

No. 19592

**FINLAND
and
AUSTRALIA**

**Agreement concerning the transfer of nuclear material between Finland and Australia (with exchange of letters).
Signed at Helsinki on 20 July 1978**

Authentic texts of the Agreement: Finnish and English.

Authentic text of the Exchange of letters: English.

Registered by Finland on 24 February 1981.

**FINLANDE
et
AUSTRALIE**

Accord relatif au transfert de matières nucléaires entre la Finlande et l'Australie (avec échange de lettres). Signé à Helsinki le 20 juillet 1978

Textes authentiques de l'Accord : finnois et anglais.

Texte authentique de l'Échange de lettres : anglais.

Enregistré par la Finlande le 24 février 1981.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF AUSTRALIA CONCERNING THE TRANSFER OF NUCLEAR MATERIAL BETWEEN FINLAND AND AUSTRALIA

The Government of the Republic of Finland and the Government of Australia, Mindful that both Finland and Australia are non-nuclear weapon States which are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons;²

Recognising that Finland and Australia have under that Treaty undertaken not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices and that both Governments have concluded agreements with the International Atomic Energy Agency for the application of safeguards^{3, 4} in their respective countries in connexion with the Treaty on the Non-Proliferation of Nuclear Weapons;

Affirming their support for the objectives of the Treaty on the Non-Proliferation of Nuclear Weapons and their desire to promote universal adherence to that Treaty;

Pending international acceptance of new international arrangements and institutions to provide more effective measures against the proliferation of nuclear weapons;

Desiring to establish conditions under which nuclear material can be transferred between their two countries for peaceful purposes, consistent with their commitment to non-proliferation;

Have agreed as follows:

Article 1. 1. This Agreement shall apply to:

- a) Nuclear material transferred between the two Parties, whether directly or through a third country, in accordance with paragraphs 2 and 3 of this article;
- b) Quantities of derived nuclear material directly proportional to the transferred nuclear material used for their production; and
- c) Quantities of all subsequent generations of nuclear material determined on the same proportional principle referred to in sub-paragraph 1 [b)] of this article.

2. Nuclear material shall be transferred between the Parties only to a natural or legal person identified by the appropriate governmental authority of the recipient Party to the appropriate governmental authority of the supplier Party as duly authorized to receive that material.

3. Prior to the transfer of nuclear material between the Parties, the appropriate governmental authorities of both Parties shall agree in writing upon the point when the material will become subject to the provisions of this Agreement.

¹ Came into force on 9 February 1980, i.e., 30 days after the Parties exchanged diplomatic notes informing each other that they had complied with all constitutional requirements for its entry into force, in accordance with article 12.

² United Nations, *Treaty Series*, vol. 729, p. 161.

³ *Ibid.*, vol. 814, p. 81.

⁴ *Ibid.*, vol. 964, p. 83.

Article 2. Nuclear material referred to in article 1 of this Agreement shall remain subject to the provisions of this Agreement until:

- a) It is no longer usable for any nuclear activity relevant from the point of view of the safeguards referred to in article 4 of this Agreement; that is, until it shall be determined by the International Atomic Energy Agency that the material is no longer so usable as a result of its being
 - i) Practicably irrecoverable,
 - ii) Consumed,
 - iii) Diluted, or
 - iv) Converted to non-nuclear use, such as the production of alloys or ceramics;
- b) It has been transferred beyond the jurisdiction of the recipient Party in accordance with the provisions of article 7 of this Agreement; or
- c) Otherwise agreed between the Parties.

Article 3. Nuclear material subject to this Agreement shall not be diverted to nuclear weapons or other nuclear explosive devices, to research on or development of nuclear weapons or other nuclear explosive devices, or used for any military purpose.

Article 4. Nuclear material subject to this Agreement shall be subject while within the territory or under the jurisdiction or control of the recipient Party to safeguards applied by the International Atomic Energy Agency under a Non-Proliferation Treaty safeguards agreement, or, if the International Atomic Energy Agency is not administering a Non-Proliferation Treaty safeguards agreement in the territory of that Party, under an agreement or agreements to which that Party and the International Atomic Energy Agency are parties which will provide safeguards equivalent in scope and effect to those provided by a Non-Proliferation Treaty safeguards agreement.

Article 5. Notwithstanding the provisions of article 4 of this Agreement, if nuclear material subject to this Agreement is present in the territory of a Party and the International Atomic Energy Agency is not administering safeguards in the territory of that Party pursuant to a safeguards agreement or agreements referred to in article 4 of this Agreement, the other Party shall have the right to administer in the territory of that Party safeguards based on the procedures of the Agency's safeguards system for the exclusive purpose of verifying that nuclear material subject to this Agreement is not diverted to nuclear weapons or other nuclear explosive devices or used for any military purpose. The two Parties shall consult and assist each other to establish and apply such safeguards.

Article 6. 1. Each Party shall take such measures as are necessary to ensure adequate physical protection of nuclear material within its jurisdiction and to apply as a minimum measures of physical protection which satisfy the requirements of the recommendations of the International Atomic Energy Agency.

2. The Parties shall consult at the request of either Party concerning matters relating to physical protection.

Article 7. 1. Nuclear material subject to this Agreement shall be

- a) Transferred beyond the jurisdiction of the recipient Party,
- b) Enriched to more than 20 percent in the isotope U-235, or
- c) Reprocessed,

only with the prior written consent of the supplier Party.

2. In considering a request for consent in relation to the matters referred to in paragraph 1 of this article, the supplier Party will take into account non-proliferation considerations, energy requirements and the needs of the recipient Party for proper management of spent nuclear fuel and for nuclear waste disposal. A Party shall not withhold its consent to a matter referred to in paragraph 1 of this article for the purpose of securing commercial advantage.

3. If a Party considers that it is unable to grant consent to a matter referred to in paragraph 1 of this article, that Party shall provide the other Party with an immediate opportunity for full consultation on that issue.

Article 8. 1. The appropriate governmental authorities of both Parties shall consult annually, or at any other time at the request of either Party, to ensure the effective implementation of this Agreement. Either Party may invite the International Atomic Energy Agency to participate in such consultations.

2. Each Party shall, upon request, inform the other Party of the overall conclusions of the most recent report by the International Atomic Energy Agency on its verification activities in the territory of that Party, relevant to the material subject to this Agreement.

3. The appropriate governmental authorities of both Parties shall establish an administrative arrangement to ensure the effective fulfilment of the obligations of this Agreement. An administrative arrangement established pursuant to this paragraph may be changed with the agreement of the appropriate governmental authorities of both Parties.

4. The cost of reports and records which either Party is required to provide pursuant to the administrative arrangement referred to in paragraph 3 of this article shall be borne by the Party which is required to provide the reports or records.

5. The Parties shall take all appropriate precautions to preserve the confidentiality of commercial and industrial secrets and other confidential information received as a result of the operation of this Agreement.

Article 9. 1. A supplier Party shall have the right in the event of

- a) Detonation by the recipient Party of a nuclear explosive device, or
- b) Determination in accordance with paragraph C of article 12 of the Statute of the International Atomic Energy Agency,¹ that there has been non-compliance with, or repudiation of, a relevant safeguards agreement concluded with the International Atomic Energy Agency, by the recipient Party,

to suspend or cancel further transfer of nuclear material and to require the return of nuclear material subject to this Agreement, subject to payment therefor at prices then current.

2. In the event of material non-compliance by the recipient Party with the provisions of articles 3 to 7 inclusive of this Agreement, the supplier Party shall have the right to suspend or cancel further transfers of nuclear material and to require the recipient Party to take corrective steps. If, following consultation between the Parties, such corrective steps are not taken within a reasonable time, the supplier Party shall thereupon have the right to require the return of nuclear material subject to this Agreement subject to payment therefor at prices then current.

¹ United Nations, *Treaty Series*, vol. 276, p. 3.

Article 10. Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation shall, on request of either Party, be submitted to an arbitral tribunal which shall be composed of three arbitrators. Each Party shall designate one arbitrator and the two arbitrators so designated shall elect a third, who shall be the Chairman. If within 30 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 30 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 of all the members of the arbitral tribunal. 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 both Parties and shall be implemented by them, in accordance with their respective constitutional procedures. The remuneration of the arbitrators shall be determined on the same basis as that for *ad hoc* Judges of the International Court of Justice.

Article 11. For the purposes of this Agreement:

a) "Appropriate governmental authority" means, in the case of Finland, the Ministry of Trade and Industry or its designated representative, and in the case of Australia, the Australian Safeguards Office;

b) "Nuclear material" means any "source material" or "special fissionable material" as those terms are defined in article 20 of the Statute of the International Atomic Energy Agency. Any determination by the Board of Governors of the International Atomic Energy Agency under article 20 of the Agency's Statute which amends the list of materials considered to be "source material" or "special fissionable material" shall only have effect under this Agreement when both Parties to this Agreement have informed each other in writing that they accept that amendment;

c) "Non-Proliferation Treaty safeguards agreement" means an agreement concluded in accordance with paragraph 1 of article 3 of the Treaty on the Non-Proliferation of Nuclear Weapons, done at London, Moscow and Washington on 1 July 1968;

d) "The Agency's safeguards system" means the safeguards system set out in International Atomic Energy Agency document INFCIRC/ 66/Rev. 2, as well as any subsequent amendments thereto which are accepted by the Government of Finland and by the Government of Australia.

Article 12. This Agreement shall enter into force 30 days after the date the Parties by an exchange of diplomatic notes have informed each other that they have complied with all constitutional requirements for its entry into force, and shall remain in force thereafter for a period of 30 years. If neither Party has notified the other Party at least 180 days prior to the expiry of such period, the present Agreement shall continue in force thereafter until 180 days after notice of termination has been given by either Party to the other Party; provided, however, that termination of the Agreement shall not release the Parties from obligations under the Agreement in respect of nuclear material referred to in article 1 of the Agreement which remains relevant from the point of view of safeguards in accordance with article 2 of the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed the present Agreement.

DONE at Helsinki on the 20th of July, 1978, in the Finnish and English languages, both language versions being equally authentic.

For the Government of the Republic of Finland:

PAUL PAAVELA

For the Government of Australia:

J. D. ANTHONY

EXCHANGE OF NOTES

I

DEPARTMENT OF FOREIGN AFFAIRS
CANBERRA, AUSTRALIA

Dear Ambassador Gustafsson,

In the negotiations between Finland and Australia on an agreement concerning the transfer of nuclear material between the two countries, the object of the two delegations was to draw up an agreement to provide conditions, consistent with the commitment of the two countries to the non-proliferation of nuclear weapons, in which nuclear material may be transferred between them for peaceful purposes.

In this context the Finnish delegation sought clarification of Australian intentions as to how the agreement would be implemented. It emphasized the importance which Finland attached to the prior consent provisions of the draft agreement being applied in such a way as to allow the most practical possible operation of various fuel cycle activities. It also pointed out that in the case of Finland several of these activities might have to take place in other countries. It envisages that these countries would be nuclear weapon states parties to the Treaty on the Non-Proliferation of Nuclear Weapons, member states of EURATOM, and/or Iceland, Norway or Sweden.

The Australian authorities recognise the interest of Finland in the practical and efficient operation of its nuclear facilities. It is the intention of the Australian Government that the provisions of the agreement including the prior consent requirements in article VII should operate to this effect and that they should be implemented so as to avoid raising practical difficulties unrelated to non-proliferation objectives.

Conversion enrichment and fuel fabrication

As to conversion, enrichment below 20%, and fuel fabrication, these proposals present the Australian Government with no difficulty. When the time comes to make arrangement for the supply of uranium from Australia to Finland and for its transfer to one or more of the countries mentioned, for processing into fuel elements for use in Finnish power reactors the Australian Government will, at the request of the Government of Finland consider giving its consent in advance and for a period of years to

the transfers involved. The only condition will be that the Australian Government will need to be satisfied in terms of its non-proliferation policy as to the applicable arrangements and controls. In this connection it is relevant that the non-nuclear weapon States referred to are parties to the Nuclear Non-Proliferation Treaty. By that time the Australian Government expects bilateral safeguards agreements to be in force covering Australian origin nuclear material in most of the countries mentioned and that these arrangements will fully satisfy the Australian Government as to the safeguards and controls applicable to the preparation there of fuel for use in Finland. Tails, reject pellets and other safeguardable residues from these processes may be left in any of these countries, provided they will be covered there by a bilateral safeguards agreement with Australia.

In cases where such agreements are not by then in force, the Australian Government expects that it will, nevertheless, be possible to make satisfactory arrangements. These arrangements will have to include the return to Finland, or to another of the countries mentioned with which Australia has at that time a bilateral safeguards agreement, of quantities of nuclear material equivalent to the supplied nuclear material.

Reprocessing and/or final disposal of spent fuel

The Finnish delegation also raised the question of reprocessing and/or final disposal of spent fuel in the same countries and the transfers for these purposes. Australian policy does not preclude giving consent in advance subject to specific arrangements and/or conditions. Reprocessing, however, is a matter on which the Australian Government has reserved its position for the time being. The Australian Government does not propose to decide on the detailed arrangements and/or conditions under which it might agree to reprocessing taking place until after the conclusion of current international studies, notably INFCE.

The Australian Government accordingly agrees to hold further consultations with the Government of Finland at a mutually convenient time after the conclusion of the INFCE study, on the detailed arrangements and/or conditions under which it might agree to reprocessing and on the possibility of giving its agreement in advance and for a period of time under specific arrangements.

As to transfers of nuclear material of Australian origin to any of the countries mentioned for final disposal, it is a requirement that Australian origin nuclear material in that country be covered by a bilateral safeguards agreement with Australia. The Australian Government would also want an opportunity to consider such aspects as the quantities involved.

Yours sincerely,

R. R. FERNANDEZ
Leader of the Australian Delegation

His Excellency Under-Secretary of State Paul Gustafsson
Leader of the Finnish Delegation
Ministry for Foreign Affairs
Helsinki

II

MINISTRY FOR FOREIGN AFFAIRS OF FINLAND

Helsinki, 20 July 1978

Dear Ambassador Fernandez,

I have the honour to acknowledge the receipt of your letter of July 20, 1978, concerning certain questions with regard to the Agreement between the Governments of the Republic of Finland and Australia concerning the transfer of nuclear material between the two countries signed at Helsinki today, which letter reads as follows:

[*See letter I*]

Yours sincerely,

[*Signed*]

PAUL GUSTAFSSON
Leader of the Finnish Delegation

His Excellency Ambassador R. R. Fernandez
Leader of the Australian Delegation
Department of Foreign Affairs
Canberra
