

No. 23079

AUSTRALIA
and
PHILIPPINES

Agreement concerning co-operation in peaceful uses of nuclear energy and the transfer of nuclear material (with annex and related letter). Signed at Manila on 8 August 1978

Exchange of notes constituting an agreement rectifying the Pilipino text of the above-mentioned Agreement (with annex). Manila, 7 and 9 September 1982

Authentic texts of the Agreement and annex: English and Pilipino.

Authentic texts of the related letter and exchange of notes with annex: English.

Registered by Australia on 18 September 1984.

AUSTRALIE
et
PHILIPPINES

Accord concernant la coopération pour l'utilisation de l'énergie nucléaire à des fins pacifiques et le transfert de matières nucléaires (avec annexe et lettre connexe). Signé à Manille le 8 août 1978

Échange de notes constituant un accord portant rectification du texte pilipino de l'Accord susmentionné (avec annexe). Manille, 7 et 9 septembre 1982

Textes authentiques de l'Accord et de son annexe : anglais et pilipino.

Textes authentiques de la lettre connexe et de l'échange de notes avec annexe : anglais.

Enregistrés par l'Australie le 18 septembre 1984.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES CONCERNING COOPERATION IN PEACEFUL USES OF NUCLEAR ENERGY AND THE TRANSFER OF NUCLEAR MATERIAL

The Government of Australia and the Government of the Republic of the Philippines:

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

Affirming their support for the various objectives of the Treaty on the Non-Proliferation of Nuclear Weapons, notably those stated in Articles III and IV, and their desire to promote universal adherence to that Treaty;

Recognizing that Australia and the Philippines have under that Treaty undertaken not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices;

Recognizing also that Australia and the Philippines have agreements in force with the International Atomic Energy Agency in connection with the Treaty on the Non-Proliferation of Nuclear Weapons for the application of safeguards^{3, 4} to all nuclear material in all peaceful nuclear activities within their territory, under their jurisdiction or carried out under their control anywhere;

Affirming further that Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world;

Confirming further the desire of both countries to cooperate in the peaceful uses of nuclear energy, as exemplified by their participation in the Regional Cooperation Agreement⁵ with other regional members of the International Atomic Energy Agency;

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

Have agreed as follows:

Article I. The Parties will cooperate in the peaceful uses of nuclear energy, including research and training, exchange of unclassified information and projects of mutual interest as may be agreed between them. This cooperation will be facilitated as may be necessary by specific agreements.

Article II. 1. This Agreement shall apply to:

- (a) All nuclear material transferred for peaceful purposes between the two Parties, whether directly or through third countries;
- (b) Quantities of derived nuclear material proportional to the transferred nuclear material used for their production; and

¹ Came into force on 11 May 1982, the date of the last of the notifications by which the Parties informed each other (on 28 April and 11 May 1982) of the completion of the constitutional requirements, in accordance with article XIV.

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

³ *Ibid.*, vol. 963, p. 203.

⁴ *Ibid.*, vol. 964, p. 83.

⁵ *Ibid.*, vol. 941, p. 157.

(c) Quantities of all subsequent generations of nuclear material determined on the same proportional principle.

2. Nuclear material shall be transferred between the Parties only to a natural or juridical person designated 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.

Article III. Nuclear material referred to in Article II of this Agreement shall remain subject to the provisions of this Agreement so long as it is usable for any nuclear activity relevant from the point of view of the safeguards referred to in Article V of this Agreement; that is, until it shall be determined by the International Atomic Energy Agency or be agreed between the Parties that the material is no longer so usable or that it has been transferred beyond the jurisdiction of the recipient Party in accordance with the provisions of Article VIII of this Agreement.

Article IV. Nuclear material subject to this Agreement shall not be diverted to the development or the manufacture of nuclear weapons or other nuclear explosive devices, or be used in such a way as to further any military purpose.

Article V. 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 Non-Proliferation Treaty safeguards agreement, that Party shall accept safeguards under an agreement or agreements to which it and the International Atomic Energy Agency are parties and which will provide safeguards equivalent in scope and effect to those provided by a Non-Proliferation Treaty safeguards agreement.

Article VI. Notwithstanding the provisions of Article V of this Agreement, if nuclear material subject to this Agreement is present in the territory of a Party and,

(a) 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 V of this Agreement, and

(b) There is no safeguards agreement being administered in the territory of that Party which is satisfactory to both Parties,

the other Party shall have the right to administer in the territory of that Party, in consultation with that Party and with its assistance, safeguards based on the procedures provided for in the Agency's safeguards system, with respect to the nuclear material subject to this Agreement for the exclusive purpose of verifying compliance with Article IV of this Agreement.

Article VII. 1. The Parties agree to take such measures as are necessary to ensure adequate physical protection of nuclear material within their jurisdiction and to apply, as a minimum, physical protection measures which satisfy the levels of physical protection set out in Annex A to this Agreement.

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

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

(a) Transferred beyond the jurisdiction of the recipient Party,

(b) Enriched to more than 20 per cent in the isotope U-235, or

(c) Reprocessed,

only with the prior written agreement of the supplier Party.

2. In considering proposals arising from matters referred to in paragraph I 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.

3. If a Party considers that it is unable to agree to a proposal arising from 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. A Party shall not withhold its agreement to a matter referred to in paragraph I of this Article for the purpose of securing commercial advantage.

Article IX. 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. If nuclear material subject to this Agreement is present in the territory of a Party, that Party shall, upon request, inform the other Party in writing of the overall conclusions of the most recent report by the International Atomic Energy Agency on its verification activities in the territory of the requested Party.

3. The appropriate governmental authorities of both Parties shall establish an administrative arrangement to ensure the effective fulfilment of the obligations under 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 administrative arrangement referred to in paragraph 3 of this Article shall also include the mechanism for financing the cost of reports and records which either Party shall be providing.

5. Each Party shall take all appropriate precautions to preserve the confidentiality of commercial and industrial secrets and other confidential information in its possession as a result of the operation of this Agreement.

Article X. 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 XII of the Statute of the International Atomic Energy Agency¹ that there has been non-compliance with, or abrogation of, a relevant safeguards agreement concluded with the International Atomic Energy Agency by the recipient Party,

to suspend or cancel further transfers 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 IV to VIII inclusive of this Agreement, the Parties shall forthwith consult at the request of either Party. The supplier Party shall have the right to suspend further transfers of nuclear material and to require the recipient Party to take corrective steps. If such corrective steps are not taken within a reasonable time, the supplier Party shall thereupon have the right to cancel further transfers of nuclear material and 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, and vol. 471, p. 334.

Article XI. Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation shall, on the 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 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. 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 XII. For the purposes of this Agreement:

(a) "Appropriate governmental authority" means, in the case of the Philippines, the Philippine Atomic Energy Commission, 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 XX of the Statute of the International Atomic Energy Agency. The term "source material" shall not be interpreted as applying to ore or ore residue. Any determination by the Board of Governors of the International Atomic Energy Agency under Article XX 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 I of Article III 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 Australia and by the Government of the Republic of the Philippines.

Article XIII. 1. Either Party may at any time propose amendments to this Agreement. An amendment agreed between the Parties shall come into force when confirmed by an Exchange of Notes.

2. After this Agreement has been in force for five years the Parties shall meet, if either Party so requests, to review the operation of this Agreement and to take into account relevant developments, including those in the fields of Technology. Thereafter further reviews shall take place, at the request of either Party, at intervals of not less than five years from the date of the previous review.

Article XIV. This Agreement shall enter into force on 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 indefinitely unless it is otherwise agreed between the Parties.

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

DONE at Manila on 8 August 1978 in the English and Filipino languages, the English text to prevail in case of ambiguity.

For the Government
of Australia:

[Signed — Signé]¹

For the Government
of the Republic of the Philippines:

[Signed — Signé]²

ANNEX A

AGREED LEVELS OF PHYSICAL PROTECTION

The agreed levels of physical protection to be ensured by the appropriate governmental authorities in the use, storage and transportation of the materials of the attached table shall as a minimum include protection characteristics as follows:

Category III

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

Transportation under special precautions including prior arrangement between sender, recipient and carrier, and prior agreement between States 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 arrangement between sender, recipient and carrier, and prior agreement between States in case of international transport specifying time, place and procedures for transferring transport responsibility.

Category I

Materials 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 of escorts and under conditions which assure close communication with appropriate response forces.

¹ Signed by J. D. Anthony — Signé par J. D. Anthony.

² Signed by Geronimo Z. Velasco — Signé par Geronimo Z. Velasco.

CATEGORIZATION OF NUCLEAR MATERIAL

| Material | Form | Category | | |
|-----------------------------|---|--------------|------------------------------------|--|
| | | I | II | III |
| 1. Plutonium ^(a) | Unirradiated ^(b) | 2 kg or more | Less than 2 kg but more than 500 g | 500 g or less ^(c) |
| 2. Uranium 235 | Unirradiated ^(b) | 5 kg or more | Less than 5 kg but more than 1 kg | 1 kg or less ^(c) |
| | —uranium enriched to 20% U-235 or more | | | |
| | —uranium enriched to 10% U-235 but less than 20% | | | |
| | —uranium enriched above natural, but less than 10% U-235 ^(d) | — | — | 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 ^(c) |
| 4. Irradiated fuel | | (e) | (e) | Depleted or natural uranium, thorium or low enriched fuel (less than 10% fissile content) ^(e) |

^(a) As identified in the Statute of the International Atomic Energy Agency (IAEA).

^(b) Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.

^(c) Less than a radiologically significant quantity should be exempted.

^(d) Natural uranium, depleted uranium and thorium and quantities of uranium enriched to less than 10% not falling in Category III should be protected in accordance with prudent management practice.

^(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 100 rads/hour at one metre unshielded.

[RELATED LETTER]

8 August 1978

Dear Ambassador Siazon,

In the negotiations between the Philippines and Australia on the Agreement concerning Co-operation in Peaceful Uses of Nuclear Energy and the Transfer of Nuclear Material signed today, the aim 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, as well as foreshadowing the further development of co-operation in the peaceful uses of nuclear energy.

In this context the Philippine delegation sought clarification of Australian intentions as to how the agreement would be implemented and, in the course of the negotiations, the following understandings, which shall be an integral part of the Agreement, were reached.

Uranium Supply

Australia attaches fundamental importance to being a secure and reliable supplier of uranium to other countries for the peaceful uses of nuclear energy. Australia shares

the Philippines' interest in stable and timely supplies of nuclear material under the Agreement for the orderly and efficient operation of the Philippines' nuclear energy program. Australia will endeavour to take such actions as may be practicable, within the framework of its law and policies, to achieve these ends.

Fallback Safeguards

In relation to Article V of the Agreement, the Philippine delegation sought clarification of the requirement for an agreement or agreements which will provide safeguards equivalent in scope and effect to those provided by a Non-Proliferation Treaty safeguards agreement. The Australian delegation noted that one way in which this requirement could be satisfied would be the application of the Agency's safeguards system under agreements which, taken together, cover all nuclear material in peaceful use within the jurisdiction of the country concerned and which provide the same degree of reassurance that material is not diverted to non-peaceful purposes, including nuclear weapons or other nuclear explosive devices.

The Australian delegation acknowledges that an agreement providing for safeguards to be administered by a third party could be a safeguards agreement which is satisfactory to both Parties for purposes of clause (b) of Article VI of the Agreement.

Non-Compliance Provisions

In regard to paragraph 2 of Article X, it is the intention of Australia that, in exercising its rights as a supplier Party, it would take into account the desirability of prior consultations and of allowing, where appropriate, reasonable time for corrective steps.

Yours sincerely,

[Signed]

R. R. FERNANDEZ

Leader of the Australian Delegation

The Honourable Ambassador Domingo Siazon, Jr.
Chairman of Philippine Delegation
Ministry of Foreign Affairs
Padre Faura
Manila

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES RECTIFYING THE FILIPINO TEXT OF THE AGREEMENT OF 8 AUGUST 1978 CONCERNING COOPERATION IN PEACEFUL USES OF NUCLEAR ENERGY AND THE TRANSFER OF NUCLEAR MATERIAL²

I

Note No: 384/82

File No: 217/3/2

The Australian Embassy presents its compliments to the Ministry of Foreign Affairs and has the honour to refer to the Agreement between the Government of Australia and the Government of the Republic of the Philippines concerning cooperation in peaceful uses of nuclear energy and transfer of nuclear material, done at Manila on 8 August 1978.²

In considering the Tagalog Language alternat of the Agreement certain typographic errors have been identified, corrections of which are set out in the Annex to this Note.

The Embassy has the honour to propose that if the foregoing is acceptable to the Government of the Republic of the Philippines, this Note together with the Ministry's confirmatory reply will thereby rectify the Agreement between the Government of Australia and the Government of the Republic of the Philippines concerning cooperation in peaceful uses of nuclear energy and the transfer of nuclear material, done at Manila on 8 August 1978 as from the date of the Ministry's reply.

The Australian Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurances of its highest consideration.

Manila, 7 September 1982

ANNEX

1. Australian alternat, preamble, paragraph 6:
for "Kasunduan ay itay"
read "Kasunduan na may"
2. Australian alternat, Article II, paragraph 3:
for "ng dalwang panig"
read "ng dalawang Panig"
3. Philippine alternat, Article VI, sub-paragraph (a):
for "and Pandaigdig"
read "ang Pandaigdig"
4. Australian alternat, Article X, paragraph 1(b):
for "ng Artikulo XII"
read "ng Artikulo XII"

¹ Came into force on 9 September 1982, the date of the note in reply, in accordance with the provisions of the said notes.

² See p. 112 of this volume.

5. Australian alternat, Article X, paragraph 1(b):
for “na kasunduang panananggalan na”
read “na kasunduang pananggalan na”
6. Australian alternat, Article XII, sub-paragraph (d):
for “dokumento INFCIR/66/Rev.2”
read “dokumento INFCIRC/66/Rev.2”
7. The Table, Philippine alternat:
add “KATEGORISASYON NG NUKLEAR MATERIAL” at top of table.
8. The Table, Australian alternat:
add “KATEGORISASYON NG NUKLEAR MATERIAL” at top of table.
9. The Table, Philippine alternat, beneath heading Katagorya II:
add “k” after “Kulang sa 2. . .”
10. Australian alternat, The Table, note (d):
for “nag naayon”
read “nang naaayon”

II

No. 82-3413

The Ministry of Foreign Affairs presents its compliments to the Australian Embassy and has the honour to refer to the Embassy's Note No. 384/82 of 7 September 1982 regarding the Agreement between the Government of the Republic of the Philippines and the Government of Australia concerning co-operation in peaceful uses of nuclear energy and transfer of nuclear material, done at Manila on 8 August 1978, the text of which reads as follows:

[See note I]

The Ministry of Foreign Affairs has the honour to confirm that the foregoing is acceptable to the Government of the Republic of the Philippines and that the Embassy's Note together with the Ministry's reply will thereby rectify the Agreement between the Government of the Republic of the Philippines and the Government of Australia concerning co-operation in peaceful uses of nuclear energy and the transfer of nuclear material, as from the date of this reply.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy of Australia the assurances of its highest consideration.

Manila, 9 September 1982
