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SUBMISSION NO. 55
Nuclear Non-proliferation and Disarmament

The Secretary
Joint Standing Committee on Treaties
House of Representatives
Parliament House, Canberra ACT

16 February 2009

Dear Secretary

ACF submission to the Nuclear Non-proliferation and Disarmament Inquiry

The Australian Conservation Foundation (ACF) welcomes the opportunity to participate in this Inquiry by the Joint Standing Committee on Treaties (JSCT) into Nuclear Non-proliferation and Disarmament – to inquire into and report on international treaties involving Australia and how the treaties might be made more comprehensive or effective and to advance Australia's objectives in this field.

In his Inauguration Address in January 2009 US President Barack Obama stated:

“With old friends and former foes, we will work tirelessly to lessen the nuclear threat, and roll back the spectre of a warming planet.”

ACF maintains that nuclear risks across nuclear weapons, proliferation, terrorism and unresolved nuclear waste management outweigh any claims for a nuclear expansion or for continued uranium exports.

Australia has a special responsibility to policy and practice in Nuclear Non-proliferation and Disarmament as the world's second largest uranium supplier and through Australia's nuclear cooperation and bilateral uranium export treaty agreements. This responsibility and treaty practice should be central to the Inquiry.

Legal opinion from Professor Donald Rothwell (Prof of International Law, ANU College of Law) advises that Australia is under an international obligation to pursue work in good faith toward the objective of Nuclear Disarmament consistent with the Nuclear Non-proliferation Treaty (NPT).

This obligation is particularly heightened in the case of Australia's interaction with state parties to the NPT and where they are mutually engaged in matters related to nuclear disarmament, including nuclear energy and nuclear non-proliferation – obligations and matters that fundamentally include the export of uranium.

In a Lowy Institute speech in July 2007 Prime Minister Kevin Rudd stated:

“The nuclear non-proliferation treaty continues to fracture. And there has been little if any progress on nuclear arms reduction – let alone nuclear disarmament.”

As an influential middle power acting on our responsibilities as a uranium exporter Australia has an opportunity to restore integrity to the NPT regime by committing to the following Nuclear Disarmament and Non-proliferation measures.

- Australia should take a lead role on nuclear disarmament by requiring countries fully observe their NPT obligations including NPT Article VI and the Objects of the NPT for: *“...the elimination from national arsenals of nuclear weapons and the means of their delivery...under strict and effective international control”* (NPT 1967).
- Australia should not sell uranium to any nuclear weapon state that does not make unequivocal commitments to eliminate nuclear weapons and take verifiable and irreversible steps to demonstrate compliance with NPT nuclear disarmament obligations by the 2010 NPT Review Conference;
- Australia should act on our international responsibilities by strongly promoting a Nuclear Weapons Convention – to abolish and to outlaw all nuclear weapons - through the UN in the lead up to the 2010 NPT Review Conference;
- Australia should apply all of our influence to bring the Comprehensive Nuclear Test Ban Treaty (CTBT) into force by giving notice that Australia will not sell uranium to any country that fails to ratify the CTBT – including China and the US that are among nine required countries that have failed to ratify the CTBT to date. Australia should also require verifiable closure of all nuclear test sites;
- Australia should promote a Comprehensive Fissile Materials Treaty (CFMT) to end any further production of weapons usable fissile materials by acting unilaterally and decisively to prohibit reprocessing and the separation of weapons usable plutonium from spent nuclear fuel that has been produced from Australian uranium. Australia should not support and should withdraw from the Global Nuclear Energy Partnership (GNEP);
- In recognition of Australia’s responsibilities to nuclear risks as the world’s second largest uranium exporter the Australian government should as a matter of urgency provide financial resources as a recurrent commitment to at least double the existing IAEA budget of approximately €450 million and should substantially recoup this funding from uranium mining and export companies;
- In addition to the IAEA safeguards regime, Australia should require adoption of a set of fundamental pre-conditions on the sale of uranium to take effect in 2010 – including the recommendations of JSCT Report 94 (September 2008), and the addition of measures and conditions on three lead issues currently not included in our uranium bilaterals – nuclear security, environmental protection and nuclear waste management.

The set of preconditions and measures to make Australia’s nuclear cooperation and uranium export bilateral treaty agreements more comprehensive and effective and to advance our stated and shared objectives in nuclear safeguards and in nuclear security should include: conditionality clauses for observance of the Rule of Law, Democratic

Values and Human Rights; verification and transparency measures; complete separation of the military from the civilian nuclear sector and facilities; and implementation of a strengthened IAEA safeguards regime and IAEA inspections and the addition of mandatory IAEA nuclear security measures at all facilities that handle Australian uranium and nuclear materials – including spent nuclear fuel that has been produced from Australian uranium.

ACF submits to the JSCT that Russia and China warrant particular focus in this Inquiry.

In August 2008 Russia threatened to use nuclear weapons against Poland – an illegal act under the UN International Court of Justice 1996 Advisory Opinion on Nuclear Weapons, and has also engaged in warfare in Georgia outside of any UN sanction.

China fails to qualify the pre-conditions on uranium sales set by the Recommendations of JSCT Report 94 (September 2008). China's continuing occupation of Tibet remains the focus of reports of cultural genocide and of wide spread human rights abuses.

Along with their failure to observe NPT nuclear disarmament obligations and to satisfy other cited pre-conditions, such unacceptable state practises and governance standards should disqualify these countries from any continued or proposed uranium exports or processing of Australian nuclear material for on-sale internationally.

The inadequacies in existing and proposed nuclear treaties with China and Russia compromise Prime Minister Kevin Rudd's *"International Commission on Nuclear Non Proliferation and Disarmament"* and weaken, rather than strengthen, Australia's policy and practice on nuclear disarmament, safeguards and non-proliferation.

Australia should withdraw from the 2006 China-Australia nuclear cooperation and uranium export agreements signed by former Prime Minister John Howard. Australia should not ratify the proposed 2007 Russia-Australia treaty and should withdraw from the existing 1990 Russia agreement – which provides for processing of Australian nuclear materials in Russia for on-sale internationally.

The 1990 nuclear treaty fails to comply with the pre-conditions as Recommendations of the JSCT Report 94 (September 2008) and undermines Australia's credibility in nuclear safeguards and in nuclear security through two practices that ACF submits should no longer be allowed in any of our uranium export bilateral treaty agreements:

- the handling and processing of Australian nuclear material in non-IAEA safeguarded nuclear fuel cycle facilities; and
- the substitution of Australian nuclear material for other nuclear material sourced from other countries and held at other nuclear facilities and locations.

In regard to the Inquiry Term of Reference: *How the Committee and the Parliament can contribute to the work of the International Commission on Nuclear Non-proliferation and*

Disarmament, ACF believes the voice of the Australian Parliament must be heard calling for nuclear disarmament.

ACF submits that the JSCT should recommend a motion or a conscience vote of the Australian Parliament to:

- renounce the potential use of nuclear weapons; call for de-alerting of all nuclear arsenals;
- call for commitments to 'No First Use' and to 'No Use Against Non-Nuclear Weapon States'; and
- call on all nuclear weapon states to make unequivocal commitments to the elimination of nuclear weapons and to take verifiable and irreversible steps in accordance with Nuclear Non-proliferation Treaty Article VI nuclear disarmament obligations in the lead up to the 2010 NPT Review Conference.

ACF believes the broad Australian community remains deeply concerned about nuclear weapons and uranium exports and the community's justified expectations for action are ahead of the policy and practice of successive Federal governments.

A national Newspoll survey (October 2008) found 2 out of 3 Australians are against Australian uranium exports to countries with nuclear weapons (62 per cent against, compared to 31 per cent in favor). Forty per cent of Australians are against the export of Australian uranium to any country for use in nuclear power plants for electricity generation and a further 22 per cent are against the export of uranium to countries that possess nuclear weapons – even if those countries have signed the NPT.

The Newspoll survey found a majority of Australians in every state are opposed to uranium exports to countries with nuclear weapons or against any uranium exports at all – including 73 per cent of Australian women and 51 per cent of Australian men.

For any further information on the recommendations and issues raised in this submission please contact David Noonan, ACF Nuclear Free Campaigner, by telephone on 08 8211 6838 or 0408 821 058, or by email: d.noonan@acfonline.org.au

ACF would welcome an opportunity to discuss these issues with the Committee and to appear before a public hearing of the JSCT Inquiry – preferably in Canberra.

Thank you for your consideration of these matters.

Yours sincerely

Tony Mohr
Manager Climate Change Program
Australian Conservation Foundation

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Nuclear disarmament – ACF recommendations

- 1 Australia should take a lead role on Nuclear Disarmament by requiring countries fully observe their Nuclear Non-proliferation Treaty (NPT) obligations including NPT Article VI and the Objects of the NPT for: “...*the elimination from national arsenals of nuclear weapons and the means of their delivery...under strict and effective international control*” (NPT 1967). Australia should not sell uranium to any nuclear weapon state that does not make unequivocal commitments to eliminate nuclear weapons and take verifiable and irreversible steps to demonstrate compliance with NPT nuclear disarmament obligations by the 2010 NPT Review Conference.
- 2 Australia should act on our international responsibilities by strongly promoting a Nuclear Weapons Convention – to abolish and to outlaw all nuclear weapons – before the UN in the lead up to the NPT 2010 Review Conference.

Australia should take up a leadership role for nuclear disarmament

ACF believes the Australian government must take an early strong public leadership role for nuclear disarmament in promoting a Nuclear Weapons Convention (NWC) before the UN in the lead up to the 2010 NPT review and in stating a clear position that Australia will require all countries to fully observe their NPT obligations and will act decisively to disqualify any country that fails to do so from sale of Australian uranium.

Observing NPT obligations is set out as a condition of uranium supply in the Australian government’s federal election policy commitments, see:

In relation to exports, Labor will allow the export of uranium only to those countries which observe the Nuclear Non-Proliferation Treaty,

(ALP National Platform, April 2007, Uranium, Paragraph 95)

Unequivocal commitments to eliminate nuclear weapons and demonstrated NPT compliance through verifiable and irreversible steps in nuclear disarmament must be clearly required of all nuclear weapon states and be stated as a pre-requisite condition on Australian nuclear cooperation and bilateral uranium export treaty agreements.

ACF welcomes the Prime Minister’s initiative in the joint Australia-Japan International Commission on Nuclear Non Proliferation and Disarmament as “*our gift to the world.*”

Both the Commission and the Australian government must address the rise in the nuclear threat over the last decade by directly confronting the inherent dual use nature of the nuclear fuel cycle and placing real security far above any proposed global nuclear expansion. They must recognise that the critical task to restore integrity to the fracturing NPT can not be achieved by addressing proliferation issues alone – without parallel and commensurate address to place nuclear disarmament issues above continued Australian uranium sales and above deferral to the nuclear weapon states.

“Australia should establish a national diplomatic initiative aimed at restoring the integrity of the nuclear non-proliferation regime...the current non-proliferation regime is fundamentally fracturing. The consequences of the collapse of this regime for Australia are acute, including the outbreak of regional nuclear arms races... The impact on Australia’s long-term national security interests is immense.”

(Kevin Rudd *“Leading, Not Following: The Renewal of Australian Middle Power Diplomacy”*, Sydney Institute address, September 2006)

“In five years, the world has changed. Our fears of a deadly nuclear detonation – whatever the cause – have been reawakened. In part, these fears are driven by new realities. The rise in terrorism. The discovery of clandestine nuclear programs. The emergence of a nuclear black market. But these realities have also heightened our awareness of vulnerabilities in the Non Proliferation Treaty regime.”

(IAEA DG Mohamed El Baradei, Address to the May 2005 NPT Conference)

Support for nuclear disarmament and recognition of our formal obligations is growing across the world. The UN-based International Court of Justice in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996) unanimously held that:

“there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”

In December 2006 at the UN General Assembly, 125 governments called upon states to immediately fulfil their nuclear disarmament obligations under the NPT Article VI:

“by commencing multilateral negotiations leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination.”

ACF commends to the JSCT an updated model Nuclear Weapons Convention (NWC) for the phased elimination of nuclear weapons, *“Securing Our Survival (SOS) The case for a Nuclear Weapons Convention”* (April 2007). This has been prepared by Nobel Peace Prize winner the International Physicians for the Prevention of Nuclear War and is an update of the model NWC submitted to the United Nations as a discussion draft in 1997. Available at: <http://www.icanw.org/securing-our-survival>

It is now time for the Australian government to act on our international responsibilities and to deliver on a range of key federal election policy commitments toward nuclear disarmament and a NWC, including that:

71. With regard to nuclear disarmament and non-proliferation, Labor will energetically support and pursue appropriate initiatives, such as those recommended by the Canberra

Commission on the Elimination of Nuclear Weapons, the Tokyo Forum for Nuclear Non-Proliferation and Disarmament, and the New Agenda Coalition, to achieve further significant reductions in nuclear armament and strengthen non-proliferation regimes as steps toward the ultimate objective of a nuclear weapon free world.

74. In the longer-term, achievement and maintenance of a nuclear weapon free world will require an enduring legal framework, linked to the Charter of the United Nations. Labor supports exploration of potential legal frameworks for the abolition of nuclear weapons, including negotiation of a Nuclear Weapons Convention that would ban nuclear weapons and provide a global framework for the elimination of existing arsenals.

(ALP National Platform, Chapter 14, Strengthening Australia's Place in the World: Australia's Role in Arms Control and Disarmament, April 2007)

Comprehensive Nuclear Test Ban Treaty – ACF recommendation

- 3 Australia should apply all of our influence to bring into force the Comprehensive Nuclear Test Ban Treaty (CTBT) by giving notice that Australia will not sell uranium to any country that fails to ratify the CTBT – including China and the US, which are among nine required countries to have failed to ratify the CTBT to date. Australia should also require verifiable closure of all nuclear test sites.

Australia should require countries to ratify the CTBT to bring the treaty into force

Australia should require Comprehensive Nuclear-Test-Ban Treaty (CTBT) ratification by China and by the US in the lead up to the 2010 NPT Review Conference.

ACF commends the positive record of successive Australian governments in promoting the CTBT and recognise the lead role of Foreign Affairs Minister Smith in the Joint Ministerial Statement of 24 September 2008 in New York, stating in part that:

1. We, the Foreign Ministers who have issued this statement, reaffirm our strong support for the Comprehensive Nuclear-Test-Ban Treaty (CTBT), which would rid the world of nuclear weapons test explosions and would contribute to nuclear disarmament and non-proliferation.

2. In this year marking the 12th anniversary of the Treaty's opening for signature, we emphasize that the CTBT is a major instrument in the field of nuclear disarmament and non-proliferation. The Treaty was an integral part of the 1995 agreements by the States parties to the Nuclear Non-Proliferation Treaty (NPT) allowing the indefinite extension of the Treaty. The early entry into force of the CTBT was recognized at the 2000 Review Conference of the NPT as a practical step to achieving NPT nuclear disarmament and non-proliferation objectives, and has also been reaffirmed as being of central importance by the UN General Assembly. ...

9. We appeal to all States **to make maximum efforts** towards achieving the early entry into force of the CTBT. On our part we dedicate ourselves to realizing this goal.

ACF considers that in Australia acting on our NPT obligations regarding the CTBT, Australia's *maximum efforts* must now include delivering on the Government's federal election policy commitment to only allow the export of uranium to those countries which have ratified international nuclear agreements:

In relation to exports, Labor will allow the export of uranium only to those countries which...have ratified international and bilateral nuclear safeguards agreements...

(ALP National Platform, April 2007, Uranium, Paragraph 9)

Clearly the CTBT is a fundamental international nuclear agreement and Australia should not sell uranium to any country that fails to ratify the CTBT – including China and the US, which have failed to ratify the CTBT to date.

ACF considers that Australia's formal obligations under the NPT include the 13 practical steps adopted at the 2000 NPT Review Conference. Thereby Australia has a formal obligation to act in good faith toward the objective of achieving the early entry into force of the CTBT as an agreed measure directed toward nuclear disarmament and Australia should recognise and include the conduct of our uranium exports in proper observance to our NPT obligations on the CTBT.

Legal opinion from Professor Donald Rothwell (Prof of International Law, ANU College of Law, ANU) advises that Australia is under an international obligation to pursue work in good faith toward the objective of Nuclear Disarmament consistent with the Nuclear Non-proliferation Treaty (NPT). This obligation is particularly heightened in the case of Australia's interaction with state parties to the NPT and in relationships where they are mutually engaged in matters related to nuclear disarmament, including nuclear energy and nuclear non-proliferation – obligations and matters that fundamentally include the export of uranium.

These obligations include the reinforcement of the NPT principle of good faith contained in the "13 Practical Steps" for "systematic and progressive efforts to implement Article VI of the Treaty", adopted by the NPT Review Conference in 2000, which can be strongly argued constitutes "subsequent practice" on the part of the parties in the application of the NPT treaty and which "establishes an agreement of the parties".

The Executive Summary of Prof Rothwell's legal advice on: "Nuclear Disarmament and the Non-Proliferation Treaty. Implications for the 2007 Australian Russian Nuclear Agreement" (23 May 2008), includes that:

4. The NPT principal of good faith was reinforced in 2000 when the NPT Review Conference adopted the so-called 13 Practical Steps for "systematic and progressive efforts to implement Article VI of the Treaty". The 13 Practical Steps outlined the very

particular obligations the nuclear weapon states were under to achieve disarmament in addition to the general obligations upon all NPT State parties to work towards nuclear disarmament. ...

At the 2000 NPT Review Conference all governments signed to the NPT agreed to the thirteen practical steps for the systematic and progressive achievement of nuclear disarmament - with the first listed step addressing the CTBT:

1. *The importance and urgency of signatories and ratifications, without delay and without conditions and in accordance with constitutional processes, to achieve the early entry into force of the Comprehensive Nuclear Test Ban Treaty.*

Fissile Materials Treaty and Prohibition on Reprocessing – ACF recommendation

4 Australia should promote a Comprehensive Fissile Materials Treaty (CFMT) to end any further production of weapons usable fissile materials by acting unilaterally and decisively to prohibit reprocessing and the separation of weapons usable plutonium from spent nuclear fuel that has been produced from Australian uranium. Australia should not support nor allow any use of Australian Obligate Nuclear Materials (AONM) in Plutonium and Mixed Oxide (MOX) fuel cycles or Generation IV or GIF (Generation IV International Forum) 'fast' or 'breeder' reactors. Australia should not support and should withdraw from the Global Nuclear Energy Partnership (GNEP).

Australia must stop contributing to the production of weapons usable plutonium

Australia should act decisively within our own responsibilities to end any further production of weapons usable fissile materials derived from our uranium exports.

Australian uranium produces plutonium in nuclear reactors and ACF considers it untenable for the Australian government to continue to grant consent to the reprocessing of this plutonium laden spent nuclear fuel, with the separation and stockpiling of weapons-usable plutonium, in a number of countries around the world.

ACF calls on the Government to deliver on its federal election policy commitment against weapons usable fissile material by withdrawing consent for reprocessing of Australian Obligated Nuclear Materials (AONM) or for any use of AONM in mixed oxide (MOX) or other plutonium-based fuels or in Gen IV reactors.

"Labor will work towards: limiting the processing of weapons usable material (separation of plutonium and high enriched uranium in civil programs);"

(ALP National Platform, Chapter 5, April 2007).

The IAEA safeguards regime is failing and cannot effectively safeguard nuclear fuel cycle bulk handling facilities, such as the uranium enrichment and spent nuclear fuel

reprocessing plants, and cannot assure detection of possible military diversion of these materials into covert weapons programs in a timely fashion. See: *"Falling Behind: International Scrutiny of the Peaceful Atom"*, Feb 2008, by the US Non-Proliferation Policy Education Centre, Available at: <http://www.npec-web.org/>

"Using existing and foreseeable safeguards technology, it is not possible for a safeguards agency to detect the diversion of quantities of weapon-usable plutonium from a reprocessing plant that could be used to fabricate one or more, or even many, nuclear weapons."

(Frank Barnaby, foreword, *An Illusion of Protection. The unavoidable limitations of safeguards on nuclear material and the export of uranium to China*, October 2006, ACF and Medical Association for Prevention of War)

Australia must stop contributing to this untenable risk and should promote a Comprehensive Fissile Materials Treaty (CFMT) to end reprocessing and to put an end for all time any further production of weapons usable fissile materials.

Nuclear safeguards – ACF recommendations

- 5 To advance Australia's objectives in Nuclear Non-proliferation and to respond to the threat of nuclear terrorism Australia should require implementation of a strengthened International Atomic Energy Agency (IAEA) nuclear safeguards regime and IAEA inspections and the addition of mandatory IAEA nuclear security measures at all nuclear facilities that will handle, process, or store Australian Obligated Nuclear Materials (AONM) – including spent nuclear fuel that has been produced from Australian uranium.
- 6 In recognition of Australia's responsibilities to nuclear risks as the world's second largest uranium exporter the Australian government should as a matter of urgency provide financial resources as a recurrent commitment to at least double the existing IAEA budget of approximately €450 million per annum – and should substantially recoup this Australian public funding from uranium mining and export companies;
- 7 In addition to the IAEA regime, Australia should require a set of fundamental pre-conditions on the sale of uranium, including adoption of the Recommendations of JSCT Report 94 (September 2008), as measures to take effect in 2010 to make Australia's uranium export bilateral treaty agreements more comprehensive and effective.

These include: Conditionality Clauses for observance of the Rule of Law, Democratic Values and Human Rights; Verification and Transparency measures; complete separation of the military from the civilian nuclear sector and facilities; and addition of measures and conditions on three lead issues currently not included in our uranium bilaterals – nuclear security, environmental protection and nuclear waste management.

Australia can not rely on the IAEA on nuclear terrorism and security issues

“National and international measures to counter nuclear terrorism remain scandalously spartan and fragmented, and not remotely commensurate with the scale of the threat. ...

But the time is ripe for a renewed global non-proliferation effort to avoid the world having to ask the day after a nuclear terrorist attack: “How did we fail to see this coming; why didn’t we do something about it before?”

(The biggest threat? Nature, editorial, Vol 457, Jan 2009)

Australia cannot have confidence in or rely on the under-resourced IAEA to address nuclear terrorism or to provide commensurate nuclear security for Australian uranium and nuclear materials. The IAEA has no authority or power to enforce tighter nuclear security measures at nuclear facilities as this remains a national prerogative.

“The human and financial costs of nuclear safety, security and proliferation related events can be incalculable in their impact and scale – so efforts to reduce risks and mitigate consequences represent money well spent.”

(Mohamed ElBaradei, IAEA Director General, Forward, 20/20 Vision for the Future, Feb 2008)

ACF believes that in recognition of Australia’s responsibilities to nuclear risks as the world’s second largest uranium exporter the Australian government should as a matter of urgency provide financial resources as a recurrent commitment to at least double the existing IAEA budget of approximately €450 million – and should substantially recoup this funding from uranium mining and export companies.

The editorial of *Nature* on IAEA security and budget issues to the JSCT stated:

“The agency’s role is most deficient in the realm of nuclear security. In 2002, it created a Nuclear Security Fund in the wake of 9/11 to boost its almost non-existent efforts to help secure nuclear materials worldwide, and to detect and prevent nuclear terrorism. But the fund depends on voluntary contributions from member states, and its current annual budget of €15 million is not only wholly inadequate...

Politicians worldwide claim that they have made nuclear security a priority since 9/11, but they must now translate that promise into action: at least double the IAEA’s budget, a ballpark figure already suggested by the agency’s director-general, Mohamed ElBaradei. Such a doubling of an already small budget is surely the least that would be consistent with the world’s expectations of the agency. ...

It needs the means to hire and train a sufficient number of experts on nuclear security, to provide the international community with a detailed picture of nuclear security worldwide, and to focus its efforts in areas, such as the former Soviet Union, where they

are most needed. It also needs greater powers — at present the IAEA can comment on what it sees as insecure facilities or stockpiles, but has no powers to enforce tighter security measures and upgrades, as these remain national prerogatives.

(Nuclear security undervalued. Nature, editorial, Vol 451, Feb 2008)

ACF believes Australia should move as a matter of urgency to fund the IAEA to develop and recommend nuclear security guidelines and measures at all facilities that handle AONM and Australia should then require these measures be implemented as conditions of our bilateral uranium export agreements as soon as possible.

Australia should further require measures and conditions to address nuclear waste management and environmental protection as conditions of our bilateral uranium export agreements and act as a matter of urgency to develop these measures.

Conditionality Clauses on the Rule of Law, Democracy and Human Rights

Key checks and balances that may be present on the nuclear industry in democratic states – independent regulators, independent and rigorous media, free environment and community groups, free labour organisations and proper protection for whistleblowers – do not effectively exist in China or in Russia.

There would need to be fundamental changes to the rule of law, judicial practice, democracy and human rights, labour rights and freedom of the press before JSCT and Australia in general could have any confidence in transparency or in accountability on nuclear issues – including non-proliferation, nuclear security and disarmament issues - in China or in Russia. These changes are also required to specifically protect nuclear whistle blowers from imprisonment or suppression.

In the executive summary of legal advice on “*Australian Safeguards Agreements with China and Russia*” (11 October 2007) Professor Rothwell concluded:

10. That Australia should seek the inclusion of ‘human rights and democracy clauses’ into the Russian Agreement which could take the following form:

- The aims of this Agreement include the promotion of and protection of respect for human rights and democratic values;*
- The parties shall respect legally binding democratic principles and human rights as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights in their internal and external policies.*

11. That Australia should seek that the human rights and democracy clauses be made a condition of the Russian Agreement, thereby giving to Australia the potential to suspend the Agreement if a breach of the relevant conditions takes place. The effect of such a ‘human rights and democracy clause’ would be to reinforce the importance Australia attaches to respect for the rule of law in Russia during the term of the Agreement.

(Professor Donald Rothwell, Prof of International Law, ANU College of Law, ANU)

ACF considers these recommendations are pre-requisite conditions to any proposed credible consideration to confidence, assurance or transparency on nuclear issues in China or in Russia. At a minimum, ACF urges JSCT to recommend that Australia should require China and Russia agree to conditionality clauses on the rule of law, on observance of human rights and of democratic values in any continuation of the existing agreements and that Australia should withdraw if they do not do so.

Russia and China – ACF recommendations

- 8 Australia should not ratify the proposed 2007 Russia-Australia nuclear and uranium sales treaty and should withdraw from the existing 1990 Russia-Australia agreement which provides for processing of Australian nuclear materials in Russia for on-sale internationally. Russia should be disqualified from any proposed exports or processing of Australian uranium given Russia's threat to use nuclear weapons against Poland - an illegal act under the UN International Court of Justice 1996 Advisory Opinion on Nuclear Weapons, and given Russia's recent engagement in warfare in Georgia outside of any UN sanction.
- 9 At a minimum Australia should make the existing 1990 Russia and 2006 China nuclear treaties subject to the set of preconditions provided for in the Recommendations of the JSCT Report 94 (September 2008) and withdraw from clauses of the treaties which represent untenable practices that should be prohibited in all of Australia's bilateral uranium export agreements as they compromise any credible exercise and realisation of Australia's safeguards responsibilities, in:
 - The proposed handling and processing of Australian nuclear material in non-IAEA safeguarded nuclear fuel cycle facilities; and
 - The ASNO practice of "substitution" of Australian nuclear material for other nuclear material sourced from other countries and held at other nuclear facilities and locations.
- 10 Australia should withdraw from the 2006 China nuclear cooperation and uranium sales treaties signed by former Prime Minister John Howard, given: the substantively inadequate safeguards provided for in the treaties including failure to qualify for the preconditions provided for in the Recommendations of the JSCT Report 94 (September 2008); and due to China's lack of transparency and unacceptable human rights record (including the ongoing conduct of cultural genocide in Tibet with reports of wide spread human rights abuses), its poor non-proliferation record and failure to separate military and civilian nuclear sectors; its failure to ratify the CTBT; and its failure to comply with NPT nuclear disarmament obligations.

The Rule of Law: Russia fails the test – threat to attack Poland with nuclear weapons

ACF believes Russia's threat to attack Poland with nuclear weapons, Russia's decision to engage in warfare in Georgia outside of any UN sanction, and Russia's recent abrogation of responsibility to a major treaty are sufficient reasons to immediately discontinue plans to sell uranium to Russia or to allow processing of Australian uranium in Russia for on-sale internationally.

Australia cannot have confidence in Russian compliance with the existing 1990 treaty or with the proposed 2007 Russia treaty proposed nuclear treaty given the current status of the rule of law and of governance standards in that country.

In 2007 Russia abrogated its international responsibilities and unilaterally suspended a major treaty: the *Conventional Forces in Europe (CFE) Treaty* (1990 and 1999 amendments), referred to by the US Arms Control Association as the '*cornerstone of European security*', downgrading compliance to a discretionary decision for Russian leaders outside of the agreed treaty process.

In August 2008 Russia breached international norms and threatened to use nuclear weapons against Poland – an illegal act under the UN International Court of Justice 1996 Advisory Opinion on Nuclear Weapons. General Anatoly Nogovitsyn, deputy head of Russia's general staff, is reported as stating that: "*Poland is making itself a target. This is 100 per cent certain. Such targets are destroyed as a first priority.*"

The Russian Foreign Minister Lavrov also made statements in September 2008 on the potential to strike Poland under Russia's military doctrine on the use of nuclear weapons as a response to a proposed missile defence base in Poland (see: DFAT Submission No.23.3 to JSCT Inquiry, dated 16 September 2008).

In 2008 Russia engaged in warfare in Georgia outside of any UN sanction. Then Democrat Vice Presidential candidate and Chairman of the Senate Foreign Relations Committee Joseph R. Biden responded by stating:

"...But Russia's actions in Georgia will have consequences. Russia's actions have already erased the possibility of advancing legislative efforts to promote U.S.-Russian partnership in the current Congress, including an agreement to allow for increased collaboration with Russia on nuclear energy production..."

(In: "*Conflict suspends Russian nuke pact*" *The Australian*, 25 August 2007)

Australia should expect Russia to act in proper accord with international norms toward neighbouring countries. This is more important than any uranium sales.

Australia cannot turn a blind eye to the threat of nuclear war and the consequent proposed annihilation of civilian populations or to warfare outside of any UN sanction.

Substitution of Australian uranium and processing in non IAEA facilities

The 2006 China agreements and the 1990 Russia treaty and the proposed 2007 Russia treaty unacceptably compromise Australia's international safeguards and non-proliferation policy and practice and unacceptably elevate commercial and state nuclear interests over safeguards under this Federal Government's watch.

Australia should not allow "substitution" of Australian Obligated Nuclear Materials (AONM) by other materials from other countries and held at other nuclear facilities and locations, and not allow management of AONM in non-IAEA safeguarded facilities - including potentially military run facilities in China and in Russia.

However this is the express intention of ASNO, see: "*Frequently Asked Questions. Australia-Russia Nuclear Cooperation Agreement* (ASNO, November 2007, at: <http://www.dfat.gov.au/geo/russia/treaties/faq.html>), including:

19. Why is there provision in the Agreement for the use of conversion and enrichment facilities outside of IAEA safeguards?

...The new Agreement strengthens considerably safeguards provisions contained in the existing agreement by providing for a direct substitution approach (see following question for more details) similar to that contained in the Australia-China Nuclear Transfer Agreement. ...

In the case of enrichment facilities, there is a unique circumstance that applies to Russia related to longstanding contracts. Russia wished to retain in the new Agreement its right to re-enrich Australian obligated depleted uranium tails on behalf of third countries in facilities outside of safeguards, due to longstanding contracts with European enrichment companies that hold this material. Russia cannot re-enrich depleted uranium tails at its showcase international nuclear fuel cycle centre at Angarsk (which will be placed under IAEA safeguards) due to the presence of undesirable uranium isotopes in depleted uranium that would complicate the operation of this facility. However, Russia proposes that Australian uranium for use in Russian nuclear power plants would be enriched at the international fuel cycle centre at Angarsk, which will be under IAEA safeguards.

20. What is "direct substitution"?

... Under the new Agreement, in the case of conversion or enrichment facilities outside of IAEA safeguards, a direct substitution approach would be used. Under this approach, on receipt of AONM at such a facility, by applying the principle of equivalence an equivalent quantity of processed uranium and processed tails or waste will be added to the inventory of a facility (or facilities) designated for safeguards.

ACF submits that these two untenable practices should no longer be allowed in any of our nuclear cooperation and uranium export bilateral treaty agreements as they breach any credible claim to the exercise and realisation of Australian safeguards

responsibilities, and prevent transparency and accountability over Australian exported uranium and derived nuclear material in these cases.

This is a deliberate ASNO practice of 'looking the other way' while Australia's actual nuclear materials are managed outside of the IAEA safeguards and inspection regime.

Australia has compromised safeguards in the flawed China nuclear deal

ACF considers that Australian uranium will effectively disappear off the safeguards radar on arrival in China. The first shipment of Australian uranium, from Rio Tinto's Ranger mine in Kakadu, was sent to China in November 2008, making Australia complicit in the failures and risks – current and potential – in China's nuclear sector.

The 2006 China-Australia uranium exports treaty agreement unacceptably fails to qualify for the preconditions set on uranium exports in Recommendations of the JSCT Report 94 (September 2008) into the proposed 2007 Russia-Australia agreement.

ACF calls on this JSCT Inquiry to recommend: application of the precondition as required tests of the 2006 China agreement; in the interim a moratorium on any further uranium exports to China; and for Australia to withdraw from the agreement if China does not comply with the preconditions by the 2010 NPT Review Conference.

As in Russia: the military in China are inextricably linked to the so called civilian nuclear sector – including that all nuclear fuel cycle facilities are operated by the one authority the Chinese National Nuclear Authority; the IAEA provide only voluntary and limited safeguards – with only 10 facilities on the IAEA eligible nuclear facilities list and actual inspections carried out in only 3 facilities a year in China; and ASNO support handling and processing of Australian nuclear materials in non-IAEA safeguarded facilities – through 'substitution' of Australian nuclear materials in China and also in processing in unsafeguarded uranium conversion facilities.

China does not observe the NPT nuclear disarmament obligations and has failed to ratify the CTBT. JSCT should make recommendations to require both from China.

Transparency provisions in China are inadequate for any justified confidence in the agreement, including: the operation of State Secrets clauses; failure to disclose the 'Administrative Arrangements' applying to the practice of IAEA safeguards; secrecy over 'Materials Unaccounted For'; the lack of conditionality clauses on the Rule of Law, Democratic Values, and Human Rights; the lack of a free press; and the lack of legal protection for whistle blowers and the lack of civil society safeguards – practices that are taken for granted in democratic states – and are in fact actively suppressed by China's authoritarian one party state.

On such a serious matter as proliferation of nuclear weapons and fissile material technology and know how, ACF considers China's poor no-proliferation record and lack of transparency – and indeed active contribution to horizontal proliferation – warrants the disqualification of China as a recipient of Australian uranium.

For detailed analysis of the limitations on safeguards in the China agreement and on reform of our bilateral uranium export agreements to strengthen safeguards, please see: *"An Illusion of Protection. The unavoidable limitations of safeguards on nuclear material and the export of uranium to China"* (November 2006), a joint report by the Medical

Association for the Prevention of War (MAPW) and ACF. Available at: <http://www.acfonline.org.au>

ACF considers that Australia's uranium export interests must not be placed above human rights and submits that this JSCT Inquiry should make recommendations to address the situation in Tibet as preconditions on any further uranium exports.

China's continuing occupation of Tibet remains the focus of reports of wide spread human rights abuses. The Dalai Lama has stated that China is carrying out a cultural genocide in Tibet and that: *"Tibetans are being handed down a death sentence. ... This ancient nation, with an ancient cultural heritage is dying"* (The Australian, 10 November 2008).

The ongoing situation in Tibet is not acceptable and the claims of state officials are not believable. The Vice Governor of Tibet responded to Prime Minister Kevin Rudd's concerns over significant human rights abuses in the region by saying that:

"As for the human rights situation in Tibet, people enjoy full management of their own affairs. ... Tibet is now a very stable society and Tibet people are entitled to full rights in their own affairs and Tibet people now enjoy a prosperous life."

(In: *Tibetans 'enjoying full rights'*, The Australian 10 Nov 2008).

ACF believes events in Tibet oblige Australia to bring all of our influence to bear to protect human rights – including to withhold any further uranium sales and to withdraw from the China-Australia bilateral uranium sales agreement.

ACF is seriously concerned over the failure of the China-Australia bilateral uranium sales agreement to cover and to require measures and conditions to address three lead issues in: nuclear waste management, environmental protection and nuclear security.

Given the first shipment of Australian uranium was sent to China in November 2008 we have embarked on a course of 'trusting' this and in all future Chinese administrations, without obligations and without transparency or accountability, to meet standards on these issues.

The conversion and enrichment of Australian uranium in China and the management of high level spent nuclear fuel wastes derived from use of Australian uranium in Chinese nuclear reactors carries serious challenges and long term risks to the environment, to workers' occupational health and safety and to public health.

These risks will be increased through BHP Billiton's proposal to export 1.6 million tonnes a year of a radioactive copper-uranium concentrate to China as part of the proposed Olympic Dam mine expansion. This would involve China smelting the radioactive concentrate to produce a copper product and to extract and process some 2000–3000 tonnes of uranium a year and to then manage in perpetuity some 1.2 million tonnes of long lived radioactive waste a year left over from processing the concentrate.

For these reasons ACF submits that Australia should withdraw from the flawed 2006 China-Australia nuclear cooperation and uranium export agreements signed by former Prime Minister John Howard and call on the JSCT to make this recommendation.

Australian Parliamentary support for the work of the International Commission on Nuclear Non-proliferation and Disarmament – ACF recommendation

11 The JSCT should recommend a Motion or a conscience vote of the Australian Parliament, to:

Renounce the potential use of nuclear weapons; call for de-alerting of all nuclear arsenals; call for commitments to 'No First Use' and to 'No Use Against Non-Nuclear Weapon States'; and call on all nuclear weapon states to make unequivocal commitments to the elimination of nuclear weapons and to take verifiable and irreversible steps in accordance with Nuclear Non-proliferation Treaty Article VI nuclear disarmament obligations in the lead up to the 2010 NPT Review Conference.

The Australian Parliament's voice should be heard calling for nuclear disarmament

ACF believes the Australian Parliament should make an unequivocal call for nuclear disarmament and to renounce the use of nuclear weapons. This would represent long held Australian community expectations and add the Parliament's voice to strengthen the hand of the ICNND in international diplomatic efforts.

Like the UN Secretary General Ban Ki-moon we should see Nuclear Disarmament as a Victory and act decisively to bring all our influence to bear in the lead up to the 2010 NPT Review to require nuclear disarmament of all of the nuclear weapon states.

"The world is facing acute challenges in the area of disarmament and non-proliferation.

...

There is widespread support throughout the world for the view that nuclear weapons must never be used again. We need only look at their indiscriminate effects, their impacts on the natural environment, their profound implications for regional and global security.

Nuclear weapons produce horrific, indiscriminate effects. Even when not used, they pose great risks. Accidents could happen any time. The manufacture of nuclear weapons can harm public health and the environment. And of course, terrorists could acquire nuclear weapons or nuclear material.

...

The obstacles to disarmament are formidable. But the costs and risks of its alternatives never get the attention they deserve."

("Disarmament is a Victory", Ban Ki-moon, United Nations Secretary General, 8 Nov 2008, The Adelaide Advertiser)

ACF recommendations to the Nuclear Non-proliferation and Disarmament Inquiry

Nuclear disarmament

- 1 Australia should take a lead role on Nuclear Disarmament by requiring countries fully observe their Nuclear Non-proliferation Treaty (NPT) obligations including NPT Article VI and the Objects of the NPT for: *“...the elimination from national arsenals of nuclear weapons and the means of their delivery...under strict and effective international control”* (NPT 1967).

Australia should not sell uranium to any nuclear weapon state that does not make unequivocal commitments to eliminate nuclear weapons and take verifiable and irreversible steps to demonstrate compliance with NPT nuclear disarmament obligations by the 2010 NPT Review Conference.

- 2 Australia should act on our international responsibilities by strongly promoting a Nuclear Weapons Convention – to abolish and to outlaw all nuclear weapons – before the UN in the lead up to the NPT 2010 Review Conference.

Comprehensive Nuclear Test Ban Treaty

- 3 Australia should apply all of our influence to bring the Comprehensive Nuclear Test Ban Treaty (CTBT) into force by giving notice that Australia will not sell uranium to any country that fails to ratify the CTBT – including China and the US, which are among nine required countries that have failed to ratify the CTBT to date. Australia should also require verifiable closure of all nuclear test sites.

Fissile Materials Treaty and Reprocessing

- 4 Australia should promote a Comprehensive Fissile Materials Treaty (CFMT) to end any further production of weapons usable fissile materials by acting unilaterally and decisively to prohibit reprocessing and the separation of weapons usable plutonium from spent nuclear fuel that has been produced from Australian uranium.

Australia should not support nor allow any use of Australian Obligate Nuclear Materials (AONM) in Plutonium and Mixed Oxide (MOX) fuel cycles or Generation IV or GIF (Generation IV International Forum) ‘fast’ or ‘breeder’ reactors. Australia should not support and should withdraw from the Global Nuclear Energy Partnership (GNEP).

Nuclear safeguards

- 5 To advance Australia’s objectives in Nuclear Non-proliferation and to respond to the threat of nuclear terrorism Australia should require implementation of a strengthened International Atomic Energy Agency (IAEA) nuclear safeguards

regime and IAEA inspections and the addition of mandatory IAEA nuclear security measures at all nuclear facilities that will handle, process, or store Australian Obligated Nuclear Materials (AONM) – including spent nuclear fuel that has been produced from Australian uranium.

- 6 In recognition of Australia's responsibilities to nuclear risks as the world's second largest uranium exporter the Australian government should as a matter of urgency provide financial resources as a recurrent commitment to at least double the existing IAEA budget of approximately €450 million per annum – and should substantially recoup this Australian public funding from uranium mining and export companies;
- 7 In addition to the IAEA regime, Australia should require a set of fundamental pre-conditions on the sale of uranium, including adoption of the Recommendations of JSCT Report 94 (September 2008), as measures to take effect in 2010 to make Australia's uranium export bilateral treaty agreements more comprehensive and effective.

These include: Conditionality Clauses for observance of the Rule of Law, Democratic Values and Human Rights; Verification and Transparency measures; complete separation of the military from the civilian nuclear sector and facilities; and addition of measures and conditions on three lead issues currently not included in our uranium bilaterals – nuclear security, environmental protection and nuclear waste management.

Russia and China

- 8 Australia should not ratify the proposed 2007 Russia-Australia nuclear and uranium sales treaty and should withdraw from the existing 1990 Russia-Australia agreement which provides for processing of Australian nuclear materials in Russia for on-sale internationally.

Russia should be disqualified from any proposed exports or processing of Australian uranium given Russia's threat to use nuclear weapons against Poland – an illegal act under the UN International Court of Justice 1996 Advisory Opinion on Nuclear Weapons, and given Russia's recent engagement in warfare in Georgia outside of any UN sanction.

- 9 At a minimum Australia should make the existing 1990 Russia and 2006 China nuclear treaties subject to the set of preconditions provided for in the Recommendations of the JSCT Report 94 (September 2008) and withdraw from clauses of the treaties which represent untenable practices that should be prohibited in all of Australia's bilateral uranium export agreements as they compromise any credible exercise and realisation of Australia's safeguards responsibilities, in:

- The proposed handling and processing of Australian nuclear material in non-IAEA safeguarded nuclear fuel cycle facilities; and
 - The ASNO practice of “substitution” of Australian nuclear material for other nuclear material sourced from other countries and held at other nuclear facilities and locations.
- 10 Australia should withdraw from the 2006 China nuclear cooperation and uranium sales treaties signed by former Prime Minister John Howard, given the substantively inadequate safeguards provided for in the treaties including failure to qualify for the preconditions provided for in the Recommendations of the JSCT Report 94 (September 2008); and due to China’s:
- lack of transparency and unacceptable human rights record - including the ongoing conduct of cultural genocide in Tibet with reports of wide spread human rights abuses;
 - poor non-proliferation record and failure to separate military and civilian nuclear sectors;
 - failure to ratify the CTBT; and
 - failure to comply with NPT nuclear disarmament obligations.

Australian Parliamentary support for the work of the ICNND

- 11 The JSCT should recommend a motion or a conscience vote of the Australian Parliament to:

Renounce the potential use of nuclear weapons; call for de-alerting of all nuclear arsenals; call for commitments to ‘No First Use’ and to ‘No Use Against Non-Nuclear Weapon States’; and call on all nuclear weapon states to make unequivocal commitments to the elimination of nuclear weapons and to take verifiable and irreversible steps in accordance with Nuclear Non-proliferation Treaty Article VI nuclear disarmament obligations in the lead up to the 2010 NPT Review Conference.