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THE TEXT OF THE AGREEMENT FOR THE APPLICATION OF AGENCY SAFEGUARDS TO UNITED STATES REACTOR FACILITIES

The text[1] of the Agreement between the Agency and the Government of the United States of America for the application of Agency safeguards to United States reactor facilities, which was signed on 15 June 1964 and entered into force on 1 August 1964, is reproduced in this document for the information of all Members.

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

AGREEMENT BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE APPLICATION OF SAFEGUARDS TO UNITED STATES REACTOR FACILITIES

WHEREAS the Government of the United States of America (hereinafter called the "United States"), desiring to lend its support to the expanded safeguards programme of the International Atomic Energy Agency (hereinafter called the "Agency") has invited the Agency to apply its safeguards to the Yankee Nuclear Power Station and to the Brookhaven Graphite, the Brookhaven Medical, and the Piqua Reactor Facilities, all of which have been established in the United States of America without any assistance from the Agency;

WHEREAS the Board of Governors of the Agency (hereinafter called the "Board") has accepted such invitation on 11 June 1964.

NOW, THEREFORE, the Agency and the United States agree as follows:

ARTICLE I

Use of Reactors for Peaceful Purposes

Section 1. The United States hereby undertakes that, during the term of this Agreement, the following reactor facilities (hereinafter called the "reactor facilities") will not be used in such a way as to further any military purpose:

(a) The Yankee Nuclear Power Station, located in the town of Rowe, Massachusetts, a nominal 600 thermal megawatt, pressurized light-water moderated and cooled, slightly enriched uranium fuelled reactor, owned and operated by the Yankee Atomic Electric Company;

(b) The Brookhaven Graphite Research Reactor Facility, located at Brookhaven National Laboratory, Upton, Suffolk County, Long Island, New York, a nominal 20 thermal megawatt, graphite moderated, air cooled, 90 per cent enriched uranium fuelled reactor, owned by the United States Atomic Energy Commission (hereinafter called the "Commission") and operated by Associated Universities, Inc.;

(c) The Brookhaven Medical Research Reactor Facility, located at Brookhaven National Laboratory, Upton, Suffolk County, Long Island, New York, a nominal 3 thermal megawatt, light-water moderated and cooled, 90 per cent enriched uranium fuelled reactor, owned by the Commission and operated by Associated Universities, Inc. ;

(d) The Piqua Organic Moderated Reactor Facility, located at Piqua, Miami County, Ohio, a nominal 45.5 thermal megawatt, organic cooled and moderated power reactor using slightly enriched uranium fuel, owned by the Commission and operated by the city of Piqua.

Section 2. The United States also undertakes that, during the term of this Agreement, the following will not be used in such a way as to further any military purpose:

(a) Any special fissionable material produced during the term of this Agreement at the reactor facilities (hereinafter called "produced material"), or materials substituted therefor;

(b) Nuclear material while it is being processed or used in any of the reactor facilities;

(c) Nuclear material while it is intermixed with material to which Agency safeguards are applied under this Agreement.

Section 3. The Agency hereby agrees to apply safeguards, in accordance with the provision of this Agreement during the period specified in Section 24, to ensure that the reactor facilities and the materials specified in Sections 1 and 2 respectively will not be used in such a way as to further any military purpose.

Section 4. It is understood that there need be no application of safeguards to the materials specified in Section 2, except to the extent that the quantity of that type of PN material in the United States of America is in excess of:

(a) In the case of natural uranium or depleted uranium with a uranium-235 content of 0. 5 per cent or greater - 10 metric tons;

(b) In the case of depleted uranium with a uranium- 235 content of less than 0.5 per cent - 20 metric tons;

(c) In the case of thorium - 20 metric tons; or

(d) 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.

Section 5. The United States undertakes to facilitate the application of such safeguards and to co-operate with the Agency to that end.

Section 6. It is understood that the facilities and materials subject to Agency safeguards under, this Agreement will be considered not to be used in furtherance of any military purpose, regardless of what organization sponsors or conducts such use when:

(a) Such facilities or materials are used in a recognized area of basic research, or

(b) The specific application or applications toward which the work is directed are peaceful, the results of which are to be published in open literature or will, on request, be made available to the Agency for possible publication.

ARTICLE II

Application of Agency Safeguards

Section 7. An initial inventory of the facilities and materials to be placed under Agency safeguards in accordance with Section 3 shall be submitted by the United States to the Agency. The Agency shall commence applying safeguards under this Agreement upon its entry into force.

Section 8. The United States shall notify the Agency by means of routine safeguards reports of any material produced, during the period covered by the report, by the reactor facilities, provided that any such produced material shall 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 and, pending resolution of any differences between the Agency and the United States, the Agency's calculations will govern.

Section 9. Agency safeguards applied to nuclear material pursuant to this Agreement shall be suspended while such material is transferred to any other State or group of States solely for the purpose of processing, reprocessing, or testing under an agreement between the United States and the other State or group of States approved by the Agency, or is transferred, under an arrangement approved by the Agency, to a facility within the United States of America to which safeguards are not applied, provided that in either case:

(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 safeguarded pursuant to this Agreement, the Agency undertakes to give any requisite approvals necessary to allow the suspension of safeguards within the United States of America.

Section 10. The United States shall notify the Agency of any transfer of produced or substituted material to a recipient which is not under the jurisdiction of the United States. Such materials shall upon such transfer cease to be subject to Agency safeguards under this Agreement, provided that:

(a) Safeguards *by* the Agency continue to apply to such materials or to substituted materials; or

(b) Other safeguards generally consistent with Agency safeguards, and acceptable to the United States and the Agency, will apply to such materials.

Section 11. Safeguards suspended pursuant to Section 9 shall 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 9(b). When and if the produced material is returned to Agency safeguards under this Agreement, Agency safeguards will cease to apply to the substituted material.

Section 12. The safeguards to be applied by the Agency are those specified in Part V of the Principal Safeguards Document and in Part C of the Additional Safeguards Document.

Section 13. 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 United States to remedy forthwith such non-compliance and shall make such reports as shall

be appropriate. In the event of failure by the United States to take fully corrective action within a reasonable time:

(a) The Board may suspend the Agency's 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 such measures prescribed in Article XII. C of the Statute as may be appropriate.

ARTICLE III

Agency Inspectors

Section 14. 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 Principal Safeguards Document. Paragraph 4 of the Inspectors Document does not apply to any facility to which the Agency's inspectors shall have access at all times. The Agency may designate one or more inspectors to be stationed in the United States of America for the purpose of continuous inspection of such facilities or for the purpose of performing an indefinite number of discrete *inspections,* including the right to inspect such facilities without advance notice. Whenever the United States avails itself of the provisions of Section 9(a) or 10 concerning substituted material, 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 to the substituted materials. It is also understood that with respect to verifying the peaceful character of any research. work performed at a facility subject to this Agreement, the requirements of paragraph 9 of the Inspectors Document with respect to access by inspectors shall be satisfied by according the inspectors access to that facility and personnel carrying out such research or work and to the documentation on hand at that facility.

Section 15. The provisions of the International Organizations Immunities Act of the United States[2] 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 in the performance of their functions.

ARTICLE IV

Use of Information by the Agency

Section 16. 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 facilities and materials being safeguarded under this Agreement, except with the consent of the United States. Specific details concerning the safeguards activities of the Agency under this Agreement 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.

ARTICLE V

Finance

Section 17. 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. Any expenses for equipment, accommodation, or transport furnished pursuant to paragraph 6 of the Inspectors Document shall be borne by the Agency.

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[2] 59 Stat. 669 (1945).

ARTICLE VI

Settlement of Disputes

Section 18. Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation or such other means as may be agreed by the parties, shall on the request of either party be submitted to an arbitral tribunal composed of three arbitrators. Each party shall be entitled to 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, the other party 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. 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 either 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 19. 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 both 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 19. 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 13, 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

Agency Safeguards System and Definitions

Section 20. The terms "application of safeguards", "Board", "depleted uranium", "Director General", "nuclear material", "PN material", "reactor", "reactor facility", "special fissionable material" and "Statute" have the same meaning in this Agreement as they do in the Principal Safeguards Document. The term "substituted material" refers to material described in Section 9(a). "Equivalent" amounts of special fissionable materials for purposes of Sections 4(d) and 9(b)(iv) shall be as defined by the equation in the Appendix to the Principal Safeguards Document; the equivalent amounts of plutonium and U^{233} are the same as for fully enriched uranium.

Section 21. The term "Agency safeguards" refers to the procedures for safeguarding reactors and related nuclear materials as set forth in the Principal Safeguards Document (INFCIRC/26, approved by the Board on 31 January 1961) and the Additional Safeguards Document (INFCIRC/26/Add.1, approved by the Board on 26 February 1964), 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, 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 22. Upon the request of either party there shall be *consultation* between them concerning the amendment of this Agreement.

Section 23. This Agreement shall enter into force, after signature by or for the Director General and by an authorized representative of the United States, on the date on which the Agency accepts the initial inventory provided for in Section 7.

Section 24. This Agreement shall remain in force for a period of five years unless sooner terminated by either party on six months' notice to the other party or at such time as. may otherwise be agreed.

Section 25. The duration of this Agreement may be extended by mutual agreement of the parties.

DONE in Vienna, this 15th day of June 1964, in duplicate in the English language.

For the INTERNATIONAL ATOMIC ENERGY AGENCY:

(signed) Sigvard Eklund

For the GOVERNMENT OF THE UNITED STATES OF AMERICA:

(signed) Henry D. Smyth