

# Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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### Framework for peaceful nuclear cooperation

#### Working paper submitted by France

1. The development of peaceful uses of nuclear technologies is central to the implementation of the objectives of the Treaty on the Non-Proliferation of Nuclear Weapons, along with nuclear disarmament and non-proliferation. All States parties to the Treaty should be able to benefit from the civil applications of nuclear technologies, provided that they respect their international obligations and pursue nuclear activities exclusively for peaceful purposes.

2. Intergovernmental agreements in the field of civil nuclear cooperation are international agreements concluded between States in written form and governed by international law. Their main goal is to provide a legal framework for peaceful nuclear cooperation between States.

#### *Intergovernmental agreements help to promote nuclear energy*

3. The development of nuclear energy can provide a competitive, predictable and sustainable way to meet growing energy needs, while helping States to meet their goals of reducing greenhouse gas emissions and guaranteeing the security of the energy supply, at affordable costs.

#### *Intergovernmental agreements help to promote non-energetic nuclear applications*

4. Nuclear technologies also have an essential role to play in socioeconomic development and the achievement of the Sustainable Development Goals. Nuclear applications are of great interest in a number of fields, including human health, agriculture and food security, the preservation of cultural heritage, environmental and water resources protection and industrial applications.

5. It is therefore legitimate to seek measures to allow the largest possible number of countries to receive the benefits of civil nuclear uses.



*Intergovernmental agreements can help to build the institutional, technical and legal framework towards the beneficial, sustainable, safe and secure use of nuclear technologies*

6. To ensure international support for the responsible and sustainable development of nuclear energy, as well as other peaceful nuclear applications, international cooperation in this field should be pursued in a manner consistent with international obligations, in accordance with the highest international standards of nuclear safety, security, safeguards, non-proliferation and environmental protection. International cooperation should also be based on the specific objectives, needs and assets of each partner country.

7. As the strategic decision to launch a civil nuclear power programme on a State's territory or to supply a facility or nuclear material (outside a State's territory) requires the involvement of governmental authorities, the conclusion of an intergovernmental agreement is often a prerequisite and an appropriate tool for industrial, institutional, scientific or technical partnerships in the field of nuclear cooperation. The preparation of such an intergovernmental agreement and its negotiation usually involve a wide range of national actors.

8. Alongside the States that have already developed a civil nuclear industry, some 30 additional States are, at various stages of progress, currently considering the use of nuclear technologies in their energy mix or for non-energetic applications. In this context, many of them have entered into intergovernmental agreements with nuclear-mature States in order to support civil nuclear cooperation.

9. Such intergovernmental agreements can serve as umbrella agreements that facilitate further cooperation through project-specific agreements, for instance, between safety regulation authorities, operators and entities in charge of waste management, training and research and development.

10. Although there is no single model or framework for civil nuclear cooperation, such umbrella intergovernmental agreements may usefully include provisions regarding:<sup>1</sup>

- Preamble to the agreement
- Areas of cooperation
- Definitions
- Protection of sensitive information
- Nuclear safety
- Peaceful, non-explosive assurances
- International Atomic Energy Agency safeguards, including fallback safeguards
- Nuclear security
- Transfers and retransfers of nuclear materials, specific equipment and technologies
- Intellectual property
- Nuclear third-party liability

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<sup>1</sup> This is an illustrative list of possible elements to be included in an intergovernmental agreement. Each State has the right, pursuant to domestic policy requirements, to adopt conditions of supply that may be more comprehensive or that may not have been included in the present working paper.

- Monitoring of the cooperation
- Settlement of disputes
- Entry into force, duration and termination

11. The conclusion of an intergovernmental agreement sets a clear framework for active cooperation, with a clear identification of partner countries' objectives and relevant stakeholders on both sides. It presents the advantage of providing legal certainty and stability and helps to streamline the export control process. Moreover, it clearly establishes the reciprocal obligations that both parties must undertake in order to ensure international support for the responsible and sustainable development of nuclear energy, as well as other peaceful nuclear applications.

12. As we work towards the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, France would like to share its experience in this field and consider how to best promote the responsible and sustainable development of civilian nuclear programmes through enhanced cooperation, based on intergovernmental agreements.

13. For this purpose, France has developed examples of what could constitute a non-exclusive reference of good practices and elements to be included with regard to intergovernmental agreements in the field of civil nuclear cooperation. The examples could be discussed in general and in relation to other national practices during the meetings of the 2019 Preparatory Committee, serving as a contribution to the work of the Preparatory Committee under the third pillar of the Treaty.

## **Examples of good practices and elements for an intergovernmental agreement for the development of peaceful nuclear cooperation**

### **Preamble to the agreement**

14. A reference to the general objectives of the agreement and recognition of relevant international agreements that the Governments are party to and the commitments made thereunder, such as the Treaty and the commitment to facilitate nuclear cooperation for peaceful uses.

### **Areas of cooperation**

15. A description of possible areas of cooperation, for example: exchange of information on energy policy, legislation and regulation in the nuclear field, fundamental and applied research and development, uses of nuclear energy such as for the generation of electricity and other applications, including human health, agriculture and food security, the preservation of cultural heritage, environmental and water resources protection or industrial applications, spent nuclear fuel and radioactive waste management, nuclear safety, radiation protection and radiological environmental protection, nuclear security, nuclear safeguards, decommissioning, human resources development, and so on.

### **Definitions**

16. Definitions of key terms referenced in the agreement, including nuclear material, equipment, research and development, non-nuclear material and technology.

### **Protection of sensitive information**

17. An agreement to protect information exchanged that is marked as such, if need be, through a dedicated security agreement on the exchange of confidential and sensitive information.

### **Nuclear safety**

18. A reference to the objective of achieving and maintaining the highest levels of nuclear safety and/or explicitly to the relevant international instruments.

### **Peaceful, non-explosive assurances**

19. A commitment that the transfers under the intergovernmental agreement, including of knowledge and technology, as well as of their results and by-products, will be used exclusively for peaceful purposes.

### **International Atomic Energy Agency safeguards, including fallback safeguards**

20. A commitment that the transfers of nuclear material under the intergovernmental agreement and their successive generations will be subject to International Atomic Energy Agency (IAEA) safeguards under the relevant agreement supplemented by an additional protocol.

21. In the event that IAEA safeguards are no longer applicable, the parties undertake to establish a mutually agreed safeguards system<sup>2</sup> covering all items subject to the agreement.

### **Nuclear security**

22. A reference to the objective of achieving and maintaining effective physical protection of nuclear material and of nuclear facilities, pursuant to international standards, and adhering to relevant international conventions.

### **Transfers and retransfers of nuclear materials, specific equipment and technologies**

23. An agreement that retransfers of items (nuclear materials, specific equipment and technology) transferred under the intergovernmental agreement and items derived therefrom can be made only after obtaining the prior written consent of the initial supplier in a manner that is consistent with its domestic non-proliferation requirements. In some instances, this could require that the retransfer is authorized only to a third party that has provided the same assurances as those required by the intergovernmental agreement for the original transfer.

24. Intergovernmental agreements may also include provisions that establish specific conditions for the reprocessing and enrichment of any material, subject to the intergovernmental agreement, including the need for consultations between the parties and the written prior consent of the other party.

### **Intellectual property**

25. A general clause for the protection of intellectual property stating, for instance, that, in the framework of the cooperation, intellectual property will be attributed on a case-by-case basis, in specific agreements or contracts.

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<sup>2</sup> Mutually agreed safeguards systems are also known as fallback safeguards. They ensure that materials remain safeguarded in all circumstances, including in the unlikely case of a country withdrawing from the Non-Proliferation Treaty.

**Nuclear third-party liability**

26. A reference to the principles established through the main relevant international conventions, on the basis of which the parties agree on a third-party liability regime and provide for the appropriate insurance coverage and/or adherence to the specific conventions.

27. For some States, intergovernmental agreements may not address nuclear third-party liability.

**Monitoring of the cooperation**

28. A reference to the setting up, for example, of a working group or consultation mechanism to monitor the cooperation.

**Settlement of disputes**

29. A general provision on an agreed mechanism for the settlement of disputes.

**Entry into force, duration and termination**

30. General provisions for entry into force. The duration is usually from 10 to 40 years and is possibly tacitly renewable.

31. France wishes to engage in a dialogue, in the framework of the 2019 Preparatory Committee, to consider how to promote good practices in terms of intergovernmental agreements on the responsible development of civil nuclear cooperation.

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