

K – Bilateral Safeguards Agreements

Agreement Between the Republic of Argentina and the Federative Republic of Brazil for the Exclusively Peaceful Use of Nuclear Energy [ABACC agreement]

[Signed at Guadalajara, Mexico, 18 July 1991]

The Government of the Republic of Argentina and the Government of the Federative Republic of Brazil, hereinafter referred to as 'the Parties'.

Noting the progress achieved in Bilateral nuclear co-operation as a result of the joint work under the co-operative agreement on the peaceful uses of nuclear energy, signed in Buenos Aires on 20 May 1980;

Recalling the commitments assumed under the Joint Declarations on Nuclear Policy of Foz do Iguacu (1985), Brasilia (1986), Viedma (1987) and Ipero (1988), reaffirmed by the Joint Statement of Buenos Aires of 6 July 1990;

Reaffirming their decision to deepen the process of integration between the two countries;

Recognizing the importance of the peaceful use of nuclear energy for the scientific, technological, economic and social development of their peoples;

Believing that the benefits of all applications of nuclear technology should be accessible for peaceful purposes to all States;

Reaffirming the principles of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean; Have agreed as follows:

Basic Undertaking

Article I

1. The Parties undertake to use the nuclear material and facilities under their jurisdiction or control exclusively for peaceful purposes.

2. The Parties also undertake to prohibit and prevent in their respective territories, and to abstain from carrying out, promoting or authorizing, directly or indirectly, or from participating in any way in:

- (a) The testing, use, manufacture, production or acquisition by any means of any nuclear weapon; and
- (b) The receipt, storage, installation, deployment or any other form of possession of any nuclear weapon.

3. Bearing in mind that at present no technical distinction can be made between nuclear explosive devices for peaceful purposes and those for military purposes, the Parties also undertake to prohibit and prevent in their respective territories, and to abstain from carrying out, promoting or authorizing, directly or indirectly, or from participating in any way in, the testing, use, manufacture, production or acquisition by means of any nuclear explosive device while the above-mentioned technical limitation exists.

Article II

None of the provisions of the present Agreement shall affect the inalienable right of the Parties to carry out research on, produce and use nuclear energy for peaceful purposes, each Party maintaining its industrial, technological and commercial secrets, without discrimination and in conformity with Articles I, III and IV.

Article III

None of the provisions of the present Agreement shall limit the right of the Parties to use nuclear energy for the propulsion of any type of vehicle, including submarines, since propulsion is a peaceful application of nuclear energy.

Article IV

The Parties undertake to submit all the nuclear materials in all nuclear activities carried out in their territories or anywhere under their jurisdiction or control to the Common System of Accounting and Control of Nuclear Materials ('SCCC') established by Article V of the present Agreement.

Common System of Accounting & Control of Nuclear Materials

Article V

The Parties shall establish the Common System of Accounting and Control of Nuclear Materials (hereinafter referred to as 'SCCC'), the objective of which shall be to verify, in accordance with the basic guidelines established in the Annex to the present Agreement, that the nuclear materials in all nuclear activities of the Parties are not diverted to the purposes prohibited by the present Agreement.

Brazilian-Argentine Agency for Accounting & Control of Nuclear Materials

Article VI

The Parties shall establish the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (hereinafter referred to as the 'ABACC'), which shall have legal personality enabling it to carry out the objective assigned to it under the present Agreement.

Objective of the ABACC

Article VII

The objective of the ABACC will be to administer and implement the SCCC in accordance with the provisions of the present Agreement.

Powers of the ABACC

Article VIII

The powers of the ABACC shall be:

- (a) To agree with the Parties new General Procedures and Implementation Manuals and any modifications to the existing procedures and manuals that may be necessary;
- (b) To carry out the inspections and other procedures required for implementation of the SCCC;
- (c) To designate inspectors to carry out the inspections indicated in (b);
- (d) To evaluate the inspections carried out in implementation of the SCCC;
- (e) To engage the necessary services to ensure fulfilment of its objective;
- (f) To represent the Parties before third parties in connection with the implementation of the SCCC;
- (g) To take legal action

Organs of the ABACC

Article IX

The organs of the ABACC shall be the Commission and the Secretariat.

Composition of the Commission

Article X

The Commission shall consist of four members, two being designated by each Party. The Commission shall be established within 60 days of the entry into force of the present Agreement.

Functions of the Commission

Article XI

The functions of the Commission shall be:

- (a) To monitor the functioning of the SCCC;
- (b) To approve the General Procedures and Implementation Manuals referred to in Article VIII(a) after their negotiation by the Secretariat;
- (c) To procure the necessary resources for the establishment of the Secretariat;
- (d) To supervise the functioning of the Secretariat, preparing instructions and directives as appropriate in each case;
- (e) To appoint the professional staff of the Secretariat and to approve the appointment of auxiliary staff;
- (f) To prepare a list of duly qualified inspectors from among those proposed by the Parties to carry out the inspection tasks entrusted to them by the Secretariat;

- (g) To inform the Party concerned of any anomalies which may arise in the implementation of the SCCC; that Party shall then be obliged to take the necessary measures to rectify the situation;
- (h) To call upon the Parties to establish any ad hoc advisory groups which may be deemed necessary to improve the functioning of the SCCC;
- (i) To report to the Parties every year on the implementation of the SCCC;
- (j) To inform the Parties of the non-compliance by one of the Parties of the commitments made under the present Agreement;
- (k) To prepare rules of procedure for itself and regulations for the Secretariat.

Composition of the Secretariat

Article XII

1. The Secretariat shall consist of the professional staff appointed by the Commission and of auxiliary staff. In the performance of their duties, the staff of the Secretariat shall be subject to the regulations approved and the directives formulated by the Commission.

2. The senior staff of the nationality of each Party shall take it in turns each year to act as Secretary of the ABACC, beginning with the nationality of the country in which the headquarters is not located.

3. The inspectors designated under Article VII(c) shall be responsible exclusively to the Secretariat while carrying out the duties assigned to them by the Secretariat in connection with the SCCC.

Functions of the Secretariat

Article XIII

The Secretariat shall have the following functions:

- (a) To implement the directives and instructions issued by the Commission;
- (b) In this context, to perform the necessary activities for implementation and administration of the SCCC;
- (c) To act, under the mandate of the Commission, as the representative of the ABACC in its relations with the Parties and with third parties;
- (d) To designate from among those included in the list referred to in Article XI(f) the inspectors who will carry out the inspection tasks necessary for the implementation of the SCCC, taking into account that the inspectors who are nationals of one of the Parties should carry out inspections at the facilities of the other Party and to instruct them in the performance of their duties;
- (e) To receive the reports which the inspectors will prepare on the results of their inspections;
- (f) To evaluate the inspections in accordance with the appropriate procedures;
- (g) To inform the Commission immediately of any discrepancy in the records of either of the Parties which emerges from the evaluation of the inspection results;
- (h) To prepare the ABACC's budget for approval by the Commission;
- (i) To report regularly to the Commission on its activities and, in particular, on the implementation of the SCCC.

Confidentiality of the Information

Article XIV

1. The ABACC shall not be authorized to divulge industrial, commercial or any other information of a confidential nature on the facilities and characteristics of the nuclear programme of the Parties without the express consent of the Parties.

2. The members of the Commission, the staff of the Secretariat, the inspectors and all persons involved in the implementation of the SCCC shall not reveal industrial, commercial or any other information of a confidential nature on the facilities and characteristics of the nuclear programmes of the Parties acquired in or as a result of the performance of their duties. This obligation shall continue even after they have ceased working for the ABACC or doing work related to the implementation of the SCCC.

3. The penalties for infringements of paragraph 2 of this Article shall be determined by the respective national legislations,

each Party establishing the penalty for infringements committed by its nationals regardless of where they were committed.

Headquarters of the ABACC

Article XV

1. The headquarters of the ABACC shall be in the city of Rio de Janeiro.
2. The ABACC shall negotiate with the Federative Republic of Brazil the relevant headquarters agreement.

Financial and Technical Support

Article XVI

1. The Parties shall provide in equal amounts the necessary funds for the functioning of the SCCC and the ABACC.

2. The Parties shall make their technical capabilities available to the ABACC in support of its activities. Persons allocated temporarily to these support tasks shall be bound by the commitment laid down in Article XIV.

Privileges and Immunities

Article XVII

1. The ABACC shall enjoy legal personality and full legal capacity. Its privileges and immunities and those of its staff in Brazil shall be laid down in the headquarters agreement referred to in Article XV.

2. The privileges and immunities of the inspectors and other staff working on a temporary basis for the ABACC shall be determined in an Additional Protocol.

Interpretation and Application

Article XVIII

Any dispute relating to the interpretation and application of the present Agreement shall be settled by the Parties through diplomatic channels.

Breach of the Agreement

Article XIX

Any serious breach of the present Agreement by one of the parties shall entitle the other Party to terminate the agreement or to suspend its application in whole or in part, notification thereof being made by that Party to the Secretariat of the United Nations and the Secretariat of the Organization of American States.

Ratification and Entry into Force

Article XX

The present Agreement shall enter into force 30 days after the date of exchange of the respective instruments of ratification. Its text shall be transmitted by the Parties to the Secretariat of the United Nations and the Secretariat of the Organisation of American States for registration.

Amendments

Article XXI

The present Agreement may be amended by the Parties at any time by mutual consent. The entry into force of the amendments shall be in accordance with the procedure laid down in Article XX.

Duration

Article XXII

The present Agreement shall be valid for an indefinite period. It may be terminated by either of the Parties by written notification to the other Party, notification thereof being made by the Party terminating the Agreement to the Secretariat of the United Nations and the Secretariat of the Organisation of American States. The termination shall become effective six months after the date of receipt of this notification.

Done in the city of Guadalajara, on the 18th day of the month of July 1991, in duplicate in the Spanish and Portuguese languages, both texts being equally authentic.

ANNEX**Basic Guidelines for the Common System of Accounting and Control of Nuclear Materials****Article I**

1. The Common System of Accounting and Control of Nuclear Materials (the SCCC) is a set of procedures established by the Parties to detect, with a reasonable degree of certainty, whether the nuclear materials in all their nuclear activities have been diverted to uses not authorised under the terms of the present Agreement.

2. The SCCC consists of General Procedures and Implementation Manuals for each category of installation.

Article II

The SCCC shall be based on a structure of nuclear material accounting areas and shall be applied as of one of the following initiating events:

- (a) The production of any nuclear material of suitable composition and purity for direct use in the manufacture of nuclear fuel or in isotopic enrichment, including the subsequent generations of nuclear material produced from such material;
- (b) The import of any nuclear material having the characteristics set forth in paragraph (a) above or any other nuclear materials produced in a subsequent stage of the nuclear fuel cycle.

Article III

The nuclear material shall cease to be subject to the SCCC when:

- (a) It has been moved outside the jurisdiction or control of the Parties; or
- (b) It has been transferred to a non-nuclear use or a nuclear use not relevant in terms of the SCCC; or
- (c) It has been used, diluted or transformed so that it cannot be used for any nuclear use relevant in terms of the SCCC or it is practically irrevocable.

Article IV

The application of the SCCC to nuclear materials used for the nuclear propulsion of any type of vehicle, including submarines, or in other activities which, by their nature, require a special procedure shall have the following special characteristics:

- (a) The suspension of inspections, of access to operational accounting records and of notifications and reports required under the SCCC in relation to these nuclear materials for the duration of their use for the above-mentioned activities;
- (b) The reapplication to these nuclear materials of the procedures referred to in paragraph (a) when they cease to be used for those activities;
- (c) The recording by the ABACC of the total quantity and composition of such nuclear materials under the jurisdiction or control of one of the Parties and all transfers of these materials outside such jurisdiction or control.

Article V

The suitable level of accounting and control of nuclear materials for each installation shall be determined according to the strategic value obtained from analysis of the following variables:

- (a) Category of the nuclear material, taking into account the relevance of its isotopic composition;
- (b) Conversion time;
- (c) Inventory/flow of the nuclear material;
- (d) Category of the installation;
- (e) Degree of importance of the installation in comparison with other existing installations;
- (f) Existence of containment and surveillance methods.

Article VI

The SCCC, where appropriate, shall include such measures as:

- (a) A system of records or reports reflecting, for each nuclear material accounting area, the inventory of nuclear materials and changes in that inventory;
- (b) Provisions for the correct application of the accounting and control procedures and measures;
- (c) Measuring systems to determine the nuclear material inventories and their variations;
- (d) Evaluation of the accuracy and degree of approximation of the measurements and calculations of their uncertainty;
- (e) Procedures to identify, revise and evaluate shipper-receiver differences in the measurements;
- (f) Procedures for carrying out a physical inventory;
- (g) Procedures for determining and evaluating non-accounted material;
- (h) Implementation of containment and surveillance systems.

