CRISPIN ROVERE – RESPONSE TO QUESTIONS ON NOTICE

JOINT STANDING COMMITTEE ON TREATIES
Treaty tabled on 28 October 2014
HEARING DATE - MONDAY, 18 MAY 2015

1 Chair: Are there mechanisms in the treaty to the effect of 'If India conducts certain things the treaty would be extinguished'?

Answer: No. Article XIV.2 states that 'a Party may terminate this Agreement by giving one year's written notice to the other Party.'

The final sentence of that paragraph does read, however 'the Party seeking termination may cease further cooperation under this Agreement if it determines that a mutually acceptable resolution of outstanding issues has not been possible or cannot be achieved through consultations.'

2 Chair: Was the Canada-India nuclear agreement signed under Prime Minister Modi?

Answer: No. The *Agreement between the Government of Canada and the Government of India for Cooperation in the Peaceful Uses of Nuclear Energy* was signed 21 March 2013. India's Prime Minister at the time of signing was Manmohan Singh.

3 Chair: Can you explain how it is possible that Australian obligated nuclear material can end up in a non-safeguarded facility?

Answer: In my verbal response I referred to Mr Carlson's submission and DFAT's failure to refute this.

As set out in Mr Carlson's submissions, the India-IAEA safeguards agreement allows India to use safeguarded material in a facility that is normally unsafeguarded, that is, a facility that is not included in the list of facilities that are subject to safeguards. Safeguards apply to listed facilities permanently. If safeguarded mterial is used in an unlisted facility, safeguards will apply temporarily while the safeguarded material is present. However, the IAEA agreement provides that in certain circumstances material produced through the use of safeguarded material may be removed from safeguards.

The provisions allowing this illustrates that the division between civilian and military facilities in India is not complete, and will not be complete by the end of this year as claimed by DFAT. In fact there are three categories of facilities in India: (a) facilities listed under the IAEA agreement for permanent safeguards; (b) military facilities (which are not formally identified); and (c) facilities used for civilian purposes (power reactors, enrichment, reprocessing, fast breeder reactors) which are not listed for safeguards but where the IAEA agreement

allows safeguarded material to be used under temporary safeguards arrangements. At least some of these facilities are dual-purpose, i.e. they contribute to the military program.

For further reading I would refer to Mr Carlson's contribution listed as *1.5 Supplementary to Submission* on JSCOT's inquiry website. Included here as Attachment A.

4 Senator Fawcett: Can you show the committee other treaties where specifically in the treaty text it talks about tracking? Or in fact is this treaty common in the framework with others?

Answer: None of the agreements specifically refer to tracking. Rather, this is implicit in the requirement in each agreement for each party to maintain a system for accounting for material subject to the agreement. In negotiating an agreement Australian officials explain this includes the requirement to report to Australia as set out in the administrative arrangement. All parties except India have readily accepted this requirement.

The evidence that India is unwilling to accept tracking through the fuel cycle relates to:

1. The experience of the United States and Canada. The United States still has not brought its agreement into operation – signed eight years ago now – for this reason. Canada capitulated as described.
2. Indian statements that they do not have anything additional to IAEA accounting.
3. That when Mr Carlson stated that India refused tracking, ASNO did not refute.

It should be noted that all Australia's other nuclear export partners, including Russia and China, have taken tracking commitments very seriously.

Senator Fawcett also asked that if the tracking could be satisfied in the AA would that allay my concerns. In my response I said it begs the question why it is not in the Treaty. In light of the above clarification, I would advise the Committee that:

- Provided that the AA enables the Australian Government to track AONM through the fuel cycle without amendment to the *Nuclear Non-Proliferation (Safeguards) Act 1987*, then this could allay my concerns, subject to the contents of the AA being made available to the Committee.
- Noting with regard to the above that paragraph 34 of the Government's *National Interest Analysis* indicates legislative amendments may be required to implement the proposed agreement – any legislative

amendment to reduce the requirements for tracking would be totally unacceptable.

- Noting also that my remaining concerns, with regard to pre-consent for reprocessing; no right of return; and no third-party arbitration, remain for the proposed agreement.

Further, at the JSCOT hearing 9 February 2015, Mr Whitely MP, asked Mr John Carlson to draft an alternative treaty text that would meet Australia's safeguards obligations and provide this to the Committee. Mr Carlson did so and is listed as *1.4 Supplementary to submission* on the JSCOT inquiry website, included here as Attachment B. This provides a comprehensive point of comparison with the proposed agreement and I commend it to the Committee.

Attachment A: *Mr John Carlson 1.5 Supplementary to submission*

Attachment B: *Mr John Carlson 1.4 Supplementary to submission*