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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

**30th meeting
Strasbourg, 19-20 September 2005**

ITEM 21 - DIGESTS OF STATE PRACTICE ON INTERNATIONAL LAW

Secretariat Memorandum
prepared by the Directorate General of Legal Affairs

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Mr Rafael Benitez
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67075 Strasbourg Cedex
FRANCE

13 May 2005

Dear Mr Benitez,

Re: State Practice of the Council of Europe Member States

Following our exchange of emails last week I am writing with some more details of the online project which I mentioned to you and of our international law publishing programme more generally.

State Practice Online

As I explained in my original message, it seems that access to properly indexed state practice in international law is limited and that this could be greatly increased by setting up an online digest containing the practice of a multitude of states. I have approached the Council of Europe since you have both a network of governmental legal advisers and, in your Model Plan, a working and widely disseminated system for indexing materials. The site would include the complete range of materials that are usually characterised as representing state practice: e.g. parliamentary proceedings, ministerial statements, committee debates, legislation, treaty practice, legal advice (when it can be made available), diplomatic letters, submissions to international organizations, and the like. The electronic delivery of this material would have several advantages over paper based publishing:

- 1) For many states the market for a year book with state practice is too small for it to stand alone. Even those year books that are produced have, with one or two exceptions, very limited distribution.
- 2) In book form, compilers of state practice have to make difficult choices about where to put material. For instance Part Three on the The Law of Treaties will generally overlap with material in Parts on specific areas of international law such as human rights under Part Six VIII or Part Eleven on Seas. In an electronic environment, the same piece of material can appear under more than one heading.
- 3) Related to the above point, space is not at a premium so decisions about what to include can be based purely on the merit of the content and not how many pages it will take up.
- 4) Functionality is greatly enhanced. Searching is fast even when the database grows to a point where it would take up hundreds of thousands of pages. Search results can be displayed in a variety of ways according to the user's preferences. For instance you can order your searches by state, type of material, or date. Furthermore you can carry out "free text searches" to search within results and find the most relevant material.

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- 5) Speed of releasing materials. For printed year books the material is gathered during one year, compiled and edited for a few months and then submitted to a publisher. By the time it is out the material is often over 18 months old. In an online environment this is greatly reduced (depending on how frequently new material is added to the database of course).

OUP's Online Publishing Experience

We have over the past five years amassed a great wealth of experience of online publishing with the Oxford English Dictionary Online, Oxford Reference Online (100+ A-Z reference books), Oxford Scholarship Online (900+ scholarly monographs) and the Oxford Dictionary of National Biography Online. In law we have two projects under way. The first complements the state practice idea in that it is an electronic law report focussing purely on domestic case law on international law issues from dozens of states. This is already well under way and is due to launch in February of next year. The other, which is a little further off, will be the online publication of a new edition of the Max-Planck Encyclopaedia. We have also published a consolidated version of the UK Materials on International Law from the British Year Book as a CD. I have enclosed a copy here for illustrative purposes, although I should add that we would want a great deal more functionality and attractive design in a web-based service.

There are of course formidable obstacles to putting together an online digest. Firstly, compilation takes a lot of work if it is to be done well. CAHDI is an ideal starting point since it is vital to have input from foreign office legal advisers, but there is still a good deal of work to be done on editing material. Secondly, there is language. It might be that even if the material were all easily accessible, users would balk at material that isn't in one of the four or five most commonly spoken languages. I doubt that we could translate all material, so one solution might be to add a few lines of description to each piece of material so that users would at least know whether the material is relevant and then decide whether to seek a translation. Thirdly, there is the perennial question of what counts as state practice. Clearly foreign office legal advisers need to be involved in this determination, but for users there might be some worry that what is presented is too sanitised if the choice of what to include is purely down to the legal advisers. For the UK Materials the selection is ultimately made by a team of scholars, although they receive a lot of assistance from the Foreign Office. Fourthly, there is the question of how far back to go. It might not be possible to offer much of an archive, yet users might feel that there is a need to show continued practice over a number of years. Fifthly, there are the problems facing any large-scale and ongoing IT project. We have a great deal of experience to bring to bear so this is not something which you would need to worry about.

I trust that these details and general considerations are sufficient at this stage. If you feel that there is merit in this suggestion I would be glad to discuss it further either through correspondence or in person.

With best wishes

Yours sincerely


John Louth
Senior Editor, Law