



course, some discussion on this topic.⁴ But it does not appear to be free from vagueness and ambiguity.

The book will perhaps be a caviar for the majority of the professional lawyers in India. But it should certainly provide a stimulating study to them in this country, who are interested in the study of law as a social science.

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BRITISH DIGEST OF INTERNATIONAL LAW, PHASE I, Vol. 7 edited by Dr. Clive Parry. Consulting editor : Sir Gerald Fitzmaurice. (London : Stevens & Sons. 1965. Pp. xlii + 1019 ; Price £ 10.10s)

BRITISH DIGEST OF INTERNATIONAL LAW, published under the auspices of the International Law Fund is undoubtedly a monumental and unique work. It is a product of the sustained labour of a team of highly competent scholars for over a decade under the distinguished editorship of Dr. Clive Parry of the University of Cambridge. Professor Wortley very rightly remarks that "no one of the present generation of international lawyers knows as much about the sources of international law existing in England today as does Dr. Parry."¹ The consulting editor is the veteran Sir Gerald Fitzmaurice, at present a judge of the International Court of Justice.

The *Digest* is unique for a number of reasons. It is the first *British Digest* in the real sense of the term. Though H. A. Smith's *Great Britain and the Law of Nations* (1932-35), Lord McNair's *Law of Treaties and International Law Opinions*, B. Lauterpacht's *British Practice of International Law*, and the new *British Bulletin of Legal Developments* have done much to make British state practice in limited fields and in a limited sense generally available, none of these attempts to cover all aspects of state practice as Wharton, Moore, Hackworth or Whiteman *Digests* have done for the United States. The *British Digest* under review, however, is an achievement comparable to the American *Digests*.

The *British Digest* is based upon as comprehensive a collection of documents-archival and extra-archival, published and unpublished and other relevant literature as could be thought of by any scholar. The arrangement and treatment of the matter are also great improvements over any previous parallel publication.

4. See *supra* note 1, chapter 11 "The professional Judges and the Law," at 285 *et seq.*

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1. Parry, *The Sources and Evidences of International Law* (1965), see "Foreward."



The *Digest* is based principally upon an examination of the papers of the Foreign office, important amongst which have been listed in the volume under review.² The long list of source-material is in itself quite convincing of the exhaustive character of the *Digest*. The 'Note on Sources and References' indicates the manner in which the material has been cited and also mentions in detail the material included under various headings.

A reference to writers (howsoever sparingly made) is a novel feature of the *Digest*. It certainly adds a wealth of material which would not have been available from any other source. The enormity of editorial burdens this task alone entailed could well be visualized. Thus, for example, references to the writings relating to India in the volume under review include not merely the well-known standard works of Keith³, Anson⁴, and Aitchison⁵, but also other valuable materials,⁶ some of which may be relatively new even for Indian scholars. This *Digest* has therefore, the merit of focussing the attention of scholars to this kind of literature too as source-material.

The *Digest* is divided into phases, parts and chapters. The materials belonging to the period before the outbreak of the First World War are assigned to phase I, more recent matters being reserved for phase II. Phase I—covering the period between 1860-1914 is estimated to comprise of 10 volume.⁷ Phase II—1914-1960 is expected to be completed in approximately five volumes and "will follow as closely as possible the arrangement of Phase I."⁸

2. (1) Foreign Office Unprinted Papers, (2) Foreign Office Library Memoranda (largely unprinted), (3) Foreign Office Printed Papers, (4) Reports of the Law Officers of the Crown, (5) Papers of other Departments, (6) Parliamentary or Command Papers, (7) Judicial decisions from United Kingdom and Colonies etc., (8) Statutes (only British statutes included), (9) Subordinate Legislation, (10) Parliamentary Debates, (11) Treaties, (12) International Judicial or Arbitral Decisions, (13) Writers who are referred to only sparingly, and notably where specialized works are to be found or where there is little, if any, other authority.

3. Keith, *A Constitutional History of India 1600-1935* (1936).

4. Anson, *2 Law and Custom of the Constitution* (1935), and *The Crown*, Part II (3rd ed. 1908).

5. Aitchison, *A Collection of Treaties, Engagement, and Sanads Relating to India and Neighbouring Countries* (1892).

6. Seton, *The India Office* (1926); Chester and Willson, *Organization of British Central Government 1914-1956* (1957); Pannikar, *Indian States and the Government of India*; Norton Kyshe, *The Law and Privileges relating to Colonial Attorneys-General* (1900); Forsyth, *Cases and Opinion on Constitutional Law* (1869).

7. Volume 1: Introductory, International Persons; Volume 2: Territory; Volume 3: Jurisdiction; Volume 4: Responsibility of States; Volumes 5 and 6: The Individual in International Law; Volumes 7 and 8: Organs of States (Central Organs, Diplomatic Agents—Volume 7; Consular Officer, Functions of Diplomatic Envoys etc.—Volume 8); Volume 9: Treaties; Volume 10: War and Neutrality.

8. *7 British Digest of International Law*, Phase I, v (Dr. Clive Parry ed. 1965), [Hereinafter cited as *Digest*].



The division between the two phases could not, in the nature of things be exact.

Hence while in the treatment of Phase I no papers later than 1914 have, unless very exceptionally been reproduced, an endeavour has been made to draw attention at least to more recent relevant materials of a public sort, such as statutes and judicial decisions. In the same way, although the attempt has been in principle to begin with the year 1860, it has been found necessary in many instances, in order to complete the story, to go back further than 1860.⁹

It is certainly questionable as to why the year 1860 has been taken as the starting point, and as to whether it would not have been better if the *Digest* were not divided into phases. The explanation given in the preface that the year 1860 "is approximately the year of the flowering of the Foreign Office 'Confidential Print'," does not sound to be quite convincing. It appears to this reviewer that the only limit in period of time could be set by the non-availability of material. Any other criterion is likely to detract from the comprehensive character of a venture of this magnitude. It is much to be hoped that the trustees of the Fund would consider, after the completion of the mammoth project at hand, the desirability of covering the period from the beginning of the sixteenth century which could approximately be said to be the period of the rise of the nation-states and the growth of the modern Law of Nations upto 1860.

The division of the *Digest* into phases creates its own difficulties as mentioned by the editor himself in the preface. Much of the duplication, cross-references and the probability of overlooking certain fundamental subsequent changes could have been avoided if there were no division into phases and if all the material on a topic were presented in a chronological order in the same sequence. Such an arrangement would have given an integrated account of the developments under a topic. But probably the practical difficulties of shifting an enormous amount of source-material, and facility of publication may justify this division into phases.

It has not been possible for the editor to place documents against the whole background of international law "because of the abundance of materials in the foreign office archives."¹⁰ "As a consequence what is offered is virtually exclusive British material, be it archival or extra-archival."¹¹ The editor seems to mention this fact with a tinge of apology, as if it were possible to present the entire international law background of each document. It may be appreciated that it is a *British Digest*, meaning thereby "international law as viewed by His/Her Majesty's Government, Foreign Office, Parliament, the Courts etc."¹² Whether the attitude of the organs of a particular state on

9. *Ibid.*

10. *Ibid.*

11. *Ibid.*

12. *Ibid.*



specific issues reflects international law accurately or not, is for the interested scholars to deduce. It cannot be the main purpose, even if feasible, of the *British Digest* or for that matter of any other national digest on state practice, to trace the history of each rule of international law and place the relevant document in that context.

What was really needed has actually been done. The documents selected for printing have been produced in their proper context (of events). The whole work thus has the character of a narrative and the material presented makes a coherent and intelligible reading.

The documents have been reproduced more or less in full, except in so far as they may have been shorn of purely formal parts. Further the editor claims to have made every attempt to avoid any expression of personal opinions and has tried "to let the documents, statutes and decisions speak for themselves."¹³ But there is a thin line of demarcation between a "expression of opinion" and implicit views which guide the presentation of the material to facilitate reading. Under the heading 'Cession of Indian Territory' Forsyth has been cited as adducing two cases in which, during the regime of the East India Company, there was a "cession (independently of treaty at the conclusion of a war) . . . to a foreign state."¹⁴

To this the editor adds :

But these are possibly not in point since, firstly, the Company may be regarded as the delegate of Parliament no less than the Crown, and, secondly the status of entities to whom the cessions were made, who were the Indian Princely Rulers, as 'foreign states' is perhaps in doubt. The same writer refers also to 'cessions of territory in India by grants, as rewards to native chiefs for fidelity to the British Government,' after the assumption of the government of British India by the Crown. The second objection stated above is equally applicable to these. . . .¹⁵

Similarly under the title 'Municipal judicial organs and International Law' the editor submits his own eloquent justification of the study of the decisions of municipal courts as an essential constituent of state practice.¹⁶

Such illustrations can be multiplied. May be much of this could not just be avoided. But it would be difficult to say that all these editorial accretions should appear in the main body of the text for the facility of the reader. Perhaps 'some', if not 'much', of it could go in the footnotes or separate notes after each topic as some of the other Digests have done. But that is not to say that the blending of opinions in this fashion in the body of the text does not have some merits. It certainly serves to alert the reader at times to the dangers

13. *Ibid.*

14. *Digest* at 60-61.

15. *Ibid.*

16. *Id.* at 146-48.



of an uncritical acceptance of some of the material reproduced in this *Digest*.

The editor has pointed out that much of the subject-matter of part VII of the *Digest* dealing with the 'Organs of States' their international relations, is foreign relations law rather than international law proper. "It has, that is to say, a large admixture of municipal law, be it statute or case law."¹⁷

This again is as it would be under a theory of the incorporation of international law adopted under the common law system. Further, as the editor has himself mentioned

as respects many topics.....such as nationality, extradition, or the immunities of diplomatic envoys, the consideration of municipal decisions is not only helpful but essential. The theoretical explanation of this circumstance is perhaps that in such areas the rules of international law are simply permissive, their detailed application being left to the several systems of municipal law be it statute or case law...¹⁸

Professors Schwarzenberger and Jenks have also pointed out that by their very character there are certain fields of international law which will for a considerable time to come remain within the province of national courts. In such areas of international law, whatever name one might give them, the admixture of statute and case law has to be preponderant. This volume of the *Digest* specifically deals with the organization of the organs of states with reference to the part they play in the application or interpretation of international law rules.

Municipal law pertaining to the subject-matter of this volume has undergone a great deal of change in various directions in very recent times. The case law touching the immunities of foreign states has developed principally since the first World War. So, too has the case law relating to 'Foreign Office Certificate.'¹⁹ As respects the status of diplomatic envoys, the Diplomatic Privileges' Act, 1964, which incorporates much of the Vienna Convention on Diplomatic Relations into English law, has both repealed the celebrated Act of Anne and has rendered obsolete many of the older cases.²⁰ Thus, despite the casting of the whole work into chronological phases, the reader should, in the exposition of the first phase, be on his guard against subsequent notorious changes. "In several regards, therefore, the editor has been compelled in spite of himself in this *Volume*, notwithstanding that it is a part of the first phase to carry matters forward to the present moment."²¹ For example on 'Foreign Office Certificate latest case law have been cited.'²²

17. *Digest* at xxv.

18. *Digest* at 146, 147.

19. See *Digest* chapter 18.

20. See *Digest* chapter 19.

21. *Digest* at xxv.

22. *Carl-Zeiss-Stiftung v. Rayner etc.*, [1965] 1 All E.R. 300; *Preston v. Preston*. [1963] 2 All E.R. 405.



In this *Volume*, the Indian reader would find the material relating to the origin of the Colonial Office, the India Office,²³ and the right of the East India Company to receive Ambassadors²⁴ particularly fascinating. Few would be knowing that the right of the East India Company to receive ambassadors has been the subject-matter of an interesting court case.

Informative and illuminating material relating to the treaty-making power of the Crown vis-à-vis the annexation and cession of territory, and the Foreign Office Certificate²⁵ where numerous precedents relating to a variety of matters with relation to which the certificate has been granted, have been collected. Amongst other valuable materials incorporated in the *Digest* are those relating to the evolution and development of the institution of the Legal Advisors of the Crown²⁶ from the 13th century onwards: historical record of legal interest regarding Warships; material on the Right of Legation of deposed monarchs, monarchs in exile, states under suzerainty, state members of a confederation, and rebels etc.

Each volume of the work has its own table of cases, table of English or U.K. statutes and index. It is proposed when the work is completed, to combine several tables and indices in a separate volume. Such a volume when published would overcome many of the shortcomings of the division of the *Digest* into phases.

In the course of the preparation of this *Digest*, it has become possible for the editor to bring out two complementary publications. viz., one *British International Law Cases* comprising decisions of courts in the U.K. (including the Judicial Committee of the Privy Council) and an *Index of British Treaties* (under publication). The former series will cover a period of over four hundred years reproducing cases down to the beginning of the *International Law Reports* in 1950. Several volumes of this series too have already been published.

Wherever possible references are supplied in the *Digest* to this series, in order to dispense with the necessity of very lengthy quotations from decisions in the *Digest* itself.

After the establishment of the International Law Commission and its report on *Making the Evidence of Customary International Law More Readily Available* in 1950, several books have appeared on the practice of various states, and leading periodicals in several countries have started to include as a permanent feature report on such practice. But in all such literature, the *British Digest of International Law* shall stand out as the most outstanding for a very long time to come.

23. *Digest* at 229-40.

24. *Digest* at 549, 550.

25. *Digest* 186-216.

26. *Digest* 242-81.



The *Digest* has a special interest for scholars from so many Afro-Asian countries which were once British dependencies. Especially so since the period between 1860-1914 (phase I) when British Imperialism blossomed, is estimated to cover two-third of the *Digest*. It is needless to mention that there could not be a better repository of the conduct of the international legal affairs of such states vis-à-vis the third states, and the British Government *inter se*.

Dr. Clive Parry and his team of collaborators deserve the unreserved acclamations from the scholars, legal practitioners, law officers and the international civil servants who will all find the *Digest* immensely helpful.

The *British Digest of International Law* along with its complementary publications will automatically occupy an eminent place in all libraries associated with the teaching, research and application of international law. The complete set however, is unfortunately much too costly for acquisition by interested individuals.

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