No. 9312

INTERNATIONAL ATOMIC ENERGY AGENCY, UNITED STATES OF AMERICA and VENEZUELA

Agreement for the application of safeguards. Signed at Vienna, on 27 March 1968

Official texts: English and Spanish.

Registered by the International Atomic Energy Agency on 20 November 1968.

AGENCE INTERNATIONALE DE L'ÉNERGIE ATOMIQUE, ÉTATS-UNIS D'AMÉRIQUE et VENEZUELA

Accord pour l'application de garanties. Signé à Vienne, le 27 mars 1968

Textes officiels anglais et espagnol.

Enregistré par l'Agence internationale de l'énergie atomique le 20 novembre 1968.

No. 9312. AGREEMENT [1] BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY, THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE APPLICATION OF SAFEGUARDS. SIGNED AT VIENNA, ON 27 MARCH 1968

WHEREAS the Government of the Republic of Venezuela and the Government of the United States of America have been co-operating on the civil uses of atomic energy under their Agreement for Cooperation of 8 October 1958 [2], which requires that equipment, devices and materials made available to Venezuela by the United States be used solely for peaceful purposes and establishes a system of safeguards to that end ;

WHEREAS the two Governments have recognized the desirability of arranging for the Agency to administer safeguards as soon as practicable ;

WHEREAS the Agency is, pursuant to its Statute [3] and the action of its Board of Governors, now in a position to apply safeguards in accordance with the Agency's Safeguards Document and Inspectors Document ;

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 safeguards to such materials, equipment and facilities as are covered by this Agreement ; and

WHEREAS the Board of Governors of the Agency approved that request on 22 September 1967 ;

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

[1] Came into force on 27 March 1968 by signature, in accordance with Part VIII, section 32.
[2] United Nations, *Treaty Series*, Vol. 371, p. 69.
[3] United Nations, *Treaty Series*, Vol. 276, p. 3, and Vol. 471, p. 334.

Part I

DEFINITIONS

Section 1. For the purposes of this Agreement :

(*a*) " Agency " means the International Atomic Energy Agency.

(*b*) " Board " means the Board of Governors of the Agency.

(*c*) " Agreement for Cooperation " means the agreement between Venezuela and the United States for co-operation on the civil uses of atomic energy signed on 8 October 1958.

(*d*) " Inspectors Document " means the Annex to Agency document GC(V) /INF /39, which was placed in effect by the Board on 29 June 1961.

(*e*) " Inventory " means either of the lists of material, equipment and facilities described in Section 10.

(*f*) " Nuclear material " means any source or special fissionable material as defined in Article XX of the Agency's Statute.

(*g*) " Safeguards Document " means Agency document INFCIRC /66, which was approved by the Board on 28 September 1965, including the Annex setting forth provisions for reprocessing plants set forth in Agency document GC(X) /INF /86, which was approved by the Board on 17 June 1966.

(*h*) " United States " means the Government of the United States of America.

(*i*) " Venezuela " means the Government of the Republic of Venezuela.

Part II

UNDERTAKINGS BY THE GOVERNMENTS AND THE AGENCY

Section 2. Venezuela undertakes that it will not use in such a way as to further any military purpose any material, equipment or facility while it is listed in the Inventory for Venezuela.

Section 3. The United States undertakes that it will not use in such a way as to further any military purpose any special fissionable material, equipment or facility while it is listed in the Inventory for the United States.

Section 4. The Agency undertakes to apply its safeguards system in accordance with the provisions of this Agreement to materials, equipment

and facilities while they are listed in the Inventories to ensure so far as it is able that they will not be used in such a way as to further any military purpose.

Section 5. Venezuela and the United States undertake to facilitate the application of safeguards and to co-operate with the Agency and each other to that end.

Section 6. The United States agrees that its rights under Article IX 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 Venezuela. It is understood that no other rights and obligations of Venezuela and the United States between themselves under Article IX and under other provisions of the Agreement for Cooperation, including those arising by reason of paragraph (*b*) of Article X, will be affected by this Agreement.

Section 7. If the Agency is relieved, pursuant to Section 23 (*a*), of its undertaking in Section 4, or if for any other reason the Board determines that the Agency is unable to ensure that any material, equipment or facility listed in an Inventory is not being used for any military purpose, the material, equipment or facility involved shall thereby automatically be removed from such Inventory until the Board determines that the Agency is again able to apply safeguards thereto. When, under this Section, an item is removed from the Inventory for either Government, the Agency may, at the request of the other Government, provide it with information available to the Agency about such material, equipment or facility in order to enable that Government to exercise effectively its rights thereto.

Section 8. Venezuela and the United States shall promptly notify the Agency of any amendment to the Agreement for Cooperation and any notice of termination given with respect to that Agreement.

Part III

INVENTORIES AND NOTIFICATIONS

Section 9. (*a*) An initial list of all the materials, equipment and facilities which are within the jurisdiction of Venezuela and subject to the Agreement for Cooperation shall be prepared by the two Governments and submitted jointly to the Agency as promptly as feasible after the entry into force of this Agreement. The Agency's acceptance thereof shall establish

the Inventory for Venezuela and the Agency will thereupon commence applying safeguards to such materials, equipment and facilities.

(*b*) Thereafter Venezuela and the United States shall jointly notify the Agency of :

(i) Any transfer from the United States to Venezuela under their Agreement for Cooperation of materials, equipment or facilities ;

(ii) Any transfer from Venezuela to the United States of any special fissionable material which has been included in the Inventory for Venezuela pursuant to Section 12 ; and

(iii) Any other materials, equipment and facilities which as a consequence of the transfers referred to in (i) and (ii) above come within the scope of the Category described in Section 10 (*b*) or (*e*).

(*c*) The Agency shall, within 30 days of its receipt of a joint notification, advise both Governments either :

(i) That the items covered by the notification are listed in the appropriate Inventory as of the date of the Agency's advice ; or

(ii) That the Agency is unable to apply safeguards to such items, in which case, however, it may indicate at what future time or under what conditions it would be able to apply safeguards thereto if the Governments so desire.

Section 10. The Agency shall establish and maintain the Inventory with respect to each Government which shall be divided into three Categories.

(*a*) Category I of the Inventory with respect to Venezuela shall list :

(i) Equipment and facilities transferred to Venezuela.

(ii) Material transferred to Venezuela or material substituted therefor in accordance with paragraph 25 or 26 (*d*) of the Safeguards Document ;

(iii) Special fissionable materials produced in Venezuela, as specified in Section 12, or any material substituted therefor in accordance with paragraph 25 or 26 (*d*) of the Safeguards Document ; and

(iv) Nuclear materials, other than those which are listed under (ii) or (iii) above, which are processed or used in any of the materials, equipment or facilities listed under (i), (ii) or (iii) above, or any material substituted therefor in accordance with paragraph 25 or 26 (*d*) of the Safeguards Document.

(*b*) Category II of the Inventory with respect to Venezuela shall list :

(i) Any facility while it incorporates any equipment listed in Category I of the Inventory for Venezuela ; and

(ii) Any equipment or facility while it is containing, using, fabricating or processing any material listed in Category I of the Inventory for Venezuela.

(*c*) Category III of the Inventory with respect to Venezuela shall list any nuclear material which would normally be listed in Category I of the Inventory for Venezuela but which is not 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.

(*d*) Category I of the Inventory with respect to the United States shall list :

(i) Special fissionable material of whose transfer from Venezuela the Agency has been notified pursuant to Section 9 (*b*) (ii) or material substituted therefor, in accordance with paragraph 25 or 26 (*d*) of the Safeguards Document ; or

(ii) Special fissionable material produced in the United States, as specified in Section 12, or any material substituted therefor, in accordance with paragraph 25 or 26 (*d*) of the Safeguards Document.

(*e*) Category II of the Inventory with respect to the United States shall list any equipment or facility while it is containing, using, fabricating or processing any material listed in Category I of the Inventory for the United States.

(*f*) Category III of the Inventory with respect to the United States shall list any material which would normally be listed in Category I of the Inventory for the United States 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.

The Agency shall send copies of both Inventories to both Governments every twelve months and also at any other times specified by either Government in a request communicated to the Agency at least two weeks in advance.

Section 11. The notification by the two Governments provided for in Section 9 (*b*) (i) shall normally be sent to the Agency not more than two weeks after the material, equipment or facility arrives in Venezuela, 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 Section 9 shall include, to the extent relevant, the nuclear and chemical composition, the physical form, and the 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 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 large quantities of nuclear materials or major equipment or facilities.

Section 12. Each Government shall notify the Agency, by means of its reports pursuant to the Safeguards Document, 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 described in Section 10 (*a*), 10 (*b*) (i) or 10 (*d*). Upon receipt by the Agency of the notification, such produced material shall be listed in Category I of the Inventory, provided that any material so produced shall be deemed to be listed and therefore 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 ; appropriate adjustment in the Inventory shall be made by agreement of the Parties ; pending final agreement of the Parties, the Agency's calculations shall govern.

Section 13. Venezuela shall notify the Agency, by means of its reports pursuant to the Safeguards Document, of any nuclear materials required to be listed in Category I of its Inventory pursuant to Section 10 (*a*) (iv). Upon receipt by the Agency of the notification, such nuclear material shall be listed in Category I of the Inventory, provided that any material so processed or used shall be deemed to be listed and therefore shall be subject to safeguards by the Agency from the time it is processed or used.

Section 14. The two Governments shall notify the Agency of the transfer to the United States of any materials, equipment or facilities listed in the Inventory for Venezuela. Upon receipt thereof by the United States :

(*a*) Materials described in Section 9 (*b*) (ii) shall be transferred from the Inventory for Venezuela to Category I of the Inventory for the United States ;

(*b*) Other materials, and equipment or facilities shall be deleted from the Inventory.

Section 15. The two Governments shall jointly notify the Agency of any transfer of materials, equipment or facilities listed in Category I of the Inventory to a recipient which is not under the jurisdiction of either of the two Governments. Such materials, equipment or facilities may be transferred and shall thereupon be deleted from the Inventory, provided that :

(*a*) Arrangements have been made by the Agency to safeguard such materials, equipment or facilities ; or

(*b*) The materials, equipment or facilities will be subject to safeguards other than those of the Agency but generally consistent with such safeguards and accepted by the Agency.

Section 16. Whenever either Government intends to transfer material or equipment, listed in Category I of its Inventory, to a facility within its jurisdiction which the Agency has not previously accepted for listing in that Government's Inventory, any notification that will be required pursuant to Section 9 (*b*) (iii) shall be made to the Agency before such transfer is effected. The Government may make the transfer to that facility only after the Agency has accepted that notification.

Section 17. The notifications provided for in Sections 14, 15 and 16 shall be sent to the Agency at least two weeks before the material, equipment or facility is to be transferred. The contents of these notifications shall conform, as far as appropriate, to the requirements of Section 11.

Section 18. 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 Document.

Section 19. The Agency shall terminate safeguards under this Agreement with respect to those items deleted from an Inventory as provided in

Sections 14 (*b*) and 15 above. Nuclear material other than that covered by the preceding sentence shall be deleted from the Inventory and Agency safeguards thereon shall be terminated as provided in paragraph 26 of the Safeguards Document.

Section 20. The two Governments and the Agency shall agree on the conditions for exemption, suspension or termination of safeguards on items not covered by Sections 18 and 19.

Part IV

SAFEGUARDS PROCEDURES

Section 21. In applying safeguards, the Agency shall observe the principles set forth in paragraphs 9 through 14 of the Safeguards Document.

Section 22. The safeguards to be applied by the Agency to the items listed in the Inventories are those procedures specified in the Safeguards Document. The Agency shall make subsidiary arrangements with each Government concerning the implementation of safeguards procedures which shall include any necessary arrangements for the application of safeguards to non-nuclear materials and equipment. 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.

Section 23. If the Board determines that there has been any non-compliance with this Agreement, the Board shall call upon the Government concerned to remedy such non-compliance forthwith, and shall make such reports as it deems appropriate. If the Government fails to take fully corrective action within a reasonable time :

(*a*) The Agency shall be relieved of its undertaking to apply safeguards under Section 4 for such time as the Board determines that the Agency cannot effectively apply the safeguards provided for in this Agreement ; and

(*b*) The Board may take any 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 this section.

Part V

AGENCY INSPECTORS

Section 24. 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 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 in the United States and in Venezuela shall be agreed between the Agency and the Government concerned before the facility or material is listed in the Inventory.

Section 25. Venezuela shall apply the relevant provisions of the Agreement on the Privileges and Immunities of the Agency [1] to Agency inspectors performing functions under this Agreement and to any property of the Agency used by them.

Section 26. The provisions of the International Organizations Immunities Act of the United States 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.

Part VI

FINANCE

Section 27. Each Party shall bear any expense incurred in the implementation of its responsibilities under this Agreement. The Agency shall reimburse each Government 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.

Section 28. (*a*) Venezuela 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 Venezuela.

[1] United Nations, *Treaty Series*, Vol. 374, p. 147.

(*b*) In carrying out its functions under this Agreement within the United States, the Agency and its personnel shall be covered to the same extent as United States nationals by any protection against third-party liability provided under the Price-Anderson Act, including insurance or other indemnity coverage that may be required by the Price-Anderson Act with respect to nuclear incidents within the United States.

Part VII

SETTLEMENT OF DISPUTES

Section 29. 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. The 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. 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 30. Decisions of the Board concerning the implementation of this Agreement, except such as relate only to Part VI, shall, if they so provide, be given effect immediately by the Parties, pending the final settlement of any dispute.

Part VIII

AMENDMENT, MODIFICATIONS, ENTRY INTO FORCE AND DURATION

Section 31. 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.

Section 32. 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.

Section 33. This Agreement shall remain in force during the term of the Agreement for Cooperation, as extended from time to time, unless terminated sooner by any Party upon six months' notice to the other Parties or as may otherwise be agreed. It may be prolonged for further periods as agreed by the Parties and may be terminated sooner by any Party on six months' notice to the other Parties or as may be otherwise agreed. However, this Agreement shall remain in force with regard to any nuclear material referred to in Section 10 (*a*) (iii) or 10 (*d*) until the Agency has notified both Governments that it has terminated safeguards on such material in accordance with Section 19.

DONE in Vienna this 27th day of March 1968, in triplicate in English and Spanish, the texts in both languages being equally authentic.

For the International Atomic Energy Agency :
Sigvard EKLUND

For the Government of the Republic of Venezuela :
Luis OLAVARRÍA

For the Government of the United States of America :
Verne B. LEWIS