

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 seabed)
- 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 treatises 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.