

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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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, in 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, 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 of treaties*
- 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 effects 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 sea-bed 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 force**

I. *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 force**

I. *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. Section 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. Section I has been subdivided into three sub-sections, 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 sub-sections 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. Section I.B, “Conclusion”, includes signature, ratification, accession, approval, acceptance, initialling, authentication, and so forth.

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

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

6. Section 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 at 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 sections, themselves sub-divided, was considered a faithful reflection of state practice.

9. Under A6 of Section I 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-section B of Section I 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 (the former Czechoslovakia, the former Soviet Union and the former Yugoslavia), sub-section D of Section I has been expanded.

11. A new sub-section entitled “Self-determination” has been added.

12. Section IV, “Other subjects of international law and other entities or groups”, in its sub-section “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 Section 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 sections 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 Section 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. Sections I to XIV broadly follow the order adopted in the convention.

**Part thirteen : international responsibility**

19. This part has been reordered. The section 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 Section 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 Section 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 Section 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, Section 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. Sub-section B, point 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 (Sections 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, Section II (“International organisations”).