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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

**35th meeting
Strasbourg, 6-7 March 2008**

**DRAFT OPINION OF THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC
INTERNATIONAL LAW (CAHDI) ON RECOMMENDATION 1824 (2008) OF THE
PARLIAMENTARY ASSEMBLY [...]**

(See document CAHDI (2008) 4, item 2.a)

REVISED FOLLOWING DISCUSSIONS IN CAHDI ON 6-7 MARCH

Document prepared by the Secretariat of the CAHDI

**Draft Opinion of the Committee of Legal Advisers on Public International Law
(CAHDI) on Recommendation 1824 (2008) of the Parliamentary Assembly [...]**

1. On 6 February 2008, the Minister's Deputies communicated Assembly Recommendation 1824 (2008) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 15 April 2008. The Minister's Deputies have also communicated this Recommendation to the Steering Committee for Human Rights (CDDH) and the Committee of Experts on Terrorism (CODEXTER).
2. The CAHDI examined the above-mentioned Recommendation at its 35th meeting (Strasbourg, 6-7 March 2008) and adopted the following comments which concern aspects of the recommendation which are of particular relevance to the mandate of the CAHDI (public international law):
3. In Recommendation 1824 (2008), the Assembly recommends to the Committee of Ministers to invite:
 - a the United Nations Security Council and the Council of the European Union to examine their targeted sanctions regimes and to implement procedural and substantive improvements aimed at safeguarding individual human rights and the rule of law, as a matter of the credibility of the international fight against terrorism, in particular an effective and comprehensive appeal mechanism against sanctions imposed by United Nations and European Union bodies;
 - b those member states of the Council of Europe which are permanent or non-permanent members of the United Nations Security Council, or of the European Union, to use their influence as a matter of urgency in these international bodies in order to improve the respective targeted sanctions regime so as to ensure respect for human rights and the rule of law;
 - c those member states of the Council of Europe which are permanent or non-permanent members of the United Nations Security Council or of the European Union to respect judicial decisions in relation to registration on blacklists, and to present the measures they have taken to put an end to the ongoing irregularities mentioned in the Assembly report.
4. From the outset, the CAHDI would like to underline the usefulness of the targeted sanctions' system which needs to be preserved and consolidated, [...] **including through the consideration of further** possible improvements. The Committee would also note that the Security Council and the European Union keep these matters under constant review and that [...] significant improvements have been made. The Committee would also draw attention to the relevant provisions of the Charter of the United Nations, which form the international legal framework for the adoption and legal effect of UN sanctions, and to the fact that the issues raised are the subject of ongoing litigation, including in the cases of *Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities* and *Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* pending before the Court of Justice of the European Communities,¹ in which Advocate General Maduro delivered his Opinion **respectively** on 16 and 23 January 2008.

¹ Judgments of the Court of First Instance of the European Communities of 21 September 2005, T-315/01 (*Kadi v.² Council and Commission*) and T-306/01 (*Yusuf and Al Barakaat International Foundation v. Council and Commission*). All judgments can be downloaded from the website of the European Court of Justice (<http://www.curia.europa.eu>).

5. As to the recommendation mentioned under paragraph 3(a) above, the CAHDI would like to recall its contribution to the improvement of the protection of human rights within the framework of the UN sanctions regime with reference to the fight against terrorism. Since March 2004 the Committee has been analysing the question of the relationship between States' obligations to implement the United Nations Security Council resolutions on the basis of which the sanctions were adopted on the one hand and on the other hand the obligations of the same States resulting from international human rights treaties, in particular the European Convention on Human Rights.

6. It should also be underlined that the delegations of the member and observer states to the CAHDI hold regular exchanges with the United Nations and [...] the European Union, in particular through the regular participation of representatives of these two institutions in the Committee's meetings.

7. As to the recommendation stipulated in paragraph 3(b) above, the CAHDI welcomes the adoption of United Nations Security Council resolutions 1730 (2006) and 1735 (2006), which aim at improving the protection of fundamental rights **of individuals** and the rule of law through the sanctions mechanism of the United Nations in the field of the fight against terrorism, **notwithstanding the need for consideration of further improvements**. The Committee also notes that **improvements** have been made in EU procedures [...] **aimed at enhancing the protection of fundamental rights of individuals and the rule of law**.

[...]

8. As to the recommendation stipulated in paragraph 3(c) above, the CAHDI would like to recall the "Guidelines on human rights and the fight against terrorism", adopted by the Committee of Ministers on 11 July 2002, at the 804th meeting of the Ministers' Deputies, and in particular Section XIV, which reads:

"The use of the property of persons or organisations suspected of terrorist activities may be suspended or limited, notably by such measures as freezing orders or seizures, by the relevant authorities. The owners of the property have the possibility to challenge the lawfulness of such a decision before a court."

9. Moreover the Committee underlines that in 2004 it initiated the setting up of a restricted database containing national contributions from member and observer states to the CAHDI, as well as a contribution from the European Union, on the implementation at national level of the United Nations sanctions in the field of the fight against terrorism and respect of human rights. This database contains, *inter alia*, information on national case-law and State practice concerning the relation between the sanctions targeting persons and the fundamental rights of these persons.

10. This database also allows for an exchange of best practices between states, with a view to making the fight against terrorism more efficient and increasing the protection of human rights. In March 2007, the CAHDI granted access to the database to the Committee of the Security Council established pursuant to resolution 1267 (1999) *concerning Al-Qaida and the Taliban and Associated Individuals and Entities*, at its request.

11. Finally, the CAHDI pursues its examination of and activities in this field.