



International Atomic Energy Agency

INFORMATION CIRCULAR

INFCIRC/244
23 February 1977

GENERAL Distr.

Original: ENGLISH and
FRENCH

THE TEXT OF THE AGREEMENT OF 5 JANUARY 1977 BETWEEN THE AGENCY,
FRANCE AND SOUTH AFRICA FOR THE APPLICATION OF SAFEGUARDS
IN RESPECT OF THE KOEBERG NUCLEAR POWER STATION

1. The text^[1] of the Agreement of 5 January 1977 between the Agency, France and South Africa for the application of safeguards in respect of the Koeberg nuclear power station is reproduced in this document for the information of all Members.
2. The Agreement entered into force, pursuant to Article 27, on 5 January 1977.

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

AGREEMENT BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY,
THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
FOR THE APPLICATION OF SAFEGUARDS

WHEREAS the Government of the French Republic and the Government of the Republic of South Africa have concluded an Agreement of Co-operation to facilitate the provision and the supply of services, installations, equipment and materials necessary for the establishment and operation of a nuclear power station in the Republic of South Africa;

WHEREAS the co-operation envisaged in the Agreement referred to above is intended exclusively for the development of the peaceful uses of nuclear energy;

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 French Republic and the Government of the Republic of South Africa have requested the Agency to apply safeguards to the nuclear power station and to the nuclear material to be used therein;

WHEREAS the Board of Governors of the Agency (hereinafter referred to as "the Board") has acceded to that request on 17 September 1976;

NOW THEREFORE, the Agency, the Government of the French Republic and the Government of the Republic of South Africa hereby agree as follows:

DEFINITIONS

Article 1

For the purpose of this Agreement:

- (a) "Co-operation Agreement" means the Agreement of Co-operation between the Government of the French Republic and the Government of the Republic of South Africa regarding the Koeberg Nuclear Power Station Units I and II of 15 October 1976, as may be amended;
- (b) "Inspectors Document" means the Annex to Agency document GC(V)/INF/39;
- (c) "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;
 - (ii) Any location where nuclear material in amounts greater than one effective kilogram is customarily used;
- (d) "Nuclear material" means any source or special fissionable material as defined in Article XX of the Agency's Statute;

- (e) "Reactor Facility" means the two 922 MW(e) pressurized light water enriched uranium reactors constituting the Koeberg Power Station Units I and II; the term shall include any major component thereof;
- (f) "Relevant technological information" means information transferred from the French Republic to the Republic of South Africa, and designated as such by the Government of the French Republic, on the design, construction or operation of the Reactor Facility, in all forms in which such information can be transferred, but excepting technological information freely available to the public;
- (g) "Safeguards Document" means Agency document INFCIRC/66/Rev. 2.

UNDERTAKINGS BY THE GOVERNMENTS AND THE AGENCY

Article 2

The Government of the Republic of South Africa 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 Reactor Facility;
- (b) Any nuclear material transferred to the Republic of South Africa from the French Republic for use in the Reactor Facility;
- (c) Any other nuclear facility or any major component thereof which is designed, constructed or operated in the Republic of South Africa on the basis of, or by the use of, relevant technological information;
- (d) Special fissionable or other nuclear material, including subsequent generations of special fissionable material, which has been produced, processed or used on the basis of or by the use of any item referred to in this Article; or
- (e) Any other item required to be listed in the Inventory referred to in Article 6.

Article 3

The Agency undertakes to apply its safeguards system in accordance with the terms of this Agreement to the items referred to in Article 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.

Article 4

The Government of the French Republic and the Government of the Republic of South Africa undertake to facilitate the application of the safeguards provided for in this Agreement and to co-operate with the Agency and with each other to that end.

INVENTORY AND NOTIFICATIONS

Article 5

- (a) The Government of the French Republic and the Government of the Republic of South Africa shall jointly notify the Agency of:

- (i) The commencement of construction of the Reactor Facility at the site in the Republic of South Africa; and
- (ii) Any transfer from the French Republic to the Republic of South Africa of any major component of the Reactor Facility or of nuclear material for use in the Reactor Facility.
- (b) The Government of the Republic of South Africa shall notify the Agency of any other nuclear material supplied for the Reactor Facility.
- (c) The Government of the Republic of South Africa shall notify the Agency of any nuclear facility which is required to be listed in the Inventory in accordance with Article 6.1(b).
- (d) Either the Government of the Republic of South Africa or the Government of the French Republic after consultation with the Government of the Republic of South Africa, shall inform the Agency of any other nuclear facility or major component thereof in the Republic of South Africa which is designed, constructed or operated on the basis of or by the use of relevant technological information.

Article 6

1. The Agency shall establish and maintain an Inventory with respect to the Republic of South Africa, which shall be divided into three parts:

- (a) The Main Part of the Inventory shall list:
 - (i) The Reactor Facility;
 - (ii) Any nuclear facility or major component thereof in the Republic of South Africa which is designed, constructed or operated on the basis of or by the use of relevant technological information;
 - (iii) Nuclear material transferred to the Republic of South Africa from the French Republic for use in the Reactor Facility;
 - (iv) Special fissionable material, including subsequent generations thereof, produced in or by the use of a nuclear facility, or major component thereof, listed in the Inventory or in or by the use of any nuclear material listed in the Main Part of the Inventory;
 - (v) Nuclear material which is processed or used in or in connection with a nuclear facility or major component thereof listed in the Inventory or in or in connection with any nuclear material listed in the Main Part of the Inventory; and
 - (vi) Nuclear material that has been substituted in accordance with paragraph 25 or 26(d) of the Safeguards Document for any nuclear material listed in (iii) to (v) above.
- (b) The Subsidiary Part of the Inventory shall list 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 the 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 send copies of the Inventory to both Governments every twelve months and also at any other time specified by either Government in a request communicated to the Agency at least two weeks in advance.

Article 7

The two Governments shall notify the Agency of the construction of the Reactor Facility within two weeks after construction has commenced. The other notifications provided for in Article 5(a)(ii) and (b) shall normally be sent to the Agency not more than two weeks after the nuclear material or major component arrives in the Republic of South Africa, except that shipments of source material in quantities not exceeding one metric ton shall not be subject to the two-week notification requirement but shall be reported to the Agency at intervals not exceeding three months. All notifications under Article 5 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 nuclear facility involved or of the major components of the Reactor Facility, the date of shipment, the date of receipt, the identity of the consignor and consignee, and any other relevant information. The two Governments also undertake to give the Agency as much advance notice as possible of the transfer of any large quantity of nuclear material or major components of the Reactor Facility.

Article 8

The Government of the Republic of South Africa 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 6. 1(a) or (b). Upon receipt by the Agency of the notification, such produced material shall be listed in the Main Part of the Inventory. The Agency may verify the calculations of the amounts of the said produced material. Appropriate adjustment in the Inventory shall be made by agreement of the Agency and the Government of the Republic of South Africa and, pending final agreement of the Agency and that Government, the Agency's calculations shall be used.

Article 9

The Government of the Republic of South Africa shall notify the Agency, by means of its reports pursuant to the Safeguards Document, of any nuclear material required to be listed in the Main Part of the Inventory, pursuant to Article 6(a)(v). Upon receipt by the Agency of the notification, such nuclear material shall be listed in the Main Part of the Inventory.

Article 10

- (a) The two Governments shall jointly notify the Agency of any transfer to the French Republic of the Reactor Facility, a major component thereof, or of nuclear material listed in the Main Part of the Inventory. Upon receipt in the French Republic such item shall be deleted from the Inventory.
- (b) If special fissionable material referred to in Article 6(a)(iv) is to be transferred to the French Republic such transfer may take place only after the Agency has confirmed that it has made arrangements to apply safeguards to such material.

Article 11

- (a) The two Governments shall jointly notify the Agency of any transfer of the Reactor Facility, a major component thereof, or of nuclear material listed in the Main Part of the Inventory to a recipient which is not under the jurisdiction of either of the two Governments. Such item may be transferred and shall thereupon be deleted from the Inventory only after the Agency has confirmed that it has made arrangements to apply safeguards to the item in question.
- (b) Relevant technological information may be transferred to a recipient which is not under the jurisdiction of either of the two Governments only upon agreement between the two Governments and provided that arrangements have been made by the Agency to apply safeguards in connection with the use of such information.

Article 12

Whenever the Government of the Republic of South Africa intends to transfer nuclear material listed in the Main Part of the Inventory, or any major component of the Reactor Facility, to a nuclear facility within the Republic of South Africa which is not yet listed in the Inventory, any notification required pursuant to Article 5(c) shall be made to the Agency before such transfer is effected. The Government may make the transfer to that nuclear facility only after the Agency has confirmed that it has made arrangements to apply safeguards to the item in question.

Article 13

The notifications provided for in Articles 10, 11 and 12 shall be sent to the Agency sufficiently in advance to enable the Agency to make any arrangements required by these Articles before the transfer is effected. The Agency shall take any necessary action promptly. The contents of these notifications shall conform, as far as appropriate, to the requirements of Article 7.

Article 14

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 15

Nuclear material shall be deleted from the Inventory and Agency safeguards thereon shall be terminated as provided in paragraphs 26 and 27 of the Safeguards Document. The Reactor Facility shall be deleted from the Inventory and safeguards thereon shall be terminated, after the Agency has determined that the Reactor Facility is no longer usable for any nuclear activity relevant from the point of view of safeguards. The Agency shall also terminate safeguards under this Agreement with respect to any item deleted from the Inventory in accordance with Articles 10 and 11.

SAFEGUARDS PROCEDURES

Article 16

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

Article 17

The safeguards procedures to be applied by the Agency are those specified in the Safeguards Document, as well as such additional procedures as result from technological developments and as may be agreed between the Agency and the Government of the Republic of South Africa. The Agency shall make subsidiary arrangements with that Government concerning the implementation of safeguards procedures which shall specify in detail, to the extent necessary to permit the Agency to fulfil its responsibilities in an effective and efficient manner, how the procedures of this Agreement shall be applied. The subsidiary arrangements shall make provisions for such containment and surveillance measures as are required for the effective application of safeguards. The subsidiary arrangements shall enter into force before any transfer of nuclear material or major component for the Reactor Facility takes place. 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 paragraphs 51 and 52 of the Safeguards Document.

AGENCY INSPECTORS

Article 18

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. However, paragraph 4 of the Inspectors Document shall not apply with regard to any nuclear facility or to 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 between the Agency and the Government of the Republic of South Africa before such a nuclear facility or nuclear material is listed in the Inventory.

Article 19

The Government of the Republic of South Africa shall apply the relevant provisions of the Agreement on the Privileges and Immunities of the Agency^[2] to the Agency, its inspectors performing functions under this Agreement and to any property of the Agency used by them.

FINANCE

Article 20

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

Article 21

The Government of the Republic of South Africa shall ensure that any protection against third-party liability, including any insurance or other financial security, in respect of a nuclear incident occurring in a nuclear installation 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 the Republic of South Africa.

[2] INFCIRC/9/Rev. 2.

NON-COMPLIANCE

Article 22

If the Board determines that there has been any non-compliance with this Agreement, the Board shall call upon the Governments concerned to remedy such non-compliance forthwith, and shall make such reports as it deems appropriate. In the event of failure by the Government concerned 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. The Agency shall promptly notify both Governments in the event of any determination by the Board pursuant to the present Article.

INTERPRETATION AND APPLICATION OF THE AGREEMENT
AND SETTLEMENT OF DISPUTES

Article 23

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 24

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 Secretary-General of the Permanent Court of Arbitration 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 Secretary-General of the Permanent Court of Arbitration 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, procedures, 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 25

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.

FINAL CLAUSES

Article 26

The Parties shall, at the request of any one of them, consult about amending this Agreement. If the Board modifies the Safeguards Document or the scope of the safeguards system, this Agreement shall be amended if the Governments so request to take account of any or all such modifications. If the Board modifies the Inspectors Document, this Agreement shall be amended if the Governments so request to take account of any or all such modifications.

Article 27

This Agreement shall enter into force upon signature by or for the Director General of the Agency and by the authorized representative of each Government.

Article 28

This Agreement shall remain in force until, in accordance with its provisions, safeguards have been terminated on all items referred to in Article 2.

Article 29

If, after this Agreement has ceased to be in force, a nuclear facility or major component thereof is designed, constructed or operated in the Republic of South Africa on the basis of or by the use of relevant technological information, this Agreement shall forthwith be reinstated.

Article 30

The Government of the French Republic and the Government of the Republic of South Africa shall jointly notify the Agency of any amendment to or modification of the Co-operation Agreement.

DONE in triplicate in the English and French languages, the two texts being equally authentic.

For the INTERNATIONAL ATOMIC ENERGY AGENCY:

(signed) Sigvard Eklund

Vienna

16 December 1976

For the GOVERNMENT OF THE FRENCH REPUBLIC:

(signed) Bertrand L. Goldschmidt

Paris

5 January 1977

For the GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA:

(signed) K. von Schirnding

Vienna

16 December 1976