

No. 7874

**UNITED STATES OF AMERICA
and
PORTUGAL**

Exchange of notes (with annex) constituting an agreement relating to the use of Portuguese ports and territorial waters by the N.S. *Savannah*. Lisbon, 12 November 1964

Official texts: English and Portuguese.

Registered by the United States of America on 10 August 1965.

**ÉTATS-UNIS D'AMÉRIQUE
et
PORTUGAL**

Échange de notes (avec annexe) constituant un accord concernant l'utilisation des eaux territoriales et des ports portugais par le N.S. *Savannah*. Lisbonne, 12 novembre 1964

Textes officiels anglais et portugais.

Enregistré par les États-Unis d'Amérique le 10 août 1965.

No. 7874. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND PORTUGAL RELATING TO THE USE OF PORTUGUESE PORTS AND TERRITORIAL WATERS BY THE N.S. *SAVANNAH*. LISBON, 12 NOVEMBER 1964

I

The American Ambassador to the Portuguese Minister of Foreign Affairs

No. 90

Lisbon, November 12, 1964

Excellency :

I have the honor to attach as an Annex to this Note the text, in both English and Portuguese, of an Accord, with its Appendix, which has resulted from communications and discussions between representatives of our two Governments regarding the use of Portuguese ports and territorial waters by the N.S. *Savannah*.

I have the honor to propose that if the provisions of the attached documents are acceptable to your Government, this Note and its attachments and Your Excellency's reply concurring therein shall constitute an agreement between our two Governments, which shall enter into force on the date of Your Excellency's reply.

Accept, Excellency, the renewed assurances of my highest consideration.

George W. ANDERSON

Enclosure :

Text of Agreement in English and Portuguese.

His Excellency Dr. Alberto Franco Nogueira
Minister of Foreign Affairs
Lisbon

AGREEMENT BETWEEN THE GOVERNMENT OF PORTUGAL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON THE USE OF PORTS BY THE N.S. *SAVANNAH*

The Government of Portugal and the United States of America, having a mutual interest in the peaceful uses of atomic energy, including its application to the merchant marine, have agreed as follows :

¹ Came into force on 12 November 1964 by the exchange of the said notes.

Article I

ENTRY OF THE N.S. "SAVANNAH" INTO PORTS OF PORTUGAL

Entry of the *Savannah* (hereafter designated as the "Ship") into Portuguese ports and the use thereof shall be subject to the prior approval of the Government of Portugal, and shall be subject to the provisions of Appendix A (Statement of Principles Governing the Entry of the N.S. *Savannah* into Ports of Portugal) which is an integral part hereof.

Article II

SAFETY ASSESSMENT

(a) To enable the Government of Portugal to consider the grant of approval for entry and use of Portuguese ports by the Ship, the Government of the United States shall provide a Safety Assessment prepared in accordance with Regulation 7 of Chapter VIII of the Safety of Life at Sea Convention of 1960¹ and in accordance with Recommendation 9 of Annex C of that Convention.²

(b) As soon as practicable after receipt of the Safety Assessment, the Government of Portugal shall notify the Government of the United States that the ship can be operated in the ports and territorial waters of Portugal in accordance with this agreement and the Safety Assessment.

Article III

PORT ARRANGEMENTS

(a) Designated authorities of the Government of Portugal shall make arrangements with appropriate local governmental authorities for entrance of the Ship into Portuguese ports and the use thereof.

(b) Local governmental authorities shall be responsible for fire and police protection, crowd control and the general preparation of the harbor with respect to acceptance of the Ship.

(c) Control of public access to the Ship shall be the responsibility of the Master of the Ship. Special arrangements relating to such control shall be developed by the Master with the concurrence of designated authorities of the Government of Portugal.

(d) The Master shall comply with local regulations so long as in the opinion of the Master these regulations do not adversely affect the operating safety of the nuclear plant.

Article IV

INSPECTION

While the Ship is within Portuguese territorial waters, the designated authorities shall have reasonable inspection access to the Ship and its operating records and program data for purposes of determining whether the Ship has been operating in accordance with the operating manual of the Ship.

¹ United Nations, *Treaty Series*, Vol. 536, No. 7794.

² Should read "Annex C to the Final Act of the International Conference on Safety of Life at Sea, 1960."

Article V

RADIOACTIVE WASTE

The Government of the United States shall ensure that no disposal of radioactive liquid or solid wastes shall take place from the Ship while she is within the territorial waters of Portugal without the specific prior approval of the designated authorities of the Government of Portugal.

Article VI

MAINTENANCE AND SERVICING

The use of contractors for maintenance, repair and servicing of the nuclear equipment on the Ship in Portuguese waters shall be restricted to those contractors having the approval of appropriate Portuguese authorities for the rendering of such services.

Article VII

CASUALTIES

A report, such as is required by Chapter VIII Regulation 12 of the Safety of Life at Sea Convention of 1960, shall be made to the designated authorities by the Master of the Ship in the event of any accident, likely to lead to an environmental hazard, while the *Savannah* is in or is approaching the territorial waters of Portugal.

Article VIII

TERMINATION

Either Government may terminate the agreement by giving no less than 90 days notice to the other.

Article IX

TERM OF AGREEMENT

In the event of entry into force of any general multilateral convention relating to the safety and operating procedures or third party liability of nuclear powered merchant ships by which both Governments become bound, the present Agreement shall be amended by agreement of the parties so as to conform with the provisions of such Convention.

Article X

EFFECTIVE DATE

The present agreement shall enter into force upon signature by the contracting parties.

APPENDIX A

STATEMENT OF PRINCIPLES GOVERNING THE ENTRY OF THE
N.S. *SAVANNAH* INTO PORTS OF PORTUGAL

The Government of Portugal and the Government of the United States of America, having a mutual interest in the peaceful uses of atomic energy and its application to the merchant marine, have agreed upon the following principles to govern the entry of the N.S. *Savannah* into ports of Portugal :

Article I

The visits of the *Savannah* to ports of Portugal shall be governed by the principles and procedures set forth in Chapter VIII of the Safety of Life at Sea Convention as proposed by the 1960 London Conference and the proposed Annex C to the Convention, being the Recommendations Applicable to Nuclear Ships.

Article II

The Government of Portugal shall determine the port or ports to be visited and will designate the authorities responsible for acceptance arrangements and for special control under Regulation 11 of Chapter VIII of the proposed SOLAS Convention.

Article III

The Government of the United States agrees that in any legal action or proceeding brought, *in personam*, against the United States, in a Portuguese court of competent jurisdiction, on account of any nuclear incident caused by the N.S. *Savannah* in a Portuguese port or where damage arising out of or resulting from a nuclear incident caused by the N.S. *Savannah* is sustained in Portugal, on a voyage to or departing from Portugal, the United States will not interpose the defense of sovereign immunity but will submit to the jurisdiction of such court; and, in such event, the United States will not seek to invoke the provisions of the Portuguese law, or any other law, relating to the limitation of shipowner's liability.

Article IV

The Government of the United States represents that there is an agreement in effect between the U.S. Atomic Energy Commission and the U.S. Maritime Administration whereunder the Atomic Energy Commission, acting upon the authority of Section 170 of the Atomic Energy Act of 1954 (Public Law 83-703), as amended by Public Law 85-256 and Public Law 85-602, has agreed to indemnify the United States Maritime Administration and other persons indemnified against claims for public liability arising from a nuclear incident in connection with the design, development, construction, operation, repair, maintenance or use of the Ship in the amount of \$500 million including the reasonable costs of investigating and settling claims and defending suits for damage. This sum represents the maximum amount for which the United States will be liable for a single nuclear incident involving the *Savannah*.

Article V

If the above indemnification of the United States Maritime Administration should for any reason terminate, the United States agrees that it will not cause or permit the entry of the *Savannah* into any Portuguese port unless there shall be in effect either (1) an agreement of indemnification entered into by the U.S. Atomic Energy Commission under the authority of Section 170 of the Atomic Energy Act of 1954, as amended, and affording a no less favorable measure of indemnification to that described above; or (2) an agreement of indemnification in some form acceptable to the Government of Portugal.

Article VI

(a) The term “ nuclear incident ” means any occurrence causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or by-product material.

(b) The term “ nuclear incident involving the *Savannah* ” means any nuclear incident in connection with, arising out of, or resulting from the operation, repair, maintenance or use of the *Savannah*.

(c) The term “ person indemnified ” means the person with whom an indemnity agreement is executed and any other person who may be liable for public liability for a nuclear incident involving the *Savannah*.

(d) The term “ public liability ” means any legal liability arising out of or resulting from a nuclear incident, except : (I) claims under United States state or federal workmen’s compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; and (II) claims arising out of an act of war. “ Public liability ” also includes damage to property of persons indemnified, except the *Savannah* and other property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

Article VII

In the event of the entry into force of a multilateral convention relating to safety and operating procedures or third party liability of nuclear ships by which both Portugal and the United States become bound, the principles adopted herein shall be amended so as to conform to the provisions of such convention.

II

The Portuguese Minister of Foreign Affairs to the American Ambassador

[PORTUGUESE TEXT — TEXTE PORTUGAIS]

MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS
Gabinete do Ministro

Lisboa, 12 de Novembro de 1964

Senhor Embaixador,

Tenho a honra de acusar a recepção da Nota de Vossa Excelência, com data de hoje, cujo teor é o seguinte :

« Tenho a honra de junto remeter em Anexo à presente Nota o texto, em inglês e português, de um Acordo, e respectivo Apêndice, o qual constitui o resultado da troca de comunicações e de discussões entre representantes dos nossos dois Governos tendo em vista o uso de portos portugueses e águas territoriais pelo N.S. *Savannah*.

b) O termo « incidente nuclear envolvendo o *Savannah* » significa qualquer incidente em relação com, causado por ou resultante de operação, reparação, manutenção ou uso do *Savannah*.

c) O termo « pessoa indemnizada » significa uma pessoa com a qual existe um acordo de indemnização ou qualquer outra pessoa que possa ser sujeita a responsabilidade pública por um incidente nuclear que envolva o *Savannah*.

d) O termo « responsabilidade pública » significa qualquer responsabilidade legal causada por ou resultante de um incidente nuclear excepto : (I) reclamações ao abrigo da legislação estadual ou federal dos Estados Unidos em matéria de indemnização de trabalho de empregados de pessoas abrangidas pela indemnização que trabalhem no local e em relação com as actividades exercidas no local em que ocorre o acidente nuclear; e (II) reclamações resultantes de um acto de guerra. « Responsabilidade pública » inclui também o dano causado à propriedade das pessoas indemnizadas, excepto o *Savannah* e outras propriedades que estejam situadas no local e utilizadas em relação com a actividade onde ocorre o acidente nuclear.

Artigo VII

No caso da entrada em vigor de uma convenção multilateral dizendo respeito à salvaguarda e processos de execução ou responsabilidade de terceiros por navios nucleares pela qual tanto Portugal como os Estados Unidos estejam ligados, os princípios aqui consignados serão emendados para se conformarem às previsões de tal Convenção.

[TRANSLATION¹ — TRADUCTION²]

MINISTRY OF FOREIGN AFFAIRS
Office of the Minister

Lisbon, November 12, 1964

Mr. Ambassador :

I have the honor to acknowledge receipt of Your Excellency's note dated today, which reads as follows :

[See note I]

I have the honor to confirm the Portuguese Government's agreement to the foregoing.

The English and Portuguese texts of the aforesaid Annex and its Appendix, which were enclosed with Your Excellency's Note, are attached to this Note.

I avail myself of the opportunity to renew to Your Excellency, Mr. Ambassador, the assurances of my highest consideration.

A. FRANCO NOGUEIRA

His Excellency Admiral George W. Anderson
Ambassador of the United States of America
Lisbon

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.