

Information Circular

INFCIRC/705

Date: 17 May 2007

General Distribution

Original: English

Agreement between the International Atomic Energy Agency and the Government of the Islamic Republic of Pakistan for the Application of Safeguards in Connection with the Supply of a Nuclear Power Station from the People's Republic of China

1. The text of the Agreement between the International Atomic Energy Agency and the Government of the Islamic Republic of Pakistan for the Application of Safeguards in Connection with the Supply of a Nuclear Power Station from the People's Republic of China is reproduced in this document for the information of all Members of the Agency. The Board of Governors approved the Agreement on 23 November 2006. It was signed in Vienna on 22 February 2007.
2. Pursuant to Section 30 of the Agreement, the Agreement entered into force on 22 February 2007, upon signature by the Director General of the Agency and by the authorised representative of Pakistan.

AGREEMENT BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN FOR THE APPLICATION OF SAFEGUARDS IN CONNECTION WITH THE SUPPLY OF A NUCLEAR POWER STATION FROM THE PEOPLE'S REPUBLIC OF CHINA

WHEREAS the Government of the Islamic Republic of Pakistan (hereinafter referred to as "Pakistan") and the Government of the People's Republic of China (hereinafter referred to as "China") concluded an Agreement for Co-operation in the Peaceful Uses of Nuclear Energy (hereinafter referred to as the Co-operation Agreement) and for the supply of nuclear material, facilities and equipment from China to Pakistan within the framework of the Co-operation Agreement;

WHEREAS pursuant to an arrangement under the Co-operation Agreement China has agreed to supply to Pakistan a 325 MW(e) pressurized light water nuclear power station;

WHEREAS Pakistan has requested the International Atomic Energy Agency (hereinafter referred to as the "Agency") to apply safeguards in connection with the supply of the reactor facility by China to Pakistan and to the nuclear material to be used therein;

WHEREAS the Agency is authorized by its Statute to apply safeguards, inter alia, at the request of a party or parties, to any bilateral arrangement;

WHEREAS the Board of Governors of the Agency (hereinafter referred to as the "Board") acceded to that request on 23 November 2006;

NOW THEREFORE, Pakistan and the Agency have agreed as follows:

DEFINITIONS

Section 1.

For the purpose of this Agreement:

- (a) "Safeguards Document" shall mean Agency document INFCIRC/66/Rev.2.
- (b) "Inspectors Document" shall mean the Annex to Agency document GC(V)/INF/39;
- (c) "facility" shall mean:
 - (i) A principal nuclear facility as defined in paragraph 78 of the Safeguards Document, as well as a critical facility or a separate storage installation;
 - (ii) Any location where nuclear material in amounts greater than one effective kilogram is customarily used;
- (d) "nuclear material" shall mean any source material or special fissionable material as defined in Article XX of the Statute of the Agency;
- (e) "reactor facility" shall mean the reactor facility (confined to the nuclear reactor, reactor pressure vessel, reactor fuel charging and discharging machine, reactor coolant system and reactor control rods only) of the 325 MW(e) pressurized light water enriched uranium reactor supplied by China under the Co-operation Agreement, and any reactor facility (as detailed above) produced therefrom or as a result of its utilization;
- (f) "produced, processed or used" shall mean any utilization or any alteration of the physical or chemical form or composition, including any change of the isotopic composition, of nuclear material.

UNDERTAKINGS BY PAKISTAN AND BY THE AGENCY

Section 2.

Pakistan undertakes that none of the following items shall be used for the manufacture of any nuclear weapon or to further any other military purpose and that such items shall be used exclusively for peaceful purposes and shall not be used for the manufacture of any nuclear explosive device:

- (a) The reactor facilities as defined in Section 1(e) above;
- (b) Any nuclear material supplied by China to Pakistan for use in a reactor facility as defined in Section 1(e) above;
- (c) Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used in or by the use of a reactor facility as defined in Section 1(e) above or in or by the use of any other item referred to in this Section;
- (d) Any other item required to be listed in the Inventory referred to in Section 6.

Section 3.

The Agency undertakes to apply safeguards, in accordance with the terms of this Agreement, to the items referred to in Section 2 so as to ensure, as far as it is able, that no such item is used for the manufacture of any nuclear weapon or to further any other military purpose and that such items are used exclusively for peaceful purposes and not for the manufacture of any nuclear explosive device.

Section 4.

Pakistan undertakes to co-operate with the Agency in the application of the safeguards provided for in this Agreement.

Section 5.

In the event that Pakistan should construct or operate any reactor facility, as defined in Section 1(e) above, it shall arrange to submit such reactor facility to Agency safeguards before such construction or operation commences.

ESTABLISHMENT AND MAINTENANCE OF INVENTORY

Section 6.

The Agency shall establish and maintain an Inventory which shall be divided into three parts.

- (a) The Main Part of the Inventory shall list:
- (i) Any reactor facility as defined in Section 1(e) above;
 - (ii) Any nuclear material supplied by China to Pakistan for use in a reactor facility as defined in Section 1(e) above;
 - (iii) Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used in or by the use of a reactor facility as defined in Section 1(e) above or in or by the use of any other item required to be listed in the Inventory;
 - (iv) Any nuclear material substituted in accordance with paragraph 25 or 26(d) of the Safeguards Document for nuclear material listed in the Main Part of the Inventory;
- (b) The Subsidiary Part of the Inventory shall list any facility while containing, using, processing or fabricating any nuclear material referred to in the Main Part of the Inventory;
- (c) The Inactive Part of the Inventory shall list any nuclear material and any parts of the reactor facility which would normally be listed in the Main Part of the Inventory but which are not so listed because:
- (i) The nuclear material is exempt from safeguards in accordance with the provisions of paragraph 21, 22 or 23 of the Safeguards Document; or
 - (ii) Safeguards on the nuclear material are suspended in accordance with the provisions of paragraph 24 or 25 of the Safeguards Document; or
 - (iii) Safeguards on the parts of a reactor facility as defined in Section 1(e) above are suspended in accordance with Section 15 of this Agreement.

Section 7.

The Agency shall send an up-to-date copy of the Inventory to Pakistan every 12 months and also at any other times specified by Pakistan in a request communicated to the Agency at least two weeks in advance. The Agency may communicate information with respect to the Inventory to China if so requested by China, and shall transmit a copy of any such communication to Pakistan.

NOTIFICATIONS

Section 8.

Pakistan shall notify the Agency of:

- (a) Any arrival in Pakistan of the reactor facility (as defined in Section 1(e) above) supplied by China, or nuclear material supplied by China for use in the reactor facility (as defined in Section 1(e) above); and
- (b) The commencement of construction or operation in Pakistan of any reactor facility produced therefrom or as a result of their utilization.

Such notifications shall be made within thirty days of the arrival of the reactor facility or nuclear material in Pakistan, and of the commencement of construction or operation of a reactor facility as defined in Section 1(e) above in Pakistan, respectively.

Section 9.

Pakistan shall notify the Agency by means of reports in accordance with the Safeguards Document, and with the Subsidiary Arrangements provided for in Section 19(b) of the Agreement, of any nuclear material referred to in Section 6(a)(iii) of the Agreement. Upon receipt of the reports the Agency shall list such material in the Main Part of the Inventory. The Agency may verify the calculations of the amounts of such material and appropriate adjustments in the Inventory shall be made by agreement between Pakistan and the Agency.

Section 10.

Notifications made pursuant to Sections 8(a) and 13 shall specify, inter alia, to the extent relevant, the nuclear and chemical composition, physical form and the quantity of the nuclear material, the type and capacity of the reactor facility where applicable, the date of shipment, the date of receipt, the identity of the consigner and the consignee and any other relevant information. In the case of a facility to be listed in the Subsidiary Part of the Inventory, the type and capacity of that facility and any other relevant information shall be notified.

Section 11.

Pakistan shall promptly notify the Agency of any facility which is required to be listed in the Subsidiary Part of the Inventory.

Section 12.

The notification of transfers referred to in Section 8 may also be made by China. The Agency shall, within thirty days of receiving a notification from Pakistan pursuant to Sections 8 to 11 of this Agreement, inform Pakistan that the items covered by the notification are listed in the Inventory.

TRANSFERS

Section 13.

- (a) Pakistan shall notify the Agency of its intention to transfer any item listed in the Main Part of the Inventory to a facility within its jurisdiction which is not yet listed in the Inventory, and shall provide to the Agency, before such transfer is effected, the necessary information to enable it to arrange to apply safeguards to the items after transfer to such a facility. Pakistan may make such transfer only after the Agency has confirmed that it has concluded arrangements to apply safeguards with respect to the facility in question.
- (b) Pakistan shall notify the Agency of any intended transfer of any item listed in the Main Part of the Inventory to a recipient which is not under the jurisdiction of Pakistan. Except for those items transferred to China which were originally supplied by China to Pakistan under the arrangement, and except in case of spent fuel produced therefrom and transferred to China, such items shall be so transferred only after the Agency has informed Pakistan that it has satisfied itself that the Agency safeguards will apply with respect to such items. Upon receipt by the Agency of the notification of transfer from Pakistan and the confirmation of receipt by the recipient country, such items shall be deleted from the Main Part of the Inventory.

Section 14.

The notifications referred to in Section 13 shall be made to the Agency sufficiently in advance to enable it to make the arrangements required by that Section before the transfer is effected. The Agency shall promptly take any necessary action. The time limits for and the contents of these notifications shall be laid down in the Subsidiary Arrangements referred to in Section 19(b).

EXEMPTION AND SUSPENSION

Section 15.

- (a) The Agency shall exempt from safeguards nuclear material listed in the Main Part of the Inventory 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 Safeguards Document.
- (b) Under conditions specified in the Subsidiary Arrangements, the Agency shall suspend safeguards with respect to any parts of the reactor facility listed in the Main Part of the Inventory which are removed for maintenance or repair.
- (c) Nuclear material or any parts of a reactor facility as defined in Section 1(e) above which are exempted from safeguards or on which safeguards have been suspended shall be deleted from the Main Part of the Inventory and shall be listed in the Inactive Part of the Inventory.

TERMINATION

Section 16.

The safeguards applied pursuant to this Agreement shall be terminated by the Agency under the following conditions:

- (a) On nuclear material and reactor facility listed in the Main Part of the Inventory, upon transfer in accordance with Section 13(b);
- (b) On nuclear material, under the conditions specified in paragraphs 26 and 27 of the Safeguards Document;
- (c) On a reactor facility as defined in Section 1(e) above, as and when Pakistan, China and the Agency have jointly determined that the item in question is no longer usable for any nuclear activity relevant from the point of view of safeguards.

Section 17.

Upon termination of safeguards on any item pursuant to Section 16, the item in question shall be deleted from the Inventory. The Agency shall, within thirty days of deleting the item from the Inventory pursuant to Section 16, inform Pakistan that such a deletion has been made.

SAFEGUARDS PROCEDURES AND SUBSIDIARY ARRANGEMENTS

Section 18.

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

Section 19.

- (a) The safeguards procedures to be applied by the Agency are those specified in the Safeguards Document, as well as such additional procedures as result from technological developments and as may be agreed to between the Agency and Pakistan. If nuclear material or any other item subject to safeguards under this Agreement is to be transferred to a facility within the jurisdiction of Pakistan, the Agency shall have the right to obtain in respect of that facility the information referred to in paragraph 41 of the Safeguards Document and to make the inspection referred to in paragraphs 51 and 52 of the Safeguards Document.
- (b) The Agency shall make Subsidiary Arrangements with Pakistan concerning the implementation of the safeguards procedures referred to in (a) above. The Subsidiary Arrangements shall also include any necessary arrangements for the application of safeguards to a reactor facility as defined in Section 1(e) above, nuclear material and other items subject to this Agreement, and for such containment and surveillance measures as are required for the effective implementation of safeguards. The Subsidiary Arrangements shall enter into force no later than six months before any transfer to Pakistan of nuclear material or the reactor facility takes place.

AGENCY INSPECTORS

Section 20.

The provisions of paragraphs 1 to 10 and 12 to 14 inclusive, of the Inspectors Document shall apply to Agency Inspectors performing functions pursuant to this Agreement. 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 shall be agreed to between the Agency and Pakistan before such a facility or nuclear material is listed in the Inventory.

Section 21.

The relevant provisions of the Agreement on the Privileges and Immunities of the Agency (INFCIRC/9/Rev.2) shall apply to the Agency, its inspectors performing functions under this Agreement and to any property of the Agency used by them in the performance of their functions under this Agreement.

PHYSICAL PROTECTION

Section 22.

Pakistan shall take all suitable measures necessary for the physical protection of the items supplied by China to Pakistan for the 325 MW(e) Nuclear Power Plant. Pakistan shall also take suitable measures for the physical protection of nuclear material subject to this Agreement, taking into account the recommendations made in Agency's document INFCIRC/225/Rev.4.

FINANCE

Section 23.

Pakistan and the Agency shall each bear any expense incurred in the implementation of their responsibilities under this Agreement. The Agency shall reimburse Pakistan for any special expenses, including those referred to in paragraph 6 of the Inspectors Document, incurred by Pakistan or persons under its jurisdiction at the written request of the Agency, if Pakistan 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 either Pakistan or the Agency to comply with this Agreement.

Section 24.

Pakistan 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 facility 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 Pakistan.

NON-COMPLIANCE

Section 25.

If the Board determines in accordance with Article XII.C. of the Statute of the Agency that there has been any non-compliance by Pakistan with this Agreement, the Board shall call upon Pakistan to remedy such non-compliance forthwith, and shall make such reports as it deems appropriate. In the event of failure by Pakistan to take fully corrective action within a reasonable time, the Board may take any other measures provided for in Article XII.C. of the Statute. The Agency shall promptly notify Pakistan in the event of any determination by the Board pursuant to this Section.

INTERPRETATION AND APPLICATION OF THE AGREEMENT AND SETTLEMENT OF DISPUTES

Section 26.

At the request of either Pakistan or the Agency there shall be consultations about any question arising out of the interpretation or application of this Agreement.

Section 27.

- (a) Pakistan and the Agency shall endeavour to settle by negotiation any dispute arising from the interpretation or application of this Agreement.
- (b) Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation or as may otherwise be agreed to by Pakistan and the Agency shall on the request of either Pakistan or the Agency be submitted to an arbitral tribunal composed of three persons as follows:

Pakistan and the Agency 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, the other party may request the President of the International Court of Justice to appoint such 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.

- (c) Two members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of at least two members. 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 Pakistan and the Agency shall be binding on Pakistan and the Agency. The

remuneration of the arbitrators shall be determined on the same basis as that for ad hoc judges of the International Court of Justice.

Section 28.

Decisions of the Board concerning the implementation of this Agreement, except such as relate only to Sections 23 and 24 shall, if they so provide, be given effect immediately by Pakistan and the Agency, pending the final settlement of any dispute.

FINAL CLAUSES

Section 29.

Pakistan and the Agency shall, at the request of either of them, consult about amending this Agreement. If the Board modifies the Safeguards Document, this Agreement shall be amended if Pakistan so requests to take account of such modifications. If the Board modifies the Inspectors Document, this Agreement shall be amended if Pakistan so requests to take account of such modifications.

Section 30.

This Agreement shall enter into force upon signature by or for the Director General of the Agency and by the authorised representative of Pakistan.

Section 31.

This Agreement shall remain in force until, in accordance with its provisions, safeguards have been terminated on all items referred to in Section 2, or until terminated by mutual agreement of the parties to this Agreement.

DONE at Vienna, on the 22 day of February 2007, in duplicate, in the English language.

For the GOVERNMENT OF THE ISLAMIC
REPUBLIC OF PAKISTAN:

(Signed)

Shahbaz
Ambassador of Pakistan to Austria
Permanent Representative to the IAEA

For the INTERNATIONAL ATOMIC
ENERGY AGENCY:

(Signed)

Mohamed ElBaradei
Director General