

**OPINION OF THE COMMITTEE OF LEGAL ADVISERS ON
PUBLIC INTERNATIONAL LAW (CAHDI)
ON THE SUGGESTIONS MADE IN THE VENICE COMMISSION REPORT ON
PRIVATE MILITARY AND SECURITY FIRMS AND EROSION OF THE STATE
MONOPOLY ON THE USE OF FORCE**

1. On 21 April 2010, the Ministers' Deputies adopted Decision No. CM/881/21042010, giving ad hoc terms of reference to 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, in the light of the Parliamentary Assembly Recommendation 1858 (2009) on the same subject, and to report back.
2. The Venice Commission considered certain issues taken up by the Parliamentary Assembly Recommendation 1858 (2009) and proposed the following suggestions which appear in Chapter XIV entitled "The Question of a Recommendation before Beginning Negotiations on a Treaty and Concluding Comments" of the report. Accordingly, the Venice Commission considers:
 - "A first matter is the endorsement of the Montreux Document. As already mentioned, this document itself can be seen as a programme for future legislative action by states, with identifiable goals which the Parliamentary Assembly can follow-up on.
 - A second is that states should review their national laws dealing with registration/licensing of private military and security companies (PMSCs), to see if these provide a proper degree of regulation of the extraterritorial activities of PMSCs. The Montreux Document identifies the desirability of doing this, but an express provision in a recommendation would focus states' particular attention on the urgent need to deal with the subject.
 - A third is that states should review their criminal laws/criminal procedure laws, to determine whether there is jurisdiction over serious offences committed by personnel of PMSCs, at least, where these personnel are nationals of the state in question. Again, the Montreux Document identifies the desirability of doing this (see part 2, paras 19, 49 and 71), but an express provision in a recommendation would focus states' particular attention on the subject.
 - A fourth is that states should begin the process of reviewing their civil law systems to determine whether it is possible at all to make claims for damages for extraterritorial civil wrongdoing against PMSCs incorporated in the state, and possibly even their foreign-incorporated subsidiaries, and if not, to consider enacting appropriate legislation on the issue. Again, the Montreux Document identifies the desirability of doing this (see part 2, paras 22, 50 and 72), but an express provision in a recommendation would focus states' particular attention on the subject".

3. The CAHDI examined these suggestions at its 40th meeting (Tromsø, 16-17 September 2010) and adopted, in accordance with the aforementioned ad hoc terms of reference, the following opinion which is of particular relevance to the mandate of the CAHDI (public international law).
4. From the outset, the CAHDI expresses its appreciation to the Venice Commission for its work on this matter. The Committee observes the growing trend, among some states, for private security and military companies to assume various security and military assignments. The CAHDI takes note of the expressions of concern, as also reflected in the report of the Venice Commission, as regards any activities that would blur distinction between combatants and non-combatants. In view of that, the international community is increasingly paying attention to some serious questions arising from the PMSCs' activities and to the need to regulate them.
5. The Venice Commission considered that a possible Council of Europe treaty on this subject would, at the present time, be time-consuming and problematic to draft. In light of the ongoing developments in the framework of the UN and the suggestions made by the Venice Commission in its report, the CAHDI agrees with the latter that it would not be appropriate at the present time to engage into possible negotiations of a Council of Europe treaty regarding the PMSCs.
6. The CAHDI welcomes the initiatives proposed in the Venice Commission's report relating to issues of international concern, namely the specific national review and possible enhancement of the provisions of the internal legal order of Council of Europe member states relevant to PMSCs. In this regard, the CAHDI highlights that national provisions should be reviewed bearing in mind the key objectives of international humanitarian law and, as applicable, the findings of the Montreux Document.
7. In particular, the CAHDI stresses the importance for national civil law systems, criminal laws and criminal procedure laws as well as laws dealing with registration and licensing of PMSCs, especially those applying to PMSCs' extraterritorial activities, to be in line with pertinent international instruments.
8. The Committee recalls that the Montreux Document pursues a humanitarian objective. Moreover, its aim is that of summarising existing international legal obligations. Furthermore, it compiles a range of good practices on the said matter, to be considered by States in their legislative action.

With reference to the endorsement of the Montreux Document, as suggested in the Venice Commission report, the CAHDI underlines the importance of future legislative action by States, taking into consideration and disseminating as widely as possible the content of the Montreux Document. The need for further international legal regulation should, as appropriate, be re-considered at a later stage in light of an assessment of the effectiveness of the national steps identified in order to prevent violations of international human rights and humanitarian law in this field.