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28 November 2007

The United States of America and international law

Reply to Recommendation¹: Recommendation 1788 (2007)
Committee of Ministers

1. The Committee of Ministers informs the Parliamentary Assembly that the following reply was adopted by a majority as provided by Article 20 (d) of the Statute.
2. The Committee of Ministers has duly considered Parliamentary Assembly [Recommendation 1788 \(2007\)](#) concerning “The United States of America and international law”. It has brought the recommendation to the attention of the governments of the member states and forwarded it to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments. The comments are appended to the present reply.
3. The Committee of Ministers notes that [Resolution 1539 \(2007\)](#) is addressed both to the United States authorities and to United States parliamentarians at the Federal and State level. While the resolution commends the United States for its traditional role as an upholder of the rule of law, at the same time it includes powerful criticism of certain recent developments based on a report by the Assembly’s Committee on Legal Affairs and Human Rights.
4. The Committee of Ministers refers to its replies to Parliamentary Assembly [Recommendations 1699 \(2005\)](#) and [1760 \(2006\)](#). It confirms its own commitment to the fundamental principles regarding detention, fair trial and the treatment of detainees, including the prohibition of torture and inhuman or degrading treatment or punishment, as contained in Articles 3, 5 and 6 of the European Convention on Human Rights and corresponding provisions of the International Covenant on Civil and Political Rights. Moreover, the Committee of Ministers underlines its total opposition to the death penalty. The Committee of Ministers considers that the death penalty constitutes an inhuman punishment and supports its universal abolition which will contribute to the enhancement and progressive development of human rights. In this respect, it recalls that it recently declared a “European Day against the Death Penalty”, which will be held annually on 10 October.
5. In response to paragraph 2.1 of the recommendation, the Committee of Ministers has requested its Chairman to transmit Parliamentary Assembly [Resolution 1539 \(2007\)](#) on “The United States of America and international law” to the Government of the United States, together with its [Recommendation 1788 \(2007\)](#) and this reply.
6. Finally, the Committee of Ministers draws the Parliamentary Assembly’s attention to the fact that Council of Europe’s member states are in dialogue with the United States authorities, *inter alia* in the framework of CAHDI’s meetings. Moreover, it recalls that the United States is a Permanent Observer to the Council of Europe and is entitled to attend the meetings of the Committee of Ministers in this capacity.

1. Adopted at the 1011th meeting of the Ministers’ Deputies (21 November 2007).



Appendix – Opinion of the Committee of Legal Advisers on Public International Law (CAHDI) on Parliamentary Assembly Recommendation 1788 (2007) “The United States of America and international law”

1. On 12 April 2007, the Ministers’ Deputies communicated Parliamentary Assembly Recommendation 1788 (2007) to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 15 June 2007.²
2. The following comments have been adopted by the CAHDI through correspondence. (The CAHDI did not have a scheduled meeting between the date of the Committee of Ministers’ request and 15 June 2007.)
3. In Recommendation 1788 (2007), the Assembly recommended that the Committee of Ministers transmit Assembly Resolution 1539 (2007) “The United States of America and international law” to the government of the United States of America, reminding it of its obligations as a Council of Europe observer state, and requesting the United States authorities to respond to this and earlier Assembly resolutions.
4. Resolution 1539 (2007) is addressed both to the United States authorities and to United States parliamentarians at the Federal and State level. While the resolution commends the United States for its traditional role as an upholder of the rule of law, at the same time it includes powerful criticisms of certain recent developments. The resolution is based on a report by the Assembly’s Committee on Legal Affairs and Human Rights (Doc. 11181), which includes an Explanatory Memorandum based on a working paper by Philippe Sands. The Memorandum is an historical and policy analysis of US attitudes to international law raising difficult legal and policy issues,
5. Council of Europe member states are already in dialogue with the United States authorities on matters of concern in these and other fields; John B Bellinger III, Department of State Legal Adviser, and his colleagues from the Office of the Legal Adviser in the Department of State, participate regularly and actively in the meetings of the CAHDI, as the United States observer delegation.
6. The United States, which has the status of Permanent Observer to the Council of Europe, is entitled to attend meetings of the Committee of Ministers and the Ministers’ Deputies.

2. CM/Del/Dec(2007)993/3.2b, 16 April 2007.