

No. 9950

**INTERNATIONAL ATOMIC ENERGY AGENCY,
PORTUGAL and UNITED STATES OF AMERICA**

**Agreement for the application of safeguards. Signed at
Vienna on 11 July 1969**

Authentic text : English.

Registered by the International Atomic Energy Agency on 13 October 1969.

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

**Accord pour l'application de garanties. Signé à Vienne
le 11 juillet 1969**

Texte authentique : anglais.

Enregistré par l'Agence internationale de l'énergie atomique le 13 octobre 1969.

AGREEMENT¹ 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 and the Government of Portugal have agreed to continue cooperating on the civil uses of atomic energy under their Agreement for Cooperation of 3 July 1969² which requires that equipment, devices and materials made available to Portugal by the United States of America be used solely for peaceful purposes and establishes a system of safeguards to that end;

WHEREAS the Agreement for Cooperation reflects the mutual recognition of the two Governments of the desirability of arranging for the Agency to administer safeguards as soon as practicable;

WHEREAS the Agency is, pursuant to its Statute³ 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 of America 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 11 June 1969;

¹ Came into force on 19 July 1969, the date of entry into force of the Agreement for co-operation of 3 July 1969 between Portugal and the United States of America, in accordance with section 32.

² United Nations, *Treaty Series*, vol. 720, No. I-10337.

³ *Ibid.*, vol. 276, p. 3, and vol. 471, p. 334.

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

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 the Government of Portugal and the Government of the United States of America for Cooperation on the Civil Uses of Atomic Energy signed on 3 July 1969 as amended, or a new superseding agreement for cooperation, as amended;
- (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/Rev.2, which contains provisions approved by the Board on 28 September 1965, 17 June 1966 and 13 June 1968;
- (h) "Agreement for the Application of Safeguards" means the 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 signed on 24 February 1965.¹

Part II

UNDERTAKINGS BY THE GOVERNMENTS AND THE AGENCY

Section 2. The Government of Portugal 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 the Government of Portugal.

Section 3. The Government of the United States of America 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 Government of the United States of America.

¹ United Nations, *Treaty Series*, vol. 556, p. 47.

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. The Government of Portugal and the Government of the United States of America undertake to facilitate the application of safeguards and to cooperate with the Agency and each other to that end.

Section 6. The Government of the United States of America agrees that its rights under the Agreement for Cooperation to apply safeguards to equipment, devices and materials subject to that Agreement will be suspended with respect to material, equipment and facilities while they are listed in the Inventory for the Government of Portugal. It is understood that no other rights and obligations of the Government of Portugal and the Government of the United States of America between themselves under the Agreement for Cooperation 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. The Government of Portugal and the Government of the United States of America 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) The inventories of the materials, equipment and facilities within the jurisdiction of the Government of Portugal and the Government of the United States of America which were, at the time this Agreement enters into force, subject to Agency safeguards under the Agreement for the Application of Safeguards signed on 24 February 1965, shall constitute the initial Inventories for the respective Governments under this Agreement and the Agency will continue to apply safeguards to such materials, equipment and facilities.

(b) Thereafter the Government of Portugal and the Government of the United States of America shall jointly notify the Agency of :

- (i) Any transfer from the United States of America to Portugal under their Agreement for Cooperation of materials, equipment or facilities;
- (ii) Any transfer from Portugal to the United States of America of any special fissionable material which has been included in the Inventory for the Government of Portugal pursuant to Section 12.

(c) Either the Government of Portugal or the Government of the United States of America, whichever is concerned, shall also thereafter notify the Agency of any other equipment and facilities which are required to be listed in an Inventory in accordance with Section 10 (b) or (e).

(d) The Agency shall, within 30 days of its receipt of a notification under this Section, 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 which 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 the Government of Portugal shall list :

- (i) Equipment and facilities transferred to Portugal;
- (ii) Material transferred to Portugal or material substituted therefor in accordance with paragraph 25 or 26 (d) of the Safeguards Document;
- (iii) Special fissionable materials produced in Portugal, 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 the Government of Portugal shall list :

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

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

(c) Category III of the Inventory with respect to the Government of Portugal shall list any nuclear material which would normally be listed in Category I of the Inventory for the Government of Portugal 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.

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

- (i) Special fissionable material of whose transfer from Portugal 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 of America, 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 Government of the United States of America 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 Government of the United States of America.

(f) Category III of the Inventory with respect to the Government of the United States of America shall list any material which would normally be listed in Category I of the Inventory for the Government of the United States of America 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 Sections 9 (b) (i) and 14 shall normally be sent to the Agency not more than two weeks after the material, equipment or facility arrives in Portugal or the United States of America, respectively, 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. The Government of Portugal 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 jointly notify the Agency of the transfer to the United States of America of any materials, equipment or facilities listed in the Inventory for the Government of Portugal. Upon receipt thereof by the United States of America :

- (a) Materials described in Section 9 (b) (ii) shall be transferred from the Inventory for the Government of Portugal to Category I of the Inventory for the Government of the United States of America;
- (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 (c) 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 15 and 16 shall be sent to the Agency sufficiently in advance so as to enable the Agency to make any arrangements required by these Sections 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 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. 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 of America and in Portugal shall be agreed between the Agency and the Government concerned before the facility or material is listed in the Inventory.

Section 25. The Government of Portugal shall apply the relevant provisions of the Agreement on the Privileges and Immunities of the Agency¹ 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 of America 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) In carrying out its functions under this Agreement within the United States of America, the Agency and its personnel shall be covered to the same extent as United States of America 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 of America.

(b) The Government of Portugal 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 function under this Agreement as that protection applies to nationals of Portugal.

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

¹ United Nations, *Treaty Series*, vol. 374, p. 147.

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 Government 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 be signed by or for the Director General of the Agency and by the authorized representatives of the Government of Portugal and the Government of the United States of America and shall enter into force on the date upon which the Agreement for Cooperation enters into force, and shall thereupon supersede the Agreement for the Application of Safeguards signed on 24 February 1965. The two Governments shall notify the Agency of the date of the entry into force of the Agreement for Cooperation within one week after that date.

Section 33. This Agreement shall remain in force during the term of the Agreement for Cooperation, as extended or amended 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 11th day of July 1969, in triplicate in the English language.

For the International Atomic Energy Agency :

Upendra GOSWAMI

For the GOVERNMENT OF PORTUGAL :

Manuel SÁ NOGUEIRA

For the Government of the United States of America :

Philippe G. JACQUES
