

JUSTITIA ET PACE  
INSTITUT DE DROIT INTERNATIONAL

**Session of Milan - 1993**

**The Activities of National Judges and  
the International Relations of their State**

*(Ninth Commission, Rapporteur : Mr Benedetto Conforti)*

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

*The Institute of International Law,*

*Whereas* international law plays an increasingly important role within the various national legal systems ;

*Whereas* this necessarily leads national courts to decide questions whose solution depends on the application of international norms ;

*Whereas* it is in principle for the legal system of each State to provide the most appropriate ways and means for ensuring that international law is applied at the national level ;

*Whereas*, however, in order to attain within each State a correct application of international law through its own methods of interpretation within each State, it is appropriate to strengthen the independence of national courts in relation to the Executive and to promote better knowledge of international law by such courts ;

*Whereas* the strengthening of the role of national courts may be facilitated by removing certain limitations on their independence which are sometimes imposed with regard to the application of international law by law and by practice ;

*Whereas* it is appropriate to this end to make recommendations to be followed in the national legal systems ;

*Noting* this Resolution is not directed to the question of the pre-eminence of international law over domestic law,

*Adopts* the following Resolution :

#### *Article 1*

1. National courts should be empowered by their domestic legal order to interpret and apply international law with full independence.
2. National courts in determining the existence or content of international law, either on the merits or as preliminary or incidental questions, should enjoy the same freedom of interpretation and application as for other legal rules, basing themselves on the methods followed by international tribunals.
3. Nothing should prevent national courts from requesting the opinion of the Executive, provided that such consultation has no binding effect.

#### *Article 2*

National courts, when called upon to adjudicate a question related to the exercise of executive power, should not decline competence on the basis of the political nature of the question if such exercise of power is subject to a rule of international law.

#### *Article 3*

1. National courts, when called upon to apply a foreign law, should recognize themselves as competent to pronounce upon the compatibility of such law with international law. They should decline to give effect to foreign public acts that violate international law.
2. No rule of international law prevents national courts from acting as here above indicated.

#### *Article 4*

National courts, in determining the existence or content of customary international law, should take account of developments in the practice of States, as well as in case law and jurisprudence.

#### *Article 5*

1. The appropriate national courts should have the power independently to determine whether a treaty claimed to be binding on the forum State has come into existence or has been modified or terminated.
2. In a case brought before them, national courts should refuse to apply, in whole or in part, a treaty if they believe that such treaty is to be considered, for any reason whatsoever, either entirely or partially invalid or terminated, even when the forum State has not denounced it.

3. National courts should have full independence in the interpretation of a treaty, making every effort to interpret it as it would be interpreted by an international tribunal and avoiding interpretations influenced by national interests.

*Article 6*

National courts should determine with full independence the existence or content of any general principle of law in accordance with Article 38, paragraph 1, of the Statute of the International Court of Justice, as well as of binding resolutions of international organizations.

*Article 7*

1. National courts should be able to defer to the Executive, in particular the organs responsible for foreign policy, for the ascertainment of facts pertaining to the international relations of the forum State or of other States.

2. The ascertainment of international facts by the Executive should constitute *prima facie* evidence of the existence of such facts.

3. The legal characterization of the facts should be reserved for the judiciary alone.

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(7 September 1993)