



**THE IMPLEMENTATION OF THE  
ESA CONVENTION**

**LESSONS FROM THE PAST**

*LA CONVENTION DE L'ESA A L'OEUVRE*

*ENSEIGNEMENTS DU PASSE*

**PROCEEDINGS**

**OF THE ESA/EUI INTERNATIONAL COLLOQUIUM**

**Organised by the European Space Agency, the European Centre for  
Space Law and the European University Institute  
FLORENCE, 25 AND 26 OCTOBER 1993**

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## The Implementation of the ESA Convention - Lessons from the Past -

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## TABLE OF CONTENTS / TABLE DE MATIERES

	Page
<b>PREFACE</b>	1
<b>FOREWORD</b> <i>R. Gibson</i>	3
<b>OPENING SESSION/SEANCE INAUGURALE</b> <i>J-M. Luton</i>	5
<i>E. Noël</i>	7
<b>INTRODUCTION</b> <i>R. Lüst</i>	9
<b>SESSION I</b> - THE BIRTH AND EVOLUTION OF THE ESA CONVENTION - LA NAISSANCE ET L'ÉVOLUTION DE LA CONVENTION DE L'ESA <i>Session Chairman: H. Atkinson</i>	
<b>AN HISTORIAN LOOKS AT THE ESA CONVENTION</b> <i>J. Krige</i>	13
<b>LES PROGRAMMES FACULTATIFS</b> <i>G. Lafferranderie</i>	21
<b>DECISION-MAKING AND VOTING</b> <i>R. Loosch</i>	59
<b>DISCUSSION</b>	69

**SESSION II**

- GEOGRAPHICAL RETURN
- LA RETOUR GÉOGRAPHIQUE

*Session Chairman: G. van Reeth*

**LA DISTRIBUTION GÉOGRAPHIQUE, LES RÈGLES,  
LEUR ÉVOLUTION, CONSÉQUENCES**

*M. Duran*

73 -

**ESA AND EUROPEAN COMMUNITIES REGULATIONS:  
COMPATIBILITY OR CONTRADICTIONS?**

*H. W. Micklitz*

77 -

**LES RÈGLES DE L'ESA DANS UNE PERSPECTIVE NATIONALE**

*D. Sacotte*

111

**RETOUR INDUSTRIEL, POLITIQUE INDUSTRIELLE ET  
COMPÉTITIVITÉ: OBJECTIFS CONCILIAIBLES ?**

*M. Praet*

125 -

**DISCUSSION**

137

**SESSION III**

- COMMERCIALISATION
- (FROM INDEPENDENCE TO INTEGRATION)
- (DE L'INDÉPENDANCE À L'INTÉGRATION)

*Session Chairman: M. Trella*

**COMMERCIALISATION DES LANCEURS**

*Ch. Bigot*

141

**LE PROGRAMME DE SATELLITES EUROPÉENS  
DE TÉLÉCOMMUNICATIONS "ECS"**

*G. Payet*

159

**THE METEOROLOGICAL SATELLITES**

*J. Morgan*

167

**EARTH OBSERVATION**

*G. Brachet*

175

**MADE IN SPACE, A LOST ILLUSION?**

*J. von der Lippe*

181

**DISCUSSION**

187

**SESSION IV**

**- THE AGENCY AND THE EVOLUTION OF THE  
INTERNATIONAL ENVIRONMENT**

**- L'AGENCE DANS UN CONTEXTE INTERNATIONAL EN ÉVOLUTION**

*Session Chairman: J M Lopez-Aguilar*

**THE EVOLUTION OF THE LEGAL FRAMEWORK OF COOPERATION  
BETWEEN ESA AND RUSSIA**

*V. Vereshchetin*

197 -

**REFLEXIONS ON 30 YEARS OF INTERNATIONAL COOPERATION -  
PAST AND FUTURE**

*P. Creola*

205 -

**L'EFFORT SPATIAL EUROPÉEN ET LA NECESSITÉ D'UNE  
ACTION COMMUNAUTAIRE**

*M. Paillon*

209 -

**INTERNATIONAL COOPERATION: PAST, PRESENT AND FUTURE**

*K. Pedersen*

213 -

**DISCUSSION**

217

**CONCLUSIONS**

*H. Atkinson*

223

*G. Lafferranderie*

231

**ANNEXES**

**ESA Convention English**

233

**Convention ESA Français**

255

**Bibliography**

277

**List of speakers and participants**

285

## PREFACE

### **The Implementation of the ESA Convention**

The papers in this collection were presented at a symposium held in October 1993 and jointly organised by the European Space Agency, the European Centre for Space Law (ESA/ECSL) and the European University Institute (EUI), with the support by Arianespace, the European Commission and ESA. The Institute, which is situated on a magnificent site near Fiesole on the hills over-looking Florence, was a particularly appropriate venue for the meeting. There is considerable overlap between its member states and those of ESA. It is host to a major project to write the history of the European Space Agency, and ESA has deposited its historical archives there. Finally, being a university, it provided an informal, intellectual environment in which speakers and participants felt free to speak their minds.

The aim of the meeting was to explore some aspects of the ESA Convention, adopted in 1975, and its subsequent implementation. Particular emphasis was placed on four sectors: optional programmes, geographical return, commercialization and internationalization. Speakers were chosen who were at once highly distinguished, who were not of ESA, and who had had to navigate their way through the Convention in their dealings with the Agency. In this way it was possible to reassess some of the clauses which have raised a variety of unexpected problems in practice as the context in which the Agency exists has been transformed over the past two decades.

Approximately 100 people attended the meeting. They represented a wide variety of interests, including not only the legal profession, but also business, academia, and several international organizations. The meeting was structured so as to leave a good deal of time for discussion and there was a lively and active participation at all times from the floor.

This book collects together all of the papers presented at the meeting, including a number of briefer interventions made at a Round Table on the last afternoon. Contributions made by participants in the audience were recorded and have been incorporated. The result is a timely and stimulating overview of some of the key questions surrounding an issue whose current and future importance for ESA, and indeed for many similar European organisations, cannot be overestimated.

## FOREWORD

**Roy Gibson**  
**Montpellier, France**

There is always the danger with a colloquium of this nature, that the participants will be unable to resist taking a nostalgic trip into the stirring pioneer days of the 1970's, and will be less willing to face the problems of today and tomorrow. Happily, I understand that this did not happen in Florence. I am obliged to express myself indirectly in this way, because my intended means of air transport from Montpellier to Florence were suddenly withdrawn, through what is nowadays euphemistically known as 'industrial action'.

I am grateful to my friend and erst-while colleague, Harry Atkinson, for having kindly agreed to take over my responsibilities. He was an important player on the scene, and I am sure that the colloquium participants were well served by the change. These few lines give me the opportunity, albeit belatedly, to say some of the things with which I intended to belabour the colloquium during the first session - and with the added luxury of being spared possible contradiction from dissatisfied participants.

Those who participated in the protracted discussions which led to the creation of ESA in 1975, will recall the infinite capacity of delegates to cut the finest of hairs into microscopic slivers. Few believed during the process that it would actually yield an organisation which would not only give Europe a credible space programme, but also act as a major federating force in the painful advance to a united Europe. But this is in fact what happened. There is tendency nowadays to cite the Ariane programme as primary proof of this achievement, but - important though Ariane certainly is - one must not forget the significant scientific and applications spacecraft which ESA has managed to launch - most of them beyond the range of individual Member States - not the creation of teams (inside ESA and within European industry) which learned to work harmoniously and effectively together in ways which would have been unthinkable a decade or so before.

I like to believe, however, that those who arranged the colloquium were not so much seeking to re-constitute the recipe for this success as to probe how far this moment could be used to take ESA, and its Member States, into the quite changed space environment of the 1990's. "More of the same" is patently an inadequate formula for the future in this sector of human activities. The trick will be to use the expertise we have gained, whilst still being fully open to the significance of the wholly changed circumstances in which we are now operating. This applies equally to the Director General and his staff, the distinguished delegates from Member States, and to the much-maligned aerospace industry. It is against this background that the colloquium must be seen. ESA staff, delegates and industry can contribute to the future by honestly analyzing the past, and by assessing its relevance to the present and the foreseeable future. Exasperated though many of us often were at the time, there is no doubt that, in making the journey through the then uncharted channels of European cooperation, we acquired valuable experience which is in danger of being lost or obscured by present difficulties. Perhaps not all of the past is appropriate to the new circumstances (in any

case, there are certain passages most of us would rather forget), but I am convinced that occasional national excesses apart the spirit of the 70's could indeed help to re-set ESA's Course. There is a disturbing tendency nowadays to talk as though ESA's days were numbered (one notes the same myopic attitude in regard to NASA), but in my view this is a misreading of the situation. Just when Europe is painfully coming together politically and economically, it would be foolish to dismantle one of our most successful European ventures.

My hope is that this meeting, and subsequent gatherings of this kind, will help politicians and civil servants to identify those features in our present ESA which must be retained, and even re-inforced, and those which need to be modified, perhaps radically so in some areas. More than ever before, the contribution of the private sector is needed to meet the European needs for space in the coming decades. The question in my mind is whether the various parties are capable of making, and accepting, the necessary changes. Unlike the 70's when there was little or no time pressure to make the necessary political decisions, the commercial and international trade pressures will brook no lengthy hesitations. There is much to be done, but we have a wealth of talent and experience. The fact that so many people are ready to meet and talk about the problems, is a promising start.