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THE TEXT OF THE AGREEMENT OF 5 MAY 1980 BETWEEN THE AGENCY AND CUBA RELATING TO THE APPLICATION OF SAFEGUARDS IN CONNECTION WITH THE SUPPLY OF A NUCLEAR POWER PLANT

1. The text^[1] of the Agreement of 5 May 1980 between the Agency and Cuba relating to the application of safeguards in connection with the supply of a nuclear power plant from the Union of Soviet Socialist Republics is reproduced in this document for the information of all Members.
2. The Agreement entered into force, pursuant to Section 30, on 5 May 1980.

[1] The footnote to the text has been added in the present information circular.

AGREEMENT BETWEEN THE REPUBLIC OF CUBA AND THE INTERNATIONAL
ATOMIC ENERGY AGENCY FOR THE APPLICATION OF SAFEGUARDS IN
CONNECTION WITH THE SUPPLY OF A NUCLEAR POWER PLANT FROM
THE UNION OF SOVIET SOCIALIST REPUBLICS

WHEREAS the International Atomic Energy Agency (hereinafter referred to as "the Agency") is authorized by its Statute to apply safeguards at the request of a State to any of that State's activities in the field of atomic energy;

WHEREAS the Government of the Republic of Cuba (hereinafter referred to as "the Government of Cuba") has requested the Agency to apply safeguards in connection with the supply of a nuclear power plant from the Union of Soviet Socialist Republics (hereinafter referred to as "the Soviet Union") and to the nuclear material to be used therein;

WHEREAS the Board of Governors of the Agency (hereinafter referred to as "the Board") acceded to that request;

NOW THEREFORE, the Government of Cuba and the Agency hereby agree as follows:

DEFINITIONS

Section 1. For the purposes of this Agreement:

- (a) "Safeguards Document" means Agency document INFCIRC/66/Rev.2;
- (b) "Inspectors Document" means the Annex to Agency document GC(V)/INF/39;
- (c) "recommendations for the physical protection of nuclear material" means the recommendations contained in Agency document INFCIRC/225/Rev.1 as updated from time to time;
- (d) "the Nuclear Power Plant" means the two 440 MW(e) pressurized light-water enriched uranium reactors constituting the Juragua Power Station Units I and II; the term shall include any major component thereof;
- (e) "nuclear facility" means:
 - (i) 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
 - (ii) any location where nuclear material in amounts greater than one effective kilogram is customarily used;
- (f) "nuclear material" means source material or special fissionable material as defined in Article XX of the Statute of the Agency;
- (g) "effective kilogram" means:
 - (i) in the case of plutonium, its weight in kilograms;
 - (ii) in the case of uranium with an enrichment of 0.01 (1%) and above, its weight in kilograms multiplied by the square of its enrichment;
 - (iii) in the case of uranium with an enrichment below 0.01 (1%) and above 0.005 (0.5%), its weight in kilograms multiplied by 0.0001; and
 - (iv) in the case of depleted uranium with an enrichment of 0.005 (0.5%) or below, and in the case of thorium its weight in kilograms multiplied by 0.00005;

- (h) "supplied information" means information transferred in any form or manner by the Soviet Union in connection with the supply of the Nuclear Power Plant which can be used in the design, production, operation and testing of major components of the Nuclear Power Plant or of nuclear material for that Plant, except information freely available to the public;
- (i) "produced, processed or used" means any utilization or any alteration of the physical or chemical form or composition including any change of the isotopic composition, of the nuclear material;
- (j) "major component" means any equipment of the Nuclear Power Plant or of the type used in it which is specially designed or prepared for the processing, use or production of nuclear material.

UNDERTAKINGS BY THE GOVERNMENT OF CUBA AND BY THE AGENCY

Section 2. The Government of Cuba undertakes 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:

- (a) The Nuclear Power Plant;
- (b) Any nuclear material transferred into the jurisdiction of the Republic of Cuba from the Soviet Union for use in the Nuclear Power Plant;
- (c) Any nuclear material including subsequent generations of special fissionable material within the jurisdiction of Cuba produced, processed or used in or by the use of the Nuclear Power Plant or in or by the use of any other item referred to in this Section;
- (d) Any other item required to be listed in the Inventory referred to in Section 8.

Section 3. The Government of Cuba undertakes to accept Agency safeguards as provided for in this Agreement on the items referred to in Section 2, to facilitate the application of safeguards by the Agency and to co-operate with the Agency to that end.

Section 4. The Agency undertakes to apply safeguards as provided for in this Agreement to the items referred to in Section 2 so as to ensure, as far as it is able, that no such item is 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.

Section 5. In the event that the Government of Cuba should construct or operate on the basis of supplied information any other nuclear power plant or major component, it shall arrange to submit such items to Agency safeguards before such construction or operation commences.

Section 6. The Government of Cuba and the Agency shall hold consultations at any time at the request of either party to ensure the effective implementation of this Agreement; for this purpose each shall provide the other with such relevant information as the other may require.

SAFEGUARDS PROCEDURES AND SUBSIDIARY ARRANGEMENTS

Section 7.

- (a) In applying safeguards, the Agency shall observe the principles set forth in paragraphs 9 to 14 of the Safeguards Document;

- (b) 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 Government of Cuba;
- (c) The Agency shall make Subsidiary Arrangements with the Government of Cuba concerning the implementation of safeguards procedures which shall specify, in detail, the measures required to permit the Agency to fulfil its responsibilities under this Agreement in an effective and efficient manner. The Subsidiary Arrangements shall enter into force within three months of the entry into force of this Agreement, but in any event before any transfer of nuclear material or major component of the Nuclear Power Plant takes place;
- (d) 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 of the Safeguards Document.

INVENTORY AND LIST

Section 8. The Agency shall establish and maintain an Inventory which shall be divided into three parts. The following items shall be listed in the Inventory upon receipt of the relevant notification or report from the Government of Cuba:

(a) Main Part:

- (i) The Nuclear Power Plant;
- (ii) Any nuclear material transferred into the jurisdiction of the Republic of Cuba from the Soviet Union for use in the Nuclear Power Plant;
- (iii) Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used within the jurisdiction of Cuba in or by the use of the Nuclear Power Plant or in or by the use of any other item referred to in this section.
- (iv) Nuclear material that has been substituted in accordance with paragraph 25 or 26(d) of the Safeguards Document for any nuclear material listed in (ii) and (iii) above.

(b) Subsidiary Part:

Any nuclear facility while it processes, contains, uses or fabricates any nuclear material listed in the Main Part of the Inventory.

(c) Inactive Part:

Any nuclear material which is not listed in the Main Part of the Inventory because:

- (i) it is exempt from safeguards pursuant to Section 17 of this Agreement; or
- (ii) safeguards thereon are suspended pursuant to Section 18 of this Agreement.

Section 9. The Agency shall maintain a List containing a brief description of supplied information which has been notified to it under Section 11(b). Upon determination by the Government of Cuba and the Agency that any supplied information is no longer significant for any nuclear activity relevant from the point of view of the safeguards foreseen in this Agreement, appropriate deletions shall be made from the List.

Section 10. The Agency shall provide an up-to-date copy of the Inventory and the List to the Government of Cuba every 12 months and at such other times as the Government of Cuba may specify by notice to the Agency given not less than two weeks in advance.

NOTIFICATION AND REPORTS

Section 11.

(a) The Government of Cuba shall notify the Agency of:

- (i) The commencement of construction of the Nuclear Power Plant at the site in the Republic of Cuba; and
- (ii) Any transfers into its jurisdiction of any major component of the Nuclear Power Plant or of nuclear material for use in the Nuclear Power Plant.

Such notifications shall be made within thirty days of the commencement of construction and of the receipt of the items in question respectively.

- (b) The Government of Cuba shall notify the Agency of the receipt of any of the supplied information within thirty days of its transfer into the jurisdiction of Cuba.
- (c) The Government of Cuba shall notify the Agency, by means of reports in accordance with the Safeguards Document and the Subsidiary Arrangements referred to in Section 7(c) of this Agreement, of any nuclear material referred to in Section 8(a) (iii). Upon receipt by the Agency of the notification, such produced material shall be so listed. Appropriate adjustments in the amounts appearing in the Inventory shall be made by agreement between the Government of Cuba and the Agency.
- (d) The Government of Cuba shall promptly notify the Agency of any nuclear facility which is required to be listed in the Subsidiary Part of the Inventory.

Section 12. The Agency shall, within thirty days of receiving a notification from the Government of Cuba pursuant to Section 11(a) to (d) of this Agreement, inform the Government of Cuba that the items covered by the notification are listed in the Inventory or List, respectively.

TRANSFERS

Section 13. The Government of Cuba shall notify the Agency of its intention to transfer nuclear material listed in the Main Part of the Inventory to any nuclear facility within its jurisdiction which is not listed in the Inventory, and shall provide to the Agency, before such transfer is effected, sufficient information to enable it to determine whether, and under what conditions, it can apply safeguards to the nuclear material after transfer to such a facility. The nuclear material shall not be transferred until all the necessary arrangements with the Agency to this end have been concluded.

Section 14. The Government of Cuba shall notify the Agency of any intended transfer of any major component of the Nuclear Power Plant or of nuclear material listed in the Main Part of the Inventory to a recipient which is not under the jurisdiction of the Government of Cuba. Such items, except for retransfers to the Soviet Union, shall not be so transferred until the Agency has informed the Government of Cuba that it has satisfied itself that Agency safeguards will apply with respect to such items. Upon receipt of the notification of transfer from the Government of Cuba and confirmation of receipt by the recipient country, the items in question shall be deleted from the Inventory.

Section 15. Supplied information shall not be transferred or otherwise made available outside the jurisdiction of Cuba until the Agency has informed the Government of Cuba that it has satisfied itself that Agency safeguards will apply in connection with the use of such information.

Section 16. Notification made pursuant to Sections 11, 13 or 14 shall specify the nuclear and chemical composition, physical form, quantity, date of receipt or dispatch and location of the material, the identification of the consignor and consignee and all other relevant information. In the case of a nuclear facility listed in the Subsidiary Part of the Inventory, the type and capacity of that facility and any other relevant information shall be notified.

EXEMPTION AND SUSPENSION OF SAFEGUARDS

Section 17. Nuclear material listed in the Main Part of the Inventory shall be exempted from safeguards under the conditions specified in paragraphs 21, 22 or 23 of the Safeguards Document.

Section 18. The Agency shall suspend safeguards on nuclear material under the conditions specified in paragraphs 24 or 25 of the Safeguards Document.

Section 19. Nuclear material which is exempted from safeguards pursuant to Section 17 and nuclear material on which safeguards have been suspended pursuant to Section 18 shall be deleted from the Main Part of the Inventory and shall be listed in the Inactive Part of the Inventory.

TERMINATION OF SAFEGUARDS

Section 20. The Agency shall terminate safeguards with respect to nuclear material under the conditions specified in paragraphs 26 and 27 of the Safeguards Document. Upon such termination the nuclear material affected shall be removed from the Inventory. The Nuclear Power Plant shall be deleted from the Inventory and safeguards thereon shall be terminated after the Agency has determined that the Nuclear Power Plant is no longer usable for any nuclear activity relevant from the point of view of safeguards. The Agency shall, within thirty days of deleting an item from the Inventory pursuant to the terms of this Section, inform the Government of Cuba of the deletion.

AGENCY INSPECTORS

Section 21. The provisions of paragraphs 1 to 10 and 12 to 14, inclusive, of the Inspectors Document shall apply to Agency inspectors performing functions pursuant to this Agreement. 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. The actual procedures to implement paragraph 50 of the Safeguards Document shall be agreed before the Nuclear Power Plant is listed in the Inventory.

Section 22. The relevant provisions of the Agreement on the Privileges and Immunities of the Agency^[2] shall apply to the Agency, its inspectors and to any property of the Agency used by them in performing their functions under this Agreement.

[2] INFCIRC/9/Rev.2.

PHYSICAL PROTECTION

Section 23. The Government of Cuba shall take all measures necessary for the physical protection of the items listed in the Inventory and shall be guided by the Agency's recommendations for the physical protection of nuclear material. The Government of Cuba and the Agency may consult each other with regard to physical protection.

FINANCIAL PROVISIONS

Section 24. Expenses shall be borne as follows:

- (a) Subject to paragraph (b) of this Section, each party shall bear any expenses incurred in the implementation of its responsibilities under this Agreement;
- (b) All special expenses incurred by the Government of Cuba or by persons under its jurisdiction at the written request of the Agency, its inspectors or other officials shall be reimbursed by the Agency, if the Government of Cuba notifies the Agency before the expenses are incurred that reimbursement will be required.

Nothing in this Section shall prejudice the allocation of expenses which are reasonably attributable to a failure by either party to comply with this Agreement.

Section 25. The Government of Cuba shall ensure that any protection against third party liability, including any insurance or other financial security, in respect of nuclear incidents occurring in nuclear facilities under its jurisdiction shall apply to the Agency and its inspectors when carrying out their functions under this Agreement as that protection applies to nationals of Cuba.

NON-COMPLIANCE

Section 26.

- (a) If the Board determines, in accordance with Article XII. C of the Statute of the Agency, that there has been any non-compliance with this Agreement, the Board shall call upon the Government of Cuba to remedy such non-compliance forthwith, and the Board may make such reports as it deems appropriate. In the event of failure by the Government of Cuba to take fully corrective action within a reasonable time, the Board may take any other measures provided for in Article XII. C of the Statute.
- (b) The Agency shall promptly notify the Government of Cuba of any decision by the Board in connection with this Section.

SETTLEMENT OF DISPUTES

Section 27. Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation or another procedure agreed to by the Government of Cuba and the Agency shall, on the request of either the Government of Cuba or the Agency, be submitted to an arbitral tribunal composed as follows: the Government of Cuba and the Agency 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 the Government of Cuba or the Agency has not designated an arbitrator, the Government of Cuba or the Agency may request the Secretary-General of the United Nations 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. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall be made by majority vote. 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 Government of Cuba and the Agency, shall be binding on the Government of Cuba and the Agency. The remuneration of the arbitrators shall be determined on the same basis as that of ad hoc judges of the International Court of Justice.

Section 28. Decisions of the Board concerning the implementation of this Agreement except such as relate only to Sections 24 and 25 of this Agreement shall, if they so provide, be given effect immediately by the Parties, pending the final settlement of any dispute.

FINAL CLAUSES

Section 29. The Parties shall, at the request of either of them, consult about amending this Agreement. If the Board decides to make any changes in the Safeguards Document or in the Inspectors Document, this Agreement shall be amended, if the Government of Cuba so requests, to take account of such changes.

Section 30. This Agreement shall enter into force upon signature by the authorized representative of the Government of Cuba and by or for the Director General of the Agency. It shall remain in force until safeguards have been terminated, in accordance with its provisions, on all nuclear material including subsequent generations of produced special fissionable material subject to safeguards under this Agreement and all other items referred to in Section 2.

DONE in Vienna on 5 May 1980 in duplicate in the Spanish language.

For the GOVERNMENT OF THE REPUBLIC OF CUBA:

(signed) Oscar Luis Caballero Garcia

For the INTERNATIONAL ATOMIC ENERGY AGENCY

(signed) Sigvard Eklund