

JUSTITIA ET PACE
INSTITUT DE DROIT INTERNATIONAL

Session of Helsinki - 1985

**The Law Applicable to Joint International State
or Quasi-State Enterprises of an Economic Nature**

(Ninth Commission, Rapporteur : Mr Ignaz Seidl-Hohenveldern)

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

Whereas States, their subdivisions and their public enterprises create joint international enterprises in order to promote international co-operation and to foster their own interests,

The Institute of International Law,

Having regard to its Resolution of Oslo (1977) on Contracts concluded by international Organizations with Private Persons ;

Having regard to its Resolution of Oslo (1977) on Multinational Enterprises ;

Having regard to its Resolution of Athens (1979) on the Proper Law of the Contract in Agreements between a State and a Foreign Private Person ;

Desiring to provide solutions for certain problems that arise with respect to such enterprises so far as those problems lie outside the scope of the above Resolutions ;

Realizing, however, that the great variety of such enterprises precludes the elaboration of a comprehensive set of propositions applicable to all of them and covering every issue that may arise with respect to them ;

Excluding, for the purpose of the present Resolution, questions pertaining to the relations between the enterprise and its employees, the nationality of the enterprise, diplomatic protection, privileges and immunities, and the possible responsibility of the participants for acts or omissions of their enterprises whether under international law or under national law,

Adopts the following Resolution :

Article 1

This Resolution concerns any joint international enterprise that combines the following features :

- a) two or more States, State subdivisions or other State-controlled entities have a dominant participation in the capital of the enterprise ;
- b) it acts in one or more States for purposes of general economic interest principally through private law procedures ; and
- c) it is distinct from the several entities referred to in (a) above.

Article 2

A joint international enterprise may be established by one or more of the following constitutive instruments : by a treaty, by a decision of an international organization or by an act of the participants governed by one or more of the sources of law enumerated in Article 7.

Article 3

The constitutive instruments of the enterprise should include all provisions which may be necessary or useful for the efficient functioning of the enterprise in relations among the participants as well as in relations with third parties.

Article 4

1. The participants may, in establishing the joint international enterprise, either
 - a) use a legal model existing under a national law, e.g., a defined type of company ; or
 - b) determine the purpose of the enterprise and the rules applicable to its creation and activities without using provisions of a national law or using them only in certain respects.
2. The fact that the constitutive instruments of the enterprise or some of them are treaties does not necessarily imply that the enterprise shall be governed by public international law.
3. The existence of the enterprise shall be recognized in the legal systems of the States participating directly or through enterprises or authorities.
4. The existence of the enterprise shall be recognized in other States in accordance with each such State's system of law and with international law.

Article 5

1. The participants may, in establishing the enterprise, either submit the relations among themselves to a national law, including any special rules laid down by such law for the participation of national or foreign public authorities, or submit these relations to such law subsidiarily to the constitutive instruments, or exempt them entirely from the application of a particular national law.

2. The constitutive instruments of the enterprise, when submitting the relations among the participants to a national law :

a) may expressly derogate from that national law ;

b) shall be deemed to derogate implicitly from provisions inconsistent with the terms of the instruments or incompatible with their object and purpose.

Except where the instruments are treaties, such derogations may not affect mandatory provisions of law or *ordre public* of the abovementioned national law.

3. To the extent that an issue respecting relations among participants is neither regulated by the constitutive instruments nor submitted to a system of law of their choice, the issue is governed by the general principles of law regulating the issue in the legal systems of the States concerned, by the general principles of the law of international organizations, and, where appropriate, by other rules of international law.

4. In submitting these relations to a national law either as the principal or as a subsidiary source of law, the constitutive instruments may provide that the provisions of that national law shall be those in force at the time of the adoption of those instruments.

5. If an enterprise is established by a decision of an international organization, the law of that organization shall be applicable to it only where it is expressly so provided.

Article 6

1. When a treaty provides for the establishment of constitutive instruments for the enterprise, they shall be interpreted in the light of the object and purpose of the treaty.

2. A national law declared applicable as a subsidiary source of law shall be resorted to only to the extent that interpreting the constitutive instruments in the light of their object and purpose fails to resolve the issue.

3. A national law made applicable as a principal or subsidiary source shall be interpreted in accordance with the methods of interpretation employed in that law.

Article 7

In respect of the relations of the enterprise with third parties, the contracting parties may choose as the proper law of the contract either one or several national laws or the principles common to these laws, 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 8

Where in respect of questions other than those dealt with in the foregoing provisions the applicable rules of private international law of a State refer to the personal law of the enterprise, that law shall be the one expressly or implicitly determined by the constitutive instruments.

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(28 August 1985)