Text of Australia-India Nuclear Cooperation Agreement: Short-sighted, Unnecessary, Dangerous

Submission to the Joint Standing Committee on Treaties

Mr Crispin Rovere

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Acknowledgements

This submission focuses on the strategic, foreign policy and global security implications this Treaty is likely to have if ratified in its current form, and provides a critique of some assertions made in the National Interest Analysis (NIA). I keep specific observations relating to how this Treaty text weakens Australia's long-standing nuclear safeguards and runs contrary to law to a minimum, as I expect that these will be covered more accurately and exhaustively by Mr John Carlson AM and Dr Kalman Robertson in their respective submissions to this committee.

In addition to serving as the Director General of the Australian Safeguards and Non-Proliferation Office (ASNO) for 21 years, John Carlson is an internationally recognised authority on nuclear safeguards. He continues to provide expert advice to, and leadership within, a large variety of international organisations, think tanks, and leading universities across the globe.

I would also like to acknowledge Dr Kalman Robertson, a nuclear physicist, lawyer and academic who specialises in treaty verification. Dr Robertson also published the most comprehensive legal opinion publicly available on the legality of Australia exporting uranium to India under the Treaty of Rarotonga.

It should be appreciated that both Mr Carlson and Dr Robertson are supporters of Australia exporting nuclear material to India. I therefore urge the Committee to treat any red flags raised by these experts with the upmost gravity and weight. While I have consulted a number of colleagues in preparation of my own submission, the arguments and conclusions outlined are my own, and it should not be assumed that my comments are reflective of the other experts I have mentioned.

Author

Crispin Rovere is co-author of a *Non-Strategic Nuclear Weapons: the Next Step in Multilateral Arms Control* and *A Strategy for Non-Strategic Disarmament: the Prohibition of Low-Yield Nuclear Weapons* at the Australian Strategic Policy Institute. Formerly, Crispin was a founding member Asia-Pacific Leadership Network for Non-Proliferation and Disarmament (APLN). He has published on nuclear arms control issues in peer-reviewed journals both Australia and internationally, and contributed to a variety of think tanks. He previously undertook postgraduate research at the Strategic and Defence Studies Centre, Australian National University.

Introduction

Any decision taken by the Australian Government to conclude a nuclear cooperation agreement with India must take account of many factors. These include: the national interest imperatives, the impact (either beneficial or adverse) on the proliferation of nuclear weapons, the likely reception of the agreement by other nations, and the economic and social impact of such a deal.

This submission argues that there are compelling reasons for Australia to export nuclear material to India **with safeguards comparable to those accepted by Australia's existing nuclear cooperation partners**. This Treaty, however, contains a number of flaws that foolishly privilege India ahead of others, and dangerously undermine key principles upon which the global nuclear non-proliferation regime has successfully operated for many years. This submission urges the Joint Standing Committee on Treaties (JSCOT) to recommend that this Treaty not be ratified until the treaty articles are re-negotiated to meet minimum standards.

This submission consists of three parts. Part I explains why concluding an appropriate nuclear cooperation agreement is in the interests of all parties. Part II outlines what is missing in this Treaty, and why it is important from a strategic and non-proliferation perspective. Part III provides a critique of the NIA and explains why failure to amend this Treaty may prove a very serious long-term mistake. This submission then concludes with a series of recommendations for the Committee to consider.

Part I: Australia-India nuclear Cooperation Agreement is a good idea

1.1 *Australia's Export Policy Prior to the Nuclear Suppliers Group Waiver*

For many decades Australia's policy was to only export nuclear material to countries that were party to the Nuclear Non-Proliferation Treaty (NPT).[1] This policy proved extremely successful for most of its history. Nuclear supply became an incentive for acceding to the NPT, and over time nuclear supply also emerged as a key tool by which international legitimacy is conferred upon a recipient state's nuclear activities.[2]

[1] With one minor exception. Australia concluded an agreement with France back in 1981 prior to France formally joining the NPT. At that time France agreed to act as if it were party to the NPT, and having exploded a nuclear device prior to 1967 it was able to join the NPT as a nuclear-weapon state – which it later did in 1992.

[2] See Crispin Rovere and Kalman A. Robertson, "Australia's Uranium and India: Linking Exports to CTBT Ratification," *Security Challenges* (2013) Vol. 9, No. 1, pp. 51-61. Accessible <http://www.securitychallenges.org.au/ArticlePDFs/SC9-1Rovereand%20Robertson.pdf>.

Australia's policy supported the grand bargain inherent in the NPT. This being that countries without nuclear weapons would not acquire them, and countries with nuclear weapons (prior to 1967) would pursue negotiations in good faith toward eventual nuclear disarmament. In exchange, state parties would have access to nuclear supply for peaceful purposes.

Today the NPT is as close to universal as it is likely to ever be, with just the resolute hold-outs remaining – these being Israel, Pakistan and India (with North Korea announcing its withdrawal in 2003).

1.2 *India's view of the NPT*

India views the NPT as being inherently discriminatory, entrenching nuclear weapons as a right for some, while outlawing them for all others. The NPT permits only those states that exploded a nuclear device prior to 1967 to accede as nuclear-weapon states under the NPT. (These states happen to be the five permanent members of the United Nations Security Council.) India did not detonate a nuclear device until 1974 (its so-called 'peaceful nuclear explosion'), therefore India cannot join the NPT without first completely disarming itself of its nuclear arsenal.

While India detonated a nuclear device in 1974, it did not conduct a full round of nuclear weapon tests and declare itself a nuclear power until 1998. These tests only occurred when it became clear that Pakistan's nuclear break-out was imminent with Chinese assistance. From India's perspective, none of the nuclear-weapon states under the NPT have fulfilled the Article VI commitment to disarm. India also believes that nuclear suppliers such as Australia have proven more interested in whether a state is party to the NPT, than whether that recipient state is in compliance with its non-proliferation obligations.

The key point is that India is very sensitive to any perceived bias by the international community that India is less than an emerging Great Power on par with the United States and China. This is important to understand when seeking to apprehend why nuclear supply is so important to India with regard to deepening bilateral ties.

1.3 *The Nuclear Suppliers Group Waiver for India*

The Nuclear Suppliers Group (NSG) is a group of nuclear supplier countries that seeks to contribute to the non-proliferation of nuclear weapons through the implementation of guidelines governing the export of nuclear materials and related technologies. It was formed in 1974, ironically as a response to India's nuclear test, where India diverted plutonium from a reactor supplied by Canada

to create a nuclear explosive device. The NSG guidelines stipulate that nuclear supplier countries may only export nuclear material to state parties to the NPT.

In 2005, President G W Bush announced he would seek to conclude a nuclear cooperation agreement between the United States and India. In doing so, he sought a waiver from the NSG guidelines for India.

There were good reasons not to grant the waiver, given that many nations had joined the NPT under the belief that only those who were party to the NPT would enjoy the benefits of nuclear supply for peaceful purposes. Granting a waiver to India from the NSG guidelines thus materially undermined the grand bargain inherent in the NPT. Nevertheless, given that India is situated between two nuclear armed powers (China and Pakistan), and that it couldn't join the NPT as a nuclear-weapon state, it was generally considered by the NSG members that an exception should be granted to India in this case – provided that is, that India adopts all of the obligations incumbent upon a nuclear-weapon state under the NPT, even though India is not a formal state party.

It was strictly on this basis that the waiver from the NSG guidelines was granted to India in 2008. Ten countries now have nuclear cooperation agreements with India, including four of the five permanent members of the UNSC.[3] Regardless of the merits of granting India the NSG waiver back in 2008, the result was Australia's policy becoming obsolete. No longer acting as a partner in a global effort, Australia's categorical refusal to export nuclear material to India (unless India joined the NPT) was taken very personally by India, harmed bilateral ties, did nothing to support nuclear non-proliferation, and proved untenable as a bargaining position.

In anticipation of the NSG waiver, John Howard amended Australia's policy toward exporting nuclear material to India in 2007, but this was reversed by Kevin Rudd after the Federal Election. In 2011, Julia Gillard changed Labor's policy to allow nuclear export to India. At that time Ms Gillard said:

> We must, of course, expect of India the same standards we do of all countries for uranium export - strict adherence to International Atomic Energy Agency arrangements and strong bilateral undertakings and transparency measures that will provide assurances our uranium will be used only for peaceful purposes.[4]

As a result, Australia-India bilateral relations greatly improved. This Treaty, however, does not live up to that statement.

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[3] These are: Argentina, Canada, France, Kazakhstan, Mongolia, Namibia, Russia, South Korea, the United Kingdom and the United States.

[4] Julia Gillard, reported in WNN, "Gillard: Drop ban on uranium sales to India," (15 November 2011), <http://www.world-nuclear-news.org/NP-Gillard_Drop_ban_on_uranium_sales_to_India-1511114.html>.

1.4 *Climate Change and Poverty Reduction*

If the worst impacts of global warming are to be mitigated then an expansion of the nuclear power sector in India has to be part of the solution. With 1.25 billion people, India has almost 18 per cent of the world's population and is projected to overtake China as the most populous nation by 2025.[5] India also has among the lowest per capita energy consumption (under 800 kWh per year). This reflects the widespread poverty that still exists in India, with almost 300 million people not even having access to electricity. By contrast, the per capita electricity consumption in Australia is around 10 times greater than in India.

With a rapidly growing population, and the change in individual consumption patterns that accompany a rise in living standards, it is not difficult to apprehend the consequences for global greenhouse gas emissions if India's future energy demand is met predominantly by coal.

India's nuclear energy sector is modest (less than 3 per cent of total electricity production), and therefore at present it does not require significant quantities of Australian uranium. With ambitious plans to expand this proportion to 25 per cent by 2050,[6] however, it may become dependent on Australian supplies in the future. Barring a transformative breakthrough in other forms of renewable energy technology, failure to rapidly expand India's nuclear energy sector will only see India's electricity demand being met by coal as the most efficient, cost-effective, and reliable non-nuclear alternative. Given the sheer scale of India in terms of its population, and the exponential trajectory of its domestic electricity demand, it is reasonable to assert that failure to prevent projected rises in India's greenhouse emissions will likewise result in a general failure to mitigate the effects of climate change – regardless of other policy initiatives.

This submission does not argue that Australia should conclude a nuclear agreement with India on moral grounds due to India's widespread poverty, because India's electricity demand will otherwise be met by coal. An awareness of India's poverty reduction imperative is important, however, for understanding India's national priorities. After all, the reliability of nuclear supply is a significant factor when considering whether to expand the production of nuclear energy.[7] In this context, Australia does have an obligation

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[5] See Sam Roberts, "In 2025, India to Pass China as the World's Most Populous, U.S. Estimates," *New York Times* (15 December 2009) <http://www.nytimes.com/2009/12/16/world/asia/16census.html?_r=0>.

[6] See World Nuclear Association, "Nuclear Power in India," (September 2014) <http://www.world-nuclear.org/info/Country-Profiles/Countries-G-N/India/>.

[7] As opposed to determining whether to pursue a nuclear weapon program. Assertions that exporting Australian nuclear material to India will "free up domestic reserves of uranium" for nuclear weapons are completely wrong. Nuclear energy production requires vastly more uranium ore concentrate than nuclear weapons, and in this context exporting coal to India has exactly the same effect of "freeing up

to assist India to moderate its greenhouse gas emissions, given the importance of climate change mitigation for Australia.

1.5 *What an Australia–India Nuclear Deal Should Have Achieved*

India has not signed the Comprehensive Nuclear-Test-Ban Treaty (CTBT). Like China and the United States, India maintains a unilateral moratorium against nuclear testing. Unlike China and the United States, India has not even signed the CTBT.[8] Of these three nations, India probably has the strongest incentive to abrogate its moratorium and resume nuclear testing.

India has not successfully detonated a thermonuclear (hydrogen) bomb,[9] and therefore concerns remain about the reliability of its strategic deterrent relative to potential rivals. Without further nuclear testing by India, these security concerns may not be resolved.

At present, China has nuclear superiority over India. Moreover, Pakistan is diversifying its nuclear arsenal, developing low-yield and niche capability nuclear weapons for battlefield use. These nuclear weapons are designed specifically as first-strike weapons against a potential conventional attack by India. Not only is there domestic pressure in India to test thermonuclear weapons to achieve strategic parity with China,[10] some are calling on India to develop its own low-yield nuclear weapons as a response to Pakistan.[11]

An appropriately worded nuclear cooperation agreement that explicitly links nuclear cooperation to continued restraint by India on nuclear testing would be a very good thing. A clear understanding that nuclear supply from Australia would cease should India resume nuclear testing would have provided an additional incentive to exercise restraint. Not only is this not achieved in the proposed Australia–India agreement, it is significantly deficient compared with all of Australia's other bilateral nuclear cooperation agreements (see Part II).

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domestic reserves of uranium" as does exporting uranium. See Crispin Rovere, "Australia should tie exports to ratification of test ban treaty," *Canberra Times* (8 August 2012) <http://www.canberratimes.com.au/federal-politics/selling-uranium-to-india-could-make-world-safer-20120807-23say.html>.

[8] While the United States and China have signed but not ratified the CTBT.

[9] India claimed to have successfully detonated a thermonuclear device during its 1998 tests. Seismic data readings appeared disprove this. Key Indian scientists have since conceded the test that was intended to achieve a thermonuclear yield fizzled, which they disclosed in-part as an argument to resume nuclear testing. See Jeffrey Lewis, "India's H Bomb Revisited," *Arms Control Wonk* (27 August 2009) <http://lewis.armscontrolwonk.com/archive/2445/indias-h-bomb-revisited>.

[10] Bharat Karnad, "India's nuclear amateurism," *Indian Express* (28 June 2013) <http://www.newindianexpress.com/columns/Indias-nuclear-amateurism/2013/06/28/article1655987.ece>.

[11] See Gaurav Rajen and Michael G. Vannoni, "Battlefield Nuclear Weapons in South Asia: The Case for Restraint," South Asian Survey, Vol. 12, No. 1 (2005) pp. 91-104.

Any move by India to resume nuclear testing would quite likely lead to a nuclear arms race stretching across the Indo-Pacific region. The risks such an arms race would pose to global security can scarcely be overstated. Strategic nuclear dynamics in the Indo-Pacific is already highly complex and very risky owing to the linked nuclear relationships that exist. To take just one example, US allies resist American nuclear reductions owing to China's conventional and nuclear expansion, China is modernising and expanding its nuclear arsenal in response to what it says is the undermining of its strategic deterrent by American ballistic missile defences. India, in-turn, apprehends China's nuclear improvements and seeks to diversify its arsenal through the development of new ballistic missiles and submarine-based platforms. Pakistan of course views this with alarm and redoubles efforts to expand and diversify its own nuclear forces – which is again noticed by India. The key point is that any change in nuclear policy by one of these states has a significant impact on others.

Indeed, there is scope for negotiating a treaty that would have taken advantage of these linked nuclear relationships and added significant value to the non-proliferation of nuclear weapons in our region. Australia should require India to agree, as part of any bilateral nuclear export deal, to ratify the CTBT after the US Senate, as China has already indicated it will do. This does not prejudice in any way against India, who would not be required to do anything until the United States does. Yet such an undertaking by India would be a significant boost to those in Washington arguing for the ratification of the CTBT, given that much of the world's population could then be brought under the CTBT regime with a single act of the US legislature. Such an undertaking would confer confidence to Australia and the world that India is serious about assuming the same rights and responsibilities as the nuclear-weapon states parties under the NPT. As it stands, China may well renege on its previous pledge, reasonably arguing that it cannot join the CTBT while a nuclear-armed India remains outside the CTBT on its border, even if the US ultimately ratifies.

This submission does not suggest the proposed Australia–India nuclear agreement will, as presently written, *cause* a nuclear arms race. However the failure to account either for the risk of a nuclear arms race or the need to ensure equity between nuclear partners, constitutes a grave error on the part of the Australian Government in negotiating this agreement.

Part II: Short-sighted Concessions, Unnecessary Capitulation

2.1 *The Core Responsibility of Nuclear Suppliers*

It is important to understand the concepts underpinning Australia's long-standing policy approach, why they are important, and why they've been successful.

In Australia, the foundation of the current policy framework was laid down by the Fraser government, and has been expanded and reinforced by all Australian governments since. It is based on a guiding principle: since uranium can be used to develop nuclear weapons, export of such material can only be justified if it supports the non-proliferation of those weapons. It is for this reason that nuclear supply was linked directly to joining the NPT, which proved very successful for a great many years. While this is not possible with regard to India, the principle remains, and no nuclear agreement with India should proceed unless this principle is satisfied – which is possible to do, given options provided in Section 1.5.

This principled approach has, over time, resulted in the supply of nuclear material becoming a powerful symbol of legitimacy – a conferral of international acceptance on a recipient state's nuclear activities. Australia is custodian of the world's largest extractable uranium reserves, and has a very prominent role in conferring this legitimacy on nuclear partners. The symbolic significance of this should not be underestimated. After all, Australia's categorical refusal to export nuclear material to India (unless India joined the NPT) was considered to be so important to India as to constitute a national insult.

This legitimacy also stems from the idea that nuclear suppliers are responsible for how their exported nuclear material is used. For Australia, the shorthand for this is Australian Obligated Nuclear Material (AONM). Australia has always required the recipient state to directly report to Australia accounts of all AONM in use. Not only does this Australia-India nuclear agreement include no such direct reporting requirements, it all but excludes *any* of the standard provisions that make the nuclear recipient accountable to nuclear suppliers for the material that is received, and would enable Australia to fulfil the obligations that the AONM acronym suggests.

The influence that Australia wields internationally in this area exists only so long as nuclear supply is viewed as a criterion of nuclear legitimacy. For Australia to conclude a nuclear agreement that does not meet the minimum standards is to undermine that principle, and through it Australia's international authority. This is clearly contrary to the national interest, and failure to acknowledge this represents one deficiency in the Government's National Interest Analysis (NIA). It can only be concluded that Australia is abrogating the very notion that nuclear suppliers have responsibility for the nuclear material that they export; a very dangerous precedent.

2.2 *How to Build Nuclear Weapons and the Dangers of Reprocessing*

Nuclear weapons typically require significant quantities of Uranium–235 or Plutonium–239. To produce these isotopes in the necessary purity for a nuclear bomb a would-be proliferator must either 'enrich' natural uranium by separating out the fissile Uranium–235 from the Uranium–238 in natural uranium ore, or breed plutonium by adding neutrons to Uranium-238 in a reactor and then chemically separating the fissile Plutonium–239. The separation of plutonium from a reactor is known as 'reprocessing'. Reprocessing enables the recycling of nuclear fuel for use in another reactor but it can also serve as a pathway to a bomb. Obviously, reprocessing is a highly sensitive stage of the nuclear fuel cycle owing to the risk of diverting plutonium for nuclear weapons.

Australia only allows two export partners to reprocess AONM, Japan and the EU (UK and France). In both cases Australia has given its explicit 'programmatic' consent for how and where AONM may be reprocessed, and specifically which downstream facilities can use the reprocessed material. This is a critical element of Australia's agreements with these long-standing nuclear partners, and failure to include programmatic consent in the Australia-India agreement is incompatible with Australia being a responsible nuclear supplier.

To underscore the risks involved, consider the case of South Korea and the United States. South Korea is a formal treaty ally of the United States, produces 22 per cent of its electricity from nuclear energy, and has for decades hosted tens of thousands of US troops on its own territory. South Korea is <u>not permitted to reprocess</u> any nuclear material it receives from the United States, full stop. And yet, in this Australia–India nuclear agreement Australia is willing to allow India to reprocess AONM without any of the standard safeguards that Australia would normally impose – such is the degree of this agreement's deficiency.

2.3 *Why the Concessions Australia Made Were Unnecessary*

It is in Australia's national interest to deepen bilateral ties with India.[12] To that end, Paragraph 4 of the NIA states that:

> The proposed Agreement would make a <u>significant contribution</u> to a further strengthening of bilateral ties between Australia and India and would mark a maturing in the relationship. [Emphasis Added]

The above statement, however, is not strictly speaking true. It is true that Australia's categorical refusal to export nuclear material to India (unless India

[12] Although this is often well overstated, see section 3.3

joined the NPT) was a serious barrier to deepening bilateral ties. The critical element, however, is whether Australia is willing to export nuclear material to India under conditions comparable to those of other countries (such as China and the United States), not whether an agreement is in place at any cost. A clue to this is offered in Paragraph 8 of the NIA which states:

> Australia's agreement to negotiate a nuclear cooperation agreement has been an important catalyst for recent improvements in our relationship with India.

The point is, the catalyst for deepening bilateral ties occurred back in 2011 when the in-principle decision to export Australian nuclear material to India achieved bipartisanship.

It is not immediately clear how concluding a nuclear agreement without the attendant safeguards deepens Australia's bilateral relationship with India. It is certainly not possible to see how the benefits outweigh the serious harms and risks arising from the conclusion of such a flawed nuclear agreement. While there will be some possible financial gains in the uranium sector, these are going to be very modest for at least the medium term. The greatest advantage is political and strategic, but again, these benefits have largely been realised since 2011.

Moreover, Australia's bargaining position in the negotiations was quite strong. It is true that India held no respect for Australia's previous position, that India join the NPT, because of the perceived bias vis-à-vis China and the United States. Once Australia amended that position, however, India should have become susceptible to arguments relating to equity between it and other nuclear powers. Requiring that India ratify the CTBT after the US Senate, for example, is eminently reasonable for any state seeking to be treated on the same level as China and the United States. It may be that India wishes to retain the option of nuclear testing regardless of what the United States and China do, and if this is so, this is something the Committee should be made aware of. In sum, the main benefits for Australia were realised in 2011 when Australia amended its policy and opened negotiations with India. Within the negotiations themselves, it is India that has everything to gain.

2.4 *Why these Errors Were Allowed to Occur*

One can only speculate as to why the Australian Government saw fit to conclude a nuclear cooperation agreement that is so obviously flawed and dangerous. The timing appears to have played a role, and to that end the NIA hints in Paragraph 8 that concluding a nuclear cooperation agreement early in Prime Minister Modi's term could have a 'strong impact'.

Another probable reason is the flaws in the Canada–India agreement and the supportive relationship that exists between Prime Minister Tony Abbott and his Canadian counterpart, Stephen Harper. So far only one nuclear cooperation agreement with India has been concluded that is almost as disastrous as the one proposed here; the Canadian–India nuclear agreement. As with the proposed Australia–India nuclear agreement, the text of the Canadian deal likewise abrogates the widely accepted principle that the nuclear recipient is accountable to the supplier. This is ironic given it was nuclear material diverted from a Canadian-supplied reactor that led to the India's break-out in the first place. It would be like the citizens of Hiroshima deciding it would be a good idea to host American nuclear weapons within the city – the absurdity is quite astonishing.

The good news is that Canada's deal has earned the Harper government pariah status with regard to nuclear safeguards.[13] So long as Canada remains isolated on this issue, the integrity of the non-proliferation regime will be maintained, with a future Canadian government likely to re-negotiate the terms of their agreement. If, however, Australia were to follow Canada's example it would normalise Canada's position. This would advantage the Harper government politically, but with the substantial side-effect of weakening the nuclear non-proliferation regime as a whole.

Part III: Dangerous Outcomes

3.1 *New Era of Uncertainty*

Those on the Committee wanting to know the long-term consequences of the Australia–India nuclear deal are to be disappointed. While various experts can analyse the agreement's defects, speculate on outcomes, and recommend improvements, no-one can say with any confidence whether the worst outcome will be realised or avoided.

What can be asserted is that this Australia–India nuclear deal introduces significant new uncertainties with regard to a proliferation risk that did not previously exist. For the first time in nearly 40 years, Australia will not be able track how its exported nuclear material is being used. All of the uncertainties in this agreement carry down-side risks, and it has no prospective benefits. It is

[13] See Paul Meyer, "India and the meltdown of Canada's nuclear non-proliferation policy," *The Star* (15 November 2012) <http://www.thestar.com/opinion/editorialopinion/2012/11/15/india_and_the_meltdown_of_canadas_nuclear_nonproliferation_policy.html>.

hard to see why the Australian Government would be willing to expose itself in this way.

These uncertainties are compounded by the opaque nature of India's nuclear activities. India has both safeguarded and non-safeguarded facilities. India has facilities that it deems to be civilian which may or may not be safeguarded, and may or may not be contributing to India's military program. India is also the only country that is still producing fissile material for nuclear weapons that will have a bilateral nuclear agreement with Australia. It is important to acknowledge that if there is a nuclear incident (such as an Indian nuclear test), under this agreement it will be very difficult for the Australian Government to say with any confidence that it bears no responsibility for what transpired.[14]

3.2 *Harm to Australia's Other Bilateral Relationships*

In this agreement Australia is privileging India ahead of all other nuclear export partners in the form of a significantly weakened safeguards apparatus. India will be able to reprocess AONM to produce plutonium, possibly at weapons grade, with no specific permission from Australia. India will not need to account directly to Australia for the AONM used in its nuclear program, and there is no provision for the return of that material in the event of India violating the conditions. This is unheard of in any nuclear agreement Australia has been party to. Even if India proves completely trustworthy, it is unrealistic to believe that Australia's other nuclear partners will accept less favourable conditions in perpetuity. Refusal by Australia to cede to the demands of other nuclear partners will result in significant harms to these bilateral relationships, while an Australian capitulation will undermine the non-proliferation regime generally, creating an environment where the risk of nuclear weapon proliferation becomes unacceptable.

It should always be remembered – the fact that only nine countries possess nuclear weapons seventy years after they were first developed is no accident. It is the result of careful policy making, successful negotiation, and the active restraint of far-sighted statesman over decades. The Post-Cold War era has now ended, a contested multipolar world order is emerging, the strategic epicentre of which is in our own region. Within this environment there is every indication that the nuclear dangers so immediately felt during the Cold War are being quickly re-asserted. Any decision to relax Australia's nuclear safeguards policy will play into these dynamics in long-term, unpredictable, and unhelpful ways. If anything, now is a perfect time to examine new ways in which the non-

[14] Instead, Australia is outsourcing this entirely to the IAEA.

proliferation regime can be strengthened, including through bilateral nuclear agreements that Australia chooses to negotiate.

I would conclude this point by saying that in my view the flaws in the Australia–India nuclear agreement cannot be corrected by a carefully crafted administrative arrangement. In addition to the problems created by their subordinate legal status and their secrecy, it does not solve the problem of other nuclear export partners seeking to amend their own agreements to match the one Australia has signed with India. The only way to fix the problems this agreement creates is to amend the agreement itself.

3.3 *Poor Foundation for Future Cooperation with India*

While it is true that deepening bilateral ties with India is a good thing, much of the thinking upon which this determination is made is seriously flawed. Anyone who asserts that India is a pro-western democratic bulwark against the expansion of Chinese power in the Indo-Pacific region fundamentally misinterprets the geo-strategic dynamics of the world.

In more ways than not, India's foreign policy is complementary with, and reflects the style of, China's foreign policy approach. It is true that India temporarily fears expanding Chinese power. However, the drivers behind India's anxiety are very different to that of countries like Australia. India considers itself to be a burgeoning Great Power, primarily concerned with the expansion of Chinese influence in what India considers to be its own legitimate sphere, the Indian Ocean region. While the power gap between China and India continues to expand, India will be willing to cooperate with middle powers such as Australia as a strategic hedge. However once the power gap between India and China starts to contract India's fear of China will evaporate. As India's confidence grows it will prove less willing to deal with others (like Australia) on the basis of equality. Indeed India is well aware that the most intensive strategic rivalry that exists between major powers today is that between the United States and China. While the United States and China directly contest the Western Pacific, the power dynamics in India's 'sphere' is far more diffuse, and there is every likelihood that India's strategic cooperation with China will deepen as India's relative power grows, potentially to the detriment of Australia's long-term interest.

This is a lesson that the United States has already largely learned at great cost. After all, it was the expenditure of American political capital that drove the NSG waiver granted to India. It was Russian companies that were awarded all

the lucrative contracts that resulted from it.[15] Indeed if India has a true strategic partnership with any nation, it is the Russian Federation. This partnership has existed for as long as ANZUS has, and is only getting stronger. Between 2008 and 2013 India's military imports rose by 111 per cent. Of this, Russian companies accounted for 75 per cent of all Indian military imports, the United States just 7 per cent. [16] In fact, some Russian experts are openly supporting an Indian push for a thermonuclear bomb.[17]

Moreover, India's bilateral cooperation with China is deep and multifaceted, including through the emerging national economies: Brazil, Russia, India, China and South Africa (BRICS).[18] Indian exports to China will reach $100 billion per annum in 2015, and are projected to reach $1 trillion per annum by 2050.[19] While the inhospitable border between the two nations has occasionally been the source of tension and even conflict, in recent years both sides have taken very concrete steps to remove potential flashpoints. In October 2013, China and India concluded a border defence cooperation agreement to ensure that patrolling along the border does not mistakenly escalate. China has withdrawn troops and India has demolished several of its bunkers near the disputed border. This sits in stark contrast with the territorial disputes that both India and China have with other nations, where tension continues to rise due to their own military assertiveness.

The fact is that India is pursuing its own long-term interest, and is not a natural partner in a China-balancing coalition. There is every likelihood that in the long run a Russia-China-India strategic coalition will emerge that seeks to curtail Western influence in Asia. Like China, India is not above punishing smaller countries both politically and economically when it does not feel as though it is being given due deference. Indeed it is widely speculated that India's anger over Australia's previous nuclear export position was behind former Prime Minister Singh's failure to attend the 2011 Commonwealth Heads of Government Meeting in Perth.

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[15] Swaminthan S. Aiyar, "Russia first, France second, US last in nuclear race," (28 June 2009) <http://swaminomics.org/russia-first-france-second-us-last-in-nuclear-race/>.

[16] Rajat Pandit, "India's arms importas almost three times of China, Pak: SIPRI report," (17 May 2014) <http://timesofindia.indiatimes.com/india/Indias-arms-imports-almost-three-times-of-China-Pak-SIPRI-report/articleshow/32190097.cms>.

[17] See Vladimir Dvorkin, "India acquires a new attribute to become a global power," *Voice of Russia* (23 June 2014) <http://indian.ruvr.ru/2014_06_23/India-acquires-a-new-attribute-to-become-a-global-power-5089/>.

[18] India is also a founding member of the new China-led Asia Infrastructure and Investment Bank, which at the time of writing Australia has opted not to join.

[19] Jim O'Neill, "A ten-step program to tap India's great potential," *Bruegal* (22 May 2014) <http://www.bruegel.org/nc/blog/detail/article/1340-a-ten-step-program-to-tap-indias-great-potential/>.

The text of this Australia–India nuclear agreement accords entirely with Indian preferences rather than well-established best practice. In truth, this treaty appears less like the deepening of a bilateral partnership and more like one of a client state being dictated to in an expanded Indian empire. It is a major display of weakness on the part of the Australian Government, and a failure to stand up for Australia's national interests in this area.

None of this submission intends to demonise India, but rather dispel some Australian myths that exist either due to poor strategic analysis or to some democratic ideological naiveté. The basic point is that the Australia-India nuclear agreement does significant harm to the global non-proliferation regime and Australia's standing as a nuclear supplier, while the strategic dividends that some hope to gain will probably never materialise.

Conclusion and Recommendations

This submission reaffirms the desirability of concluding a nuclear cooperation agreement with India with comparable export controls and safeguards with those accepted by Australia's other export partners. However, the existing agreement is fundamentally deficient in a range of areas and cannot be supported in its current form. To summarise, weaknesses of this agreement include:

- The safeguards under this agreement are far inferior to that of Australia's other bilateral agreements (no direct accounting for AONM, no programmatic consent for reprocessing, no arbitration process, and no right of return of AONM in the event of an Indian violation)
- For the first time, Australia will not be able to guarantee the tracking of how its exported nuclear material is used
- By removing the provisions that make a recipient of nuclear material accountable to the supplier, Australia is abrogating the principle that suppliers are accountable for the nuclear material that they export
- Allowing reprocessing without programmatic consent increases the risk that Australian material will help further the proliferation of nuclear weapons to an unacceptable degree
- By failing to support the long-standing principle that nuclear export is justified if it supports the non-proliferation of nuclear weapons,[20] Australia is weakening nuclear supply as a tool of nuclear legitimacy

[20] Paragraph 9 of the NIA notes the bilateral Disarmament and Non-proliferation Dialogue with India. While this is to be commended, the Dialogue alone in no way satisfies this principle given the obvious shortcomings in the agreement itself.

- If the supply of nuclear material no longer confers international legitimacy on a recipient state's nuclear activities, then Australia's international influence as a major nuclear supplier is seriously reduced
- The concessions Australia made in this agreement were largely unnecessary given that it was Australia's demand that India join the NPT prior to negotiating an agreement that was the main barrier in the bilateral relationship. Once that barrier was removed, India had everything to gain by concluding an actual agreement
- This represents a serious missed opportunity. If Australia required India to undertake to ratify the CTBT after the US Senate as part of a nuclear deal, the world would be made safer, and the principle that nuclear export must support non-proliferation would have been upheld
- As it stands, this agreement undermines the non-proliferation regime critical to the prevention of nuclear war
- Other nuclear partners are certain to demand concessions similar to those that Australia has granted to India in this agreement. Refusal by Australia to cede to these demands will seriously harm these important bilateral relationships, while capitulation will dismantle a long-held and widely successful safeguards apparatus
- The anticipated strategic benefits that some believe will arise from concluding a deal are unlikely to eventuate, while the costs and risks are real and measurable
- This agreement creates new uncertainties with regard to non-proliferation that have not previously existed. These uncertainties carry only down-side risks, with no benefits in prospect.

RECOMMENDATIONS

This submission therefore recommends that JSCOT:

1) Commend the bipartisanship that has been achieved with regard to exporting Australian nuclear material to India

2) Recommend the Australia-India nuclear agreement not be ratified in its current form, and that it instead be re-negotiated to meet safeguard standards comparable with Australia's other nuclear agreements

3) Recommend that the Australian government require India to state its position publicly on whether India will ratify the CTBT after the US Senate (as China has done), as a pre-condition to concluding a bilateral nuclear agreement