,⁴ and told the Committee that a European Commission assessment of the old Russian nuclear reactors operating in both countries had held that these would not be fully compliant with Western standards for at least ten years.⁵
- 4.9 The FoEA argued that:
- Yet, if you have a reactor that would not be approved in the United States or in a western European country or in Australia, aside from what are internationally accepted standards, Friends of the Earth believes that there is an ethical question about whether Australia should be supplying its uranium to that facility.⁶
- 4.10 FoEA are also concerned that neither Hungary nor the Czech Republic has yet devised a permanent solution to their radioactive waste problem.⁷
- 4.11 The Committee understands from the Department of Foreign Affairs and Trade that both Hungary and the Czech Republic have ratified the Treaty on the Convention on Nuclear Safety, which places a legal obligation on all states parties to apply the International Atomic Energy Agency's

3 Bruce Thompson, *Transcript of Evidence*, 9 April, 2002, TR117.

4 Friends of the Earth, Australia, *Submission No. 3*, p. 2.

5 Bruce Thompson, *Transcript of Evidence*, 9 April, 2002, p. TR119. This comment was in part based on an EC publication (Agenda 2000, July 1997) which called upon countries with Soviet type reactors to implement modernisation programs over a period of 7 - 10 years. . More detail on this can be found at http://europa.eu.int/comm/external_relations/nuclear_safety/intro/role_eu.htm.

6 *Ibid.*, p. TR 124.

7 *Ibid.*, p. TR118.

(IAEA) strict safety measures to the operation of nuclear power reactors.⁸ The Department has further informed the Committee that reviews of the nuclear safety regimes of Hungary and the Czech Republic published in October 2000 by the West European Nuclear Regulator's Association (WENRA)⁹ concluded that the licensing processes and regulatory practices in both countries are comparable with those of Western Europe.¹⁰

- 4.12 Hungary and the Czech Republic have also ratified the Joint Convention on the Safety of Spent Fuel management and the Safety of Radioactive Waste Management, and are parties to a number of other relevant treaties relating to physical protection, notification of a nuclear accident, and liability.¹¹

Conclusions and recommendations

- 4.13 The Committee understands the concerns raised before it by the Friends of the Earth, Australia, but notes that the FoEA acknowledges it has a fundamental objection to nuclear development overall.¹²
- 4.14 The Committee has considered the opposition to these proposed treaty actions, but is persuaded that the potential benefits of cooperation far outweigh the potential disadvantages and risks of uranium exports. Furthermore, the Committee is confident that the various mechanisms established by these Agreements will give the Australian Government ongoing opportunities for monitoring and influencing on-the-ground developments in both countries.

8 DFAT, *Submission No. 9.1*, p. 2.

9 WENRA is a regional body made up of the heads of the nuclear safety regulatory bodies of EU member States having nuclear power plants, including Belgium, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden and the UK, together with their national Technical Support Organisations. One of their objectives is to provide the EU with an independent capability to examine nuclear safety and regulation in (EU) applicant countries having at least one nuclear power reactor.

10 DFAT, *Submission No. 9.1*, pp. 2 & 7. IAEA country reports on nuclear safety for both Hungary and the Czech Republic can be found on the IAEA's website at www.iaea.org/ns/nusafe/safeconv.htm.

11 DFAT, *Submission No. 9.1*, p. 2.

12 Friends of the Earth, Australia, *Submission No. 3*, p. 1.

4.15 Accordingly, the Committee makes the following recommendations:

Recommendation 3

4.16 The Committee supports the *Agreement between the Government of Australia and the Government of the Czech Republic on cooperation in peaceful uses of nuclear energy and the transfer of nuclear material* and recommends that binding treaty action be taken.

Recommendation 4

4.17 The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Hungary on cooperation in peaceful uses of nuclear energy and the transfer of nuclear material* and recommends that binding treaty action be taken.

Julie Bishop MP
Committee Chair
May 2002



Appendix A – Dissenting Report

Proposed Treaty with Argentina

I am opposed to the agreement between Australia and Argentina concerning Cooperation in Peaceful Uses of Nuclear Energy as recommended in the Treaty Committee Report.

The grounds for my opposition are as follows:

1. **Policy:** The Australian Democrats remain committed to a nuclear free Australia and remain opposed to any Australian involvement in the nuclear fuel cycle.
2. **Accountability:** The underlying commercial agreement between ANSTO and INVAP that is the basis for the Treaty has never been released. The Australian community and the Parliament have been deprived of the right to view, comment on and seek changes to an agreement that has significant and fundamental implications for the Australian community. The lack of accountability of the Australian government in pursuing the commercial agreement and treaty is unacceptable.
3. **Political instability in Argentina:** The current political and social instability in Argentina raises major concerns about the capacity of INVAP to construct a reactor in Australia according to necessary safety specifications. Concerns regarding the financial situation of INVAP and of the Argentine government and the potential for cost cutting in fulfilling contract conditions has not been adequately assessed. The crisis in Argentina could also impact on the capacity of Argentina to take and reprocess spent fuel from the Lucas Heights Reactor. This too has not been adequately considered. There is no way that Australia can be certain, for instance, that Argentina will uphold requirements relating to the use of nuclear materials when even democratic institutions may be threatened by the current level of political instability. For the same reason, there can be no certainty that Argentina's physical protection measures will be adequate. Multiple Presidents in the space of a few months and widespread civil

unrest call into question the capacity of the Argentine government to make such guarantees.

4. **Legal issues in Argentina:** The current prosecutorial investigations into the commercial contract and the Constitutionality of Argentina reprocessing spent fuel from Argentina has the potential to derail the entire agreement. Ratification of a treaty without any certainty that some of the underlying provisions are lawful would seem rash at best. Article 12 of the Agreement may be void should current legal efforts in Argentina be successful. The Australian Democrats understand that prosecutors have recommended to Argentine courts an investigation of the commercial agreement and related Constitutional provisions. Support for the Agreement with Argentina should be contingent on the outcomes of that investigation.
5. **Waste storage:** The Australian Government is not prepared to store long-term radioactive waste. There is no facility that has been approved and the resolute opposition in South Australia to a waste dump facility in that State must raise concerns that waste issues are not only being inappropriately deferred, they are being avoided. While I recognise that there is no long term technological capacity for either the safe storage or disposal of nuclear waste, common sense would dictate that current best practice requires waste disposal provisions be in place before agreements and treaties are finalised. The notion that this is a matter to be resolved in the future in my view constitutes reckless behaviour.
6. **Security issues:** While post September 11 safety considerations have been acknowledged by the Australian Government, it is unclear to what extent those concerns have been addressed. Despite being a critical issue for the people of Sydney, safety assessments have not been part of a public process and remain buried under over-broad and self-serving notions of national interest. Despite comments that an intentional jumbo jet collision with the Lucas Heights reactor would have only minimal impact, there has been no data to support this position.

The entire edifice upon which this Treaty is constructed is precarious. From the instability of INVAP and Argentina to the legal challenges to the commercial agreement and the sending of spent fuel to Argentina, to the failure to have waste disposal provisions in place, to the widespread community opposition to safety concerns to the secretive and unaccountable nature of many of the critical issues surrounding Lucas Heights, this process is and has been defective. An agreement such as this should represent the culmination and resolution of outstanding issues; it should not serve as another plank in a project that is unnecessary, wasteful, expensive and dangerous.

It should also be understood that opposition to this Agreement is coming at a time when Australia's uranium mines are suffering from chronic spills. There have been 11 reported spills at the Beverely uranium mine alone this year. Declarations

of no environmental impacts are simply not believable. The failure of regulators and the government to properly monitor and control uranium mines does not inspire confidence in their ability to construct and run a nuclear reactor. Secretive and unaccountable processes only increase the level of distrust.

Proposed Treaties with the USA, the Czech Republic and the Republic of Hungary

I do not agree that “the potential benefits of cooperation far outweigh the potential disadvantages and risks of uranium exports.”¹. The Australian Democrats are opposed to Australian involvement in the nuclear fuel cycle and believe our country should be encouraging other countries to reduce their use of nuclear energies. Any new treaties which Australia enters into to facilitate uranium exports will only lock Australia (and the rest of the world) further into what is an unsustainable and environmentally hazardous technology.

Andrew Bartlett
Australian Democrat Senator for Queensland

¹ Main Committee Report, paragraph 4.16



Appendix B – Submissions

Individuals and agencies who made written submissions on the four proposed nuclear safeguards treaties

- Peter Beattie, MP, Premier of Queensland, Brisbane, Queensland;
- Danilo Chaverri, Ministry for Foreign Affairs and Trade, Costa Rica
- Mr Juan Cornejo, Mayor, Municipality of Punta Arenas, Chile
- Donald F. McLeod, Private Citizen, South Australia
- Dr. Raul A. Montenegro, FUNAM, Cordoba, Argentina
- Rosa Moreno (on behalf of 31 Chilean NGOs), Santiago, Chile
- Bill Paterson, FAS, Commonwealth Department of Foreign Affairs and Trade, Canberra
- Sutherland Shire Council, Sutherland, NSW
- Sydney People Against a New Nuclear Reactor, Sydney, NSW
- Bruce Thompson, National Nuclear Campaigner, Friends of the Earth, Australia
- Dr. Sue Wareham, President, Medical Association for the Prevention of War, Australia



Appendix C – Witnesses at hearings on four nuclear safeguards treaties

27 August 2001

BAKER, Mr Stephen, Coordinator, National Campaigns Reference Group, Friends of the Earth Australia

BOUWHUIS, Mr Stephen, Principal Legal Officer, Office of International Law, Attorney-General's Department

CAMPBELL, Mr Stephen Roderick, Nuclear Campaign Team Leader, Greenpeace Australia/Pacific

CARLSON, Mr John Albert, Director General, Australian Safeguards and Non-Proliferation Office

HARRIS, Mr Jeffrey Milroy, General Manager, Mineral Access and Rehabilitation Branch, Department of Industry, Science and Resources

MASON, Ms Leah Marie, Coordinator, Sydney People Against a New Nuclear Reactor

McDONELL, Councillor Ken, Councillor, Sutherland Shire Council

McINTOSH, Mr Steven, Government and Public Affairs Division, Australian Nuclear Science and Technology Organisation

PATERSON, Mr Bill, First Assistant Secretary, International Security Division, Department of Foreign Affairs and Trade

ROBERTSON, Mr Timothy Frank, Consultant, Sutherland Shire Council

ROLLAND, Mr John, Director, Government and Public Affairs, Australian Nuclear Science and Technology Organisation

SMITH, Dr Garry, Principal Environmental Scientist, Sutherland Shire Council

SPILLANE, Ms Shennia Maree, Executive Officer, International Law Section,
Department of Foreign Affairs and Trade

SULLIVAN, Mr John, Assistant Secretary, Nuclear Policy Branch, Department of
Foreign Affairs and Trade

SWEENEY, Mr Dave, Anti-Nuclear Campaign Coordinator, Australian
Conservation Foundation

9 April 2002

CAMPBELL, Mr Stephen Roderick, Nuclear Campaigner, Greenpeace
Australia/Pacific

NOONAN, Mr David Joseph, Campaign Officer, Australian Conservation
Foundation

THOMPSON, Mr Bruce Peter, National Nuclear Campaigner, Friends of the Earth,
Australia