



International Atomic Energy Agency

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THE TEXT OF THE SAFEGUARDS TRANSFER AGREEMENT RELATING
TO THE BILATERAL AGREEMENT BETWEEN PORTUGAL AND
THE UNITED STATES OF AMERICA

1. The text [1] of the Safeguards Transfer Agreement between the Agency, Portugal and the United States of America relating to the agreement between those Governments concerning co-operation in the promotion and development of the peaceful uses of atomic energy is reproduced in this document for the information of all Members.

2. The Safeguards Transfer Agreement entered into force on 15 December 1965 upon acceptance by the Agency of the initial inventory provided for in Section 6.

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

AGREEMENT BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY,
THE GOVERNMENT OF PORTUGAL AND THE GOVERNMENT
OF THE UNITED STATES OF AMERICA FOR THE
APPLICATION OF SAFEGUARDS

WHEREAS the Government of the United States of America (hereinafter called the "United States") and the Government of Portugal (hereinafter called "Portugal") have been co-operating on the civil uses of atomic energy under their Agreement for Cooperation of 21 July 1955 [2], as amended on 7 June 1957 [3], 11 June 1960 [4], 28 May 1962 and 11 August 1964 (hereinafter called the "Agreement for Cooperation"), which requires that equipment, devices and materials made available to Portugal by the United States be used solely for peaceful purposes and establishes a system of safeguards to that end; and

WHEREAS the Agreement for Cooperation reflects the mutual recognition of the two Governments of the desirability of arranging for the International Atomic Energy Agency (hereinafter called the "Agency") to administer safeguards as soon as practicable; and

WHEREAS the Agency is, pursuant to its Statute and the action of its Board of Governors, now in a position to apply safeguards to certain materials, equipment and facilities in accordance with the Agency's safeguards procedures set forth in the Safeguards Document and in the Inspectors Document; and

WHEREAS the two Governments have reaffirmed their desire that equipment, devices and materials supplied by the United States under the Agreement for Cooperation or produced by their use or otherwise subject to safeguards under that Agreement shall not be used for any military purpose and have requested the Agency to apply, insofar as it has appropriate provisions to do so, safeguards to such materials, equipment and facilities as are covered by this Agreement; and

WHEREAS the Board of Governors of the Agency has acted favourably upon that request on 11 September 1964;

NOW, THEREFORE, the two Governments and the Agency agree as follows:

[2] Text reproduced in United Nations Treaty Series, Vol. 239, page 283.

[3] Ibid., Vol. 290, page 336.

[4] Ibid., Vol. 377, page 428.

ARTICLE I

Use of Materials, Devices and Facilities for Peaceful Purposes

Section 1. Portugal hereby undertakes that, during the term of this Agreement, it will not use in such a way as to further any military purpose any material, equipment or facility listed in the inventory for Portugal provided for in paragraphs 1 and 2 of the Annex.

Section 2. The United States hereby undertakes that, during the term of this Agreement, it will not use in such a way as to further any military purpose any special fissionable material listed in the inventory for the United States provided for in paragraph 3 of the Annex.

Section 3. The Agency hereby agrees to apply safeguards, during the term of and in accordance with the provisions of this Agreement, to materials, equipment and facilities while they are listed in the inventories provided for in the Annex, to ensure that they will not be used in such a way as to further any military purpose, provided that there need be no application of safeguards to:

- (a) Nuclear materials, except to the extent that the quantity of PN material of that type in the State, including that listed in the inventory provided for in the Annex, is in excess of:
 - (i) In the case of natural uranium or depleted uranium with a uranium-235 content of 0.5 per cent or greater - 10 metric tons;
 - (ii) In the case of depleted uranium with a uranium-235 content of less than 0.5 per cent - 20 metric tons;
 - (iii) In the case of thorium - 20 metric tons;
 - (iv) In the case of special fissionable material: plutonium, uranium-233 or fully enriched uranium or its equivalent in the case of partially enriched uranium - 200 grams;
- (b) Reactors specified by Portugal and determined by the Agency to have a maximum calculated power for continuous operation of less than three thermal megawatts, provided that the total such power of the reactors thus specified by Portugal under this and all other agreements providing for safeguards by the Agency in Portugal may not exceed six thermal megawatts;
- (c) Mines, mining equipment or ore-processing plants.

Section 4. Portugal and the United States undertake to facilitate the application of such safeguards and to co-operate with the Agency and each other to that end.

Section 5. The United States agrees that its rights under Article VI of the Agreement for Cooperation to apply safeguards to equipment, devices and materials subject to that Agreement will be suspended with respect to materials, equipment and facilities while they are listed in the inventory for Portugal provided for in the Annex. It is understood that no other rights and obligations of Portugal and the United States between each other under Article VI and under other provisions of the Agreement for Cooperation, including those arising by reason of paragraph B of Article VII will be affected by this Agreement. If the Board determines, pursuant to Section 15(a) or otherwise, that the Agency is unable to apply safeguards to any such material, equipment or facility, it shall thereby be removed from such inventory until the Board determines that the Agency is able to apply safeguards to it.

ARTICLE II

Application of Agency Safeguards

Section 6. An initial inventory of all the materials, equipment and facilities which are within the jurisdiction of Portugal and subject to the Agreement for Cooperation and which are within the scope of the Agency's safeguards system shall be prepared by the two Governments and submitted to the Agency. Upon the entry into force of this Agreement, the Agency will commence applying safeguards to such materials, equipment and facilities. Thereafter Portugal and the United States shall jointly notify the Agency of:

- (a) Any transfer from the United States to Portugal under their Agreement for Cooperation of materials, equipment or facilities which are within the scope of the Agency's safeguards system;
- (b) Any transfer from Portugal to the United States of any special fissionable material included in the inventory pursuant to Section 8.

Such materials, equipment and facilities shall be listed in the respective inventory provided for in the Annex, within thirty days of receipt of such notification by the Agency and thereupon become subject to safeguards by the Agency, unless the Agency notifies the two Governments that it is unable to apply safeguards thereto.

Section 7. The notification by the two Governments provided for in Section 6 shall normally be sent to the Agency not more than two weeks after the material, equipment or facility arrives in the recipient country, except that shipments of natural uranium, depleted uranium, or thorium in quantities not exceeding one ton shall not be subject to the two-week notification requirement but shall be reported to the Agency at quarterly intervals. Such notification shall include the type, form and quantity of the material and/or the type and capacity of the equipment or facility involved, the date of shipment, the date of receipt, the identity of the recipient, and any other relevant information. The two Governments also undertake to give the Agency as much advance notice as possible of the transfer of large quantities of nuclear materials or major equipment or facilities. Design information pertinent to safeguards and concerning the facilities listed in the inventory provided for in paragraphs 1(a) and 2 of the Annex shall also be provided to the Agency by the Party concerned at the request of the Agency.

Section 8. Portugal shall notify the Agency, by means of its routine safeguards reports, of any special fissionable material it has produced, during the period covered by the report, in or by the use of any of the materials, equipment or facilities listed in the principal part of the inventory for Portugal provided for in the Annex. Upon receipt by the Agency of the notification, such produced material shall be listed in that inventory, provided that any material so produced shall be deemed to be listed and therefore to be subject to safeguards by the Agency from the time it is produced. The Agency may verify the calculations of the amounts of such materials; appropriate adjustment in the inventory provided for in the Annex will be made by agreement of the Parties to the Agreement concerned. Pending final agreement of the Parties concerned, the Agency's calculations will govern.

Section 9. Portugal and the United States shall jointly notify the Agency of the return to the United States of any materials, equipment or facilities listed in the inventory for Portugal provided for in the Annex. Upon receipt thereof by the United States:

- (a) Materials described in Section 6(b) shall be transferred from the inventory for Portugal to the inventory for the United States;
- (b) Other materials, and equipment or facilities shall be deleted from the inventory provided for in the Annex.

Section 10. Portugal and the United States shall jointly notify the Agency of any transfer of materials, equipment or facilities listed in the inventory provided for in the Annex to a recipient which is not under the jurisdiction of either Portugal or the United States. Such materials, equipment or facilities shall thereupon be deleted from such inventory, provided that:

- (a) Safeguards by the Agency continue to apply to such materials, equipment or facilities; or
- (b) Other safeguards, generally consistent with Agency safeguards and acceptable to Portugal and the United States, will apply to such materials, equipment or facilities, provided that in the case of materials included in the inventory pursuant to Section 6(b) or 8 such other safeguards are also acceptable to the Agency.

Section 11. The notifications by the two Governments provided for in Sections 9 and 10 shall be sent to the Agency at least two weeks before the material, equipment or facility is transferred. In other respects these notifications shall conform, as far as appropriate, to the requirements of Section 7.

Section 12. Agency safeguards applied to nuclear material pursuant to this Agreement will be suspended while such material is transferred, to any other State or group of States or to an international organization, solely for the purpose of processing, reprocessing or testing, under an agreement approved by the Agency and within the scope of the Agreement for Cooperation or is transferred, under an arrangement approved by the Agency, to a facility within Portugal or the United States of America to which safeguards are not applied, provided that:

- (a) The agreement or the arrangement requires that there be placed under safeguards by the Agency, at a time to be agreed and with due allowance for processing losses, an amount of the same type of nuclear material at least equal to such transferred material and not otherwise subject to safeguards (hereinafter called "substituted material"); or
- (b) The quantities of such transferred material are not at any time in excess of:
 - (i) In the case of natural uranium or depleted uranium with a uranium-235 content of 0.5 per cent or greater - 10 metric tons;
 - (ii) In the case of depleted uranium with a uranium-235 content of less than 0.5 per cent - 20 metric tons;
 - (iii) In the case of thorium - 20 metric tons;
 - (iv) In the case of special fissionable material: plutonium, uranium-233 or fully enriched uranium or its equivalent in the case of partially enriched uranium - 1000 grams.

In the case of materials listed in the inventory pursuant to Section 6(b), the Agency undertakes to give any requisite approvals necessary to allow the suspension of safeguards within the United States.

Section 13. In the event material is substituted as provided for in Section 12, that substituted material will be listed in the inventory provided for in the Annex in place of the original produced material as of the date of substitution. Safeguards suspended pursuant to Section 12 will remain suspended for as long as the substituted material remains subject to Agency safeguards or as long as the quantities of the materials for which no substitution was made do not exceed the limits specified in Section 12(b). When and if the original produced material is returned to the safeguards system provided for by this Agreement, that material will be listed in the inventory provided for in the Annex in place of the substituted material.

Section 14. The safeguards to be applied by the Agency are those procedures specified in Part V of the Safeguards Document, provided that the procedures for notification of transfers shall be as set forth in this Agreement.

Section 15. If the Board determines, in accordance with Article XII.C of the Statute, that there has been any non-compliance with this Agreement, the Board shall call upon the State concerned to remedy forthwith such non-compliance and shall make such reports as may be appropriate. In the event of failure by such State to take fully corrective action within a reasonable time:

- (a) The Agency shall be relieved of its responsibility under Section 3 to apply safeguards for such time as the Board determines the Agency cannot effectively apply the safeguards provided for in this Agreement; and
- (b) The Board may take any other measures prescribed in Article XII.C of the Statute.

The Agency shall promptly notify the Parties in the event of any determination by the Board pursuant to this Section.

ARTICLE III

Agency Inspectors

Section 16. Agency inspectors performing functions pursuant to this Agreement shall be governed by paragraphs 1 through 7 and 9, 10, 12 and 14 of the Inspectors Document and by paragraph 41 of the Safeguards Document. The provisions of paragraph 8 of the Inspectors Document shall be applicable with respect to the performance of functions by Agency inspectors in Portugal pursuant to this Agreement. Whenever the United States avails itself of the provisions of Section 12(a) with respect to any material listed in the inventory pursuant to Section 6(b), it is understood that, with respect to the right of access of Agency inspectors within the United States of America, the requirements of paragraph 9 of the Inspectors Document shall be satisfied by affording Agency inspectors access at all times to the substituted materials.

Section 17. Portugal shall apply the provisions of the Agreement on the Privileges and Immunities of the Agency [5] to Agency inspectors performing functions consequent upon this Agreement and to any property of the Agency used by them.

Section 18. The provisions of the International Organizations Immunities Act of the United States [6] shall apply to Agency inspectors performing functions in the United States of America under this Agreement and to any property of the Agency used by them.

ARTICLE IV

Use of Information by the Agency

Section 19. The Agency shall not publish nor communicate to any State, organization or person not on its staff any information obtained by it under this Agreement, other than summarized information about the inventories provided for in the Annex, except with the consent of the Government of the State to which the information relates. Specific details concerning safeguards aspects of the nuclear energy programmes of either Portugal or the United States may be disseminated to the Board and to appropriate Agency staff members as necessary for the Agency to fulfil its safeguards responsibilities under this Agreement.

[5] Text reproduced in document INFCIRC/9/Rev.1.

[6] 59 Stat. 669 (1945).

ARTICLE V

Finance

Section 20. In connection with the implementation of this Agreement all expenses incurred by or at the written request or direction of the Agency, its inspectors or other officials shall be borne by the Agency, and neither Portugal nor the United States shall be required to bear any expenses for equipment, accommodation, or transport furnished pursuant to paragraph 6 of the Inspectors Document.

ARTICLE VI

Settlement of Disputes

Section 21. Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation or as may otherwise be agreed by the Parties concerned shall on the request of any Party be submitted 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.

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. Upon application by any Party, and if necessary to ensure that this Agreement continues to function effectively, the arbitral tribunal shall be empowered to make interim decisions and to issue interim orders pending a final decision on any dispute, except with respect to matters covered by Section 22. The final decision and interim orders and 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 and shall be implemented by them. The remuneration of the arbitrators shall be determined on the same basis as that of ad hoc judges of the International Court of Justice under Article 32, paragraph 4, of the Statute of the Court.

Section 22. Decisions of the Board concerning the inability of the Agency to apply safeguards or concerning any non-compliance with this Agreement, taken pursuant to Section 6 or 15, shall, if they so provide, immediately be given effect by the Parties, pending the conclusion of any consultation, negotiation or arbitration that may be or may have been invoked with regard to the dispute.

ARTICLE VII

The Agency's Safeguards System and Definitions

Section 23. The terms "application of safeguards", "Board", "depleted uranium", "Director General", "nuclear material", "PN material", "reactor", "special fissionable material" and "Statute" have the same meaning in this Agreement and the Annex hereto as they do in the Safeguards Document. The term "substituted material" refers to material described in Section 12(a). "Equivalent" amounts of special fissionable materials for purposes of Sections 3(a)(iv) and 12(b)(iv) shall be as defined by the equation in the Appendix to the Safeguards Document; the equivalent amounts of plutonium and uranium-233 are the same as for fully enriched uranium. "Party" shall mean the Agency, Portugal or the United States.

Section 24. The terms "the Agency's safeguards system" and "Agency safeguards" refer to the procedures for safeguarding reactors with less than 100 megawatts thermal output, the related nuclear materials and small research and development facilities, as set forth in the Safeguards Document (INFCIRC/26, approved by the Board on 31 January 1961) and, with respect to Agency inspectors, the Inspectors Document (GC(V)/INF/39, Annex, placed in effect by the Board on 29 June 1961). In the event the Agency modifies those documents or the scope of the system, the Parties may agree to apply any or all such modifications for purposes of this Agreement.

ARTICLE VIII

Amendment, Entry into Force and Duration

Section 25. Upon the request of any Party there shall be consultations among them concerning the amendment of this Agreement.

Section 26. This Agreement shall enter into force, after signature by or for the Director General and by the authorized representatives of Portugal and of the United States, on the date on which the Agency accepts the initial inventory provided for in Section 6.

Section 27. This Agreement shall remain in force until 13 July 1974 unless sooner terminated by any Party upon six months' notice to the other Parties or as may otherwise be agreed.

DONE in Vienna, this 24th day of February 1965, in triplicate in English and French.

For the INTERNATIONAL ATOMIC ENERGY AGENCY:

(signed) Sigvard Eklund

For the GOVERNMENT OF PORTUGAL:

(signed) Marcus de Fontes Peseira de Mello Fonseca

For the GOVERNMENT OF THE UNITED STATES OF AMERICA:

(signed) Henry D. Smyth

A N N E X

MATERIALS, EQUIPMENT AND FACILITIES
SUBJECT TO AGENCY SAFEGUARDS

Inventories, with respect to Portugal and with respect to the United States, of the materials, equipment and facilities subject to safeguards by the Agency pursuant to this Agreement shall be currently maintained by the Agency on the basis of the notifications, agreements and determinations provided for in Article II of this Agreement, and on the basis of the safeguards reports submitted by the Governments pursuant to this Agreement. These inventories will be considered integral parts of this Agreement, and the Agency will communicate them routinely to Portugal and to the United States every three months and also within two weeks of the receipt of a special request therefor from one of the Governments.

1. The principal part of the inventory with respect to Portugal will consist of at least the following categories:
 - (a) Equipment and facilities transferred to Portugal;
 - (b) Material transferred to Portugal, and any substituted material;
 - (c) Special fissionable materials produced in Portugal, as specified in Section 8 of this Agreement, and any substituted material; and
 - (d) Nuclear materials utilized in or recovered from any materials, equipment or facilities listed in the principal part of this inventory, and any substituted material.
2. The subsidiary part of the inventory with respect to Portugal will contain any other equipment or facility while it is using, fabricating or processing any material listed in the principal part of this inventory.
3. The inventory with respect to the United States will contain any special fissionable material of whose transfer from Portugal the Agency has been notified pursuant to Section 6(b) of this Agreement, and any substituted material.