

105th Congress, 2d Session - - - - - House Document 105-183

PROPOSED AGREEMENT FOR COOPERATION BETWEEN  
THE UNITED STATES AND KAZAKHSTAN

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

THE TEXT OF A PROPOSED AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KAZAKHSTAN CONCERNING PEACEFUL USES OF NUCLEAR ENERGY, WITH ACCOMPANYING ANNEX AND AGREED MINUTE, PURSUANT TO 42 U.S.C. 2153(b)



JANUARY 28, 1998.—Message and accompanying papers referred to the Committee on International Relations and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

59-011

WASHINGTON : 1998

*To the Congress of the United States:*

I am pleased to transmit to the Congress, pursuant to sections 123b. and 123d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b), (d)), the text of a proposed Agreement for Cooperation Between the Government of the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy, with accompanying annex and agreed minute. I am also pleased to transmit my written approval, authorization, and determination concerning the agreement, and the memorandum of the Director of the United States Arms Control and Disarmament Agency with the Nuclear Proliferation Assessment Statement concerning the agreement. The joint memorandum submitted to me by the Secretary of State and the Secretary of Energy, which includes a summary of the provisions of the agreement and various other attachments, including agency views, is also enclosed.

The proposed agreement with the Republic of Kazakhstan has been negotiated in accordance with the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 and as otherwise amended. In my judgment, the proposed agreement meets all statutory requirements and will advance the non-proliferation and other foreign policy interests of the United States. The agreement provides a comprehensive framework for peaceful nuclear cooperation between the United States and Kazakhstan under appropriate conditions and controls reflecting our common commitment to nuclear nonproliferation goals.

Kazakhstan is a nonnuclear weapons state party to the Treaty on the Nonproliferation of Nuclear Weapons (NPT). Following the dissolution of the Soviet Union, the Republic of Kazakhstan agreed to the removal of all nuclear weapons from its territory. It has a full-scope safeguards agreement in force with the International Atomic Energy Agency (IAEA) to implement its safeguards obligations under the NPT. It has enacted national legislation to control the use and export of nuclear and dual-use materials and technology.

The proposed agreement with the Republic of Kazakhstan permits the transfer of technology, material, equipment (including reactors), and components for nuclear research and nuclear power production. It provides for U.S. consent rights to retransfer, enrichment, and reprocessing as required by U.S. law. It does not permit transfers of any sensitive nuclear technology, restricted data, or sensitive nuclear facilities or major critical components thereof. In the event of termination, key conditions and controls continue with respect to material and equipment subject to the agreement.

I have considered the views and recommendations of the interested agencies in reviewing the proposed agreement and have determined that its performance will promote, and will not constitute an unreasonable risk to, the common defense and security. Accord-

ingly, I have approved the agreement and authorized its execution and urge that the Congress give it favorable consideration.

Because this agreement meets all applicable requirements of the Atomic Energy Act, as amended, for agreements for peaceful nuclear cooperation, I am transmitting it to the Congress without exempting it from any requirement contained in section 123a. of that Act. This transmission shall constitute a submittal for purposes of both section 123b. and 123d. of the Atomic Energy Act. The Administration is prepared to begin immediately the consultations with the Senate Foreign Relations and House International Relations Committees as provided in section 123b. Upon completion of the 30-day continuous session period provided for in section 123b., the 60-day continuous session provided for in section 123d. shall commence.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *January 28, 1998.*

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

The United States of America and the Republic of  
Kazakhstan;

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 the Republic  
of Kazakhstan 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;

Stating their commitment to ensuring that the  
international development and use of nuclear energy for  
peaceful purposes are carried out under arrangements which  
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 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 UF<sub>6</sub> to UO<sub>2</sub> 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 United States of America and the Republic of Kazakhstan;

(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) 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 needs in the field of civil nuclear energy supply, 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 the Republic of

Kazakhstan 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.

#### ARTICLE 5 - STORAGE AND RETRANSFERS

1. Plutonium, uranium 233 and high enriched uranium, if not contained in irradiated nuclear fuel, 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 the Republic of Kazakhstan, 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 the Republic of Kazakhstan 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 the Republic of Kazakhstan and

the IAEA for the application of safeguards in connection with the NPT, signed on July 26, 1995 and entered into force on August 11, 1995.

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 18, 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 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 the Republic of Kazakhstan 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. If the United States of America at any time following entry into force of this agreement detonates a nuclear explosive device using nuclear material transferred pursuant to this agreement or produced through the use of nuclear material or equipment so transferred, the Republic of Kazakhstan 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

current 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 environmental 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 national requirements for its entry into force.

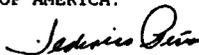
2. This agreement shall remain in force for a period of 30 years. This term may be extended for such additional periods as may be agreed between the parties in accordance with their applicable requirements. The agreement may be terminated at any time by either party on one year's written notice to the 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 Washington this 18th day of November, 1997, in duplicate, in the English and Kazakh languages, both texts being equally authentic. In case of divergence, the English language text shall prevail.

FOR THE UNITED STATES  
OF AMERICA:



FOR THE REPUBLIC  
OF KAZAKHSTAN:



## 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 <sup>a</sup>
1. Plutonium <sup>a</sup>	Unirradiated <sup>b</sup>	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 <sup>b</sup> - uranium enriched to 20% <sup>235</sup> U or more - uranium enriched to 10% <sup>235</sup> U but less than 20 % <sup>235</sup> U - uranium enriched above natural, but less than 10 % <sup>235</sup> 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 15g Less than 10kg but more than 1 kg 10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	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) <sup>4b</sup>	

- 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  $1 \text{ Gy/hr}$  ( $100 \text{ rads/hr}$ ) 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 while the radiation level from the fuel exceeds  $1 \text{ Gy/hr}$  ( $100 \text{ rads/hr}$ ) at one meter unshielded.

## AGREED MINUTE

During the negotiation of the Agreement for Cooperation Between the United States of America and the Republic of Kazakhstan 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 material used in or produced through the use of any material, equipment components so transferred; and

(3) To designate personnel, in consultation with the other party, who shall have access to all places and data necessary to account for the material in paragraph 2, to inspect any equipment or facility referred to in paragraph 1, and to install any devices and make such

independent measurements as may be deemed necessary to account for such material. Such personnel shall, if either party so requests, be accompanied by personnel designated by the other party.

FOR THE UNITED STATES  
OF AMERICA:



FOR THE REPUBLIC OF  
KAZAKHSTAN:



THE WHITE HOUSE  
WASHINGTON  
November 17, 1997

Presidential Determination  
No. 98-5

MEMORANDUM FOR THE SECRETARY OF STATE  
THE SECRETARY OF ENERGY

SUBJECT: Presidential Determination on the Proposed  
Agreement for Cooperation Between the Government  
of the United States of America and the Republic  
of Kazakhstan Concerning Peaceful Uses of Nuclear  
Energy

I have considered the proposed Agreement for Cooperation Between the Government of the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the Federal Register.

*William J. Clinton*

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY  
Washington, D.C. 20451

THE DIRECTOR

NOV 14 1997

## MEMORANDUM FOR THE PRESIDENT

**SUBJECT:** Views and Recommendations on the Proposed Agreement for Cooperation Between the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Atomic Energy

After gaining its independence in 1991, Kazakhstan had one of the world's largest nuclear arsenals deployed within its territory. However, Kazakhstan made clear that it had no intention of becoming a nuclear weapon state. By 1992, Russia announced that all tactical nuclear weapons had been removed from Kazakhstan and by 1995 and that all remaining nuclear warheads were gone. Kazakhstan joined the NPT in 1994 and promptly negotiated an IAEA safeguards agreement to cover all its peaceful nuclear facilities. Kazakhstan signed the Comprehensive Test Ban Treaty in 1996 and has joined with other Central Asian states in supporting the creation of a regional nuclear weapons free zone. These actions represent a significant contribution to global and regional security and to U.S. nuclear nonproliferation objectives.

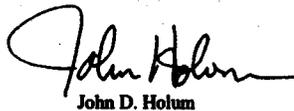
This commitment by Kazakhstan to nuclear nonproliferation provides a solid foundation for an affirmative decision by the United States to enter into the proposed Agreement. The agreement expands our bilateral civil nuclear cooperation with Kazakhstan and demonstrates the benefits that can accrue to countries that make strong commitments to nuclear nonproliferation. This agreement also helps to fulfill U.S. obligations under Article IV of the NPT to engage in the fullest possible civil nuclear cooperation with NPT parties.

Kazakhstan has also demonstrated its support for nuclear nonproliferation by entering into an extensive cooperative program with the United States to upgrade Kazakhstan's system for the protection, control and accounting of nuclear material. The improvement of this system will facilitate the application of effective IAEA safeguards, and help provide maximum protection for high enriched uranium (HEU) and plutonium in spent fuel at Kazakhstan's fast breeder reactor. Kazakhstan has taken steps to reduce the large inventories of HEU left on its territory (including having the United States remove 600 kilograms) and has announced that the breeder will be shut down in 2003. The United States and Kazakhstan are engaged in discussions about options for the secure and safe long-term disposition of the spent fuel from the breeder. These efforts by Kazakhstan strongly support a high priority of U.S. policy which is to minimize the use of weapon-usable material in civil applications and to eliminate such stockpiles where possible.

Kazakhstan has taken important steps to put into place an effective nationwide system of nuclear export controls. Kazakhstan is not a member of the Nuclear Suppliers Group (NSG), but has stated that its international nuclear cooperation will be in accordance with the guiding principles of the NSG and that it will avoid assisting nuclear programs of countries of proliferation concern. It should be noted that there have been published reports that Pakistan and India have expressed interest in civil nuclear cooperation with Kazakhstan. The NSG full-scope safeguards requirement places a virtual embargo on nuclear cooperation with India and Pakistan because of their unsafeguarded nuclear activities. The United States will continue its bilateral consultations to ensure that Kazakhstan understands the comprehensive nature of NSG controls and to confirm that it will avoid nuclear cooperation with countries having unsafeguarded nuclear activities as well as with others which pose a nuclear proliferation risk such as Iran.

Kazakhstan's efforts to ensure the application of effective IAEA safeguards, physical protection measures, and nuclear export controls are ongoing activities that have not reached a maximum level of effectiveness. However, major strides have been taken in just a few years due to the strong commitment of Kazakhstan's leaders to nuclear nonproliferation principles, and we are confident that progress will continue. The United States will continue to work with, and to provide assistance to, Kazakhstan in these areas. As with all U.S. nuclear trading partners, Kazakhstan's policies and practices with regard to safeguards, physical protection, and nuclear export controls will be considered in the context of implementing the proposed Agreement. We expect that our bilateral consultations will continue to be an effective means for pursuing the important nuclear nonproliferation goals that we jointly share.

In conclusion, the scope and depth of the nuclear nonproliferation policies adopted by Kazakhstan over the past few years demonstrate its strong support for international norms in this area. Entry into force of the proposed Agreement will serve important foreign policy and national security interests of the United States with particular emphasis on nuclear nonproliferation goals. I recommend that you approve the proposed Agreement, that you determine that the performance of the proposed Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security, and that you authorize the signature of the proposed Agreement.



John D. Holum



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 14, 1997

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

In accordance with the provisions of Section 123 of the Atomic Energy Act, as amended, the Nuclear Regulatory Commission has reviewed the proposed Agreement for Cooperation with Kazakhstan and supporting draft documents. It is the view of the Commission that the proposed Agreement includes all of the provisions required by Section 123 of the Atomic Energy Act, as amended. The Commission therefore recommends that you make the requisite statutory determination, approve the Agreement, and authorize its execution.

Respectfully,

A handwritten signature in cursive script, appearing to read "Shirley Ann Jackson".

Shirley Ann Jackson

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DEPARTMENT OF STATE  
WASHINGTON

November 15, 1997

MEMORANDUM FOR: THE PRESIDENT

FROM: Strobe Talbott <sup>(ST)</sup>  
Acting Secretary of State  
*Elizabeth A. Moler*  
Elizabeth A. Moler  
Acting Secretary of Energy

SUBJECT: Proposed Agreement for Cooperation Between  
the United States of America and the  
Republic of Kazakhstan Concerning  
Peaceful Uses of Nuclear Energy

The United States and Kazakhstan have recently concluded negotiations on an agreement for peaceful nuclear cooperation. This memorandum recommends that you sign the determination, approval and authorization at Attachment 1, which, pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended, sets forth: (1) your approval of the proposed agreement; (2) your determination that performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security; and (3) your authorization for execution of the agreement.

If you authorize execution of the agreement, it will be signed by representatives of the United States and Kazakhstan. Afterward, in accordance with sections 123 b. and d. of the Act, it will be submitted to both Houses of Congress. A draft letter of transmittal to the Congress is at Attachment 2 for your signature. (This letter will be held until after the agreement is signed.) The agreement must lie before Congress for 90 days of continuous session. Unless a joint resolution of disapproval is enacted, the agreement may thereafter be brought into force.

The text of the proposed agreement is at Attachment 3. It includes an agreed minute, which is an integral part of the agreement. A summary of basic provisions is at Attachment 4. The proposed agreement provides a comprehensive framework for peaceful nuclear cooperation

between the United States and Kazakhstan under appropriate conditions and controls reflecting our common commitment to nuclear non-proliferation. The agreement has an initial term of 30 years and may be extended by agreement of the parties in accordance with their applicable requirements.

The proposed agreement permits the transfer of technology, material (including low enriched uranium), equipment (including reactors), and components for both nuclear research and nuclear power purposes. It does not permit transfers of any sensitive nuclear technology or facilities. In our judgment the proposed agreement meets all requirements for new agreements for peaceful nuclear cooperation set forth in section 123 a. of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act (NNPA) of 1978.

The agreed minute contains certain important understandings relating to implementation of the agreement, including provisions regarding the implementation of safeguards and US fallback safeguards rights.

Section 407 of the NNPA directs that the United States seek to include in agreements for peaceful nuclear cooperation provisions for identifying environmental implications and protection of the international environment. Article 12(2) of the proposed agreement satisfies these provisions.

In accordance with the provisions of section 123 of the Atomic Energy Act, the proposed agreement was negotiated by the Department of State, with the technical assistance and concurrence of the Department of Energy and in consultation with the Arms Control and Disarmament Agency (ACDA). The views and recommendations of the Director of ACDA are at Attachment 5. A Nuclear Proliferation Assessment Statement concerning the proposed agreement is being submitted to you separately by the Director of ACDA. The proposed agreement has also been reviewed by the members of the Nuclear Regulatory Commission. Their views are at Attachment 6.

Kazakhstan is a non-nuclear weapon state party to the Treaty on the Nonproliferation of Nuclear Weapons (NPT). Following the dissolution of the Soviet Union, Kazakhstan agreed to the removal of all nuclear weapons from its territory. It has a full-scope safeguards agreement in force with the International Atomic Energy Agency (IAEA) to implement its safeguards obligations under the NPT. It has enacted national legislation to control the use and export of nuclear and dual-use materials and technology. A more detailed discussion of these and other significant actions that Kazakhstan has taken to demonstrate its commitment to

nuclear non-proliferation is provided in ACDA's Nuclear Proliferation Assessment Statement.

In our judgment, the agreement text meets all US statutory requirements and will serve important US non-proliferation and other foreign policy interests. We recommend, therefore, that you determine, pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended, that performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security; and that you approve the agreement and authorize its execution.

RECOMMENDATION

That you sign the determination, approval and authorization at Attachment 1 and the transmittal to Congress at Attachment 2. (The transmittal will be held until the agreement itself is signed.)

**ATTACHMENTS**

1. Draft Determination, Approval and Authorization
2. Draft Transmittal to the Congress (To be held until after the agreement is signed)
3. Proposed Agreement for Cooperation Between the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy
4. Summary of Basic Provisions of the Agreement
5. Views and Recommendations of the Director of the Arms Control and Disarmament Agency
6. Views of the Members of the Nuclear Regulatory Commission

MEMORANDUM FOR: THE SECRETARY OF STATE  
THE SECRETARY OF ENERGY

SUBJECT: Presidential Determination on the Proposed  
Agreement for Cooperation Between the  
United States of America and the Republic  
of Kazakhstan Concerning Peaceful Uses of  
Nuclear Energy

I have considered the proposed Agreement for Cooperation Between the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to Section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153 (b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

William J. Clinton

Draft Transmittal Letter

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153 (b), (d)), the text of a proposed Agreement for Cooperation Between the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy, with accompanying annex and agreed minute. I am also pleased to transmit my written approval, authorization and determination concerning the agreement, and the memorandum of the Director of the United States Arms Control and Disarmament Agency with the Nuclear Proliferation Assessment Statement concerning the agreement. The joint memorandum submitted to me by the Secretary of State and the Secretary of Energy, which includes a summary of the provisions of the agreement and various other attachments, including agency views, is also enclosed.

The proposed agreement with the Republic of Kazakhstan has been negotiated in accordance with the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 and as otherwise amended. In my judgment, the proposed agreement meets all statutory requirements and will advance the non-proliferation and other foreign policy interests of

the United States. The agreement provides a comprehensive framework for peaceful nuclear cooperation between the United States and Kazakhstan under appropriate conditions and controls reflecting our common commitment to nuclear non-proliferation goals.

Kazakhstan is a non-nuclear weapon state party to the Treaty on the Nonproliferation of Nuclear Weapons (NPT). Following the dissolution of the Soviet Union, the Republic of Kazakhstan agreed to the removal of all nuclear weapons from its territory. It has a full-scope safeguards agreement in force with the International Atomic Energy Agency (IAEA) to implement its safeguards obligations under the NPT. It has enacted national legislation to control the use and export of nuclear and dual-use materials and technology.

The proposed agreement with the Republic of Kazakhstan permits the transfer of technology, material, equipment (including reactors) and components for nuclear research and nuclear power production. It provides for US consent rights to retransfers, enrichment and reprocessing as required by US law. It does not permit transfers of any sensitive nuclear technology, restricted data, or sensitive nuclear facilities or major critical components thereof. In the event of termination key conditions and controls continue with respect to material and equipment subject to the agreement.

I have considered the views and recommendations of the interested agencies in reviewing the proposed agreement and have determined that its performance will promote, and will not constitute an unreasonable risk to, the common defense and security. Accordingly, I have approved the agreement and authorized its execution and urge that the Congress give it favorable consideration.

Because this agreement meets all applicable requirements of the Atomic Energy Act, as amended, for agreements for peaceful nuclear cooperation, I am transmitting it to the Congress without exempting it from any requirement contained in section 123 a. of that Act. This transmission shall constitute a submittal for purposes of both sections 123 b. and 123 d. of the Atomic Energy Act. The Administration is prepared to begin immediately the consultations with the Senate Foreign Relations and House International Relations Committees as provided in section 123 b. Upon completion of the 30-day continuous session period provided for in section 123 b., the 60-day continuous session period provided for in section 123 d. shall commence.

THE WHITE HOUSE,

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

The Republic of Kazakhstan and the United States of  
America;

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 Republic of Kazakhstan and the United  
States of America 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;

Stating their commitment to ensuring that the  
international development and use of nuclear energy for  
peaceful purposes are carried out under arrangements which

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 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 UF<sub>6</sub> to UO<sub>2</sub> 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 Republic of Kazakhstan and the United States of America;

(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) 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 needs in the field of civil nuclear energy supply, 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 the Republic of Kazakhstan 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.

#### ARTICLE 5 - STORAGE AND RETRANSFERS

1. Plutonium, uranium 233 and high enriched uranium, if not contained in irradiated nuclear fuel, 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 the Republic of Kazakhstan, 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 the Republic of Kazakhstan 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 the Republic of Kazakhstan and the IAEA for the application of safeguards in connection with the NPT, signed on July 26, 1995 and entered into force on August 11, 1995.

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 18, 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 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 the Republic of Kazakhstan 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. If the United States of America at any time following entry into force of this agreement detonates a nuclear explosive device using nuclear material transferred pursuant to this

agreement or produced through the use of nuclear material or equipment so transferred, the Republic of Kazakhstan 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 current 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 environmental 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 national 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 Washington this     day of             , 1997,  
in duplicate, in the English language. Kazakh and Russian  
language texts shall be prepared which shall be considered  
equally authentic upon an exchange of diplomatic notes  
between the parties confirming their conformity with the

English language text. Subsequently, in case of  
divergence, the English language text shall prevail.

FOR THE REPUBLIC  
OF KAZAKHSTAN:

FOR THE UNITED STATES  
OF AMERICA:

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 <sup>a</sup>
1. Plutonium *	Unirradiated <sup>b</sup>	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 <sup>b</sup> - uranium enriched to 20% <sup>235</sup> U or more - uranium enriched to 10% <sup>235</sup> U but less than 20 % <sup>235</sup> U - uranium enriched above natural, but less than 10 % <sup>235</sup> 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 15g Less than 10kg but more than 1 kg 10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	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) <sup>c/e</sup>	

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

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.

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

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.

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 while 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 the Republic of Kazakhstan 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 material used in or produced through the use of any material, equipment or components so transferred; and

(3) To designate personnel, in consultation with the other party, who shall have access to all places and data necessary to account for the material in paragraph 2, to inspect any equipment or facility referred to in paragraph 1, and to install any devices and make such independent measurements as may be deemed necessary to account for such material. Such personnel shall, if either party so requests, be accompanied by personnel designated by the other party.

FOR THE REPUBLIC  
OF KAZAKHSTAN:

FOR THE UNITED STATES  
OF AMERICA:

SUMMARY OF BASIC PROVISIONS OF THE  
AGREEMENT FOR COOPERATION BETWEEN  
THE UNITED STATES OF AMERICA AND  
THE REPUBLIC OF KAZAKHSTAN  
CONCERNING PEACEFUL USES OF NUCLEAR ENERGY,  
WITH ANNEX AND AGREED MINUTE

Article 1 contains definitions.

Article 2 sets forth the scope of cooperation in the use of nuclear energy for peaceful purposes. It provides that transfers of information, material, equipment and components may be undertaken subject to the agreement and to such additional terms and conditions as may be agreed by the parties. A related understanding in the Agreed Minute provides that material, equipment or components transferred between the parties for peaceful purposes will be regarded as having been transferred pursuant to the agreement only upon confirmation by the recipient party that such item or items are to be subject to the terms of the agreement.

Article 3 provides for the transfer of information in a variety of fields involving the peaceful uses of nuclear energy. Restricted data may not be transferred under the agreement. Sensitive nuclear technology may not be transferred under the agreement unless the agreement is amended to provide for such transfer.

Article 4 provides the basic enabling framework for the transfer of material, equipment and components. With some stated exceptions, including small quantities for use as samples, standards, detectors, targets and such other purposes as may be agreed, transfers of special nuclear material to Kazakhstan will be limited to low enriched uranium, which may be transferred for use as fuel in reactors or reactor experiments, for conversion or fabrication or for such other purposes as may be agreed. No sensitive nuclear facilities or major critical components of such facilities may be transferred unless the agreement is amended to provide for such transfers. This article further provides that the quantity of special nuclear material transferred shall not at any time be in excess of quantities that the parties agree are necessary for specified purposes. Transfers of small quantities of special nuclear material are not subject to this limitation.

Article 5 requires the parties' agreement (1) on facilities for the storage of plutonium and uranium 233 (except in irradiated fuel elements) or high enriched uranium transferred pursuant to the agreement or used in or produced through the use of material or equipment so transferred; and (2) for the retransfer of any material, equipment or components so transferred and special nuclear material

produced through the use of material or equipment so transferred. The agreed minute states that the consent rights specified in article 5 with respect to special nuclear material produced through the use of nuclear material transferred, and not used in or produced through the use of equipment transferred, shall in practice be applied to that proportion of produced special nuclear material which represents the ratio of transferred material used in its production to the total amount of material so used.

Article 6 requires the parties' agreement (1) for the reprocessing of material transferred pursuant to the agreement and material used in or produced through the use of any material or equipment so transferred; (2) for the alteration in form or content, except by irradiation or further irradiation, of plutonium, uranium 233, high enriched uranium or irradiated source or special nuclear material so transferred or produced; and (3) for the enrichment of uranium so transferred or used in any equipment so transferred. The agreed minute states that the consent rights specified in article 6 with respect to special nuclear material produced through the use of nuclear material transferred, and not used in or produced through the use of equipment transferred, shall in practice be applied to that proportion of produced special nuclear material which

represents the ratio of transferred material used in its production to the total amount of material so used.

Article 7 requires each party to maintain adequate physical protection measures, in accordance with levels of protection set forth in the Annex to the agreement, with respect to all material and equipment subject to the agreement. The measures applied shall, as a minimum, provide protection comparable to that set forth in the current version of IAEA document INFCIRC/225 concerning the physical protection of nuclear material as agreed to by the parties. The Annex describes physical security levels applicable with respect to the use, storage and transport of nuclear materials classified as categories I (requiring the most stringent levels of protection), II and III. The parties agree to consult concerning the adequacy of these physical security measures and to identify agencies or authorities responsible for physical security. The provisions of this article shall be implemented in such a way as to avoid undue interference in the parties' nuclear activities and to be consistent with prudent management.

Article 8 contains a guarantee by each party that no material, equipment or components subject to the agreement will be used for any nuclear explosive device, for research

on or development of any nuclear explosive device, or for any military purpose.

Article 9 requires application of IAEA safeguards with respect to all nuclear activities within the territory of Kazakhstan, under its jurisdiction or carried out under its control anywhere. This article further requires source or special nuclear material transferred pursuant to the Agreement and source or special nuclear material used in or produced through the use of material, equipment or components so transferred to be subject to the two parties' respective safeguards agreements with the IAEA. This article also contains provisions for fall-back safeguards. The agreed minute sets forth certain rights each party will have in the event IAEA safeguards are not being applied. Article 9 also requires each party to take measures to maintain and facilitate the application of safeguards. This article requires each party to maintain a material accounting and control system, the details of which shall be comparable to those set forth in IAEA document INFCIRC/153 (corrected). Upon the request of either party, the other party shall report or permit the IAEA to report on the status of all inventories of material subject to the agreement. The article's provisions, finally, are to be implemented so as to avoid undue interference in the parties' nuclear activities and consistent with prudent management.

Article 10 provides that if an 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 those set forth under articles 5 or 6 with respect to material, equipment or components subject to the agreement, the parties may, upon the request of either, agree that implementation of such rights will be accomplished by the other nation or group of nations.

Article 11 accords each party the right to cease cooperation, suspend or terminate the agreement, and require the return of any material, equipment or components transferred under the agreement and any special nuclear material produced through their use if the other party does not comply with article 5, 6, 7, 8, or 9, or terminates, abrogates or materially violates a safeguards agreement with the IAEA. If Kazakhstan detonates a nuclear explosive device, the United States has the same rights noted above. If the United States detonates a nuclear explosive device using nuclear material transferred pursuant to the Agreement or produced through the use of nuclear material or equipment so transferred, Kazakhstan has the same rights noted above. In the event a return is required by one party, the other party shall be reimbursed for current market value.

Article 12 provides for consultations at the request of either party regarding the implementation of the agreement and the development of further cooperation in the peaceful uses of nuclear energy. It also provides that the parties shall consult on the environmental implications of activities under the agreement, and cooperate in protecting the international environment from radioactive, chemical or thermal contamination arising from such activities and in related matters of health and environmental safety.

Article 13 provides for the settlement of disputes by negotiations between the parties.

Article 14 establishes a 30 year term for the agreement, which may be extended by agreement of the parties in accordance with their applicable requirements. It provides that the agreement may be terminated at any time by either party on one year's written notice to the other party. In the event of termination or expiration of the agreement, articles 5, 6, 7, 8, 9 and 11 shall continue in effect so long as items subject to the agreement remain in the territory, under the jurisdiction or under the control of the party concerned, or until the parties agree that such items are no longer usable for any nuclear activity relevant from the point of view of safeguards.