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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)

38th meeting
Strasbourg, 10-11 September 2009

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

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Document prepared by the Secretariat of the CAHDI

1. CAHDI

1.a CM/Del/Dec(2009)1056/10.4E / 15 May 2009

Committee of Legal Advisers on Public International Law (CAHDI) – Abridged report of the 37th meeting (Strasbourg, 19-20 March 2009)

Decision

The Deputies took note of the abridged report of the 37th meeting of the Committee of Legal Advisers on Public International Law (CAHDI), as it appears in document CM(2009)56, as a whole.

1.b CM/Del/Dec(2009)1060/3.1bE / 12 June 2009

Parliamentary Assembly – Standing Committee (Ljubljana, 29 May 2009)

b. Texts adopted

Decisions

The Deputies

(...)

3. concerning Recommendation 1870 (2009) – “Protecting financial aid granted by Council of Europe member states to poor countries against financial funds known as “vulture funds””¹

- a. decided to bring it to the attention of their governments;
- b. agreed to communicate it to the Committee of Legal Advisers on Public International Law (CAHDI) and to the Council of Europe Development Bank, for information;
- c. adopted the following reply to the recommendation:

“The Committee of Ministers took note of Parliamentary Assembly Recommendation 1870 (2009) on “Protecting financial aid granted by Council of Europe member states to poor countries against financial funds known as “vulture funds””, which contains no direct recommendation to the Committee of Ministers. It has agreed to bring the recommendation to the attention of the member states’ governments as well as to the Committee of Legal Advisers on Public International Law (CAHDI) and the Council of Europe Development Bank.”;

4. concerning Recommendation 1871 (2009) – “Ban on cluster munitions”

- a. decided to bring it to the attention of their governments;
- b. agreed to communicate it to the Steering Committee for Human Rights (CDDH), for information;
- c. agreed to communicate it to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 30 September 2009;
- d. in the light of possible comments, invited their Rapporteur Group on Legal Co-operation (GR-J) to prepare a draft reply for adoption at one of their forthcoming meetings;

(...)

7. took note of the following resolutions:

Resolution 1668 (2009) – Ban on cluster munitions² (...)

¹ Appendix I to the present document

² Recommendation and Resolution appear in Appendix II to the present document

2. DECISIONS ADOPTED DURING THE 119th MINISTERIAL SESSION Madrid / 12 May 2009

2.a Guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights

Decisions

The Committee of Ministers

1. welcomed the report “Guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights” (document CM(2009)51) and asked the Ministers’ Deputies to come back to the follow-up to be given to it at one of their forthcoming meetings;
2. asked the Ministers’ Deputies to prepare a non-binding instrument on domestic remedies for excessive lengths of proceedings;
3. adopted Protocol No. 14 bis to the European Convention on Human Rights, as it appears at Appendix 1 to the present volume of Decisions and decided to open it for signature in Strasbourg on 27 May 2009³;
4. took note of the Explanatory Report to Protocol No. 14 bis, as it appears in document CM(2009)58 add final;
5. adopted the statement on the agreement reached by consensus at the Conference of the High Contracting Parties to the European Convention on Human Rights, as it appears at Appendix 2 to the present volume of Decisions⁴.

2.b Declaration: Making gender equality a reality⁵

3. ELECTION OF THE SECRETARY GENERAL

3.a CM/Del/Dec(2009)1055/1.11E / 27 April 2009

Election of the Secretary General

Decisions

The Deputies

1. agreed on the draft Resolution CM/Res(2009)... on the appointment of the Secretary General, as it appears at Appendix 2 to the present volume of Decisions; **[See below]**
2. agreed to forward it to the 119th Session of the Committee of Ministers (Madrid, 12 May 2009) for adoption and transmission to the Parliamentary Assembly.

* * *

³ Appendix III to the present report

⁴ Appendix IV to the present report

⁵ Document distributed at the request of Mr. Philippe Biollat, Director General of Human Rights and Legal Affairs. The full text of the Declaration appears in Appendix V to the present document.

Draft Resolution CM/Res(2009)... on the appointment of the Secretary General
(Adopted by the Committee of Ministers on 12 May 2009 at the 119th Session)

The Committee of Ministers, under the terms of Article 36.b of the Statute of the Council of Europe,

Having regard to the Regulations relating to the appointment of the Secretary General, Deputy Secretary General and Secretary General of the Parliamentary Assembly having the rank of Deputy Secretary General;

Having regard to the decisions taken at the 117th Session of the Committee of Ministers (10-11 May 2007);

Having examined the four candidatures presented by the Governments of Norway, Belgium, Hungary and Poland;

Having interviewed the four candidates;

[Having consulted the representatives of the Parliamentary Assembly in the Joint Committee,]

Decides to transmit to the Parliamentary Assembly, for appointment to the post of Secretary General, with effect from 1 September 2009, the following candidatures, listed in alphabetical order, with the names of the sponsoring governments in brackets:

- Mr Włodzimierz CIMOSZEWICZ (Poland);
- Mr Thorbjørn JAGLAND (Norway).

3.b CM/Del/Dec(2009)1057/3.1E / 22 May 2009

Parliamentary Assembly –
2nd part of the 2009 Session (Strasbourg, 27-30 April 2009) – Texts adopted
 (2009 Session (Provisional Compendium of texts adopted))

Decisions

The Deputies

(...)

6. took note of the following resolutions:

(...)

Resolution 1665 (2009) – The election process for the Secretary General of the Council of Europe.⁶

4. EXTERNAL RELATIONS

4.a CM/Del/Dec(2009)1055/1.10E / 27 April 2009

Co-operation with the United Nations – Invitations to meetings of rapporteur groups

Decisions

The Deputies

1. reaffirmed that they attach importance to co-operation between the Council of Europe and the United Nations and its agencies;

⁶ Appendix VI to the present document

2. agreed that invitations to representatives of the United Nations or its agencies, as well as to other international organisations, to attend meetings of the Deputies' rapporteur groups on items falling within the former's competence, shall be decided by unanimity by the Deputies case by case according to the applicable rules.

4.b CM/Del/Dec(2009)1055/9.6E / 27 April 2009

Memorandum of Co-operation between the Council of Europe and the International Union for Conservation of Nature and Natural Resources (IUCN)

Decision

The Deputies approved the Memorandum of Co-operation between the Council of Europe and the International Union for Conservation of Nature and Natural Resources (IUCN), as it appears in document CM/Inf(2009)14 rev, and authorised the Secretary General to sign it.

4.c CM/Del/Dec(2009)1056/10.1E / 15 May 2009

Council of Europe's Convention on Cybercrime (ETS No. 185) – Request by Chile to be invited to accede

Decisions

The Deputies

1. took note of the request of Chile to be invited to accede to the Convention on Cybercrime (ETS No. 185) and noted that the Committee of Ministers agreed in principle to granting this request;
2. instructed the Secretariat to consult the non-member state which is a Contracting State to the Convention, i.e. the United States of America, and set 12 June 2009 as the deadline for a reply;
3. agreed that, if there was no objection from the United States of America, the decision to invite Chile to accede to the Convention on Cybercrime (ETS No. 185) would be regarded as adopted on 17 June 2009 (1061st meeting of the Ministers' Deputies);
4. agreed to resume consideration of this item if the United States of America raised an objection concerning the accession of Chile to the Convention.

5. PARLIAMENTARY ASSEMBLY

CM/Del/Dec(2009)1057/6.5E / 22 May 2009

“Activities of the International Committee of the Red Cross (ICRC)” Parliamentary Assembly Recommendation 1842 (2008)

Decision

The Deputies adopted the reply to Parliamentary Assembly Recommendation 1842 (2008) on “Activities of the International Committee of the Red Cross (ICRC)”, as it appears at Appendix 8 to the present volume of Decisions. **[See below]**⁷

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⁷ At the request of the Committee of Ministers, CAHDI adopted its opinion on Parliamentary Assembly Recommendation 1842 (2008) at its 35th meeting, 6-7 March 2008

**“Activities of the International Committee of the Red Cross (ICRC)”
Parliamentary Assembly Recommendation 1842 (2008)**

(Reply adopted by the Committee of Ministers on 20 May 2009 at the 1057th meeting of the Ministers’ Deputies)

1. The Committee of Ministers has taken note with interest of the Parliamentary Assembly Recommendation 1842 (2008), together with Resolution 1623 (2008) on the “Activities of the International Committee of the Red Cross (ICRC)”. It has transmitted both texts to governments as well as to relevant intergovernmental committees. The comments received from committees have been reflected in this reply.
2. The Committee of Ministers is highly appreciative of the work carried out the ICRC, and the International Red Cross and Red Crescent Movement as a whole. The ICRC’s mandate under the Geneva Conventions of 1949 and the Additional protocols of 1977 and 2005 makes it an important and uncontested international actor in the field of humanitarian law, and in promoting the fundamental principles of the Council of Europe – respect for human rights and dignity of the individual. The Committee of Ministers considers it appropriate to support the work of the ICRC and encourage co-operation between the two bodies on matters of common concern.
3. In response to paragraph 2.1, the Committee of Ministers would like to recall the synergy which already exists between the activities of the ICRC and those of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Furthermore, the Committee of Ministers encourages the relevant bodies of the Council of Europe, where feasible, to support the ICRC in its work on monitoring of detention conditions.
4. Referring to paragraph 2.2, the Committee of Ministers also urges member states to co-operate fully with the ICRC where necessary in promoting humanitarian assistance for persons affected by armed conflict and other situations of violence. It recognises that the Red Cross’s work is also highly relevant to the Organisation’s activities in the field of migration and points out that to enhance co-operation, the International Federation of Red Cross and Red Crescent Societies was granted observer status with the European Committee for Migration (CDMG) in 2008. The CDMG has also proposed to involve it, as appropriate, in its forthcoming activities.
5. The question of missing persons, raised by the Assembly in paragraph 2.3, is undeniably an issue which needs continued attention on both the national and the international level and the Committee of Ministers supports the ICRC’s primary role in this respect. It would draw particular attention to the ICRC’s “Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or Internal Violence”, a tool to assist states and their national authoritative bodies with the adoption of legislation that will address, prevent and resolve cases of missing persons and which has been brought to the attention of the Committee of Legal Advisers on Public International Law (CAHDI) by the ICRC.
6. The Committee of Ministers, cognisant of the importance of advancing on various issues related to missing persons, encourages the ICRC, together with other international and regional organisations, to further develop co-operation within their respective mandates whilst ensuring synergies and avoiding duplication. In this respect, the Committee of Ministers informs the Assembly that, under the responsibility of the European Committee on Legal Co-operation (CDCJ) a draft recommendation on missing persons and presumption of death is currently being prepared. It welcomes the fact that this contribution of the Council of Europe, together with recent measures taken in this field by the ICRC and the International Commission on Missing Persons, has been reflected in recent work of the United Nations in this field.⁸

⁸ Report of the Secretary General on missing persons of 3 February 2009 (A/HRC/10/28).

7. With regard to paragraph 2.4, the Committee of Ministers informs the Assembly that the member states and observers to the CAHDI regularly report on national events aimed at the promotion and dissemination of international humanitarian law and hold exchanges of views on the promotion of the relevant international instruments, such as the Third Additional Protocol to the Geneva Conventions and the Second Protocol to the Hague Convention of 1954 on the Protection of Cultural Property in the Event of Armed Conflict. The ICRC contributes actively as an observer to the work of the CAHDI, attending its meetings regularly to inform the committee about the ICRC's on-going projects and initiatives. An exchange of views was also held with the President of the ICRC in 2004.

8. The Committee of Ministers has also taken note with satisfaction of events in recent months which have taken place in co-operation with the International Red Cross and Red Crescent Movement, such as a Conference-debate organised by the ICRC on the theme of juveniles in custody in co-operation with the Council of Europe on 24 November 2008 and the joint Council of Europe/French Red Cross seminar on migration which took place in Strasbourg on 19 and 20 February 2009. It would encourage further focused co-operation of such kind.

9. Finally, the Committee of Ministers has taken note of the Assembly's suggestion for the CDED to support the efforts of the ICRC to include knowledge about international humanitarian law in school curricula. It would point out that humanitarian law is considered as one of the dimensions of the CDED programme on Education for Democratic Citizenship and Human Rights (EDC/HRE). In this context, ICRC representatives are invited to all the major conferences on the EDC/HRE programme and inter-institutional meetings, facilitating access to the Council of Europe networks. Co-operation with ICRC is also envisaged for EDC/HRE activities 2010-2014.

6. DEATH PENALTY

CM/Del/Dec(2009)1055/4.3E / 27 April 2009

Abolition of the death penalty in all member states of the Council of Europe

Decisions

The Deputies

1. reiterated their strong and urgent call on the Russian Federation, as the only member state which has not yet abolished the death penalty, to take without delay all the necessary steps to transform the existing moratorium on executions into *de jure* abolition of the death penalty and to ratify Protocol No. 6;
2. took note of the information provided by the Russian Federation on measures taken to this effect;
3. welcomed the recent ratification of Protocol No. 13 by Italy and encouraged those states which have not yet signed or ratified this Protocol to do so rapidly;
4. agreed to resume consideration of this issue at one of their forthcoming meetings, but no later than October 2009, in the light of additional information to be provided by the Russian Federation by mid-September 2009.

7. EUROPEAN COURT OF HUMAN RIGHTS (Reform and request for advisory opinion)

7.a CM/Del/Dec(2009)1054/4.3E / 17 April 2009

Steering Committee for Human Rights (CDDH) –

Guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights

- i. CDDH's final opinion on putting into practice certain procedures envisaged to increase the Court's case-processing capacity**
- ii. Activity report "Guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights"**
- iii. Opinion of the CAHDI (transmitted to the CDDH) on the public international law aspects of the advisability and modalities of inviting the European Court of Human Rights to put into practice certain procedures which are already envisaged to increase the Court's case-processing capacity, in particular the new single judge and committee procedures**

Decision

The Deputies decided to transmit the draft Protocol No. 14 bis to the European Convention on Human Rights, as it appears in document CM(2009)58, to the Parliamentary Assembly, on the understanding that the draft is still under consideration and could be changed by the Committee of Ministers, and invited the Assembly to give its opinion on the draft Protocol, during the forthcoming part-session in April 2009, under the urgent procedure in the Assembly.

7.b CM/Del/Dec(2009)1056/4.1aE / 6-8 and 11 May 2009

Steering Committee for Human Rights (CDDH)

a. Guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights

- i. Activity report "Guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights"**
- ii. CDDH's final opinion on putting into practice certain procedures envisaged to increase the Court's case-processing capacity**
- iii. Opinion of the CAHDI (transmitted to the CDDH) on the public international law aspects of the advisability and modalities of inviting the European Court of Human Rights to put into practice certain procedures which are already envisaged to increase the Court's case-processing capacity, in particular the new single judge and committee procedures**

Decisions

The Deputies

1. invited the Secretary General of the Council of Europe to convene a Conference of the High Contracting Parties to the European Convention on Human Rights in Madrid on 12 May 2009, in the margins of the 119th Session of the Committee of Ministers;
2. took note of the draft rules of procedure of the conference, as they appear in document CM(2009)70 rev;
3. adopted the "Detailed modalities for the provisional application of certain provisions of Protocol No. 14 to the European Convention on Human Rights" as they appear in document CM(2009)71 rev2, subject to an agreement being reached by the High Contracting Parties to the Convention;

4. invited the Secretary General to transmit the draft rules of procedure and the draft “detailed modalities” referred to in decisions 2 and 3 above to the Conference of the High Contracting Parties to the European Convention on Human Rights;
5. having examined the Parliamentary Assembly’s opinion on draft Protocol No. 14 bis, took note of this opinion while expressing their appreciation for the speed with which the Assembly had responded to their request;
6. approved the text of Protocol No. 14 bis, as it appears in document CM(2009)58 final, and agreed to transmit it to the 119th Session of the Committee of Ministers (Madrid, 12 May 2009) for adoption and for decision about the date and place of its opening for signature;
7. took note of the Explanatory Report to Protocol No. 14 bis, as it appears in document CM(2009)58 add final, and agreed to transmit it to the 119th Session of the Committee of Ministers for the Ministers to take note of;
8. took note of a draft text that will be proposed for inclusion in the abridged report of the Conference of the High Contracting Parties (Madrid, 12 May 2009) (document DD(2009)240 rev).

7.c CM/Del/Dec(2009)1056/4.1bE / 15 May 2009

Steering Committee for Human Rights (CDDH)

b. Draft terms of reference of the Committee of Experts on reform of the Court (DH-GDR)

Decisions

The Deputies

1. approved the terms of reference of the Committee of Experts on reform of the Court (DH-GDR), as they appear at Appendix 4 to the present volume of Decisions;
2. agreed on the possibility of adopting, in the light of decisions taken at the 119th Session of the Committee of Ministers, ad hoc terms of reference instructing the Steering Committee for Human Rights (CDDH) to further examine specific measures envisaged in its activity report “Guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights”.

7.d CM/Del/Dec(2009)1063/4.5E / 13 July 2009

Proposal to request an advisory opinion from the European Court of Human Rights

Decisions

The Deputies

1. agreed, under the terms of Article 47 of the European Convention on Human Rights, to request an advisory opinion from the European Court of Human Rights on the following questions:
 - a. Can a list of three candidates, nominated by a High Contracting Party for election as a judge to the European Court of Human Rights in respect of the High Contracting Party and submitted to the Parliamentary Assembly, be withdrawn and replaced with a new list of three candidates by that High Contracting Party? If yes, is there any time limit?
 - b. Can candidates for the post of judge at the European Court of Human Rights be considered as nominated by a High Contracting Party within the meaning of Article 22 of the European

Convention on Human Rights if the list containing their names has been withdrawn by that High Contracting Party?

c. Is the Parliamentary Assembly obliged to consider a list of candidates submitted by a High Contracting Party which replaces a list previously submitted but withdrawn by that High Contracting Party?

2. furthermore, they invited the Court to pronounce on the following two additional questions:

a. If one or more candidates on a list of candidates submitted to the Parliamentary Assembly by a High Contracting Party withdraw(s) before the Parliamentary Assembly has voted on the list, is that High Contracting Party obliged under the European Convention on Human Rights to submit an additional candidate or candidates to complete the list or is it entitled to submit a new list?

b. Are the conditions in paragraphs 1 and 2 of the Appendix to Resolution 1432 (2005) of the Parliamentary Assembly of the Council of Europe in breach of the Assembly's responsibilities under Article 22 of the European Convention on Human Rights to consider a list, or a name on such a list, on the basis of the criteria listed in Article 21 of the Convention?

APPENDICES

APPENDIX I

Parliamentary Assembly
Assemblée parlementaire



Protecting financial aid granted by Council of Europe member states to poor countries against financial funds known as “vulture funds”

Recommendation 1870 (2009)¹

1. At a time when the world economic and financial crisis is affecting the whole population and giving rise to colossal losses in the banking system and certain private investment funds, the Parliamentary Assembly draws the attention of governments to the risks for states and citizens, particularly in the poorest countries, of certain finance companies engaged in debt restructuring transactions, which are regarded as “vulture funds”.
2. “Vulture funds” are investment funds which purchase at a cheap price the borrowings of poor countries, often heavily indebted, then bring court proceedings to wear them down and compel them to pay the nominal value (the initial amount owing) of these debts at the time when the loans were issued, together with the interest on arrears and legal costs.
3. The Assembly strongly condemns the action of these funds which have no compunction in taking advantage of opportunities arising from debt waivers granted by creditor countries, particularly European, or blocking worldwide the assets of the countries concerned and threatening them with bankruptcy.
4. These funds make use of a huge legal arsenal, often bringing debtors to their knees. While international fund providers grant debt remissions for persistent debts (HIPC – Heavily Indebted Poor Countries Initiative) and western governments for their part work to secure debt reduction and remission (Paris Club for example), these funds take over the benefits of the programmes, thus jeopardising the United Nations Millennium Development Goals (MDGs). Some “vulture funds” do not hesitate to interfere with the debt rescheduling programmes set up for the poorest developing countries – the HIPC or Heavily Indebted Poor Countries.
5. In the context of unprecedented global crisis, some states, companies or banks could attempt to negotiate assignments of bad or doubtful debts as discreetly as possible on the over-the-counter market. The Assembly deplores the opacity of and lack of control over this type of market.
6. According to Oxfam International, commercial creditors have to date brought at least 40 actions against third world countries deepest in debt. The International Monetary Fund has voiced concern at the “vulture funds’ ” practices, but attempts to work out a solution at international level have failed.

¹ Text adopted by the Standing Committee acting on behalf of the Assembly on 29 May 2009 (see Doc. 11862, report of the Committee on Economic Affairs and Development, rapporteur: Mr Wille).

7. Nonetheless, the Assembly welcomes the few initiatives taken at national and international level. It subscribes fully to the May 2007 statement by Paris Club creditors who confirmed that they were “committed to the full implementation of the HIPC initiative” and urged “all official and commercial creditors and HIPC countries to take the necessary steps to implement this initiative”. It also supports the initiatives taken by certain countries such as France and Belgium; in March 2008 the latter’s parliament passed a law to make co-operation aid secure against any attachment or transfer by the “vulture funds” method.

8. Lastly, the Assembly would like to prevent financial aid or the benefits of substantial debt remissions that may in future be granted to poor or developing countries by Council of Europe member states from being put to inappropriate uses on account of certain creditors.

9. Accordingly, the Assembly calls on the Governments of the Council of Europe member states, at national level, to:

9.1. reinforce their legal arsenal in order to curb the “vulture funds’ ” action, for example by giving no effect to foreign judgments and conducting no judgment enforcement procedures in favour of “vulture funds” in cases where the debt arises from unethical speculation;

9.2. insert into the bilateral aid contracts they conclude with developing countries a clause providing that the contract will be void under such circumstances. In this way, if the money is not used for development (in other words if it is seized), it must return to the original donor country;

9.3. establish rules of good conduct to prevent debts being resold to “vulture funds” engaging in improper and aggressive practices;

9.4. offer technical and legal assistance in the area of debt policy and management to the partner countries with which they pursue development co-operation, so as to avoid, among other things, legal proceedings with creditors.

10. Furthermore, the Assembly calls on the Governments of the Council of Europe member states, at international level, to:

10.1. take action with the International Monetary Fund and the World Bank so as to ensure that lobbying by “vulture funds” does not prevent a country’s access to a debt reduction programme under the Heavily Indebted Poor Countries Initiative;

10.2. call on the governing bodies of the Bretton Woods institutions to insist that countries granted debt relief employ greater transparency in managing their revenue (from oil, minerals, etc.) and draw up a plan to combat the corruption that could seriously undermine their society, and to establish rules of transparency regarding information and transactions applicable to over-the-counter traded loans markets.

APPENDIX II

Parliamentary **Assembly**
Assemblée parlementaire



Ban on cluster munitions

Recommendation 1871 (2009)¹

1. The Parliamentary Assembly refers to its Resolution 1668 (2009) on the “Ban of Cluster Munitions” and recommends that the Committee of Ministers:

- 1.1. forward this resolution to the governments of member states and request them to take it into account when raising the issue of the ban of cluster munitions in their countries;
- 1.2. actively and publicly – possibly in a declaration – support the campaign for ratification of the Cluster Munitions Convention and invite all member and observer states, if they have not already done so, to immediately sign and ratify the Convention on the Cluster Munitions without further delay, particularly, the major cluster munitions producing and exporting military powers to set a good example to their neighbours;
- 1.3. until such time that states become party to the Cluster Munition Convention, invite them to sign and ratify the Protocol V of 28 November 2003 on Explosive Remnants of War to the United Nations Convention on Certain Conventional Weapons as it provides at least a partial response to the cluster munition problem by alleviating the dangers to civilians when these weapons have been used.

Resolution 1668 (2009)²

1. Cluster munitions, due to their conception, cannot distinguish between civilians and military objectives. In 2006, a survey by Handicap International of countries and regions affected by cluster munitions found that 98% of recorded cluster munitions casualties were civilians. In fact cluster munitions pose both an immediate and long-term danger to civilians due to three main characteristics: their area-wide impact, their inaccuracy and their unreliability.

2. Cluster munitions consist of a large container that opens in the air and disperses smaller explosive submunitions over a wide area. Although the majority of submunitions are designed to explode on, or shortly after, impact, a high proportion of submunitions fail to explode as intended. As each cluster munition can contain hundreds of submunitions, vast numbers can be dispersed in a very short period of time. The result is that massive amounts of unexploded ordnance remain on

¹ Text adopted by the Standing Committee acting on behalf of the Assembly on 29 May 2009 (see Doc. 11909, report of the Political Affairs Committee, rapporteur: Mr Pflug, Doc. 11925, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Haibach, and Doc. 11929, opinion of the Committee on Migration, Refugees and Population, rapporteur: Mrs Curtis-Thomas).

² Text adopted by the Standing Committee acting on behalf of the Assembly on 29 May 2009 (see Doc. 11909, report of the Political Affairs Committee, rapporteur: Mr Pflug, Doc. 11925, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Haibach and Doc. 11929, opinion of the Committee on Migration, Refugees and Population, rapporteur: Mrs Curtis-Thomas).

the ground and leave behind a devastating legacy that will persist for years after the conflict has ended.

3. Furthermore, the ground contamination from unexploded cluster submunitions has serious socio-economic consequences for individuals and communities. When unexploded munitions litter agricultural lands, or vital infrastructure and buildings, they may hamper the supply of basic necessities, including food, water and fuel, and hinder access to public services such as schools and hospitals.

4. Millions of cluster munitions containing billions of submunitions are still stockpiled in the arsenals of many countries on the planet today. If they are proliferated to an ever-increasing number of countries and actors with varying capacities and will to respect international humanitarian law, the consequences for civilians in future conflicts may be devastating. The Parliamentary Assembly considers that the cluster munition problem must therefore be tackled urgently, before these weapons are further deployed and the problem becomes even worse than it is today.

5. Despite consistent efforts by humanitarian organisations and some states to put this issue on the international agenda, it has only recently received serious attention from the international community.

6. The use of cluster munitions during the armed conflict in Lebanon, in the summer of 2006, brought renewed public and political attention to the humanitarian consequences of cluster munition use. Following extensive media coverage of the impact of cluster munitions on the civilian population in southern Lebanon, as well as renewed calls for action by the United Nations, the International Committee of the Red Cross (ICRC) and many non-governmental organisations, a growing number of countries have engaged in both national and international initiatives to tackle the problem.

7. In February 2007, the Norwegian Government launched an international diplomatic process to negotiate a treaty prohibiting cluster munitions "that cause unacceptable harm to civilians". The so-called Oslo Process resulted in the adoption of a Convention on Cluster Munitions by 107 states in Dublin, on 30 May 2008.

8. The Assembly warmly welcomes the adoption of this historic treaty, which provides a comprehensive response to the cluster munitions problem by prohibiting their use, production, stockpiling and transfer; requiring the destruction of existing stocks, and establishing a framework for co-operation and assistance to address their humanitarian consequences in areas already affected.

9. With this convention, the participating states have confirmed that cluster munitions, which have caused so much loss in past decades, are not only morally reprehensible, but are now considered illegal. This achievement demonstrates that the world has been moved by the suffering of the victims of cluster munitions and that the international community is capable of taking effective action to prevent further such suffering.

10. The convention was opened for signature at a ceremony in Oslo on 3 December 2008 and will enter into force six months after 30 states have ratified it. For the time being, 96 states have signed it and only 6 have ratified it, namely Austria, Ireland, the Holy See, Laos, Norway and Sierra Leone. The Assembly considers that the most urgent priority is therefore to encourage all states to sign and ratify the treaty in order to ensure its rapid entry into force and subsequent implementation. Only by doing so can states prevent the cluster munitions problem from continuing to grow and reduce the number of new victims claimed by these weapons each year.

11. In this context, the Assembly strongly condemns the use of cluster munitions – by both parties – during the August 2008 war between Georgia and Russia. It urges Georgia and Russia to continue, as a matter of urgency, to remove mines and unexploded ordnance and to raise awareness among the affected population about the dangers posed by such devices.

12. Once states have become party to the Convention on Cluster Munitions, national parliaments will have a key role to play, in particular in establishing implementing legislation, including penal sanctions for activities prohibited by the treaty.

13. Parliamentary actions will be crucial to ensure allocation of the resources needed for implementation, including the destruction of stockpiles in those states possessing cluster munitions and for the clearance and destruction of abandoned or unexploded cluster munitions in areas under the state's jurisdiction or control. The necessary resources and structures must also be put in place to provide, in accordance with international humanitarian law, adequate medical care, rehabilitation and psychological support to cluster munitions victims and to ensure their social and economic inclusion. These cluster munition victims include all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly affected by cluster munitions as well as their families and communities.

14. Under the new treaty, States Parties in a position to do so are required to provide technical, material and financial support, to assist other States Parties that are affected by cluster munitions, in implementing the treaty.

15. The Assembly regrets that, while the new treaty provides the only viable solution to eliminate a weapon that has caused tremendous civilian harm over several decades, a number of states, including major military powers, did not participate in its adoption and are unlikely to join the treaty in the short-term. In the interim, the Assembly considers that it will nevertheless be important to ensure their adherence to, and implementation of, other relevant legal norms pertaining to cluster munitions such as the Protocol V of 28 November 2003 on Explosive Remnants of War to the United Nations Convention on Certain Conventional Weapons. These states are also in the process of examining alternative options for regulating the use of cluster munitions, which - even if they fall short of the prohibition contained in the new treaty - could contribute to reducing their humanitarian consequences.

16. Where international forces (e.g. NATO or bodies created by or acting under the delegated authority of the UN Security Council) undertake de-mining and related activities, clear lines of command and control and responsibility and accountability must be established.

17. Consequently, the Assembly urges the member states, states holding observer status with the Organisation and states whose parliament holds observer status with the Assembly to:

17.1. make every necessary effort to bring about a total ban on the manufacture, use, transfer and stockpiling of cluster munitions worldwide;

17.2. immediately destroy the existing stocks of cluster munitions in territories under their jurisdiction or control;

17.3. without further delay, if they have not already done so, sign and ratify the Convention on Cluster Munitions;

17.4. apply criminal sanctions against the use of cluster munitions in violation of the rules of international humanitarian law;

17.5. accept responsibility, for those which have used cluster munitions, for the clearance of these munitions, and in particular, keep accurate records of where such munitions have been used and undertake to support de-mining activities by marking, identifying and reporting on the location of cluster munitions sites, and in turn, to exchange such information with all relevant stakeholders, in order to help clearance efforts following conflicts;

17.6. contribute to rehabilitation and assistance programmes for cluster munitions victims in Europe and the rest of the world with a view to their social rehabilitation and re-entry into working life;

17.7. encourage the media to circulate relevant information among populations exposed to the danger of cluster munitions and run major awareness campaigns, aimed at children and other potential victims, on a continuous basis, until no risk remains, in order to avoid new victims;

17.8. raise their population's awareness of the dangers of cluster munitions and promote action in order to mobilise international public opinion in respect of the harmful effects of cluster munitions.

18. The Assembly also urges the national parliaments of the aforementioned states to:

18.1. encourage their governments, if they have not already done so, to sign the Convention on Cluster Munitions without further delay;

18.2. ratify the said convention;

18.3. introduce national legislation for a total ban on cluster munitions in their territory or, as a first step towards a total ban, introduce national measures to ban, suspend or take other restrictive measures against cluster munitions, in particular concerning their use, production and transfer, and impose criminal sanctions in relation to these measures.

19. Until such time that states become party to the Convention on Cluster Munitions, the Assembly urges them to sign and ratify the Protocol V of 28 November 2003 on Explosive Remnants of War to the United Nations Convention on Certain Conventional Weapons, as it provides at least a partial response to the cluster munition problem by alleviating the dangers to civilians when these weapons have been used.

20. The Assembly strongly opposes any attempt to bypass the Convention on Cluster Munitions by developing an alternative legal instrument – such as a draft Protocol to the Convention on Conventional Weapons – that would merely regulate but not ban the use of cluster munitions.

APPENDIX III

PROTOCOL NO. 14 BIS TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Preamble

The member states of the Council of Europe, signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”),

Having regard to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, opened for signature by the Committee of Ministers of the Council of Europe in Strasbourg on 13 May 2004;

Having regard to Opinion No. 271 (2009), adopted by the Parliamentary Assembly of the Council of Europe on 30 April 2009;

Considering the urgent need to introduce certain additional procedures into the Convention in order to maintain and improve the efficiency of its control system for the long term, in the light of the continuing increase in the workload of the European Court of Human Rights and the Committee of Ministers of the Council of Europe;

Considering, in particular, the need to ensure that the Court can continue to play its pre-eminent role in protecting human rights in Europe,

Have agreed as follows:

Article 1

In relation to the High Contracting Parties to the Convention which are bound by this Protocol, the Convention shall read as provided in Articles 2 to 4.

Article 2

1. The title of Article 25 of the Convention shall read as follows:

“Article 25 – Registry, legal secretaries and rapporteurs”

2. A new paragraph 2 shall be added at the end of Article 25 of the Convention, which shall read as follows:

“2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court’s registry.”

Article 3

1. The title of Article 27 of the Convention shall read as follows:

“Article 27 – Single-judge formation, committees, Chambers and Grand Chamber”

2. Paragraph 1 of Article 27 of the Convention shall read as follows:

“1 To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court’s Chambers shall set up committees for a fixed period of time.”

3. A new paragraph 2 shall be inserted in Article 27 of the Convention, which shall read as follows:

“2. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.”

4. Paragraphs 2 and 3 of Article 27 of the Convention shall become paragraphs 3 and 4 respectively.

Article 4

Article 28 of the Convention shall read as follows:

“Article 28 – Competences of single judges and of committees

1. A single judge may declare inadmissible or strike out of the Court’s list of cases an application submitted under Article 34, where such a decision can be taken without further examination.

2. The decision shall be final.

3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

4. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

a. declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

b. declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

5. Decisions and judgments under paragraph 4 shall be final.

6. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 4.b.”

Article 5

1. This Protocol shall be open for signature by member states of the Council of Europe signatories to the Convention, which may express their consent to be bound by:

a. signature without reservation as to ratification, acceptance or approval; or

b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 6

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three High Contracting Parties to the Convention

have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 5.

2. In respect of any High Contracting Party to the Convention which subsequently expresses its consent to be bound by this Protocol, the Protocol shall enter into force for that High Contracting Party on the first day of the month following the expiration of a period of three months after the date of expression of its consent to be bound by the Protocol in accordance with the provisions of Article 5.

Article 7

Pending the entry into force of this Protocol according to the conditions set under Article 6, a High Contracting Party to the Convention having signed or ratified the Protocol may, at any moment, declare that the provisions of this Protocol shall apply to it on a provisional basis. Such a declaration shall take effect on the first day of the month following the date of its receipt by the Secretary General of the Council of Europe.

Article 8

1. From the date of the entry into force or application on a provisional basis of this Protocol, its provisions shall apply to all applications pending before the Court with respect to all High Contracting Parties for which it is in force or being applied on a provisional basis.

2. This Protocol shall not apply in respect of any individual application brought against two or more High Contracting Parties unless, in respect of all of them, either the Protocol is in force or applied on a provisional basis, or the relevant corresponding provisions of Protocol No. 14 are applied on a provisional basis.

Article 9

This Protocol shall cease to be in force or applied on a provisional basis from the date of entry into force of Protocol No. 14 to the Convention.

Article 10

The Secretary General of the Council of Europe shall notify the member states of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. the date of entry into force of this Protocol in accordance with Article 6;
- d. any declaration made under Article 7; and
- e. any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at [Strasbourg], this [27] day of [May 2009], in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member state of the Council of Europe.

APPENDIX IV**Statement by the Committee of Ministers on the Conference of the High Contracting Parties to the European Convention on Human Rights (Madrid, 12 May 2009)**

The Ministers noted that in spite of the efforts undertaken by all member states as collective guarantors of the Convention, the conditions for the entry into force of Protocol No. 14 have still not been met. The Ministers recalled their position on this issue expressed at their 118th Session in May 2008, stressing in particular that the entry into force of Protocol No. 14 should remain the first priority of the States Parties to the European Convention on Human Rights. If need be, interpretative declarations or reservations could be formulated in conformity with the principles of the international law of treaties and relevant provisions of the Convention.

The Ministers noted that the Conference of the High Contracting Parties to the European Convention on Human Rights, meeting in the margins of the 119th Ministerial Session, agreed by consensus, subject to the absence of opposition by 31 May 2009 by High Contracting Parties not represented at the Conference, that the provisions regarding the new single-judge formation and the new competence of the Committees of three judges contained in Protocol No. 14 are to be applied on a provisional basis with respect to those states that express their consent, according to the modalities set out in document CM(2009)71 rev2. The Ministers also adopted Protocol No. 14 bis, offering member states another legal avenue to accept the provisional application of the same provisions.

APPENDIX V

Ministers' Deputies

CM Documents

CM(2009)68 final 6 May 2009

119th Session of the Committee of Ministers

(Madrid, 12 May 2009)

Declaration: Making gender equality a reality

The Committee of Ministers of the Council of Europe

Recalling that the core objective of the Council of Europe is preserving and promoting human rights and their full enjoyment, democracy and the rule of law and that all its activities must contribute to this fundamental objective;

Recalling that gender equality is an integral part of human rights and a fundamental criterion of democracy;

Recalling that gender equality means an equal visibility, empowerment, responsibility and participation of both women and men in all spheres of public and private life. Gender equality is the opposite of gender inequality, not of gender difference;

Recalling that policies should be gender sensitive and that they should take into account the social reality to which they apply, mainly that society is composed of women and men who may have differing needs;

Recognising that the legal status of women has improved over time, but that 20 years after its Declaration on equality of women and men, bridging the gap between gender equality in fact and in law is still a challenge for its member states;

Recognising that the past decades were often marked by neglect of a gender perspective in legislation and policy with gender equality being a partially or totally isolated issue, with few links with other policies and fields although it is both a goal in itself and a cross-cutting issue which should be at the core of practical decision-making;

Recognising the importance of including men in achieving gender equality;

Regretting the under-representation of women in political and public life and the continued gender based discrimination against women in all sectors of society and at all stages of their lives;

Condemning the persistent gender pay gap, obstacles met by women to entry and advancement in the labour market, degrading labour conditions and exploitation, overburdening with unpaid work in the private and social spheres, further exacerbated by economic deprivation and violence, and the more frequent and deeper effects of poverty on women;

Condemning the fact that many women are exposed to violations of their human rights, are victims of physical, psychological, sexual violence, stalking and trafficking for various purposes, including sexual exploitation, and of practices which qualify as torture or inhuman or degrading treatment (*inter alia* violence, rape, traditional practices harmful to women, genital and sexual mutilation);

Emphasising that a genuine democracy must fully use the competences, the skills and the creativity of both women and men to build a society with a better quality of life for all and respectful of the values on which the Council of Europe is founded;

Urge member states to commit themselves fully to bridging the gap between equality in fact and in law and to act to:

I. Eliminate the structural causes of power imbalances between women and men, including in political, public and economic decision-making process at all levels;

II. Ensure economic independence and empowerment of women by guaranteeing that equality is respected in the labour market and economic life. This will be possible by eliminating discrimination generally, and in particular that emanating from gender stereotypes, and by guaranteeing an equal pay for equal work or work of equal value;

III. Address the need to eliminate established stereotypes by investing further in gender mainstreaming in education and research including gender focused research to ensure that both women and men achieve their full economic and social potential;

IV. Eradicate violations of the dignity and human rights of women through increased and effective action to prevent and combat gender-based violence against women, provide the necessary assistance and support for all victims and prosecute the perpetrators;

V. Integrate a gender equality perspective in governance by ensuring openness, transparency, participation of all relevant stakeholders as well as real accountability in the process of achieving full gender equality;

And to this end:

1. Take the following steps which are of major importance for abolishing obstacles to the achievement of gender equality in fact:

- identify the structural causes of inequalities which affect women, including women affected by multiple forms of discrimination and take the necessary social and economic measures for their eradication;
- eliminate gender stereotypes, responsible for the under utilisation of human resources and which are an obstacle to self-realisation of women and men; take any special measures to address and overcome stereotypes in education and encourage the professionals and actors in the media and communication sector to convey a non stereotyped image of women and men respectful of human rights, including gender equality;
- create the conditions for a secure life in the private and public spheres by preventing and combating all forms of violence against women;
- raise awareness among women and men of the need to eradicate violence which is a threat to peace, security, human rights and democracy in line with the provisions of UN Security Council Resolutions 1325 (2000) and 1820 (2008);
- take the necessary measures to guarantee an equal sharing of responsibilities between women and men and create conditions favourable to the reconciliation of private and family life with professional life through a fair and balanced distribution of resources taking into account the different situations in women's and men's lives;
- encourage men to participate actively in the discussions and activities aimed at achieving gender equality in all spheres of life;

2. To accelerate the achievement of these aims, guarantee a visible political commitment by setting up the necessary legislative and policy framework and implement parallel strategies and innovative and effective tools so that gender equality is recognised as a challenge by the whole of society in all its sectors and place it at the heart of the different decision-making and policy-setting processes:

- Adhere to international standards by ratifying all the relevant international legal instruments and by implementing and monitoring them fully at national level, in particular those contained in the relevant conventions of the Council of Europe, as well as in its recommendations;
- Adopt, implement and evaluate gender equality policies by:
 - adopting strategies, plans and programmes at different levels in all policy areas;
 - acknowledging and addressing the obstacles that persist to the achievement of gender equality;
 - establishing target groups, time frames and benchmarks for its effective implementation and using clear indicators to evaluate results and progress achieved;
 - creating or reinforcing monitoring mechanisms;
 - regularly reporting to parliament on progress and results accomplished;
- Adopt and implement specific policies and action plans at different levels and ensure their adequate financing; enable positive action or special measures to be adopted in order to achieve balanced participation, including representation, of women and men in decision-making in all sectors of society, in particular in the labour market and in economic life as well as in political and public decision-making;
- Adopt and implement effectively specific policies and plans of action to prevent and combat gender-based violence against women, protect victims and prosecute perpetrators;
- Ensure visible political commitment to the strategy of gender mainstreaming, including where necessary by adopting legislation or other instruments to this effect and appropriate structures to co-ordinate it;
- Use gender mainstreaming effectively:
 - by adopting and using tools such as gender analysis, sex disaggregated data, gender impact assessment;
 - by developing skills of all relevant actors to put gender mainstreaming into practice and
 - by creating indicators aimed at evaluating its impact on the promotion of gender equality;
- Explore the use of gender mainstreaming through gender budgeting to guarantee a fair distribution of resources between women and men;
- Reinforce national mechanisms for gender equality at the highest political level, guarantee their effective functioning by giving them clear mandates, well defined functions and responsibilities and by providing them the necessary human and financial resources to enable them to fully implement their mandates;
- Support all actions which denounce discrimination against women and combat inequalities between women and men, including by ensuring the existence of specialised institutional mechanisms entrusted with the task of addressing complaints from individuals and groups on alleged violations of gender equality provisions;
- Develop and support research on gender issues, including policy-related analytical studies on women's and men's situations and on their participation at all levels and spheres; provide evidence-based analysis to governments and other political decision-makers to assess the

situation of women and men, to monitor and evaluate progress and to continue to integrate a gender perspective in all policies;

3. Renew their commitment to achieve equality in fact and in law between women and men as an integral part of human rights and a fundamental criterion of democracy in conformity with the values defended by the Council of Europe and to provide the Council of Europe the necessary human and financial resources;

4. Invite the Secretary General of the Council of Europe to monitor and evaluate progress every three years in the implementation of gender equality policy in the Council of Europe member states.

APPENDIX VI

Parliamentary Assembly
Assemblée parlementaire



Resolution 1665 (2009)

The election process for the Secretary General of the Council of Europe

1. The term of office of the current Secretary General of the Council of Europe will come to an end on 31 August 2009. In October 2008, the process for the election of the (new) Secretary General was initiated.
2. The Parliamentary Assembly considers that, during this election process, several issues have arisen which seriously affect it:
 - 2.1. the addition, in May 2007, by the Committee of Ministers, without prior consultation with the Assembly, of new provisions concerning the qualifications of the candidates for this post;
 - 2.2. the possibility of shortlisting candidates;
 - 2.3. the adoption by the Ministers' Deputies on 23 April 2009 of a draft resolution restricting the number of candidates which appears to pre-empt the possibility of genuine consultation of the Assembly in the Joint Committee on 29 April 2009.
3. In addition, the Assembly notes the lack of a female candidate.
4. The Assembly considers that any shortlisting of candidates would limit its right to choose between the candidates.
5. The Assembly also considers that the decision taken by the Committee of Ministers at its 117th session, in May 2007, was not incorporated into the Council of Europe's Regulations relating to the appointment of the Secretary General, Deputy Secretary General and Secretary General of the Assembly, and therefore should not be relied upon by the Committee of Ministers without the formal agreement of the Assembly.
6. Therefore, the Assembly considers that, in order to ensure the legitimacy of the new Secretary General of the Council of Europe:
 - 6.1. the Ministers' Deputies should review their proposals (draft resolution) of 23 April 2009 concerning transmission to the Assembly of the candidates for the post of Secretary General of the Council of Europe;
 - 6.2. the Committee of Ministers, at its ministerial session on 12 May 2009, should adopt a resolution on the election of the Secretary General of the Council of Europe with a view to forwarding to the Assembly a list which will allow the Assembly to choose among the four existing candidates.

7. In future, the Committee of Ministers should ask member states to consider putting forward a female candidate.
8. The Assembly also considers that the Committee of Ministers should re-establish a genuine dialogue with it in order to ensure a proper institutional balance and a more efficient functioning of the Council of Europe based on a spirit of co-operation.
9. Finally, the Assembly believes that the regulations governing the election of the three senior officials of the Council of Europe, which have existed largely unamended for over half a century, are no longer fully satisfactory and calls on the Bureau to instruct the relevant committee to submit to the Bureau any possible changes to these regulations.