

No. 4234. AGREEMENT FOR CO-OPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOUTH AFRICA CONCERNING THE CIVIL USES OF ATOMIC ENERGY. SIGNED AT WASHINGTON ON 8 JULY 1957<sup>1</sup>

AMENDMENT<sup>2</sup> TO THE ABOVE-MENTIONED AGREEMENT, AS AMENDED AND EXTENDED<sup>1</sup> (WITH EXCHANGE OF NOTES). SIGNED AT WASHINGTON ON 22 MAY 1974

*Authentic text: English.*

*Registered by the United States of America on 17 March 1975.*

The Government of the United States of America and the Government of the Republic of South Africa,

Desiring to amend the Agreement for cooperation between the Government of the United States of America and the Government of the Republic of South Africa concerning the civil uses of atomic energy, signed at Washington on July 8, 1957<sup>3</sup> (hereinafter referred to as the "Agreement for Cooperation"), as amended by the Agreements signed at Washington on June 12, 1962,<sup>4</sup> and July 17, 1967,<sup>5</sup>

Agree as follows:

*Article I.* Article II of the Agreement for cooperation, as amended, is amended by deleting "twenty" and substituting in lieu thereof "fifty" (50).

*Article II.* Article VIII of the Agreement for cooperation, as amended, is amended to read as follows:

"A. Subject to the availability of capacity in United States Commission facilities for uranium enrichment and within the quantity authorized in article IX for transfer, contracts with the Government of the Republic of South Africa, or with authorized persons under its jurisdiction, may be entered into by the United States Commission as herein set forth for the production or enrichment of uranium enriched in the isotope U-235 for use as fuel in power applications undertaken within the Republic of South Africa. It is understood by the Parties that, at such times as the Government of the Republic of South Africa, or such authorized persons, have requirements for such services and are prepared to execute firm contracts which set forth the agreed delivery schedules and other terms and conditions of supply of such services, the Government of the Republic of South Africa or such authorized persons will have access on an equitable basis with other purchasers of such services to uranium enrichment capacity then available in United States Commission facilities and not already allocated.

"B. Additionally, upon request by the Government of the Republic of South Africa or authorized persons under its jurisdiction, the United States Commission may, at its option and under terms and conditions as may be agreed, sell uranium enriched in the isotope U-235 in such amounts as are within the quantity authorized in article IX for transfer for use as fuel in power applications undertaken within the Republic of South Africa.

<sup>1</sup> United Nations, *Treaty Series*, vol. 290, p. 147, and annex A in volumes 458 and 692.

<sup>2</sup> Came into force on 28 June 1974, the date on which each Government received from the other Government written notification that it had complied with all statutory and constitutional requirements to that effect, in accordance with article VII.

<sup>3</sup> United Nations, *Treaty Series*, vol. 290, p. 147.

<sup>4</sup> *Ibid.*, vol. 458, p. 328.

<sup>5</sup> *Ibid.*, vol. 692, p. 428.

“C. Under such terms and conditions as may be agreed, the United States Commission may transfer (including, *inter alia*, supply through enrichment services contracts) to the Government of the Republic of South Africa, or authorized persons under its jurisdiction, uranium enriched in the isotope U-235 for use as fuel in reactor experiments and reactors within the Republic of South Africa other than those covered under paragraphs A and B of this article, including reactors for research, materials testing, experimental, scientific, and industrial uses.

“D. Special nuclear material other than uranium enriched in the isotope U-235 may be transferred to the Government of the Republic of South Africa, or to authorized persons under its jurisdiction, for use as fuel in reactors and reactor experiments within the Republic of South Africa, provided that, if the transfers are made by the United States Commission, it may transfer quantities of such material only to the extent that they fall within an authorized ceiling therefor set forth in article IX for transfer and that the terms and conditions of each such transfer shall be agreed upon in advance.

“E. The enriched uranium supplied under this Agreement may contain up to twenty percent (20%) in the isotope U-235. A portion of the uranium enriched in the isotope U-235 so supplied may be made available as material containing more than twenty percent (20%) in the isotope U-235 when there is a technical or economic justification for such a transfer.

“F. Subject to the provisions of article IX, the quantity of uranium enriched in the isotope U-235 transferred under this article or article VII and under the jurisdiction of the Government of the Republic of South Africa for the fueling of reactors or reactor experiments shall not at any time be in excess of the quantity thereof necessary for the loading of such reactors or reactor experiments, plus such additional quantity as, in the opinion of the Parties, is necessary for the efficient and continuous operation of such reactors or reactor experiments.

“G. When any special nuclear material received from the United States of America requires reprocessing, or any irradiated fuel elements containing fuel material received from the United States of America are to be removed from a reactor and are to be altered in form or content, such reprocessing or alteration shall be performed in facilities acceptable to both Parties upon a joint determination that the provisions of article X may be effectively applied.

“H. Special nuclear material produced as a result of irradiation processes in any part of the fuel that may be leased by the United States Commission under this Agreement shall be for the account of the lessee and, after reprocessing as provided in paragraph G of this article, title to such produced material shall be in the lessee unless the United States Commission and the lessee otherwise agree.

“I. Special nuclear material produced through the use of material transferred to the Government of the Republic of South Africa or to authorized persons under its jurisdiction pursuant to this Agreement may be transferred to any other nation or group of nations, provided that such nation or group of nations has an appropriate agreement for cooperation with the Government of the United States of America or guarantees the use of such special nuclear material for peaceful purposes under safeguards acceptable to the Parties.

“J. Some atomic energy materials which may be provided in accordance with this Agreement are harmful to persons and property unless handled and used carefully. After delivery of such materials, the Government of the Republic of South Africa shall bear all responsibility, insofar as the Government of the United States of America is concerned, for the safe handling and use of such materials. With respect to any special nuclear material or fuel elements which the United States Commission may, pursuant to this Agreement, lease to the Government of the Republic of South Africa or to any person under its jurisdiction, the Government of the Republic of

South Africa shall indemnify and save harmless the Government of the United States of America against any and all liability (including third party liability) for any cause whatsoever arising out of the production or fabrication, the ownership, the lease and the possession and use of such special nuclear material or fuel elements after delivery by the United States Commission to the Government of the Republic of South Africa or to any person under its jurisdiction.”

*Article III.* Article IX of the Agreement for cooperation, as amended, is amended to read as follows:

“The separative work required to produce the uranium enriched in the isotope U-235 transferred under this Agreement from the United States of America to the Republic of South Africa for power applications shall not exceed that necessary to support the fuel cycles of reactors having a total installed capacity of two thousand (2,000) megawatts (electric).”

*Article IV.* A. Paragraph A of article X of the Agreement for cooperation is amended to read as follows:

“The Government of the United States of America and the Government of the Republic of South Africa emphasize their common interest in assuring that any material, equipment or device made available to the Government of the Republic of South Africa or any person under its jurisdiction pursuant to this Agreement shall be used solely for civil purposes.”

B. Subparagraph B3 of article X of the Agreement for cooperation, as amended, is amended to read as follows:

“To require the deposit in storage facilities designated by the United States Commission of any of the special nuclear material referred to in subparagraph B2 of this article which is not currently utilized for civil purposes in the Republic of South Africa and which is not transferred pursuant to article VIII, paragraph I, or otherwise disposed of pursuant to an arrangement mutually acceptable to the Parties.”

*Article V.* Article XI of the Agreement for cooperation, as amended, is amended to read as follows:

“The Government of the Republic of South Africa guarantees that:

- “(1) Safeguards provided in article X shall be maintained.
- “(2) No material, including equipment and devices, transferred to the Government of the Republic of South Africa or authorized persons under its jurisdiction by purchase or otherwise pursuant to this Agreement, and no special nuclear material produced through the use of such material, equipment and devices will be used for atomic weapons, or for research on or development of atomic weapons, or for any other military purpose.
- “(3) No material, including equipment and devices, transferred to the Government of the Republic of South Africa or authorized persons under its jurisdiction pursuant to this Agreement will be transferred to unauthorized persons or beyond the jurisdiction of the Government of the Republic of South Africa except as the United States Commission may agree to such a transfer to the jurisdiction of another nation or group of nations, and then only if, in the opinion of the United States Commission, the transfer of the material is within the scope of an Agreement for cooperation between the Government of the United States of America and the other nation or group of nations.”

*Article VI.* Article XII of the Agreement for cooperation, as amended, is amended to read as follows:

“A. The Government of the United States of America and the Government of the Republic of South Africa note that, by an Agreement signed by them and the

International Atomic Energy Agency on July 26, 1967,<sup>1</sup> the Agency has been applying safeguards to materials, equipment and facilities transferred to the jurisdiction of the Government of the Republic of South Africa under this Agreement. The Parties, recognizing the desirability of continuing to make use of the facilities and services of the International Atomic Energy Agency, agree that Agency safeguards shall continue to apply to materials, equipment and facilities transferred under this Agreement.

“B. The continued application of Agency safeguards pursuant to this article will be accomplished either as provided in the above-mentioned trilateral agreement among the Parties and the Agency, as it may be amended from time to time or supplanted by a new trilateral agreement, or as provided in an agreement which may be entered into between the International Atomic Energy Agency and the Government of the Republic of South Africa pursuant to article III of the Treaty on the Non-Proliferation of Nuclear Weapons.<sup>2</sup> It is understood that, without modification of this Agreement, the safeguards rights accorded to the Government of the United States of America by article X of this Agreement will be suspended during the time and to the extent that the Government of the United States of America agrees that the need to exercise such rights is satisfied by a safeguards agreement as contemplated in this paragraph.

“C. In the event the applicable safeguards agreement referred to in paragraph B of this article should be terminated prior to the expiration of this Agreement and the Parties should fail to agree promptly upon resumption of Agency safeguards, either Party may, by notification, terminate this Agreement. In the event of such termination by either Party, the Government of the Republic of South Africa shall, at the request of the Government of the United States of America, return to the Government of the United States of America all special nuclear material received pursuant to this Agreement and still in its possession or in the possession of persons under its jurisdiction. The Government of the United States of America will compensate the Government of the Republic of South Africa or the authorized persons under its jurisdiction for their interest in such material so returned at the United States Commission's schedule of prices then in effect in the United States of America.”

*Article VII.* This Amendment shall enter into force on the date on which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for entry into force of such Amendment and shall remain in force for the period of the Agreement for co-operation, as amended.

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

DONE at Washington, in duplicate, this twenty-second day of May, 1974.

For the Government of the United States of America:

[Signed — Signé]<sup>3</sup>

[Signed — Signé]<sup>4</sup>

For the Government of the Republic of South Africa:

[Signed — Signé]<sup>5</sup>

<sup>1</sup> United Nations, *Treaty Series*, vol. 614, p. 217.

<sup>2</sup> *Ibid.*, vol. 729, p. 161.

<sup>3</sup> Signed by Donald B. Easum — Signé par Donald B. Easum.

<sup>4</sup> Signed by Dixy Lee Ray — Signé par Dixy Lee Ray.

<sup>5</sup> Signed by J. S. F. Botha — Signé par J. S. F. Botha.

## EXCHANGE OF NOTES

## I

DEPARTMENT OF STATE  
WASHINGTON

May 22, 1974

Excellency:

I have the honor to refer to the proposed amendment to the Agreement for co-operation between our two Governments concerning civil uses of atomic energy.

In connection with this Agreement and with the related trilateral safeguards agreement between our two Governments and the International Atomic Energy Agency, and consistent with the position of this Government in the case of all other agreements of these types to which the Government of the United States of America is a party, it is understood that the material subject thereto will not be used for any nuclear explosive device, regardless of how the device itself is intended to be used, and that the safeguards provided under the trilateral agreement will verify that such material is not so used.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Acting Secretary of State:

DONALD B. EASUM

His Excellency Johan S. F. Botha  
Ambassador of South Africa

## II

EMBASSY OF SOUTH AFRICA      AMBASSADE VAN SUID-AFRIKA  
WASHINGTON, D.C.

22 May 1974

Mr. Secretary,

I have the honour to acknowledge receipt of your note of today which reads as follows:

[See note I]

Please accept, Mr. Secretary, the renewed assurances of my highest consideration.

J. S. F. BOTHA

Ambassador Extraordinary and Plenipotentiary  
of the Republic of South AfricaThe Honourable the Secretary of State  
U.S. Department of State  
Washington, D.C.