

Session of Oslo - 1977

**Contracts Concluded by International Organizations
with Private Persons**

(Fourth Commission, Rapporteur : Mr Nicolas Valticos)

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

The Institute of International Law,

Whereas the development of international organizations and of their activities involves the conclusion of an increasing number of contracts of various types between such organizations and private persons ;

Whereas it is desirable that such contractual relations meet the following requirements : allow international organizations to perform their duties without hindrance within the framework established by international law, show regard for the law, and safeguard the stability of transactions and legal relations ;

Having regard to the information obtained by consulting a large number of international organizations, and taking account of the various situations and practices existing in this field ;

Recalling the spirit of the Resolution of Amsterdam (1957) on judicial redress against the decisions of international bodies,

Adopts this Resolution :

Article 1

This Resolution concerns contracts concluded by international inter-governmental organizations with private persons, natural or legal.

I. The Proper Law of the Contract

Article 2

1. To facilitate the settlement of difficulties which may arise in connection with the contracts under consideration, it is desirable that the parties expressly specify the source, national or international, from which the proper law of the contract is to be derived.

2. The parties may expressly refer to a combination of several sources.

Article 3

The parties may stipulate 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

Whenever the private party may be subject to special burdens or risks - such as alteration, suspension or termination of the contract upon the initiative of the contracting organization - due to the connection of the contract with the exercise of the organization's particular functions, the contract should specify the implications for the rights and obligations of the parties.

Article 5

If not expressly indicated in the contract, the proper law shall, where necessary and unless otherwise agreed by the parties at a later stage, be determined by the body entrusted with the settlement of the dispute, which shall try to ascertain the parties' tacit intention or, failing this, apply objective criteria.

Article 6

In so far as it constitutes the proper law of the contract, the law of the organization shall be considered as including the constitutive instrument, any other rules governing the organization and the practice established by the latter, these sources being supplemented by the general principles of law.

II. Settlement of Disputes in Case of Immunity from Jurisdiction

Article 7

Contracts concluded with private persons by international organizations should, in cases where the latter enjoy immunity from jurisdiction, provide for the settlement of disputes arising out of such contracts by an independent body.

Article 8

The body referred to in Article 7 may be :

- a) an arbitration body set up in accordance with the rules of a permanent arbitration institution or in pursuance of *ad hoc* clauses ;
- b) a tribunal set up by an international organization, if conferring such jurisdiction is compatible with the rules of the organization ; or
- c) a national judicial body, if this is not incompatible with the status and functions of the organization.

Article 9

If a dispute arises in connection with a contract which contains no clause on the settlement of disputes, the organization concerned should either waive immunity from jurisdiction or negotiate with the other party to the contract with a view to settling the dispute or to establishing an appropriate procedure for its settlement - particularly through arbitration.

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(6 September 1977)