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

**32nd meeting
Athens, 13-14 September 2006**

**ITEM 9 : DIGESTS OF STATE PRACTICE ON INTERNATIONAL LAW, PROPOSAL FOR
A NEW ACTIVITY**

Document submitted by *Oxford University Press*

Secretariat Memorandum
prepared by the Directorate General of Legal Affairs

13 September 2006

RE: Digests of State Practice Online Project

Following our exchanges of emails I am setting out some general comments explaining what it is that we have in mind and then some answers to the questions you posed in your email of 18 August for the CAHDI meeting in September.

To be clear, I should set out again what it is that we are proposing: An online collection of indexed materials relating to the member states' practice in international law. The indexed entry consists of the full text, or the relevant section of the text of the material. The indexing system could be the Model Plan or could be a simpler model.

The target users and readers are: Advisers, scholars, practitioners, with a common need for raw material on state practice in international law.

What would it do?

- The service would allow users to search by jurisdiction, year or key word against a range of state practice sources.

You asked a number of penetrating questions.

The usefulness of the proposal to CAHDI members, and the coverage

I would like to start by addressing two questions. First I will respond to the question of further clarification on the usefulness of the proposal for the CAHDI. In fact we consider that this is the most important point as the answer to this question will determine whether there is a need for this type of information service and how useful it will be to the potential users.

My awareness that there is some need for greater access to materials on state practice came from speaking with a number of practitioners and legal advisers. Whilst that highlighted the perception of a gap in available information, it would take a good deal more research to find out what materials exactly would be most useful and how that material might best be organized. Part of the reason for my original enquiry to you and your members about this matter was to improve our understanding in this area. We would like to find out what content the Ministries of Foreign Affairs (MFAs) would like to see available and how this might be best presented to make it of use. Each MFA has a particularly deep understanding of state practice because they are the primary advisers to their governments on matters of public international law. In executing these duties the MFAs place more emphasis on research into state practice than would be the case for most academics and practitioners and therefore are ideally placed to comment on how this research could be improved in terms of efficiency or effectiveness. An MFA may also have a dual role in that they not only make use of state practice in their arguments, but they might want also to have a say in what practice from their own state should be seen as evidence of *opinio juris*. As such, understanding the rules that the MFA might apply and the importance and weight attached to different types of material will give us an important insight into how we might prioritize certain types of material or document.

This last point helps to answer another of your questions. You asked that we define which state practice we are interested in. The better we understand what the MFA looks for when working with state practice the better we will be able to define, or prioritize, those areas of state practice which are of most interest. My original hope was that we could keep the coverage fairly broad, as we do in the UK Materials on International Law section which we publish in the British Year Book of International Law, but as I said above, the ultimate answer is really one which should come from your members as they are in effect the most important users of this type of information.

In the last paragraph of your message to me dated 18 August 2006, you intimated that your members would prepare brief overviews of the current state of their collection of state practice materials. What we would like to request is that you allow us to undertake a thorough survey of MFAs to find out more about the frequency and importance of different types of practice as well as getting a sense of how much collecting and organizing of material they currently undertake. This will help us to take a more focused approach and prioritize content. This will also help to set a manageable scope for any projects, not just in relation to preparing the initial content but more importantly in ensuring that the material can be kept up-to-date. If the CAHDI is agreeable we will develop a questionnaire, the text agreed in advance by the Secretary, and make this available in either online or paper form for each MFA. We would undertake to collate all of the responses and to submit a report to the Secretary for circulation to all members. We would hope at that point also to be able to propose a more concrete plan since at this stage we feel that there is still a lot of information to be gathered.

How would OUP work with the CAHDI or individual legal advisors?

Once there is a common understanding as to what material is important, the next key question is the extent to which each MFA is interested or able to play a role in the selection, supply or editing of materials.

Our response to this is that we are not looking for any special resource from the CAHDI and that any relationships between MFAs and OUP would depend entirely on the individual preferences of each MFA. A relationship could take one of a number of forms and we would be happy to discuss the options with any MFA which is interested. For example, an MFA that was interested in providing full contents, on an agreed regular basis, in the form of manuscript could be treated as an author and paid royalties on any net receipts associated with the publication. Alternatively, an MFA might decide that they were prepared to make the primary materials available to an editor or editors, perhaps from an academic institution renowned for public international law scholarship. There are other levels of involvement in between, but essentially the least we would need would be some commitment to collecting material which it would be impossible or very difficult for others to collect and to be available to advise when particular queries arise about what to include or not to include. We are not proposing any one scenario but would be willing to find out what arrangement, if any, would best suit each MFA.

In summary then, we feel that it is important that such a project be driven by an understanding of what is needed by those most likely to make use of it, i.e. your members. At this stage we feel that we have too little knowledge of these needs to give much more detail and therefore propose that we undertake some research into the current state of play and into your member's needs.

John Louth
Senior Editor, Law