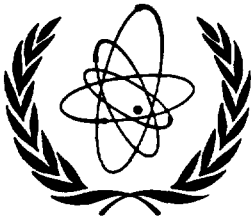




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THE TEXT OF THE SAFEGUARDS AGREEMENT OF 26 FEBRUARY 1976 BETWEEN THE AGENCY, BRAZIL AND THE FEDERAL REPUBLIC OF GERMANY

1. The text^[1] of the Agreement of 26 February 1976 between the Agency, Brazil and the Federal Republic of Germany relating to the agreement of 27 June 1975 between the two Governments for co-operation in the peaceful uses of nuclear energy is reproduced in this document for the information of all Members.
2. The Agreement entered into force, pursuant to Section 27, on 26 February 1976.

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[1] The footnotes to the text have been added in the present information circular.

AGREEMENT OF 26 FEBRUARY 1976 BETWEEN THE
INTERNATIONAL ATOMIC ENERGY AGENCY,
THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL
AND THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF GERMANY FOR THE
APPLICATION OF SAFEGUARDS

WHEREAS the Government of the Federative Republic of Brazil and the Government of the Federal Republic of Germany have concluded an Agreement concerning Co-operation in the Field of the Peaceful Uses of Nuclear Energy on 27 June 1975 (hereinafter referred to as "the Bilateral Agreement");

WHEREAS the International Atomic Energy Agency (hereinafter referred to as "the Agency") is authorized by its Statute to apply safeguards, at the request of the Parties, to any bilateral or multilateral arrangement;

WHEREAS the Government of the Federative Republic of Brazil and the Government of the Federal Republic of Germany have requested the Agency to apply its safeguards to nuclear material supplied, transferred or produced under the Bilateral Agreement;

WHEREAS the Board of Governors of the Agency (hereinafter referred to as "the Board") has acceded to that request on 24 February 1976;

NOW THEREFORE, the Agency, the Government of the Federative Republic of Brazil and the Government of the Federal Republic of Germany hereby agree as follows:

PART I

DEFINITIONS

Article 1

For the purpose of this Agreement:

- (a) "Inspectors Document" means the Annex to Agency Document GC(V)/INF/39;
- (b) "Nuclear facility" means:
 - (1) A principal nuclear facility as defined in paragraph 78 of the Safeguards Document as well as a critical facility or a separate storage installation;
or
 - (2) Any location where nuclear material in amounts greater than one effective kilogram is customarily used;
- (c) "Nuclear material" means any source or special fissionable material as defined in Article XX of the Agency's Statute;

- (d) "Relevant technological information" means information designated as such by either contracting Government transferring such information on the design, construction or operation of a nuclear facility or specified equipment or on the preparation, use or processing of nuclear material or specified material, in all forms in which such information can be transferred, but excepting technological information available to the public;
- (e) "Safeguards Document" means Agency Document INFCIRC/66/Rev. 2;
- (f) "Specified equipment" means any equipment which is especially designed or prepared for the processing, use or production of nuclear material or specified material;
- (g) "Specified material" means any material which is especially prepared for the processing, use or production of nuclear material.

PART II

UNDERTAKINGS BY THE CONTRACTING GOVERNMENTS AND BY THE AGENCY

Article 2

The Government of the Federative Republic of Brazil and the Government of the Federal Republic of Germany undertake that none of the following items shall be used for the manufacture of any nuclear weapon or to further any other military purpose or for the manufacture of any other nuclear explosive device:

- (1) Nuclear material or any nuclear facility transferred from one of the said States to the other;
- (2) Any nuclear facility which is designed, constructed or operated in one of the said States on the basis of or by the use of relevant technological information transferred from the other;
- (3) Nuclear material, including subsequent generations of produced special fissionable material, which has been produced, processed or used on the basis of or by the use of:
 - (a) Any nuclear facility or nuclear material referred to in this Article;
 - (b) Any other item referred to in Article 7, paragraph 1; or
 - (c) Any relevant technological information transferred from one of the said States to the other.

Article 3

1. The contracting Government of the State concerned, on the occasion of the first transfer of relevant technological information from that State to the other, shall communicate to the Agency an adequate description of the relevant technological information transferred if the information relates to any of the following areas of co-operation:

- (a) Production of nuclear material compounds of a purity suitable for use in the fuel cycle;
- (b) Manufacture of nuclear reactors, other nuclear facilities or their components;
- (c) Uranium enrichment;
- (d) Fabrication of fuel elements; and
- (e) Reprocessing of irradiated fuel.

2. Without restricting the generality of Article 2, any nuclear facility or specified equipment designed, constructed or operated, within a period of twenty years after the communication made to the Agency under paragraph 1 above, in the State to which relevant technological information has been transferred shall be deemed to be designed, constructed or operated on the basis of or by the use of transferred relevant technological information if its design, construction or operation is based on the same or essentially the same physical or chemical process or processes as those specified, and communicated to the Agency in accordance with paragraph 1 above, by the contracting Government of the State from which the relevant technological information had been transferred.

Article 4

- 1. The Agency undertakes to apply safeguards on the nuclear material referred to in Article 2 so as to ensure as far as it is able that such nuclear material is not used for the manufacture of any nuclear weapon or to further any other military purpose or for the manufacture of any other nuclear explosive device. The Agency shall also apply the relevant provisions of the Safeguards Document to the nuclear facilities referred to in Article 2 with a view to assuring the effective application of safeguards on nuclear material.
- 2. Safeguards shall not be applied in mining or ore processing activities.

Article 5

The contracting Governments undertake to facilitate the application of safeguards provided for in this Agreement and to co-operate with the Agency and with each other to that end.

PART III

INVENTORIES, LISTS AND NOTIFICATIONS

Article 6

- 1. The contracting Government of the State from which the transfer is made shall notify the Agency of:
 - (a) Any transfer to the other State of nuclear material, a nuclear facility, specified equipment or specified material;
 - (b) Any transfer to the other State of relevant technological information.

2. Any nuclear facility or specified equipment which is designed, constructed or operated on the basis of or by the use of relevant technological information transferred from one State to the other shall be notified to the Agency by the contracting Government of the State to which the relevant technological information had been transferred. The contracting Government of the State from which the relevant technological information had been transferred is under the obligation to consult promptly the other contracting Government if in the view of the former there is reason for a notification to the Agency under this paragraph. The contracting Governments shall jointly or severally inform the Agency promptly if any disagreement should arise between them as to whether a particular nuclear facility or specified equipment should be notified to the Agency in accordance with this paragraph.

3. Whichever contracting Government is concerned shall notify the Agency of any other nuclear facility which is required to be listed in the Inventory in accordance with Article 7, paragraph 1(b).

Article 7

1. The Agency shall establish and maintain an Inventory with respect to each of the said States. The Inventory shall be divided into three parts:

(a) The Main Part of each Inventory shall list:

- (i) Nuclear material, any nuclear facility, specified equipment and specified material transferred from the other State to the State concerned;
- (ii) Any nuclear facility and specified equipment which is designed, constructed or operated in the State concerned on the basis of or by the use of relevant technological information transferred from the other State;
- (iii) Specified material which has been prepared or produced in the State concerned on the basis of or by the use of specified equipment or relevant technological information transferred from the other State;
- (iv) Nuclear material, including subsequent generations of produced special fissionable material, which has been produced, processed or used in the State concerned on the basis of or by the use of any item referred to in the Main Part of the Inventory or any relevant technological information transferred from the other State.

If nuclear material has been substituted for any nuclear material referred to in (i) and (iv) above in accordance with paragraph 25 or 26(d) of the Safeguards Document, the substituted material shall be listed in place of the nuclear material referred to in (i) and (iv) above.

(b) The Subsidiary Part of each Inventory shall list:

- (i) Any nuclear facility while it contains any specified equipment or specified material listed in the Main Part of the Inventory;
- (ii) Any nuclear facility while it contains, uses, fabricates, or processes any nuclear material listed in the Main Part of the Inventory.

(c) The Inactive Part of each Inventory shall list any nuclear material which would normally be listed in the Main Part of the Inventory but which is not so listed because:

- (i) It is exempt from safeguards in accordance with the provisions of paragraph 21, 22 or 23 of the Safeguards Document; or
- (ii) Safeguards thereon are suspended in accordance with the provisions of paragraph 24 or 25 of the Safeguards Document.

2. The Agency shall also establish and maintain a List with respect to each recipient State containing a description of such relevant technological information as has been notified under Article 6, paragraph 1(b).

3. The Agency shall send copies of both Inventories and of the Lists referred to in paragraph 2 above to both contracting Governments every twelve months and also at any other times specified by either contracting Government in a request communicated to the Agency at least two weeks in advance.

Article 8

1. The notification provided for in Article 6, paragraph 1(a) shall normally be made to the Agency not more than two weeks after the nuclear facility, nuclear material, specified equipment or specified material arrives in the State concerned, except that shipments of source material in quantities not exceeding one metric ton shall not be subject to the two weeks notification requirement but shall be reported to the Agency at intervals not exceeding three months. The notification provided for in Article 6, paragraph 2 shall normally be made at as early a stage as possible.

2. Notifications under Article 6, paragraphs 1(a) and 2 shall include, to the extent relevant, the nuclear and chemical composition, the physical form and the quantity of the material, the type and capacity of the specified equipment or nuclear facility involved, the date of shipment, the date of receipt, the identity of the consignor and consignee, and any other relevant information.

3. The contracting Governments also undertake to give the Agency as much advance notice as possible of the transfer of large quantities of nuclear material, any nuclear facility or specified equipment.

4. The notification provided for in Article 6, paragraph 1(b) shall be made at as early a stage as possible.

5. The general contents, form and timing of the notifications referred to in paragraph 4 above shall be agreed between the Parties to this Agreement.

Article 9

1. The contracting Government concerned shall notify the Agency, by means of its reports pursuant to the Safeguards Document, of any special fissionable material produced during the period covered by the report in or by the use of any of the items described in Article 7, paragraphs 1(a) and (b). Upon receipt of the notification, the Agency shall list such produced material in the Main Part of the Inventory. The Agency may verify the calculations of the amounts of such material. Appropriate adjustments in the Inventory shall be made by agreement between the Agency and the contracting Government concerned. Pending final agreement between the Agency and the contracting Government concerned, the Agency's calculations shall be used.

2. The contracting Government concerned shall notify the Agency, by means of its reports pursuant to the Safeguards Document, of any other nuclear material required to be listed in the Main Part of its Inventory pursuant to Article 7, paragraph 1(a)(iv). Upon receipt of the notification, the Agency shall list such nuclear material in the Main Part of the Inventory.

Article 10

1. Whenever any item listed in the Main Part of the Inventory for one of the said States is transferred to the other State the required changes shall be made in the respective Inventories as of the date when the item in question has been received in the State concerned provided that the notification required by Article 6, paragraph 1 has been received by the Agency.

2. The contracting Government concerned shall notify the Agency of any transfer of an item listed in the Main Part of its Inventory to a recipient which is in neither of the said States. Such item may be transferred, and shall upon transfer be deleted from the Inventory, only if arrangements have been made by the Agency to apply safeguards with respect to such item. When any of the following items is transferred, the contracting Governments shall jointly notify the Agency of such transfer and the item in question shall be deleted from the Inventory only upon receipt by the Agency of such joint notification:

- (a) Uranium enriched in uranium-235 to more than 20%, uranium-233 and plutonium, but excepting small quantities of such materials as needed, for example, for laboratory purposes;
- (b) Fuel element fabrication plants for the fabrication of fuel elements containing uranium enriched in uranium-235 to more than 20%, uranium-233 or plutonium;
- (c) Plants for the reprocessing of irradiated fuel elements;
- (d) Uranium enrichment plants.

Joint notifications shall also be used in the case of the transfer of major critical components of any of the plants referred to in (b), (c) and (d) above.

3. Relevant technological information may be transferred to a recipient which is in neither of the said States only if the Agency has made arrangements to apply safeguards in connection with the use of the information transferred.

Article 11

1. Whenever nuclear material, specified equipment or specified material listed in the Main Part of the Inventory for one of the said States is to be transferred to a nuclear facility within that State which is not yet listed in that Inventory, the notification required pursuant to Article 6, paragraph 2 shall be made to the Agency before such transfer is effected. No such transfer may be made until the Agency has confirmed that it has made arrangements in accordance with Article 15, paragraph 2, with respect to that facility.

2. The notification referred to in paragraph 1 above shall be made to the Agency sufficiently in advance to enable the Agency to make the arrangements referred to therein before the transfer is effected. The Agency shall promptly take any necessary action. The contents of such notification shall conform, as far as appropriate, to the requirements of Article 8, paragraph 2.

Article 12

The Agency shall exempt from safeguards nuclear material under the conditions specified in paragraph 21, 22 or 23 of the Safeguards Document and shall suspend safeguards with respect to nuclear material under the conditions specified in paragraph 24 or 25 of the Safeguards Document.

Article 13

Nuclear material shall be deleted from the relevant Inventory and Agency safeguards thereon shall be terminated as provided for in paragraphs 26 and 27 of the Safeguards Document. Nuclear facilities, specified equipment and specified material listed in the Main Part of the Inventory shall be deleted from the relevant Inventory as and when the Agency determines that such nuclear facilities, specified equipment or specified material have been consumed, are no longer usable for any nuclear activity relevant from the point of view of safeguards or have become practicably irrecoverable. The Agency shall also terminate safeguards under this Agreement on nuclear material deleted from the relevant Inventory as provided for in Article 10, paragraph 2.

PART IV

SAFEGUARDS PROCEDURES

Article 14

In applying safeguards, the Agency shall observe the principles set forth in paragraphs 9 through 14 of the Safeguards Document.

Article 15

1. The safeguards procedures to be applied by the Agency are those specified in the Safeguards Document, as well as such additional procedures resulting from technological developments as may be agreed upon between the Agency and the contracting Government concerned.
2. The Agency shall make subsidiary arrangements with each contracting Government concerning the implementation of safeguards procedures which shall include appropriate containment and surveillance measures as well as any procedures necessary for maintaining and verifying the correctness of the Inventory with respect to specified equipment and specified material.
3. The Agency shall have the right to request the information referred to in paragraph 41 of the Safeguards Document and to make the inspections referred to in paragraph 51 thereof.

Article 16

If the Board determines that there has been any non-compliance with this Agreement, the Board shall call upon the contracting Government concerned to remedy such non-compliance forthwith, and shall make such reports as it deems appropriate. In the event of failure by the contracting Government concerned to take fully corrective action within a reasonable time, the Board may take any other measure provided for in Article XII. C of the Agency's Statute. The Agency shall promptly notify both contracting Governments in the event of any determination by the Board pursuant to the present Article.

PART V

AGENCY INSPECTORS

Article 17

Agency inspectors performing functions pursuant to this Agreement shall be governed by the Inspectors Document. However, paragraph 4 of the Inspectors Document shall not apply with regard to any nuclear facility or nuclear material to which the Agency has access at all times in accordance with the Safeguards Document. The actual procedures to implement paragraph 50 of the Safeguards Document in the Federative Republic of Brazil and in the Federal Republic of Germany shall be agreed between the Agency and the contracting Government concerned before the nuclear facility or the nuclear material is listed in the Inventory.

Article 18

The contracting Governments shall apply the relevant provisions of the Agreement on the Privileges and Immunities[2] of the Agency to Agency inspectors performing functions under this Agreement and to any property of the Agency used by them.

PART VI

PHYSICAL PROTECTION

Article 19

Each contracting Government shall keep the Agency informed of the measures it will take for ensuring the physical protection of nuclear material, nuclear facilities and specified equipment.

PART VII

FINANCE

Article 20

Each Party to this Agreement shall bear any expense incurred in the implementation of its responsibilities under this Agreement. However, the Agency shall reimburse a contracting Government in respect of any special expenses, including those referred to in paragraph 6 of the Inspectors Document, incurred by that contracting Government or persons under its jurisdiction at the written request of the Agency. Such reimbursement shall be due only if the contracting Government concerned notified the Agency accordingly before the expense was incurred. These provisions shall not prejudice the allocation of expenses attributable to a failure by a Party to comply with this Agreement.

Article 21

1. The contracting Government of the State concerned shall ensure that any protection against third-party liability, including any insurance or other financial security, with respect to a nuclear incident occurring in a nuclear installation in that State shall apply to the Agency and its inspectors when carrying out their functions under this Agreement as that protection applies to its nationals.

[2] INFCIRC/9/Rev. 2.

2. Any claim by either contracting Government against the Agency or by the Agency against either contracting Government in respect of any damage, other than damage arising out of a nuclear incident, resulting from the implementation of safeguards under this Agreement, shall be settled in accordance with international law.

PART VIII

INTERPRETATION AND APPLICATION OF THE AGREEMENT AND SETTLEMENT OF DISPUTES

Article 22

At the request of any of the Parties to this Agreement there shall be consultations about any question arising out of the interpretation or application of this Agreement.

Article 23

1. The Parties shall endeavour to settle by negotiation any dispute arising from the interpretation or application of this Agreement.

2. If a dispute is not settled by negotiation or as may otherwise be agreed by the Parties concerned, it shall be submitted, on the request of any of the Parties concerned, to an arbitral tribunal composed as follows:

- (a) If the dispute involves only two of the Parties to this Agreement, all three Parties agreeing that the third is not concerned, the two Parties involved shall each designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman. If within thirty days of the request for arbitration either Party has not designated an arbitrator, either Party to the dispute may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected; or
- (b) If the dispute involves all three Parties to this Agreement, each Party shall designate one arbitrator, and the three arbitrators so designated shall by unanimous decision elect a fourth arbitrator, who shall be the Chairman, and a fifth arbitrator. If within thirty days of the request for arbitration any Party has not designated an arbitrator, any Party may request the President of the International Court of Justice to appoint the necessary number of arbitrators. The same procedure shall apply if, within thirty days of the designation or appointment of the third of the first three arbitrators, the Chairman or the fifth arbitrator has not been elected.

3. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of at least a majority. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal, including all rulings concerning its constitution, procedure, jurisdiction and the division of the expenses of arbitration between the Parties shall be binding on all Parties. The remuneration of the arbitrators shall be determined on the same basis as that of ad hoc judges of the International Court of Justice.

Article 24

Decisions of the Board concerning the implementation of this Agreement, except such as relate only to Articles 20 and 21, shall, if they so provide, be given effect immediately by the Parties, pending the final settlement of any dispute.

PART IX

FINAL CLAUSES

Article 25

Any amendment of this Agreement shall require the consent of the Parties. If the Agency modifies the Safeguards Document, the scope of the safeguards system or the Inspectors Document, this Agreement shall be amended if both contracting Governments so request in order to take account of any or all such modifications. Such extensions of the Safeguards Document as may be approved by the Board to provide for special safeguards procedures in respect of plants for separating the isotopes of nuclear material shall be applicable under this Agreement.

Article 26

This Agreement shall also apply to Berlin (West), provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Director General of the Agency and to the Government of the Federative Republic of Brazil within three months of the date of entry into force of this Agreement.

Article 27

This Agreement shall enter into force upon signature by or for the Director General of the Agency, by the authorized representative of the Government of the Federative Republic of Brazil and by the authorized representative of the Government of the Federal Republic of Germany.

Article 28

1. This Agreement shall remain in force until, in accordance with this Agreement:

- (a) Safeguards have been terminated on all nuclear material, including subsequent generations of produced special fissionable material, subject to safeguards under this Agreement; and
- (b) All other items have been deleted from the Inventories.

2. If, after this Agreement has ceased to be in force, a nuclear facility or specified equipment is designed, constructed or operated in either State on the basis of or by the use of relevant technological information transferred from the other, this Agreement shall forthwith be reinstated.

Article 29

1. With respect to the Federal Republic of Germany, the provisions of the Treaty of 1 July 1968 on the Non-Proliferation of Nuclear Weapons[3] as well as of the Treaties establishing the European Economic Community[4] and the European Atomic Energy Community[5] and of the Agreement of 5 April 1973[6] in Implementation of Article III(1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons shall not be affected by this Agreement.

2. The said Agreement of 5 April 1973 shall, as long as it remains in force, have the effect of suspending the application of safeguards under this Agreement in the Federal Republic of Germany.

DONE in Vienna, this 26th day of February 1976, in triplicate in the English, Portuguese and German languages, all three texts being equally authentic.

For the INTERNATIONAL ATOMIC ENERGY AGENCY:

(signed) Sigvard Eklund

For the GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL:

(signed) Andre Teixeira de Mesquita

For the GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY:

(signed) Balken

[3] Reproduced in document INFCIRC/140.

[4] United Nations Treaty Series, Vol. 298, No. 4300.

[5] United Nations Treaty Series, Vol. 298, No. 4301.

[6] Reproduced in document INFCIRC/193.