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Draft version

Piracy – a crime and a challenge for democracies

A. Draft resolution

1. The Assembly is concerned at the upsurge of piracy, which has become endemic in some stretches of sea and which causes an economic loss of billions of dollars every year, great human suffering, with people being kidnapped, injured, traumatised or killed and may serve to finance extremist or terrorist groups. This phenomenon is directly related to the inability of the coastal state to enforce police control in its territorial waters or their proximity, due to lack of good governance.
2. Since 2009, the sea off the coast of Somalia has become the main hotspot worldwide with pirate activities expanding from Somali territorial waters to the Gulf of Aden, Kenya, Madagascar, the Seychelles and Tanzania and using increasingly sophisticated weapons and technology.
3. So far, the main emphasis of the counter-piracy framework has been on military deterrence: 45 countries have dispatched warships off the coast of Somalia to escort merchant vessels flying their flags or vessels in which they have a particular interest, due to the nationality of the crew or the nature of the cargo on board.
4. States have started to co-operate and set up collective security systems, with a view to deterring, defending against and disrupting pirate attacks against ships, irrespective of their flag. In this context, the Assembly commends the efforts undertaken by NATO and the European Union, since 2008, with a number of successive military operations, which have made it possible to deliver safely thousands of tons of humanitarian aid to the Somali civilian population, thwart dozens of pirate attacks and provide assistance to victims.
5. Military deterrence has managed to reduce the ratio of successful attacks off the coast of Somalia from 1 out of 3 in 2006 to 1 out of 6 in 2009. At the same time, the capacity of commercial ships to avoid or escape pirate attacks on their own has increased considerably, making them less and less reliant on private security firms.
6. The Assembly is convinced, however, that military deterrence cannot provide a long-term solution to the problem of piracy as its root causes are ashore. A comprehensive approach is needed to address poverty, instability and lack of governance in Somalia and other countries which generate piracy.
7. The practice of some Council of Europe member states to set free pirate suspects is a matter of concern. A comprehensive approach to piracy requires ensuring effective prosecution as an integral part of any credible deterrence effort and as a way to demonstrate genuine political commitment to enforcing the rule of law.

8. The Assembly acknowledges that a number of hurdles prevent the effective prosecution of pirate suspects, the main being that the majority of pirate attacks take place in a state's territorial waters: in such cases, according to international law, the sole responsibility for apprehension and prosecution lies with the coastal state, as the principle of universal jurisdiction does not apply, with the exception of Somalia by virtue of Resolution 1851 (2008) of the United Nations Security Council.

9. In addition, some Council of Europe member states are reluctant to enforce prosecution, on the grounds that their domestic legislation is obsolete, unclear or unsuitable to fit the reality of today's piracy. Furthermore, in the case of international operations or when a number of countries are involved, there are no clear rules on which state should undertake prosecution, and in which order of precedence.

10. The Assembly notes that the European Union has signed agreements with the governments of Kenya and the Seychelles for the transfer and prosecution of persons suspected of having committed acts of piracy on the high seas and apprehended by navies of the European Union Naval Force (EUNAVFOR); the Netherlands, the United Kingdom and the United States have done likewise. The Assembly regrets that these arrangements do not seem appropriate to deal with the size and the scale of the problem.

11. While acknowledging that the transfer of pirate suspects to a third country is not *per se* unlawful, and that geographical proximity with the theatre of pirate attacks is important in order to facilitate further investigations, collect evidence and hear witnesses, the Assembly recalls that Council of Europe member states must ensure the compliance of all the agreements which they conclude with the European Convention on Human Rights (the Convention) and other relevant human rights instruments, and that they could be held responsible for breaches of the Convention, for instance when transferring individuals to a country where they might be subjected to torture or inhuman and degrading treatment or where they would not be given a fair trial.

12. The Assembly also recalls that compliance with the Convention is mandatory for Council of Europe member states when exercising extraterritorial jurisdiction: thus, they must abide by the relevant provisions of the Convention in the course of apprehension, detention on board or transfer of pirate suspects irrespective of where they take place.

13. Although lack of transparency surrounds the solution of most piracy cases, especially those involving protracted kidnappings, there are grounds to believe that the majority of them end with the payment of ransoms. Council of Europe member states should introduce clear policies and legislation to address this issue, in order to avoid further encouraging piracy and the use of ransom payments to finance extremist or terrorist groups.

14. In the light of these considerations, the Assembly, as regards military deterrence:

14.1. encourages Council of Europe member states to provide naval escort to ships crossing areas at risk of piracy;

14.2. asks NATO, the European Union and countries concerned to renew and strengthen their anti-piracy operations off the coast of Somalia.

15. As regards prosecution, the Assembly:

15.1. calls on Council of Europe member states:

15.1.1. to modernise and develop a common and more relevant domestic legal framework in order to criminalise the act of piracy wherever it takes place and ensure prosecution in Council of Europe member states, or introduce appropriate legislation where it does not exist;

15.1.2. to introduce legal provisions to allow the apprehension, transfer and prosecution of pirate suspects apprehended in Somali territorial waters or on Somali territory, pursuant to UNSC Resolution 1851 (2008);

15.1.3. to draw up rules on the treatment of pirate suspects while on board their military ships, ensuring full compliance with the Convention and other relevant international human rights instruments;

15.1.4. to step up international cooperation and agree on clear rules for identifying the state responsible for prosecution of pirate suspects;

15.1.5. to seek appropriate ways in which the existing international legal framework can be adapted to face current needs of policing at sea;

15.2. calls on Council of Europe member states and the European Union:

15.2.1. to conclude agreements with third countries on the transfer and prosecution of pirate suspects and ensure that these agreements comply fully with the Convention and other relevant international human rights instruments;

15.2.2. to monitor closely the treatment of pirate suspects after their transfer to a third country, in particular as regards detention conditions, availability of a fair trial, absence of torture and inhuman and degrading treatment or capital punishment.

16. Finally, as regards the elaboration of a comprehensive counter-piracy framework, the Assembly calls on Council of Europe member states:

16.1. to support the efforts of the Federal Transitional Government of Somalia as well as of the international community, in particular the United Nations and the European Union, to restore peace and stability in Somalia;

16.2. to step up assistance to Somalia, directly or through the World Food Programme, the United Nations High Commissioner for Refugees and other human rights and humanitarian organisations;

16.3. to establish clear policies and legislation against the payment of ransoms, and ensure compliance by both private actors and state authorities;

16.4. to enhance international cooperation in order to identify the criminal networks, based in Somalia or outside, which mastermind pirate attacks and ensure that they are brought to justice;

16.5. to investigate whether ransom payments are used to finance extremist or terrorist groups and, if so, take all necessary action to stop this and prevent it from occurring.