

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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### 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.