

# Basic Texts

Authoritative and original English texts  
and English translations







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## ESO BASIC TEXTS 2012: PREFACE

The European Organisation for Astronomical Research in the Southern Hemisphere was created in 1962 by Belgium, France, Germany, Sweden and The Netherlands with dual aims to provide astronomers with a large telescope with which to study the southern night sky and to foster collaborations in astronomy. Very soon after, ESO selected Chile as the Host State for its planned observatory, and then achieved its initial objective with the construction of the La Silla Observatory and its flagship 3.6 m telescope which started operations in 1976.

In 1987, the year of ESO's 25th anniversary, Council took a major step beyond the original goal by approving the construction of the Very Large Telescope. By this time Denmark, Italy and Switzerland had joined ESO, bringing the number of Member States to eight. In the same year, ESO published the book *Basic Texts*, containing the text of the *Convention*, the *Financial Protocol*, the *Protocol for Privileges and Immunities*, and agreements with Chile and Germany (where Headquarters had been located since 1981), in seven languages.

This year we celebrate ESO's 50th anniversary. By now, ESO's programme has expanded tremendously beyond the original vision with the construction of the world-leading ground-based observatory on Paranal hosting the Very Large Telescope (VLT) with its four 8.2 m telescopes, the VLT Interferometer and the survey telescopes VISTA and VST, participation in the APEX partnership operating a 12m submillimetre antenna on Chajnantor, participation in the intercontinental partnership that is constructing the world's largest radio telescope ALMA on Chajnantor, and the approval of the construction of the 39.3 m diameter E-ELT on Armazones with a projected start of operations in ten years time. The number of Member States has increased to 14, with Brazil to join as the first non-European Member after completion of the process of ratification of the Accession Agreement signed in late 2010. Together these 15 countries contain approximately 30% of the world's astronomers.

As a result of these developments, ESO concluded further agreements with the Chilean government, and the number of languages used increased to 11 by the successive accession of Portugal, UK, Finland, Spain, the Czech Republic, Austria, and Brazil. It is therefore appropriate to collect the 12 high-level documents in a single repository, and have them available in the languages of the Member States. Rather than publish 132 documents in a single 800+ page book, the choice was made to produce individual collections for each Member State, including the authoritative versions, English versions (because it is ESO's working language) and those in the language of the individual Member State. This approach also allows adding new agreements, or editions in other languages when further Member States join ESO, in a straightforward way.

The Head of ESO's Legal Service, Laura Comendador Frutos, took the responsibility for producing this new edition of the Basic Texts. Anna Krueger cheerfully carried out the bulk of the work with enormous dedication and persistence, organizing the translations of 12 major texts in 11 languages by external translation companies. With assistance from her colleagues within Legal Service, she meticulously checked the contents and integrated the corrections kindly provided by the highly motivated native speakers from inside ESO and by similarly supportive Council delegates. Jutta Boxheimer and Mafalda Martins from ESO's Outreach Department designed the homogenous layout. It is a pleasure to thank them all for their contributions to such a high-quality result.

Tim de Zeeuw  
Director General  
September 2012



## Additional remark

All authoritative/original English texts included in this version (the Headquarters Agreement, the Interpretative Supplementary and Amending Agreement, the ALMA Agreement and the E-ELT Agreement) which were also signed in the English language are in accordance with their original version apart from the fact that for the purpose of consistency ESO is called *European Organisation for Astronomical Research in the Southern Hemisphere* (change underlined). The authentic/former title *Convention between the Government of Chile and the European Organisation for Astronomical Research in the Southern Hemisphere for the Establishment of an Observatory in Chile* and any corresponding reference has been changed to *Agreement between the Government of Chile and the European Organisation for Astronomical Research in the Southern Hemisphere for the Establishment of an Observatory in Chile* to make the English documents match each other (change underlined). Furthermore, the name of CONICYT has been adjusted to its originally designated name which reads *Comisión Nacional de Investigación Científica y Tecnológica*. In some cases capital letters have been used, such as *Member States* (change underlined).



Part I

CONVENTION, FINANCIAL PROTOCOL AND  
PROTOCOL ON THE PRIVILEGES AND IMMUNITIES





English translation

## CONVENTION ESTABLISHING A EUROPEAN ORGANISATION FOR ASTRONOMICAL RESEARCH IN THE SOUTHERN HEMISPHERE

THE GOVERNMENT OF THE STATES parties to this Convention,

CONSIDERING:

That the study of the southern celestial hemisphere is much less advanced than that of the northern hemisphere,

That, as a result, the data on which the knowledge of the galaxy is based are far from having the same value in the different parts of the sky and that it is essential to improve and supplement them in all instances where they are inadequate,

That, in particular, it is deeply regrettable that systems with no equivalent in the northern hemisphere are almost inaccessible to the largest instruments currently in use,

That it is therefore urgent to install powerful instruments in the southern hemisphere comparable to those in the northern hemisphere, but that such a project can only be accomplished through international co-operation,

DESIROUS of jointly creating an observatory equipped with powerful instruments in the southern hemisphere and thereby promoting and organizing co-operation in astronomical research,

AGREE TO THE FOLLOWING PROVISIONS:

### Article I – Establishment of the Organisation

1. This Convention hereby establishes a European Organisation for Astronomical Research in the Southern Hemisphere, hereinafter called the Organisation.
2. The headquarters of the Organisation shall be provisionally established in Brussels. The final location of the headquarters shall be determined by the Council established in accordance with the provisions of Article IV.

## Article II — Purposes

1. The purpose of the Organisation shall be to build, fit out and operate an astronomical observatory situated in the southern hemisphere.
2. The initial programme of the Organisation shall comprise the construction, installation and operation of an observatory in the southern hemisphere, consisting of:
  - a) a telescope with an aperture of about 3 metres;
  - b) a Schmidt telescope with an aperture of about 1.20 metres;
  - c) not more than three telescopes with a maximum aperture of 1 metre;
  - d) a meridian circle;
  - e) the auxiliary equipment needed to carry out research programmes with the instruments listed in a), b), c) and d) above;
  - f) the buildings needed to house the equipment listed in sub-paragraphs a), b), c), d) and e) above, as well as the administration of the observatory and the accommodation of personnel.
3. Any supplementary programme shall be submitted to the Council established under Article IV of this Convention, and shall be approved by this Council by a two-thirds majority of the Member States of the Organisation. States which have not approved the supplementary programme shall not be required to contribute to its implementation.
4. The Member States shall facilitate the exchange of persons and of scientific and technical information necessary for carrying out the programmes in which they participate.

## Article III — Members

1. The States parties to this Convention shall be members of the Organisation.
2. The admission of other States to the Organisation shall be in accordance with the procedure set forth in Article XIII, paragraph 4.

## Article IV — Organs

The Organisation shall consist of the Council and the Director.



## Article V — The Council

1. The Council shall be composed of two delegates from each of the Member States, at least one of whom shall be an astronomer. The delegates may be assisted by experts.
2. The Council:
  - a) determines the policy of the Organisation with respect to scientific, technical and administrative matters;
  - b) approves the budget by a two-thirds majority of the Member States and determines financial arrangements in accordance with the Financial Protocol annexed to this Convention;
  - c) supervises expenditure, approves and publishes the audited annual accounts of the Organisation;
  - d) decides on the composition of the personnel and approves the recruitment of the Organisation's senior personnel;
  - e) publishes an annual report;
  - f) approves the internal rules of the observatory proposed by the Director;
  - g) is vested with the authority to take the measures necessary for the functioning of the Organisation.
3. The Council shall meet at least once a year. It shall decide on the venue of its meetings.
4. Each Member State shall have one vote in the Council. However, a Member State may not vote on the implementation of a programme other than the initial programme set forth in Article II, paragraph 2, unless it has agreed to make a financial contribution to that programme or the vote concerns installations to whose purchase it has agreed to contribute.
5. The decisions of the Council shall be binding only if the representatives of at least two-thirds of the Member States are present.
6. Unless otherwise provided for in this Convention, decisions of the Council shall be taken by simple majority of the Member States represented and voting.
7. The Council shall determine its own rules of procedure, subject to the provisions of this Convention.
8. The Council shall elect a President from among its delegates for a term of office of one year. The President may not be re-elected more than twice consecutively.

9. The President shall convene the meetings of the Council. He is required to convene a meeting of the Council within 30 days after at least two of the Member States have requested such a meeting.
10. The Council may set up such auxiliary organs as may be necessary to accomplish the purposes of the Organisation. The Council shall define the mandate of such organs.
11. The Council shall, with the unanimous approval of the Member States, decide on the choice of State on whose territory the observatory shall be established, together with its location on that territory.
12. The Council shall conclude the headquarters agreements needed to implement this Convention.

#### Article VI — Director and Personnel

1.
  - a) The Council shall appoint the Director for a fixed term of office by a two-thirds majority of the Member States. The Director shall be answerable to the Council alone. He shall be responsible for the general management of the Organisation. He shall represent it in civil actions. He shall submit an annual report to the Council. He shall attend Council meetings in a consultative capacity unless the Council otherwise decides.
  - b) The Council may, by a two-thirds majority of the Member States, relieve the Director of his duties.
  - c) In the event of the Director's post falling vacant, the President of the Council shall represent the Organisation in civil actions. In such a case, the Council may designate a person whose powers and responsibilities it shall determine, to take the place of the Director.
  - d) In accordance with conditions determined by the Council, the President and the Director may delegate their power of signature.
2. The Director shall be assisted by such scientific, technical and administrative personnel as the Council authorizes.
3. Subject to the provisions of Article V, paragraph 2 *d)* and to the budget appropriations, personnel shall be engaged and dismissed by the Director. Engagements shall be made and terminated in accordance with the personnel rules adopted by the Council.

4. The Director and personnel of the Organisation shall perform their duties in the interests of the Organisation. They may only seek and receive instructions from the competent organs of the Organisation. They shall refrain from any act incompatible with the nature of their duties. Each Member State shall undertake not to influence the Director and personnel of the Organisation in the performance of their duties.
5. Research workers and their associates who are called upon to work at the observatory with the Council's authorization but who are not members of the Organisation's personnel shall be placed under the Director's authority and shall be subject to the general rules established or approved by the Council.

## Article VII — Financial Contributions

1.
  - a) Each Member State shall contribute to the Organisation's capital investment and fitting-out costs and to its current operating costs in accordance with a schedule which shall be drawn up by the Council once every three years and shall be approved by a two-thirds majority of the Member States on the basis of the average net national income calculated in accordance with the rules laid down in Article VII, paragraph 1 *b*), of the Convention Establishing a European Organisation for Nuclear Research signed in Paris on 1 July 1953<sup>1</sup>.
  - b) These provisions shall only apply to the initial programme set out in Article II, paragraph
  - c) However, no Member State shall be required to pay annual contributions exceeding one-third of the total amount of the contributions determined by the Council. This maximum contribution may be reduced by unanimous decision of the Council in the event of a State not mentioned in the Annex to the Financial Protocol becoming a member of the Organisation.

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<sup>1</sup> The paragraph in question is reproduced below:

1. Each Member State shall contribute both to the capital expenditure and to the current operating expenses of the Organisation:
  - a. for the period ending on the thirty-first of December 1956, as set out in the Financial Protocol annexed to this Convention; and, thereafter,
  - b. in accordance with scales which shall be decided every three years by the Council by a two-thirds majority of all the Member States, and shall be based on the average net national income at factor cost of each Member State for the three latest preceding years for which statistics are available, except that,
    - i. in respect of any programme of activities, the Council may determine, by a two-thirds majority of all the Member States, a percentage as the maximum which any Member State may be required to pay of the total amount of contributions assessed by the Council to meet the annual cost of that programme; once any such maximum percentage has been so determined, the Council may, by the same majority, change it, provided that no Member State participating in that programme votes to the contrary;
    - ii. the Council may decide, by a two-third majority of all the Member States, to take into account any special circumstances of a Member State and adjust its contribution accordingly; for the purpose of applying this provision it shall be considered to be a special circumstance, in particular, when the national income "per capita" of a Member State is less than an amount to be decided by the Council by the same majority.



2. In the event of a supplementary programme being set up as provided for in Article II, paragraph 3, the Council shall draw up a special schedule in order to determine the contributions to the cost of the supplementary programme of Member States participating in that programme. This special schedule shall be drawn up in accordance with the rules specified in paragraph 1 above without regard to the conditions set forth in sub-paragraph c) thereof.
3. States becoming members of the Organisation after the date on which this Convention comes into force shall be required to make a special contribution representing their share in capital investment and fitting-out costs already incurred in addition to their contribution to future capital investment and fitting-out costs and current operating costs. The amount of this special contribution shall be determined by the Council by a two-thirds majority of the Member States.
4. All special contributions made in accordance with the provisions of paragraph 3 above shall have the effect of reducing the contributions of the other Member States unless the Council shall unanimously decide otherwise.
5. No State shall be entitled to participate in activities to which it has not made a financial contribution.
6. The Council may accept gifts and bequests made to the Organisation provided they are not on terms that are incompatible with the purposes of the Organisation.

#### **Article VIII — Amendments**

1. The Council may recommend to the Member States that this Convention and the annexed Financial Protocol be amended. Any Member State wishing to propose an amendment shall notify the Director of its proposal. The Director shall circulate any such proposals communicated to him at least three months before they are considered by the Council.
2. Amendments recommended by the Council may only be adopted with the consent of all the Member States in accordance with their own constitutional requirements. Such amendments shall come into force thirty days after the last notification of acceptance of the proposed amendment has been received. The Director shall inform the Member States of the date of entry into force of the amendment.

## **Article IX — Disputes**

Unless Member States agree to some other manner of settlement, all disputes arising between Member States with respect to the interpretation or application of this Convention or of the Financial Protocol which cannot be settled by the Council's intervention shall be submitted to the Permanent Court of Arbitration of The Hague in accordance with the provisions of the Convention for the pacific settlement of international disputes dated 18 October 1907.

## **Article X — Withdrawal**

Any Member State of the Organisation may, after a period which shall not be less than ten years from its date of entry into the Organisation, notify the President of the Council in writing of its withdrawal from the Organisation. Such withdrawal shall take effect at the end of the financial year following that in which notification of withdrawal is given. Any State withdrawing from the Organisation shall have no claim on the assets of the Organisation or on the amount of the contributions it has already made.

## **Article XI — Failure to fulfil obligations**

If one of the members of the Organisation ceases to fulfil the obligations arising out of this Convention or of the Financial Protocol, it shall be called upon by the Council to abide by their provisions. If the said member does not respond to that request in the time imparted to it, the other members may decide unanimously to continue co-operating within the Organisation without that member. In such an eventuality, that State shall have no claim on the assets of the Organisation or on the amount of the contributions it has already made.

## **Article XII — Dissolution**

The Organisation may be dissolved at any time by a resolution adopted by a two-thirds majority of the Member States. In the event of there not being unanimous agreement among the Member States at the time of dissolution, a liquidator shall be appointed under the terms of the same resolution. Assets shall be distributed among the Member States of the Organisation at the time of dissolution pro rata in proportion to the contributions they have actually made since they became party to this Convention. In the event of there being any liabilities, they shall be borne by the same Member States pro rata in proportion to the contributions laid down for the ongoing financial year.

### **Article XIII — Signature — Accession**

1. This Convention and the annexed Financial Protocol shall be open for signature by all the States having participated in the preparatory work on this Convention.
2. This Convention and the annexed Financial Protocol shall be submitted for approval or ratification by each State in accordance with its constitutional requirements.
3. The instruments of approval or ratification shall be deposited with the Ministry of Foreign Affairs of the French Republic.
4. The Council may, by the unanimous vote of the Member States, approve the admission into the Organisation of States other than those covered by paragraph 1 of this Article. The States thus admitted shall become members of the Organisation by depositing an instrument of accession with the Ministry of Foreign Affairs of the French Republic.

### **Article XIV — Entry into force**

1. This Convention and the annexed Financial Protocol shall enter into force on the date on which the fourth instrument of approval or ratification is deposited provided that the total contributions in accordance with the schedule in the Annex to the Financial Protocol amount to at least 70%.
2. With respect to any State depositing its instrument of approval, ratification or accession after the date of entry into force provided for in paragraph 1 of this Article, the Convention and the Financial Protocol shall enter into force on the date the said instrument is deposited.

### **Article XV — Notifications**

1. The Minister of Foreign Affairs of the French Republic shall notify the signatory or acceding States and the Director of the Organisation of the deposit of each instrument of approval, ratification or accession and of the entry into force of this Convention and of the annexed Financial Protocol.
2. The President of the Council shall notify all Member States whenever a State withdraws from the Organisation or ceases to be a party to it by virtue of the provisions of Article XI.



## Article XVI — Registration

As soon as this Convention and the annexed Financial Protocol enter into force, the Ministry of Foreign Affairs of the French Republic shall have them registered with the Secretary-General of the United Nations in accordance with Article 102 of the United Nations Charter.

IN WITNESS WHEREOF the undersigned representatives, being thereunto duly authorized, have signed this Agreement.

DONE at Paris on 5 October 1962, in a single copy in the German, French, Dutch and Swedish languages, the French text being authoritative in the event of dispute. This copy shall be deposited in the archives of the Ministry of Foreign Affairs of the French Republic.

This Ministry shall transmit a certified true copy to the signatory or acceding States.

For the Federal Republic of Germany: Karl Knoke

For the Kingdom of Belgium: Jaspar

For the French Republic: E. de Carbonnel

For the Kingdom of the Netherlands: M. Beyen

For the Kingdom of Sweden: R. Kumlin.



English translation

**FINANCIAL PROTOCOL ANNEXED TO THE CONVENTION  
ESTABLISHING A EUROPEAN ORGANISATION FOR ASTRONOMICAL  
RESEARCH IN THE SOUTHERN HEMISPHERE**

THE GOVERNMENTS OF THE STATES parties to the Convention Establishing a European Organisation for Astronomical Research in the Southern Hemisphere, hereinafter called the Convention,

DESIROUS of making provision for the financial administration of the Organisation,

HAVE AGREED AS FOLLOWS:

**Article 1 — Budget**

1. The financial year of the Organisation shall run from the 1<sup>st</sup> January to 31 December.
2. Not later than the 1<sup>st</sup> September of each year, the Director shall submit detailed estimates of income and expenditure for the subsequent financial year for the Council's consideration and approval.
3. Estimates of income and expenditure shall be grouped into chapters. Transfers within the budget shall not be permitted except by authorization of the Finance Committee set up in accordance with Article 3 hereinafter. The exact form of the budget estimates shall be determined by the Finance Committee on the recommendation of the Director.

**Article 2 — Additional Budget**

If circumstances so require, the Council may ask the Director to present an additional or revised budget. No resolution involving additional expenditure shall be deemed to have been approved by the Council unless it has also approved, on the proposal of the Director, the corresponding budget estimates.

### Article 3 — Finance Committee

The Council shall set up a Finance Committee composed of representatives of all the Member States, whose functions shall be determined in the Financial Rules, provided for in Article 8 hereinafter. The Director shall submit to the Committee the budget estimates which shall subsequently be submitted to the Council with the Committee's report thereon.

### Article 4 — Contributions

1. For the period ending on 31 December of the year in which the Convention enters into force, the Council shall draw up provisional budget estimates of which the relevant expenditures shall be met by contributions determined in accordance with the provisions of the Annex to this Protocol.
2. With effect from the 1<sup>st</sup> January of the following year, expenditures in the budget approved by the Council shall be met by the contributions of Member States in accordance with the provisions of Article VII, paragraph 1, of the Convention.
3. If a State becomes a member of the Organisation after 31 December of the year in which the Convention enters into force, the contributions of all the Member States shall be revised and the new schedule shall take effect as from the beginning of the current financial year. If necessary, repayments shall be made to adjust the contributions of all the Member States to the new schedule.
4.
  - a) On the proposal of the Director, the Finance Committee shall determine the terms on which payment of contributions shall be made, in order to ensure the proper funding of the Organisation.
  - b) The Director shall then notify the Member States of the amounts of their contributions and the dates on which payment should be made.

### Article 5 — Currency for the payment of Contributions

1. The Council shall determine the currency in which the budget of the Organisation will be drawn up. The contributions of the Member States shall be payable in that currency in accordance with current payment arrangements.

2. The Council may, however, require the Member States to pay part of their contributions in any other currency which the Organisation may require to accomplish its duties.

### **Article 6 — Revolving Fund**

The Council may establish a revolving fund.

### **Article 7 — Accounts and Auditing**

1. The Director shall ensure that an account is kept of all income and expenditure and that an annual balance-sheet is drawn up for the Organisation.
2. The Council shall appoint external auditors who shall serve for a period of three years in the first instance and may be re-appointed. The external auditors shall be responsible for examining the accounts and balance-sheets of the Organisation, in particular with a view to certifying that expenditure has conformed, within the limits specified in the Financial Rules, to the budget estimates. They shall also perform such other functions as are laid down in those Financial Rules.
3. The Director shall provide the external auditors with such information and assistance as they may require in order to perform their duties.

### **Article 8 — Financial Rules**

The Financial Rules shall lay down all the other arrangements relating to the Organisation's budget, accounting system and finances.

They shall be subject to the unanimous approval of the Council.

IN WITNESS WHEREOF, the undersigned representatives, being thereunto duly authorized, have signed this Protocol.

DONE at Paris on 5 October 1962 in a single copy in the German, French, Dutch and Swedish languages, the French text being authoritative in the event of dispute. This copy shall be deposited in the archives of the Ministry of Foreign Affairs of the French Republic.

This Ministry shall transmit a certified true copy to signatory or acceding States.

For the Federal Republic of Germany: Karl Knoke

For the Kingdom of Belgium: Jasper

For the French Republic: E. de Carbonnel

For the Kingdom of the Netherlands: M. Beyen

For the Kingdom of Sweden: R. Kumlin.



## ANNEX

### CONTRIBUTIONS FOR THE PERIOD ENDING ON 31 DECEMBER OF THE YEAR IN WHICH THE CONVENTION SHALL ENTER INTO FORCE

- a) The States who are parties to the Convention on the date of its entry into force and States which become members of the Organisation during the period indicated above shall together bear the entire expenditure covered by the provisional budget estimates drawn up by the Council in accordance with Article 4, paragraph 4 of the Financial Protocol.
- b) Contributions of States becoming members of the Organisation during the period indicated above shall be determined provisionally in such a way that the contributions of all the Member States are proportional to the percentages specified in paragraph d) of this Annex. As provided for in paragraph c) below, the contributions of these new members shall be used either for the subsequent repayment of part of the provisional contributions already made by the other Member States or to cover the additional budget appropriations entailed in the implementation of the initial programme approved by the Council during that period.
- c) The final amount of contributions outstanding for the above period shall be determined retrospectively on the basis of the overall budget for the said period in such a way that such amount shall be equivalent to what it would have been if all the Member States had been parties to the Convention at the time it entered into force. Any amount which a Member State may have paid in excess of the amount determined retrospectively shall be credited to that State.
- d) If all the States listed in the schedule given below have become members of the Organisation before the above period, their contributions for the overall budget for that period shall be at the following rates:

Federal Republic of Germany	33.33%
Belgium	11.32%
France	33.33%
Netherlands	10.49%
Sweden	11.53%
<b>Total</b>	<b>100.00%</b>

- e) In the event of any change in the maximum annual contributions as provided for in Article VII, paragraph 1 c), of the Convention, the above schedule shall be amended accordingly.



English translation

**PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE  
EUROPEAN ORGANISATION FOR ASTRONOMICAL RESEARCH  
IN THE SOUTHERN HEMISPHERE**

**Preamble**

The States parties to the Convention establishing the European Organisation for Astronomical Research in the Southern Hemisphere signed at Paris on 5 October 1962, hereinafter called 'the Convention',

CONSIDERING that the said Organisation, hereinafter called 'the Organisation', should enjoy on the territory of its Member States a legal status defining the privileges and immunities necessary for the achievement of its mission,

CONSIDERING that the Organisation is established in Chile where its status is defined by the Agreement between the Government of Chile and the Organisation, dated 6 November 1963,

HAVE AGREED AS FOLLOWS:

**Article 1**

The Organisation shall have legal personality. It shall, in particular, have the capacity to contract, acquire and dispose of immovable and movable property and take part in legal proceedings.

**Article 2**

1. The buildings and premises of the Organisation shall be inviolable, subject to the provisions of paragraph 2 of the present Article and of Articles 5 and 6 below.
2. The Organisation shall not allow its buildings or premises to serve as a refuge to a person wanted in connection with a crime or who is caught in the act, or for whom a warrant of arrest or deportation order has been issued, or who has been convicted of a crime by the competent authorities of the territory.

### Article 3

The archives of the Organisation and, in general, all documents belonging to it or in its possession shall be inviolable wherever they may be.

### Article 4

1. Within the scope of its official activities, the Organisation shall enjoy immunity from legal process and execution, except:
  - a) in so far as such immunity is waived in a particular case by the Director General of the Organisation, or the person acting in his stead as provided for by Article VI of the Convention;
  - b) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Organisation, or in respect of a road traffic offence involving such a vehicle;
  - c) in respect of the enforcement of an arbitration award made under either Article 23 or Article 24 of the present Protocol;
  - d) in the event of attachment of salary, enforced for a debt of a member of personnel of the Organisation, provided that such attachment results from a final and enforceable legal decision in accordance with the rules in force on the territory of enforcement;
  - e) in respect of a counter-claim relating directly to a main claim brought by the Organisation.
2. The Organisation's property and assets wherever they may be shall be immune from any form of requisition, confiscation, expropriation and sequestration. They shall also be immune from any form of administrative constraints or provisional judicial measures, except in so far as may be temporarily necessary in connection with the prevention of accidents involving motor vehicles belonging to, or operated on behalf of, the Organisation or enquiries to which such accidents may have given rise.

### Article 5

1. The Organisation shall co-operate at all times with the competent authorities of States parties to the present Protocol, in order to facilitate the proper administration of justice, to ensure the observance of police regulations and regulations concerning public health and work, or other analogous legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in the present Protocol.

2. The procedure of co-operation mentioned in the preceding paragraph may be specified in the additional agreements referred to in Article 27 of the present Protocol.

### **Article 6**

1. Each State party to the present Protocol reserves the right to take all precautionary measures necessary in the interests of its security and the maintenance of public order.
2. If the Government of the State party to the present Protocol concerned considers it necessary to exercise this right, it shall liaise with the Organisation as soon as circumstances allow, in order to determine by mutual agreement the steps necessary to protect the interests of the Organisation.
3. The Organisation shall collaborate with the authorities of the States parties to the present Protocol to avoid any prejudice to their safety and public order resulting from its activities.

### **Article 7**

1. Within the scope of its official activities, the Organisation and its property and income shall be exempt from direct taxation.
2. When the Organisation makes major purchases of goods or services, including the issue of publications, which are strictly necessary for the exercise of its official activities, in the price of which duties or charges are included, appropriate measures shall be taken by the State party to the present Protocol which has levied the duties or charges to remit or reimburse the amount of such duties or charges where they are identifiable.
3. No exemption shall be accorded in respect of taxes and duties which only constitute remuneration for services rendered.

### **Article 8**

Each State party to the present Protocol shall grant the Organisation exemption from or reimbursement of import and export duties and taxes, with the exception of those which only constitute remuneration for services rendered, on goods and materials for use in connection with its official activities, and on publications relating to its mission, that it imports or exports.

Such goods and materials shall be exempt from all prohibitions and restrictions on import or export.

## Article 9

The provisions of Articles 7 and 8 of the present Protocol shall not apply to goods and services purchased and goods imported for the personal needs of the Director General and the members of personnel of the Organisation.

## Article 10

1. Goods belonging to the Organisation, which have been acquired in accordance with Article 7 or imported in accordance with Article 8, may not be sold, given away, lent or hired out on the territory of the State which has granted the aforementioned exemptions, except in accordance with the conditions laid down by that State.
2. The transfer of goods or services between the establishments of the Organisation shall be exempt from any charges or restrictions; if necessary, the Governments of the States parties to the present Protocol shall take all appropriate measures to remit or reimburse the amount of such charges or to lift such restrictions.

## Article 11

For the purposes of the present Protocol, 'official activities of the Organisation' shall mean all the activities of the Organisation carried out in pursuance of its objectives as defined in the Convention, including its administrative activities.

## Article 12

1. The circulation of publications and other information material sent by or to the Organisation, and in accordance with its purposes, shall not be restricted in any way.
2. For its official communications and the transfer of all its documents, the Organisation shall enjoy treatment which is at least as favourable as that granted to other similar international organisations by the Government of each State party to the present Protocol.

## Article 13

1. The Organisation may receive, hold and transfer any funds, currency and cash; it may dispose of them freely for its official activities and hold accounts in any currency to the extent required to meet its obligations.



2. In the exercise of the rights granted to it under the present Article, the Organisation shall take into account any representation made by the Government of a State party to the present Protocol and which is not prejudicial to its own interests.

#### Article 14

1. Representatives of States parties to the present Protocol attending meetings of the Organisation shall enjoy, while exercising their functions and in the course of their journeys to and from the place of meeting, immunity from arrest and detention, and from seizure of their personal luggage, except in the case of being caught in the act. In such an event, the competent authorities shall immediately inform the Director General of the Organisation or his representative of the arrest or seizure.
2. The persons referred to in the present Article shall also enjoy immunity from legal process, even after the termination of their duties, in respect of acts, including words spoken or written, done by them in the exercise of their functions and within the limits of their remit. This immunity shall not apply in the case of a violation of the motor vehicle traffic regulations committed by the persons concerned nor in the case of damage caused by a motor vehicle belonging to or driven by them.

#### Article 15

In addition to the privileges and immunities provided for in Articles 16 and 17 below, the Director General of the Organisation, or the person acting in his stead, shall enjoy throughout his term of office the privileges and immunities to which diplomatic representatives of comparable rank are entitled by virtue of the Vienna Convention of 18 April 1961 on diplomatic relations.

#### Article 16

1. Persons in the service of the Organisation shall enjoy immunity from any legal proceedings for acts, including words written or spoken, done by them in the exercise of their functions and within the limits of their remit, even after the end of their duties.
2. This immunity shall not apply, however, in the case of a violation of the motor vehicle traffic regulations committed by the persons mentioned in paragraph 1 above, nor in the case of damage caused by a motor vehicle belonging to or driven by them.

## Article 17

The members of personnel of the Organisation who work professionally only for the Organisation:

- a) shall enjoy in respect of the transfer of funds the privileges generally accorded to members of personnel of international organisations in accordance with the respective national regulations;
- b) shall, provided that they hold a contract with the Organisation for a period of at least one year, have the right to import free of duty their furniture and personal effects at the time of first taking up their post in the State concerned and the right, on the termination of their duties in that State, to export free of duty their furniture and personal effects, subject, in either case, to the conditions and restrictions imposed by the laws and regulations of the State where the right is exercised;
- c) shall, together with members of their families forming part of their households, enjoy the same exemptions from measures restricting immigration and governing aliens' registration that are normally accorded to members of personnel of international organisations,
- d) shall enjoy inviolability for all their official papers and documents;
- e) shall be exempt from all obligations in respect of military service or any other compulsory service;
- f) shall, together with the members of their families forming part of their households, enjoy the same facilities with regard to repatriation as members of diplomatic missions in time of international crisis.

## Article 18

The Organisation, its Director General and members of personnel shall be exempt from all compulsory contributions to national social security systems in the event that it establishes its own social security system providing adequate benefits, subject to agreements to be concluded with the States concerned, parties to the present Protocol, in accordance with the provisions of Article 27 below, or to corresponding measures taken by these States.

## Article 19

1. Subject to the conditions and following the procedure laid down by the Council, by the end of a period of one year at the latest from the date of the entry into force of the Protocol, the Director General and the members of personnel of the Organisation referred to in Article 17 may be subject to a tax, for the benefit of the Organisation, on salaries and emoluments paid by the Organisation. From the date on which this tax is applied, such

salaries and emoluments shall be exempt from national income tax; but the States parties to the present Protocol shall reserve the right to take these salaries and emoluments into account for the purpose of assessing the amount of taxation to be applied to income from other sources.

2. The provisions of paragraph 1 of this Article shall not apply to annuities and pensions paid by the Organisation to its former Directors-General and former members of personnel in respect of their service with the Organisation.

## Article 20

The names, titles and addresses of the members of personnel of the Organisation who are referred to in Article 17 of the present Protocol shall be communicated periodically to the Governments of the States parties to this Protocol.

## Article 21

1. The privileges and immunities provided for in the present Protocol are not designed to give personal advantage to their beneficiaries. They are provided solely to ensure, in all circumstances, the unimpeded functioning of the Organisation and the complete independence of the personnel to whom they are accorded.
2. The Director General or the person acting in his stead or, in the case of the representative of a State party to the present Protocol, the Government of the State concerned, or, in the case of the Director General himself, the Council, shall have the right and the duty to waive such immunity in cases where they consider that such immunity would impede the normal course of justice and that it can be waived without prejudice to the purposes for which it was granted.

## Article 22

No State party to the present Protocol shall be obliged to accord the privileges and immunities referred to in Articles 14, 15 and 17 *a)*, *b)*, *c)*, *e)* and *f)* to its own nationals or to permanent residents on its own territory.

## Article 23

1. The Organisation shall be obliged to include in all written contracts into which it enters, other than those concluded in accordance with personnel rules, an arbitration clause whereby any disputes arising out of the interpretation or execution of the contract may, at the request of either party, be submitted to private arbitration. This arbitration clause shall specify the manner in which the arbitrators are to be appointed, the law applicable and the State where the arbitrators shall sit. The arbitration procedure shall be that of the aforementioned State.
2. The enforcement of the award rendered in such arbitration shall be governed by the rules in force in the State in which it is to be executed.

## Article 24

1. Any State party to the present Protocol may submit to an international arbitration Tribunal any dispute:
  - a) arising out of damage caused by the Organisation;
  - b) involving any non-contractual obligation of the Organisation;
  - c) involving any person who can claim immunity from legal process under Articles 15 and 16, if this immunity is not waived in accordance with the provisions of Article 21 of the present Protocol. In disputes where immunity from legal process is claimed under Articles 15 and 16, the liability of the Organisation shall be substituted for that of the individuals referred to in these Articles.
2. If a State party to the present Protocol intends to submit a dispute to arbitration, it shall notify the Director General, who shall immediately inform each State party to the present Protocol of such notification.
3. The procedure laid down in paragraph 1 of this Article shall not apply to disputes between the Organisation and the Director General, its members of personnel or experts in respect of their conditions of service.
4. There shall be no right of appeal against the award of the arbitration Tribunal which shall be final and binding on the parties. In the event of dispute concerning the meaning and scope of the award, it shall be the responsibility of the arbitration Tribunal to interpret it on request by either party.

## Article 25

1. The arbitration Tribunal referred to in Article 24 above shall consist of three members, one arbitrator appointed by the State or States parties to the arbitration, one arbitrator appointed by the Organisation and a third arbitrator, who shall assume the Presidency, appointed by the first two arbitrators.
2. The arbitrators shall be chosen from a list comprising no more than six arbitrators appointed by each State party to the present Protocol and six arbitrators appointed by the Organisation.
3. If, within three months from the date of the notification referred to in paragraph 2 of Article 24, either party fails to make the appointment referred to in paragraph 1 of the present Article, the choice of the arbitrator shall, on request of the other party, be made by the President of the International Court of Justice from among the persons included in the list. This shall also apply, when so requested by either party, if, within one month from the date of appointment of the second arbitrator, the first two arbitrators are unable to agree on the choice of the third arbitrator. However, a national of the State which is a claimant in the arbitration may not be chosen as an arbitrator when such appointment is to be made by the Organisation, nor may a person nominated to the list by the Organisation be chosen as arbitrator when such appointment is to be made by the State which is the claimant. Persons falling into either of these two categories may not be selected as President of the Tribunal.
4. The arbitration Tribunal shall establish its own rules of procedure.

## Article 26

Any dispute which may arise between the Organisation and the Government of a State party to the present Protocol concerning the interpretation or application of the present Protocol and which cannot be settled by direct negotiation shall, unless the parties agree to another method of settlement, be submitted at the request of either one of them to an arbitration Tribunal composed of three members, an arbitrator appointed by the Director General of the Organisation or the person acting in his stead, an arbitrator appointed by the Government of the State or States parties to the present Protocol concerned and a third arbitrator appointed jointly by the two others, who should be neither an official of the Organisation nor a national of the State or States concerned and who shall be President of the Tribunal.

The request for arbitration shall include the name of the arbitrator appointed by the claimant; the respondent shall appoint his arbitrator and inform the other party of that person's name within two months of receiving the request for arbitration. If the respondent fails to notify the name of his arbitrator within the above time or if the two arbitrators fail to agree on the choice of a third arbitrator within two months of the last arbitrator having been appointed, the arbitrator or the third arbitrator, as the case may be, shall be appointed by the President of the International Court of Justice, at the request of whichever party is first to apply to the Court.

The Tribunal shall establish its own rules of procedure. Its decisions shall be binding on the parties and shall not be subject to appeal.

### **Article 27**

The Organisation may, if the Council so decides, conclude complementary agreements with one or more of the States party to the present Protocol in order to implement the provisions of the present Protocol.

### **Article 28**

1. This Protocol shall be open for signature by States parties to the Convention Establishing the Organisation, dated 5 October 1962.
2. This Protocol shall be subject to ratification or approval. The instruments of ratification or approval shall be deposited in the archives of the Government of the French Republic.

### **Article 29**

The present Protocol shall enter into force on the date of the deposit of the third instrument of ratification or approval.

### **Article 30**

1. After entering into force, the present Protocol shall remain open for accession by any State party to the Convention Establishing the Organisation, dated 5 October 1962.
2. Instruments of accession shall be deposited in the archives of the Government of the French Republic.



### **Article 31**

For any State which ratifies or approves the present Protocol after its entry into force, or for any State which accedes thereto, the present Protocol shall enter into force on the date of the deposit of the instrument of ratification, approval or accession.

### **Article 32**

The Government of the French Republic shall notify all signatory and acceding States of this Protocol and the Director General of the Organisation of the deposit of each instrument of ratification, approval or accession and of the entry into force of this Protocol.

### **Article 33**

1. The present Protocol shall remain in force until the expiry of the Convention Establishing the Organisation, dated 5 October 1962.
2. Any State which withdraws from the Organisation or ceases to be a member thereof as provided for in Article XI of the Convention referred to in the preceding paragraph shall cease to be a party to the present Protocol.

### **Article 34**

This Protocol shall be interpreted in the light of its primary objective, which is to allow the Organisation fully and efficiently to fulfil its purposes and exercise the functions assigned to it by the Convention.

### **Article 35**

Upon the entry into force of this Protocol, the Government of the French Republic shall register it with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

DONE at Paris, this 12th day of July 1974 in a single original in the German, Danish, French, Dutch and Swedish languages, the French text being authoritative in the event of dispute. This copy shall be deposited in the archives of the Ministry of Foreign Affairs of the French Republic, which shall transmit a certified copy thereof to all signatory and acceding States.

For the Kingdom of Belgium: C de Kerchove

For the Federal Republic of Germany: Sigismund Fr. von Braun

For the Kingdom of the Netherlands: Vegelin Van Claerbergen

For the Kingdom of Denmark: Paul Fischer

For the French Republic: G. de Courcel

For the Kingdom of Sweden: Ingemar Hägglöf.

Part II

AGREEMENTS WITH HOST STATES GERMANY AND  
CHILE



English translation

**AGREEMENT BETWEEN THE GOVERNMENT OF CHILE AND THE EUROPEAN  
ORGANISATION FOR ASTRONOMICAL RESEARCH IN THE SOUTHERN  
HEMISPHERE FOR THE ESTABLISHMENT OF AN ASTRONOMICAL  
OBSERVATORY IN CHILE**

The Government of the Republic of Chile (hereinafter referred as “the Government”) and the European Organisation for Astronomical Research in the Southern Hemisphere (hereinafter called “ESO”),

CONSIDERING the Convention Establishing a European Organisation for Astronomical Research in the Southern Hemisphere signed in Paris on the 5th day of October 1962 by the Federal Republic of Germany, the Kingdom of Belgium, the French Republic, the Kingdom of the Netherlands and the Kingdom of Sweden;

DESIROUS of co-operating in and instituting astronomical research in the Southern Hemisphere through the construction of an Astronomical Observatory on Chilean territory equipped with scientific resources and instruments of a capacity such that they are capable of solving the problems arising out of knowledge of the Galaxy in this sector of the Universe;

HAVE AGREED AS FOLLOWS:

**Article I**

The construction of buildings, the provision and installation of equipment and instruments and the operation of the Astronomical Observatory shall be carried out on behalf of and under the responsibility of ESO.

ESO shall likewise be responsible for the transportation to the Observatory site of the materials, instruments and equipment required and for the construction of housing for the personnel in charge of setting up and operating the Observatory.

## Article II

The Government shall provide ESO with all the information it might require for the preliminary construction studies for the Observatory and shall furnish all manner of assistance and facilities for carrying out the project, such as: granting the necessary permissions to set up radio-telegraph stations, for the study and construction of an airfield, and for the carrying out of a topographic survey of the region in which the Observatory will be located; giving preference, in its road construction programme, to the construction of roads in the region; selling to ESO State-owned lands; and granting to ESO water distribution rights, providing that to do so is not prejudicial to third parties. This assistance shall not entail any financial obligation on the part of the Government.

## Article III

The Government recognises the international personality of ESO, as it shall its legal personality and, in particular, its capacity:

- a) to enter into contracts;
- b) to acquire and dispose of immovable and movable property; and
- c) to appear in legal proceedings.

## Article IV

The Government shall grant ESO the same immunities, prerogatives, privileges and facilities as the Government applies to the United Nations Economic Commission for Latin America and the Caribbean as granted in the Agreement signed in Santiago on 16 February 1953.

## Article V

The Government shall grant to the representatives of the Members of ESO and to the Executive and other senior international officials the immunities, prerogatives, privileges and facilities which the Government applies to the representatives, experts and officials of the United Nations Economic Commission for Latin America and the Caribbean as granted in the Agreement signed in Santiago on 16 February 1953.

## Article VI

Scientists, teachers, engineers, technicians and employees of foreign nationality coming to Chile for the purpose of constructing, fitting out, maintaining and operating the Observatory, whose number and status shall be determined by mutual agreement between the Government and ESO, shall be subject to the following regime during their period of residence on Chilean territory:

- a) Furniture and personal effects which the persons referred to in the foregoing paragraph and the members of their families import when commencing their assignment in Chile shall be exempt from customs duty and other taxes, prohibitions and import or export restrictions and from any other form of fiscal levy.

This exemption shall extend to one motor vehicle, provided that their assignment to Chile is for at least one year. The transfer of the motor vehicle shall be subject to the same provisions as are applied by the Government to the experts and officials of the United Nations Economic Commission for Latin America and the Caribbean as granted by the Agreement signed in Santiago on 16 February 1953.

- b) With respect to the property, resources and emoluments of the persons referred to in the first paragraph of this Article and of the members of their families, the Government shall apply the same provisions enjoyed by the experts and officials of the United Nations Economic Commission for Latin America and the Caribbean as granted by the Agreement signed in Santiago on 16 February 1953. Similarly, the Government shall exempt them from registering as aliens and from immigration restrictions and the competent authorities shall provide them with a document testifying to their status as ESO officials.
- c) The Government shall grant these persons the same repatriation facilities and the same rights to protection by the Chilean authorities for themselves, their families and dependents as are enjoyed by members of diplomatic missions at times of international tension.

## Article VII

The prerogatives and immunities provided for in this Agreement are granted in the interests of ESO and not for the personal benefit of the persons concerned. The Director shall waive the immunity of any official in cases where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of ESO.



ESO and its officials shall cooperate at all times with the Chilean authorities to facilitate the proper administration of justice, ensure observance of the regulations of the police and to avoid any abuse in the exercise of the prerogatives and immunities granted in this Agreement.

### Article VIII

The Director of ESO shall take all steps necessary to prevent any abuse of the prerogatives and immunities provided for in this Agreement and shall, for that purpose, draw up the rules he deems necessary and appropriate for the officials of ESO.

When the Government considers that there has been some abuse in the exercise of the prerogatives and immunities granted in this Agreement, the Director, at the Government's request, shall address the matter with the competent Chilean authorities in order to determine whether any such abuse has occurred. If these negotiations do not give results that are satisfactory to the Director and the Government, the matter shall be settled in accordance with the provisions of Article X.

### Article IX

The Government and ESO may conclude any supplementary agreements which may prove necessary within the scope of this Agreement.

### Article X

Any dispute between the Government and ESO concerning the interpretation or application of this Agreement or of any supplementary agreement or matter relating to the ESO headquarters (premises occupied by ESO), or concerning relations between the Government and ESO, which are not settled by direct discussions between the Parties may be submitted by either Party to a Tribunal composed of three arbitrators, which shall be set up on the entry into force of this Agreement.

The Government and ESO shall each appoint one of the members of the Tribunal.

The duly appointed members of the Tribunal shall appoint their Chairman.

In the event of disagreement between the members of the Tribunal over the appointment of the Chairman, he shall be appointed, at the request of the members of the Tribunal, by the President of the International Court of Justice.

The Tribunal shall assume jurisdiction at the request of either Party.

The Tribunal shall decide on its own procedure.

## Article XI

This Agreement shall enter into force as soon as it has been ratified by the Government and approved by the ESO Council provided that the fourth instrument of ratification or approval of the Convention Establishing ESO dated 5 October 1962 has been deposited with the Ministry of Foreign Affairs of the French Republic in accordance with the conditions specified in Article XIV of the said Convention.

Consultations may be held at the request of the Government or of ESO with a view to modifying this Agreement; any amendment shall be implemented by mutual approval.

This Agreement shall be interpreted in the light of its fundamental purpose, which is to enable ESO to perform its functions completely and efficiently and to accomplish its aims.

In the event that this Agreement imposes obligations on the competent Chilean authorities, the ultimate responsibility for fulfilment of such obligations shall devolve upon the Government.

This Agreement and any supplementary agreement concluded between the Government and ESO within the scope of its provisions shall cease to apply twelve months after one or other of the Contracting Parties has notified the other Party in writing of its decision to terminate the Agreement, except with regard to the provisions that would apply to the normal cessation of ESO's activities in Chile and to the disposal of its property in Chile.

IN WITNESS WHEREOF,

The Government and ESO have signed this Agreement.

DONE at Santiago de Chile, this sixth day of November nineteen hundred and sixty-three in two copies in the Spanish and French languages, the Spanish text being authoritative in the event of dispute.

For the Government of Chile: E. Ortuzar E.

For the European Organisation for Astronomical Research in the Southern Hemisphere:  
O. Heckmann.

## PROTOCOL

On 6 November 1963, the European Organisation for Astronomical Research in the Southern Hemisphere, represented by Mr. Otto Heckmann, signed an Agreement with the Government of Chile for the Establishment of an Astronomical Observatory in Chile.

Through this complementary Protocol, the Parties confirm this Agreement and further declare that it will be deemed to have entered into force from the sixth day of February last.

This Protocol is signed in four original copies, two in the Spanish language two in the French language, which shall remain in the possession of each Party. In the event of doubt the Spanish text shall be authoritative.

DONE in Santiago de Chile, this eighteenth day of April nineteen hundred and sixty-four.

For the Government of Chile: E. Ortuzar E.

For the European Organisation for Astronomical Research in the Southern Hemisphere:  
O. Heckmann.

**AGREEMENT SUPPLEMENTING THE AGREEMENT SIGNED BETWEEN THE  
GOVERNMENT OF CHILE AND THE EUROPEAN ORGANISATION FOR  
ASTRONOMICAL RESEARCH IN THE SOUTHERN HEMISPHERE FOR THE  
ESTABLISHMENT OF AN ASTRONOMICAL OBSERVATORY IN CHILE**

The Government of the Republic of Chile (hereinafter called “the Government”) and the European Organisation for Astronomical Research in the Southern Hemisphere (hereinafter called “ESO”),

CONSIDERING

the Agreement signed on 6 November 1963 between the Government and ESO for the purpose of constructing, fitting out and maintaining on behalf of ESO an Astronomical Observatory equipped with scientific resources and instruments of a capacity such that they are capable of solving the problems arising from the knowledge of the Galaxy in this sector of the Universe, in respect of which the Government shall provide all manner of assistance and facilities,

DESIROUS of ensuring that ESO’s observational work will be protected and that the powerful and delicate instruments equipping the Observatory will be safeguarded,

HAVE AGREED TO THE FOLLOWING:

**Article I**

No mining operations shall be conducted without the authorization of the Head of State of Chile in the locality of Cerro de la Silla in La Higuera municipality, Coquimbo Province, where the Observatory will be built, or in the surrounding area, within the limits indicated on the attached plan<sup>2</sup>, which shall be considered to form an integral part of the present Agreement.

In the North, the Quebrada Las Breas de San Antonio, from the point marked “A” on the attached map, at its confluence with the Quebrada Pedernales and Quebrada Pelicano, to the point marked “B” at a distance of 20 500 metres along the wavy line measured from the centreline of the Quebrada Las Breas de San Antonio.

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<sup>2</sup> The plan is reproduced in the authoritative Spanish version.

In the North-East, from the above-mentioned point "B" for a distance of 7 500 metres in a straight line to the Cerro Tabaco Alto marked "C" on the said plan.

In the East, from the Cerro Tabaco Alto for a distance of 21 600 metres in a straight line measured from North to South to the point marked "D" on the Quebrada Cortadera.

In the South, from the above-mentioned point "D" for a distance of 35 400 metres in a straight line to the point marked "E" on the Quebrada Pelicano.

In the West, from the above-mentioned point "E" to the above-mentioned point "A" at a distance of 23 400 metres along the wavy line measured from the centreline of the Quebrada Pelicano.

The longitude and latitude of the points mentioned above are as follows:

Point	Longitude	Latitude
A	70°.48'52"	-29°09'36"
B	70°.38'56"	-29°05'51"
C	70°.34'46"	-29°08'20"
D	70°.34'46"	-29°19'46"
E	70°.55'30"	-29°19'13"

## Article II

The provisions of the foregoing Article shall be without prejudice to any rights which third parties may have validly acquired prior to the date of entry into force of this Agreement.

## Article III

If, for any reason whatsoever, the aforementioned main Agreement signed on 6 November 1963 shall lapse, the present Agreement shall be null and void.

## Article IV

This Agreement shall enter into force once the Government of the Republic of Chile has notified ESO that the relevant internal constitutional requirements have been complied with.

IN WITNESS WHEREOF, the Government and ESO have signed this Agreement in Santiago on the thirtieth day of March nineteen hundred and sixty-six, in two copies in the Spanish and French languages. In the event of any discrepancy between the two texts, the Spanish text shall prevail.

For the Government of Chile: Gabriel Valdes S.

For the European Organisation for Astronomical Research in the Southern Hemisphere:

O. Heckmann.



English translation

**AGREEMENT BETWEEN THE GOVERNMENT OF CHILE AND THE EUROPEAN  
ORGANISATION FOR ASTRONOMICAL RESEARCH IN THE SOUTHERN  
HEMISPHERE ON THE DONATION OF A PLOT OF LAND IN SANTIAGO FOR THE  
CENTRAL OFFICE OF THE ORGANISATION IN CHILE**

The Government of the Republic of Chile (hereinafter referred as “the Government”) and the European Organisation for Astronomical Research in the Southern Hemisphere (hereinafter called “ESO”),

CONSIDERING the scientific activities which ESO will undertake in Chile in accordance with the Agreement signed with the Government on the sixth of November nineteen hundred and sixty-three for the Establishment of an Astronomical Observatory in Chile,

FURTHER CONSIDERING, ESO’s intention to set up a central office in Santiago for the scientific activities it will be conducting in Chile in connection with the said Astronomical Observatory,

CONSIDERING LASTLY, the desire of the Government of Chile to co-operate with ESO in setting up the said central office in the city of Santiago,

HAVE AGREED AS FOLLOWS:

*First.* — The Government shall transfer to ESO, free of charge, a plot of land located in the Vitacura district of Las Condes municipality in the department and province of Santiago which forms part of a larger area of land registered in the name of the Treasury in folio seven thousand four hundred and seventy-one under the number nine thousand nine hundred in the Santiago Land Register for the year nineteen hundred and fifty-nine. The plot of land which shall be transferred to ESO shall consist of an area of approximately three hectares and thirty-nine ares (3.39 ha) and its boundaries shall be as follows: in the North, one hundred and fifty-nine metres contiguous with the Treasury land handed over to the Ministry of Foreign Affairs and with the Calle O’Brien; in the East, two hundred and twelve metres contiguous with private property and the Avenida Alonso de Cordova; in the South, one hundred and fifty-nine metres contiguous with the land of the United Nations Organisation and, in the West, two hundred and twelve metres contiguous with the Treasury land handed over to the Ministry of Foreign Affairs.

*Second.* — ESO agrees to construct a building on the said site for the purpose of setting up the central office for the activities it will be conducting in Chile.



*Third.* — ESO undertakes to commence construction of the said building within a period of one year from the date this Agreement shall enter into force.

*Fourth.* — Without prejudice to the taxation requirements laid down in Law No. 12.437, the Government shall apply, with respect to the buildings and construction work carried out on the site defined in Clause 1 herein, the advantages provided for in Article IV of the Agreement which the Government and ESO signed on 6 November 1963.

*Fifth.* — The present Agreement shall enter into force once the Government of Chile has notified ESO that the relevant internal constitutional requirements have been complied with.

IN WITNESS WHEREOF, the Government and ESO have signed the present Agreement in Santiago de Chile on the thirtieth day of October nineteen hundred and sixty-four.

Julio Philippi, for the Government of Chile.

O. Heckmann, for the European Organisation for Astronomical Research in the Southern Hemisphere.

SITZSTAATABKOMMEN ZWISCHEN DER REGIERUNG DER BUNDESREPUBLIK  
DEUTSCHLAND UND DER EUROPÄISCHEN ORGANISATION FÜR  
ASTRONOMISCHE FORSCHUNG IN DER SÜDLICHEN HEMISPHERE

HEADQUARTERS AGREEMENT BETWEEN THE GOVERNMENT OF THE  
FEDERAL REPUBLIC OF GERMANY AND THE EUROPEAN ORGANISATION  
FOR ASTRONOMICAL RESEARCH IN THE SOUTHERN HEMISPHERE

DIE REGIERUNG DER BUNDESREPUBLIK  
DEUTSCHLAND  
und  
DIE EUROPÄISCHE ORGANISATION FÜR  
ASTRONOMISCHE FORSCHUNG IN DER  
SÜDLICHEN HEMISPHERE —

THE GOVERNMENT OF THE FEDERAL  
REPUBLIC OF GERMANY  
and  
THE EUROPEAN ORGANISATION FOR  
ASTRONOMICAL RESEARCH IN THE  
SOUTHERN HEMISPHERE,

GESTÜTZT auf das Übereinkommen vom 5.  
Oktober 1962 zur Gründung einer Europäi-  
schen Organisation für Astronomische For-  
schung in der Südlichen Hemisphäre.

HAVING REGARD to the Convention of 5 Octo-  
ber 1962 Establishing a European Organisa-  
tion for Astronomical Research in the South-  
ern Hemisphere,

GESTÜTZT auf Artikel 27 des Protokolls vom  
12. Juli 1974 über die Vorrechte und Immunitä-  
ten der Europäischen Organisation für Astro-  
nomische Forschung in der Südlichen Hemi-  
sphäre,

HAVING REGARD to Article 27 of the Pro-  
tocol of 12 July 1974 on the Privileges and  
Immunities of the European Organisation for  
Astronomical Research in the Southern Hemi-  
sphere,

IN DER ERWÄGUNG, daß die Organisa-  
tion gemäß dem Beschluß des Rates vom  
2. Dezember 1975 ihren Sitz in Garching bei  
München hat —

CONSIDERING that the Organisation, in  
accordance with the decision of the Council  
of 2 December 1975, has its Headquarters at  
Garching near Munich,

SIND WIE FOLGT ÜBEREINGEKOMMEN:

HAVE AGREED AS FOLLOWS:

## Artikel 1 — Begriffsbestimmungen

Im Sinne dieses Abkommens bedeutet:

- a) „Regierung“ die Regierung der Bundesrepublik Deutschland;
- b) „ESO“ die Europäische Organisation für Astronomische Forschung in der Südlichen Hemisphäre;
- c) „MPG“ die Max-Planck-Gesellschaft in München;
- d) „Übereinkommen“ das Übereinkommen vom 5. Oktober 1962 zur Gründung einer Europäischen Organisation für Astronomische Forschung in der Südlichen Hemisphäre;
- e) „Protokoll“ das Protokoll vom 12. Juli 1974 über die Vorrechte und Immunitäten der Europäischen Organisation für Astronomische Forschung in der Südlichen Hemisphäre.

## Artikel 2 — Auslegung

Dieses Abkommen ist im Hinblick auf sein oberstes Ziel auszulegen, das darin besteht, ESO die Möglichkeit zu geben, an ihrem Sitz in der Bundesrepublik Deutschland die ihr gestellten Aufgaben voll und ganz zu erfüllen und ihrer Zweckbestimmung nachzukommen.

## Artikel 3 — Grundstück

1. Die Regierung trägt dafür Sorge, daß ESO entsprechend einem zwischen der MPG und ESO zu schließenden Vertrag ein Erbbaurecht für die Dauer von 99 Jahren an einem im Grundbuch von Garching eingetragenen Grundstück eingeräumt wird, dessen Eigentümerin

## Article 1 — Definitions

For the purposes of the present Agreement:

- a) “the Government” shall mean the Government of the Federal Republic of Germany;
- b) “ESO” shall mean the European Organisation for Astronomical Research in the Southern Hemisphere;
- c) “MPG” shall mean the Max-Planck-Gesellschaft in Munich;
- d) “the Convention” shall mean the Convention of 5 October 1962 Establishing a European Organisation for Astronomical Research in the Southern Hemisphere;
- e) “the Protocol” shall mean the Protocol of 12 July 1974 on the Privileges and Immunities of the European Organisation for Astronomical Research in the Southern Hemisphere.

## Article 2 — Interpretation

This Agreement shall be interpreted in the light of its primary purpose of enabling ESO at its Headquarters in the Federal Republic of Germany fully and efficiently to discharge its responsibilities and fulfil its purposes.

## Article 3 — Site

1. The Government shall ensure that a building lease (Erbbaurecht) for a duration of 99 years for a site entered in the land register of Garching and owned by MPG is granted to ESO, in accordance with a contract to be concluded between MPG and ESO. The Government undertakes

die MPG ist. Die Regierung übernimmt die mit der Bestellung des Erbbaurechts verbundenen Kosten sowie den Erbbauzins für die Dauer des Erbbaurechts.

2. Lage und Ausmaß des Grundstücks sind auf dem Plan wiedergegeben, welcher der Anlage I zu diesem Abkommen beigefügt ist.

#### Artikel 4 — Öffentliche Leistungen

1. Die Regierung bringt auf ihre Kosten das Grundstück in baureifen Zustand. Die von der Regierung in diesem Zusammenhang zu erbringenden Leistungen sind in Anlage II zu diesem Abkommen aufgeführt.
2. Die Regierung übernimmt die erforderlichen Kosten der Planung und bezugsfertigen Herstellung der auf dem in Artikel 3 bezeichneten Grundstück für ESO zu errichtenden Bauwerke, die von der MPG wie ein eigenes Bauvorhaben nach den für diese geltenden Baurichtlinien geplant und durchgeführt werden. Der Umfang des Bauvorhabens ist in Anlage III zu diesem Abkommen aufgeführt.
3. Das in Artikel 3 Absatz 2 bezeichnete Grundstück und die darauf zu errichtenden Bauwerke dürfen nur für die Aufgaben benutzt werden, für die ESO errichtet worden ist.
4. Die Regierung ergreift alle notwendigen Maßnahmen, um die Errichtung und den Betrieb der ESO-Anlage zu erleichtern.

to bear the costs relating to the conveying of the building lease and to pay the ground rent throughout the duration of the building lease.

2. The situation and area of the site are indicated on the plan attached to Annex I to the present Agreement.

#### Article 4 — Public services

1. The Government shall develop the site for construction at its own expense. The services to be provided by the Government in this context are set out in Annex II to the present Agreement.
2. The Government shall bear the necessary costs of planning the buildings to be erected for ESO on the site mentioned in Article 3 and constructing them ready for use; the work will be planned and executed by MPG as though it were a project of its own and in accordance with the applicable building regulations. The scope of the building project is set out in Annex III to the present Agreement.
3. The site mentioned in Article 3 (2) and the buildings to be erected thereon may be used only for the tasks for which ESO was set up.
4. The Government shall take all necessary steps to facilitate the setting up and operation of the ESO facilities.

5. Die Regierung wird die Bemühungen von ESO um die Versorgung ihres Personals mit angemessenen Wohn- und Unterrichtsmöglichkeiten in der Bundesrepublik Deutschland nachhaltig unterstützen.

#### **Artikel 5 — Unverletzlichkeit der Gebäude und Räumlichkeiten**

Die Gebäude und Räumlichkeiten im Sinne des Artikel 2 Absatz 1 des Protokolls sind das Gebäude und die Räumlichkeiten, die von ESO zur Ausübung ihrer amtlichen Tätigkeit benutzt werden.

#### **Artikel 6 — Haftung für Schäden**

1. ESO ist nach Maßgabe des inner-staatlichen deutschen Rechts für Rechtsverletzungen und Schäden verantwortlich, die auf ihre Tätigkeit in der Bundesrepublik Deutschland zurückzuführen sind.
2. ESO haftet nach Maßgabe des inner-staatlichen deutschen Rechts für alle der Bundesrepublik Deutschland oder einem Dritten entstehenden Schäden, welche von dem in Artikel 3 bezeichneten Grundstück oder den hierauf errichteten Bauwerken ausgehen. Soweit Dritten Schäden entstehen, stellt ESO die Bundesrepublik Deutschland von Schadenersatzansprüchen frei.

#### **Artikel 7 — Haftpflichtversicherung**

1. ESO unterhält eine Versicherung, durch die ihre in Artikel 6 bezeichnete Verantwortlichkeit gedeckt wird. Diese

5. The Government will actively support ESO's efforts to provide suitable housing and schooling facilities for its staff in the Federal Republic of Germany.

#### **Article 5 — Inviolability of buildings and premises**

The buildings and premises referred to in Article 2 (1) of the Protocol are the building and premises used by ESO to carry out its official activities.

#### **Article 6 — Liability for damage**

1. In accordance with German national law, ESO shall be liable for any damage or injury arising from its activities in the Federal Republic of Germany.
2. In accordance with German national law, ESO shall be liable for any damage sustained by the Federal Republic of Germany or a third party and arising from the site mentioned in Article 3 or the buildings erected thereon. ESO shall hold the Federal Republic of Germany harmless from any claim for indemnity based on any damage caused to a third party.

#### **Article 7 — Liability insurance**

1. ESO shall carry insurance sufficient to cover its liability under Article 6. Such insurance contract shall be concluded

- Versicherung wird mit einer nach deutschem Recht zugelassenen Versicherungsgesellschaft abgeschlossen.
2. Die Bestimmungen des Versicherungsvertrages werden nach Konsultation mit der Regierung festgelegt.
  3. Der Versicherungsvertrag hat vorzusehen, daß jede nicht zum Personal von ESO gehörende Person, die eine Rechtsverletzung oder einen Schaden erleidet, für die ESO haftbar ist, ihre Ansprüche unmittelbar gegen den Versicherer geltend machen kann.

#### **Artikel 8 — Tätigkeit für Dritte**

Jede Tätigkeit, die nach Maßgabe des Übereinkommens für Dritte ausgeführt wird, gilt für die Zwecke dieses Abkommens als ein Teil der Tätigkeit von ESO.

#### **Artikel 9 — Mitteilungen über Personalentwicklung**

ESO unterrichtet die Regierung über den Dienstantritt und das Ausscheiden aus dem Dienst von Mitgliedern des Personals von ESO. Außerdem übermittelt ESO in regelmäßigen Abständen eine Liste aller Mitglieder des Personals und aller Sachverständigen mit Namen, Dienstbezeichnungen und Anschriften. Sie gibt in jedem einzelnen Fall an, ob die betreffende Person deutsche Staatsangehörige ist.

with an insurance company licensed under German law.

2. The terms of the insurance contract shall be determined after consultation with the Government.
3. The insurance contract shall provide that any person who is not an ESO staff member and who suffers damage or injury for which ESO is liable shall be entitled to claim damages directly from the insurer.

#### **Article 8 — Activity on behalf of third parties**

Any activity on behalf of third parties carried out in accordance with the provisions of the Convention shall, for the purposes of the present Agreement, be considered part of the activities of ESO.

#### **Article 9 — Reporting of staff situation**

ESO shall inform the Government when staff members of ESO take up their appointments or cease their service. In addition, ESO shall provide at regular intervals a list of all staff members and experts with names, titles and addresses. In each individual case, it shall indicate whether the person concerned is a German national.

**Artikel 10 — Deutsche Staatsangehörige und im Geltungsbereich des Grundgesetzes ständig ansässige Personen**

Deutschen Staatsangehörigen und im Geltungsbereich des Grundgesetzes für die Bundesrepublik Deutschland ständig ansässigen Personen stehen die in den Artikeln 14, 15 und in Artikel 17 Buchstaben *a)*, *b)*, *c)*, *e)* und *f)* des Protokolls bezeichneten Vorrechte und Immunitäten nicht zu.

**Artikel 11 — Befreiung von Steuern**

1. Direkte Steuern im Sinne des Artikels 7 Absatz 1 des Protokolls sind alle Steuern, die vom Bund, einem Land oder einer anderen Gebietskörperschaft direkt erhoben werden. Direkte Steuern sind insbesondere:
  - a)* Die Einkommensteuer (Körperschaftsteuer),
  - b)* die Gewerbesteuer,
  - c)* die Vermögensteuer,
  - d)* die Grundsteuer.
2. Die für ESO zugelassenen Kraftfahrzeuge werden auf Antrag von der Kraftfahrzeugsteuer befreit.

**Artikel 12 — Erstattung von Steuern**

1. In Anwendung des Artikels 7 Absatz 2 des Protokolls erstattet das Bundesamt für Finanzen aus dem Aufkommen der Umsatzsteuer auf Antrag die ESO von den Unternehmern gesondert in Rechnung gestellte Umsatzsteuer für deren

**Article 10 — German nationals and permanent residents in the area of application of the Basic Law (constitutional law)**

German nationals and permanent residents in the area of application of the Basic law (constitutional law) for the Federal Republic of Germany shall not be entitled to the privileges and immunities defined in Articles 14 and 15 and in Article 17 *a)*, *b)*, *c)*, *e)*, and *f)* of the Protocol.

**Article 11 — Exemption from taxes**

1. Direct taxes under the terms of Article 7 (1) of the Protocol shall be considered to be all taxes levied directly by the Federation, by a "Land" or by some other territorial authority. Such taxes shall in particular include:
  - a)* Income tax (corporation tax),
  - b)* Trade tax,
  - c)* Property tax,
  - d)* Land tax.
2. The motor vehicles registered for ESO shall, on request, be exempted from motor vehicle tax.

**Article 12 — Reimbursement of taxes**

1. Pursuant to Article 7 (2) of the Protocol, the Federal Finance Authority (Bundesamt für Finanzen) shall, upon request, reimburse out of the turnover tax yield the amount of turnover tax invoiced separately by contractors

Lieferungen und sonstige Leistungen an ESO, wenn diese Umsätze ausschließlich für die amtliche Tätigkeit von ESO bestimmt sind: Voraussetzung ist, daß der für diese Umsätze geschuldete Steuerbetrag im Einzelfall DM 50, — übersteigt und von ESO an die Unternehmer bezahlt worden ist. Mindert sich der erstattete Steuerbetrag nachträglich, so unterrichtet ESO das Bundesamt für Finanzen hiervon und zahlt den Mindestbetrag zurück.

2. In Anwendung des Artikels 7 Absatz 2 des Protokolls erstattet das Bundesamt für Finanzen auf Antrag von ESO ferner die im Preis enthaltene Mineralölsteuer für Benzin, Dieselkraftstoff und Heizöl, wenn der Steuerbetrag im Einzelfall DM 50,— übersteigt.

### Artikel 13 — Veräußerung von Waren

1. Wird ein Gegenstand, den ESO für ihre amtliche Tätigkeit erworben oder eingeführt hat und für dessen Erwerb oder Einfuhr ihr Entlastung von der Umsatzsteuer oder Einfuhrumsatzsteuer nach Artikel 7 Absatz 2 oder Artikel 8 des Protokolls gewährt worden ist, entgeltlich oder unentgeltlich abgegeben, vermietet oder übertragen, so ist der Teil der Umsatzsteuer oder Einfuhrumsatzsteuer, der dem Veräußerungspreis oder, bei unentgeltlicher Abgabe oder Übertragung, dem Zeitwert des Gegenstands entspricht, an das Bundesamt für Finanzen abzuführen. Der abzuführende Steuerbetrag kann aus Vereinfachungsgründen durch Anwendung des im Zeitpunkt der Aufgabe oder Übertragung

in respect of supplies and other services rendered to ESO, whenever such transactions are exclusively intended for ESO's official activities; provided that the amount of tax due on such transactions shall exceed DM 50 in each individual case and shall have been paid by ESO to the contractor. If the amount of tax giving rise to reimbursement is subsequently reduced, ESO shall inform the Federal Finance Authority accordingly and refund the overpayment.

2. Pursuant to Article 7 (2) of the Protocol, the Federal Finance Authority shall furthermore, at ESO's request, reimburse the amount of the petroleum tax included in the price of petrol, diesel or fuel oil, whenever the amount of tax exceeds DM 50 in each individual case.

### Article 13 — Disposal of goods

1. If an article purchased or imported by ESO for its official activities and exempted from turnover tax or import turn-over tax under Article 7 (2) or Article 8 of the Protocol is disposed of, leased or transferred, on payment or free of charge, the fraction of the turnover tax or import turnover tax corresponding to the sales price or, in the event of disposal or transfer free of charge, to the market value of the article shall be paid to the Federal Finance Authority. For the sake of simplicity, the amount of tax payable may be determined by applying the tax rate in force at the time of disposal or transfer.



des Gegenstands geltenden Steuersatzes ermittelt werden.

2. Die von ESO unter den in Artikel 8 des Protokolls genannten Bedingungen zollfrei eingeführten Waren dürfen nur dann entgeltlich oder unentgeltlich an andere abgegeben, vermietet oder übertragen werden, wenn die zuständige Zollstelle vorher unterrichtet worden ist und die entsprechenden Zölle bezahlt worden sind. Die zu entrichtenden Zölle werden auf der Grundlage des Zeitwerts dieser Waren berechnet.

#### **Artikel 14 — Einreise, Aufenthalt und Ausreise**

1. Die Regierung trifft alle geeigneten Maßnahmen, um die Einreise, den Aufenthalt und die Ausreise der Mitglieder des Personals von ESO zu erleichtern.
2. Die Regierung erleichtert die Einreise, den Aufenthalt und die Ausreise aller amtlich zum Besuch von ESO eingeladenen Personen.

#### **Artikel 15 — Aufenthalts- und Arbeitserlaubnis**

Die Mitglieder des Personals von ESO, die ihre Tätigkeit in der Bundesrepublik Deutschland ausüben, bedürfen

- a) keiner Aufenthaltserlaubnis und unterliegen nicht den Vorschriften über die Meldepflicht für Ausländer; das gleiche gilt für die in ihrem Haushalt lebenden Familienangehörigen;

2. Goods imported duty free by ESO under the terms of Article 8 of the Protocol may only be disposed of, leased or transferred, either on payment or free of charge, if the competent customs authority has been informed in advance and the appropriate duty paid. The duty payable shall be calculated on the basis of the market value of the goods.

#### **Article 14 — Entry, presence in Germany and departure**

1. The Government shall take all appropriate steps to facilitate the entry, presence in Germany and departure of ESO staff members.
2. The Government shall facilitate the entry, presence in Germany and departure of all persons officially invited to visit ESO.

#### **Article 15 — Residence permits and work permits**

ESO staff members working in the Federal Republic of Germany

- a) do not require residence permits and are not subject to the regulations governing aliens' registration; the same applies to the members of their families forming part of their households;

b) keiner Arbeitserlaubnis.

#### Artikel 16 — Flagge und Emblem

ESO ist berechtigt, an ihren Räumlichkeiten und Dienstfahrzeugen Flagge und Emblem zu zeigen.

#### Artikel 17 — Inkrafttreten

Dieses Abkommen tritt einen Monat nach dem Tag in Kraft, an dem die Regierung dem Generaldirektor notifiziert hat, daß die innerstaatlichen Voraussetzungen für das Inkrafttreten dieses Abkommens erfüllt sind.

#### Artikel 18 — Revision

Auf Verlangen einer der beiden Vertragsparteien finden Verhandlungen über die Revision dieses Abkommens statt.

#### Artikel 19 — Geltungsdauer des Abkommens

1. Vorbehaltlich der Absätze 2 und 3 hat dieses Abkommen die gleiche Geltungsdauer wie das Übereinkommen zur Gründung einer Europäischen Organisation für Astronomische Forschung in der Südlichen Hemisphäre.
2. Dieses Abkommen tritt mit der Auflösung von ESO nach Artikel XII des Übereinkommens außer Kraft.

b) do not require work permits.

#### Article 16 — Flag and emblem

ESO shall be entitled to display its flag and emblem on its premises and official vehicles.

#### Article 17 — Entry into force

The present Agreement shall enter into force one month after the Government has notified the Director General that the domestic requirements for the entry into force of the Agreement have been fulfilled.

#### Article 18 — Revision

Negotiations for the revision of this Agreement shall be conducted at the request of either Party.

#### Article 19 — Duration of the Agreement

1. Except as otherwise provided in paragraphs (2) and (3) of this Article, the present Agreement shall have the same duration as the Convention Establishing a European Organisation for Astronomical Research in the Southern Hemisphere.
2. The present Agreement shall terminate in the event of ESO being dissolved under Article XII of the Convention.

3. Wenn die Regierung das Übereinkommen nach dessen Artikel X kündigt, tritt dieses Abkommen an dem Tag außer Kraft, an dem die Kündigung wirksam wird.
4. Für den Fall des Außerkrafttretens dieses Abkommens gemäß Absatz 3 erklären die Regierung und ESO ihre Bereitschaft, unverzüglich über eine fortdauernde Benutzung des Gebäudes und der Einrichtungen durch ESO in Verhandlungen zu treten.

#### **Artikel 20 — Verfahren bei Außerkrafttreten**

Bei Außerkrafttreten dieses Abkommens nach Artikel 19 sowie bei Beendigung des in Artikel 3 bezeichneten Vertrags vereinbaren die Regierung und ESO den Betrag, den die Regierung ESO als Ersatz für die Aufwendungen erstattet, welche ESO für die unbeweglichen Einrichtungen der von ihr benutzten Bauwerke geleistet hat.

#### **Artikel 21 — Beilegung von Streitigkeiten**

1. Kann eine sich aus der Auslegung oder Anwendung dieses Abkommens ergebende Streitigkeit nicht unmittelbar zwischen den Vertragsparteien beigelegt werden, so kann sie durch jede von ihnen einem Schiedsgericht unterbreitet werden. Beabsichtigt eine Vertragspartei, eine Streitigkeit einem Schiedsgericht zu unterbreiten, so notifiziert sie dies der anderen Vertragspartei.

3. If the Government denounces the Convention under Article X thereof, the present Agreement shall terminate on the date when the denunciation takes effect.
4. The Government and ESO express their willingness to enter into immediate negotiations for the continued use of the building and facilities by ESO, should the present Agreement be terminated under the terms of paragraph (3) of this Article.

#### **Article 20 — Procedure in the event of termination**

If the present Agreement is terminated under the terms of Article 19 or if the contract referred to in Article 3 is terminated, the Government and ESO shall agree on the amount to be paid to ESO by the Government in respect of ESO expenditure on the immovable facilities of the buildings used by ESO.

#### **Article 21 — Settlement of disputes**

1. Any dispute arising out of the interpretation or application of the present Agreement which cannot be settled directly between the Contracting Parties, may be submitted by either Party to an Arbitration Tribunal. If a Contracting Party intends to submit a dispute to an Arbitration Tribunal, it shall so notify the other Party.

- |   |   |
|---|---|
| <p>2. Das Schiedsgericht wird von Fall zu Fall gebildet. Die Regierung und ESO ernennen je ein Mitglied des Schiedsgerichts. Diese bestimmen ein drittes Mitglied, das als Obmann tätig wird.</p>   | <p>2. The Arbitration Tribunal shall be constituted for each individual case. The Government and ESO shall each appoint one member of the Arbitration Tribunal. These two members shall designate a third member, who shall be the chairman.</p>  |
| <p>3. Nimmt eine Vertragspartei binnen drei Monaten nach der in Absatz 1 erwähnten Notifizierung die in Absatz 2 vorgesehene Ernennung nicht vor, so wird der Schiedsrichter auf Antrag der anderen Vertragspartei vom Präsidenten des Internationalen Gerichtshofs oder von dessen amtierendem Stellvertreter ernannt. Das gleiche geschieht auf Antrag einer Vertragspartei, wenn innerhalb eines Monats nach der Ernennung des zweiten Schiedsrichters die zwei Schiedsrichter sich nicht über die Ernennung eines Obmanns einigen können.</p> | <p>3. If, within three months from the date of the notification referred to in paragraph (1) of this Article, either Contracting Party fails to make the appointment referred to in paragraph (2) of this Article, the arbitrator shall, at the request of the other Contracting Party, be nominated by the President of the International Court of Justice or by the person acting in his stead. This shall also apply, at the request of either Contracting Party, if, within one month from the date of the appointment of the second arbitrator, the first two arbitrators are unable to agree on the chairman to be appointed by them.</p> |
| <p>4. Das Schiedsgericht regelt sein Verfahren selbst.</p>  | <p>4. The Arbitration Tribunal shall determine its own procedure.</p>   |
| <p>5. Der Spruch des Schiedsgerichts ist für beide Parteien endgültig und bindend; ein Rechtsmittel gegen die Entscheidung ist nicht gegeben. Im Falle einer Streitigkeit über Inhalt oder Tragweite der Entscheidung obliegt es dem Schiedsgericht, sie auf Antrag einer Partei auszulegen.</p>  | <p>5. No appeal shall lie against the award of the Arbitration Tribunal, which shall be final and binding on the parties. In case of dispute concerning the import or scope of the award, it shall be incumbent upon the Arbitration Tribunal to interpret it at the request of either party.</p>   |
| <p>6. Auf Ersuchen der Regierung unterbreitet ESO dem Schiedsgericht jede Streitigkeit der in Artikel 24 Abs. 1 Buchstaben a) bis c) des Protokolls aufgeführten Art.</p>   | <p>6. Upon request of the Government, ESO shall submit to the Arbitration Tribunal any dispute of the kind described in Article 24 (1) a) to c) of the Protocol.</p>  |

## Artikel 22 — Berlin-Klausel

Dieses Abkommen gilt auch für das Land Berlin, sofern nicht die Regierung gegenüber ESO innerhalb von drei Monaten nach Inkrafttreten des Abkommens eine gegenteilige Erklärung abgibt.

GESCHEHEN zu Bonn am 31. Januar 1979 in zwei Urschriften, jede in deutscher und englischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

## Article 22 — Berlin clause

The present Agreement shall also apply to Land Berlin, provided that the Government does not make a contrary declaration to ESO within three months of the date of entry into force of the present Agreement.

DONE at Bonn on 31 January 1979 in duplicate in the German and English languages, both texts being equally authoritative.

Für die Regierung der Bundesrepublik Deutschland  
For the Government of the Federal Republic of Germany

Peter Hermes.

Für die Europäische Organisation für Astronomische Forschung in der Südlichen Hemisphäre  
For the European Organisation for Astronomical Research in the Southern Hemisphere

L. Woltjer.

## ANLAGE I

### LAGE UND AUSMASS DES IN ARTIKEL 3 DIESES ABKOMMENS BEZEICHNETEN GRUNDSTÜCKS

Lage und Ausmaß des in Artikel 3 Absatz 2 dieses Abkommens bezeichneten Grundstücks sind auf dem Plan angegeben, der dieser Anlage beigelegt ist<sup>3</sup>.

## ANLAGE II

### BESCHREIBUNG DER IN ARTIKEL 4 ABSATZ 1 DIESER ABKOMMENS ERWÄHNTEN LEISTUNGEN

Die Regierung erbringt für die in Artikel 4 Absatz 1 dieses Abkommens vorgesehene Baureifmachung des Grundstücks folgende Leistung:

- a) Herrichtung des Grundstücks;
- b) Vermessung des Grundstücks;
- c) Erstellung der Anschlüsse an die öffentlichen Versorgungsanlagen bis zur Grundstücksgrenze, und zwar für:
  - Elektrizität, einschließlich der Errichtung notwendiger Transformatoren,
  - Gas,
  - Wasser,
  - Wärme,
  - Kanalisation (einschließlich etwa erforderlicher Drainage),

<sup>3</sup> Von einer Wiedergabe des Plans wird abgesehen.

## ANNEX I

### SITUATION AND AREA OF THE SITE REFERRED TO IN ARTICLE 3 OF THE PRESENT AGREEMENT

The situation and area of the site referred to in Article 3 (2) of the present Agreement are indicated on the plan attached to this Annex<sup>3</sup>.

## ANNEX II

### ENUMERATION OF THE SERVICES REFERRED TO IN ARTICLE 4 (1) OF THE PRESENT AGREEMENT

With a view to the development of the site for construction as provided for in Article 4 (1) of the present Agreement, the Government shall provide the following services:

- a) Preparation of the site;
- b) Surveying the site;
- c) Provision of connexions to the following public utilities up to the boundary of the site:
  - electricity, including the installation of the necessary transformers,
  - gas,
  - water,
  - heating,
  - drains (including ground drains if necessary),

<sup>3</sup> The plan is not reproduced here.

- Feuermeldesystem (Anschluß an die nächstgelegene Feuerwache),
  - Telefon- und Fernschreibverbindungen (hierzu können besondere Abmachungen zwischen den zuständigen Dienststellen der Deutschen Bundespost und ESO getroffen werden);
- d) Bau einer Zufahrtstraße, wie in dem Plan zu Anlage I eingezeichnet;
- e) Zahlung von Erschließungskosten auf Grund baugesetzlicher oder ortsüblicher Regelungen.

### ANLAGE III

#### ERLÄUTERUNG DER IN ARTIKEL 4 ABSATZ 2 DIESES ABKOMMENS ERWÄHNTEN ZUSAGE

Die Regierung übernimmt die erforderlichen Kosten der Planung und bezugsfertigen Herstellung der in Artikel 4 Absatz 2 vorgesehenen Bauwerke gemäß DIN 276 (neu) im Leistungsumfang des Kostenrichtwerts II (Gesamtkosten) nach den Empfehlungen des Wissenschaftsrats zum Bau wissenschaftlicher Hochschulen.

- fire-alarm system (connexion to the nearest fire station),
  - telephone and teleprinter circuits (for this purpose, special arrangements may be concluded between the appropriate services of the Federal Postal Administration (Deutsche Bundespost) and ESO);
- d) Construction of an access road, as shown on the plan attached to Annex I;
- e) Payment of development costs on the basis of building legislation or local regulations.

### ANNEX III

#### DETAILS OF THE UNDERTAKING REFERRED TO IN ARTICLE 4 (2) OF THE PRESENT AGREEMENT

The Government shall bear the necessary costs of planning the building referred to in Article 4 (2) and providing them ready for use in accordance with building standard DIN 276 (new), up to an amount determined on the basis of Standard Building Costs, type II (Kostenrichtwert II) (total costs), following the recommendations of the Scientific Council for the Construction of Scientific Higher Educational Establishments (Wissenschaftsrat zum Bau wissenschaftlicher Hochschulen).

Original English text

INTERPRETATIVE, SUPPLEMENTARY AND AMENDING AGREEMENT  
TO  
“THE AGREEMENT BETWEEN THE GOVERNMENT OF CHILE AND THE  
EUROPEAN ORGANISATION FOR ASTRONOMICAL RESEARCH IN THE  
SOUTHERN HEMISPHERE FOR THE ESTABLISHMENT OF AN ASTRONOMICAL  
OBSERVATORY IN CHILE”

The Government of the Republic of Chile (“the Government” hereinafter) and the European Organisation for Astronomical Research in the Southern Hemisphere (“ESO” hereinafter):

CONSIDERING:

the Agreement signed on 6 November 1963 between the Government and ESO, the purpose of which is the construction, installation, operation and maintenance of an observatory of ESO (“the Agreement” hereinafter), endowed with scientific equipment and powerful instruments able to solve the problems arising from the lack of knowledge of the galaxy in this sector of the universe;

that, during the time the Agreement has been in force, ESO and the Government have developed ample relations of cooperation which have led to a legal system which should be interpreted, complemented and amended in the light of the scientific and technological changes which have occurred in Chile and in the world;

DESIRING:

to widen their cooperation with respect to astronomical research in the Southern Hemisphere on the basis, on the one hand, of constructing a centre for observation equipped with new and more powerful instruments and its respective installations and infrastructure and, on the other hand, of deepening and strengthening the cooperation in scientific and technological fields between both Parties;

HAVE AGREED AS FOLLOWS:



## Article One

The present Interpretative, Supplementary and Amending Agreement confirms and regulates the application of the Agreement and what has been subsequently agreed upon to the activities of ESO in the whole national territory and, especially, to the construction, maintenance and operation of a new centre for observation, in the framework of the project called VLT/VLTI as well as to the future activities of ESO in Chile.

## Article Two

1. For the purposes of the present Agreement the project called VLT/VLTI is a series of optical and infrared telescopes owned by ESO which, in its VLT option — Very Large Telescope — consists of an ensemble of four fixed telescopes of eight meters and twenty centimeters diameter each, which can be operated independently or together. Used together, their observing power equals that of a telescope of sixteen meters diameter.
2. The interferometric option (VLTI) of this system implies the increase of its observation capacity with the addition of one or more smaller auxiliary telescopes which can be placed in different positions. This permits beams of the light coming from the ensemble of telescopes to be combined in order to permit a higher angular resolution.

## Article Three

Paragraph 2 of Article VII of the Agreement is replaced by the following text:

“ESO shall cooperate at all times with the Chilean authorities to facilitate the proper administration of justice, to ensure the observance of police regulations, of public health, and of labour and of other similar legislation, and to prevent any abuse in exercising the privileges and immunities recognized in the Agreement.”

## Article Four

The following paragraph is added to Article IV of the Agreement:

“This provision refers to all present and future goods and properties of ESO in Chile.”

## Article Five

The properties of ESO in Chile can be used only to facilitate the accomplishment of the official and scientific objectives of the Organisation in Chile. The Government shall make all efforts within its competence, in conformity with the Chilean legal and constitutional order and with international law, to ensure ESO the tranquil and peaceful possession of the same and, in general, to guarantee the peaceful development of the overall activities of ESO compatible with the objectives here mentioned.

## Article Six

1. The text of the Regulations for ESO Local Staff engaged in Chile ("Regulations" hereinafter) shall be harmonized with the essential principles and objectives of the Chilean labour law. In particular, the said text shall include the principles and objectives of labour association and collective bargaining. Its implementation shall take place in a manner compatible with the privileges and immunities granted to ESO in the Agreement.
2. The amendment of the Regulations, for the purpose of harmonizing its text with the principles and objectives of the Chilean labour law, shall be made through the Working Group of the Finance Committee of ESO with the participation of an expert in the subject, nominated by the Government.
3. The text of the Regulations, in the part which establishes the principles and objectives of the labour law mentioned above, may not be amended except by agreement between the Parties.

## Article Seven

1. In case that the application or the interpretation of the Regulations causes a labour conflict which cannot be resolved by an internal appeal procedure and which is not within the competence of the Administrative Tribunal of the International Labour Organisation, the said conflict shall be submitted to an International Arbitration Tribunal.
2. This tribunal shall be composed of three members, one nominated by the Government, one nominated by ESO and a third elected by them. This member will act as the President of the Tribunal.
3. If the members nominated by the Government and by ESO do not reach agreement on the third member, the third member shall be nominated by the President of the Administrative Tribunal of the International Labour Organisation.

4. The International Tribunal of Arbitration shall adopt its own rules of procedure.

### Article Eight

1. The Government and ESO shall adopt all necessary measures within their competence to maintain and protect the astronomical and environmental quality of the centres of observation already installed and to be installed by ESO. For this purpose, a Joint Committee shall be constituted, which shall make the relevant recommendations.
2. The Committee shall be composed of representatives of the Ministry of Education, of the National Commission of the Environment (CONAMA), of members of the scientific community nominated by the Ministry of Education and of representatives of ESO. The Committee shall pay special attention to the problems of light contamination, contamination by particles and control of the environmental impact of mining activities, taking into account the guidelines of the International Astronomical Union and the environmental legislation in force in Chile.

### Article Nine

1. ESO shall contribute substantially to the development of astronomy and related scientific and technological specialities in Chile. For this purpose, it shall cooperate directly in programs for training young scientists, for engineers and technologists, and for equipment in general.
2. On its part, the Government shall provide increasing support to the financing of teaching and research activities in the field of astronomy, with the objective of promoting the efficient use of the installations of ESO by Chilean scientists.
3. The programs, the procedures, the modalities of financing and the amounts through which this cooperation is planned shall be agreed upon, evaluated and updated periodically by ESO and the Government. For these purposes, a Joint Committee of six members shall be constituted, consisting of three representatives of the Government and three of ESO, which shall meet within six months following the exchange of the Instruments of ratification by the Government and of approval by the Council of ESO.
4. Moreover this Joint Committee shall evaluate the operation of the observing time considered in paragraphs 2, 3, 4 and 5 of Article Eleven, and recommend modifications to it.

## Article Ten

Paragraph Five of Article XI of the Agreement is replaced by the following text:

“The present Agreement and any supplementary Agreement concluded between the Government and ESO, within the scope of its stipulations, shall cease to apply three years after either Contracting Party has notified the other in writing of its decision to terminate it, except with respect to the provisions which would apply to the normal cessation of the ESO’s activities in Chile and to the disposal of its properties in Chile. In case of termination of the Agreement and its Supplementary and Amending Agreements for a reason which is attributable to the Government of Chile, in agreement with international law, the latter shall indemnify ESO with respect to the immovable installations owned by ESO located in Chile. The amount of the indemnification shall be agreed upon between the Government and ESO. In case that no agreement is reached on the amount, the system for the settlement of disputes foreseen in Article X of the Agreement shall be applied, the Tribunal establishing the amount of indemnification *ex aequo et bono* and taking account of the depreciation.”

## Article Eleven

1. The Chilean scientists shall continue to have access to the instruments of observing of ESO on the basis of competitive projects, on equal conditions with the astronomers of the member countries of ESO. There are no limits to the percentage of time which can be acquired in this way.
2. In recognition of the role of Chile as the host country and to assist in the development of astronomy in Chile, ESO is prepared to make observing time available to scientifically meritorious Chilean proposals, independent of the competitive pressure, up to the fractions of observing time specified in this Article.
3. Consequently, Chilean scientists who present meritorious projects, shall have the right to obtain additional time up to 10% of observing time in each and every telescope installed or to be installed by ESO, without prejudice to the statements in paragraphs four and five of the present Article.
4. Chilean scientists who present meritorious projects shall have the right to obtain up to 10% of the observing time of the VLT/VLTI telescopes (defined in Article Two), it being understood that at least one half of this 10% shall be dedicated to projects of Chilean astronomers in cooperation with astronomers of ESO member countries. This percentage shall be acquired over a period of five years starting from the beginning of the functioning of

the first telescope as agreed upon between the Parties through an exchange of Notes. In case of an increase in the request for observing time by Chilean scientists for projects of special scientific merit, the Director General of ESO may assign additional observing time for these projects, within the fraction of observing time devoted to cooperative projects.

5. The percentage of time indicated for the telescopes presently functioning, 10%, shall be established on the basis of total time available to ESO and in accordance with the distribution by the Observing Programmes Committee of ESO (OPC). In the case of telescopes presently in operation, for which a member State of ESO contributed financially, in total or in part, in addition to its ordinary contribution, the Organisation shall make its best efforts to ensure that a similar percentage to that mentioned in the second paragraph shall be granted.
6. Any proposal whose principal investigator is a Chilean scientist or is a foreign scientist affiliated to a Chilean institution included in a list to be approved by the Joint Committee mentioned in Article Nine, shall be considered as a Chilean proposal.
7. The proposals for observation submitted by Chilean scientists, which respond to the regular calls for competition, shall be qualified in accordance with Annex A for all of the telescopes installed or to be installed.
8. Those proposals from Chilean scientists which have obtained a classification higher than 3.0, within the percentage specified in this Article, shall be accepted. The Chilean scientists whose proposals are accepted shall be subject to the same rules and shall have the same facilities and obligations as the scientists of ESO Member States.
9. It is understood that the limiting value specified as 3.0 is a part of the current scheme of evaluation. In case there are changes in the scale of evaluation, the corresponding limiting value on the new scale shall be equivalent to the one specified here, which shall be determined by the parties.
10. Meritorious projects shall be selected by the ESO Observing Programmes Committee (OPC) in which a Chilean scientist shall be incorporated as a full member. Similarly, a Chilean scientist shall be incorporated as a full member in the Scientific Technical Committee of ESO (STC) and a Chilean scientist as a full member in the Users Committee (UC).
11. These scientists shall be appointed according to the same rules existing for the appointment of the scientists from ESO Member States. As long as no national Chilean ESO Committee exists, the Government shall designate these scientists in consultation with ESO.

12. The Government shall designate these scientists as quickly as possible. Until the entry into force of this Agreement, these scientists shall have the status as observers. The terms of reference and periods of service are described in Annex B.

### Article Twelve

The establishment of new centres for observation in addition to those presently existing or under construction, as well as the installation of new telescopes of any kind which do not belong to ESO under immunities and privileges considered in Article IV, V and VI of the Agreement shall require the prior agreement of the Parties.

### Article Thirteen

The present Agreement shall enter into force immediately after the exchange of instruments of ratification by the Government and of approval by the Council of ESO.

The Agreement shall remain in force as far as it has not been amended or supplemented.

### Transitory Articles

#### First

1. Within the year following the entry into force of the Agreement, ESO shall implement the corresponding modifications of its Regulations for the Local Personnel engaged in Chile.
2. Until the implementation of the modified Regulations, ESO will continue to apply its present Regulations with the understanding that in their application the Organisation will take into account, to the extent possible, the principles and objectives of the Chilean labour legislation.
3. On its part, the Government will make its best efforts to ensure the positive development of this process, about which ESO will keep its personnel informed, with the cooperation of the Government within its sphere of competence.

## Second

The Government is prepared to consider a solution to the question of the privileges and immunities which could apply to the international personnel of ESO, of lower ranks, who will be transferred to Chile with the purpose of assisting in the construction and installation of the VLT/VLTI.

## Third

The Government shall make its best efforts for the improvement of the old Pan-American Highway (Road B-70) from Paposo to the connection with the current Pan-American Highway. This will benefit Taltal and Antofagasta as well as ESO.

IN WITNESS WHEREOF:

The Government and ESO have signed this Agreement in Garching, Federal Republic of Germany, on April, eighteen, nineteen ninety five, in three copies in Spanish, French and English languages.

In case of differences between the three texts, the text in Spanish shall prevail.

For the Government of Chile:

Roberto Cifuentes.

For the European Organisation for Astronomical Research in the Southern Hemisphere:

Riccardo Giacconi.

## ANNEX A

### EVALUATION SYSTEM FOR THE APPLICATIONS

In order to facilitate the procedure for assigning observing time and to adequately prepare the respective documents, the referees have to follow the evaluation system indicated below.

The scale of evaluation of scientific merit relating to each proposal is as follows:

- 1 – outstanding
- 1.5 – excellent
- 2 – very good
- 2.5 – good
- 3 – sound
- 3.5 – acceptable
- 4 – doubtful
- 4.5 – very doubtful
- 5 – useless

Along with the classification, each referee must put forward a “recommendation” on the number of nights (hours for SEST/plates for Schmidt) to be assigned to each proposal.

In order to have the proposals included in the “competition list”, in which, for each telescope, proposals are placed in accordance with their average qualification, it is compulsory to assign to them a rank and to recommend a number of nights/hours/plates.

Those proposals to which any of the referees has not assigned a ranking or has recommended “0” nights/hours/plates, will be indicated on a separate list. The use of these two options will be restricted solely to proposals considered to be extremely doubtful, in order to have the maximum number of proposals in the ranking list.



## ANNEX B

### SCIENTIFIC TECHNICAL COMMITTEE (STC)

The ESO Scientific Technical Committee (STC) is established as an advisory committee under the responsibility of the ESO Council, in accordance with Article V, para. 10, of the ESO Convention.

The STC shall:

1. advise Council on policy matters of long-range scientific and technical importance related to the planning and operation of ESO;
2. advise Council on scientific priorities for the equipment, maintenance, upgrade, and operation of ESO's facilities upon the request of Council or the Executive, or on its own initiative;
3. advise Council and the Administrative and Finance Committee on major budget items concerning telescopes, instrumentation, or other scientific equipment upon the request of Council, the Administrative and Finance Committee, or the Executive;
4. keep ESO informed of the long-term scientific plans and priorities of the astronomical communities in the ESO Member States and in Chile;
5. assist ESO in informing the astronomical communities in the Member States and in Chile about the status, background, and motivation for ESO's scientific and technical planning;
6. assist ESO in the planning and execution of specific telescope and instrumentation projects by collaborating with the Director General in appointing specialist Instrument Science Teams for such projects and monitoring the progress reports from these teams;
7. assist in planning ESO's programme of scientific workshops and other meetings.

The STC consists of 12–16 members appointed by Council for their scientific and technical eminence, with at least one member from each Member State and Chile<sup>4</sup>. Good coverage of the relevant astronomical disciplines at all times should be aimed at in selecting the individual members and the actual size of the Committee. Members are appointed for three-year staggered terms (immediately renewable once), so that about an equal number retire each year.

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<sup>4</sup> Until the entry of Portugal as a full member of ESO and the entering into force of the Interpretative, Supplementary and Amending Agreement with Chile, the members from Portugal and Chile will have an observer status.

Nominations for new STC members are presented to Council by a committee consisting of the President of Council, the STC Chairman, and the Director General.

The STC Chairman is appointed annually by Council, for no more than three consecutive years. The term of a member who is Chairman may be prolonged by 1–2 years. At its first meeting in a year, the STC elects from among its members a Vice-Chairman for one year to replace the Chairman at occasions when the latter is unable to fulfil his/her functions.

The STC meets at least twice per year at the request of Council or on its own initiative. It is convened by its Chairman, who sets the Draft Agenda in consultation with the Director General. The formulation of the conclusions and recommendations of the STC is made under the responsibility of the Chairman, who also determines its distribution, in agreement with Council.

## THE OBSERVING PROGRAMMES COMMITTEE (OPC)

### Function

It is the function of the OPC to inspect and rank the proposals made for the use of ESO observing facilities and, thereby, to advise the Director General on the distribution of observing time.

### Structure and membership

An adequate number of discipline-oriented sub-committees are appointed by the Director General to ensure a proper reviewing of the observing proposals submitted by the community.

The size of each sub-committee is adjusted according to the needs. Each sub-committee consists of one or two OPC representatives, i.e. members nominated by the respective national committees of the Member States and of Chile and/or members-at-large nominated by the Director General in consultation with the OPC Chairman. They serve for five years, not immediately renewable. Alternates to national delegates are also nominated by the respective national committees.

The other sub-committee members are “expert advisers” selected by the Director General in consultation with the OPC Chairman without nationality consideration for a staggered two/three-year term. ESO staff astronomers might be asked to participate as “expert advisers”, if required. The chair of the sub-committees rotates between the OPC representatives only.

The Chairman of the OPC is necessarily chosen among the national delegates, for the Vice-Chairman there is no constraint with this respect. Both of them are appointed annually by Council.

The final recommendation for time allocation is prepared by the OPC composed of the national representatives and the members-at-large only, under the guidance of the OPC Chairman.

### **Functioning**

The OPC meets as required by the schedule for the award of observing time. It is convened by its Chairman in consultation with the ESO scientist responsible for the Visiting Astronomers' Programme.

## **THE USERS COMMITTEE (UC)**

### **Membership**

The members (one from each member country) are appointed by the Director General from among the recent Visiting Astronomers for four-year terms (not immediately renewable). The terms are staggered so that each year two persons are replaced. The Committee annually selects its Chairman. National Committees of the Member States of ESO and of Chile are invited to submit nominations for membership to the Director General.

### **Functions**

The Committee advises the Director General on matters pertaining to the functioning of the centres for observation of ESO from the point of view of the Visiting Astronomers. It should consider the possibility to arrange a Users conference.

### **Functioning**

The Committee meets at least once a year. It is convened by the Director General.

OFFICIAL GAZETTE OF THE REPUBLIC OF CHILE

Wednesday 27 November 2002

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(12850)

No 37. 419

General Regulations

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THE EXECUTIVE POWER

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The Ministry of Foreign Affairs

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PROMULGATES THE AGREEMENT WITH THE EUROPEAN ORGANISATION FOR  
ASTRONOMICAL RESEARCH IN THE SOUTHERN HEMISPHERE (ESO)  
CONCERNING THE EXPERIMENTAL ANTENNA CONSTITUTING THE SUBJECT  
OF THE "ATACAMA PATHFINDER EXPERIMENT" OR "APEX PROJECT"

Number 210.- Santiago 28 August 2002.- Having regard to: Articles 32, number. 17 and 50), number 1, subsection two, of the Political Constitution of the Republic,

Considering:

That by an Exchange of Notes dated 12 July and 23 August 2002 the Government of the Republic of Chile and the European Organisation for Astronomical Research in the Southern Hemisphere (ESO) adopted the Agreement concerning the experimental antenna that constitutes the subject of the project known as the "Atacama Pathfinder Experiment" or the "Apex Project", conceived in scientific research work carried out by ESO in its current observatories.

That the said Agreement was adopted in the framework of the Agreement between the Government of the Republic of Chile and the European Organisation for Astronomical Research in the Southern Hemisphere for the Establishment of an Astronomical Observatory in Chile, signed on 6 November 1963 and published in the Official Gazette of the Republic of Chile on 4 April 1964, and of the Agreement and its Annexes A and B, Interpretative, Supplementary and Amending of the said Agreement, signed on 18 April 1995 and published in the Official Gazette on 17 May 1997.

Decrees:

Sole article. In compliance with the Agreement between the Government of the Republic of Chile and the European Organisation for Astronomical Research in the Southern Hemisphere concerning the experimental antenna that constitutes the subject of the project known as the "Atacama Pathfinder Experiment" or the "Apex Project", adopted by Exchange of Notes dated 12 July and 23 August 2002, this publication of an authorized copy of its text in the Official Gazette enacts the Agreement.

Recorded, noted, registered and published by RICARDO LAGOS ESCOBAR, President of the Republic of Chile and Maria Soledad Alvear Valenzuela, Minister of Foreign Affairs.

Transmitted to you for information by José Miguel Cruz Sánchez, Ambassador and General Administrative Director.

Number 15,211.- Santiago, 20 August 2002.

Your Excellency:

I have the honour of acknowledging receipt of your kind Note number 215 of 12 July 2002, which states the following:

"Dear Minister:

On behalf of the European Organisation for Astronomical Research in the Southern Hemisphere (ESO) I am pleased to send you our sincerest greetings and to refer to the Special Agreement concluded between the Government of the Republic of Chile and ESO concerning the experimental antenna that constitutes the subject of the project known as the Atacama Pathfinder Experiment or the Apex Project, conceived as the result of scientific research work carried out by ESO in its current observatories.

In this respect, ESO would like to propose that the installation and maintenance of the said experimental antenna of the Apex Project be subject to the terms and conditions recorded below in this Note,

Considering:

That within the scientific research activities carried out in its observatories within the framework of the Agreement of 6 November 1963 (the 1963 Agreement) and the Interpretative, Supplementary and Amending Agreement of the same dated 18 April 1995 (the 1995 Agreement) and in particular within the stipulations of Article One of this last instrument, ESO has conceived and formulated the project known as the "Atacama Pathfinder Experiment" also known

as the “Apex Project”, the aim of which is to experimentally test the quality of observations in sub-millimetric wave lengths on land situated in Chajnantor, in the municipality of San Pedro de Atacama, Antofagasta Region II, and also to evaluate the operation of the scientific equipment under environmental conditions specific to this location and to carry out astronomical observations that will enable the experience gathered in these observations to be used in one or more future projects;

That the Chajnantor land is currently conceded to the National Commission for Scientific and Technological Research (CONICYT) according to Exempted Resolution No. 189 of the Regional Ministerial Department of Antofagasta Region II;

That, given the above, the regulations contained in the 1963 Agreement and the 1995 Agreement, should be accorded to the Apex Project;

The Government and ESO agree:

First: The Government authorises ESO to carry out the Apex Project, on an experimental basis, within the regulations of the 1963 Agreement and the 1995 Agreement, and on the terms and conditions that are set out in this Note.

Second: The pioneering antenna with which the Apex Project will be carried out shall be installed on the site indicated for this purpose on the attached plan<sup>5</sup> of the lands granted as a concession to CONICYT, between the coordinates:

UTM	N 7.455.817	E 627.242
UTM	N 7.455.817	E 627.542
UTM	N 7.455.517	E 627.542
UTM	N 7.455.517	E 627.242

Third: ESO shall develop the Apex Project within a period of approximately six years from the start of the operation.

Fourth: ESO shall inform the Ministry of Foreign Affairs, Special Political Department, in writing of the start and end dates of the Apex Project. The date on which ESO begins the scientific operation of the project shall be considered the start date and the date on which ESO ceases the experimental activities envisaged by the project shall be considered the end date.

Fifth: Ten per cent of the observations carried out under the Apex Project will be set aside each year for Chilean astronomy. The mechanism for administering that time will be agreed by ESO and CONICYT.

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<sup>5</sup> The plan is not reproduced here.

Sixth: The authorisation referred to in the first clause shall be subject to ESO concluding an Agreement with CONICYT authorising the Apex Project to be carried out on the land identified in the second clause.

In the event that the Government of the Republic of Chile declares its agreement to the above proposal this Note and the reply Note from you in which such agreement is given, will constitute an Agreement between the said Government and ESO, that will enter into force on the date of the reply Note.

I would like to take this opportunity to reiterate my sincerest regards to Her Excellency the Minister of Foreign Affairs.”

In addition I have the honour of confirming in the name of my Government that the Note from Your Excellency and this Note constitute an Agreement between the Government of the Republic of Chile and the European Organisation for Astronomical Research in the Southern Hemisphere that will enter into force on the date of the present Note.

I would like to take this opportunity to reiterate my sincerest regards to Your Excellency.

Maria Soledad Alvear Valenzuela, Minister of Foreign Affairs

To Mr Daniel Hofstadt, Representative of the  
European Organisation for Astronomical Research in  
the Southern Hemisphere (ESO) in Chile,  
Here present.

**AGREEMENT BETWEEN THE EUROPEAN ORGANISATION FOR  
ASTRONOMICAL RESEARCH IN THE SOUTHERN HEMISPHERE AND THE  
GOVERNMENT OF THE REPUBLIC OF CHILE FOR THE PURPOSE OF  
ESTABLISHING A NEW CENTRE FOR OBSERVATION – ALMA PROJECT**

The European Organisation for Astronomical Research in the Southern Hemisphere (“ESO”) and the Government of the Republic of Chile (“the Government”), hereinafter “The Parties”,

CONSIDERING:

The Agreement signed on 6 November 1963 between the European Organisation for Astronomical Research in the Southern Hemisphere (“ESO”) and the Government of the Republic of Chile, promulgated by Executive Decree No. 18 of 4 January 1964 of the Ministry of Foreign Affairs, published in the Official Gazette on 4 April 1964 (hereinafter “the 1963 Agreement”) and that on 18 April 1995 the same parties subscribed an Interpretative, Supplementary and Amending Agreement to the aforementioned Agreement, promulgated by Executive Decree No. 1766 from the Ministry of Foreign Affairs on 3 December 1996, published in the Official Gazette on 17 May 1997 (hereinafter “the 1995 Agreement”);

That Article One of the 1995 Agreement states that it confirms and regulates the application of the 1963 Agreement, and what has been subsequently agreed upon, to the activities of ESO in the whole national territory and, especially, to the construction, maintenance and operation of a new centre for observation in the framework of the project called VLT/VLTI, as well as to the future activities of ESO in Chile;

That Article Twelve of the 1995 Agreement states that the establishment of a new centre for observation shall require the prior agreement of the Government and ESO;

That ESO, jointly with Associated Universities Inc. (AUI), which administers and operates the National Radio Astronomy Observatory of the United States of America (NRAO), have decided to carry out a project for the construction, maintenance and operation of a radio-telescope in Chile, namely, the “Atacama Large Millimetre Array” (ALMA Project) on a site at 5 000 metres altitude, located in the district of San Pedro de Atacama, in the mountain range of Region II, Antofagasta. This project will be one of the most important scientific instruments currently designed in the world; it will produce images of the Universe in the millimetre and submillimetre wavelengths, with an unprecedented sensitivity and angular resolution; it will entail a significant



advancement for astronomy, enabling the study of the origin of galaxies, stars and planets and will open new horizons for science, due to its capacity to observe star-forming regions in galaxies across the Universe;

That the ALMA Project, as far as ESO is concerned, will specifically consist on the installation of a new centre for astronomical observation, which must be subject to an agreement between the Parties, according to Article Twelve of the 1995 Agreement;

That the Parties wish to extend astronomical research in the Southern Hemisphere to the activities included in the ALMA Project, which is expected to incorporate new instruments operating within the millimetre and submillimetre wavelengths, as well as deepening and strengthening the cooperation in scientific and technological issues between both Parties;

That the installation and operation of the new centre for observation implied by the ALMA Project is of great national interest, particularly for science in Chile.

HAVE AGREED AS FOLLOWS:

### Article One

For the purposes of the present Agreement, the Atacama Large Millimetre Array Project (hereinafter "ALMA Project") comprises an array of radio-astronomy antennas for the purpose of studying the Universe within the millimetre and submillimetre wavelengths.

### Article Two

The ALMA Project will be carried out in the site of Llano Chajnantor, Region II of Antofagasta, Provincia El Loa, San Pedro de Atacama.

### Article Three

The ALMA Project will constitute a new centre for observation. In accordance with Article Twelve of the 1995 Agreement, the participation of ESO in the construction and operation of the ALMA Project shall be subject to the provisions of the 1963 Agreement, the 1995 Agreement, and the present instrument.

#### Article Four

Ten percent of ESO's observing time within the ALMA Project will be set aside for Chilean astronomy. The mechanism for allocating time shall be agreed between ESO and the Comisión Nacional de Investigación Científica y Tecnológica (CONICYT).

#### Article Five

The present Agreement shall remain in force as long as the 1963 Agreement, which was supplemented, interpreted and modified by the 1995 Agreement, remains in force.

#### Article Six

The present Agreement shall enter into force on the date of the last notification in which one Party notifies the other Party in writing that it has complied with the requirements set out, to that effect, in its respective legal regulations.

DONE in Santiago, Republic of Chile, on 21 October, 2002, in duplicates in the Spanish, English and French languages, each being equally authentic. In case of divergence, the Spanish text shall prevail.

FOR THE EUROPEAN ORGANISATION  
FOR ASTRONOMICAL RESEARCH IN  
THE SOUTHERN HEMISPHERE

Catherine Cesarsky.

FOR THE GOVERNMENT OF THE  
REPUBLIC OF CHILE

María Soledad Alvear Valenzuela.



Original English text

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHILE  
AND  
THE EUROPEAN ORGANISATION FOR ASTRONOMICAL RESEARCH IN THE  
SOUTHERN HEMISPHERE (ESO) ON THE INSTALLATION OF THE EUROPEAN  
EXTREMELY LARGE TELESCOPE**

The Government of the Republic of Chile (hereinafter, the “Government”) and the European Organisation for Astronomical Research in the Southern Hemisphere (hereinafter “ESO”):

CONSIDERING:

That on November 6, 1963, an Agreement was concluded between ESO and the Government for the Purpose of Establishing an Astronomical Observatory in Chile, which was enacted by Executive Decree No. 18 of January 4, 1964 issued by the Ministry of Foreign Affairs and published in Official Gazette dated April 4, 1964 (hereinafter, the “1963 Agreement”) and that on April 18, 1995, the same parties subscribed an Interpretative, Supplementary and Amending Agreement to the aforementioned Agreement, enacted by Executive Decree No. 1,766 of December 3, 1996, issued by the Ministry of Foreign Affairs and published in Official Gazette dated May 17, 1997 (hereinafter, the “1995 Agreement”);

That the European Extremely Large Telescope (hereinafter “E-ELT”) is a telescope owned by ESO that will be installed in Cerro Armazones, II Region of Antofagasta, as soon as the ESO Council approves the construction phase and which shall form part of Paranal Observatory;

That, in the light of the foregoing and of the provisions in Article One of the 1995 Agreement, the E-ELT must conform to the norms contained in the 1963 Agreement and the 1995 Agreement;

That, through an exchange of letters dated September 9, 2009, December 7, 2009, January 19, 2010, February 12, 2010, April 6, 2010, April 22, 2010, May 25, 2010, July 12, 2010, August 4, 2010, December 17, 2010 and April 26, 2011, as well as discussions held between the Government and ESO conditions were established both by the Government and ESO for the installation in Chile of the E-ELT;

That the Parties wish to continue to develop and strengthen cooperation on scientific and technological matters between them;

THE GOVERNMENT AND ESO AGREE AS FOLLOWS:

## Article One — Land for the installation of the E-ELT

- 1.1 The Government shall cooperate, within the framework of legal procedures in force, to install the E-ELT by transferring to ESO, free of charge, title to an area of 18,900 hectares containing Cerro Armazones which coordinates are as follows:

UTM	N 7.288.500	E 370.000
UTM	N 7.288.500	E 383.500
UTM	N 7.274.500	E 383.500
UTM	N 7.274.500	E 370.000

The said area is owned by the State of Chile and is available to be transferred free of charge to ESO to be executed by the Ministry of National Assets.

- 1.2 The Government shall cooperate, within the framework of legal procedures in force, to safeguard the construction and operation of the E-ELT through the grant, for a 50-year term, of a free of charge concession to ESO to use an area of 36,200 hectares, corresponding to land adjoining the area described in the above paragraph 1.1. The coordinates of such adjoining land are as follows:

UTM	N 7.288.500	E 370.000
UTM	N 7.293.000	E 370.000
UTM	N 7.293.000	E 389.000
UTM	N 7.264.000	E 389.000
UTM	N 7.264.000	E 370.000
UTM	N 7.274.500	E 370.000
UTM	N 7.274.500	E 383.500
UTM	N 7.288.500	E 383.500

The above mentioned area is owned by the State of Chile and is available to be granted as a free of charge concession to ESO to be executed by the Ministry of National Assets.

- 1.3 A map<sup>6</sup> is attached illustrating the land referred to in paragraphs 1.1 and 1.2 above.
- 1.4 It is left on record that the Agreement on Cooperation dated February 22, 2011, subscribed by ESO and Universidad Católica del Norte complies with the requirements by the Government as to safeguarding astronomical research facilities of this University and the Bochum University (Germany), currently installed within the said area, which will benefit from the installation of the E-ELT.

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<sup>6</sup> The map is reproduced in the authoritative Spanish version.

## Article Two — Observing time

- 2.1 With regard to observing time, the conditions in Article Eleven of the 1995 Agreement, as well as those in this Article, shall apply.
- 2.2 According to the powers vested in the Joint Committee established under Article Nine of the 1995 Agreement, said Committee, at a meeting held on September 15, 2011 – the minutes of which are enclosed as Annex to this Agreement – has recommended, and the Parties have accepted, as follows:
- 2.2.1 That out of the 10% E-ELT observing time allocated to Chilean scientifically meritorious proposals referred to in paragraphs 2 and 3 of Article Eleven of the 1995 Agreement, at least 7.5% is devoted to projects by Chilean astronomers in cooperation with astronomers from ESO Member States.
- 2.2.2 That the Government defines an internal eligibility and selection process through a Scientific Committee discussing and defining E-ELT observing proposals with a responsible (principal) Chilean investigator, to be submitted to ESO as Chilean proposals, before submitting them to ESO.

## Article Three — Infrastructure Support

### A. Energy supply

- 3.A.1 Considering that the State of Chile does not develop nor operate electric infrastructure for energy supply to third parties – the said activities being the responsibility of private companies engaged, respectively, in producing and distributing electricity - the Government undertakes to coordinate actions necessary for the companies of the electrical sector to submit their best alternatives to develop the required transmission infrastructure and enter into agreements on electrical power supply to the Paranal Observatory, including the extension to the E-ELT. The said coordination shall be made effective prior to the start of the E-ELT construction.
- 3.A.2 Likewise, the Government, by means of the Ministry of Energy, will, jointly with ESO, perform a study on electrical supply alternatives based on conventional and non-conventional renewable energy sources. Said study shall include wind and solar radiation monitoring, modelling and inter-annual variability analysis of the same, a selection of optimal installation sites and a preliminary economic analysis.

## **B. Access and communications**

The Government, through the Ministry of Public Works, has in the past few years invested over US\$ 20 million to improve the 120 km road from Antofagasta to the present access to the Paranal Observatory, particularly the semi-coastal highway, thus ensuring a high-standard connection. In the future, the Government will make the necessary investments to permanently secure optimal maintenance of this road.

## **C. Connectivity and other services**

The Government, through the competent agencies, shall afford all facilities, within the legal and statutory framework, to secure optic fiber, electric and other interconnections required for the joint operation of the Paranal-Armazones complex.

### **Article Four — Scientific-technological cooperation in E-ELT construction and operation**

- 4.1 The Parties express their mutual interest in developing cooperation projects in the scientific, astronomical, instrumentation and astronomy-related technologies, in the training of advanced and technical human capital and, primarily, in regional, cultural and touristic projects connected with science and astronomy that have a bearing on the development of the E-ELT installation area, particularly all such things as may facilitate the extension, dissemination and knowledge of astronomy in Chile.
- 4.2 The Parties undertake to enter into a Scientific and Technological Cooperation Agreement to develop E-ELT related services and technologies, including training of scientists, engineers and specialized technicians, which facilitate and make the E-ELT development and operation in Chile and, generally, astronomical facilities within Chilean territory, more efficient.
- 4.3 Said Agreement shall regulate the granting of short-duration scholarships to Chilean astronomers, scientists, engineers and specialized technicians in astronomical institutes based in ESO Member States. Likewise, it shall regulate visits by scientists from the ESO Member States to Chilean institutes, free of charge for Chile.

## Article Five — Calls for Tender and Information related to the installation of the E-ELT

- 5.1 ESO shall provide the information required for Chilean construction and engineering companies, to enable them to actively participate on their own behalf or in association with companies based in ESO Member States or with astro-engineering research centres and related institutions in calls for tender related to the E-ELT which might be of interest to Chile, in accordance with regulations on ESO calls for tender.
- 5.2 The Government shall appoint an expert representative to act as liaison officer with ESO to facilitate agreements in support of Chilean companies and the scientific community to participate in calls for tender related to installation, construction and maintenance of the E-ELT.
- 5.3 ESO shall facilitate visits from Chilean industry representatives to ESO's Headquarters in Garching and enable contacts with the main contractors who have participated in the E-ELT design, so as to identify areas where the Chilean industry can take part in calls for tender related to the E-ELT.
- 5.4 ESO undertakes to inform the Chilean Government of the progress made towards the installation, maintenance and operation of the E-ELT, as legally proper.

## Article Six — Entry into force

This Agreement shall enter into force on the date of signature.

Signed in Santiago, Chile, on this 13 October, 2011, in four (4) copies in the Spanish and English languages, all texts being equally authentic, two (2) copies being kept by each Party.

FOR THE GOVERNMENT OF THE  
REPUBLIC OF CHILE

Alfredo Moreno Charme  
MINISTER OF FOREIGN AFFAIRS.

FOR THE EUROPEAN ORGANISATION  
FOR ASTRONOMICAL RESEARCH IN  
THE SOUTHERN HEMISPHERE

Tim de Zeeuw  
DIRECTOR GENERAL.



**MINUTES OF THE JOINT COMMITTEE ESTABLISHED  
IN ARTICLE NINE OF THE 1995 AGREEMENT REGARDING THE  
DISTRIBUTION OF E-ELT OBSERVING TIME**

In accordance with Article Nine of the 1995 Agreement, the Joint Committee established therein met, comprising the following members:

For the Government of Chile

- Mr. José Miguel Aguilera Radic
- Mr. Gabriel Rodríguez García-Huidobro
- Mr. Leopoldo Infante Lira

For the European Organisation for Astronomical Research in the Southern Hemisphere (ESO)

- Mr. Massimo Tarenghi
- Mr. Andreas Kaufer
- Mr. Michael West

The aforementioned Committee, in exercise of the powers recognized by that provision, unanimously agreed to recommend to the Parties that of the 10% E-ELT astronomical observing time allocated to Chilean scientifically meritorious proposals, referred to in paragraphs 2 and 3 of Article Eleven of the 1995 Agreement, at least 7.5% should be devoted to projects by Chilean astronomers in cooperation with astronomers from ESO Member States.

It was likewise agreed that an internal mechanism is defined by the Government of Chile for evaluation and selection through a Scientific Committee, which shall analyze and define the E-ELT observing proposals with a responsible (principal) Chilean investigator to be submitted to ESO as Chilean, before sending these proposals to ESO.

Massimo Tarenghi  
ESO REPRESENTATIVE IN CHILE

Gabriel Rodríguez García-Huidobro  
DIRECTOR OF ENERGY, SCIENCE AND  
TECHNOLOGY AND INNOVATION  
MINISTRY OF FOREIGN AFFAIRS

Andreas Kaufer  
DIRECTOR OF THE LA SILLA/ PARANAL  
OBSERVATORY

José Miguel Aguilera Radic  
PRESIDENT OF THE NATIONAL  
COMMISSION FOR SCIENTIFIC AND  
TECHNOLOGICAL RESEARCH

Michael West  
DIRECTOR OF SCIENCES IN CHILE

Leopoldo Infante Lira  
DIRECTOR OF THE CENTRE FOR  
ASTRO-ENGINEERING PONTIFICIA  
UNIVERSIDAD CATÓLICA DE CHILE

Done at Santiago, Chile, on the 15th day of the month of September, 2011.



## APPENDIX



AGREEMENT<sup>7</sup> BETWEEN THE GOVERNMENT OF CHILE AND THE UNITED NATIONS ECONOMIC COMMISSION FOR LATIN AMERICA REGULATING CONDITIONS FOR THE OPERATION, IN CHILE, OF THE HEADQUARTERS OF THE COMMISSION, SIGNED AT SANTIAGO, ON 16 FEBRUARY 1953

The Government of Chile and the United Nations Economic Commission for Latin America, desiring to conclude an agreement regulating conditions for the operation, in Chile, of the Headquarters of the Commission, established under United Nations Economic and Social Council resolution 106 (VI) of 25 February 1948,<sup>8</sup> have agreed as follows:

Article I — Definitions

SECTION 1

In this Agreement:

- a) The expression “the Government” means the Government of the Republic of Chile.
- b) The expression “ECLA” means the United Nations Economic Commission for Latin America.
- c) The expression “appropriate Chilean authorities” means the national or other authorities of the Republic of Chile, in accordance with Chilean law.
- d) The expression “Executive Secretary” means the Executive Secretary of the United Nations Economic Commission for Latin America.
- e) The expression “laws of the Republic of Chile” includes legislative acts, decrees, regulations and ordinances, issued by the Government or the appropriate Chilean authorities.
- f) The expression “Headquarters of ECLA” means the premises occupied by ECLA.
- g) The expression “archives of ECLA” means the records, correspondence, documents, manuscripts, photographs, cinematograph films and sound recordings, belonging to or held by ECLA.

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<sup>7</sup> Came into force on 23 September 1954, upon ratification by the Government in Chile, in accordance with section 22 (a).

<sup>8</sup> United Nations, *Resolutions adopted by the Economic and Social Council during its sixth session (E/777)*, p.4

- h)* The expression “official of ECLA” means any member of the staff of ECLA, who is employed by the United Nations.
- i)* The expression “property” as used in articles IV and V means all property, including funds and assets belonging to ECLA or held or administered by ECLA in furtherance of its constitutional functions, and in general all income of ECLA.

## **Article II — Immunity from legal process**

### SECTION 2

The Government recognizes the immunity from legal process of the Headquarters of ECLA, which shall be under the authority and administration of ECLA, as provided in this Agreement.

### SECTION 3

- a)* The Headquarters of ECLA shall be inviolable.
- b)* Without prejudice to the provisions of article VII, ECLA undertakes not to permit the Headquarters of ECLA to be used as a refuge by persons who are avoiding arrest under any law of the Republic of Chile, or who are required by the Government, or who are endeavouring to avoid service of legal process or a judicial proceeding.

## **Article III — Communications**

### SECTION 4

ECLA shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any other Government or organisation, including foreign diplomatic missions in Chile.

### SECTION 5

ECLA shall be entitled, for its official purposes, to use the State Railways under the same conditions as may be granted to resident diplomatic missions.

## SECTION 6

No censorship shall be applied to the correspondence and other communications of ECLA. This immunity shall extend, without limitation by reason of this enumeration, to printed matter, still and moving pictures, films and sound recordings. ECLA shall have the right to use codes and to dispatch and receive its correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags. Nothing in this section may be construed to preclude the adoption of appropriate security measures to be determined by agreement between the Government and ECLA.

## Article IV — ECLA property and taxation

### SECTION 7

ECLA and its property, wherever situated and by whomsoever held, shall enjoy immunity from legal process, except in so far as in any particular case ECLA shall have expressly waived such immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

### SECTION 8

The Headquarters of ECLA shall be inviolable. The property and assets of ECLA, wherever situated and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

### SECTION 9

The archives of ECLA, and in general all documents belonging to it or held by it, shall be inviolable.

### SECTION 10

The assets, income and other property of ECLA shall be exempt:

- a) From all direct taxes; it is understood, however, that ECLA will not claim exemption from taxes which are, in fact, no more than charges for public utility services;



- b) From customs duties and prohibitions and restrictions on imports in respect of articles imported or exported by ECLA for its official use; it is understood, however, that articles imported under such exemption will not be sold within the country, except under conditions to be agreed later between the Government and ECLA;
- c) From customs duties and prohibitions and restrictions in respect of the import and export of its publications.

## Article V — Financial and exchange facilities

### SECTION 11

- a) ECLA shall not be subject to any financial controls, regulations or moratoria and may freely:
  - i) Acquire negotiable currencies from authorized commercial agencies, hold them and make use of them; operate foreign currency accounts; acquire through authorized agencies, hold and use funds, securities and gold;
  - ii) Transfer funds, securities, foreign currencies and gold to or from the Republic of Chile, to or from any other country, or within the Republic of Chile.
- b) ECLA shall, in exercising its rights under this section, pay due regard to any representations made by the Government and shall give effect to such representations so far as this is possible without detriment to the interests of ECLA.

## Article VI — Transit and residence

### SECTION 12

- a) The appropriate Chilean authorities shall impose no impediment to transit to or from the Headquarters of ECLA of:
  - i) Officials of ECLA and their families;
  - ii) Persons, other than officials of ECLA, performing missions for ECLA, and their spouses;
  - iii) Other persons invited to the Headquarters of ECLA on official business. The Executive Secretary shall communicate the names of such persons to the Government.
- b) This section shall not apply to general interruptions of transport and shall not impair the enforcement of the laws in force.
- c) Visas which may be necessary for persons referred to in this section shall be granted without charge.

- d)* This section shall not obviate the requirement of evidence to establish that persons claiming the rights granted under this section are included in the categories described in paragraph *a)*, or the reasonable application of quarantine and health regulations.

## Article VII — Officials of ECLA

### SECTION 13

Officials of ECLA shall enjoy within the territory of the Republic of Chile, the following privileges and immunities:

- a)* Immunity from personal arrest or detention;
- b)* Immunity from seizure of their personal and official baggage;
- c)* Immunity from legal process of any kind in respect of words spoken or written or any act performed by them in their official capacity, such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of ECLA;
- d)* Exemption from any form of direct taxation on salaries, emoluments, and allowances paid by the United Nations;
- e)* Exemption for officials of other than Chilean nationality, from any direct taxation on income derived from sources outside the Republic of Chile.
- f)* Exemption, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- g)* Freedom for officials of other than Chilean nationality, to maintain, within the territory of the Republic of Chile or elsewhere, foreign securities, foreign currency accounts and movable and immovable property, and on termination of their employment by ECLA, the right to take their funds out of Chile, without any restrictions or limitations, in the currencies and in the amounts brought by them into Chile through authorized channels;
- h)* The same repatriation facilities, for themselves, their families and dependents, and the same right to protection by the Chilean authorities in time of international crisis as members of diplomatic missions;
- i)* The right to import, free of customs duties and other levies, prohibitions and restrictions on import, their furniture and effects, including one motor vehicle each, on first taking up their posts in Chile. The general regulations in force for the resident diplomatic corps shall apply to the transfer of each motor vehicle.

### SECTION 14

All officials of ECLA shall be provided with a special identity card certifying that they are officials of ECLA enjoying the privileges and immunities set forth in this Agreement.

## SECTION 15

The Government shall accord to the Executive Secretary and other permanent senior officials of ECLA, recognized as such by the Ministry of Foreign Affairs, to the extent permitted under its constitutional precepts, the diplomatic immunities and privileges specified in Article 105, paragraph 2, of the United Nations Charter.

For this purpose, the said officials of ECLA shall be incorporated by the Ministry of Foreign Affairs into the appropriate diplomatic categories and shall enjoy the customs exemptions provided in section 1901 of the Customs Tariff.

## SECTION 16

- a) The privileges and immunities accorded under the provisions of this Agreement are granted in the interests of ECLA and not for the personal benefit of the individuals concerned. The Executive Secretary shall waive the immunity of any official in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of ECLA.
- b) ECLA and its officials shall co-operate at all times with the Chilean authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in the exercise of the privileges and immunities conferred by this Agreement.

### Article VIII — Persons who are not officials of ECLA

## SECTION 17

Persons who, without being officials of ECLA, are members of ECLA missions or are invited by ECLA to its Headquarters for official purposes, shall enjoy the privileges and immunities specified in article VII, section 13, with the exception of the right provided in sub-paragraph *i*) of that section, always provided that such persons are not of Chilean nationality.

### Article IX — Laissez-Passer

## SECTION 18

The Government shall recognize and accept as a valid travel document equivalent to a passport the United Nations laissez-passer issued by the United Nations to officials of ECLA.

## Article X — General provisions

### SECTION 19

- a) The Executive Secretary shall take every precaution to prevent any abuse in the exercise of the privileges and immunities conferred by this Agreement and to this end shall establish such regulations as he may deem necessary and expedient, for officials of ECLA and persons who are members of ECLA missions.
- b) Should the Government consider that an abuse has occurred in the exercise of the privileges and immunities conferred by this Agreement, the Executive Secretary shall, upon the request of the Government, consult with the appropriate Chilean authorities to determine whether such an abuse has occurred. If such consultations fail to achieve a result satisfactory to the Executive Secretary and the Government, the matter shall be settled in accordance with the procedure set out in article XI.

## Article XI — Supplementary agreements and settlement of disputes

### SECTION 20

- a) The Government and ECLA may enter into such supplementary agreements as may be necessary within the scope of this Agreement.
- b) The Convention on the Privileges and Immunities of the United Nations<sup>9</sup> and this Agreement shall, where they relate to the same subject matter, be treated wherever possible as complementary.

### SECTION 21

Any dispute between the Government and ECLA concerning the interpretation or application of this Agreement or any supplementary agreement, or any question affecting the Headquarters of ECLA or relations between ECLA and the Government, shall be resolved in accordance with the procedure indicated in article VIII, section 30, of the Convention on the Privileges and Immunities of the United Nations.

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<sup>9</sup> United Nations, *Treaty Series*, Vol. 1, pp. 15 and 263; Vol. 4, p. 461 ; Vol. 5, p. 413; Vol. 6, p. 433; Vol. 7, p. 353; Vol. 9, p. 398; Vol. 11, p. 406; Vol. 12, p. 416; Vol. 14, p. 490; Vol. 15, p. 442; Vol. 18, p. 382; Vol. 26, p. 396; Vol. 42, p. 354; Vol. 43, p. 335; Vol. 45, p. 318; Vol. 66, p. 346; Vol. 70, p. 266; Vol. 173, p. 369; Vol. 177, p. 324; Vol. 180, p. 296; Vol. 202, p. 320; Vol. 214, p. 348; Vol. 230, p. 427; Vol. 231, p. 347; Vol. 247, p. 384; Vol. 248, p. 358; Vol. 252, p. 308; Vol. 254, p. 404; Vol. 261, p. 373; Vol. 266, p. 363; Vol. 270 p. 372; Vol. 271, p. 382; Vol. 280, p. 346; Vol. 284, p. 361; Vol. 286, p. 329, and Vol. 308.

## Article XII

### SECTION 22

- a) This Agreement shall enter into force immediately after its ratification by the Government of Chile, without prejudice to the fact that the President of the Republic may provisionally put into force those of its provisions in respect of which he is granted special powers under Act No° 5142.
- b) Consultations with respect to the modification of this Agreement may be entered into at the request of the Government or of ECLA. Any such modification shall be by mutual consent.
- c) This Agreement shall be construed in the light of its primary purpose, that is to enable ECLA fully and efficiently to discharge its responsibilities and fulfil its purposes.
- d) Wherever this Agreement imposes obligations on the appropriate Chilean authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government.
- e) This Agreement and any supplementary agreement entered into between the Government and ECLA within the scope of its provisions shall cease to be in force six months after either of the Contracting Parties shall have given notice in writing to the other of its decision to terminate the Agreement, except as regards those provisions which may apply to the normal cessation of the activities of ECLA in Chile and the disposal of its property in Chile.

IN WITNESS WHEREOF

The Government and ECLA have signed this Agreement on 16 February 1953, in duplicate, in the Spanish language.

For the Government of Chile – (Signed): Arturo Olavarría Bravo, Minister of Foreign Affairs.

For the United Nations Economic Commission for Latin America (ECLA) – (Signed): Raúl Prebisch, Executive Secretary.



