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COMMUNICATIONS RECEIVED FROM CERTAIN MEMBER STATES REGARDING GUIDELINES FOR THE EXPORT OF NUCLEAR MATERIAL, EQUIPMENT AND TECHNOLOGY

Nuclear Transfers

1. The Director General has received notes verbales relating to the export of nuclear material, equipment and technology from the following Permanent Missions to the International Atomic Energy Agency: A note verbale dated 1 April 1993 from the Permanent Mission of Japan; notes verbales dated 1 June 1993 from the Permanent Missions of Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Romania, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America; a note verbale dated 7 June 1993 from the Permanent Mission of Poland; and a note verbale dated 14 July 1993 from the Permanent Mission of the Russian Federation.
2. The purpose of the notes verbales is to provide further information on these Governments' nuclear export policies and practices.
3. In the light of the wish expressed at the end of each note verbale, the analogous text of the notes verbales dated 1 April, 1 June 1993 and 14 July 1993 is reproduced as NOTE VERBALE I and the note verbale dated 7 June 1993 is reproduced as NOTE VERBALE II. The attachment to these notes verbales ("The Guidelines for Nuclear Transfers", with paragraph 4 amended) is reproduced in the Annex.

NOTE VERBALE I

The Permanent Mission of [Member State] presents its compliments to the Director General of the International Atomic Energy Agency and has the honour to provide further information on its Government's nuclear export policies and practices.

The Government of [Member State] has decided that, when considering the transfer of items listed in Annexes A and B of INFCIRC/254/Rev.1/Part.1 (clarification of items on the Trigger List) it will only do so if the receiving non-nuclear-weapon State has brought into force an agreement with the IAEA requiring the application of safeguards on all source and special fissionable material in its current and future peaceful activities. A copy of the "Guidelines for Nuclear Transfers", with paragraph 4 amended to reflect this policy is attached.

In reaching this decision, the Government of [Member State] is fully aware of the need to contribute to economic development while avoiding contributing in any way to the dangers of the proliferation of nuclear weapons or other nuclear explosive devices, and of the need to remove non-proliferation assurances from the field of commercial competition.

The Government of [Member State] would be grateful if the Director General will bring this note to the attention of Member States of the IAEA.

The Permanent Mission of [Member State] avails itself of this opportunity to renew to the Director General of the International Atomic Energy Agency the assurances of its highest consideration.

NOTE VERBALE II

The Permanent Mission of the Republic of Poland to the United Nations Office and to other International Organizations in Vienna presents its compliments to the Director General of the International Atomic Energy Agency and recalling the decision of the Polish Government, as communicated by this Mission's note of 11 January, 1978,- to deliver nuclear material, equipment and technology, defined in the Trigger List of INFCIRC/254, to non-nuclear weapon States only if the entire nuclear activity of a recipient State was subject to IAEA safeguards, has the honour to inform that the Government of the Republic of Poland has maintained and reaffirmed this policy with regard to the transfer of items listed in Annexes A and B of INFCIRC/254/REV.1/Part1. A copy of the "Guidelines for Nuclear Transfers" with paragraph 4 which has been amended to reflect this policy is attached hereto.

In maintaining and reaffirming this decision, the Government of the Republic of Poland is fully aware of the need to contribute to economic development while avoiding to augment in any way the risk of the proliferation of nuclear weapons or other nuclear explosive devices, and of the need to remove non-proliferation assurances from the field of commercial competition.

The Government of Poland would be grateful if this note could be brought to the attention of Member States of the IAEA.

The Permanent Mission of Poland avails itself of this opportunity to renew to the Director General of the International Atomic Energy Agency the assurances of its highest consideration.

GUIDELINES FOR NUCLEAR TRANSFERS

1. The following fundamental principles for safeguards and export controls should apply to nuclear transfers to any non-nuclear-weapon State for peaceful purposes. In this connection, suppliers have defined an export trigger list and agreed on common criteria for technology transfers.

Prohibition on nuclear explosives

2. Suppliers should authorize transfer of items identified in the trigger list only upon formal governmental assurances from recipients explicitly excluding uses which would result in any nuclear explosive device.

Physical protection

3. (a) All nuclear materials and facilities identified by the agreed trigger list should be placed under effective physical protection to prevent unauthorized use and handling. The levels of physical protection to be ensured in relation to the type of materials, equipment and facilities, have been agreed by suppliers, taking account of international recommendations.
(b) The implementation of measures of physical protection in the recipient country is the responsibility of the Government of that country. However, in order to implement the terms agreed upon amongst suppliers, the levels of physical protection on which these measures have to be based should be the subject of an agreement between supplier and recipient.
(c) In each case special arrangements should be made for a clear definition of responsibilities for the transport of trigger list items.

Safeguards

4. a) Suppliers should transfer trigger list items to a non-nuclear-weapon State only when the receiving State has brought into force an agreement with the IAEA requiring the application of safeguards on all source and special fissionable material in its current and future peaceful activities.
b) Transfers covered by paragraph 4 a) to a non-nuclear-weapon State without such a safeguards agreement should be authorized only in exceptional cases when they are deemed essential for the safe operation of existing facilities and if safeguards are applied to those facilities. Suppliers should inform and, if appropriate, consult in the event that they intend to authorize or to deny such transfers.
c) The policy referred to in paragraph 4 a) and 4 b) does not apply to agreements or contracts drawn up on or prior to April 3, 1992. In case of countries that have adhered or will adhere to INFCIRC/254/Rev.1/Part 1 later than April 3, 1992, the policy only applies to agreements (to be) drawn up after their date of adherence.

- d) Under agreements to which the policy referred to in paragraph 4 a) does not apply (see paragraphs 4 b) and c)) suppliers should transfer trigger list items only when covered by IAEA safeguards with duration and coverage provisions in conformity with IAEA doc. GOV/1621. However, suppliers undertake to strive for the earliest possible implementation of the policy referred to in paragraph 4 a) under such agreements.
 - e) Suppliers reserve the right to apply additional conditions of supply as a matter of national policy.
5. Suppliers will jointly reconsider their common safeguards requirements, whenever appropriate.

Safeguards triggered by the transfer of certain technology

6. (a) The requirements of paragraphs 2, 3 and 4 above should also apply to facilities for reprocessing, enrichment, or heavy-water production, utilizing technology directly transferred by the supplier or derived from transferred facilities, or major critical components thereof.
- (b) The transfer of such facilities, or major critical components thereof, or related technology, should require an undertaking (1) that IAEA safeguards apply to any facilities of the same type (i.e. if the design, construction or operating processes are based on the same or similar physical or chemical processes, as defined in the trigger list) constructed during an agreed period in the recipient country and (2) that there should at all times be in effect a safeguards agreement permitting the IAEA to apply Agency safeguards with respect to such facilities identified by the recipient, or by the supplier in consultation with the recipient, as using transferred technology.

Special controls on sensitive exports

7. Suppliers should exercise restraint in the transfer of sensitive facilities, technology and weapons-usable materials. If enrichment or reprocessing facilities, equipment or technology are to be transferred, suppliers should encourage recipients to accept, as an alternative to national plants, supplier involvement and/or other appropriate multinational participation in resulting facilities. Suppliers should also promote international (including IAEA) activities concerned with multinational regional fuel cycle centres.

Special controls on export of enrichment facilities, equipment and technology

8. For a transfer of an enrichment facility, or technology therefor, the recipient nation should agree that neither the transferred facility, nor any facility based on such technology, will be designed or operated for the production of greater than 20% enriched uranium without the consent of the supplier nation, of which the IAEA should be advised.

Controls on supplied or derived weapons-usable material

9. Suppliers recognize the importance, in order to advance the objectives of these guidelines and to provide opportunities further to reduce the risks of proliferation, of including in agreements on supply of nuclear materials or of facilities which produce weapons-usable material, provisions calling for mutual agreement between the supplier and the recipient on

arrangements for reprocessing, storage, alteration, use, transfer or retransfer of any weapons-usable material involved. Suppliers should endeavour to include such provisions whenever appropriate and practicable.

Controls on retransfer

10. (a) Suppliers should transfer trigger list items, including technology defined under paragraph 6, only upon the recipient's assurance that in the case of:
 - (1) retransfer of such items,

or
 - (2) transfer of trigger list items derived from facilities originally transferred by the supplier, or with the help of equipment or technology originally transferred by the supplier;

the recipient of the retransfer or transfer will have provided the same assurances as those required by the supplier for the original transfer.
- (b) In addition the supplier's consent should be required for: (1) any retransfer of the facilities, major critical components, or technology described in paragraph 6; (2) any transfer of facilities or major critical components derived from those items; (3) any retransfer of heavy water or weapons-usable material.

SUPPORTING ACTIVITIES

Physical security

11. Suppliers should promote international co-operation on the exchange of physical security information, protection of nuclear materials in transit, and recovery of stolen nuclear materials and equipment.

Support for effective IAEA safeguards

12. Suppliers should make special efforts in support of effective implementation of IAEA safeguards. Suppliers should also support the Agency's efforts to assist Member States in the improvement of their national systems of accounting and control of nuclear material and to increase the technical effectiveness of safeguards.

Similarly, they should make every effort to support the IAEA in increasing further the adequacy of safeguards in the light of technical developments and the rapidly growing number of nuclear facilities, and to support appropriate initiatives aimed at improving the effectiveness of IAEA safeguards.

Sensitive plant design features

13. Suppliers should encourage the designers and makers of sensitive equipment to construct it in such a way as to facilitate the application of safeguards.

Consultations

14. (a) Suppliers should maintain contact and consult through regular channels on matters connected with the implementation of these guidelines.
- (b) Suppliers should consult, as each deems appropriate, with other Governments concerned on specific sensitive cases, to ensure that any transfer does not contribute to risks of conflict or instability.
- (c) In the event that one or more suppliers believe that there has been a violation of supplier/recipient understandings resulting from these guidelines, particularly in the case of an explosion of a nuclear device, or illegal termination or violation of IAEA safeguards by a recipient, suppliers should consult promptly through diplomatic channels in order to determine and assess the reality and extent of the alleged violation.

Pending the early outcome of such consultations, suppliers will not act in a manner that could prejudice any measure that may be adopted by other suppliers concerning their current contacts with that recipient.

Upon the findings of such consultations, the suppliers, bearing in mind Article XII of the IAEA Statute, should agree on an appropriate response and possible action which could include the termination of nuclear transfers to that recipient.

15. In considering transfers, each supplier should exercise prudence having regard to all the circumstances of each case, including any risk that technology transfers not covered by paragraph 6, or subsequent retransfers, might result in unsafeguarded nuclear materials.
16. Unanimous consent is required for any changes in these guidelines, including any which might result from the reconsideration mentioned in paragraph 5.