

JUSTITIA ET PACE
INSTITUT DE DROIT INTERNATIONAL

Session of Athens - 1979

**The Proper Law of the Contract in Agreements
Between a State and a Foreign Private Person**

(Twenty-first Commission, Rapporteur : Mr Georges van Hecke)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Conscious of the importance which agreements between a State and a foreign private person have nowadays in international economic relations,

Wishing to contribute to the clarification of rules of private international law relating to such agreements,

Considering that in the case of a contract between a State and a foreign private person the parties may, under the general principles of private international law, designate the proper law of the contract and, if such is their intent, withdraw the contract from the exclusive application of any given domestic law,

Reserving the question of a possible operation of public policy or mandatory legislation in this field,

Reserving the question of contracts concluded by a public enterprise or body having a legal personality of its own with a foreign private person,

Stressing that the international responsibility of States under international law is not covered by this Resolution,

Adopts this Resolution :

Article 1

Contracts between a State and a foreign private person shall be subjected to the rules of law chosen by the parties or, failing such a choice, to the rules of law with which the contract has the closest link.

Article 2

The parties may in particular choose as the proper law of the contract either one or several domestic legal systems or the principles common to such systems, or the general principles of law, or the principles applied in international economic relations, or international law, or a combination of these sources of law.

Article 3

The parties may agree that domestic law provisions referred to in the contract shall be considered as being those in force at the time of conclusion of the contract.

Article 4

It is desirable that the parties expressly designate the proper law of the contract.

It is also desirable that in designating the latter the parties take into consideration the difficulties which may result from the possible application or combination of a variety of legal systems or principles.

Article 5

In the absence of any choice by the parties, the proper law of the contract shall be derived from indications of the closest connection of the contract.

Article 6

The rules of law chosen in accordance with the preceding provisions shall govern the incidence of contractual liability between the parties, in particular those raised by the State's exercise of its sovereign powers in violation of any of its commitments toward the contracting partner.

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(11 September 1979)