

STCU Agreement

AGREEMENT TO ESTABLISH A SCIENCE AND TECHNOLOGY CENTER IN UKRAINE

(text copy)

Canada, Sweden, Ukraine and the United States of America:

Reaffirming the need to prevent the proliferation of technologies and expertise related to weapons of mass destruction -- nuclear, chemical, and biological weapons:

Taking note of the present critical period in the states of the former Soviet Union, a period that included the transition to a market economy, the developing process of disarmament, and the conversion of industrial-technical potential from military to peaceful endeavors.

Recognizing, in this context, the need to create an international Science and Technological Center in Ukraine that would minimize incentives to engage in activities that could result in such proliferation, by supporting and assisting the activities for peaceful purposes of weapons scientists and engineers in Ukraine and, if interested, in other states of the former Soviet Union.

Responding to the need to contribute, through the Center's projects and activities, to the transition of the states of the former Soviet Union to market-based economies and to support research and development for peaceful purposes. Desiring that Center projects provide; impetus and support to participating scientists and engineers in developing long-term career opportunities, which will strengthen the scientific research and development capacity of Ukraine; and

Realizing that the success of the Center will require strong support from governments, foundations, academic and scientific institutions, and other inter-governmental and non-governmental entities; Have agreed as follows:

ARTICLE I

The Science and Technology Center in Ukraine (hereinafter referred to as the "Center") is hereby established as an intergovernmental organization. Each Party shall facilitate, in its territory, the activities of the Center. In order to achieve its objectives, the Center shall have, in accordance with the laws and regulations or the Parties, the legal capacity to contract, to acquire and dispose of immovable and movable property, and to institute and respond to legal proceedings.

ARTICLE II

(A) The Center shall develop, approve, finance, and monitor science and technology projects for peaceful purposes, which are to be carried out primarily at institutions and facilities located in Ukraine and, if interested, in other states of the former Soviet Union.

The objectives of the Center shall be:

- (i)** To give weapons scientists and engineers, particularly those who possess knowledge and skills related to weapons of mass destruction or missile delivery systems, in Ukraine and, if interested, in other states of the former Soviet Union, opportunities to redirect their talents to peaceful activities; and
- (ii)** To contribute thereby through its projects and activities: to the solution of national or international technical problems; and to the wider goals of reinforcing the transition to market based economies responsive to civil needs, of supporting basic and applied research and technology development, inter alia, in the fields of environmental protection, energy production, and nuclear safety, and the remediation of the consequences of nuclear-power reactor accidents, and of promoting the further integration of scientists of Ukraine and the former Soviet Union into the international scientific community.

ARTICLE III

In order to achieve its objectives, the Center is authorized to:

- (i)** Promote and support, by use of funds or otherwise, science and technology projects in accordance with Article II of this Agreement;
- (ii)** Monitor and audit Center projects in accordance Article VIII of this Agreement.

- (iii)* Disseminate information, as appropriate, to promote its projects, encourage proposals, and broaden international participation;
- (iv)* Establish appropriate forms of cooperation with governments, inter-governmental organizations, non-governmental organizations (which shall, for the purposes of this Agreement, include the private sector), and programs;
- (v)* Receive funds or donations from governments, inter-governmental organizations, and non-governmental organizations;
- (vi)* Establish branch offices as appropriate; and
- (vii)* Engage in other activities as may be agreed upon by the Partners.

ARTICLE IV

(A) The Center shall have a Governing Board and a Secretariat, consisting of an Executive Director, Deputy Executive Directors, and such other staff as may be necessary, in accordance with the Statute of the Center.

(B) The Governing Board shall be responsible for:

- (i)* Determining the Center's policy and its own rules of procedure;
- (ii)* Providing overall guidance and direction to the Secretariat;
- (iii)* Approving the Center's operating budget;
- (iv)* Governing the financial and other affairs of the Center, including approving procedures for the preparation of the Center's budget, drawing up of accounts, and auditing thereof;
- (v)* Formulating general criteria and priorities for the approval of projects;
- (vi)* Approving projects in accordance with Article vi;
- (vii)* Adopting the Statute and other implementing arrangements as necessary; and
- (viii)* Other functions assigned to it by this Agreement or necessary for the implementation of this Agreement.

Decisions of the Governing Board shall be by consensus of all Parties on the Board, subject to conditions and terms determined pursuant to Article V, except as provided otherwise in this Agreement.

(C) Each of the signatory Parties shall be represented by a single vote on the Governing Board. Each shall appoint one representative to the Governing Board within seven (7) days after entry into force of this Agreement.

(D) The Governing Board shall adopt a Statute in implementation of this Agreement. The Statute shall establish:

- (i)* The structure of the Secretariat;
- (ii)* The process for selecting, developing, approving, financing, carrying out, and monitoring projects;
- (iii)* The process by which the Executive Director shall obtain scientific and other necessary professional advice with regard to proposed projects directly from international experts;
- (iv)* Procedures for the preparation of the Center's budget, drawing up of accounts, and auditing thereof;
- (v)* Appropriate guidelines on intellectual property rights resulting from Center projects and on the dissemination of project results;
- (vi)* Procedures governing the participation of governments, inter-governmental organization, and non-governmental organizations in Center projects;
- (vii)* Provision for allocating the Center's property upon termination of this Agreement or withdrawal of a Party;
- (viii)* Personnel policies; and
- (ix)* Other arrangements necessary for the implementation of this Agreement.

ARTICLE V

The Governing Board shall have the discretion and exclusive power to expand its membership to include representatives that may accede to this Agreement, on such conditions and terms as the Board may determine. Parties not represented on the Governing Board and inter-governmental and non-governmental organizations may be invited to participate in Board deliberations, in a non-voting capacity.

ARTICLE VI

Each project submitted for approval by the Governing Board shall be accompanied by the written concurrence of the state (s) in which the work is to be carried out. In addition to the prior concurrence of that state(s), the approval of projects shall require the consensus of Parties on the Governing Board other than any state eligible for projects under Article II (A). (Such consensus shall be subject to the conditions and terms determined pursuant to Article V.)

ARTICLE VII

(A) Projects approved by the Governing Board may be financed or supported by the Center, or by the governments, inter-governmental organizations, or non-governmental organizations, directly or through the Center. Such financing and support of approved projects shall be provided on terms and conditions specified by those providing it, which shall be consistent with this Agreement.

(B) Representatives of the Parties on the Board and personnel of the Center Secretariat shall be ineligible for project grants and may not directly benefit from any project grant.

ARTICLE VIII

(A) The Center shall have the right, within Ukraine or other states of the former Soviet Union that accede to this Agreement.

(i) To examine on-site Center project activities, materials, supplies, use of funds, and project related services and use of funds, upon its notification or, in addition, as specified in a project agreement; and

(ii) To inspect or audit, upon its request, any information, including records or documents, in connection with Center project activities and use of funds, wherever such records or documentation are located, during the period in which the Center provides the financing, and for a period thereafter as determined in the project agreement.

The written concurrence required in Article VI shall include the agreement of both the state of the former Soviet Union in which the work is to be carried out, and the recipient institution which provides the Center with the access necessary for auditing and monitoring of the project, as required by this paragraph.

(B) Any Party represented on the Governing Board shall also have the rights described in paragraph (A), coordinated through the Center, with regard to projects it finances in whole or in part, either directly or through the Center.

(C) If it is determined that the terms and conditions of a project have not been respected, the Center or a financial government or organization may, having informed the Board of its reasons, terminate the project and take appropriate steps in accordance with the terms of the project agreement.

ARTICLE IX

(A) The Headquarters of the Center shall be located in Ukraine.

(B) By way of providing material support to the Center, the Government of Ukraine shall provide at its own expense a facility suitable for use by the Center, along with maintenance, utilities, and security for the facility.

(C) In Ukraine, the Center shall have the status of a legal person and, in that capacity, shall be entitled to contract, acquire and dispose of immovable and movable property, and to institute and respond to legal proceedings.

ARTICLE X

The Government of Ukraine shall ensure that:

(i)

(a) Funds and property of the Center or any branch thereof, including any interest arising from funds held in banks in Ukraine, are exempt from taxation or other charges imposed by the Government of Ukraine and any subdivision thereof;

(b) Commodities, supplies, and other property provided or utilized in connection with the Center and its projects and activities may be imported into, exported from, or used in Ukraine free from any tariffs, dues, customs duties, import taxes, and other similar taxes or charges imposed by Ukraine. In order to receive exemptions under this paragraph, commodities, supplies, and other property must either be specified in a project agreement or be certified by the Executive Director as items to be used by the Center or in a Center project. The procedures for such certifications shall be described in the Statute;

(c) Funds received by natural and legal persons, including Ukrainian scientific organizations or scientists and specialists, in connection with the Center's projects and activities, shall not be subject to taxation or other charges by the Government of Ukraine or any subdivision thereof;

(ii)

(a) The Center, governments, inter-governmental organization, and non-governmental organizations shall have the right to move funds related to the Center and its projects or activities, other than local currency of Ukraine, into or out of Ukraine without restriction, each in amounts not to exceed the total amount moved into Ukraine;

(b) To finance the Center and its projects and activities, the Center shall be entitled, for itself and on behalf of the entities referred to in subparagraph (ii) (a), to sell foreign currency in Ukraine.

ARTICLE XI

(A) The Parties shall closely cooperate in order to facilitate the settlement of legal proceedings and claims under this Article.

(B) Unless otherwise agreed, the Government of Ukraine shall, in respect of legal proceeding and claims by Ukrainian nationals or organizations, other than contractual claims, arising out of the acts or missions of the Center or its personnel done in the performance of the Center's activities:

(i) Not bring any legal proceedings against the Center and its personnel;

(ii) Assume responsibility for dealing with legal proceedings and claims brought by the aforementioned against the Center and its personnel; and

- (iii)* Hold the Center and its personnel harmless in respect of legal proceedings and claims referred to in subparagraph (ii) above.
- (C)** The provisions of this Article shall not prevent compensation or indemnity available under applicable international agreements or national law of any state
- (D)** Nothing in paragraph (B) shall be construed to prevent legal proceedings or claims against Ukrainian nationals.

ARTICLE XII

(A) Personnel of the United States Government, Canadian Government, and Swedish Government who are present in Ukraine in connection with the Center or its projects and activities shall be accorded by the Government of Ukraine status equivalent to that accorded to administrative and technical staff under the Vienna Convention on Diplomatic Relations of April 13, 1951.

(B) Personnel of the Center shall be accorded by the Government of Ukraine the following privileges and immunities, which usually accord to employees of international organizations, to wit:

- (i)* Immunity from arrest, detention, and legal proceedings, including criminal, civil and administrative jurisdiction with regard to words said or written by themselves or any acts performed in the course of their official duties;
- (ii)* Exemption from any income, social security, or other taxation duties, customs duties, or other charges on income derived from Center activities, except those that are normally incorporated in the price of goods or paid for services rendered;
- (iii)* Immunity from social security provisions, immigration restrictions, and alien registration; and
- (iv)* The right to import their furniture and personal effects, at the time of first taking up their post, free of any Ukrainian tariffs, dues, customs duties, import taxes, and other similar taxes or charges.

(C) Representatives of the Parties on the Governing Board, the Executive Director, and the Deputy Executive Directors shall be accorded by the Government of Ukraine, in addition to the privileges and immunities listed in paragraphs (A) and (B) of this Article, the privileges, immunities, exemptions, and facilities accorded to representatives of members and executive heads of international organizations in accordance with international law.

(D) Any Party may notify the Executive Director of any person, other than those in paragraphs (A) and (C), who will be in Ukraine in connection with the Center's projects and activities. A Party making such a notification shall inform such persons of their duty to respect the laws and regulations of Ukraine. The Executive Director shall notify the Government of Ukraine, which shall accord to such persons the privileges described in subparagraph (ii)-(iv) of paragraph (B) of this Article.

(E) Nothing in this Article shall require the Government of Ukraine to provide the privileges and immunities provided in paragraphs (A), (B), and (C) of this Article to its nationals.

(F) Without prejudice to the privileges, immunities, and other benefits provided above, it is the duty of all persons enjoying privileges, immunities, and benefits under this Article to respect the laws and regulations of Ukraine.

(G) Nothing in this Agreement shall be construed to derogate from privileges, immunities, and other benefits granted to personnel described in paragraph (A) to (D) under other agreements.

ARTICLE XIII

Any state desiring to become Party to this Agreement shall notify the Governing Board through the Executive Director. The Governing Board shall provide such a state with certified copies of this Agreement through the Executive Director. Upon approval by the Governing Board, that state shall be permitted to accede to this Agreement. In the event that a state or states of the former Soviet Union accede to this Agreement, that state or those states shall comply with the obligations undertaken by the Government of Ukraine in Articles VIII, IX(C), and X-XII.

ARTICLE XIV

Although nothing in this Agreement limits the rights of the Parties to pursue projects without resort to the Center, the Parties shall make their best efforts to use the Center when pursuing projects of character and objectives appropriate to the Center.

ARTICLE XV

(A) This Agreement shall be subject to review by the Parties two years after entry into force. This review shall take into account the financial commitments and payments of the Parties.

(B) This Agreement may be amended at any time by written agreement of all the Parties.

(C) Any Party may withdraw at any time from this Agreement six months after written notification to the other Parties.

ARTICLE XVI

Any question or dispute relating to the application or interpretation of this Agreement shall be the subject of consultation between the Parties.

ARTICLE XVII

With a view to financing projects as soon as possible, the Signatories shall establish necessary interim procedures until the adoption of the Statute by the Governing Board. These shall include, in particular, the appointment of an Executive Director and necessary staff and the establishment: of procedures for the submission, review, and approval of projects.

ARTICLE XVIII

(A) Each Signatory shall notify the others through diplomatic channels that it has completed all internal procedures necessary to be bound by this Agreement.

(B) This Agreement shall enter into force upon the thirtieth (30th) day after the date of the last notification described in paragraph (A).

IN witness whereof the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Kiev, on 25 October 1993 in a single original, in the English, French, and Ukrainian language, each text being equally authentic.

STATEMENT UPON SIGNATURE OF THE UNITED STATES OF AMERICA

"In the United States, the Center will have legal capacity to the same extent as other legal person and, in particular, the capacity to contract, to acquire and dispose of movable and immovable property and to institute and respond to legal proceedings."

STATEMENT UPON SIGNATURE OF THE KINGDOM OF SWEDEN

"As a legal person of Ukraine, the Center is automatically accepted as such in Sweden. The Center will have the same legal capacity in Sweden as other foreign legal person, including the capacity to contact, to acquire and dispose of movable and immovable property, and to institute and respond to legal proceedings."

FOR CANADA:

G. Kelley

FOR THE KINGDOM OF SWEDEN:

Per W. [unclear]

FOR UKRAINE:

[unclear]

FOR THE UNITED STATES OF AMERICA:

William Green Miller