

Ukraine
agreement

AGREEMENT FOR COOPERATION BETWEEN
THE UNITED STATES OF AMERICA
AND UKRAINE
CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

The Government of the United States of America and the
Government of Ukraine;

Reaffirming their support for strengthening nuclear non-
proliferation measures worldwide;

Mindful of their respective obligations under the Treaty on
the Non-Proliferation of Nuclear Weapons ("NPT"); to which
both the United States of America and Ukraine are parties;

Reaffirming their intention to work closely together and
with other states to urge universal adherence to the NPT
and full realization of the purposes of the preamble and of
all the provisions of the Treaty;

Reaffirming their commitment to ensuring that the
international development and use of nuclear energy for
peaceful purposes are carried out under arrangements that
will to the maximum possible extent further the objectives
of the NPT;

Affirming their support of the objectives of the
International Atomic Energy Agency ("IAEA");

Recognizing the indispensable role of the safeguards system of the IAEA in the maintenance of an effective non-proliferation regime;

Confirming their commitment to the strengthening of IAEA safeguards, including their readiness to take such steps as are necessary to allow the Agency to apply safeguards effectively and efficiently and to attain its inspection goal at facilities in their respective jurisdictions;

Recognizing that they have decided to act in accordance with the principles contained in the Guidelines for Nuclear Transfers of the Nuclear Suppliers Group;

Stressing the importance of Nuclear Suppliers Group principles on full-scope IAEA safeguards as a condition of transfer to non-nuclear weapon states; on the control of dual-use items; and on the exercise of restraint in the export of sensitive items;

Recognizing the importance of maintaining effective nuclear material control and accountancy and physical protection in accordance with international standards;

Desiring to cooperate in the development, use and control of peaceful uses of nuclear energy; and

Mindful that peaceful nuclear activities must be undertaken with a view to protecting the international environment from radioactive, chemical and thermal contamination;

Have agreed as follows:

ARTICLE 1 - DEFINITIONS

For the purposes of this agreement:

(A) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(B) "Component" means a component part of equipment or other item, so designated by agreement of the parties;

(C) "Conversion" means any of the normal operations in the nuclear fuel cycle, preceding fuel fabrication and excluding enrichment, by which uranium is transformed from one chemical form to another -- for example, from UF₆ to UO₂ or from uranium oxide to metal;

(D) "Decommissioning" means the actions taken at the end of a facility's useful life to retire the facility from service in a manner that provides adequate protection for the health and safety of the decommissioning workers and

the general public, and for the environment. These actions can range from closing down the facility and a minimal removal of nuclear material coupled with continuing maintenance and surveillance, to a complete removal of residual radioactivity in excess of levels acceptable for unrestricted use of the facility and its site;

(E) "Equipment" means any reactor, other than one designed or used primarily for the formation of plutonium or uranium 233, or any other item so designated by agreement of the parties;

(F) "High enriched uranium" means uranium enriched to twenty percent or greater in the isotope 235;

(G) "Low enriched uranium" means uranium enriched to less than twenty percent in the isotope 235;

(H) "Major critical component" means any part or group of parts essential to the operation of a sensitive nuclear facility;

(I) "Material" means source material, special nuclear material, byproduct material, radioisotopes other than byproduct material, moderator material, or any other such substance so designated by agreement of the parties;

(J) "Moderator material" means heavy water or graphite or beryllium of a purity suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, or any other such material so designated by agreement of the parties;

(K) "Parties" means the Government of the United States of America and the Government of Ukraine;

(L) "Peaceful purposes" include the use of information, material, equipment and components in such fields as research, power generation, medicine, agriculture and industry but do not include use in, research on, or development of any nuclear explosive device, or any military purpose;

(M) "Person" means any individual or any entity subject to the jurisdiction of either party but does not include the parties to this agreement;

(N) "Reactor" means any apparatus, other than a nuclear weapon or other nuclear explosive device, in which a self-sustaining fission chain reaction is maintained by utilizing uranium, plutonium or thorium or any combination thereof;

(O) "Restricted data" means all data concerning (1) design, manufacture or utilization of nuclear weapons, (2) the

production of special nuclear material, or (3) the use of special nuclear material in the production of energy, but shall not include data of a party which it has declassified or removed from the category of restricted data;

(P) "Sensitive nuclear facility" means any facility designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, heavy water production, or fabrication of nuclear fuel containing plutonium;

(Q) "Sensitive nuclear technology" means any information (including information incorporated in equipment or an important component) which is not in the public domain and which is important to the design, construction, fabrication, operation or maintenance of any sensitive nuclear facility, or other such information which may be so designated by agreement of the parties;

(R) "Source material" means (1) natural uranium, depleted uranium, thorium, or any other material so designated by agreement of the parties, or (2) ores containing one or more of the foregoing materials in such concentration as the parties may agree from time to time;

(S) "Special nuclear material" means (1) plutonium, uranium 233, or uranium enriched in the isotope 235, or (2) any other material so designated by agreement of the parties.

ARTICLE 2 - SCOPE OF COOPERATION

1. The parties shall cooperate in the use of nuclear energy for peaceful purposes in accordance with the provisions of this agreement and their applicable treaties, national laws, regulations and license requirements.

2. Transfer of information, material, equipment and components under this agreement may be undertaken directly between the parties or through authorized persons. Such transfers shall be subject to this agreement and to such additional terms and conditions as may be agreed by the parties.

ARTICLE 3 - TRANSFER OF INFORMATION

1. Information concerning the use of nuclear energy for peaceful purposes may be transferred. Transfers of information may be accomplished through various means, including reports, data banks, computer programs, conferences, visits, and assignments of staff to facilities. Fields which may be covered include, but shall not be limited to, the following:

(A) Development, design, construction, operation, maintenance and use of reactors, reactor experiments, and decommissioning;

(B) The use of material in physical and biological research, medicine, agriculture and industry;

(C) Fuel cycle studies of ways to meet future world-wide civil nuclear needs, including multilateral approaches to guaranteeing nuclear fuel supply and appropriate techniques for management of nuclear wastes;

(D) Safeguards and physical protection of materials, equipment, and components;

(E) Health, safety and environmental considerations related to the foregoing; and

(F) Assessing the role nuclear power may play in national energy plans.

2. This agreement does not require the transfer of any information which the parties are not permitted under their respective treaties, national laws, and regulations to transfer.

3. Restricted data shall not be transferred under this agreement.

4. Sensitive nuclear technology shall not be transferred under this agreement unless provided for by an amendment to this agreement.

ARTICLE 4 - TRANSFER OF MATERIAL, EQUIPMENT AND COMPONENTS

1. Material, equipment and components may be transferred for applications consistent with this agreement. Any special nuclear material transferred to Ukraine under this agreement shall be low enriched uranium, except as provided in paragraph 4. Sensitive nuclear facilities and major critical components thereof shall not be transferred under this agreement, unless provided for by an amendment to this agreement.

2. Low enriched uranium may be transferred for use as fuel in reactor experiments and in reactors, for conversion or fabrication, or for such other purposes as may be agreed by the parties.

3. The quantity of special nuclear material transferred under this agreement shall not at any time be in excess of that quantity the parties agree is necessary for any of the following purposes: use in reactor experiments or the loading of reactors, the efficient and continuous conduct of such reactor experiments or operation of reactors, and the accomplishment of other purposes as may be agreed by the parties.

4. Small quantities of special nuclear material may be transferred for use as samples, standards, detectors,

targets and for such other purposes as the parties may agree. Transfers pursuant to this paragraph shall not be subject to the quantity limitations in paragraph 3.

5. The United States of America shall endeavor to take such actions as are necessary and feasible to ensure a reliable supply of nuclear fuel to Ukraine, including the export of nuclear material on a timely basis and the availability of the capacity to carry out this undertaking during the period of this agreement.

ARTICLE 5 - STORAGE AND RETRANSFERS

1. Plutonium and uranium 233 (except as contained in irradiated fuel elements), and high enriched uranium, transferred pursuant to this agreement or used in or produced through the use of material or equipment so transferred shall only be stored in a facility to which the parties agree.

2. Material, equipment and components transferred pursuant to this agreement and any special nuclear material produced through the use of any such material or equipment shall not be transferred to unauthorized persons or, unless the parties agree, beyond the recipient party's territorial jurisdiction.

ARTICLE 6 - REPROCESSING AND ENRICHMENT

1. Material transferred pursuant to this agreement and material used in or produced through the use of material or equipment so transferred shall not be reprocessed unless the parties agree.

2. Plutonium, uranium 233, high enriched uranium and irradiated source or special nuclear material, transferred pursuant to this agreement or used in or produced through the use of material or equipment so transferred, shall not be altered in form or content, except by irradiation or further irradiation, unless the parties agree.

3. Uranium transferred pursuant to this agreement or used in any equipment so transferred shall not be enriched after transfer unless the parties agree.

ARTICLE 7 - PHYSICAL PROTECTION

1. Adequate physical protection shall be maintained with respect to source or special nuclear material and equipment transferred pursuant to this agreement and special nuclear material used in or produced through the use of material or equipment so transferred.

2. The parties agree to the levels for the application of physical protection set forth in the Annex to this agreement, which may be modified by mutual consent of the parties without amending this agreement. The parties shall maintain adequate physical protection measures in accordance with these levels. These measures shall as a minimum provide protection comparable to the recommendations set forth in the current version, as agreed to by the parties, of IAEA Document INFCIRC/225.

3. The adequacy of physical protection measures maintained pursuant to this article shall be subject to review and consultations by the parties from time to time and whenever either party is of the view that revised measures may be required to maintain adequate physical protection.

4. The parties will keep each other informed through diplomatic channels of those agencies or authorities having responsibility for ensuring that levels of physical protection for nuclear material in their territory or under their jurisdiction or control are adequately met and having responsibility for coordinating response and recovery operations in the event of unauthorized use or handling of material subject to this article. The parties will inform each other through diplomatic channels, as well, of the designated points of contact within their national authorities to cooperate on matters of out-of-country transportation and other matters of mutual concern.

5. The provisions of this article shall be implemented in such a manner as to avoid undue interference in the parties' nuclear activities and so as to be consistent with prudent management practices required for the economic and safe conduct of their nuclear programs.

ARTICLE 8 - NO EXPLOSIVE OR MILITARY APPLICATION

Material, equipment and components transferred pursuant to this agreement and material used in or produced through the use of any material, equipment or components so transferred shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device, or for any military purpose.

ARTICLE 9 - SAFEGUARDS

1. Cooperation under this agreement shall require the application of IAEA safeguards with respect to all nuclear activities within the territory of Ukraine, under its jurisdiction or carried out under its control anywhere. Implementation of a Safeguards Agreement pursuant to Article III (4) of the NPT shall be considered to fulfill this requirement.

2. Source or special nuclear material transferred to Ukraine pursuant to this agreement and any source or

special nuclear material used in or produced through the use of material, equipment or components so transferred shall be subject to safeguards in accordance with the agreement between Ukraine and the IAEA for the application of safeguards in connection with the NPT, signed on September 21, 1995 and entered into force on January 22, 1998.

3. Source or special nuclear material transferred to the United States of America pursuant to this agreement and any source or special nuclear material used in or produced through the use of any material, equipment or components so transferred shall be subject to the agreement between the United States of America and the IAEA for the application of safeguards in the United States of America, done at Vienna November 16, 1977, entered into force on December 9, 1980.

4. If either party becomes aware of circumstances which demonstrate that the IAEA for any reason is not or will not be applying safeguards in accordance with the agreement as provided for in paragraph 2 or paragraph 3, to ensure effective continuity of safeguards the parties shall consult and immediately enter into arrangements with the IAEA or between themselves which conform with IAEA safeguards principles and procedures, which provide assurance equivalent to that intended to be secured by the

system they replace, and which conform with the coverage required by paragraph 2 or paragraph 3.

5. Each party shall take such measures as are necessary to maintain and facilitate the application of safeguards provided for under this article.

6. Each party shall establish and maintain a system of accounting for and control of source and special nuclear material transferred pursuant to this agreement and source and special nuclear material used in or produced through the use of any material, equipment or components so transferred. The procedures for this system shall be comparable to those set forth in IAEA document INFCIRC/153 (corrected), or in any revision of that document agreed to by the parties.

7. Upon the request of either party, the other party shall report or permit the IAEA to report to the requesting party on the status of all inventories of material subject to this agreement.

8. The provisions of this article shall be implemented in such a manner as to avoid hampering, delay or undue interference in the parties' nuclear activities and so as to be consistent with prudent management practices required for the economic and safe conduct of their nuclear programs.

ARTICLE 10 MULTIPLE SUPPLIER CONTROLS

If any agreement between either party and another nation or group of nations provides such other nation or group of nations rights equivalent to any or all of those set forth under Article 5 or 6 with respect to material, equipment or components subject to this agreement, the parties may, upon request of either of them, agree that the implementation of any such rights will be accomplished by such other nation or group of nations.

ARTICLE 11 - CESSATION OF COOPERATION

1. If either party at any time following entry into force of this agreement:

(A) does not comply with the provisions of Article 5, 6, 7 8, or 9; or

(B) terminates, abrogates or materially violates a safeguards agreement with the IAEA;

the other party shall have the rights to cease further cooperation under this agreement and to require the return of any material, equipment and components transferred under

this agreement and any special nuclear material produced through their use.

2. If Ukraine at any time following entry into force of this agreement detonates a nuclear explosive device, the United States of America shall have the same rights as specified in paragraph 1.

3. If either party exercises its rights under this Article to require the return of any material, equipment or components, it shall, after removal from the territory of the other party, reimburse the other party for the fair market value of such material, equipment or components.

ARTICLE 12 - CONSULTATIONS AND ENVIRONMENTAL PROTECTION

1. The parties undertake to consult at the request of either party regarding the implementation of this agreement and the development of further cooperation in the field of peaceful uses of nuclear energy.

2. The parties shall consult, with regard to activities under this agreement, to identify the international environmental implications arising from such activities and shall cooperate in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities under this agreement and in related matters of health and safety.

ARTICLE 13 - SETTLEMENT OF DISPUTES

Any dispute concerning the interpretation or implementation of the provisions of this agreement shall be promptly negotiated by the parties with a view to resolving that dispute.

ARTICLE 14 - ENTRY INTO FORCE AND DURATION

1. This agreement shall enter into force on the date on which the parties exchange diplomatic notes informing each other that they have completed all applicable requirements for its entry into force.

2. This agreement shall remain in force for a period of 30 years. This term may be extended for such additional periods as may be agreed between the parties in accordance with their applicable requirements. The agreement may be terminated at any time by either party on one year's written notice to the other party.

3. Notwithstanding the termination or expiration of this agreement or any cessation of cooperation hereunder for any reason, Articles 5, 6, 7, 8, 9, and 11 shall continue in effect so long as any material, equipment or components subject to these articles remains in the territory of the party concerned or under its jurisdiction or control.

anywhere, or until such time as the parties agree that such material, equipment or components are no longer usable for any nuclear activity relevant from the point of view of safeguards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Agreement.

DONE at *Kiev*, this *6th* day of *May* 1998,
in duplicate, in the English and Ukrainian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

A handwritten signature in dark ink, appearing to read "Steven Pifer".

FOR THE GOVERNMENT OF
UKRAINE:

A handwritten signature in dark ink, appearing to be a stylized name, likely Yulia Tymoshenko.

ANNEX

Pursuant to paragraph 2 of Article 7, the agreed levels of physical protection to be ensured by the competent national authorities in the use, storage and transportation of the materials listed in the attached table shall as a minimum include protection characteristics as below:

Category III

Use and storage within an area to which access is controlled.

Transportation under special precautions including prior arrangements among sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of supplier and recipient states, respectively, in case of international transport specifying time, place and procedures for transferring transport responsibility.

Category II

Use and storage within a protected area to which access is controlled, i.e., an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control, or any area with an equivalent level of physical protection.

Transportation under special precautions including prior arrangements among sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of supplier and recipient states, respectively, in case of international transport, specifying time, place and procedures for transferring transport responsibility.

Category I

Material in this category shall be protected with highly reliable systems against unauthorized use as follows:

Use and storage within a highly protected area, i.e., a protected area as defined for category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their objective the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

Transportation under special precautions as identified above for transportation of categories II and III materials and, in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category I	Category II	Category III ^c
1. Plutonium ^a	Unirradiated ^b	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated ^b - uranium enriched to 20% ²³⁵ U or more - uranium enriched to 10% ²³⁵ U but less than 20% ²³⁵ U - uranium enriched above natural, but less than 10% ²³⁵ U	5 kg or more	Less than 5 kg but more than 1 kg 10 kg or more	1 kg or less but more than 15 g Less than 10 kg but more than 1 kg 10 kg or more
3. Uranium-233	Unirradiated ^b	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
4. Irradiated fuel (The categorization of irradiated fuel in the table is based on international transport considerations. The State may assign a different category for domestic use, storage, and transport taking all relevant factors into account.)			Depleted or natural uranium, thorium or low enriched fuel (less than 10% fissile content) ^{d,e}	

^a All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

^b Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 1 Gy/hr (100 rads/hr) at one meter unshielded

^c Quantities not falling in Category III and natural uranium, depleted uranium and thorium should be protected at least in accordance with prudent management practice.

^d Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

^e Other fuel which by virtue of its original fissile material content is classified as Category I or II before irradiation may be reduced one category level when the radiation level from the fuel exceeds 1 Gy/hr (100 rads/hr) at one meter unshielded.

AGREED MINUTE

During the negotiation of the Agreement for Cooperation Between the United States of America and Ukraine Concerning Peaceful Uses of Nuclear Energy ("the Agreement") signed today, the following understandings, which shall be an integral part of the Agreement, were reached.

Coverage of Agreement

Material, equipment and components transferred from the territory of one party to the territory of the other party, whether directly or through a third country, will be regarded as having been transferred pursuant to the Agreement only upon confirmation, by the appropriate government authority of the recipient party to the appropriate government authority of the supplier party, that such material, equipment or components will be subject to the Agreement.

For the purposes of implementing the rights specified in Articles 5 and 6 with respect to special nuclear material produced through the use of nuclear material transferred pursuant to the Agreement and not used in or produced through the use of equipment transferred pursuant to the

Agreement, such rights shall in practice be applied to that proportion of special nuclear material produced which represents the ratio of transferred material used in the production of the special nuclear material to the total amount of material so used, and similarly for subsequent generations.

Safeguards

If either party becomes aware of circumstances referred to in paragraph 4 of Article 9, either party shall have the rights listed below, which rights shall be suspended if both parties agree that the need to exercise such rights is being satisfied by the application of IAEA safeguards under arrangements pursuant to paragraph 4 of Article 9:

- (1) To review in a timely fashion the design of any equipment transferred pursuant to the Agreement, or of any facility which is to use, fabricate, process, or store any material so transferred or any special nuclear material used in or produced through the use of such material or equipment;
- (2) To require the maintenance and production of records and of relevant reports for the purpose of assisting in ensuring accountability for material transferred pursuant to the Agreement and any source material or special nuclear