

**OPINION OF THE COMMITTEE OF LEGAL ADVISORS ON
PUBLIC INTERNATIONAL LAW (CAHDI)
ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1913 (2010)
“THE NECESSITY TO TAKE ADDITIONAL INTERNATIONAL LEGAL STEPS TO DEAL
WITH SEA PIRACY”**

1. On 26 May 2010, the Minister's Deputies communicated Parliamentary Assembly Recommendation 1913 (2010) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 20 September 2010.
2. In its Recommendation, the Assembly recommends that the Committee of Ministers, with the help of a newly mandated expert group or through an already existing mechanism:
 - 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;
 - 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;
 - 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;
 - 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.

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 it from the waters 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.

3. The CAHDI examined the above-mentioned recommendation at its 40th meeting (Tromsø, 16-17 September 2010) and adopted the following comments on aspects of the recommendation which are of particular relevance to the mandate of the CAHDI (public international law).

4. From the outset, the CAHDI agrees that it is necessary for the international community to combat piracy effectively as it is seriously threatening shipping traffic and the safety of people and goods. The CAHDI takes note of the work of the Contact Group on Piracy off the Coast of Somalia, including its Working Group 2 on Legal Issues, as well as the recent report of the United Nations Secretary General on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia¹ and the appointment of Mr Jack Lang as Special Adviser on Legal Issues related to Piracy off the Coast of Somalia. As noted by the President of the Security Council, the report provides a solid base for future work in order to enhance international, regional and national cooperation in bringing pirates to justice. The CAHDI considers that, as in the past, the United Nations remains the most appropriate institution to discuss the issue of piracy and its legal framework, given the global scope of the law of the sea.
5. The CAHDI first wishes to underline the importance of the existing legal instruments in this field, in particular the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS). Articles 100 to 111 of the Convention provide mechanisms of dissuasion and rules on the legal action to be taken following the arrest of persons suspected of piracy on the high seas.
6. The UNCLOS, a large part of which reflects customary law, is the legal reference in this field given that 160 states or entities, 42 of which are Council of Europe member states, are party to the Convention². The CAHDI therefore recommends that the Ministers' Deputies invite the Council of Europe member states which have not yet done so to consider the ratification or accession to this instrument. The Committee also draws states' attention to the importance of bringing their national legislation on combating piracy into line with the related provisions of the UNCLOS so as to enable, as appropriate, the exercise of national criminal jurisdiction.
7. Furthermore, the CAHDI notes the relevance of the 1958 Geneva Convention on the High Seas – which defines piracy in almost identical terms to those used in the UNCLOS – to states which are not party to the UNCLOS. Certain other international texts may also be relevant to the fight against piracy. In this context, the CAHDI refers to the 1988 International Maritime Organization Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Convention), the 1979 International Convention against the Taking of Hostages, the 2000 United Nations Convention against Transnational Crime and the Djibouti Code of Conduct to repress acts of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden.

¹ Reference S/2010/394

² State of signatures and ratifications at the date of 16 September 2010. See following link for further details:
<http://treaties.un.org>

8. Concerning the specific situation in Somalia, mentioned in the Parliamentary Assembly's recommendation, the CAHDI evokes the resolutions taken in this context³ by the UN Security Council pursuant to Chapter 7 of the UN Charter. The CAHDI further takes note of the fact that the UN Security Council has expressed its intention to remain seized of this matter.
9. The CAHDI underlines that Council of Europe member states are required to fulfil their obligations under different international human rights instruments, in particular the European Convention on Human Rights. These concern, inter alia, the right to a fair trial, the prohibition of torture and inhuman or degrading treatment, the non-application of the death penalty and respect for the rights of detainees. In this regard, the CAHDI refers to the well-established case law of the European Court of Human Rights⁴.

Finally, the CAHDI would underline the importance for states to strengthen international co-operation in launching prosecutions against persons suspected of piracy. In this connection, it notes that important initiatives have already been taken at international level and that these are reflected in the recommendation of the Parliamentary Assembly of the Council of Europe. Moreover, the Committee can but encourage member states and international organisations to conclude further bilateral or regional agreements or to develop joint strategies, while taking into account the existing international law and the demands of national legal systems.

³ Resolutions 1816 (2008), 1838 (2008), 1846 (2008), 1851 (2008), 1897 (2009), 1918 (2010) of the UN Security Council and Statement by the President of the Security Council S/PRST/2010/16 of 25 August 2010.

⁴ See, inter alia, recently *Medvedyev and others v. France* judgment of 29 March 2010 [GC], No. 3394/03, paras. 64-65