



Resolution 1722 (2010)¹

Final version

Piracy – A crime and a challenge for democracies

Parliamentary Assembly

1. The Parliamentary Assembly is concerned about the upsurge in piracy, now endemic in certain maritime areas, which leads to billions of dollars in economic losses every year, great suffering, as people are being kidnapped, traumatised, injured or killed, and which may serve to finance extremist or terrorist groups. This phenomenon is directly related to the inability of coastal states to enforce police control in or around their territorial waters, due to lack of good governance.
2. Since 2009, the sea off the coast of Somalia has become the worldwide hotspot for pirate activities, from Somali territorial waters to the Gulf of Aden, Kenya, Madagascar, the Seychelles and Tanzania. In addition, pirates use 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 their cargo.
4. States have started to co-operate and set up collective security systems, with a view to deterring, defending against and disrupting pirate attacks on 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 in which piracy flourishes.
7. The practice of some Council of Europe member states to set free suspected pirates 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 demonstration of a strong political commitment to enforcing the rule of law.
8. The Assembly acknowledges that a number of hurdles prevent the effective prosecution of suspected pirates, the main hurdle being that the majority of attacks take place in a state's territorial waters: in such cases, according to international law, the sole responsibility for apprehending and prosecuting the authors of acts of piracy 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.

1. *Assembly debate* on 28 April 2010 (14th Sitting) (see [Doc. 12193](#), report of the Political Affairs Committee, rapporteur: Mrs Keleş). *Text adopted by the Assembly* on 28 April 2010 (15th Sitting).



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 deal with today's forms of 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 (EU NAVFOR); the Netherlands, the United Kingdom and the United States have done likewise. The Assembly regrets that these arrangements seem inappropriate 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 scene 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 with all commitments entered into on ratification of the European Convention on Human Rights (ETS No. 5) and other relevant human rights instruments. It also recalls that the states could be held to account for breaching 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 European Convention on Human Rights 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, onboard detention or transfer of suspected pirates, irrespective of where they take place.
13. Although lack of transparency surrounds 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, with regard to military deterrence, the Assembly:
 - 14.1. encourages Council of Europe member states to provide a naval escort to ships crossing areas at risk of piracy;
 - 14.2. asks the North Atlantic Treaty Organization (NATO), the European Union and countries concerned to renew and strengthen their anti-piracy operations off the coast of Somalia;
 - 14.3. recalling its [Recommendation 1858 \(2009\)](#) on private military and security firms and the erosion of the state monopoly on the use of force, encourages Council of Europe member states to regulate the hiring of private security firms by shipping companies.
15. As regards prosecution, the Assembly calls on Council of Europe member states to:
 - 15.1. modernise and develop a common and more relevant domestic legal framework in order to criminalise acts of piracy wherever they take place and ensure prosecution in Council of Europe member states, or introduce appropriate legislation where it does not exist;
 - 15.2. introduce legal provisions to allow the arrest, transfer and prosecution of suspected pirates apprehended in Somali territorial waters or on Somali territory, pursuant to Resolution 1851 of the United Nations Security Council;
 - 15.3. draw up rules on the treatment of suspected pirates while on board their military ships, ensuring full compliance with the European Convention on Human Rights and other relevant international human rights instruments;
 - 15.4. step up international co-operation and agree on clear rules for identifying the state responsible for the prosecution of suspected pirates;
 - 15.5. seek appropriate ways in which the existing international legal framework can be adapted to face current policing needs at sea and consider creating, provided all existing disadvantages in this field are removed, a special mechanism (international or with international participation) for the prosecution of persons suspected of piracy.

16. The Assembly calls on Council of Europe member states and the European Union to:
 - 16.1. conclude agreements with third countries on the transfer and prosecution of suspected pirates and ensure that these agreements comply fully with the European Convention on Human Rights and other relevant international human rights instruments;
 - 16.2. monitor closely the treatment of suspected pirates after their transfer to a third country, in particular as regards detention conditions and access to a fair trial, and ensure there is no risk of torture and inhuman and degrading treatment or capital punishment.
17. Finally, as regards the elaboration of a comprehensive counter-piracy framework, the Assembly calls on Council of Europe member states to:
 - 17.1. address the root causes of piracy by supporting measures aimed at reducing poverty, promoting economic recovery and development and strengthening assistance to countries in which piracy flourishes, in particular Somalia;
 - 17.2. support the efforts of the Federal Transitional Government of Somalia and of the international community, in particular the United Nations and the European Union, to restore peace and stability in Somalia;
 - 17.3. 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;
 - 17.4. establish clear policies and legislation against the payment of ransoms, and ensure compliance by both private actors and state authorities;
 - 17.5. enhance international co-operation in order to identify the criminal networks, based in Somalia or elsewhere, which mastermind pirate attacks and ensure that those responsible are brought to justice;
 - 17.6. 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 reoccurring.