

Protocol on Cooperation in Astrophysical Research in Spain

The Signatory Bodies of this Protocol,

Considering that the Agreement on Cooperation in Astrophysics signed at La Palma on the 26th day of May 1979 provides for the conclusion of a Protocol on Cooperation in Astrophysical Research in Spain which shall be signed by the Signatory Bodies named in Article 3 of that Agreement,

Have agreed as follows:

Article 1 Definitions

In this Protocol the following terms shall be used in the sense in which they are defined in this Article:

- (a) "Instituto de Astrofísica de Canarias" (hereinafter referred to as the IAC) (Canary Islands Astrophysical Institute): a scientific institution belonging to the Higher Council for Scientific Research (CSIC) and set up by it with the collaboration of the University of La Laguna and the Mancomunidad Provincial Interinsular de Cabildos de Santa Cruz de Tenerife for the purpose of promoting astrophysical research on the Canary Islands and which includes the laboratories and equipment situated at La Laguna and the observatories delimited in the Annex to the Agreement on Cooperation in Astrophysics to which the Preamble of this Protocol refers.
- (b) "Telescope Installation": Radiation collectors together with the instrumental services appertaining thereto and which are installed in the same building.
- (c) "Contracting Party": A State party to the Agreement on Cooperation in Astrophysics.
- (d) "Signatory Body": An Organisation which, being established on the territory of one of the Contracting Parties of the Agreement on Cooperation in Astrophysics and having its nationality, is a signatory of this Protocol.
- (e) "User Institutions": The IAC, and those scientific organisations which, being established on the territory of one of the Contracting Parties of the Agreement on Cooperation in Astrophysics and having its nationality, are authorised to use the installations and services of the IAC for astrophysical research by signing an agreement on telescope installations with the IAC.
- (f) "Common facilities": The necessary facilities at the observatories available for the support of their infra-structure and their telescope installations.
- (g) "Patronato del Instituto de Astrofísica de Canarias" (PIAC) (Board of the Canary Islands Astrophysical Institute): The governing body of the IAC set up by the

CSIC, the University of La Laguna and the Mancomunidad Interinsular de Cabildos de Santa Cruz de Tenerife.

- (h) "International Scientific Committee" (CCI): The Body set up in accordance with Article 7 of this Protocol.

Article 2

The provisions of this Protocol shall apply exclusively to the Observatory of Roque de los Muchachos. Its extension to other observatories shall require the unanimous agreement of the Signatory Bodies.

Article 3

Agreements Concerning the Telescope Installations

(1) Each telescope installation, other than those of the IAC, which it is desired to establish in an observatory shall be the subject of an agreement between the IAC and the other User Institutions, with the prior consent of the PIAC (with regard to the siting of buildings, building plans and the protection of the environment) and of the CCI (with regard to those aspects which may affect other User Institutions) and with the concurrence of the Signatory Body of this Protocol which shall be of the same nationality as the User Institution. These agreements shall require the approval of the CSIC, and this organisation shall guarantee all the commitments undertaken by the IAC in each one of these agreements.

(2) The agreements between the IAC and the other User Institutions shall grant the latter the right to use the land in an observatory for the purpose of constructing telescope installations and to these User Institutions and the persons authorised by them the right to use the telescope installations, such use being subject to payment for the use of the common facilities as is laid down in Article 5, paragraphs (2), (3) and (4) of this Protocol.

(3) The agreements between the IAC and the other User Institutions shall contain full details of the proposed telescope installations, including:

The siting and plans of buildings;

Specifications, operation and use of the telescopes and their associated instruments;

An estimate of immediate and future needs in respect of the common facilities.

(4) The IAC may establish telescope installations in an observatory only with the prior consent of the CCI (with regard to those aspects which may affect other User Institutions).

Article 4

Allocation of Observing Time and Scientific and Technical Cooperation

(1) In accordance with the provisions of Article 5 of the Agreement on Cooperation in Astrophysics:

- (a) Spain shall have at its disposal at least 20% of the observing time of each of the telescopes and instruments installed in an observatory free of charge, except for the normal costs of consumable material required for observations. This time, on the responsibility of the IAC, shall be for the use of Spanish Institutions and other collaborating institutions of any nationality.
- (b) Provision shall be made for the allocation of at least an additional 5% of the observing time of each of the telescope installations to collaborative programmes between User Institutions including the IAC. Each User Institution, and, with the agreement of the IAC, any Spanish Institution, shall have the right to join in each such programme if it so wishes.
- (c) In the case of cooperation in the training of Spanish scientific and technical personnel in the field of Astrophysics, endeavours will be made to encourage collaborative programmes in which such personnel may take part.

(2) The allocation of observing time to Spain and to collaborative programmes shall, where appropriate, be apportioned in an equitable manner in the various seasons of the year and phases of the Moon. Any dispute shall be referred to the CCI which shall give a decision on the matter.

(3) Responsibility for the allocation of the remaining observing time shall lie with the User Institutions of the particular telescope.

(4) Periods of time allocated but not taken up during a calendar year may not be transferred for use to the year immediately following or to subsequent years.

(5) All persons using any telescope or instrument shall observe the rules for their operation laid down by the appropriate User Institution.

(6) All persons using the common facilities shall observe the rules for the use of the common facilities established by the IAC and approved by the CCI.

Article 5

Financial Provisions

(1) The cost of each telescope installation shall be borne by the User Institution, unless other conditions are laid down in an appropriate agreement. The maintenance costs, including the cost of all the staff directly employed in its service, shall be borne by the User Institution.

(2) Whenever possible, recurrent expenditure on common facilities shall be borne by the User Institutions according to the amount of use of the services received. These common facilities shall include electricity, telephone, telex, hostels, housing, restaurant service, offices and other matters of a similar nature.

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(3) Recurrent expenditure which cannot be easily differentiated in accordance with paragraph (2) of this Article shall be borne by the User Institutions in proportions which the CCI shall determine. Such expenditure includes:

- (a) The costs of all personnel assigned to the maintenance, administration and security services and other matters of a similar nature.
- (b) All other charges derived from services which cannot be clearly differentiated (site, equipment, construction and repair work, maintenance and other matters of a similar nature).

(4) The CCI shall provide a fund to the IAC with contributions from the User Institutions to enable that Institute to deal with the charges for the common facilities before they are billed to those Institutions in the proportions appropriate to them. A User Institution shall be entitled to the return of its contribution to the fund on termination of the corresponding telescope installation agreement.

Article 6 Administrative Provisions Concerning an Observatory

The IAC shall be responsible for:

- (a) Providing common facilities for the proper operation of the telescope installations which are deemed appropriate by the CCI and which can be established.
- (b) Agreeing with the CCI on the amount to be paid for the use of common facilities.

Article 7 Provisions Concerning International Participation

(1) An International Scientific Committee (CCI) shall be set up for the purpose of enabling the international scientific community to make use of the natural advantages of the Canary Islands for astrophysical research and affording the Signatory Bodies an effective voice in the decision making with regard to the use of telescope installations.

(2) The CCI shall consist of:

A representative of the CSIC;

A representative of the University of La Laguna;

A representative of the Comisión Nacional de Astronomía de España (National Astronomy Commission of Spain);

A representative of each of the Signatory Bodies other than the CSIC;

The Director of the IAC;

An eminent scientist, who is not a national of any of the Contracting Parties, appointed by the European Science Foundation as assessor without the right to vote.

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(3) The CCI shall elect a President and Vice-President, each of a different nationality, from among its members other than the scientist appointed by the European Science Foundation. Their terms of office shall be for two years. Each President shall be of a different nationality from that of his predecessor.

(4) The CCI, availing itself of the advice of Sub-Committees for specific questions, where it deems this appropriate, shall be responsible for the following functions:

- (a) Coordinating, for their submission to the IAC, the requirements of the individual telescope installations in respect of the use or modification of the common facilities;
- (b) Approving the expenditure and other financial arrangements referred to in Article 5 paragraphs (2), (3) and (4);
- (c) Approving new agreements for telescope installations with regard to those aspects which may affect other User Institutions;
- (d) Coordinating the joint scientific activities within the observing time allotted to collaborative research projects, always taking into account the provisions of the agreements for telescope installations which shall always have priority;
- (e) Producing annual reports on the scientific activities carried on in an observatory;
- (f) Drawing up rules for the allocation of observing time in accordance with Article 4 of this Protocol;
- (g) Any other matter which may arise during the development and use of an observatory.

(5) All decisions of the CCI shall require the unanimous approval of the representative of the CSIC (who shall vote on behalf of all the representatives of all the Spanish bodies represented on the CCI) and of the representatives of all the other Signatory Bodies.

(6) If a unanimous decision cannot be reached by the CCI the discussion shall be postponed until a meeting which shall be held within a period of not less than twenty-eight days and not more than fifty-six days. If a unanimous decision cannot be reached at this meeting owing to the opposition of only one of the members of the CCI with the right to vote, any of the other members with the right to vote may refer to arbitration the question of the reasonableness of the dissident member's refusal to agree, in accordance with the procedure for resolving disputes laid down in Article 11 of this Protocol.

(7) If a member of the CCI is unable to attend the meeting, his powers may be exercised by a substitute or the votes of the Bodies referred to in paragraph (5) of this Article may be sent by post or telex.

(8) The CCI may set up temporary or permanent Sub-Committees to advise on specific questions. The terms of reference of these Sub-Committees shall be laid down by the CCI.

Article 8
Third Countries

The User Institutions may negotiate with institutions in States which are not parties to the Agreement on Cooperation in Astrophysics, the transfer of part of their own observing time once the allocation of time has been made in accordance with Article 4 of this Protocol. The CSIC and the CCI shall be notified of such arrangements. The researchers invited from these countries who use that observing time shall enjoy the same privileges in the use of an observatory as the scientists of the User Institutions.

Article 9
Staff

(1) The staff needed for the common facilities shall be engaged by the IAC, taking into account the requirements of the CCI.

(2) The maintenance staff of the telescope installations shall be engaged by the Institutions operating these installations which shall endeavour, whenever possible, to engage Spanish staff.

(3) The Spanish staff locally engaged by the IAC or the other User Institutions shall be subject to the relevant Spanish laws.

Article 10
Ownership

The telescopes and other equipment installed in an observatory by the various Institutions shall continue to belong to their original owners, even in the case of termination of the agreements on telescope installations, unless otherwise provided for by a transfer or an agreement. If there is no transfer or agreement, the Institution affected shall remove its telescope or other equipment if the CCI or the CSIC so request.

Article 11
Resolution of Disputes

All disputes arising between the Signatory Bodies concerning the interpretation or application of this Protocol which cannot be resolved otherwise shall be resolved in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbiters appointed in accordance with its Rules, whose decisions shall be binding on all the Signatory Bodies.

Article 12
Duration

(1) This Protocol shall enter into force for each Signatory Body on the date on which the Agreement on Cooperation in Astrophysics enters into force for, or is provisionally applied by, its Contracting Party in accordance with Article 15, paragraph (2) or (3) thereof.

(2) In the event of accession by a State to the Agreement referred to in the preceding paragraph, this Protocol – which shall be signed by a Body of the nationality of that State – shall enter into force in respect of that Body on the date on which the accession becomes effective.

(3) This Protocol shall continue in force in respect of each of the Signatory Bodies (including the Signatory Bodies of States which accede to the Agreement) during the period in which the Agreement is in force or is provisionally applied in respect of the State whose nationality such Body holds.

Done at La Palma this 26th day of May 1979 in the Spanish and English languages, both texts being equally authoritative.

For the Higher Council for Scientific Research of Spain

For the Research Administration of Denmark

For the Science Research Council of the United Kingdom

For the Royal Academy of Sciences of Sweden

ADDENDUM TO THE PROTOCOL ON COOPERATION IN ASTROPHYSICAL RESEARCH BETWEEN THE GOVERNMENTS OF THE KINGDOM OF SPAIN, THE KINGDOM OF DENMARK, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF SWEDEN.

In view of the request by the Federal Republic of Germany to join the agreement on cooperation in astrophysical research and the protocol between the governments of the Kingdom of Spain, the Kingdom of Denmark, the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Sweden, signed in Santa Cruz de La Palma on the 26th of May of 1979, and published in the official State bulletin no.161 on the 6th of July of 1979, the signatory bodies consider that it is necessary to introduce an addendum to the protocol on co-operation in astrophysical research in the following terms:

The aforementioned protocol referring exclusively to the Observatory at Roque de los Muchachos shall be extended to include the Observatory of Teide in accordance with the provisions of the Protocol with the exception of the modifications introduced by the present Addendum.

1. The Observatory of Roque de los Muchachos and the Observatory of Teide shall with respect to financial responsibilities form two separate units with no mutual economic obligations.
2. The installations existing at the Observatory of Teide at the time of signature of the present Addendum shall be regarded as fulfilling the provisions of Article 9,1 of the intergovernmental agreements.
3. The telescopic installations at the Observatory of Teide belonging either to the IAC (Instituto de Astrofísica de Canarias), or to organisations of countries other than the Signatories to the Protocol and the present Addendum which at present have agreements with the IAC, shall not be covered by the provisions of the agreement signed in Santa Cruz on 26 May 1979 and those of the present Addendum. The IAC may include its own telescopic installations in these agreements by simply notifying the CCI.
4. The allocation of observing time to Spain and to collaborative programmes shall, where appropriate, be apportioned in an equitable manner for the various seasons of the year and phases of the moon and for periods known to offer a solar image of excellent quality. Any dispute shall be referred to the CCI which shall give a decision on the matter.
5. All decisions of the CCI shall require the unanimous approval of the representative of the CSIC (on behalf of all Spanish organisations represented in the CCI) and of the representatives of all the other Signatory Bodies with the exception of decisions on questions which refer to only one observatory and do not directly affect all the Signatories to the Protocol and the Addendum. In such cases the decisions of the CCI shall require only the unanimous approval of the representatives of the CSIC (on behalf of all Spanish organisations

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represented in the CCI) and of the representatives of all the Signatory Bodies which have telescopic installations from their respective countries in that observatory.

6. In view of the new legal personality of the Instituto de Astrofísica de Canarias established by the Royal Decree-Law 7/1982 of 30 April, the said Institute assumes the functions, rights and obligations corresponding to the former Instituto de Astrofísica de Canarias dependent on the Consejo Superior de Investigaciones Científicas, and replace it with regard to the rights and obligations of a contractual nature acquired by the former prior to the entry into force of the above-mentioned Royal Decree-Law. Whenever reference is made to the IAC, therefore, this will be understood to mean the Instituto de Astrofísica de Canarias, a public management consortium, created by the Royal Decree-Law 7/1982 of 30 April, and consequently the final part of point 1 of Article III of the Protocol, which states, "These agreements shall require the approval of the CSIC and this organisation shall guarantee all the commitments undertaken by the IAC in each one of these agreements" shall be deleted.
7. All references to the "Patronato of the IAC" in the Protocol shall be replaced by "Governing Council of the IAC", which is the new Governing body of the IAC. Section (g) of Article 1 of the Protocol should therefore, in accordance with the Article III of the above-mentioned Royal Decree-Law 7/1982, be drawn up as follows:

"Governing Council of the Instituto de Astrofísica de Canarias" (CRIAC): Managing Body of the IAC, responsible for decisions on administrative and economic matters, through which the State Administration, the Junta de Canarias, the University of La Laguna and the Consejo Superior de Investigaciones Científicas will carry out their respective duties".

Done at Madrid this 8th day of April 1983 in the Spanish and English languages, both texts being equally authoritative.

For the Higher Council of Scientific Research of Spain.

For the Research Administration of Denmark

For the Science and Engineering Research Council of the United Kingdom.

For the Royal Academy of Sciences of Sweden

For the German Research Society (Deutsche Forschungsgemeinschaft)