

**SUBMISSION NO. 4**  
**TT on 12 March 2013**

To: The Secretary,  
Joint Standing Committee on Treaties,  
Parliament House

5<sup>th</sup> May 2013

**Public Submission Re Treaty: Agreement between the Government of Australia and the Government of the United Arab Emirates on Cooperation in the Peaceful Uses of Nuclear Energy (Abu Dhabi, 31 July 2012)**

Dear Committee

I provide this public submission to the JSCT regarding the Australia – United Arab Emirates bilateral Nuclear Treaty tabled on 12 March 2013 that is currently before JSCT for a Public Inquiry, a treaty proposing precedent Australian uranium sales to the Middle East and Gulf Region - a notably volatile, unstable and insecure region.

Thank you for this opportunity and for the requested extension in time to provide a public submission.

I raise a number of public interest matters regarding the acceptability of this set of proposed treaty actions involving precedent Australian uranium sales into the Middle East. Both the wider region and the UAE face serious challenges of governance, democracy, the rule of law, human rights, risk of terrorism and risk of war.

Challenges which are so serious as to be incompatible with the proposed treaty actions and the introduction of nuclear reactors, Australian uranium sales and consequent nuclear risks in to such a high risk region.

Nuclear reactors using Australian uranium in the UAE are likely to be targets for terrorism and targets in war with potential catastrophic consequences for the people and for the country of the UAE and the Gulf Region.

Key issues that I contend should be addressed by this JSCT Inquiry include: Lack of Accountability in the UAE; Lack of Accountability of the UAE to Australia; and Security and Nuclear Risks in the UAE and Gulf region.

I believe that the JSCT Committee has an additional onus to do so as there is no comparable public process, if any, in the UAE regarding this treaty or the wider nuclear risks the people of that country face through the UAE government's introduction of nuclear reactors and the nuclear fuel cycle / fuel chain.

Following the Fukushima nuclear disaster fuelled by Australia uranium I believe JSCT should review our involvements in the uranium trade and Recommend a dedicated public inquiry into the domestic and international implications of Australia's uranium industry, including a cost-benefit and a risks analysis.

I raise a number of issues and key questions that go to the credibility of the proposed treaty action that I believe JSCT should consider and seek answers to from Federal government agencies, including: Unacceptable failure of the DFAT *National Interest Analysis* to include any Security and Nuclear Risks Analysis in the UAE and Gulf Region – including proliferation risks; and the untenable proposed "return" to Australia of nuclear materials and AONM including spent nuclear fuel and plutonium under Article XV of the proposed Treaty.

I request your consideration to these aspects of the proposed treaty action and believe and request that JSCT should make Findings and Recommendations on these matters in your report to the Parliament.

For your information, I have previously authored public submissions to JSCT on proposed bi-lateral nuclear cooperation and uranium sales treaties with China and later with Russia and have appeared as a witness in each case before JSCT on behalf of Australian Conservation Foundation (in a prior long term employment as ACF national campaigner based in Adelaide).

Yours sincerely

David Noonan B.Sc., M.Env.St.  
Freelance Environment Campaigner and Consultant

### **Key Questions and Recommendations:**

#### **1. Lack of Accountability in the UAE compromises a safety culture in Australian uranium sales:**

Q What standards, preconditions and demonstrated practice of observance, *if any*, in Governance, Accountability, Democratic Values, the Rule of Law, Human Rights, Worker's Rights, the protections and rights of Whistle blowers, and in Transparency measures, does the Australian government require in bi-lateral uranium sales agreements, and specifically in this proposed nuclear cooperation treaty with the UAE?

Q What position and what action, *if any*, has Australia taken on Gulf Cooperation Council and UAE use of forces to suppress the *Arab Spring* in Bahrain, and on UAE suppression of the *Arab Spring* at home?

#### **2. Demonstrated Lack of Accountability of the UAE to Australian public interests:**

Q Why should we expect this treaty action for sale of Australia uranium to the UAE to be accountable, given the fundamental failure of UAE to comply with Australian public interests and expectations in cited cases?

Q If we translate these events to that of a nuclear whistleblower in the UAE, what reason *if any* is there for confidence in their treatment in the UAE or for any effective Australian capacity to influence their case?

**Recommendation:** Australia should not ratify this proposed treaty and not export uranium to the United Arab Emirates as the lack of accountability in the UAE and the lack of observance of Democratic Values, the Rule of Law and Human Rights is seriously unacceptable, compromises a nuclear safety culture in both the UAE and in Australian uranium sales, and warrants disqualification of the UAE on these grounds alone.

#### **3. Unacceptable Security and Nuclear Risks in the UAE and in the Gulf region:**

Q Why has DFAT's *National Interest Analysis* failed to consider and assess Security and Nuclear Risks in the UAE and the Gulf region, including the potential for war in the region and targeting of nuclear reactors?

**Recommendation:** In Australia's National Interest, the JSCT recommend and require a comprehensive Security and Nuclear Risks Analysis of the UAE and Gulf region be carried out, and in the absence of such required guidance the JSCT should act to recommend Australia not ratify this proposed treaty.

**Recommendation:** Australia should not export uranium to the UAE as the risk of war and acts of terrorism to target nuclear reactors in the Middle East presents unacceptable risks of catastrophic reactor failures and release of radiation in the Gulf Region, these grounds alone warrant exclusion of the UAE from uranium sales.

#### **4. Australia should review and take responsibility for the impacts of uranium trade:**

**Recommendation:** Following the Fukushima nuclear disaster fuelled by Australian uranium, the JSCT should support a dedicated public inquiry into the domestic and international implications of Australia's uranium industry, including a cost-benefit analysis and a risks / impacts analysis.

#### **5. Untenable proposed "return" of nuclear materials to Australia under Treaty Article XV:**

**Recommendation:** The Australian community deserves a full explanation by DFAT of an array of potential significant National Interest consequences for Australia in exercise of proposed rights in UAE Treaty Article XV *Cessation of Cooperation and Transfers for "return" of nuclear materials from the UAE "to Australia"*- given DFAT has conspicuously failed to do so in the National Interest Analysis for this Category 1 Treaty. Including: The public policy, legislative framework, institutional arrangements, democratic and economic implications, and required transport and siting of facilities, for this *return* of nuclear material from the UAE.

**Recommendation:** JSCT and the Federal Parliament should now discuss and seriously consider the potential consequences of Australia's uranium trade in proposed *return* of nuclear materials to Australia and JSCT should reject this proposed treaty action for *return* to Australia of international nuclear wastes from UAE.

**1. Lack of Accountability in the UAE compromises a safety culture in Australian uranium sales:**

**Q What standards, preconditions and demonstrated practice of observance, *if any*, in Governance, Accountability, Democratic Values, the Rule of Law, Human Rights, Worker's Rights, the protections and rights of Whistle blowers, and in Transparency measures, does the Australian government require in bi-lateral uranium sales agreements, and specifically in this proposed nuclear cooperation treaty with the UAE?**

**Q What position and what action, *if any*, has Australia taken on Gulf Cooperation Council and UAE use of forces to suppress the *Arab Spring* in Bahrain, and on UAE suppression of the *Arab Spring* at home?**

*"I think you have an obligation as a uranium supplier to reward countries that stay within the rules,"*

(Foreign Minister Bob Carr, In: The Australian, *Mid-East uranium sales on cards*, 2<sup>nd</sup> Aug 2012).

**If Australia has no rules on these key issues we fail a crucial test for a nuclear safety culture in uranium sales.**

Undemocratic governance and limited accountability in the UAE are significantly unsuited for representing and protecting the public interest and public safety in characteristically high risk nuclear decisions. Standards and practice in democratic values, the rule of law, human rights and the rights and protections provided for whistle blowers, are all key reasoned tests for an Australian and JSCT decision on whether to sell uranium to the UAE.

However, the United Arab Emirates is an undemocratic state, a federation of absolute hereditary monarchies.

UAE is governed by a Federal Supreme Council made up of the seven emirs of Abu Dhabi, Ajman, Fujairah, Sharjah, Dubai, Ras al-Khaimah and Umm al-Qaiwain. Although elected by the Supreme Council, the positions of the President and of the Prime Minister are essentially hereditary as the emir of Abu Dhabi holds the presidency and the emir of Dubai is prime minister.

The UAE convened a half-elected Federal National Council in 2006. The FNC consists of 40 members drawn from all the emirates. Half are appointed by the rulers of the constituent emirates, and the other half were indirectly elected by a select group of voters in the first election in the UAE. The FNC is advisory and consultative rather than a democratically elected decision making body.

It is reported that the rule of law in the UAE does not allow free trade unions to exist, that the right to collective bargaining and the right to strike are not recognized, and the Ministry of Labour has the power to force workers to go back to work, including that migrant workers who participate in a strike can have their work permits cancelled and be deported.

The '*Arab Spring*' public protests and calls for democracy that were hailed in Australia were actively resisted by entrenched governing interests in the UAE, both at home and by UAE and Saudi military force in the region.

*"The Nation"* newspaper in UAE reported that the UAE and Saudi Arabia dispatched security forces to Bahrain to help to establish "*security and domestic stability*" according to statements by all three governments (*UAE and Saudi Arabia send forces to Bahrain*, March 15, 2011).

The deployment of the troops, part of the six state Gulf Cooperation Council's (GCC) Peninsula Shield Security force — made up of the UAE, Saudi Arabia, Bahrain, Oman, Kuwait and Qatar, demonstrates that these countries are willing to collaborate to militarily suppress public challenges to their governing elites, at request of any of the Gulf member states.

The Nation (*Defensive shield for the Gulf since 1982*, March 16, 2011) reported that the GCC Peninsula Shield Force, officially created in 1982, has rarely been deployed, having taken part in the liberation of Kuwait during the First Gulf War in the early 1990s, and again sent to Kuwait in 2003 ahead of the US-led invasion that toppled Saddam Hussein.

Use of this force in Bahrain, that included some 1000 Saudi soldiers and 500 UAE police 'to help restore order amid ongoing unrest', effectively ended the Arab Spring in Bahrain and can be seen as a significant barrier to advancement of democracy movements throughout the region including in the UAE.

A communique by the Interior Minister's that set up the force states that:

*"The security of the council's states is an indivisible whole, and any aggression on a member state is aggression against the other states, and facing aggression is considered a joint responsibility whose burden is on all the member states. ... Interference from any entity in the internal affairs of one of the member states is interference in the internal affairs of all the nations of the council."*

The Nation reports the communique thus made attacks by a foreign force, foreign interference and destabilisation of a GCC state all contingencies that demand unified action by the council and that co-operation has also extended to internal security including GCC address to counter-terrorism policies.

This use of GCC force appears to apply equally in response to war in the region, to counter terrorism, and to an array of *internal security* issues including active and illegitimate military force to counter democratic movements that may effectively challenge unrepresentative governing elites.

Within the UAE, the government clamped down on public and Internet activism during the Arab Spring. Time World (*Why the Arab Spring Never Came to the U.A.E., July 18, 2011*) reports calls for a constitutional monarchy and for more direct democracy culminated in a petition signed by 133 leading Emiratis in March 2011. The U.A.E. then dissolved the elected boards of the Jurists' Association and the Teachers' Association, among the most prominent non-governmental groups in the country. Members who had signed the petition were charged with *"interfering in politics or in matters that impair state security and its ruling regime."*

In April 2011 five leading reformers including an academic and a board member of a human rights NGO who signed an online petition calling for reforms were arrested on charges of insulting the President and imprisoned. The trial of the 'UAE Five' attracted international publicity and protest from a number of human rights groups including Amnesty International which named the five men *"prisoners of conscience"*.

The Australian (*"UAE jails internet activists for 'insults'"* Nov 28, 2011) reported that Human Rights Watch representative Samer Muscati, who attended the trial, said *"The decision was a complete miscarriage of justice. ... This shows that in the UAE you are not guaranteed a fair trial,"* charging that the trial was *"flawed from day one,"* and pointing out that lawyers *"couldn't cross-examine witnesses"*. The defendants were convicted and given 2 to 3 year prison sentences without rights to appeal. They were then pardoned.

In response to the *Arab Spring* protests in Bahrain, the UAE outlawed online mockery of its own government or attempts to organize public protests through social media and blocked reform bloggers web sites. The recent Human Rights Watch *"World Report 2013"* reports that since March 2012 more than 60 human rights defenders and civil society activists have been arbitrarily detained without charge. A member of the ruling family in Ras al-Khaimah was also put under house arrest in April 2012 after calling for political openness.

More recently, The Australian (*UAE to put on trial 94 Islamists, January 28, 2013*) reported that *"authorities have stepped up a crackdown on voices of dissent and calls for democratic reform"* and has started a trial of 94 political and human rights reformers who are accused of plotting against Gulf monarchies.

Of increasing concern is that the *2013 World Press Freedom Index: Dashed hopes after spring, by Reporters without Borders – for Freedom of Information*, now ranks the UAE 114<sup>th</sup> out of 179 countries surveyed.

At present, Britain is using a UAE state visit to raise concerns over the torture of three Britain's after their arrest in Dubai (*Britain to press UAE President on torture, AFP, April 28, 2013*). Authorities in the UAE have dismissed the allegations, saying an internal investigation found them to be *"baseless"* but Britain is pushing for a full independent investigation into the claims, which it says it takes *"extremely seriously"*. *"We have raised, and continue to raise, these allegations at the most senior levels in person and through diplomatic channels, including through ministers,"* a Foreign Office spokesman said.

## 2. Demonstrated Lack of Accountability of the UAE to Australian public interests:

Cases of Australian citizens jailed in the UAE establish that the UAE is not accountable to Australian public interests and expectations and has a clear failure of both the rule of law and observance of human rights.

Even though Australia has a \$6 billion trade relationship with the UAE as our 14th-largest trading partner, the UAE hosts the Australian Defence Force headquarters in the Middle East and Australia uses UAE airstrips to support the Australian military mission in Afghanistan, these cases demonstrate the inability or unwillingness of the Australian government to effectively influence events and realise acceptable outcomes in the UAE.

**Q Why should we expect this treaty action for sale of Australia uranium to the UAE to be accountable, given the fundamental failure of UAE to comply with Australian public interests and expectations in cited cases?**

**Firstly:** The Sunday Mail (*Queensland woman tells of her jail hell in United Arab Emirates*, March 27, 2011) and other press report an Australian woman spent eight months imprisoned in a United Arab Emirates jail charged with adultery after complaining to police about being drugged and raped by co-workers in a five-star international resort where the attack took place in 2008.

Ms. Alicia Gali said the harrowing ordeal should be a warning to other women against going to the UAE. Ms. Gali said she endured eight months in a crowded prison room with up to 30 other women after she complained to authorities of being raped. Ms. Gali has said:

*"It's distressing because I was a victim in all this and I was punished. ... The UAE is being promoted hugely here as a tourism destination - they sponsor things here. They are not complying with human rights, women's rights and migrant workers' rights."*

*"These countries don't have the same laws as us. You can end up in serious trouble. I didn't even know what the charges were until five months into my sentence ... You're just totally alone in a foreign country, with no assistance from your employer or the embassy"*

Maurice Blackburn principal Michelle James has said there were strong grounds for examining the role of the Department of Foreign Affairs and Trade in dealing with Ms. Gali's case. *"The embassy's deficient advice led to Ms. Gali spending a hellish eight months in prison"* he said.

Australian embassy staff also advised her and her family not to go to the media during her time in custody.

Ms. Gali said she was never warned by her UAE employers that she could be charged with adultery and face prison if she complained of being raped, without having four adult male Muslim witnesses. It is illegal in the UAE to have sex outside marriage and women are often punished regardless of the circumstances. Three of the men who sexually abused Ms. Gali were jailed - but for adultery and not for rape.

**Secondly:** The Australian (*PM rejects UAE call to plead for Aussies*, June 21, 2012) reports Prime Minister Julia Gillard as having being urged to contact the King of the United Arab Emirates on behalf of two jailed Australian businessmen in Dubai, but so far having failed to act on the request by one of the UAE's most senior officials.

Matthew Joyce and Marcus Lee have been held in Dubai since January 2009 on discredited corruption charges. They spent nine months in jail, initially in solitary confinement, before being placed under house arrest in Dubai with their families. The Victorian Supreme Court has tested the allegations against the men in a parallel case in 2012 and dismissed the claims that involved a failed property deal finding them to be without merit.

One of Mr Joyce's legal team, Melbourne lawyer Martin Amad, confirmed that Mr Shaibani the director-general of the Rulers Court of the King and negotiator in the case had asked for Ms. Gillard's intervention, and called on her to act before the men were sentenced. The Australian reported Ms. Gillard's office said she had no plans to make a representation on behalf of Mr Joyce or Mr Lee given other representations on the case.

Recently The Australian (*Julia Gillard lacks conviction on Dubai case, says Malcolm Fraser, April 4, 2013*) reports Prime Minister Julia Gillard stopped short of asking for the release of two Australians facing discredited bribery charges in Dubai during a private conversation with the Prime Minister of the UAE on her first phone call to address this issue in February 2013.

Former prime minister Malcolm Fraser said Ms. Gillard's approach was "*weak and without conviction*" when The Australian showed him a briefing note of her confidential talking points, which have been obtained by the paper. "*Her words would not leave anyone in Dubai with the feeling that this is important to Australia. Why should anyone pay attention?*" he is reported to have said.

The Australian (*Multi-billion-dollar trade relationship could be curbed by unresolved case, Feb 27, 2013*) reports the Qantas-Emirates alliance and the multi-billion-dollar trade relationship between Dubai and Australia could be disrupted by the unresolved case of two Australians wrongly jailed in Dubai, former trade minister Mark Vaile has warned the Dubai royal family.

In a private letter dated January 6<sup>th</sup> to the chairman of Emirates Airlines, Sheik Ahmed bin Saeed Al Maktoum, Mr Vaile has urged Australians Matthew Joyce and Marcus Lee be given their passports to return home after being detained for four years on discredited bribery charges relating to a failed property deal.

Mr Vaile wrote as patron of the council of advisors of Australia Gulf Council, a non-profit peak business council that facilitates two-way trade and investment between Australia and the Gulf states, stating that:

*"The AGC believes that this case could potentially disrupt the harmonious commercial relationship that exists between Australia and Dubai. ... Public perception of the Qantas-Emirates merger will be adversely affected if further attention is drawn to the circumstances in which Mr Joyce and Mr Lee and their families find themselves,"*

Amidst extensive advertising in Australia the alliance of Qantas and Emirates Air was finalized but after four years these Australian citizens continue to be detained without due process in the UAE on discredited charges.

The Australian (*Bob Carr giving detainee's family 'the run-around', March 1, 2013*) reports an Australian Olympic medalist whose brother has been detained in Dubai for four years on false charges has accused Foreign Minister Bob Carr of giving her family "*the run-around*" and denied his "*outrageous*" claims that the government had worked hard to secure his release.

*"If I had worked as hard as an Olympic rower as this government says it has worked for my brother and (fellow detainee) Marcus Lee then I would never have made the start line for the Olympics,"* Mrs Joyce said.

Foreign Minister Bob Carr yesterday said there had been repeated Australian ministerial level representations to senior United Arab Emirates government figures, including by himself, Transport Minister Anthony Albanese and Defense Minister Stephen Smith, and said Prime Minister Julia Gillard had also last year written to her UAE counterpart, the ruler of Dubai, and had telephoned in relation to the detained Australians.

However, Senator Bob Carr told ABC radio that Australia could not interfere in the Dubai legal system.

Taking such an array of Australian representations to the UAE at face value we must face the fact that there is no demonstrated level of effective influence exercised by Australia on the UAE, nor is there any acceptable practice of accountability on the part of the UAE to Australian public interests and proper expectations.

**Q If we translate these events to that of a nuclear whistleblower in the UAE, what reason *if any* is there for confidence in their treatment in the UAE or for an effective Australian capacity to intervene in their case?**

**Recommendation: Australia should not ratify this proposed treaty and not export uranium to the United Arab Emirates as the lack of accountability in the UAE and the lack of observance of Democratic Values, the Rule of Law and Human Rights is seriously unacceptable, compromises a nuclear safety culture in both the UAE and in Australian uranium sales, and warrants disqualification of the UAE on these grounds alone.**

### 3. Unacceptable Security and Nuclear Risks in the UAE and in the Gulf region:

***"We should not be fuelling potential nuclear fires across the Middle East. All these nuclear power plants will become terrorist targets, they'll also become potential targets during war."***

(David Noonan, In: The Australian *"UAE Talks open way for Uranium Exports"*, March 10, 2011)

*"However, historically the UAE has reportedly housed 'hundreds of front companies and foreign trading agencies that actively procure dual-use items for entities in countries under sanction'. Dubai's territory was a known hub for the A.Q. Khan network, which illicitly supplied nuclear technology to countries such as Iran, Libya, and North Korea."*

(US Nuclear Threat Initiative, UAE country profile, at [www.nti.org](http://www.nti.org) accessed May 2013)

The UAE nuclear program faces: active terrorist risks; a record of black market sanction breaking illicit trade in dual use nuclear technology; a highly militarised and unstable region with a heightened risk of war over Iran's nuclear program; risk of a regional proliferation breakout; and potential catastrophic health, economic and environmental impacts from attacks as acts of war or terrorism targeting nuclear power plants in the region.

Australia should not fuel potential nuclear fires and become complicit in nuclear insecurity in such an unstable region through uranium sales. Risk prevention should outweigh economic gain to uranium sales companies.

The Australian (*UAE busts Saudi-Emirati 'terror' cell: official*, December 07, 2012) reports UAE authorities have announced busting a cell of Saudi and Emirati members plotting "terror" attacks in the two countries and other states. A state news agency said the suspects *"imported material and equipment with the aim of committing terror acts"*. Terrorist risks in the UAE may increase and/or escape detection and turn nuclear in future.

The Stockholm International Peace Research Institute (SIPRI) Arms Transfer Database 2013 says the UAE is among the top three main importers of US arms sales. The US has long considered potential regional conflict in the Gulf and provides weaponry to facilitate potential UAE, Israeli and Saudi strikes on Iran in a regional war.

The Australian (*Eyeing Iran, US plans weapons sale to UAE*, Nov 12, 2011) reports on US plans to provide thousands of advanced *"bunker-busting"* bombs to the United Arab Emirates as part of efforts to contain Iran. The advanced munitions are designed to demolish bunkers, tunnels and other thickly reinforced targets, making them well-suited for a potential strike on Iran's underground nuclear facilities. The proposed package to the UAE was said to include up to 4,900 joint direct attack munitions, or JDAMs, and other weapons.

Recently, The Australian (*Israeli arms deal sends signal to Iran*, April 21, 2013 ) reports a major multi-billion dollar US arms deal with Israel sends a *"very clear signal"* to Tehran that military action and a military strike remains an option to stop it going nuclear, according to US Defense Secretary Chuck Hagel.

The US plans to sell \$US10 billion worth of advanced missiles and aircraft to Israel, the UAE and Saudi Arabia in a bid to counter the threat posed by Iran, including the sale of US F-16 fighter jets to the UAE.

The Australian (*Iranian War fears spark closure of Israeli reactor*, Jan 9, 2012) reports Israel is closing its nuclear reactor at Dimona because of the site's vulnerability in a war with Iran. Deactivating the reactor would minimize the dangers of nuclear fallout in the area following an attack on the reactor.

The decision to close Dimona follows warnings by Iran's Deputy Chief of Staff that the reactor site is a legitimate target and would be targeted in retaliation to an Israeli attack. Nuclear reactors are targets in war, have been repeatedly attacked in the Middle East, and are expected to be targets in future regional wars.

If Israel can't defend a nuclear reactor from attack then the UAE can't credibly claim to be able to do so.

Military strikes on nuclear reactors and plants in the Middle East, to date, include the following:

- Israel's destruction of the Osirak research reactor in Iraq by aerial bomb strike in 1981;

- Attempted military strikes by Iraq and Iran on each other's nuclear facilities during the 1980-88 war;
- The US destruction of two smaller research reactors in Iraq in 1991;
- Iraq's attempted missile strikes on Israel's nuclear facilities in 1991;
- Israel's aerial bomb strike destroying a suspected nuclear plant in Syria in 2007.

Nuclear reactors will likely become targets in future for a range of overlapping aims: to cause dispersal of radioactive material; in the case of power reactors - to disrupt electricity supply; to cause widespread public panic and disruption; and for a range of economic impacts. No human constraint can be assumed by attackers.

Following the experience of Chernobyl and Fukushima, potential catastrophic radioactive contamination of lands must be expected to follow a significant reactor 'loss of coolant' accident, by whatever cause, and even in Japan with the highest level of technical sophistication the capacity for any 'clean up' is strictly limited.

Asharq Al-Awsat, a news service in Saudi Arabia reports these risks are under consideration by the Gulf Cooperation Council (*GCC Environment Chief Talks to Asharq Al-Awsat*, Feb 20, 2013). With the erratic but steady progress of Iran's nuclear program and the announcement of nuclear power projects in some other Gulf states, the issue of nuclear safety and environmental protection in the region is more important than ever. As a result, the technical and scientific problems surrounding it are now rising up the agenda of regional states to join the existing economic and social problems that have be-devilled them in recent decades.

Dr Abdullah Aqlah Al-Hashem, Assistant Sec-Gen for Humanitarian and Environmental Affairs in the GCC says:

*"Of course war with Iran is not in our interest and we wish to avoid such an outcome. Therefore, it is imperative to establish a permanent peace. This requires full transparency on Iran's part and it must allow the international and Gulf communities to oversee and verify the peaceful nature of its endeavours so as to reassure everyone. Thus when Iran is not transparent in its nuclear activities, it poses a risk to everyone, and only 200 to 250 km divides us from Tehran."*

Q: How do you view this threat of Iran's nuclear activities to the Gulf, and how do you plan to deal with it?

Answer: *"It is not just a question of war and a nuclear blast; the radiation would spread very quickly and very far [in the event of a serious accident]. Not to mention the chemical and environmental pollution and the contaminants that are easily detectable."*

*"However the real the danger is the radiation because it has no colour, taste, or smell. Therefore the average citizen would not be aware that he or she is within the contaminated zone. Moreover, that the radiation remains for a long time, in the food, clothing, air, land, crops, livestock, everything."*

*"Thus radioactive contamination is unlike other types of pollution which are geographically and temporally limited, and it cannot be treated or contained in a safe manner."*

*"Unfortunately Iran's reactors have aroused fear amongst its neighbours and amongst those who rely on a pristine natural environment. This also violates the water security of the people of the region, which is one of the world's most vital commodities. ... I will reiterate that the risks that would result from their reactors would exceed their containment capacity and the capacity of others."*

In spite of GCC proposed contingency plans, a significant loss of coolant accident / core melt down at a UAE reactor, caused by whatever means, places the Gulf at the same risk as an accident at Iran's Bushehr reactor.



**Nuclear proliferation is a serious risk with the threat of a nuclear Iran to completely change the landscape and trigger a nuclear arms race in the Middle East. The UAE would get caught up in this one way or another:**

The Australian (*Saudis to buy nukes to counter Iran harm*, Feb 11, 2011) has reported on Saudi plans to match Iran if its arch enemy in the Gulf goes nuclear. Riyadh would immediately launch a twin-track nuclear weapons program to build an immediate deterrent. Warheads could be purchased off the shelf from abroad alongside active work for a new ballistic missile platform. "*Politically, it would be completely unacceptable to have Iran with a nuclear capability and not the kingdom*" according to Saudi sources cited by *The Times UK*.

At the same time, the Saudi kingdom would upgrade its planned civil nuclear program to include a military dimension, beginning uranium enrichment to develop weapons-grade material in the long term.

Investigations by *The Times UK* reveal that Pakistan is a potential *black market* source of warheads to Riyadh. Saudi Arabia is believed to have shouldered much of the cost of Pakistan's nuclear program and bailed out Islamabad when it was sanctioned by the West after its first nuclear test, in 1998. In exchange, the countries are understood to have an agreement whereby Pakistan would sell Saudi Arabia warheads and nuclear technology if security in the Gulf deteriorates, according to Western defense officials and diplomats in Riyadh.

The Australian has further reported (*Tehran Tests Saudi's Nerve on Nukes*, July 01, 2011) that the combination of Iran's steady nuclear progress, and Riyadh's growing frustration with Washington's "*Arab Spring*" policies and the Saudi royal family's fear of similar instability, threaten to drive Riyadh's pursuit of a nuclear option.

Saudi Arabia is reported to have turned to its longstanding ally Pakistan for assistance. Over the decades Saudi Arabia has helped finance Pakistan's nuclear and missile programs and Saudi Arabia may seek to capitalise on its investment. It has been reported that Pakistan had placed two divisions on alert to be sent to Saudi Arabia if security there deteriorates. Such co-operation has an important precedent: after the 1979 Islamic Revolution in Iran, and throughout the 1980s, Pakistan stationed military forces in Saudi Arabia.

Research fellow at the Institute for National Security Studies at Tel Aviv University, Yoel Guzansky, reports that if Pakistan were to station some of its nuclear weapons in the kingdom, Saudi Arabia might argue that this is not an infringement of the nuclear Non-Proliferation Treaty to which it is a signatory, especially if the weapons remain under Pakistani control.

Former head of the Saudi intelligence service and ambassador to the US, Turki al-Faisal, is reported as stressing that if Iran were to develop a nuclear weapon:

*"Saudi Arabia might feel pressure to acquire a nuclear deterrent of its own".*

In July 2011 *The Wall Street Journal* reported another Saudi threat to go nuclear and propositioned that given its enormous wealth it is a safe bet that Saudi Arabia will invest in security arrangements that help guarantee the continuity of the regime including acquiring or developing nuclear weapons.

**Q Why has DFAT's *National Interest Analysis* failed to consider and assess Security and Nuclear Risks in the UAE and the Gulf region, including the potential for war in the region and targeting of nuclear reactors?**

**Recommendation:** In Australia's *National Interest*, the JSCT recommend and require a comprehensive Security and Nuclear Risks Analysis of the UAE and Gulf region be carried out, and in the absence of such required guidance the JSCT should act to recommend Australia not ratify this proposed treaty.

**Recommendation:** Australia should not export uranium to the UAE as the risk of war and acts of terrorism to target nuclear reactors in the Middle East presents unacceptable risks of catastrophic reactor failures and release of radiation in the Gulf Region, these grounds alone warrant exclusion of the UAE from uranium sale

#### 4. Australia should review and take responsibility for the impacts of uranium trade:

Australia announced the start of negotiations for a bi-lateral agreement for supply of uranium to the UAE on March 9<sup>th</sup> 2011 in Abu Dhabi on a visit of then Foreign Affairs Minister Kevin Rudd to the country.

Minister Kevin Rudd's media release "*OPENING A NEW MARKET FOR AUSTRALIAN URANIUM*" stated that:

*"Australia ... hopes that it will serve as a model for other countries in the Middle East." And that: "...the proposed agreement would open up an important additional market for Australian uranium producers."*

Two days later, the nuclear disaster in Fukushima Japan unfolded with catastrophic impacts on the Japanese economy, the nuclear industry was discredited and in decline, and promoting the self-interests of the predominantly overseas owned uranium producing companies operating in Australia was less in vogue.

However, Australia took a further eight months to first admit that Australian uranium had fuelled the Fukushima nuclear reactors and the Australian government has consistently failed to acknowledge any responsibility for the Fukushima disaster or to review the impacts of the uranium it exports around the world:

*"We can confirm that Australian obligated nuclear material was at the Fukushima Daiichi site and in each of the reactors - maybe five out of six, or it could have been all of them; almost all of them."*

(Director General, Australian Safeguards and Non-proliferation Office, DFAT, October 31, 2011. In Hansard evidence to the *Joint Standing Committee on Treaties*).

*"Events in Japan have not altered the Australian government's position with respect to our uranium mining, export and nuclear power policies."*

(Minister for Resources Ferguson, AAP "*Fed gov all aglow over UAE uranium deal*", April 20, 2011)

Following the Fukushima nuclear disaster Australia should review our involvements in the uranium trade.

**Recommendation: Following the Fukushima nuclear disaster fuelled by Australian uranium, the JSCT should support a dedicated public inquiry into the domestic and international implications of Australia's uranium industry, including a cost-benefit analysis and a risks / impacts analysis.**

(Submission continued overleaf)

## 5. Untenable proposed “return” of nuclear materials to Australia under Treaty Article XV:

Australians do not accept the importation of international nuclear waste, high level nuclear wastes or spent nuclear fuels, of whatever origin - including nuclear material derived from the use of Australian exported uranium. To date this is a strict social license threshold for Federal government policy in the controversial and contested area of uranium sales and has largely held bi-partisan support in Federal politics over time.

**Recommendation: The Australian community deserves a full explanation by DFAT of an array of potential significant National Interest consequences for Australia in exercise of proposed rights in UAE Treaty Article XV Cessation of Cooperation and Transfers for “return” of nuclear materials from the UAE “to Australia”- given DFAT has conspicuously failed to do so in the National Interest Analysis for this Category 1 Treaty.**

**Including: The public policy, legislative framework, institutional arrangements, democratic and economic implications, and required transport and siting of facilities, for this return of nuclear material from the UAE.**

Contrary to the social license expectations of the Australian community this proposed Treaty clearly provides a power to require nuclear material located in the UAE, that is derived from the use of Australia uranium to be returned to Australia in the event of scenarios of UAE non-compliance with IAEA nuclear safeguards or with provisions of this Treaty, including as set out in Article XV 5:

*“Both Parties agree that detonation of a nuclear explosive device by either Party would constitute non-compliance with the provisions of this Agreement.”*

The DFAT National Interest Analysis (NIA) at *Nuclear Safeguards 12* explains that nuclear material subject to the agreement is: *Australian uranium and nuclear material derived from its use (such as plutonium), and is termed Australian obligated nuclear material (AONM)*. AONM includes both nuclear fuel prior to use and high level nuclear waste and Spent Nuclear Fuel and Australian obligate plutonium (in or separated from the SNF) after the use of Australian uranium in a nuclear reactor.

The NIA at *Nuclear Safeguards 14* describes this power to require return of AONM as *“...an essential element of Australia’s policy for the control of nuclear materials”*, and sets out this essential element at NIA 14. g:

*“the provision for cessation of supply by, and the repatriation of supplied nuclear material, non-nuclear material, equipment, components and technology to Australia, in the event of material non-compliance with IAEA safeguards arrangements, or with key provisions in the proposed Agreement (Article XV);”*  
(my bolding)

The NIA further discusses this proposed treaty power to “repatriate” nuclear material to Australia at NIA 27.

The proposed Treaty sets out the right to return nuclear materials to Australia from the UAE in Treaty Article XV Cessation of Cooperation and Transfers at Article XV 2. and at Article XV 4.

**“2. ... the supplier Party shall thereupon have the right to:**

**a. suspend or cancel further transfers of nuclear material, non-nuclear material, equipment, components and technology; and**

**b. require the return of nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement, provided that the arbitral tribunal has decided, in accordance with Article XVI, that the receiving Party is in material non-compliance and that such non-compliance cannot be rectified or that the corrective measures previously determined between the Parties or decided by the arbitral tribunal have not been effected. ...**

**4. In determining whether to exercise its rights to require the return of any nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement under paragraph 2 of this Article, a Party shall give due consideration to the form in which such nuclear material, non-nuclear material, equipment, components and technology exist at the time, and whether it is subject**

*to additional agreements, and/or consent by a third party. **Such request for return can only be implemented once all requirements for transfer are met**, including any relevant requirements contained in agreements that the other Party has concluded with third parties.” (my bolding)*

Until now a bipartisan position has existed through the powers of the *Customs Act 1901* and the *Customs (Prohibited Imports) Regulations 1956, Regulation 4R Importation of Radioactive Substances*, that radioactive waste is a prohibited import - unless its import is sanctioned by Ministerial discretion.

This treaty action creates a Ministerial discretion to import certain international nuclear wastes from the UAE.

JSCT should require DFAT to set out the proposed logistical and other arrangements in Australia to import, transport, store and dispose of these nuclear waste materials, including the port or ports they would be transported through and the site or sites of the proposed storage facilities for their long term management.

Notably: The *National Radioactive Management Act 2012 (An Act to make provision in relation to the selection of a site for, and the establishment and operation of, a radioactive waste management facility, and for related purposes)* specifically limits the origin and types of radioactive waste materials that can be controlled and managed at the proposed facility, through the definition of ‘*controlled materials*’ in Section 4 *Definitions*:

*“**controlled material** means controlled material within the meaning of the Australian Radiation Protection and Nuclear Safety Act 1998 **that is of domestic origin, but does not include high level radioactive material or spent nuclear fuel.** For this purpose, controlled material is **of domestic origin** if it has been used in Australia, generated by activities in Australia, or sent to Australia under contractual arrangements relating to the conditioning or reprocessing of ANSTO spent nuclear fuel “*

The Australian Greens Senator Scott Ludlam proposed the Amendment to the Bill to limit controlled radioactive materials to that of “*domestic origin*” and this move was supported by the ALP Federal Government. Then Minister for Science Chris Evans stated (Senate Hansard, March 13, 2012) that:

*“It complements controls under the Customs (Prohibited Imports) Regulations and the prohibition already in the bill on acceptance of high-level waste, preventing the facility from accepting used power reactor fuel. As I said, this has been a policy of successive Australian governments.*

*It is one that this government is committed to, and we are very happy to have that reflected in the bill and the act. **That will ensure that the parliament would have to debate this issue before there were any change in policy in that regard.”***

The Lucas Heights facility, that is intended to receive nuclear waste relating to the conditioning or reprocessing of ANSTO spent nuclear fuel, is not presently proposed to be a permanent storage site for nuclear wastes.

There has been no public acknowledgement by successive Federal governments of any plans or proposals to use Lucas Heights, or any other existing or proposed site or facility in Australia, to store AONM nuclear materials to be *returned* to Australia under the “*essential elements*” of DFAT policy for the control of nuclear materials consequent to our bi-lateral uranium sales agreements.

Further, the State and Territories across Australia have had Parliamentary debates and passed Legislation to prohibit the import, transport, storage and disposal of nuclear wastes, including international nuclear wastes, high level nuclear wastes and Spent Nuclear Fuel. Are they to be respected or overridden by this treaty action?

**Recommendation: JSCT and the Federal Parliament should now discuss and seriously consider the potential consequences of Australia’s uranium trade in proposed *return* of nuclear materials to Australia and JSCT should reject this proposed treaty action for *return* to Australia of international nuclear wastes from UAE.**