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

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ITEM 9 - DIGESTS OF STATE PRACTICE ON INTERNATIONAL LAW

Secretariat Memorandum
prepared by the Directorate General of Legal Affairs

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (64) 10

(Adopted by the Ministers' Deputies on 6th October 1964)

PUBLICATION OF DIGESTS OF STATE PRACTICE IN THE FIELD OF PUBLIC INTERNATIONAL LAW

The Committee of Ministers,

Having examined Recommendation 309 of the Consultative Assembly, proposing in particular measures to facilitate the publication of the collected diplomatic correspondence of member Governments and other materials which constitute the sources of international law;

Having regard to the proposals of the Committee of Experts on the publication of national digests of State practice in the field of public international law, contained in the report of the meetings which the Committee held on 28th and 29th May and 30th and 31st October 1963,

A. Recommends that the Governments of member States of the Council of Europe :

1. publish digests concerning national practice in the field of public international law, in so far as publication of such a digest has not yet been undertaken by themselves or in any other way which, in the light of the principles and methods set forth below, they consider to be satisfactory;

2. comply as far as possible, for the planning and drafting of the digests, with certain uniform standards in order to make the digests readily accessible and comparable with each other;

3. follow for this purpose the principles and methods given below :

I. Field to be covered by publications

The field to be covered by publications should include all matters related to public international law.

II. Documents to be included in publications

The digests should contain official documents issued by public authorities or addressed to them which illustrate governmental practice in the field of public international law. The term "public authorities" is intended to include all organs of State such as those relating to the executive, legislative and judicial powers. In this connection it might be desirable to mention in particular documents such as diplomatic notes, letters of instruction, reports, internal memoranda, explanatory memoranda and texts of laws and regulations, parliamentary reports and discussions, national judicial and arbitral decisions.

At another level, mention may be made of treaties and conventions to which the State concerned is a party, statements made before international organisations, proceedings of the organs of such organisations in so far as these call for action on the part of the State in question or concern it particularly, statements presented before international judicial or arbitral authorities but only in so far as they all contribute to the formulation of public international law.

These documents might be published in part or in full to the extent to which they illustrate the practices of Governments in regard to public international law and to which their publication is possible. To avoid unnecessary reprinting, documents already published in other national or international digests might be indicated by references to those digests.

III. Co-operation between States

With regard to documents or public instruments which affect several States on either a bilateral or multilateral level, the States concerned should consult each other to decide whether and how such documents or instruments should be published except in cases where consultation would clearly be superfluous.

IV. Period covered by publications

As a rule, the period covered should be as long as possible and come as near to the present day as practicable, since the contemporary period has produced considerable changes and is thus of particular interest in international law. However, the length of this period is left to the discretion of Governments, who may be guided by considerations peculiar to their countries.

Generally speaking, there is no difficulty in reproducing instruments in the legislative and judicial fields. With regard to documents of the executive power, especially the records of Ministries of Foreign Affairs, it is suggested that the documents to which access is not normally authorised be examined for their legal interest

by specialists enjoying the confidence of Governments or chosen by them, publication remaining subject to government approval.

V. Languages

It would be desirable for publication to be in one of the four languages used in debates of the Council of Europe Consultative Assembly (French, English, German, Italian). In any case, it is recommended that the table of contents and alphabetical index of digests not written in French or English be translated into one of these two languages;

B. Reserves the possibility of recommending at some later date the adoption of a model standard plan for the classification and presentation of national digests, which is being prepared by the Council of Europe.

Commentary *

Comment on Item A.1 of Resolution (64) 10 :

In drafting this text, the Committee of Experts stressed that its draft was intended primarily for Governments which had not yet begun to prepare national digests or have them prepared. Countries in which such a publication was already in hand would not be asked to change the methods being used.

The words "or in any other way" apply to countries in which digests would be published not by governmental departments but by a private institution. It is intended that such institutions should comply with the principles and methods outlined in Resolution (64) 10.

Comment on Item A.2 :

The main purpose of this text is to recommend a certain degree of unity in the drafting and lay-out of national digests. The Committee of Experts felt that, as the proposed publications should be easily accessible to research workers, specialists, teachers and students of many countries, such uniformity would be highly desirable and would make it considerably easier to use the digests.

Comment on Item A.1 :

This text is intended *inter alia* to serve as a guide in the preparation of the proposed digests by defining the field of the law of nations in regard to that of private international law. The Committee of Experts thought that private international law should not as a rule be taken into consideration in preparing the digests, particularly by reason of the complexity of

(* This commentary was drawn up by the "Committee of Experts on the publication of digests of national State practice in the field of public international law" who prepared the text of Resolution (64) 10 for the Committee of Ministers ; it takes into account the Amendments proposed by the Committee of Ministers to the text prepared by the Committee of Experts.

this legal subject and the multiplicity of the problems which it raises. Matters relating to both public and private international law could be included in the publication if this seemed advisable, but only in so far as they related to public international law.

It was also agreed that the digests should cover the practice of each State in its relations with international organisations.

For the purpose of Resolution (64) 10, the expression "international organisations" should be understood to include supranational organisations.

On this latter point, however, the expert of the Federal Republic of Germany pointed out the considerable difficulties which arise when any attempt is made to classify topics relating to the law of the *integrated European Communities* into systems of traditional international law.

The Italian expert considered that the advisability of including in the publications matters concerned with private international law should be interpreted as meaning not only the *subjective advisability* but also the *objective* or material possibility of producing the works planned.

The Committee of Experts, however, considered that this observation applied equally to all the documents to be included in the digests and that it had no special bearing on the scope of the first paragraph of the comment on Item A.I.

Comment on Item A.II :

The Committee of Experts did not think it necessarily desirable to restrict the number of texts to be reproduced in the digests merely to documents in the records of the Ministry of Foreign Affairs; the relevant documents from other Ministries could also be taken into consideration if it were considered advisable to do so.

The Committee of Experts considered that the texts reproduced in the digests should not be accompanied by explanatory commentaries. However, in order that they may be better understood, it might be advisable in some cases to include, *inter alia*, the following :

- a short historical background note ;
- the reference to or text of a document such as a treaty ;
- the text of, or at least the reference to, a document opposing the one reproduced ;
- particularly relevant bibliographical references ;
- mention of one or more precedents or the absence of any precedents.

With regard to "*diplomatic notes*", the Committee of Experts considered that it would often be useful if States reproduced in their digests not only the notes they *sent* themselves, but also those which they *received* from foreign countries. The text applicable to such *replies* is Item A. III of Resolution (64) 10.

As far as *parliamentary documents* are concerned, the Committee of Experts pointed out that it might be useful to include amongst those texts reports of parliamentary committees and extracts of public debates.

After discussing whether it would be advisable to reproduce in national digests the opinions given by official legal advisers to Governments, the Committee of Experts considered that it would be most useful for such opinions to be reproduced in digests whenever possible, if necessary anonymously.

The United Kingdom expert, with the agreement of other experts, advised extreme caution on this matter, particularly with regard to allowing sufficient time to elapse before publication.

With particular reference to the *second paragraph* of Item A.II, the Committee of Experts considered that care should be taken to exclude from national digests official documents only remotely connected with the purpose of the proposed publications.

As regards the *third paragraph* of Item A.II, the Committee of Experts observed that experience had revealed certain highly exceptional circumstances when documents could not be published in part or in full but had to be summarised.

Comment on Item A. III :

This item is mainly concerned with the publication of documents (diplomatic notes, unpublished international arbitral sentences, statements presented before international arbitral bodies, *etc.*), relating to the same affair but including one or more issued by other States.

Item A. III is also intended to cover the publication of any summaries referred to in the comment on the third paragraph of Item A. II above.

Comment on Item A. IV :

In drafting this text the Committee of Experts emphasised the desirability of giving full consideration to certain *ancient documents* which are still often of great value in the appreciation of the legal position of a State in international law.

With regard to the suggestion made in the second sentence of paragraph 2, the Committee of Experts agreed that it should not only include documents falling under the "50-year rule" (the rule which forbids, except prior authorisation, the publication of diplomatic documents less than 50 years old) but also older confidential documents, as, for example, certain opinions of legal advisers. In any case the Committee of Experts thought that the competent national departments should do their best to place as great a number of documents as possible at the disposal of digest editors.

Comment on Item A.V :

In adopting this text, the Committee of Experts considered that publications of this nature could not fulfil their purpose if they were written in an unusual or little-known language.

Comment on Item B :

The Committee of Experts wished to make it clear that any proposals it might make regarding the use of a model standard plan would be chiefly intended for Governments which had not yet begun to publish national digests or to have them prepared. Countries which have undertaken to publish digests would not be asked to change plans already adopted.

Some experts, referring to the wide diversity of opinions in this field at the level of doctrine, questioned the chances of success of such an attempt to work out a uniform standard for classification and presentation.

The Netherlands expert said that he thought that too much importance should not be attached to the question of uniformity of the digest since a certain diversity might even be justified by the real differences that existed between the countries concerned in regard to the organisation of their archives, the organisation of the national administration, the appreciation of certain scientific data, *etc.*

The British expert emphasised the fact that if a uniform scheme of classification were applied there would be a danger that certain problems might be detached from their true context and would thus appear in a false light.

The Belgian expert considered that nothing prevented the uniformity of classification and presentation of digests from allowing a certain degree of flexibility.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (68) 17

(Adopted by the Ministers' Deputies on 28 June 1968)

MODEL PLAN FOR THE CLASSIFICATION OF DOCUMENTS CONCERNING STATE PRACTICE IN THE FIELD OF PUBLIC INTERNATIONAL LAW

The Committee of Ministers,

Having regard to **Resolution (64) 10** of 6 October 1964, on the publication of digests of state practice in the field of public international law, recommending that the governments of member states of the Council of Europe publish such digests in accordance with the principles and methods set out therein;

Noting that in that resolution it reserved the possibility of recommending, at some later date, the adoption of a model standard plan for the classification and presentation of national digests, and of a model index for the said digests;

Having regard to the work of the committee of experts on the publication of digests of national state practice in the field of public international law, which made it possible for such a model plan to be prepared and adopted by the European Committee on Legal Co-operation at its 9th meeting,

A. Renews its recommendation that the governments of member states of the Council of Europe, in so far as they have not yet done any work along this line and no work has been undertaken in another way deemed satisfactory by the government concerned, publish national digests of documents concerning the practice in their country in the field of public international law, in conformity with the rules and methods set out in **Resolution (64) 10**;

B. Recommends that those governments of member states of the Council of Europe which have not already adopted a final plan for digests of their national practice :

1. adopt, so far as it is compatible with available documents, the appended model plan as a basis for preparing digests of their national state practice;

2. if possible, use the said model plan as a system for future classification of documents relating to national practice in the field of public international law;

3. communicate the model plan to their archivists and to all national institutions, both public and private, which have to do with public international law, inviting them to make such use of this model plan as the nature of their work permits;

C. Referring to Article 24 of the Statute of the International Law Commission, in which the collection and publication of documents concerning state practice in questions of international law is mentioned as one means of making the evidence of customary international law more readily available, expresses the hope that the appended model plan may be used by member states of the international community as a basis for preparing digests of their national practice and as a system for the future classification of documents concerning such practice;

D. Instructs the Secretary General to transmit the appended model plan to the Secretary General of the United Nations, asking him to communicate it to the competent organs of UN and in particular to the International Law Commission, as well as if possible to the member states of the United Nations, as a first contribution by the Council of Europe towards implementing Resolution 2099 (XX) on technical assistance to promote the teaching, study, dissemination and wider understanding of international law;

E. Reserves the later transmission to the governments of member states of the Council of Europe, and to the Secretary General of the United Nations, of the model index to digests of national state practice, designed as a complement to the annexed model plan.

APPENDICES

**A. MODEL PLAN FOR THE CLASSIFICATION OF DOCUMENTS CONCERNING
STATE PRACTICE IN THE FIELD OF PUBLIC INTERNATIONAL LAW**

Part One : International law in general

I. NATURE, BASIS, PURPOSE

II. RELATIONSHIP BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

- A. In general
- B. International law in municipal courts
- C. Municipal remedies for violations of international law

Part Two : Sources of international law

Treaties - Custom - General principles of law - Judicial decisions - Opinions of writers - Equity - Unilateral acts (including, where appropriate, acts or decisions of international organisations or conferences) - Restatement by formal processes of codification and progressive development - Comity

Part Three : Subjects of international law

I. STATES

A. International status

- 1. Sovereignty and independence
- 2. Non-intervention
- 3. Domestic jurisdiction
- 4. Equality of states

B. Recognition

- 1. Recognition of states
- 2. Recognition of governments
- 3. Forms of recognition (de facto and de jure recognition, collective recognition, conditional recognition, implied recognition)
- 4. Retroactive effect of recognition
- 5. Non-recognition

C. Types of states

- 1. Unitary states, Federal states and Confederations
- 2. Personal Unions, Real Unions
- 3. Permanently neutral states
- 4. Dependent states (states under protection, vassalage)

D. Formation, continuity and succession of states

- 1. Formation
- 2. Identity, continuity
- 3. The effect of territorial change
- 4. The effect of extinction of states

II. INTERNATIONAL ORGANISATIONS

A. *In general*

1. Legal status
 - (a) Personality
 - (b) Powers, including treaty-making power
 - (c) Privileges and immunities
2. Participation of states in international organisations and in their activities
 - (a) Admission
 - (b) Suspension, withdrawal, expulsion
 - (c) Obligations of membership
 - (d) Representation of states
3. Legal effect of acts of international organisations
4. International officials
5. Responsibility of international organisations (see Part Eleven)

B. *Particular aspects*

1. Universal organisations
2. Regional organisations
3. Organisations constituting integrated (economic etc.) communities
4. Other types of organisations

III. OTHER SUBJECTS OF INTERNATIONAL LAW

- A. Insurgents
- B. Belligerents
- C. The Holy See
- D. Mandated and trust territories
- E. Condominium
- F. Special regimes (Cracow, Danzig etc.)
- G. Miscellaneous (tribes, chartered companies etc.)

Part Four : The position of the individual (including the corporation) in international law

- I. NATIONALITY
- II. DIPLOMATIC PROTECTION (See Part Eleven)
- III. ALIENS OR NON-NATIONALS
- IV. MINORITIES
- V. STATELESSNESS, REFUGEES
- VI. IMMIGRATION AND EMIGRATION, EXTRADITION, EXPULSION, ASYLUM
- VII. PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
- VIII. RESPONSIBILITY OF THE INDIVIDUAL (see Part Eleven)

Part Five : Organs of the State

- I. THE HEAD OF STATE, THE FOREIGN MINISTER, THE GOVERNMENT ETC.
- II. DIPLOMATIC MISSIONS
- III. CONSULS AND CONSULATES
- IV. SPECIAL MISSIONS
- V. TRADE DELEGATIONS, INFORMATION CENTRES ETC.
- VI. ARMED FORCES

Part Six : The law of treaties

- I. CONCLUSION AND ENTRY INTO FORCE
 - A. Conclusion
 - B. Reservations to multilateral treaties
 - C. Entry into force
- II. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES
 - A. The observance of treaties
 - B. The application of treaties
 - C. The interpretation of treaties
 - D. Treaties and third states
- III. AMENDMENT AND MODIFICATION OF TREATIES
- IV. INVALIDITY, TERMINATION AND SUSPENSION OF OPERATION
 - A. General rules (validity and continuance in force, obligations under other rules of international law, severance of treaty stipulations etc.)
 - B. Invalidity
 - C. Termination, suspension of operation
 - D. Procedure
 - E. Consequences of invalidity, termination or suspension of operation
- V. DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

Part Seven : Personal jurisdiction of the state

- I. GENERAL CONCEPTION
- II. EXERCISE
 - A. Consular jurisdiction, capitulations, mixed courts
 - B. Military jurisdiction
 - C. Miscellaneous (Antarctica, artificial islands, *terra nullius* etc.)

Part Eight : State territory and territorial jurisdiction

- I. PARTS OF TERRITORY, DELIMITATION
 - A. Frontiers
 - B. Relations of "voisinage"
 - C. The sub-soil
 - D. The territorial sea (see Part Nine)
 - E. Inland and land-locked seas (see Part Nine)
 - F. The air space (see Part Ten)
- II. TERRITORIAL JURISDICTION
 - A. Territorial sovereignty
 - B. Limitations upon territorial jurisdiction (servitudes, leases etc.)
 - C. Concurrent territorial jurisdiction and extra-territoriality

III. ACQUISITION AND TRANSFER OF TERRITORY

- A. Acquisition
- B. Transfer

Part Nine : Seas, waterways

I. THE TERRITORIAL SEA

- A. Admeasurement
- B. Legal status
 - 1. The right of innocent passage
 - 2. The regime of merchant vessels
 - 3. The regime of public ships other than warships
 - 4. Warships

II. THE CONTIGUOUS ZONE

III. BAYS AND GULFS

IV. STRAITS

V. CANALS

VI. THE HIGH SEAS

- A. Freedom of the seas
 - 1. Navigation
 - 2. Fishery
 - 3. Submarine cables and pipelines
 - 4. The right of overflight
 - 5. Other freedoms (scientific research, explorations and exploitation of the sea-bed)
- B. Nationality of vessels; the flag
- C. Hot pursuit
- D. Visit and search
- E. Piracy
- F. Conservation of living resources
- G. Pollution

VII. THE CONTINENTAL SHELF

VIII. INLAND AND LAND-LOCKED SEAS

IX. RIVERS

Part Ten : The air space, outer space

I. SOVEREIGNTY OVER THE AIR SPACE

- A. Extent
- B. Limitations

II. AIR NAVIGATION

- A. Civil aviation
 - 1. Legal status of aircraft
 - 2. Treaty regime
- B. Military aviation

III. OUTER SPACE

IV. TELECOMMUNICATIONS

Part Eleven : Responsibility**I. GENERAL CONCEPTION****II. RESPONSIBLE ENTITIES****A. States**

1. The elements of responsibility (unlawfulness of the act, imputability to the state)
2. Executive acts
3. Legislative acts
4. Judicial acts
5. Factors excluding responsibility (self-defence, necessity, reprisals)
6. Reparation (*restitutio in integrum*, damages, satisfaction, guarantees)
7. Procedure
 - (a) Diplomatic protection
 - (i) Nationality of claims
 - (ii) Exhaustion of local remedies
 - (b) Peaceful settlement (see Part Twelve)

B. International organisations**C. Other subjects of international law****D. Individuals and groups of individuals, including corporations****Part Twelve : Pacific settlement of disputes****I. THE CONCEPT OF AN INTERNATIONAL DISPUTE****II. MODES OF SETTLEMENT****A. Negotiations****B. Consultation****C. Enquiry and finding of facts****D. Good offices****E. Mediation****F. Conciliation****G. Arbitration**

1. Arbitral tribunals and commissions
2. The Permanent Court of Arbitration

H. Judicial settlement

1. The Permanent Court of International Justice and the International Court of Justice
2. Other tribunals

I. Settlement within international organisations**J. Other means of settlement****Part Thirteen : Coercion and use of force short of war****I. UNILATERAL ACTS****A. Retorsion****B. Reprisals****C. Pacific blockade****D. Intervention (see also Part Three)****E. Other unilateral acts**

II. COLLECTIVE MEASURES

- A. Regime of the League of Nations
- B. Regime of the United Nations
- C. Other collective measures

Part Fourteen : Armed conflicts (war)

I. INTERNATIONAL WAR

- A. Resort to war
 - 1. Definition of war
 - 2. Limitation and abolition of the right of war
 - 3. Limitation and reduction of armaments
- B. The laws of war
 - 1. Sources and sanctions
 - 2. The commencement of war and its effects (diplomatic and consular relations, treaties, private property, nationality, trading with the enemy, *persona standi in judicio*)
 - 3. Land warfare
 - 4. Sea warfare
 - 5. Air warfare
 - 6. The distinction between combatants and non-combatants
 - 7. Humanitarian law ("droit humanitaire")
 - 8. Belligerent occupation
 - 9. Conventional weapons
 - 10. Nuclear, bacteriological and chemical weapons
 - 11. Treaty relations between combatants (cartels, armistices etc.)
 - 12. Termination of war, treaties of peace

II. CIVIL WAR

- A. Rights and duties of states
- B. Recognition of insurgency or belligerency (see Part Three)

III. OTHER ARMED CONFLICTS

Part Fifteen : Neutrality, non-belligerency

I. THE LEGAL NATURE OF NEUTRALITY

- A. Land warfare
- B. Sea warfare
- C. Air warfare

II. NEUTRALITY IN THE LIGHT OF THE CHARTER OF THE UNITED NATIONS

III. NEUTRALITY AS THE POLICY OF A STATE

IV. NON-BELLIGERENCY

B. COMMENTARY ON THE VARIOUS PARTS OF THE MODEL PLAN

1. The following explanatory notes are about the wording of the rubrics and the order in which they have been placed.

Part One : International law in general

2. In Head I of this general part will be classified documents which, while they relate to public international law, do not concern a particular aspect of it, for in that case they would have to be classified in one of the subsequent parts. More numerous no doubt will be the documents which come under Head II, "Relationship between international law and municipal law", which the Committee took from the sub-divisions of the Swiss digest. In the general chapter of Head II ("A. In general") should be included documents concerning the application in international law of the national law of states.

Part Two : Sources of international law

3. As in treatises of public international law, the study of sources follows the general part. The following points should be noted :

(a) In order to adhere to the terminology adopted by the United Nations International Law Commission, the Committee prefers to use the term "Treaties" instead of "Conventions".

(b) The rubrics in this part have not been set out under heads and numbered as in the other parts. This is to make it clear that only documents indicating the national attitude with regard to a given source of international law are to be classified in this part and not national documents which may or do constitute sources of international law.

Part Three : Subjects of international law

4. This part, which covers an extensive area of public international law from the point of view both of theoretical study and of the volume of state practice relating thereto, finds its logical place in Part Three, after the general part and the part relating to sources. The Committee considered that its division into three heads, themselves sub-divided, was a faithful reflection of the national practice of states, although the order is different from that normally adopted in treatises of public international law. A few explanations are necessary however :

(a) In the title of Sub-Head D of Head I "States", the Committee kept the term "Succession of states" although this is a controversial concept. It reasoned that, since the term is familiar in public international law, its omission might arouse doubts or confusion in the minds of users of the plan.

(b) It is to be understood that "The effect of extinction of states" (Rubric 4 of Sub-Head D) also covers the case of the dismemberment of a state.

(c) The Committee thought it advisable to refer to Part Eleven documents concerning responsibility of states, so as to include all national practice relating to "Responsibility" in the same part of the plan.

(d) Head III "Other subjects of international law" is designed to facilitate the classification of documents which it might be difficult to place elsewhere, e.g. documents relating to "Insurgents" and "Belligerents" (whose recognition is not of the same kind as that of the state), and to the "Holy See".

Part Four : The position of the individual including corporations in international law

5. Without wishing to express any opinion as to whether or not the individual may be regarded as a subject of international law, the Committee considered that, having regard to the various aspects which it may assume, the position of the individual under international law should be the subject of a separate part of the plan. This seemed all the more important, not only because of the already numerous documents on state practice in the matter, but also because their quantity is tending to increase as a result of the intensified international protection of human rights.

In the case of Heads II "Diplomatic protection" and VIII "Responsibility of the individual" reference is made to Part Eleven which is devoted to "Responsibility".

Part Five : Organs of state

6. This part is the corollary of Part Three which is concerned, *inter alia*, with states. The Committee did not think it necessary to sub-divide the six heads since they seemed sufficiently well-defined and comprehensive to permit the classification of the already numerous documents on state practice in the matter. It should however be noted that Head III "Consuls and consulates" covers not only consular posts proper but also consular officers and the auxiliary staff of consulates as defined in the Vienna Convention on Consular Relations.

Part Six : The law of treaties

7. The Committee thought it advisable to use, for the sub-divisions in this part, the headings of the parts and sections of the draft Articles on the law of treaties drawn up by the United Nations International Law Commission. These sub-divisions will therefore have to be altered to bring them into line with the text finally agreed on.

Part Seven : Personal jurisdiction of the state

8. The Committee recognised that there were a large number of documents referring to state practice in this matter, and that it would only be possible to classify them satisfactorily by devoting to them a separate part. Following the example of the plans used in treaties of public international law, this part has been placed before that which deals with the territorial jurisdiction of states, and is so conceived as to permit the classification of all documents reflecting the exercise of the state's personal jurisdiction, whether within its territory or outside it.

The sub-titles of Head II concern cases in which the personal jurisdiction of the state is exercised most frequently. In this respect, it may be noted that although the rubric "capitulations" is now only of historical interest, on the contrary that treating of "military jurisdiction" refers to a current situation in international law.

Part Eight : State territory and territorial jurisdiction

9. In view of the important place occupied by "State territory" in national practice, the Committee thought it necessary to devote a separate part to it in the model plan. However, the Committee considered it preferable to refer the documents relating to certain constituents of "State territory" to special parts set aside for them.

It should be pointed out that "Limitations upon territorial sovereignty" (under Head II) are to be construed as including "rights over territory not deriving from territorial sovereignty" as well as servitudes, leases, concessions etc.

Similarly, the term "Acquisition" under Head III implies the acquisition of unoccupied territory and the acquisition of "territory already occupied", which covers cession, fusion, secession, and division. The concept "Transfer" is also to be understood in the widest sense of the term.

Part Nine : Seas, waterways

10. The Committee included the term "waterways" in the title of this part in order to preclude any doubts on the part of users of the plan as to where to classify documents concerning international waterways, whether maritime or fluvial.

The sub-divisions of "The territorial sea", which reflect the legal problems that tend to arise in national practice, are those generally found in treatises of public international law.

The sub-divisions of "The high seas" correspond to the subjects codified in the conventions adopted by the Geneva Conference on the Law of the Sea.

Part Ten : The air space, outer space

11. Since the law of the air and the law of outer space are relatively new fields of public international law, relevant state practice is not yet sufficiently extensive to justify devoting two separate parts to them.

Part Eleven : Responsibility

12. The Committee had two reasons for not including "Responsibility of the state" in Part Three "Subjects of international law" : it considered that responsibility was a sufficiently important aspect of international law to form a separate part and it wanted to take account of the fact that responsibility is a matter not only for the state but also for other subjects of international law. However, since the question of responsibility is likely to arise more frequently with regard to states than to other bodies in international practice, the Committee thought it advisable to make the sub-divisions under Head II ("A. States") as detailed as possible.

The responsibility of individuals and groups of individuals covers international crimes and the punishment thereof.

Part Twelve : Pacific settlement of disputes

13. The modes of settlement listed under Head II are the same as those appearing in the United Nations Charter except that "Consultation" has been added.

The expression "international organisations" in Head II Sub-head "I" includes both world and regional organisations.

Part Thirteen : Coercive measures and use of force short of war

14. Owing to the volume of documents relating to national practice concerning the use of coercion, the Committee decided to devote two separate parts to measures other than war and to armed conflicts and war respectively.

The title of Head I "Unilateral acts" is to be understood as meaning measures which states take of their own accord, as is clear from the nature of the measures listed. The "Collective measures" which are the subject of Head II fall into three categories; the Committee refrained from any further sub-division - particularly as regards the "Regime of the United Nations", the most important from the point of view of practice - in order to avoid committing itself as to the respective roles of the United Nations organs in the matter.

Part Fourteen : Armed conflicts (war)

15. This part which follows logically on its predecessor is divided into three heads corresponding to the type of armed conflict. Two sub-heads of Head I call for comment :

(a) The expression "Humanitarian law ('droit humanitaire')" (Rubric 7 of Sub-head B) is to be understood in the sense in which it is used in law relating to the legal status of prisoners of war, to the protection of the sick and wounded and to that of the civil population.

(b) By "Belligerent occupation" (Rubric 8 of Sub-head B) is to be understood not only military occupation in time of war, but also all other kinds of occupation including occupation in time of peace, for example to guarantee the execution of a peace treaty.

(c) The aspects of "Civil war" which form the Sub-heads of Head II are, in the Committee's opinion, the only ones of significance from the point of view of state practice. However, since sub-head B already figures in Part Three, a reference is made to it.

Part Fifteen : Neutrality, non-belligerency

16. As is the case in most of the digests in process of publication, this part, the sub-division of which is based on the Swiss digest, follows the parts dealing with the laws of war.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION No. R (97) 11

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE AMENDED MODEL PLAN FOR THE CLASSIFICATION OF DOCUMENTS
CONCERNING STATE PRACTICE IN THE FIELD OF PUBLIC INTERNATIONAL LAW**

*(adopted by the Committee of Ministers on 12 June 1997
at the 595th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to Resolution (64) 10 of 6 October 1964 on the publication of digests of state practice in the field of public international law, recommending that the governments of member states of the Council of Europe publish such digests in accordance with the principles and methods set out therein;

Having regard to Resolution (68) 17 of 28 June 1968 containing a model plan for the classification of documents concerning state practice in the field of public international law;

Considering that developments in public international law since 1968 have made it necessary to amend the model plan;

Taking account of the work of the Group of Specialists on Publications concerning State Practice in the Field of Public International Law (DI-S-PR) which made it possible for such an amended model plan to be prepared and adopted by the Committee of Legal Advisers on Public International Law (CAHDI) at its 13th meeting in March 1997;

A. Renews its recommendation that the governments of member states of the Council of Europe, in so far as they have not yet undertaken such work, publish national digests of documents concerning the practice in their country in the field of public international law, in conformity with the rules and methods set out in Resolution (64) 10;

B. Recommends that those governments of member states of the Council of Europe which have not already adopted a final plan for digests of their national practice:

1. adopt, so far as it is compatible with available documents, the appended model plan as a basis for preparing digests of their national state practice;

2. if possible, use the said model plan as a system for future classification of documents relating to national practice in the field of public international law;

3. communicate the model plan to their archivists and to all national institutions, both public and private, concerned with the field of public international law, inviting them to make such use of this model plan as the nature of their work permits;

C. Referring to Article 24 of the Statute of the International Law Commission, in which the collection and publication of documents concerning state practice in questions of international law is mentioned as one means of making the evidence of customary international law more readily available, expresses the hope that the appended model plan may be used by member states of the international community as a basis for preparing digests of their national practice and as a system for the future classification of documents concerning such practice;

D. Instructs the Secretary General to transmit the appended model plan to the Secretary-General of the United Nations, asking him to communicate it to the competent organs of the UN and in particular to the International Law Commission, as well as if possible to the member states of the United Nations, as a contribution by the Council of Europe towards implementing Resolution 2099 (XX) on technical assistance to promote the teaching, study, dissemination and wider understanding of international law and to the United Nations Decade of International Law from 1990 to 1999.

Appendix to Recommendation No. R (97) 11

A. Amended model plan for the classification of documents concerning state practice in the field of public international law

Part one: international law in general

I. *Nature, basis, purpose*

A. In general

B. *Jus cogens*

C. Soft law

II. *History*

Part two: sources and codification of international law

I. *Sources of international law*

A. Treaties

B. Custom

C. General principles of law

D. Unilateral acts, including acts and decisions of international organisations and conferences

- E. Judicial decisions
- F. Opinions of writers
- G. Equity
- H. Comity (*Comitas gentium*)

II. *Codification and progressive development of international law*

Part three: the law of treaties

I. *Definition, conclusion and entry into force of treaties*

- A. Definition
- B. Conclusion
- C. Reservations and declarations
- D. Provisional application and entry into force

II. *Observance, application and interpretation of treaties*

- A. Observance of treaties
- B. Application of treaties
- C. Interpretation of treaties
- D. Treaties and third states

III. *Amendment and modification of treaties*

IV. *Invalidity, termination and suspension of the operation of treaties*

- A. General rules
- B. Invalidity
- C. Termination and suspension of operation
- D. Procedure
- E. Consequences of invalidity, termination or suspension of operation

V. *State succession in respect of treaties (see part five)*

VI. *Depositaries, notifications, corrections and registration*

VII. *Arrangements other than treaties*

Part four: relationship between international law and internal law

- I. *In general*
- II. *Application and implementation of international law in internal law*
- III. *Remedies under internal law for violations of international law*

Part five: subjects of international law**I. States****A. Status and powers**

1. Personality
2. Sovereignty and independence
3. Non-intervention
4. Domestic jurisdiction
5. Equality of states
6. State immunity
7. Other powers, including treaty-making powers

B. Recognition

1. Recognition of states
2. Recognition of governments
3. Types of recognition
 - a. *de facto/de jure*
 - b. conditional/unconditional
4. Acts of recognition
 - a. implied/express
 - b. collective/unilateral
5. Effects of recognition
6. Non-recognition and its effects

7. Withdrawal of recognition

C. Types of States

1. Unitary states, federal states and confederations
2. Personal and real unions
3. Protected states

D. Formation, continuity, extinction and succession of states

1. Conditions for statehood
2. Formation
3. Identity and continuity
4. Extinction
5. Succession
 - a. Cases of state succession
 - i. Union with or without the demise of the predecessor state
 - ii. Dismemberment
 - iii. Separation
 - iv. Newly independent states
 - b. Effects of state succession
 - i. Territory and other areas under national jurisdiction
 - ii. Nationality
 - iii. Succession in respect of treaties
 - iv. Archives
 - v. Debts
 - vi. Property
 - vii. Responsibility

viii. Other rights and obligations

E. Self-determination

II. *International organisations*

A. In general

1. Status and powers

a. Personality

b. Privileges and immunities of the organisation

c. Powers, including treaty-making power

2. Participation of states in international organisations and in their activities

a. Admission

b. Suspension, withdrawal, expulsion

c. Obligations of membership

d. Representation of states, including privileges and immunities

3. Legal effect of the acts of international organisations

4. Personnel of international organisations, including their privileges and immunities

5. Responsibility of international organisations (see part thirteen)

6. Succession of international organisations

B. Particular types

1. Universal organisations

2. Regional organisations

3. Organisations constituting integrated (for example economic) communities

4. Other types

III. *The Holy See*IV. *Other subjects of international law and other entities or groups*

A. Mandated and trust territories

- B. Dependent territories
- C. Special regimes
- D. Insurgents
- E. Belligerents
- F. Others (indigenous people, minorities, national liberation movements, etc.)

Part six: the position of the individual (including the corporation) in international law

- I. *Nationality*
- II. *Diplomatic and consular protection (see part thirteen)*
- III. *Aliens*
- IV. *Members of minorities*
- V. *Stateless persons*
- VI. *Refugees*
- VII. *Immigration and emigration, extradition, expulsion, asylum*
 - A. Immigration and emigration
 - B. Extradition
 - C. Expulsion
 - D. Asylum
- VIII. *Human rights and fundamental freedoms*
- IX. *Crimes under international law*
- X. *Responsibility of the individual (see part thirteen)*

Part seven: organs of the State and their status

- I. *Heads of state*
- II. *Ministers*
- III. *Other organs of the state*
- IV. *Diplomatic missions and their members*
- V. *Consulates and their members*

- VI. *Special missions*
- VII. *Trade delegations, information centres, etc.*
- VIII. *Armed forces*
- IX. *Protecting powers*

Part eight: jurisdiction of the State

- I. *Bases of jurisdiction*
 - A. Territorial principle
 - B. Personal principle
 - C. Protective principle
 - D. Universality principle
 - E. Other bases
- II. *Types of jurisdiction*
 - A. Jurisdiction to prescribe
 - B. Jurisdiction to adjudicate
 - C. Jurisdiction to enforce
- III. *Extra-territorial exercise of jurisdiction*
 - A. General
 - B. Consular jurisdiction
 - C. Jurisdiction over military personnel abroad
 - D. Others (artificial islands, *terrae nullius*, etc.)
- IV. *Limitations upon jurisdiction (servitudes, leases, etc.)*
- V. *Concurrent jurisdiction*

Part nine: state territory

- I. *Territory*
 - A. Elements of territory
 - 1. Land, internal waters, rivers, lakes and land-locked seas (see also parts

ten and eleven).

2. Sub-soil

3. Territorial sea (see part eleven)

4. Airspace (see part twelve)

B. Good neighbourliness

II. *Boundaries and frontiers*

A. Delimitation

B. Demarcation

C. Stability

III. *Acquisition and transfer of territory*

A. Acquisition

B. Transfer

Part ten: international watercourses

I. *Rivers and lakes*

A. Definition

B. Navigation

C. Uses for purposes other than navigation

D. Protection of the environment

E. Institutional aspects

II. *Groundwaters*

III. *Canals*

Part eleven: seas

I. *Internal waters, including ports and bays*

II. *Territorial sea*

III. *Straits*

IV. *Archipelagic waters*

- V. *Contiguous zone*
- VI. *Exclusive economic zone, exclusive or preferential fisheries zones*
- VII. *Continental shelf*
- VIII. *High seas*
 - A. Freedoms of the high seas
 - B. Visit and search
 - C. Hot pursuit
 - D. Piracy
 - E. Conservation of living resources
- IX. *Islands, rocks and low-tide elevations*
- X. *Enclosed and semi-enclosed seas*
- XI. *International bed sea area*
- XII. *Land-locked and geographically disadvantaged states*
- XIII. *Protection of the marine environment*
- XIV. *Marine scientific research*
- XV. *Cables and pipelines*
- XVI. *Artificial islands, installations and structures*
- XVII. *Tunnels*
- XVIII. *Vessels*
 - A. Legal regime
 - 1. Warships
 - 2. Public vessels other than warships
 - 3. Merchant ships
 - B. Nationality
 - C. Jurisdiction over vessels
 - 1. Flag state

2. Coastal state
3. Port state
4. Other exercise of jurisdiction

Part twelve: airspace, outer space and Antarctica

I. *Airspace*

- A. Status
- B. Uses
- C. Legal regime of aircraft

II. *Outer space and celestial bodies*

- A. Status
- B. Uses
- C. Legal regime of spacecraft

III. *Antarctica*

- A. Status
- B. Uses
- C. Protection of the environment

Part thirteen: international responsibility

I. *General conception*

II. *General issues of international responsibility*

- A. The elements of responsibility (such as wrongfulness of the act, imputability)
- B. Factors excluding responsibility (self-defence, necessity, reprisals)
- C. Procedure
 1. Diplomatic protection
 - a. Nationality of claims
 - b. Exhaustion of local remedies
 2. Consular protection

3. Peaceful settlement of disputes (see part fourteen)

D. Consequences of responsibility (*restitutio in integrum*, damages, satisfaction, guarantees)

III. *Responsible entities*

A. States

B. International organisations

C. Entities other than states and international organisations

D. Individuals and groups of individuals (including corporations)

Part fourteen: peaceful settlement of disputes

I. *The concept of an international dispute*

II. *Means of settlement*

A. Negotiations and consultations

B. Good offices

C. Enquiry (fact-finding)

D. Mediation

E. Conciliation

F. Arbitration

1. Arbitral tribunals and commissions

2. Permanent Court of Arbitration

G. Judicial settlement

1. International Court of Justice

2. Other courts or tribunals

H. Settlement within international organisations

1. United Nations

2. Other organisations

I. Other means of settlement

Part fifteen: coercive measures short of the use of forceI. *Unilateral measures*

- A. Retortion
- B. Counter-measures
- C. Pacific blockade
- D. Intervention (see also part five)
- E. Other unilateral measures

II. *Collective measures*

- A. United Nations
- B. Collective measures outside the United Nations

Part sixteen: use of forceI. *Prohibition of the use of force*II. *Legitimate use of force*

- A. Self-defence
- B. Collective measures
 - 1. United Nations
 - 2. Outside the United Nations
- C. Others

III. *Disarmament and arms control***Part seventeen : the law of armed conflict and international humanitarian law**I. *International armed conflict*

- A. Definition
- B. The law of international armed conflict
 - 1. Sources
 - 2. The commencement of international armed conflict and its effects
(for example diplomatic and consular relations, treaties, private property,

nationality, trading with the enemy, *locus standi personae in judicio*)

3. Land warfare
4. Sea warfare
5. Air warfare
6. Distinction between combatants and non-combatants
7. International humanitarian law
8. Belligerent occupation
9. Conventional, nuclear, bacteriological and chemical weapons
10. Treaty relations between combatants (cartels, armistices, etc.)
11. Termination of international armed conflict, treaties of peace

II. *Non-international armed conflict*

Part eighteen: neutrality and non-belligerency

I. *The laws of neutrality*

- A. Land warfare
- B. Sea warfare
- C. Air warfare

II. *Permanent neutrality*

III. *Neutrality in the light of the United Nations Charter*

IV. *Policy of neutrality and non-alignment*

V. *Non-belligerency*

Part nineteen: Legal aspects of international relations and co-operation in particular matters

I. *General economic and financial matters*

- A. Trade
- B. Loans
- C. Investments
- D. Taxes

E. Monetary matters

F. Development

II. *Transport and communications*

III. *Environment*

IV. *Natural resources*

V. *Technology*

VI. *Social and health matters*

VII. *Cultural matters*

VIII. *Legal matters (for example judicial assistance, crime control, etc.)*

IX. *Military and security matters*

B. Commentary on the various parts of the amended model plan

Part one: international law in general

1. Head I of this general part is intended for those documents which, while they relate to public international law, do not concern a particular aspect of it, for in that case they would have been classified in one of the subsequent parts. Head I has been subdivided into three divisions, which reflect in particular the importance of the development of *jus cogens* (peremptory norms of general international law) and "soft law".

Part two: sources and codification of international law

2. The subdivisions in this part are based on the distinction between codification and sources and, regarding the latter, on Article 38 of the Statute of the International Court of Justice.

Part three: the law of treaties

3. The order of this part follows that adopted in the Vienna Convention on the Law of Treaties. Head I.B, "Conclusion", includes signature, ratification, accession, approval, acceptance, initialling, authentication, and so forth.

4. Head IV.A, "General rules", covers items such as validity and continuance in force, obligations under other rules of international law and separability of treaty stipulations.

5. Head IV.C on termination also includes breach of treaty and fundamental change of circumstances.

6. Head VII, "Arrangements other than treaties", was added to take account of the increasing number of arrangements which do not set forth rights and/or duties binding under international law.

Part four: relationship between international and internal law

7. This part is intended for documents concerning the application of international law on the domestic level.

Part five: subjects of international law

8. This part covers an extensive area of public international law from the point of view of both theoretical study and state practice. It finds its logical place in part five of the model Plan, after "International law in general" and the parts relating to sources and treaties. The division into four Heads, themselves sub-divided, was considered a faithful reflection of state practice.

9. Under A6 of the first Head the important topic of state immunity was added, of which there has been a growing state practice, in particular in relation to the restrictive doctrine of state immunity. Sub-head B of the first Head has been expanded to distinguish between types and acts of recognition and to introduce the concept of withdrawal of recognition.

10. In order to take account of the recent increase of cases of state succession (former Czechoslovakia, Soviet Union and Yugoslavia), sub-head D of the first head has been expanded.

11. A new sub-division entitled "Self-determination" has been added.

12. Head IV, "Other subjects of international law and other entities or groups", in its sub-division "Others", includes modern phenomena such as indigenous people and national liberation movements.

Part six: the position of the individual (including the corporation) in

international law

13. The "Crimes under international law" mentioned in Head IX include genocide, war crimes, crimes against humanity, acts of terrorism and others.

Part seven: organs of the State and their status

14. Most of the Heads correspond to the relevant Vienna conventions on diplomatic and consular relations and on special missions (including, *inter alia*, privileges and immunities of the said organs).

Part eight: jurisdiction of the State

15. Part eight covers both personal and territorial jurisdiction. It deals in particular with the basis and types of jurisdiction, the extra-territorial exercise of jurisdiction, limitations upon jurisdiction and concurrent jurisdiction.

Part nine: state territory

16. In view of the important place occupied by "state territory" in national practice, it was considered necessary to devote a separate part to it.

17. The term "acquisition" as used in Head III refers to the acquisition of unoccupied territory and the acquisition of territory already occupied, which covers cession, merger,

secession and dismemberment. The concept of transfer is also to be understood in the widest sense of the term.

Part eleven: seas

18. This part takes into account the developments due to the entry into force of the 1982 United Nations Convention on the Law of the Sea. Heads I to XIV broadly follow the order adopted in the Convention.

Part thirteen: international responsibility

19. This part has been reordered. The Head on "General issues of international responsibility" covers all entities susceptible of being responsible and not only states.

Part fourteen: peaceful settlement of disputes

20. The modes of settlement listed under Head II are those appearing in the United Nations Charter, except that "consultations" and "good offices" have been added.

Part fifteen: coercive measures short of the use of force

21. Parts sixteen and seventeen deal with the use of force, making a clear distinction between the *jus ad bellum* (the law governing the recourse to war) and *jus in bello* (the law applicable in time of war), whereas the present part fifteen relates to unilateral and collective practices short of the use of force.

22. The title of Head I, "Unilateral acts", is to be understood as meaning measures which States take of their own volition, as is clear from the nature of the measures listed.

23. The "Collective measures" which are the subject of Head II fall into two categories.

Part sixteen : use of force

24. Part sixteen concerns issues related to the *jus ad bellum*. The prohibition of the use of force and the legitimate use of force essentially arise from the legal regime instituted by the United Nations Charter. In addition, Head III "Disarmament and arms control", takes into account developments since the era of détente which began in the 1960s, both on a bilateral basis (such as SALT, START) and a multilateral basis (for example United Nations, NATO and the OSCE).

Part seventeen: the law of armed conflict and international humanitarian law

25. The term "war" used in the original model plan has been replaced by "armed conflict", taking account of the fact that formal states of war no longer arise. Similarly, the term "Civil war" has been replaced by "Non-international armed conflict".

26. Point B.8 on "Belligerent occupation" covers not only military occupation in time of war, but also all other kinds of occupation, including occupation in time of peace, for example to ensure the execution of a peace treaty.

Part eighteen: neutrality and non-belligerency

27. The two substantive changes to this part are the addition of the concepts of permanent neutrality and non-alignment (Heads II and IV).

Part nineteen: legal aspects of international relations and co-operation in particular matters

28. States (and other subjects of international law) often adopt and deal with international regulations in various fields. In order to document the related activities appropriately, a spectrum of rubrics is provided in part nineteen. Texts concerning institutional aspects of the international organisations dealing with such activities are to be placed in part five, Head II ("International organisations").