

JUSTITIA ET PACE
INSTITUT DE DROIT INTERNATIONAL

Session of Basel - 1991

**Non-Appearance Before the
International Court of Justice**

(Fourth Commission, Rapporteur : Mr Gaetano Arangio-Ruiz)

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

The Institute of International Law,

Considering the frequent cases of non-appearance which have occurred before the International Court of Justice ;

Considering that the International Court of Justice is the principal judicial organ of the United Nations, and that all the members of the United Nations are *ipso facto* parties to the Court's Statute ;

Considering that Article 53 of the Court's Statute provides :

"1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law." ;

Considering that the said Article implies that a State may not appear before the Court ;

Considering that the absence of a party is such as to hinder the regular conduct of the proceedings, and may affect the good administration of justice ;

Considering in particular the difficulties that non-appearance of a party may present in some circumstances for the other party or parties and for the Court itself, especially with regard to :

- a) the full implementation of the principle of the equality of the parties ; and
- b) the acquisition by the Court of knowledge of facts which may be relevant for the Court's pronouncements on interim measures, preliminary objections or the merits ;

Considering the positions which non-appearing States have taken in a number of cases in parallel with, or following, their failure to appear ;

Recalling further the attitude taken by non-appearing States in some instances with regard to the Court's pronouncements on interim measures, preliminary objections or the merits,

Adopts the following Resolution :

Article 1

Each State entitled under the Statute to appear before the Court and with respect to which the Court is seized of a case is *ipso facto*, by virtue of the Statute, a party to the proceedings, regardless of whether it appears or not.

Article 2

In considering whether to appear or to continue to appear in any phase of proceedings before the Court, a State should have regard to its duty to co-operate in the fulfilment of the Court's judicial functions.

Article 3

In the event that a State fails to appear in a case instituted against it, the Court should, if the circumstances so warrant :

- a) invite argument from the appearing party on specific issues which the Court considers have not been canvassed or have been inadequately canvassed in the written or oral pleadings ;
- b) take whatever other steps it may consider necessary, within the scope of its powers under the Statute and the Rule of Court, to maintain equality between the parties.

Article 4

Notwithstanding the non-appearance of a State before the Court in proceedings to which it is a party, that State is, by virtue of the Statute, bound by any decision of the Court in that case, whether on jurisdiction, admissibility, or the merits.

Article 5

A State's non-appearance before the Court is in itself no obstacle to the exercise by the Court of its functions under Article 41 of the Statute.

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(31 August 1991)