REGULATIONS OF THE EUROPEAN SPACE AGENCY

ADDITIONAL ARBITRATION RULES

The attached additional arbitration rules constitute, together with article XVII of the ESA Convention, the basis of the arbitration procedure between Member States and ESA.

Article XVII of the Convention establishes an arbitration procedure for settling disputes that may arise between two or more ESA Member States or between any of them and the Agency, concerning the interpretation or application of the Convention, including its Annexes, and the disputes referred to in Article XXVI of Annex 1 to the Convention. This arbitration procedure may be used if it has not been possible to settle the dispute amicably through the Council.

These additional arbitration rules were unanimously adopted by the ESA Council during its 66th meeting held on 12 and 13 December 1984.
ADDITIONAL ARBITRATION RULES

(adopted for the application of Article XVII of the Convention)

The Council,

HAVING REGARD to Article XVII.2 of the Convention,

ADOPTS the additional arbitration Rules as follows:

RULE 1

The arbitration procedure provided for by Article XVII of the Convention shall be carried out in accordance with this Article and with the provisions of the present additional Rules.

RULE 2

The petitioner or the respondent may, if appropriate, be one or more of the Member States or the Agency itself.

RULE 3

1. A Member State seeking recourse to arbitration ("the petitioner") shall lodge with the Director General a full written submission containing:

   - designation of the respondent with which the dispute exists;

   - a statement describing in detail the subject matter of the dispute referred to arbitration, accompanied by any supporting evidence;

   - a statement which sets forth the reasons why the dispute comes within the competence of the arbitration tribunal whose constitution is requested, the legal reasons why the tribunal should accede to the request, and the
decision sought from the tribunal;

- a statement that negotiations have taken place though unsuccessfully through the Council over a reasonable period allowing all solutions for settling the dispute to be explored, and that the parties to the Dispute have not agreed on any other means of settling it;

- the name of the person designated by the petitioner to sit as Arbitrator and, if appropriate, the name and address of the person responsible for defending the interests of the petitioner.

2. The Director General shall verify that this submission complies with the provisions of paragraph 1 above, notify all the Member States that a request for arbitration has been made, and submit immediately a copy of this submission to the respondent and to each of the Member States. In Particular, the Director General shall invite the respondent to appoint its arbitrator and to send him its written counter-submission.

3. In the event of the Agency itself being a petitioning party to a dispute with one or more Member States, the Director General's request for arbitration shall be subject to the prior approval of the Council, voting by a simple majority. The tasks described in paragraphs 1 and 2 above and in Rules 4.1 and 9.3 shall in such a case be carried out by a person appointed by the Council.

RULE 4

1. The counter-submission by the respondent shall contain:

- a statement of the facts in response to the statement made by the petitioner, together with all supporting documents;

- a statement of the points of law involved;

- the name of the person designated as an arbitrator and, where appropriate, the name and address of the person responsible for defending the interests of the respondent.

2. The respondent may submit a counter-claim arising directly out of the subject matter of the dispute.
3. The Director General shall communicate immediately a copy of this counter-submission to the petitioner and to all the Member States.

RULE 5

1. If within sixty days from the date of receiving the petitioner's submission, the respondent has not appointed its arbitrator, the Director General shall notify the petitioner of this immediately. At the petitioner's request, the choice of the second arbitrator shall then be made by the President of the International Court of Justice ex, in the event of disagreement between the parties, by the Secretary General of the Permanent Court of Arbitration.

2. Within thirty days of their appointment, the first two arbitrators shall agree on a third person to serve as the Chairman of the tribunal. If they fail to reach such an agreement, the third arbitrator shall be appointed, at the request of one of the parties to the dispute, by the President of the International Court of Justice ex, in the event of disagreement between the parties, by the Secretary General of the Permanent Court of Arbitration.

3. If the President or as the case may be the Secretary General is unable to so act or if he has the nationality of one of the parties, the arbitrator shall be appointed by the Vice-Chairman. If the Vice-Chairman is unable to so act or if he has the nationality of one of the parties, the appointment shall be made by the oldest member of the Court not having the nationality of one of the parties.

4. The Chairman of the tribunal must not be, or have been, a national of one of the Member States concerned, or an official of the Agency, unless the parties to the dispute expressly agree to this.

5. The tribunal is constituted as soon as it Chairman is appointed. Its composition must remain the same until the award is made.

RULE 6

If, for whatever reason, a vacancy occurs in the tribunal, a new member of the tribunal shall be appointed in accordance with the procedure for the original appointment.
RULE 7

1. The tribunal shall decide the place and dates of its sittings.

2. The proceedings shall be held in private and all documents submitted shall be confidential. In the event of a Member State or the Agency not being a party to the dispute, it may attend the proceedings if the tribunal so agrees. When the Agency is itself a party to the proceedings, all Member States may attend them and have access to the documents submitted.

3. If there is disagreement about the existence of a dispute or on whether the dispute is subject only or in part to the obligation to have recourse to arbitration’s, the tribunal shall examine this matter first and give its decision as soon as possible.

4. The proceedings shall be conducted in writing. However, the parties may submit oral arguments and witnesses may be heard. The languages of the proceedings shall be chosen by the tribunal from among the Agency's working languages.

5. The Chairman shall conduct the proceedings. The proceedings shall start with the presentation of the petitioner's submission followed by presentation of the respondent's counter-submission and if necessary of replies and rejoinders. A certified true copy of every document produced by either party shall be communicated to the other party.

6. The tribunal may hear counter-claims arising directly out of the subject matter of the dispute and rule on such claims provided they are within its competence.

7. Any Member State of the Agency or the Agency itself not being a party to the dispute may ask the tribunal for authorization to intervene and to became an additional party to the dispute. The tribunal shall accede to the request if it determines that the Member State concerned has a substantial interest in the matter.

8. If the parties reach an agreement in the course of the proceedings, the tribunal shall take due note thereof and record it in the form of an award made with the consent of the parties.

9. A record signed by the Chairman of the tribunal shall be kept of each hearing.
RULE 8

1. At the request of a party or on its own initiative, the tribunal may appoint such experts as it deems necessary to assist it.

2. Each party to the dispute and the Agency shall facilitate the tribunal's work and in particular provide it with all the information and documents the tribunal deems necessary to settle the dispute.

3. Before making its award and if it considers that circumstances so require, the tribunal may indicate any provisional measures which it considers would preserve the respective rights of the parties to the dispute.

RULE 9

1. The deliberations of the tribunal shall be held in private and shall be secret.

2. An award by the tribunal shall be rendered in writing and substantiated. It shall be taken by a majority of the members of the tribunal who may not abstain from voting. The award shall be deemed to have been rendered when it has been read at a hearing before the representatives, either present or duly convened, of the parties. The absence of a party or its failure to attend shall not obstruct the procedure.

3. The tribunal shall forward its award to the Director General of the Agency who shall distribute it to the parties to the dispute and to all Member States.

4. The award shall be final and binding on all parties to the dispute who shall carry it out in good faith forthwith, and no appeal shall lie against it. If the Agency is a party to a dispute and the tribunal deems that a decision taken by one of its organs is null and void as not being in compliance with or authorised by the Convention and its Annexes, the award shall be binding on all the Member States.

5. In the event of a dispute as to the meaning or scope of its award, the tribunal shall construe it at the request of any party to the dispute.
6. A review of an award can be requested of the tribunal that has made it, only if a fact likely to have a determining influence has come to light, and which, prior to the award being made, was unknown to the tribunal and, through no fault of its own, to the party requesting a review.

RULE 10

1. Each party to the dispute shall bear the cost of remuneration and the expenses of its arbitrator and the cost incurred in preparing and presenting its own case.

2. Unless the tribunal decides otherwise because of the particular circumstances, the remuneration and expenses of the Chairman of the tribunal and the other expenses of the tribunal shall be borne in equal shares by each party to the dispute. If the Agency is a party to a dispute, the expenses incurred by it shall be regarded as an administrative expenditure charged to the general budget. The tribunal shall keep a record of all its expenses and costs and submit a final statement thereof.