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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)

39th meeting
Strasbourg, 18-19 March 2010

COMMITTEE OF MINISTERS' DECISIONS OF RELEVANCE TO THE CAHDI'S ACTIVITIES
INCLUDING REQUESTS FOR THE CAHDI'S OPINION

ADDENDUM

Document prepared by the Secretariat of the CAHDI

Note of the CAHDI Secretariat:

The Ministers' Deputies Rapporteur Group on Legal Co-operation (GR-J) has considered the issue on giving CAHDI the draft ad hoc terms of reference referred to below, in the context of the examination of a draft reply to Parliamentary Assembly Recommendation 1858 (2009). No objections to the draft ad hoc terms of reference were raised by delegations on that occasion. The draft decisions below are, however, still **subject to formal adoption by the Ministers' Deputies in April**.

The Secretariat will keep the Committee informed on the advancement of discussions in the Committee of Ministers.

Extract from the annotated agenda of the Ministers' Deputies Rapporteur Group on Legal Co-operation (GR-J)

Meeting of 23 February 2010

[...]

24/09 Private military and security firms and the erosion of the state monopoly on the use of force - Parliamentary Assembly Recommendation 1858 (2009)

Recommendation 1858 (2009), CDL-AD(2009)038, GR-J(2009)CB6 and CM/AS(2010)Rec1858prov

15. Recommendation 1858 (2009) was adopted by the Parliamentary Assembly on 29 January 2009. At their 1048th meeting (11-12 February 2009, item 3.1), the Deputies decided to bring it to the attention of their governments and agreed to communicate it to the Steering Committee for Human Rights (CDDH) and to the European Committee on Crime Problems (CDPC), for information and possible comments by 15 April 2009. They also agreed to transmit it to the European Commission for Democracy through Law (Venice Commission) for information and for it to be taken into account in its future work. They finally invited their Rapporteur Group on Legal Co-operation (GR-J) to prepare a draft reply for adoption at one of their forthcoming meetings.

16. It is recalled that the GR-J discussed this Recommendation at its meeting on 6 October 2009, without having received any comments from the above-mentioned steering committees and without a draft reply. On that occasion, the Group agreed not to transmit the report by the Venice Commission on "private military and security firms and erosion of the state monopoly on the use of force" (see CDL-AD(2009)038) to the Parliamentary Assembly as a reply to Recommendation 1858 (2009). The Group agreed to ask the Deputies to invite the European Committee on Crime Problems (CDPC), the Steering Committee for Human Rights (CDDH) and the Committee of Legal Advisers on Public International Law (CAHDI) to study the suggestions made by the Venice Commission in its report. It also instructed the Secretariat to prepare a draft reply to Recommendation 1858 (2009) reflecting that decision, for adoption by the Deputies.

17. Following that, comments by the CDDH were received on 18 December 2010 (see Appendix 3 to this document). The Secretariat has prepared the draft reply contained in document CM/AS(2010)Rec1858 prov and the draft decisions and draft ad hoc terms of reference (see Appendix 4) which appear below. The Group is invited to examine these texts with a view to submitting them to the Deputies for adoption at their 1079th meeting (10 March 2010) without further debate (**item placed in the box**).

These are the proposed decisions:

“The Deputies

1. The Deputies adopted the reply to Parliamentary Assembly Recommendation 1858 (2009) on “Private military and security firms and the erosion of the state monopoly on the use of force”, as it appears at Appendix ... to the present volume of Decisions;¹ <<document CM/AS(2010)Rec1858 prov>>”

2. adopted Decision No. CM/.../... giving ad hoc terms of reference, as they appear at Appendix ... to the present volume of Decisions << see Appendix 4 to this document >>, to the European Committee on Crime Problems (CDPC), the Steering Committee for Human Rights (CDDH) and the Committee of Legal Advisers on Public International Law (CAHDI), to study the suggestions made in the Venice Commission’s report on Private Military and Security Firms and Erosion of the State Monopoly on the use of force (document CDL-AD(2009)038), in the light of the Parliamentary Assembly’s Recommendation 1858 (2009) on the same subject, and to report back.”

[...]

Appendix 3

Comments by the Steering Committee for Human Rights (CDDH) on Recommendation 1858 (2009) “Private military and security firms and the erosion of the state monopoly on the use of force”

1. The CDDH shares the concerns expressed by the Assembly in its Recommendation with regard to the legal vacuum or the vagueness in the application of rules, at the international level regarding certain private companies which carry out military or security-related activities, in other words, services pertaining to the State’s sovereignty and competence. A real concern is raised as to how to set legal constraints on those services which play the role of public order.

2. The CDDH is wondering whether, from an operational point of view, the Council of Europe is the most appropriate body to deal with these questions. However, it welcomes the report of the Venice Commission and expresses its availability to cooperate, from a human rights perspective, in the possible work of other bodies dealing with this issue.

Appendix 4

(Item ...)

Decision No. CM/.../...

Ad hoc terms of reference for the European Committee on Crime Problems (CDPC), the Steering Committee for Human Rights (CDDH) and the Committee of Legal Advisers on Public International Law (CAHDI) to study the Venice Commission’s report on Private Military and Security Firms and Erosion of the State Monopoly on the use of force (CDL-AD(2009)038)

1. Name of Committee:

European Committee on Crime Problems (CDPC), Steering Committee for Human Rights (CDDH) and Committee of Legal Advisers on Public International Law (CAHDI)

¹ See also document CM/AS(2009)Rec1858 final.

2. Source:

Committee of Ministers

3. Completion date:

These terms of reference shall expire on 31 December 2010.

4. Terms of reference:

To study the suggestions made in the Venice Commission's report on Private Military and Security Firms and Erosion of the State Monopoly on the use of force (document CDL-AD(2009)038), in the light of the Parliamentary Assembly's Recommendation 1858 (2009) on the same subject, and to report back.