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United Nations Security Council and European Union blacklists

Reply to Recommendation[1]: Recommendation 1824 (2008)
Committee of Ministers

1. The Committee of Ministers brought the recommendation to the attention of the governments of the member states, so that they can take it into account when they act within the framework of the United Nations, or of the European Union if appropriate.

2. At the same time, the Committee of Ministers sought comments from the Committee of Legal Advisers on Public International Law (CAHDI), the Committee of Experts on Terrorism (CODEXTER) and the Steering Committee for Human Rights (CDDH). Their opinions, which the Committee of Ministers fully endorses, are appended hereto. The Assembly may wish to consult them; it will find there information on the various initiatives taken. The Council of Europe keeps the questions raised by the recommendation under constant review, particularly within the CAHDI and the CODEXTER. To this end, in 2004, the CAHDI set up a restricted database on the implementation at national level of the United Nations sanctions in the field of the fight against terrorism and respect of human rights, which contains national contributions from member and observer states to the CAHDI, as well as a contribution from the European Union. The CODEXTER considers this matter in the context of its activity aimed at securing effective follow-up to the "road map" for the Council of Europe's contribution to the implementation of the United Nations Counter-Terrorism Strategy.

3. Generally speaking, the Committee of Ministers underlines the importance in the fight against terrorism of the targeted sanctions contained in the resolutions of the Security Council of the United Nations adopted under Chapter VII of the United Nations Charter, and their implementation. Having said that, the Committee of Ministers reiterates that it is essential that these sanctions be accompanied by the necessary procedural guarantees, as specified in its "Guidelines on human rights and the fight against terrorism" of 11 July 2002. The Committee of Ministers encourages all member states of the Council of Europe to support ongoing efforts to further improve the international system of targeted sanctions, in particular with regard to fair and clear procedures for placing individuals and entities on the lists, for removing them and for granting humanitarian exemptions.

4. The Council of Europe's views are drawn to the attention of the United Nations and the European Union through regular exchanges between these bodies and CAHDI. The Council of Europe will hold further exchanges of views with these organisations on the relationship between targeted sanctions and compliance with human rights obligations, in particular after the European Court of Justice has delivered its judgments in the various cases concerning targeted sanctions currently pending before that Court.

1. Adopted by the Committee of Ministers on 9 July 2008, at the 1032nd meeting of the Ministers' Deputies.

Appendix 1 – Opinion of the Committee of Legal Advisers on Public International Law (CAHDI)

1. On 6 February 2008, the Ministers' 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 Ministers' 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 recommended 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, in the interest 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 also notes that the Security Council and the European Union keep these matters under constant review and that significant improvements have tions, 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*[2], in which Advocate General Maduro delivered his opinion respectively on 16 and 23 January 2008.

5. As to the recommendation in 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 the obligations of states 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 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.

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2. Judgments of the Court of First Instance of the European Communities of 21 September 2005, T-315/01 (Kadi v. 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 Court of Justice of the European Communities (www.curia.europa.eu).

8. As to the recommendation 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-Qaeda and the Taliban and associated individuals and entities, at its request.

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

Appendix 2 – Opinion of the Committee of Experts on Terrorism (CODEXTER)

1. On 6 February 2008, the Ministers' Deputies communicated Assembly Recommendation 1824 (2008) to the Committee of Experts on Terrorism (CODEXTER), for information and possible comments by 15 April 2008. The Ministers' Deputies also communicated this recommendation to the Committee of Legal Advisers on Public International Law (CAHDI) and the Steering Committee for Human Rights (CDDH).

2. The CODEXTER examined the above-mentioned recommendation at its 14th meeting (Strasbourg, 7-9 April 2008), having in mind the opinions and comments already provided by the CAHDI and the CDDH, and adopted the following comments.

3. From the outset, the CODEXTER underlines that the targeted sanctions regime has been established by the United Nations (UN) Security Council on the basis of the relevant provisions of the UN Charter, which forms the international legal framework for the adoption and legal effect of the sanctions, and brings – as an important and unique global tool – a considerable added value to the international fight against terrorism. It must be preserved and consolidated in accordance with the above-mentioned relevant provisions of the Charter, notably its Article 25 and Chapter VII, notwithstanding the need for consideration of further improvements aiming at strengthening the credibility as well as the effectiveness of the targeted sanctions regime.

4. At the same time, the CODEXTER stresses the need to maintain and strengthen the principles of human rights and the rule of law, which are necessary to protect the rights of the listed individuals, while applying the targeted sanctions regime. In this respect, the CODEXTER welcomes a number of significant improvements which have already been introduced through the adoption of the UN Security Council Resolutions 1730 (2006) and 1735 (2006). The CODEXTER also emphasises the importance of implementing and considering further procedural improvements to the targeted sanctions regime, including with regard to fair and transparent procedures for placing individuals and entities on the lists, for removing them and for granting humanitarian exemptions.

5. The CODEXTER welcomes the Council of Europe's constant co-operation with the Security Council Committee established pursuant to Resolution 1267 (1999) concerning al-Qaeda and the Taliban and associated individuals and entities. The CODEXTER closely follows developments in this field, including ongoing cases concerning the European Union's implementation of sanctions under the Resolution 1267 (1999) regime[3].

6. Furthermore, the CODEXTER would like to recall that, as a regional organisation, the Council of Europe is committed to facilitating the implementation of UN Security Council resolutions, namely Resolutions 1267 (1999), 1373 (2001) and 1624 (2005), and the UN Global Counter-Terrorism Strategy, which in paragraph 15 encourages the Security Council committee mentioned in paragraph 5 "to continue to work to strengthen the effectiveness of the travel ban under the United Nations sanctions regime against al Qaeda and the Taliban and associated individuals and entities, as well as to ensure, as a matter of priority, that fair and transparent procedures exist for placing individuals and entities on its lists, for removing them and for granting humanitarian exception. In this regard [the Strategy] encourage[s] states to share information, including by widely distributing the Interpol/United Nations special notices concerning people subject to this sanctions regime."

7. In this connection, the CODEXTER wishes to recall Committee of Ministers' Recommendation CM/Rec(2007)1 regarding co-operation against terrorism between the Council of Europe and its member states, and the International Criminal Police Organisation (ICPO-Interpol). The CODEXTER assessed the implementation of this recommendation at its meeting in October 2007 on the basis of information provided by Interpol concerning the use by Council of Europe member states of its tools against terrorism. On that occasion, the CODEXTER stressed the importance of consistent use of Interpol's tools and databases, as stated in the operative paragraph of the recommendation, as well as of the other tools offered by Interpol.

8. The CODEXTER wishes to stress the importance of securing effective follow-up to the "road map" for the Council of Europe contribution to the implementation of the UN Global Counter-Terrorism Strategy. The road map was prepared by the ad hoc meeting of the Chairs of relevant committees of the Council of Europe

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3. Pending 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 Commissionof the European Communities. Judgments of the Court of First Instance of the European Communities of 21 September 2005, T-315/01 (Kadi v. 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 Court of Justice of the European Communities (www.curia.europa.eu).

on terrorism on 25 April 2007 and transmitted to relevant intergovernmental committees and monitoring bodies by the Committee of Ministers on 20 June 2007. The CODEXTER periodically reviews the implementation of the “road map” in pursuance of its co-ordinating role on terrorism.

9. The CODEXTER welcomes the entry into force on 1 May 2008 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) and underlines the importance of its ratification as well as that of the Council of Europe Convention on the Prevention of Terrorism and the Protocol amending the European Convention on the Suppression of Terrorism as soon as possible.

10. The CODEXTER also underlines the importance of pursuing the Council of Europe’s action against terrorism, by providing a co-ordination forum for discussing and adopting regional standards and best practice, as well as by providing assistance to its member states in improving their counterterrorism capabilities.

Appendix 3 – Opinion of the Steering Committee for Human Rights (CDDH)

1. The Steering Committee for Human Rights remains convinced of the essential importance of respect for human rights and the requirements of the rule of law in the context of the fight against terrorism, as also underlined in the guidelines adopted by the Committee of Ministers in July 2002. For this reason, it shares the concern of the Parliamentary Assembly, expressed in its Recommendation 1824 (2008) and its Resolution 1597 (2008), regarding the fact that any targeted sanction in the context of this fight must be accompanied by the necessary procedural guarantees.

2. That said, one must recall the well-foundedness of such sanctions as an important means available to member states for discharging their positive obligation to protect their populations against terrorist acts that threaten the enjoyment of human rights, particularly the right to life. In the aforementioned guidelines, it is notably recalled that "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" (Guideline XIV). It is not the case, therefore, to condemn the principle of targeted sanctions, but to ensure that, through an appropriate framework, they respect the requirements of human rights and the rule of law.

3. As regards targeted sanctions imposed by the United Nations Security Council and the European Union, the CDDH recalls the importance of fair procedures and of informing promptly the individuals and entities affected of the reasons for which they have been affected by such sanctions, as well as making available to them effective remedies for challenging the well-foundedness of the sanctions.

4. The CDDH notes the ongoing work concerning fair procedures in the context of targeted sanctions within the United Nations and the European Union. More specifically:

i. within the United Nations Security Council, information to affected persons and entities has been improved and that they are provided with a mechanism to request their removal from the lists that is no longer dependent on the support of their state of nationality or residence;

ii. a reform of the European Union's procedures was made in 2007, following a decision of the European Court of First Instance. The various issues are currently subject to litigation, notably before the Court of Justice of the European Communities in the case of *Kadi v. the Council and the Commission*, of which it is necessary to await the outcome.