

Strasbourg, 15/07/10

CAHDI (2010) 19

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)

40th meeting
Tromsø, 16-17 September 2010

COMMITTEE OF MINISTERS' DECISIONS OF RELEVANCE TO THE CAHDI'S ACTIVITIES
INCLUDING REQUESTS FOR THE CAHDI'S OPINION

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Document prepared by the Secretariat of the CAHDI

1. CAHDI¹

1.a CM/Del/Dec(2010)1089/10.1bE / 02 July 2010

Committee of Legal Advisers on Public International Law (CAHDI) – Abridged report of the 39th meeting (Strasbourg, 18-19 March 2010)

Decision

“The Deputies took note of the abridged report of the 39th meeting of the Committee of Legal Advisers on Public International Law (CAHDI), as it appears in document CM(2010)44.”

1.b CM/Del/Dec(2010)1085/3.2E / 28 May 2010

Parliamentary Assembly – 2nd part of the 2010 Session (Strasbourg, 26-30 April 2010) – Texts adopted (2010 Session (Provisional Compendium of texts adopted))

Decisions

“The Deputies (...)

6. concerning Recommendation 1913 (2010) – “The necessity to take additional international legal steps to deal with sea piracy” **[See below]**

- a. decided to bring it to the attention of their governments;
- b. agreed to communicate it to the European Committee on Crime Problems (CDPC) and to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 15 September 2010²;
- c. in the light of possible comments, invited their Rapporteur Group on Legal Co-operation (GR-J) to prepare a draft reply for adoption at one of their forthcoming meetings; (...)

Parliamentary Assembly Recommendation 1913 (2010)³

“The necessity to take additional international legal steps to deal with sea piracy”

1. The Parliamentary Assembly refers to its Resolution 1722 (2010) on piracy – a crime and a challenge for democracies, in which it stresses that no legal response to the phenomenon of piracy is possible unless it is supported by a firm political commitment to do so. Acts of piracy, especially those off the coast of Somalia, have become endemic and combating this phenomenon necessitates a concerted effort in strict conformity with international legal standards.

2. The Assembly urges Council of Europe member states to ensure that all agreements on the treatment of suspected pirates, their transfer and trial, including those concluded by the European Union and certain Council of Europe member states with Kenya and the Seychelles, comply with international human rights standards. It recalls, in this connection, that Council of Europe member states involved in anti-piracy action off the coast of Somalia are bound by the provisions of the European Convention on Human Rights and other relevant international instruments.

¹ *Note of the Secretariat*: Please also refer to the *ad hoc* terms of reference given to the CAHDI by the Committee of Ministers to study the suggestions made in the Venice Commission’s report on Private military and security firms and erosion of the state monopoly on the use of force (document CDL-AD(2009)038), in the light of the Parliamentary Assembly’s Recommendation 1858 (2009) on the same subject. All relevant documents on this matter appear in document CAHDI (2010) 15.

² *Note of the Secretariat*: It has been agreed with the Secretariat of the Committee of Ministers that CAHDI comments could be submitted by 20 September 2010.

³ Assembly debate on 28 April 2010 (14th Sitting) (see Doc. 12194, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Holovaty). Text adopted by the Assembly on 28 April 2010 (15th Sitting). Resolution 1722 (2010) appears as **Appendix I** to the present document.

3. The Assembly recommends that the Committee of Ministers, with the help of a newly mandated expert group or through an already existing mechanism:

3.1. conduct an in-depth study on member states' practice in dealing with suspected pirates and the state of national criminal law concerning the repression and prosecution of acts of piracy;

3.2. prepare, according to existing international guidelines, a code of conduct on how to deal with suspected pirates in full compliance with international human rights standards in order to ensure the harmonisation of national criminal legislation on the subject of combating sea piracy;

3.3. promote the conclusion of international agreements clearly specifying state responsibility for the prosecution of pirates and the elaboration of common procedures to be followed for this purpose;

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

4. The Assembly further recommends that the Committee of Ministers enhance co-operation in combating sea piracy with other international organisations, including the United Nations, the African Union, NATO and the European Union, with a view to eradicating this phenomenon off the Somali coast, while ensuring full observance of the requirements stemming from the European Convention on Human Rights and other pertinent international legal instruments.

1.c CM/Del/Dec(2010)1087/3.1E / 10 June 2010

**Parliamentary Assembly –
Standing Committee (Skopje, 21 May 2010) –
Texts adopted
(2010 Session (Provisional Compendium of adopted texts))**

Decisions

“The Deputies (...)

2. concerning Recommendation 1920 (2010) – “Reinforcing the effectiveness of Council of Europe treaty law” **[See below]**

a. agreed to communicate it to the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC) and the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 15 October 2010;

b. in the light of possible comments, invited their Rapporteur Group on Legal Co-operation (GR-J) to prepare a draft reply for adoption at one of their forthcoming meetings;

c. agreed to communicate it to the European Union for information together with the reply. (...)”

Parliamentary Assembly Recommendation 1920 (2010)⁴ “Reinforcing the effectiveness of the Council of Europe treaty law”

1. The Parliamentary Assembly, referring to its Resolution 1732 (2010) on reinforcing the effectiveness of Council of Europe treaty law, considers that one of the Council of Europe's main

⁴ Text adopted by the Standing Committee, acting on behalf of the Assembly on 21 May 2010 (see Doc. 12175, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Prescott). Resolution 1732 (2010) appears as **Appendix II** to the present document.

functions is to draw up standards on human rights and the rule of law, which together form a coherent body of European conventions. It therefore asks the Committee of Ministers to:

1.1. approve an action plan to secure the early ratification by all member states of the core Council of Europe treaties, as defined in the appendix to the Assembly resolution, with the fewest possible reservations;

1.2. urge member states to withdraw their reservations, derogations and restrictive declarations concerning Council of Europe treaties, particularly the European Convention on Human Rights, and instruct the Committee of Legal Advisers on Public International Law (CAHDI) to intensify its existing efforts in this area to reduce the use of such clauses;

1.3. agree on an action programme of new conventions to be drawn up, as a matter of priority, over the next five years;

1.4. instruct the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC), in close co-operation with the Council of Europe's Legal Advice Department and the Treaty Office, to examine the binding legal instruments within their respective areas of authority, with a view to identifying:

1.4.1. treaties that are still relevant but require updating;

1.4.2. treaties that are obsolete and should be abrogated;

1.4.3. treaties which have lost their relevance and have not come into force within a certain number of years of their adoption and which should be withdrawn;

1.5. in the light of changes in European law within the European Union, particularly the advent of framework decisions or community acts, consult the CAHDI on the possible adoption by the Council of Europe of pan-European model acts to supplement its treaties.

2. The Assembly is also concerned about the possible effects of the increased use, at the request of the European Union, of so-called disconnection clauses in Council of Europe treaties. To ensure the coherence of Council of Europe treaty law, and to avoid establishing new dividing lines in Europe, it asks the Committee of Ministers to draw up strict guidelines to control this practice, based on the work of the CAHDI. The Assembly also urges the European Union to accede to the Council of Europe's conventions, in particular the European Convention on Human Rights, as provided for in the Lisbon Treaty.

1.d CM/Del/Dec(2010)1081/4.2E / 06 April 2010

“The protection of human rights in emergency situations” – Parliamentary Assembly Recommendation 1865 (2009) (Parliamentary Assembly REC_1865 (2009) and CM/AS(2010)Rec1865 prov)

Decision

“The Deputies adopted the reply to Parliamentary Assembly Recommendation 1865 (2009) on “The protection of human rights in emergency situations”, as it appears at Appendix 4 to the present volume of Decisions”⁵.

⁵ The reply of the Committee of Ministers appears as **Appendix III** to the present document. The Recommendation 1865 (2009) of the Parliamentary Assembly of the Council of Europe on “The protection of human rights in emergency situations” was transmitted by the Ministers’ Deputies to the CAHDI for information and possible comments. This request reached the CAHDI’s Secretariat only after the 38th meeting of the Committee and the answer should have been formulated before 15 December 2009. The Chair of the CAHDI, in consultation with the Vice-Chair, submitted to the Ministers’ Deputies the communication found in appendix to Committee of Ministers’ reply.

1.e CM/Del/Dec(2010)1090/10.7 E/ 9 July 2010

“Ban on cluster munitions” –

Parliamentary Assembly Recommendation 1871 (2009)

(Parliamentary Assembly REC_1871 (2009), CM/AS(2010)Rec1871 prov3)

Decision

The Deputies adopted the reply to Parliamentary Assembly Recommendation 1871 (2009) on a “Ban on cluster munitions”, as it appears at Appendix 16 to the present volume of Decisions.⁶

1.f CM/Del/Dec(2010)1090/10.5 E / 9 July 2010

“Towards a new ocean governance” –

Parliamentary Assembly Recommendation 1888 (2009)

(Parliamentary Assembly REC_1888 (2009) and CM/AS(2010)Rec1888 prov)

Decision

The Deputies adopted the reply to Parliamentary Assembly Recommendation 1888 (2009) on “Towards a new ocean governance”, as it appears at Appendix 15 to the present volume of Decisions.⁷

2. REFORM OF THE COUNCIL OF EUROPE ENTITIES AND FOLLOW-UP TO INTERLAKEN

2.a CM/Del/Dec(2010)1080/1.6E / 29 March 2010

Rules and procedures for the future elections of the Secretary General –

Joint interpretative statement

(CM/Del/Dec(2009)1073/1.6, CM/Del/Dec(2010)1074/1.7 and CM(2009)195 rev)

Decision

“The Deputies adopted the joint interpretative statement on the rules and procedures for the future elections of the Secretary General, as it appears in document CM(2009)195 final”⁸.

2.b CM(2010)PVadd1E / 11 May 2010

**Follow-up to the High-level Conference on the Future of the European Court of Human Rights
(Interlaken, 18-19 February 2010)**

Decisions

“The Committee of Ministers

1. endorsed the Declaration and Action Plan unanimously adopted at the High-level Conference on the Future of the European Court of Human Rights held in Interlaken on 18 and 19 February 2010,

⁶ The reply of the Committee of Ministers appears as **Appendix IV** and the CAHDI took note of this Recommendation at its 38th meeting.

⁷ The reply of the Committee of Ministers appears as **Appendix V**. The comments of the CAHDI could be found in appendix to Committee of Ministers’ reply.

⁸ This document appears as **Appendix VI** to the present document.

paid tribute to the Swiss authorities for this initiative and expressed its determination to implement the Interlaken outcome in a timely manner;

2. recalled the shared responsibility between the States Parties, the Court and the Committee of Ministers for the full and effective implementation of the Interlaken Declaration and Action Plan, as well as the subsidiary nature of the system of the European Convention on Human Rights;

3. welcomed the first steps made by the Court to follow up the Interlaken Declaration and invited the Court to take further steps to this end;

4. encouraged States Parties to implement the measures in the Action Plan addressed to them, in particular by providing effective remedies in case of violation of the Convention rights and freedoms and taking measures to enhance knowledge of the Convention system and the Court's case law;

5. encouraged member states to respond favourably to the call for secondments of national lawyers, particularly judges, to the Registry of the Court;

6. recalling the fundamental importance of the right to individual petition, encouraged the Court to pursue its efforts to provide better information about the Convention system and invited the Secretary General to investigate possible means of providing comprehensive and objective information to potential applicants to the Court on the Convention and the Court's case law, in particular on the application procedures and admissibility, including through independent national human rights institutions or Ombudspersons. The Committee invited the Secretary General to make proposals to this end by December 2010;

7. also invited the Secretary General to make proposals by the end of 2010 on how to grant the Court, in the interest of its efficient functioning, the necessary level of administrative autonomy within the Council of Europe;

8. reaffirmed that prompt and effective execution of the judgments and decisions delivered by the Court is essential for the credibility and effectiveness of the Convention system and a determining factor in reducing the pressure on the Court. This requires the joint efforts of member states and the Committee of Ministers. The Committee instructed its Deputies to step up their efforts to make execution supervision more effective and transparent and to bring this work to a conclusion by December 2010;

9. instructed its Deputies to pursue the follow-up to the Interlaken Declaration and Action Plan in a swift and effective manner, through an open and constructive dialogue and engagement with all relevant stakeholders, to ensure that the agreed deadlines are met;

10. welcomed the intention of the future Turkish Chairmanship of the Committee of Ministers to organise in April 2011 a further High-level Conference on the Future of the European Court of Human Rights to review the progress made in the follow-up to the Interlaken Declaration and, as appropriate, provide further guidance for its successful completion;

11. welcomed the forthcoming entry into force of Protocol No. 14 to the European Convention on Human Rights on 1 June 2010 and the preparations made by the European Court of Human Rights for its implementation."

12. adopted Recommendation CM/Rec(2010)7 of the Committee of Ministers to member states on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education, as it appears at Appendix 1 to the present volume of Decisions and took note of the Explanatory Memorandum thereto (CM(2010)32 add)."

2.c CM/Del/Dec(2010)1090/1.10 E / 9 July 2010

High-level Conference on the future of the European Court of Human Rights (Interlaken, 18-19 February 2010) - Action to be taken

- a. First report of the Steering Committee for Human Rights (CDDH) on implementation of the Interlaken Declaration**
- b. Draft terms of reference of the Committee of Experts on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (DH-PS)**
- c. Ways of reinforcing the efficiency of the supervision of the execution of the judgments and decisions of the European Court of Human Rights**
(GT-SUIVI.Interlaken(2010)7, CM/Inf(2010)28 rev and GT-SUIVI.Interlaken(2010)CB5)

Decisions

“The Deputies:

1. took note of the first report of the Steering Committee for Human Rights (CDDH) on implementation of the Interlaken Declaration, as it appears in document GT-SUIVI.Interlaken(2010)7;
2. approved the terms of reference of the Committee of experts on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (DH-PS), as they appear at Appendix 8⁹ to the present volume of Decisions, and taking into account the comments made during the meeting;
3. instructed the Secretariat to prepare a detailed document on the modalities for a new twin track supervision system, as described in the document on the supervision of the execution of the judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – elements for a roadmap (CM/Inf(2010)28 rev), with a view to its examination at their 1092nd meeting (DH) meeting (14-15 September 2010);
4. decided to declassify the above-mentioned document CM/Inf(2010)28 rev;
- 5 took note of the synopsis of the meeting of the Ad hoc working party on the follow-up process to the Interlaken Declaration (GT-SUIVI.Interlaken), as it appears in document GT-SUIVI.Interlaken(2010)CB5. “

3. RELATIONS BETWEEN THE COUNCIL OF EUROPE AND THE EUROPEAN UNION

3.a CM(2010)PVadd1E / 11 May 2010

Relations between the Council of Europe and the European Union

Decisions

“The Committee of Ministers

1. welcomed the substantial progress in the co-operation between the Council of Europe and the European Union based on the Memorandum of Understanding, as reflected in the report prepared in accordance with the decisions adopted at their 119th Session (documents CM(2010)52 final, CM(2010)52 add final), and emphasised the importance of ongoing and forward looking co-

⁹ This document appears as **Appendix VII** to the present document.

operation. The Committee of Ministers will continue to give priority to the implementation of the Memorandum of Understanding;

2. noted that the entry into force of the Lisbon Treaty and the Charter of Fundamental Rights on 1 December 2009 has created new opportunities to enhance further the values-based partnership between the Council of Europe and the European Union, with a view to achieving a strong and coherent system of human rights protection in Europe; it welcomed the commitment of the European Union to accede to the European Convention on Human Rights (ECHR), confirmed its own commitment to this process, facilitated by the entry into force on 1 June 2010 of Protocol No. 14 to the ECHR, and called for the early completion of negotiations and a rapid accession;

3. recalled that co-operation should also ensure coherence in the drafting of Council of Europe standards and European Union legislation, through consultations at an early stage; it called for stronger synergies between Council of Europe monitoring mechanisms and the European Union, in particular in the context of the implementation of its Stockholm programme;

4. noted with satisfaction the co-operation between the Council of Europe and the European Union in the countries participating in the European Neighbourhood Policy, in particular those in its Eastern Partnership, or the Enlargement Process;

5. decided to explore, where appropriate and in close co-operation with the European Union, how the accession of the European Union to relevant Council of Europe conventions may be facilitated, and welcomed the further promotion of Council of Europe standards by the European Union in its relations with third countries;

6. welcomed the increase in the volume of Joint Programmes between the Council of Europe and the European Union, which are an efficient co-operation tool to support the reform agenda of the partner countries and thus to promote and protect human rights, democracy and the rule of law in Europe; noted that the current reform of the Council of Europe's external presence should have a positive impact on the design and implementation of Joint Programmes;

7. encouraged the further development of dialogue and co-operation between all relevant bodies of the two organisations, in accordance with the Memorandum of Understanding, in particular between the Commissioner for Human Rights and the European Union, in order to foster their strategic and complementary partnership;

8. encouraged the continuation of co-operation in the field of intercultural dialogue and social cohesion on the basis of the Memorandum of Understanding.”

3.b CM/Del/Dec(2010)1085/4.3E / 28 May 2010

Steering Committee for Human Rights (CDDH) – Draft ad hoc terms of reference to elaborate a legal instrument setting out the modalities of accession of the European Union to the European Convention on Human Rights (CM/Del/Dec(2010)1077/4.5)

Decisions

“The Deputies

1. adopted Decision No. CM/882/26052010 giving ad hoc terms of reference, as they appear at Appendix 7 to the present volume of Decisions¹⁰, to the Steering Committee for Human Rights (CDDH) to elaborate a legal instrument setting out the modalities of accession of the European Union to the European Convention on Human Rights;

2. invited the Secretary General to ensure that this activity is carried out efficiently with a view to its swift completion.”

¹⁰ This decision appears as **Appendix VIII** to the present document.

4. TREATY LAW

4.a CM/Del/Dec(2010)1083/10.4E / 23 April 2010

European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) – Request by Brazil to be invited to accede (GR-J(2010)4)

Decisions

“The Deputies

1. took note of the request of Brazil to be invited to accede to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and noted that the member states Parties to the Convention unanimously agreed in principle to granting this request;
2. instructed the Secretariat to consult the non-member state which is a Party to the Convention, i.e. Israel, and set 11 June 2010 as the deadline for a reply;
3. agreed that if there was no objection from Israel, the decision to invite Brazil to accede to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) would be regarded as adopted on 16 June 2010 (1088th meeting of the Ministers’ Deputies);
4. agreed to resume consideration of this item if Israel raised an objection concerning the accession of Brazil to this Convention.”

4.b CM/Del/Dec(2010)1090/10.2a E / 9 July 2010

Council of Europe’s Convention on Cybercrime (ETS No. 185) - Request by Argentina to be invited to accede (GR-J(2010)12)

Decisions

“The Deputies

1. took note of the request of Argentina to be invited to accede to the Council of Europe's Convention on Cybercrime (ETS No. 185) and noted that the Committee of Ministers agreed in principle to granting this request;
2. instructed the Secretariat to consult the non-member state which is a Contracting State to the Convention, i.e. the United States of America, and set 31 August 2010 as the deadline for a reply;
3. agreed that, if there was no objection from the United States of America, the decision to invite Argentina to accede to the Convention on Cybercrime (ETS No. 185) would be regarded as adopted on 16 September 2010 (1091st meeting of the Ministers’ Deputies);
4. agreed to resume consideration of this item if the United States of America raise an objection concerning the accession of Argentina to the convention.”

4.c CM/Del/Dec(2010)1090/10.2b E / 9 July 2010

Council of Europe’s Convention on Cybercrime (ETS No. 185) - Request by Australia to be invited to accede (GR-J(2010)11)

Decisions

“The Deputies

1. took note of the request of Australia to be invited to accede to the Council of Europe's Convention on Cybercrime (ETS No. 185) and noted that the Committee of Ministers agreed in principle to granting this request;

2. instructed the Secretariat to consult the non-member state which is a Contracting State to the Convention, i.e. the United States of America, and set 31 August 2010 as the deadline for a reply;
3. agreed that, if there was no objection from the United States of America, the decision to invite Australia to accede to the Convention on Cybercrime (ETS No. 185) would be regarded as adopted on 16 September 2010 (1091st meeting of the Ministers' Deputies);
4. agreed to resume consideration of this item if the United States of America raised an objection concerning the accession of Australia to the convention."

4.d CM/Del/Dec(2010)1080/10.1E / 29 March 2010

**Council of Europe Ad hoc Committee for the revision of the Convention on Administrative Mutual Assistance in Tax Matters (CAHTAX) –
Draft Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127)
(CM/Del/Dec(2009)1073/10.6, Parliamentary Assembly Opinion No. 277 (2010), CM(2010)26, CM(2010)26 add, DD(2010)157)**

Decisions

"The Deputies

1. took note of the Parliamentary Assembly's opinion on the draft Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127);
2. adopted the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127), as it appears at Appendix 8 to this volume of Decisions¹¹;
3. took note of the declaration made by the member states of the European Union;
4. agreed, subject to a corresponding decision by the Council of the OECD, to open the amending Protocol for signature on the occasion of the OECD Ministerial Council meeting "From Policy driven recovery to sustained growth" (Paris, 27-28 May 2010);
5. took note of the Explanatory Report to the amending Protocol, as it appears in document CM(2010)26 add."

4.e CM/Del/Dec(2010)1090/10.4 E / 9 July 2010

**European Committee on Crime Problems (CDPC) – Draft Third Additional Protocol to the European Convention on Extradition (ETS No. 24) and its Explanatory Report
(CM/Del/Dec(2010)1075/10.3b, CM(2009)187, CM(2009)187add1 and Parliamentary Assembly Opinion No. 278 (2010))**

Decisions

The Deputies

1. took note of Parliamentary Assembly Opinion No. 278 (2010) on the draft Third Additional Protocol to the European Convention on Extradition (ETS No. 24);
2. adopted the Third Additional Protocol to the European Convention on Extradition (ETS No. 24), as it appears at Appendix 14 to the present volume of Decisions¹², and took note of its Explanatory Report, as it appears in document CM(2009)187add1;
3. agreed to come back to the issue of the date and place of the opening for signature of the Protocol at a forthcoming meeting.

¹¹ This Protocol is published on the treaty website of the Treaty office of the Council of Europe: <http://conventions.coe.int/>

¹² This Protocol will be published on treaty website of the Treaty office of the Council of Europe: <http://conventions.coe.int/>

APPENDICES

APPENDIX I

Parliamentary Assembly Resolution 1722 (2010)¹³ “Piracy – a crime and a challenge for democracies”

1. The Parliamentary Assembly is concerned at the upsurge of piracy, which has become endemic in some stretches of sea, 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 pirates 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.

¹³ 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 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 and other relevant human rights instruments. It also recalls 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 European Convention of 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, 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;

14.3. recalling its Recommendation 1858 (2009) on Private military and security firms and 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 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;

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

15.3. draw up rules on the treatment of pirate suspects 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 prosecution of pirate suspects;

15.5. seek appropriate ways in which the existing international legal framework can be adapted to face current needs of policing 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 pirate suspects 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 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.

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 generating piracy, in particular Somalia;

17.2. 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;

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 outside, which mastermind pirate attacks and ensure that they 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 occurring.

APPENDIX II

Parliamentary Assembly Resolution 1732 (2010)¹⁴ **“Reinforcing the effectiveness of Council of Europe treaty law”**

1. The Parliamentary Assembly underlines the key role of the Council of Europe in drawing up human rights standards and its major contribution to the development of international law through its treaties. The Assembly is committed to ensuring that these standards are fully applied.
2. The Council of Europe's treaties embody the Organisation's shared values and constitute a fundamental body of law.
3. As the political driving force of the Council of Europe, the Assembly has initiated many of these conventions and welcomes the successful development of this European legal acquis.
4. The Assembly emphasises that many Council of Europe treaties deal with pressing issues and include ground-breaking provisions to supplement existing international law.
5. The Assembly welcomes the fact that the Council of Europe has laid the foundations of an innovative and coherent body of European law, particularly in its special fields of expertise of human rights' protection, democracy and the rule of law. This body of conventions, covering the entire continent, forms the basis for a Europe without dividing lines.
6. One distinctive feature of Council of Europe treaty law is the independent machinery established by certain conventions to monitor their implementation, the most advanced being the European Court of Human Rights. Thanks in particular to these monitoring arrangements, the Council of Europe's treaty law has proved its added value and shown itself to be effective.
7. However, the Assembly regrets that the authority of Council of Europe treaty law is adversely affected by the excessively low member state participation in certain conventions. It calls on all the member states to ratify the Organisation's “core treaties” as a matter of priority, particularly those provided with monitoring mechanisms.
8. It also notes that certain treaties are outdated or even obsolete and that a minority of them have never come into force even more than 20 years after their adoption.
9. If Council of Europe treaty law is to retain its relevance and value, its conventions must reflect the realities of present-day society.
10. The Assembly believes that two steps must be taken to make Council of Europe treaties more effective and ensure that they are implemented. Firstly, there must be increased member state participation in those treaties, in other words a larger number of ratifications. Secondly, the relevance of Council of Europe treaties must be ensured by updating them, by establishing procedures for abrogating those that are clearly obsolete and withdrawing those that have not come into force within a certain number of years of their adoption.
11. The Assembly calls on member states to:
 - 11.1. ratify, as a matter of priority, what the Assembly considers to be the core Council of Europe treaties (see Appendix) with as few reservations as possible;
 - 11.2. withdraw their reservations, derogations and restrictive declarations concerning Council of Europe treaties, particularly the European Convention on Human Rights.

¹⁴ Text adopted by the Standing Committee, acting on behalf of the Assembly on 21 May 2010 (see Doc. 12175, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Prescott).

12. The Assembly invites each national parliament to:

12.1. require its government to submit during each legislature a report on its policy on ratifying Council of Europe conventions, as is already the case in certain member states;

12.2. instruct its foreign or European affairs committee and, where appropriate, those on legal affairs and human rights to hold debates on Council of Europe activities in the legal and human rights fields, with particular emphasis on the application of the corresponding legal instruments;

12.3. report to it regularly on the progress of national procedures for ratifying Council of Europe treaties and explain to it, where necessary and in a spirit of dialogue, any difficulties encountered.

Appendix to Resolution 1732 (2010) - Core Council of Europe treaties

Human rights (including minority rights)

- Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5)
- Protocol No. 1 (ETS No. 9 - protection of property)
- Protocol No. 4 (ETS No. 46 - freedom of movement, prohibition of expulsion of nationals and prohibition of collective expulsion of aliens)
- Protocol No. 6 (ETS No. 114 - abolition of the death penalty)
- Protocol No. 7 (ETS No. 117 - various: immigration legislation, criminal law and equality)
- Protocol No. 12 (ETS No. 177 - general prohibition of all forms of discrimination)
- Protocol No. 13 (ETS No. 187 - abolition of the death penalty in all circumstances)
- Protocol No. 14 (CETS No. 194 - reform of the Court)
- European Social Charter/European Social Charter (revised) (ETS No. 35 and ETS No. 163)
- Additional Protocol to the European Social Charter (ETS No. 128 – additional rights)
- Protocol amending the European Social Charter (ETS No. 142 – reform of the supervisory machinery) (not yet in force)
- Additional Protocol to the European Social Charter (ETS No. 158 – providing for a system of collective complaints)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and its amending protocols
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108)
- European Charter for Regional or Minority Languages (ETS No. 148)
- Framework Convention for the Protection of National Minorities (ETS No. 157)
- Council of Europe Convention on Trafficking in Human Beings (CETS No. 197)

- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)

Legal co-operation in criminal matters/Combating terrorism

- European Convention on Extradition (ETS No. 24)
- Additional Protocol (ETS No. 86 – prohibition of extradition for political offences and further reference to the ne bis in idem principle)
- Second Additional Protocol (ETS No. 98 – further provisions)
- European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)
- Additional Protocol (ETS No. 99 – redefines the provisions of the Convention)
- Second Additional Protocol (ETS No. 182 - cross-border crime and data protection)
- European Convention on the Suppression of Terrorism (ETS No. 90)
- Amending Protocol (ETS No. 190 – limiting the exceptions to the treaty's provisions)
- Criminal Law Convention on Corruption (ETS No. 173)
- Additional Protocol (ETS No. 191 – extending its scope to persons exercising quasi-judicial functions)
- Civil Law Convention on Corruption (ETS No. 174)
- Convention on Cybercrime (ETS No. 185)
- Additional Protocol (ETS No. 189 – criminalisation of racist acts)
- Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

APPENDIX III

“The protection of human rights in emergency situations” – Parliamentary Assembly Recommendation 1865 (2009)

*(Adopted by the Parliamentary Assembly on 27th April 2009
At the 11th sitting)*

1. The Committee of Ministers notes with interest Parliamentary Assembly Recommendation 1865 (2009) on “The protection of human rights in emergency situations”, which it has brought to the attention of the members states’ governments. It has also communicated it to the Steering Committee for Human Rights (CDDH) and to the Committee of Legal Advisers on Public International Law (CAHDI) for comments. The comments received are appended to this reply.
2. The Committee of Ministers agrees with the Parliamentary Assembly that as the declaration of a state of emergency entails restrictions on the rights and freedoms of individuals, it must be used with utmost care and as a means of last resort only. It must never become a pretext to restrict the exercise of fundamental human rights unduly.
3. The Committee of Ministers observes that under Article 15, paragraph 3 of the European Convention on Human Rights (ETS No. 5), a High Contracting Party derogating from its obligations under the Convention shall keep the Secretary General fully informed of the measures it has taken and the reasons therefore. He/she shall also be informed when the measures cease to operate. The Secretary General has the possibility to request supplementary information from the High Contracting Party concerned during and after the state of emergency and has made use of this possibility on several occasions in the past. The Secretary General can transmit the information received to other member states and to the relevant bodies within the Organisation.
4. As to the Assembly’s recommendation to add more rights to the list of those that are currently non-derogable under Article 15 of the Convention, especially rights whose suspension is not essential even in a state of emergency, the Committee of Ministers agrees with the CDDH, that in the light of the Court’s role in assessing the national margin of appreciation, it is not necessary to take such a step. It recalls that although it is not for the Court to say what measures are best adapted to situations of emergency because this comes under the direct responsibility of governments, the Court has nevertheless confirmed that “Contracting Parties do not enjoy an unlimited power of appreciation. It is for the Court to rule on whether, inter alia, the states have gone beyond the “extent strictly required by the exigencies” of the crisis. The domestic margin of appreciation is thus accompanied by a European supervision. At the same time, in exercising its supervision the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation”.
5. Recalling the subsidiary nature of the Convention’s control mechanism, the Committee of Ministers agrees with the Assembly about the usefulness of a possibility for judicial scrutiny at national level of the validity of a state of emergency and its implementation. It also agrees that the legislature could have an important role to play in scrutinising the decision-making process.

Appendix 1 to the reply

Comments by the Steering Committee for Human Rights (CDDH)

1. The Steering Committee for Human Rights (CDDH) notes with interest Recommendation 1865 (2009) of the Parliamentary Assembly on “The protection of human rights in emergency situations”, which deals with a crucial problem. At the moment of a declaration of a state of

emergency, the level of surveillance at the national and at the European level must be effective in order to respect human rights, with the relevant Council of Europe control mechanisms fully playing their role.

2. The Committee has already looked into situations where fundamental rights are at risk of being violated, under the pretext of protecting them, particularly within the framework of drafting the Guidelines of the Committee of Ministers on Human Rights and the Fight against Terrorism, adopted on 11 July 2002. Following from Article 15 of the European Convention on Human Rights and the Court's jurisprudence, it is intended that when the fight against terrorism intervenes in a state of war or public danger which threatens the life of the nation, it is possible to unilaterally adopt measures temporarily derogating from certain obligations which follow from international human rights instruments, but only to the extent strictly required by the exigencies of the situation, as well as within the limits and under the conditions fixed by international law. It is emphasised that states may never, whatever the acts of the person suspected of terrorist activities, or convicted of such activities, derogate from the right to life as guaranteed by these international instruments, from the prohibition of torture or inhuman or degrading treatment or punishment, from the principle of legality of sentences and of measures, nor from the ban on the retrospective effect of criminal law (Guideline XV).

3. The CDDH takes note of the suggestion of the Parliamentary Assembly to grant to the Secretary General, upon the receipt of a declaration of derogation in accordance with Article 15 of the Convention, the possibility to request additional information during and after the state of emergency, in order to pass this information on to other member states and affected bodies within the Organisation. It recalls that the legal framework for the exercise of this competence by the Secretary General already exists in paragraph 3 of Article 15 of the Convention.

4. The CDDH nevertheless recalls that the Court affirmed its competence for exercising control over the existence of a public danger threatening the life of the nation: "it is for the Court to determine whether the conditions laid down in Article 15 for the exercise of the exceptional right of derogation have been fulfilled in the present case". The Court does not exercise this competence in abstracto, but only in the event of a concrete situation which has been brought to its attention following an individual or state application.

5. In addition, if it is not for the Court to say what measures are best adapted to situations of emergency because this comes under the direct responsibility of governments, the Court has nevertheless confirmed that "Contracting Parties do not enjoy an unlimited power of appreciation. It is for the Court to rule on whether, inter alia, the states have gone beyond the "extent strictly required by the exigencies" of the crisis. The domestic margin of appreciation is thus accompanied by a European supervision. At the same time, in exercising its supervision the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation".

6. Rather than extending the list of rights in relation to which no derogations can be made under Article 15 of the Convention, the CDDH wants to underline the crucial role of the Court in assessing the national margin of appreciation.

Appendix 2 to the reply

Communication by the Chair of the Committee of Legal Advisers on Public International Law (CAHDI)

In this recommendation, the Assembly invites the Committee of Ministers to look into ways to elevate the level of scrutiny applied to declarations of a state of emergency, in particular by considering the opportunity of granting the Secretary General, upon receipt of a declaration of a derogation under Article 15 of the European Convention on Human Rights (ETS No. 5), the possibility to request supplementary information during and after the state of emergency, and to

transmit this information to all Contracting Parties, the Chairperson of the Committee of Ministers, the President of the European Court of Human Rights, the Council of Europe Commissioner for Human Rights, as well as the Presidents of the Parliamentary Assembly and of the Congress of Local and Regional Authorities of the Council of Europe.

Besides, the Assembly proposes considering of a possibility of adding more rights to the list of those that are currently non-derogable under Article 15 of the European Convention on Human Rights, especially with respect to rights whose suspension is not essential even in a state of emergency, as is the case in Article 27 of the American Convention on Human Rights.

The CAHDI received the text of this recommendation and the invitation for presenting its comments after its September meeting (Strasbourg, 10-11 September 2009). Since the next meeting of CAHDI is planned for 18 and 19 March 2010 the Committee will not be able to consider this request of comments before the deadline, namely 15 December 2009.

However, the President of CAHDI considers it important to underline that the questions raised by the Recommendation 1865 (2009) would in any case require an amendment of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

APPENDIX IV

Interim reply to Parliamentary Assembly Recommendation 1871 (2009) “Ban on cluster munitions”

*(Adopted by the Committee of Ministers on 7 July 2010
at the 1090th meeting of the Ministers' Deputies)*

1. The Committee of Ministers has carefully reviewed Parliamentary Assembly Recommendation 1871 (2009) on a “Ban on cluster munitions”, in the light of Parliamentary Assembly Resolution 1668 (2009), and both texts have been brought to the attention of member states' governments. It has also communicated them to the Steering Committee for Human Rights (CDDH) and to the Committee of Legal Advisers on Public International Law (CAHDI).
2. The Committee of Ministers is fully aware of the suffering caused by cluster munitions to civilians and of the dangers these weapons expose them to. Cluster munitions also impede post-conflict rehabilitation and reconstruction and can delay or prevent the return of refugees and internally displaced persons as well as negatively impact on national and international peace-building and humanitarian assistance efforts. The Committee agrees with the Assembly to ban those cluster munitions that cause unacceptable harm to civilians and have other severe consequences that can persist for many years after use.
3. The Committee welcomes the fact that since the adoption of the Assembly's recommendation, the number of ratifications of the Convention on Cluster Munitions has increased to 30 and that thus the convention will enter into force on 1 August 2010. It notes that a large number of Council of Europe member states have either ratified or signed the convention (ratifications: 17; signatures: 15) and encourages all member states which have not yet done so to sign and ratify as soon as possible. It agrees with the Assembly that pending such time as they become parties to the convention, they should sign and ratify Protocol V on Explosive Remnants of War to the UN Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects.

APPENDIX V

Reply to Parliamentary Assembly Recommendation 1888 (2009) – “Towards a new ocean governance”

*(Adopted by the Committee of Ministers on 7th July 2010
“at the 1090th meeting of the Minister’s Deputies”)*

1. The Committee of Ministers has taken note of Parliamentary Assembly Recommendation 1888 (2009) on "Towards a new ocean governance". It has brought it to the governments' attention and transmitted it to the competent committees for their observations or comments.
2. The Committee of Ministers deems it important that states pursue a common maritime policy aimed at guaranteeing the protection of resources and the oceans' role and security with regard to the new threats referred to in the recommendation and set out in Parliamentary Assembly Resolution 1694 (2009). It shares the Assembly's interest in the EurOcean project aimed at co-ordinating maritime scientific and technological information by establishing an intergovernmental information network for a better approach to marine areas and their potential.
3. With regard to the proposals contained in the recommendation concerning a new legal and institutional framework to establish a new form of ocean governance, the Committee of Ministers considers that the Council of Europe is not the most appropriate organisation to address these issues. Given, in particular, the global reach of the law of the sea, it deems that the United Nations remains the institution best suited to debate regulation of the use of the seas and the oceans.
4. The Committee of Ministers stresses the relevance of the comment by the Committee of Legal Advisers on Public International Law (CAHDI) (cf. Appendix to the reply) underlining the importance of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), which continues to constitute the key legal reference in the field of security and conservation of marine resources. The Committee of Ministers considers that it provides a full and adequate legal framework in all the regions concerned and urges those Council of Europe member states that have not yet done so to ratify it at their earliest convenience.
5. In this connection, it is appropriate also to recall – as does the CAHDI in its comments – the importance of the peaceful settlement of disputes in the field of the law of the sea, including as provided for in UNCLOS. In this respect states may use the opportunity provided under UNCLOS to nominate suitably qualified people to lists of arbitrators and to update such lists on a regular basis. On this subject, the Committee of Ministers refers to its Recommendation CM/Rec(2008)9 to member states on the nomination of international arbitrators and conciliators.
6. The Committee of Ministers transmitted the recommendation to the Committee of Senior Officials of the Council of Europe Conference of Ministers responsible for Spatial/Regional Planning (CEMAT), particularly with a view to the CEMAT's 15th session (Moscow, Russian Federation, 8-9 July 2010). The Committee underlines that its Recommendation Rec(2002)1 to member states on the CEMAT Guiding principles for sustainable spatial development of the European Continent states that “the oceans are considered as an important resource for the future” (paragraph 13).

Appendix to the reply

Comments of the Committee of Legal Advisers on Public International Law (CAHDI)

1. On 21 October 2009, the Ministers' Deputies communicated Parliamentary Assembly Recommendation 1888 (2009) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 31 March 2010.

2. In its recommendation, the Parliamentary Assembly called on the Committee of Ministers to:

- instruct a committee of experts to define a legal and institutional framework for new ocean governance;
- invite the Parliamentary Assembly to take part in the work of the committee of experts.

The Assembly also recommended that the Committee of Ministers call on governments of member states to:

- take part in the EurOcean intergovernmental project;
- promote the establishment and proper management of marine protected areas.

3. The CAHDI examined the above-mentioned recommendation at its 39th meeting (Strasbourg, 18-19 March 2010) and adopted the following comments concerning aspects of the recommendation which are of particular relevance to the mandate of the CAHDI (public international law).

4. From the outset, the CAHDI would like to underline the importance of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), which provides the regulatory framework for use of the world's seas and oceans and is the key legal reference in this field. 160 states or entities are parties to UNCLOS, of which 42 are Council of Europe member states. Also large parts of UNCLOS reflect customary law. The CAHDI considers that UNCLOS is the comprehensive legal and institutional framework for oceans governance and does not see the need to establish a new framework. The CAHDI recommends to the Ministers' Deputies to call on Council of Europe member states which have not yet done so to ratify or to accede to this instrument at their earliest convenience.

5. The CAHDI considers that, as before, the United Nations remains the most appropriate institution for discussing oceans governance, given the global reach of the law of the sea.

6. In this respect, the CAHDI also recalls the importance of the peaceful settlement of disputes in the field of the law of the sea, including as provided for in UNCLOS. In this respect states may use the opportunity provided under UNCLOS to nominate suitably qualified people to lists of arbitrators and to update such lists on a regular basis. In this regard, the CAHDI would like to recall its contribution to the Committee of Ministers' adoption of Recommendation CM/Rec(2008)9 to member states on the nomination of international arbitrators and conciliators.

7. The CAHDI considers that the Arctic is not a new region, nor is it currently intensively exploited. Also in this region UNCLOS constitutes the existing legal framework for oceans governance.

8. Finally, in the course of its work, the CAHDI has also taken note of relevant recent cases brought before international courts, including the European Court of Human Rights, concerning directly or indirectly the law of the sea. The CAHDI follows on a regular basis the development of case law in this field.

9. The CAHDI advises the Committee of Ministers that there is no need to establish a committee of experts to attempt to define a legal and institutional framework for oceans governance as requested as it considers the current legal framework to be sufficient.

APPENDIX VI

Rules and procedures for the future elections of the Secretary General – Joint interpretative statement

Having regard to the Statute of the Council of Europe, in particular Article 36.b;

Having regard to the Regulations relating to the appointment of the Secretary General, Deputy Secretary General and Secretary General of the Assembly having the rank of Deputy Secretary General which were adopted by the Committee of Ministers in 1956 with the agreement of the Assembly;

Having regard to the proposals for enhanced dialogue and co-operation between the Parliamentary Assembly and the Committee of Ministers, as they appear in document CM(2009)142 and Appendix to Parliamentary Assembly Doc. 12028 Part II;

1. The Committee of Ministers and the Assembly agreed that the rules for future elections of the Secretary General need to be clarified in respect of the consultation process between the Assembly and the Committee of Ministers and that the gender aspects need to be strengthened.

2. In accordance with Article 36.b of the Statute of the Council of Europe, the election of the Secretary General is a shared responsibility. It is the responsibility of the Committee of Ministers to draw up a list of candidates to be transmitted to the Assembly. It is the responsibility of the Assembly to elect the Secretary General from the candidates included in that list.

3. The criteria for determining the choice of candidates is set out in Article 2 of the Regulations relating to the appointment of the Secretary General. These are:

“a. The recruitment of persons of the highest ability and integrity and suitability for the post to be filled.

b. The qualifications and experience of persons already employed by the Council of Europe shall be taken into consideration, so that members of the Secretariat may have reasonable prospects of promotion.

c. The desirability of ensuring an equitable geographical allocation of appointments among nationals of the Member States subject to the overriding interests of efficiency. No office in the Secretariat shall be considered to be the prerogative of any particular Member State.”

In this connection, the Committee of Ministers will interpret the criteria of “highest ability and suitability” in particular by reference to the decision taken at the 117th Ministerial Session (Strasbourg, 10-11 May 2007) whereby the Committee of Ministers agreed to present to the Parliamentary Assembly “candidates who enjoy a high level of recognition, are well-known among their peers and the people of Europe, and have previously served as Heads of State or Government, or held senior ministerial office or similar status relevant to the post”. When assessing candidates against these criteria, the Committee of Ministers will have a merit based approach and use the appended competence framework it has prepared to that effect (cf. Appendix 2).

4. With a view to strengthening gender aspects, both organs will, taking into account their different responsibilities in the election process, strive to make gender equality a reality, in line with the declaration adopted by the Committee of Ministers at its 119th session in Madrid in May 2009. The Chair of the Committee of Ministers, when calling for candidatures, will strongly encourage member states to put forward candidatures of both sexes. Furthermore and bearing in mind paragraph 3 above, when the Committee of Ministers draws up its recommendation to be transmitted to the Parliamentary Assembly, it will pay due regard to the desirability of ensuring an equitable gender balance of appointments.

5. In accordance with Article 4 of the Regulations relating to the appointment of the Secretary General, the Committee of Ministers shall consult the Assembly through the medium of the Joint Committee before transmitting the recommendation to the Assembly.

6. The Committee of Ministers shall seek the Assembly's views before the Committee of Ministers draws up its recommendation. Therefore, consultation of the Assembly by the Committee of Ministers will take place at an early stage of the election procedure through the Joint Committee. It shall include a discussion on all the candidatures proposed by governments. The revised timeframe, which is part of this statement, to accommodate this early consultation, is set out in Appendix 1.

7. After the consultation of the Assembly within the Joint Committee, the Committee of Ministers will decide on the list of candidates to be included in the recommendation to the Assembly, in accordance with its own procedures. This may include voting when drawing-up the list of candidates. In this context, it is recalled that Article 20.d of the Statute of the Council of Europe applies to the adoption of the recommendation of the Committee of Ministers to the Assembly in the absence of a consensus.

Appendix 1: calendar for the election of the Secretary General

For a mandate beginning on 1 October of year n:

- January n-1: after informal discussions between the President of PACE and the Chair of the CM, PACE confirms the date (June of year n) of the election in the Joint Committee;
- February n-1: the CM fixes the timetable and calls for candidatures to be received before 15 December n-1. The Chair of the CM writes to his colleagues asking for suitable candidates and drawing attention to the "Juncker criteria" and to the gender aspects;
- 15 December n-1: deadline for member states to propose candidates;
- January n: consultation with PACE through the Joint Committee on all proposed candidates
- February n: interviews of candidates by CM, drawing up of the recommendation and subsequent transmission to PACE;
- Before June n: interviews by the Assembly of the candidates included in the recommendation;
- June n: election by PACE;
- 1 October n: start of the mandate of the new Secretary General.

If only one candidate appears in the Recommendation:

- A discussion in the April n PACE part-session or during the March n Standing Committee to seek agreement in the Joint Committee on the submission of only one candidate in the CM recommendation;
- If agreement is reached in the Joint Committee, subsequent transmission of recommendation;
- June n: election by PACE;
- 1 October n: start of the mandate of the new Secretary General.

If the CM considers that no candidates are suitable to appear in the recommendation or if no agreement is reached in the Joint Committee on the submission of only one candidature in the recommendation:

- February/March n: prolongation of deadline for submission of candidates by 2 months;
- May/June n: new consultation in Joint Committee on candidatures proposed by member states, either at the May n Standing Committee or the June n part-session;
- June/July n: interview of candidatures by CM, drawing up of the recommendation and subsequent submission to PACE;
- September n: election by PACE;

- 1 October n: start of the mandate of the new Secretary General.

Appendix 2: Competence framework

The Secretary General is responsible to the Committee of Ministers for the work of the Secretariat and provides secretariat and other assistance to the Parliamentary Assembly. She/he represents the values of the Council of Europe to the outside at the highest levels and provides leadership to a culturally diverse Secretariat. The budgets of the Council of Europe amount to approximately € 300 million in 2010.

a) To assess the “suitability for the post” (Regulations):

- “high level of recognition”, “well-known among their peers”, “has previously served as Heads of State or government, or held senior ministerial office or similar status relevant to the post” (117th Session’s decisions);
- strong and effective relations with governments of member states; ability to work with the Committee of Ministers at all levels;
- demonstrated commitment to human rights, democracy, rule of law;
- very good knowledge of at least one of the official languages of the Council of Europe;
- at least a passive knowledge of the second official language, or a declared readiness to follow appropriate training during the first six months of the mandate.

b) To assess “highest ability” (Regulations):

- political vision and insight on international affairs; including the role of the Council of Europe; strategic thinking;
- leadership skills; trust-building; inspires and motivates a culturally diverse staff of 2,000 from 47 countries;
- skills to manage a large Organisation; delegates authority and empowers staff while remaining accountable; innovative thinking; promotes and accompanies change;
- pro-active planning ability and priority setting, both in his/her responsibility and in making proposals to the Committee of Ministers;
- delivers results, with efficiency and transparency;
- communication skills, both oral and written;
- negotiating skills; ability to tackle sensitive issues while promoting Council of Europe values;
- advocacy skills; proven ability to establish, maintain and use strong and effective networks; capacity to interact effectively with diverse interlocutors (political and cultural figures, officials, NGOs, media, etc); highly developed ability to explain and to persuade.

c) To assess “highest integrity” (Regulations)

- proven personal commitment to the ethical values of the Council of Europe;
- respect for diversity;
- openness to scrutiny.

APPENDIX VII

Terms of reference of the Committee of Experts on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (DH-PS)

1. Name of Committee:	Committee of Experts on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (DH-PS)
2. Type of Committee:	Committee of Experts
3. Source of terms of reference:	The Committee of Ministers on the proposal of the Steering Committee for Human Rights (CDDH)
4. Terms of reference:	
	Having regard to:
-	Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods,
-	the Declaration and Action Plan adopted at the High-level Conference on the future of the European Court of Human Rights (Interlaken, 18-19 February 2010), as endorsed by the Committee of Ministers at their 120th Session (Strasbourg, 11 May 2010);
-	the Declaration and the Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe member states (Warsaw, 16-17 May 2005; CM(2005)80 final, 17 May 2005), in particular chapter I.1. "Ensuring the continued effectiveness of the European Convention on Human Rights";
-	the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5) and Protocol No. 14 to the ECHR, amending the control system of the Convention (2004, CETS No. 194).
	Under the authority of the Steering Committee for Human Rights (CDDH) and in relation with the implementation of the project 2008/DGHL/1403 "Enhancing the control system of the European Court of Human Rights" of the Programme of Activities, the Committee is instructed to:
i.	examine in depth proposals for making it possible to simplify amendment of the Convention's provisions, with such a procedure to be introduced by means of an amending Protocol to the Convention;
ii.	consider in particular including the following elements within a possible Statute and/or new Convention provisions: <ul style="list-style-type: none"> - certain provisions contained in Section II of the European Convention on Human Rights, with revision where necessary; - certain provisions found in the Rules of the Court, with modification where necessary; - other matters, including certain provisions found in other relevant treaties;
iii.	consider which bodies should be involved in the procedure, including in particular the possible roles of the Committee of Ministers, the European Court of Human Rights and the Parliamentary Assembly (see also further below);
iv.	consider the most appropriate modality for the introduction of such a procedure, whether by (i) inclusion of relevant issues in a Statute of the Court, with a new provision in the Convention establishing the Statute and its amendment procedure

	and/or (ii) (a) new provision(s) in the Convention allowing certain other provisions of the Convention to be amended by a simplified procedure;
v.	consider the precise operation of the new procedure, including the questions of: <ul style="list-style-type: none"> - which body or bodies should have the right to propose amendments; - which body or bodies approval should be required to adopt amendments; - whether any decisions on adoption of amendments in the Committee of Ministers should be by majority, and if so whether simple or qualified, by unanimity or by a “non-opposition” procedure of implied consent;
vi.	take into account relevant elements of the Wise Persons’ report, as well as of the contributions made on it by the Parliamentary Assembly, the Court, the Secretary General, the Commissioner for Human Rights and civil society, in reply to the invitation given at the 984th meeting of the Ministers’ Deputies (17 January 2007);
vii.	in addition to the Interlaken Conference, take into account also the results of the Colloquy on the future developments of the European Court of Human Rights in the light of the Wise Persons’ report (San Marino, 22-23 March 2007) and the results of other activities and initiatives relating to the reform of the ECHR system, including those undertaken by Sweden, Norway and Poland.
5.	Composition of the Committee:
5.A	Members
	<p>Governments of member states are entitled to appoint representatives with the relevant qualifications concerning procedures in the framework of international human rights protection instruments, in particular the European Convention on Human Rights.</p> <p>The Council of Europe budget will bear the travel and subsistence expenses of 14 members appointed by the following member states: Iceland (Chair), Armenia, Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Greece, Poland, Russian Federation, Sweden, Switzerland and United Kingdom.</p> <p>The above-mentioned states may send (an) additional representative(s) to meetings of the Committee at their own expense.</p> <p>Members appointed by the following states will have their travel and subsistence expenses borne by their national authorities: Belgium, Germany, Netherlands, Norway.</p> <p>Representatives appointed by other member states may participate in the meetings of the Committee at the expense of these states.</p> <p>Each member state participating in the meetings of the Committee has the right to vote in procedural matters.</p>
5.B	Participants
i.	<p>The following committees may each send a representative to meetings of the Committee, without the right to vote and at the expense of the corresponding Council of Europe budgetary article:</p> <ul style="list-style-type: none"> - the European Commission for the Efficiency of Justice (CEPEJ); - the European Commission for Democracy through Law (“Venice Commission”).

ii.	The Parliamentary Assembly may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of its administrative budget.
iii.	The Council of Europe Commissioner for Human Rights may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of its administrative budget.
iv.	The Registry of the European Court of Human Rights may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of its administrative budget.
v.	The Conference of INGOs of the Council of Europe may send (a) representative(s) to meetings of the Committee, without the right to vote and at the expense of the body that (s)he (they) represent(s).
5.C Other participants	
i.	The European Commission and the Council of the European Union may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses.
ii.	States with observer status of the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses.
iii.	<p>The following bodies and intergovernmental organisations may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses:</p> <ul style="list-style-type: none"> - Organisation for Security and Co-operation in Europe (OSCE) / Office for Democratic Institutions and Human Rights (ODIHR); - Office of the United Nations High Commissioner for Human Rights.
5.D Observers	
	<p>The following non member state:</p> <ul style="list-style-type: none"> - Belarus;
	<p>and the following non-governmental organisations and other bodies:</p> <ul style="list-style-type: none"> - Amnesty International; - International Commission of Jurists (ICJ); - International Federation of Human Rights (FIDH); - European Roma and Travellers Forum; - European Group of National Institutions for the Promotion and Protection of Human Rights <p>may send (a) representative(s) to meetings of the Committee, without the right to vote or defrayal of expenses.</p>
6. Working methods and structures:	
	<p>In order to fulfil its tasks, the Committee:</p> <ul style="list-style-type: none"> - may authorise the participation of other participants and/or observers, without the right to vote or defrayal of expenses; - is authorised to seek, as appropriate and within its budgetary appropriations, the advice of experts, to have recourse to studies prepared by consultants and to consult relevant non-governmental organisations and other members of civil

	<p>society.</p> <p>Bearing in mind the specific nature of this work, it would in the first place be for the Committee of Experts for the improvement of procedures for the protection of human rights (DH-PR) to give appropriate directions to this Committee of experts of restricted composition. The Committee will report on its activities to the DH-PR. The DH-PR will then report to the CDDH.</p> <p>It should be noted that the research, negotiation and drafting work on this issue will take a relatively long time.</p>
7.	Duration:
	These terms of reference will expire on 15 April 2012.

APPENDIX VIII

Ad hoc terms of reference for the Steering Committee for Human Rights (CDDH) to elaborate a legal instrument setting out the modalities of accession of the European Union to the European Convention on Human Rights

1. Name of Committee: Steering Committee for Human Rights (CDDH)

2. Source: Committee of Ministers

3. Completion date:

The CDDH shall execute these terms of reference as soon as possible, but no later than 30 June 2011, date of expiry of these terms of reference.

4. Terms of reference:

To elaborate, in co-operation with representative(s) of the European Union to be appointed by the latter, a legal instrument, or instruments, setting out the modalities of accession of the European Union to the European Convention on Human Rights, including its participation in the Convention system; and, in this context, to examine any related issue.