

INSIGHT EUNAVFOR Atalanta anti-piracy operation

Taking stock six months on

By Nicolas Gros-Verheyde

The European Union's first naval military operation, responsible for combating piracy in the Gulf of Aden, has reached its cruising speed. What looked like being rather a challenge just a few months ago - having European Union warships guarding a part of the world that is more than 5,000 kilometres from Brussels, out of its 'usual' area - has become a reality. Operation Atalanta, or EUNAVFOR, depending on the title used, is only halfway through its mandate, but initial lessons can be learnt and possibilities can be identified for going forward.

SIGNIFICANCE

Being the EU's first naval operation is in itself an innovation. Those who thought up the idea of Europe of defence probably had not thought, ten years ago, that the EU would be able to deploy and lead, without outside help (in particular from America), a maritime operation several thousand

kilometres away from European coasts. Granted, the Western European Union (WEU), the forerunner to the ESDP, led maritime operations during the Gulf war and off the coast of Yugoslavia (see box). But the context was different; it was more a matter of coordinating the commitment of resources.

This operation is most importantly the Union's first international policing operation. One of the officially stated goals is to protect European economic interests, in other words merchant shipping, and protect one of Europe's (and the world's) main supply routes for oil, gas, minerals and various goods. It is also to protect the specific interests of fishermen, particularly in Spain and France, who have a strong presence around the Seychelles.

This is quite a way from the objectives set out in Petersberg, almost 20 years ago, which were essentially aimed at peacekeeping or intervening between two forces, and a lot closer to the new European security strategy that aims to combat a wide range

of threats. It is quietly creeping towards the 'principle of action' of any power or the 'solidarity clause' in the Lisbon Treaty. This can be viewed in a positive or negative light, but it cannot be ignored. Those who are calling for a stronger European defence must not be misunderstood. At the end of this mission, a threshold will have been crossed, both in terms of military as well as political capability. In this way, Atalanta perfectly achieves the goal written in Article 2 of the Treaty on the European Union, to "assert its identity on the international scene".

In a highly strategic area, Atalanta demonstrates the EU's capability as a 'global' force, a structure that is both military and civilian, political and legal. Although no official will openly admit it, the EU has 'overtaken' the Americans and NATO. The latter had had a presence in the area since 2002, under the operation Enduring Freedom, and were already involved in the anti-piracy fight, but without being equipped with a specific force. As a result,



In a highly strategic area, Atalanta demonstrates the EU's capability as a 'global' force

the EUNAVFOR operation has had a knock-on effect, with the Americans creating a new force, the CTF151, specifically dedicated to the fight against piracy and bringing together American ships (which have links with the Turks).

STRUCTURED OPERATION

Operation Atalanta is the only really structured anti-piracy operation in the Gulf of Aden (and in the Indian Ocean). Unlike the other forces in the area, the European force is there permanently, has a structured command, with organised links to maritime industry (MSCHOA), legal agreements with third countries that benefit all participants (including non-EU members), and enjoys onshore logistical support in Djibouti, thanks to the permanent French base there. Atalanta is one of the only operations, among recent military operations by the European Union, and even the UN, where capabilities are not a crucial problem. "Although the head of an operation always wants more resources, we can say that we have the necessary resources," confided Phil Jones, head of the operation when it started. And, indeed, the turnaround of boats is carried out smoothly. If needed, member state ships passing through the region, be they national or under the Atlantic alliance, provide occasional reinforcement or a transition between two shifts.

HESITANCE

While Spain and France, made aware of the situation very early on because of pirate attacks on their boats (fishermen, leisure boats), quickly pushed for a European naval operation, many countries were more hesitant (United Kingdom and Italy in particular) for different reasons (economic and/or political). As a result, the operation almost did not see the light of day. Some countries would have preferred to have seen NATO lead the operation. For many months, the two organisations (the European Union and NATO) prepared, in parallel, two operations. In October, during the Budapest summit, the alliance was still intending to launch a generation of forces to launch its operation.

At the United Nations, a vote on two successive resolutions, on 15 May and 2 June (1814 and 1816), made it legal to use an international operation by appeal-

ing to member states. The first request to members was to ensure the safe passage of boats from the World Food Programme (WFP). The second authorised the use of force (Chapter VII of the United Nations Charter) against acts of piracy and to enter into Somali waters simply by notifying the Somali transitional government.

At the same time, preparations for an operation were picking up pace at a European level. The Council of foreign affairs and defence ministers approved the principle of an operation, on 26 May, and insisted on the need for a wider participation from the international community in these escorts. But the delicate question of the legal framework for the operation (in particular the procedure of arrest and transfer of pirates) complicated discussions. And the 27 still did not manage to agree on the details of the operation. On the agenda for the foreign affairs ministers' meeting, on 22 July, the 27 member states acknowledge that the file is not yet ready. On 5 August 2008, the concept of crisis management is approved (by written procedure). But the crisis in Georgia that occurs a few days later rallies minds and diplomats in the weeks that follow.

For want of anything better, on 15 September 2008, the Council decided to set up a coordination unit (EUNAVCO) "to support surveillance and protection operations". The unit's joint action is immediately approved, on 19 September.

But the pirates do not stop. Blow by blow in September, they turn to different prey: a pleasure sailing boat (the Carré d'As), an

oil tanker (the Front Voyager) and above all a Ukrainian ship (the Faina), carrying tanks and rocket launcher weapons to Africa (Kenya or South Sudan depending on the source). The need for action is felt.

It is in fact the ship owners – in the United Kingdom, Italy, Germany - who sweep away the final doubts. The weight of Lloyd and British ship owners, in particular, works in favour of the European operation. When Libby Purves, one of the editors at the *Times*, published a pamphlet accusing the government of inaction, the die was cast.

"Our islands lie more open to blackmail and danger than at any other moment since Henry VIII," she said.

A few days later, London officially endorsed the European operation. But not without something in return. The operation would be managed from the Northwood headquarters (near London) and led by a Brit, Rear-Admiral Jones is considered likely. The operational planning could at last really get going.

At an international level, the 7 October vote on a new UN resolution paved the way for an EU operation since the Security Council welcomed "the ongoing planning process towards a possible European Union naval operation".

On 10 November 2008, the Council approved the joint action to launch Operation Atalanta. The operation was officially launched on 8 December 2008, during the Council of foreign affairs ministers. Its mandate is one year. ■

WEU's naval history

In 1987 and 1988, Western European Union member states decided to respond to the threat posed to the freedom of navigation by mining in the Persian Gulf, provoked by the war between Iran and Iraq. Operation Cleansweep enabled mines to be cleared in a sea lane of 300 miles as of the Strait of Hormuz (the name was used in 2004 by the Bush administration to indicate the hunt for 'terrorists').

Two years later, in 1990, WEU ministers, meeting in Paris on 21 August, agreed to coordinate European naval operations in order to apply a trade embargo on Iraq and Resolution 661 of the United Nations

Security Council. An ad hoc group, made up of diplomats and military, coordinated naval operations.

In 1992, the WEU's Council of Ministers decided that WEU naval forces would go to the Adriatic to monitor the embargo decreed against the ex-Yugoslavia. NATO led its own operation (with roughly the same resources). In June 1993, a single command was put in place. It was Operation Sharp Guard, which began on 15 June 1993. The WEU deployed four ships and a half dozen naval patrol planes. One limited section of WEU staff ensured control of one of the joint naval groups while another was seconded to the NATO headquarters in Naples.

Means, tasks and results

By Nicolas Gros-Verheyde

The European counter-piracy operation has gradually increased its resources since its start-up in early December 2008. Commencing with three to four warships, it had a dozen or so ships (German, Spanish, French, Swedish, Italian and Greek) and three aircraft at the end of May this year. Although the figure varies day by day, the operation mobilises an average of six or seven European ships (frigates and a supply vessel), around ten helicopters (each frigate is equipped with one or two helicopters) and two maritime surveillance aircraft.

Most EU countries are taking part in the operation, including all the states with a navy (Spain, France, Greece, Germany, the United Kingdom, Sweden, Belgium and the Netherlands). Portugal is a noteworthy exception. The other countries are participating by contributing officers to the military staff (Finland, Latvia, Romania). In addition, several non-EU countries have already decided to take part (Norway) or are considering taking part in the operation (Switzerland).

The logistics base (FHQ Log) is situated at the military airport in Djibouti (25 men headed by a British national) and the port of Djibouti. It has the support of the European troops based in the area: France has a permanent base (more than 2,000 troops, transport and fighter aircraft, ships) and Germany also maintains a logistics detachment in the context of Operation Enduring Freedom.

As with other military operations, Denmark is not participating. This is paradoxical considering that its navy, which is present in the Combined Task Force (CTF) coalition, is one of the most active in combating piracy. However, in the absence of the necessary legal frame-

work, pirates who are caught generally end up being released (unless another state requests a transfer, which was the case for the Netherlands in early January after interception of the *Samanyulo*, a vessel registered in the Dutch Antilles).



At the end of May 2009, the EU operation mobilised a dozen warships

COMMAND

The operation is commanded by a small multinational military staff headed by a British rear admiral (Philip Jones for the first six months, followed by Peter D. Hudson), assisted by a deputy - French Rear Admiral Jean-Pierre Labonne (for the first six months) and German Squadron Admiral Torsten Kähler (for the following six months). The command

Other multinational forces

Several other multinational forces are present in the zone. Some are permanent and more or less specialised. The CTF151 coalition, headed by the Americans, includes Korean and Turkish vessels and is specifically dedicated to combating piracy. The others (CTF150, CTF152) are focused more on counter-terrorism as part of Operation Enduring Freedom. Commanded in turn by a coalition member country (Denmark, France and Germany have successively been in command), they can nevertheless lend a hand to counter-piracy operations.

transfer will take place in early June.

The operation headquarters (OHQ) are in Northwood (25 miles north of London), which is also home to the joint command of British forces overseas (Iraq, Afghanistan) and one of NATO's interallied maritime commands.

In the region, naval forces are commanded directly from one of the frigates, with a rotation among several countries. After Greek Commodore Antonios Papaioannou, who commanded from December to March from the Greek frigate *Psara*, a Spaniard, Juan Garat Caramé, took over in April 2009. In August of this year he will pass on the

command to a Dutch officer.

FINANCING

The operation is financed principally by the member states. A maritime patrol vessel, such as an *Orion*, with its crew and maintenance, is estimated to cost €30 million for a full year (according to the Spaniards).

A frigate (in the German budget)

Many states — first of all Russia and India, joined by China, Malaysia, Japan, South Korea and Australia — have deployed vessels to the area. Coast guard vessels from Saudi Arabia, Yemen and Somalia (Puntland and Somaliland in particular) are also present.

NATO has decided to take advantage of the presence in the area, for port visits or routine manoeuvres several times a year, of vessels from one of its standing NATO maritime groups (SNMG). These will carry out a deterrence mission on both legs of their journey, to and from the zone, offering valuable support to the forces already present.

comes to around €40 million for a full year. The operation's total budget therefore amounts to around €300 million. The Athena solidarity mechanism covers only a small fraction of the costs (military staff costs): €8.3 million.

MARITIME SECURITY CENTRE

In parallel with the military operation proper, the European Union has set up a Maritime Security Centre for the Horn of Africa (MSC-HOA). It is under the authority of the rear admiral commanding the operation and based at the OHQ in Northwood.

The objective is to assist vessels in the Gulf of Aden and in the waters of Somalia and the Horn of Africa by providing real-time information on possible risks in these waters and all information and advice likely to reduce the danger of pirate attacks. The MSC-HOA thus advises owners or skippers to register via a secure website the position of their vessels, their route and cargo, so as to be capable of identifying the vessels that need specific assistance and intervening quickly.

The centre can also provide real-

time advice on attacks and on avoidance manoeuvres (use of fire fighting equipment, engine acceleration and zigzagging to create waves).

These arrangements are quite original. This is the first time an EU military operation has made openly available to the main economic stakeholders concerned a dedicated information and intelligence service. Merchant marine specialists also help man the centre, liaising between the maritime industry and the military forces operating in the region. ■

A three-pronged operation

The primary mission of the EU's Naval Force (EUNAVFOR) Atalanta operation is to escort World Food Programme (WFP) ships delivering humanitarian aid to Somalia. Before Atalanta, this task was carried out by countries on an individual basis (France, the Netherlands, Canada). But the WFP ran into difficulties, as recently as in 2008, when it was forced to beg each country, in turn, for their help and protection in escorting these ships.

EUNAVFOR now has means to carry out its mission, which is no mean feat. In early May, over 20 ships were escorted to Somalia, delivering 130,000 tonnes of food and allowing about 1.6-1.7 million people to be fed every day. Not long after the mission began, a WFP ship was also escorted to North Korea. EUNAVFOR's second mission is to guarantee the safety of the "most vulnerable" merchant ships. Of course, as the Atalanta Operation's Commander, Rear Admiral Philip Jones, explained at the start of the mission, "We cannot claim to eradicate piracy with a few ships. But we will make a useful contribution to countering the phenomenon". A twin secure corridor (with separate eastbound and westbound transit lanes) has been set up as part of the mission. A corridor was already in place before EUNAVFOR but was shifted further from the Yemeni coast to avoid surprise attacks.

Around a hundred merchant ships have been escorted in some twenty escorts. Even if all the ships escorted have therefore been able to evade attacks from pirates, the pirates have still, sometimes successfully, attacked ships close to these

convoys. The work is being coordinated closely with other forces in the area, such as the anti-terrorist coalition, whose HQ is in Bahrain (US Navy) or NATO (which has a Standing NATO Maritime Group in the area). "We share information and intelligence on the pirates' activity," explains Rear Admiral Jones. The information is relayed via a secure 'webchat'. Escorts are, in particular, carried out together with the other ships of the forces in the area (Combined Task Force - CTF - NATO, Russia, India).

The third mission is to deter and detain pirates. This is an aim, which, without being a priority, has today become one of the keys to the success of the operation. The number of pirate attacks has been continuously on the rise for a year (see box) but two factors can help in the assessment of the operation's effectiveness. Firstly, the level of 'successful' attacks has gone down. From nearly one in two being successful, one in four were successful in the first quarter of 2009. Secondly, the number of arrests and of those handed over for trial is significant (108 arrests and 93 pirates handed over for trial – see details below). Finally, Rear Admiral Philip Jones announced that the multinational forces had eliminated four mother ships in early May without bloodshed. In spite of the risks entailed in the operation, only three people have been injured (one sailor and two pirates) in six months. All the other operations taking place over the same period of time have ended in the deaths of pirates. By contrast, hunting down pirates or releasing hostages (see interview with

Rear Admiral Labonne) is not normally part of Atalanta's mission.

HOSTAGES: UP TO THE FLAG STATE

Military intervention in the event that hostages are taken is solely up to the flag state. Few countries have used force, with most preferring to negotiate. There are two exceptions: France and the US. In an epic operation in early April 2008, after freeing hostages from the Ponant (a CMA CGM cruise ship) by paying a ransom, France intervened directly on Somali territory to

Attacks on the rise

In 2008, the number of acts of piracy in the Gulf of Aden has exploded (up by a factor of three by comparison with 2007), according to a report by the International Maritime Bureau. A total of 111 ships were attacked off Somalia (Red Sea and Gulf of Aden) and 43 were hijacked. In addition, there were 17 attacks in the Indian Ocean (Tanzania, Kenya, Seychelles). This upward trend has continued in 2009. In the first quarter of 2009, 114 ships have been attacked and 29 seized. The danger near the Seychelles and in the Indian Ocean has grown markedly, with one attack out of two or three now taking place in that area. The pirates have between ten and 20 ships and 200 sailors as hostages at any one moment. The total amount of ransoms could be between US\$30 million and US\$150 million.

recover the pirates and part of the ransom. Six pirates were repatriated to Paris for trial. Again, in September 2008, after a yacht, the Carré d'As, was captured by pirates, marine commandos intervened, freed hostages and arrested six pirates (a seventh was killed in the operation). France intervened a third time, in April 2009, when a yacht called the Tanit was taken hostage. The hostages were freed but one was shot and killed during the operation. There was no official identification of who shot the hostage (even if the person seems to be French). Two pirates were also killed and three other arrested. In this type of operation, it is normally the military of the states concerned who act under their own flag. But other ships play a supporting role. For example, during the operation on the Tanit, a German ship, the Mecklenburg-Vorpommern, which had a surgical unit, was given a supporting role.



The arrest of pirates tends to receive high media coverage. Shown here is a German boat capturing pirates in March 2009

INTERCEPTIONS MADE BY ATALANTA

According to an unofficial estimate by *Europolitics*, on 26 May 2009, Operation Atalanta has carried out 108 arrests. Of this number, only 14 have been released and disarmed. Seventy-seven were handed over for trial and 17 are waiting to be transferred.

Most of the suspects (52) arrested by Atalanta have been transferred to Kenya – under an agreement signed with the EU – the others (25) to Somalia or to the Seychelles, through some legal or operational sleight of hand. Some were handed over to Somalia and the Seychelles, where there is no legal agreement with the EU, when national ships left the EU operation briefly to make that decision (these pirates are not therefore in EUNAVFOR's official figures)

The European operation therefore has one of the best records in terms of bringing pirates to trial, with eight out of ten arrested handed over to judicial authorities. According to calculations done by *Europolitics*, this number comes to seven out of ten for national operations, three out of ten for the US coalition CTF151 and a little more than one out of ten for the NATO operation (NATO's procedure being a 'catch and release' policy).

Transfers to Kenya:

- Nine pirates, arrested on 3 March

2009 by the German frigate Rheinland-Pfalz with the help of a US helicopter from the USS Monterey (from CTF151) after attacking a merchant ship (the MV Courier) flying the flag of Antigua. The Hamburg prosecutors' office opened an investigation as the owner of the ship

was German. But the German government wanted to hand the pirates over to the Kenyan authorities. The suspects were handed over to the Kenyan police in Mombasa, on 10 March.

- Seven pirates were handed over, on 7 April 2009, by the German frigate Rheinland-Pfalz after an attack on a refueling ship for the Atalanta fleet, the SPS Spessart, on 29 March. Germany decided against taking up the possible jurisdiction of its courts.

- Eleven men were arrested by the French frigate Nivôse, on 15 April 2009, after an attack on the MV Safmarine Asia, a ship flying the flag of Liberia, and handed over to the Kenyan authorities in Mombasa, on 22 April.

- Eleven men were arrested by the French frigate Nivôse, on 3 May 2009, as they were trying to attack the military ship and handed over – after "reflection" – to the Kenyan authorities in Mombasa, on 8 May. France decided against taking up the possible jurisdiction of its courts.

- Thirteen men arrested on 6 and 7 May 2009 by the Spanish navy after attacks on two ships - the Nepheli (Greek ship flying the flag of Panama) and the Anny Petrakis (Maltese cargo) – were handed over to Kenya by the Marques della Ensanada ship, on 16 May 2009. The 14th pirate arrested was injured during the operation and evacuated to Djibouti. A Spanish judge requested that judgement be made in Spain but the government and

the Spanish prosecutor, who were not very keen on the judge's initiative, were against that.

- Seven pirates arrested by the Swedish corvette, HMS Malmö, on 26 May 2009, after an attack on the Greek ship MV Antonis.

Repatriation to Europe:

- Nine pirates, captured on 22 May by the Italian frigate Maestrale, could be brought to Rome to be tried by the Italian courts, after their attack on the Greek ship Maria K and the American ship Maersk Virginia.

Handed over to authorities in Somalia or the Seychelles:

- Eight Somali pirates, arrested by the small French frigate, Premier Maitre L'Her, on 1 January 2009, after attempting

to attack a cargo ship from Panama, the S. Vénus, were handed over to authorities in Puntland.

- Nine suspects were handed over to Somali coastguards by the Floréal, on 29 January 2009, after they attempted to attack the African Rubis, a ship flying under the Maltese flag.

- Nine men arrested by the Spanish frigate Numancia, on 26 April 2009, in a joint operation with the Indian navy after an attack on Italian cruise ship MSC Melody, were handed over to authorities in the Seychelles. Officially, they were released then recaptured immediately afterwards by Seychelles coastguards who were in the vicinity. This was a necessary way round the problem of there not yet being a direct handover agreement of pirates between the EU and the Seychelles.

Freed on the spot:

- Six men arrested by the German ship the Karlsruhe, on 25 December 2008, released following orders from Berlin. Their weapons were destroyed.

- Five men arrested by the Greek ship Psara after an attack on a Norwegian oil tanker flying the Danish flag, the Sigloo Tor, on 30 March 2009.

- Three men arrested by the French frigate Nivôse, on 30 April 2009, on board what seemed to be a mother ship. Life jackets from a ship captured by the pirates were discovered but no weapon on board or tangible proof was found, which meant that they had to be released. ■

Pirates becoming better organised

By Nicolas Gros-Verheyde

Piracy, its causes and how it is organised still remain a mystery. One of the merits of Atalanta operation is its very ability to identify certain causes and forms of organisation.

THREE CAUSES

Piracy seems to be based on several factors. First of all, poverty. Becoming a pirate in a poor country like Somalia holds the prospect of a guaranteed income. A sailor taken on in an operation can earn several thousand dollars. That is a huge amount if one considers that 'normal' incomes do not exceed US\$1 a day. The starting amount for a piracy operation can be US\$20,000, while the hoped for income exceeds a million euro. Ransoms paid vary between €1.5 million and €3 million. And the risk is very small.

A second element is that the break-up of the Somali state allows, facilitates and encourages piracy. There is a large part of the territory that is beyond its reach, and there are 'centrifugal' trends, expressed in the form of demands for independence (Somaliland, a former British colony) or autonomy (Puntland).

A third aspect is the 'desire for revenge' for the pillage of Somali resources (illegal fishing or the discharge of toxic products). This a vaguer point, but one that Atalanta officials have been able to notice through their contacts with the Somali diaspora in London, as the head of the operation, Rear Admiral Phil Jones recently confirmed.

GANGS

Piracy seems to be the work of several gangs that operate in accordance with a way of life copied from how fishing is organised. They are organised into different groups: those who get involved directly, those who look after the boat and the hostages, and those who negotiate the ransom. There are mother ships, which can go far out to sea, and around which several little skiffs operate. Most pirates are seafaring people – former fishermen, or even former coastguards (some trained by international programmes).

The tools used – be it the skiffs (little fishing boats) or weapons – are fairly basic. The basic weapons are usually old (AK147, RPG) and made in Russia or China, serving more to intimidate than to kill. However, they are equipped with standard communication means – VHS radio, GSM – which allow them to keep up-to-date. And more modern weapons are starting to appear (US-made M16 rifles).



Most pirates are seafaring people – former fishermen, or even former coastguards

Somali pirates have broad autonomy with regards to their tactics, which allows them to change tactics and tackle different situations. "We have also established," explains Rear Admiral Jones, "that mother ships share information about ships sighted or to be attacked". According to several sources, it would seem that some of the pirates have been trained either as military in Soviet schools (cf testimony of a former Soviet Rear Admiral, Sergei Bliznyuk, published in *Gazeta Po Kievski* and reported by *Lloyd List*), or as coastguards by private companies, particularly as part of the international effort to support Somalia (cf Roger Middleton).

While the pirates' goals are crimes at sea: seizing boats and ensuring a fairly quick profit without casualties, the fears of the international community and regional authorities (like in Djibouti) are seeing piracy become more international with the arrival of (European) mafia and bigger, more modern weapons – in particular surface-to-air missiles (Stingers), which could be used against helicopters. Persistent rumours also point to the existence of such weapons but this has never been substantiated. It would be a sign of moving from crime towards terrorism.

GOALS

The strategic interest of the international community – and therefore of EUNAVFOR and other international forces active in the Gulf of Aden – is therefore to rebalance the regional trend towards impunity, by increasing the risk of being caught and thus lowering the attraction for other organised gangs to enter 'the market'.

Until multinational forces arrived on the scene, the only real risk for pirates was drowning. Most of the reported deaths have been for this reason (eg six pirates drowned when their skiff overturned after delivering the ransom for *Sirius Star*).

There are now two other risks: being killed and being taken prisoner. Although no pirates have been killed in an EUNAVFOR operation, as of May, several have been during an operation with a military ship: three in an encounter with the British ship *Cumberland*, under a NATO flag, in November 2008;

five others in two consecutive operations to free hostages, one led by the French navy (*Tanit*), the other by the US Navy (*Maersk Alabama*). The most dramatic case recorded in recent months in the area is the death of 15 people – mostly fishermen from a Thai boat, taken hostage by pirates and sunk by the Indian Navy in what seemed to be a 'blunder'.

The aim of democracies, which cannot aim to kill pirates, is to bring pirates to justice, something that is fraught with difficulties of all kinds – technical, legal, political. But in the end it succeeds. According to our sources, about 200 suspects have been brought before judicial authorities over the course of a year, most often from nearby countries (Yemen, Puntland-Somalia, Kenya, Seychelles), and more rarely from the countries of the flag under attack. Twenty-one have been repatriated to France (15), the Netherlands (five) and the United States (one) to face judgement.

The risk of being caught during an attack on a ship has now risen to about one in three. This is not yet enough of a deterrent for cash-poor pirates. It does, however, 'contain' the number of potential candidates. ■

The operation's legal framework

By Nicolas Gros-Verheyde

All the difficulties of Operation Atalanta centre on the arrest and, in particular, the judging of pirate suspects. Hence the importance of the legal framework of the operation and the arrests. All of this is complicated by the different international and national provisions that do not fit perfectly into a judicial procedure. A simple procedural error can mean that suspects have to be freed.

AUTHORISATION

The basis of the joint action is in Article 14, Article 25, third indentation, and Paragraph 3 of Article 28 of the EU Treaties. Article 14 governs joint actions: "Joint actions shall address specific situations where operational action by the Union is deemed to be required." Article 25 refers to the Political and Security Committee with regard to "the political control and strategic direction" of crisis management operations. Article 28 is the basis for the financial mechanism (solidarity mechanism between member states, outside the Athena mechanism).

UN resolutions, along with the Convention of Montego Bay, provide not just for the legitimate use of force but also the authorisation to go into territorial waters and air space adjacent to Somalia in order to counter piracy. Resolution 1816 of the UN Security Council, adopted on 2 June, authorises, for six months (renewable), states cooperating with the Somali transitional government to "enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea".

States are given the possibility to "use all necessary means" while respecting "international law provisions concerning actions on the high seas". The Somali transitional government must be notified of all the "offers of cooperation". The EU also sent a letter, on 30 October 2008, to the Somali transitional government, "which contains proposals regarding the exercise of jurisdiction against people arrested in the territorial waters of Somalia". Resolution 1846 of the UN Security Council, adopted on

2 December, extends this authorisation for twelve months.

ARRESTS

EU ships can pursue and arrest pirates on the high seas – as international law allows them to (Convention of Montego Bay) and in the territorial waters of Somalia – as allowed by UN Resolutions



Evidence is crucial to all criminal justice proceedings

1816 and 1838 – where other third states have agreed to it. Djibouti has already given its consent and other agreements are being negotiated, notably with the Seychelles. But there are loopholes in the provisions obliging a state to judge people guilty of piracy committed on another territory (or on the high seas) on its territory. UN Security Council Resolutions 1816 and 1838 do not resolve this legal vacuum. They simply make it possible to counter piracy in the territorial waters of Somalia but do not oblige any change in national criminal law. Based on existing international law and differences in national law between member states, Atalanta lawyers have therefore had to craft a preferred legal mode of action.

DEFINITIONS

The international law of the sea has set the framework for intervention against piracy. Thus the 1982 Montego Bay Convention on the Law of the Sea defines piracy and specifies the conditions in which military ships can seize pirate ships. The definition of piracy is very precise: "Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed against another ship or aircraft,

or against persons or property on board". Piracy only applies "on the high seas" or "in a place outside the jurisdiction of any state". NB: in territorial waters, one talks of 'armed robbery'. Faced with an act of piracy, "any state can intervene". There are two conditions: it must be "on the high seas" or "in a place outside the jurisdiction of any state" and only "warships or military aircraft" can intervene as well as ships or aircraft on government service (Article 107). They can seize the pirate ship, the ship taken hostage, the goods of pirates and arrest the pirates.

The convention foresees the right of visit on any ship which "is engaged in piracy" or is "without nationality". The ship that does the boarding must dispatch a ship "under the command of an officer". It can check the documents authorising the ship to fly its flag and "if suspicion remains [...] it may proceed to a further examination on board the ship, which must be carried out with all possible consideration". "If the suspicions prove to be unfounded and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained."

The courts of the state which carried out the seizure may decide upon the penalties to be imposed. It is also the state which ensures responsibility "in case of arbitrary seizure". "Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the state making the seizure shall be liable to the state the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure" (Article 106).

As for the 1988 Convention of Rome for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, developed by the International Maritime Organisation, it obliges all member states to foresee in their national laws the suppression of acts of piracy which take place in its territorial waters or against one of its ships flying its flag or committed by one of its nationals. Fifty-two states are part of it, including European states and the Seychelles, but not Somalia.

COMMUNITY FRAMEWORK

There is no minimal legal framework at the European level. "We don't intend to propose such a framework," said the cabinet of Jacques Barrot, the EU's justice, freedom and security commissioner. But while piracy is not one of the offences where a European arrest warrant can be used, "unlawful seizure of ships" and "organised or armed robbery" are.

Only five states – Germany, Sweden, Finland, the Netherlands (according to a law dating back to the 17th century) and Spain (since November 2008) - have in their laws an expanded jurisdiction allowing them to sit in judgement on pirates of any nationality. Several other states, such as France, can bring pirates to justice if the national interest (the flag borne by the ship attacked or the nationality of the victim) is at stake, wherever the offence took place. Then it is a matter of political or judicial will to pursue the perpetrators of the offence in national jurisdictions.

RULES OF JURISDICTION

People having committed or suspected of having committed acts of piracy or armed robbery in the territorial waters of Somalia or on the high seas, and who are arrested and held for judicial proceedings, as well as the goods that have been used to carry out these acts, are transferred according to the rules set by Operation Atalanta.

- to the competent authorities of the member state or third state taking part in the operation whose flag the ship that carried out their capture flies

- or, if this state cannot or does not want to exercise its jurisdiction, to a member state or any third state that wants to exercise it on the abovementioned people or goods.

One condition is placed on the transfer to a third state. "None of the people can be transferred to a third state if the conditions of this transfer have not been decided with this third state in a manner complying with applicable international law, especially international human rights law, to guarantee in particular that no-one is subjected to the death penalty, torture or any other cruel, inhuman or degrading conduct." Clearly that excludes any transfers to Somalia, admitted a diplomat, given that it is not a state based on the rule of law.

But Yemen also refuses to get rid of the death penalty. In fact, said another diplomat, "few neighbouring states, apart from Kenya, respect this condition".

The big difficulty for Atalanta legal experts (on board the ships or at the HQ) is to know which country's justice system the pirate will be handed over very quickly. The questioning, court hearing and proof-gathering procedures vary depending on the case.

In that sense, the agreement signed with Kenya has simplified the task. Ships'



Conditions apply to pirates' transfer to a third state

commanders apply the Anglo-Saxon procedure of common law, which is in force in Kenya.

A guidebook has been produced, setting out the essential rules and conduct for commanders to adhere to.

AGREEMENT WITH KENYA

Approved by the EU, on 26 February, an agreement, in the form of an exchange of letters, was reached with Kenya, on 6 March. Under the agreement, some of the pirates - or people suspected of acts of piracy or armed robbery - arrested by the ships taking part in the Atalanta military operation (whether they belong to the EU or not) can be brought to justice in Kenya. This exchange of letters has the value of an international agreement and is based on Article 24 of the EU's Treaty, which allows international agreements to be signed in the area of the Common Foreign Security Policy. Funds were released at Community level (initially €1.7 million) to help countries bear the cost of court cases and transferring suspects to their prisons.

EXTRADITION

The text amounts to a real extradition agreement. It contains a number of details on the transfer procedure and the rights of the people transferred. It gives

EUNAVFOR representatives the right to check that the people transferred are being treated well, something which few of those responsible for military operations normally have in a traditional jurisdictional system (except for the EU's rule of law mission, EULEX, in Kosovo).

Kenya accepts the transfer of people detained by EUNAVFOR in connection with piracy and transfers them to the competent authority for investigation and proceedings (the same goes for goods seized). It will not be able to transfer this person to another state without EUNAVFOR's permission.

TRANSFER PROCEDURE

All transfers require the signature of the EUNAVFOR representative and the relevant representative for the Kenyan legal authorities. EUNAVFOR provides Kenya with data on the person being transferred with, as far as possible, the physical condition of the person being transferred, the duration of the transfer, the reason for the arrest, when and where the arrest took place as well as any decision taken with regard to the arrest.

Kenya must keep a precise account of all the people transferred as well as the preceding data. These data are available to the EU and EUNAVFOR (upon a written request to the Kenyan Foreign Affairs Ministry). Kenya also notifies EUNAVFOR of where any person transferred is being held as well as any (possible) worsening of their physical condition and any allegation of ill treatment.

Representatives of the EU and EUNAVFOR can have access to people who are transferred for as long as they are in pre-trial detention. International or national humanitarian agencies can, upon request, be authorised to visit the people who are transferred.

EUNAVFOR must provide assistance to the Kenyan authorities in accordance with its means and possibilities: handing over arrest information, proof, witness statements or affidavits (statements made on oath) or handing over seized goods. Any dispute or problem of interpretation between the EU and Kenya is resolved via diplomatic channels.

RIGHTS OF THOSE TRANSFERRED

A certain number of guarantees are writ-

ten down so that the person transferred enjoys all his/her fundamental rights:

- Presumption of innocence
- The right to be treated humanely and not subject to torture or degrading, inhuman or cruel treatment or punishment. The person incarcerated must in particular be given adequate shelter and food as well as access to medical treatment and to be able to carry out his/her religious rites
- The right to rapidly appear before a judge or legal officer, who must decide, without delay, on the legality of the detention and must order his/her release if it is not legal
- The right to be brought before a court in a reasonable period of time or to be released
- The right to a public and fair hearing by an impartial, independent and competent court established by the law
- The right to be informed rapidly and

in detail, in a language he/she understands, of the nature and reason for the charges against him/her; adequate time and means to prepare his/her defence and communicate with the counsel of



A certain number of guarantees are written down so that the person transferred enjoys all his/her fundamental rights

his/her choice. The suspect must be present when he/she is being judged and can defend himself/herself or be defended by legal help of his/her choice. He/she must benefit from legal help if his/her means do not allow him/her to pay for counsel

- The right to examine the evidence and testimonies for the prosecution
- The right to free assistance from an interpreter if the suspect does not understand or speak the language of the court
 - The right not to testify against himself/herself or to admit guilt
 - The right to appeal the sentence to a higher court, according to the law in force in Kenya
 - The death penalty cannot be applied. Any penalty must be commuted to a prison penalty

In spite of the reticence of some countries (Finland in particular), European diplomats stress that this document gives enough guarantees for the death penalty not to be applied and for suspects not to be subjected to degrading or inhuman treatment.

This position can be reviewed in cases of 'serious doubts' as to respect for provisions of the international convention, it states. ■

INTERVIEW WITH REAR ADMIRAL JEAN-PIERRE LABONNE

Operation limits but does not eliminate risks

By Nicolas Gros-Verheyde

French Rear Admiral Jean-Pierre Labonne served for six months as deputy to the head of Operation Atalanta. Europolitics was able to talk freely with Labonne at several meetings, in particular in Djibouti in March, where the French officer agreed to be interviewed.

In April and in the last few weeks, we have seen an increasing number of attacks not just in the Gulf of Aden but also in the Indian Ocean.

This is a spectacular and alarming development. It reinforces our belief that the system needs to be adjusted by creating a better balance between our interventions in two zones: the Gulf of Aden and the Seychelle Islands. The equation is difficult. We can't lower our guard in the Gulf of Aden. We have planned on strengthening our presence in the south-eastern part of the zone. But this area – the Indian Ocean – is

even more immense than the Gulf. We are studying the possibility of using additional air means to allow for wider coverage.

Can an aircraft stop the attacks?

Not automatically. What is important is to identify suspect vessels. The aircraft we use (maritime patrol) is not a combat aircraft but is equipped with all means of detection, from infrared to radar and observers on board. So we have two options: either a frigate is in the zone and we can easily guide it to detect the parent vessel, or there are no means available, in which case we trigger the alert.

The example of the Tanit (a French sailboat seized by pirates in April) demonstrates that yachtsmen are still venturing into the area. What can be done?

We can't keep a yachtsman from sailing where he pleases but we formally advise those who do not have professional rea-

sons to do so to steer clear of the Gulf of Aden and the Indian Ocean. Because in spite of our efforts the risk remains very high. People need to be aware that this is not really the best place for yachting. The danger is particularly great for sailboats, which are a target of choice due to their slow speed and ease of boarding, but also because a yacht means that there will be someone behind it willing to pay a ransom. The pirates see it as a sailing bank, with the key on the safe, so to speak.

The pirates seem to be well organised.

They use both very unsophisticated means in keeping with their way of life – their arms are quite old – and modern means (satellite telephones, GPS and so on). They're good sailors. They're not amateurs, at least for attacking vessels at around 400-500 nautical miles from shore, which requires endurance at sea and a real maritime culture. They

are also well organised, although their organisation can vary from one region to the next. Those who attack the vessels are distinct from those who stand guard or negotiate and those who keep the hostages.

They also learn very quickly. Our real fear is that the more ransoms are paid, the better equipped they will be for organisational purposes.

What do you recommend to ship owners whose vessels are captured: should they pay the ransom?

We don't really advise ship owners. They are left completely free and this is their responsibility. The logic is to save the lives of crew members. But by paying a ransom, the dynamic of piracy, the lure of gain, is maintained.

Why do you not intervene militarily?

When the pirates take hostages, the nature of the intervention changes and it is no longer in EUNAVFOR's remit. The intervention becomes a state responsibility (flag state or state of nationality of the hostages). Not all states are willing or able to intervene. The intervention conditions are less than ideal: far from the usual bases and in unfamiliar surroundings, requiring technical skills and a high level of control. And, most importantly, a high-level political commitment is needed because ship owners tend to negotiate and pay the ransom.

The risk of failure, with victims among the crew or the hostages, is

considerable. An armed intervention once the pirates are on board is always dangerous. So that is the challenge of our work, reaching the scene before the pirates have a foothold on the vessel. We have to be very fast.

What initial assessment would you make of the operation?



Labonne: "We have developed cooperation terms with the world of maritime trade"

In terms of organisation and build-up, we have managed in just months to build up from scratch a coherent and viable operation with a force at sea. And we have developed cooperation terms with the world of maritime trade, which is very new in itself, because the seafaring world has a tradition of freedom. It has accepted a fair amount of regulation given the risk, such as registration on our MSCHOA system [vessels crossing the zone register their route and the cargo they are transport-

ing in a computerised database - Ed] and the circulation of information.

What about coordination with the other forces present?

Coordination is probably saying a lot. But we regularly trade information not only with NATO and the Americans – which is quite easy – but also with the Russians, the Chinese and the Indians – which is new. And it's working. When a vessel puts out a distress signal, no one gives a thought to its nationality: whoever is closest goes to its rescue, without hesitation...

The acts of piracy seem endless. Is the military solution a stopgap measure?

We are fully aware that the military operation simply limits the risk, without eliminating it. We all know that a long-term solution requires a comprehensive approach to re-equip Somalia with

the instruments of rule of law, justice, a police force, a coast guard capable of controlling not only what happens in the country's territorial waters, but also in the 200-mile zone (exclusive economic zone).

It also requires development, to give the population a source of income through agriculture or fishing. The challenge of changing the situation is huge: people have income of around a dollar a day and a pirate can earn several thousand in a single operation. But Europe can bring about change. ■

Future plans: Seychelles and Somalia

With the misgivings of the start-up period behind them, and in spite of ongoing difficulties, the EU member states have no reluctance whatsoever over continuing the operation or developing it further. Several options for Atalanta's future are being discussed, but the guiding principles have already been agreed: geographical extension of the operation to the Seychelles, tactical evolution, prolongation and a solution for the medium and long term (training for the Somali army and stabilisation of Somalia).

EXTENSION

The 27 member states have given the green light, confirmed on 19 May at a meeting of the Political and Security Committee (PSC), to extension of the mission to the south-eastern section of the zone, around the Seychelles (the option of an overall extension to the Indian Ocean was rejected). The request was made by Spain, backed by Greece and France, based partly on the need to protect tuna fishermen (mainly Spanish and French), whose fishing zone has been reduced.

This extension requires review of the operation plan (OpPlan), the positioning and number of forces required and above all tactics to counter acts of piracy in this huge area. It also requires the signature of several agreements with the Seychelles, for entry into its territorial waters and use of its ports, a status of forces agreement (SOFA) and the possible transfer of arrested pirates. These agreements should be accompanied by financial and material support for the islands (and for Kenya).

TACTICAL EVOLUTION

Extension of the zone also requires a 'review of tactics'. "The means used in the Gulf of Aden cannot be used in the Seychelles," confirmed Atalanta's Commander, Phil Jones. "Pirates can use more isolated bases in the region." This new tactic could include more precise action with regard to parent vessels (location, neutralisation and arrest), using more air detection means (satellites, maritime patrol aircraft) and intelligence.

OTHER PROVISIONS

Several sets of agreements are in progress with third countries, on the one hand for participating in the operation through material or men (Switzerland, Croatia, Ukraine), and on the other for judging arrested pirates (Oman, Tanzania, Seychelles) or facilitating their transfer (Djibouti) to other states.

Discussions are held regularly, in particular with NATO and the American CTF151 coalition, to coordinate operations.

PROLONGATION

EU officials announced their intention, at their informal meeting in Prague last March, to prolong this mission beyond its initial one-year length. "All the ministers' comments on this subject show that they are inclined to continue," noted Javier Solana, high representative for the Common Foreign and Security Policy. The United Kingdom has proposed to continue to use Northwood and several states have said they are willing to contribute to the operation. Another force generation conference could be held in September.

STABILISATION OF SOMALIA

At a donors' conference in Brussels, on 23 April, the international community pledged US\$213 million, or €165 million, to support the African Union's peacekeeping mission in Somalia (AMISOM) and the creation of a Somali police force. This is one third more than what was initially sought by the United Nations. More than half the amount will come from the EU.

The EU Commissioner for Development and Humanitarian Aid, Louis Michel, confirmed that €72 million would be released under the EU budget: €60 million for AMISOM and €12 million for the police force (a year's training and the salaries of 10,000 Somali policemen). On top of this amount, EU member states will contribute around €15 million (Spain €6 million, Italy €4 mn, the Netherlands €1.4 mn and Belgium €500,000). The European Commission is also providing Somalia with funding of €18 million under the 10th European Development Fund (EDF) for development of the rule

of law, and €48 million for humanitarian aid (financed by ECHO).

NEW ESDP MISSION

Based on a French initiative, presented on 18 May at the Council of defence ministers, the Council's services have begun studying the possibility of an ESDP mission aimed at supporting the process of reform of Somalia's security sector (SSR). The ultimate aim is the creation of a strong force of around 6,000 men.

At the conference for the international community, France agreed to train 500 men (a battalion) starting in September. A brief (six-week) training course would be provided, relying on the French forces based in Djibouti (FFDJ). The Arab countries also agreed to finance the salaries paid directly to the Somali government (US\$3 million a month for six months). Other countries (Egypt) will provide material support (uniforms).

The aim is to transform this bilateral initiative into a European operation, what is known as an SSR (security sector reform) mission. The size would be different from the SSR mission in the Congo or the future Althea II mission in Bosnia and Herzegovina, but the objective would be the same: to train a modern, effective and democratic army. It would be an 'offshore' mission, since the soldiers would not be trained in Somalia – owing to the danger involved – but in foreign bases: Djibouti or Burundi (where the UN has a training base) are mentioned frequently.

OTHER PROJECTS

Other ideas have been developed to combat piracy, in particular the creation of counter-piracy centres and strengthening of the coast guards of neighbouring countries (Yemen, Djibouti). Another idea is to improve the training of sea-going staff of merchant vessels or even to place armed (private) guards aboard such vessels. The maritime sector has its doubts about the latter solution, doubts shared by Atalanta officials. "This would contribute to an escalation of the violence and it is no solution for dealing with the pirates," explained Atalanta's Commander, Phil Jones. ■

EUROPOLITICS

THE EUROPEAN AFFAIRS DAILY

The centrepiece of EU news



www.europolitics.info

Yes, I would like to subscribe to **EUROPOLITICS** daily:

- 6 MONTHS, 112 issues (paper version) + unlimited online access at the price of €890⁽¹⁾.
- 1 YEAR, 223 issues (paper version) + unlimited online access at the price of €1,700⁽¹⁾.
- 6 MONTHS, 112 issues (PDF + html) at the price of €765⁽¹⁾.
- 1 YEAR, 223 issues (PDF + html) at the price of €1,450⁽¹⁾.

I would like to receive *Europolitics* in: French English

I would like to receive a free issue of **EUROPOLITICS** daily in: French English

First name: Last name:

Organisation: Activity:

Job title: VAT: No Yes: N°

Address:

Post code: City:

Date and signature:	Country:
.....	Phone: Fax:
.....	E-mail:

Subscription order form to be returned by fax or mail to: **EUROPOLITICS**
Rue d'Arlon 53 / B-1040 Brussels or by fax to: +32 (0)2 732 67 57

HELP US GET TO KNOW YOU BETTER...

YOUR ACTIVITY

- Embassy
- EU institution
- Association, federation, trade union, NGO
- Research, scientific institute, university
- Chamber of commerce
- Media and communication
- Consultant, lawyer
- Ministry and national government
- Enterprise, EU representation
- Finance, bank, insurance
- Other:

YOUR INTERESTS

- Agro-industry and agriculture
- SMEs
- Competition
- General EU policy
- Consumers
- EU-third countries' relations
- Energy Science and research
- Environment
- Security and defence
- Finance, taxation and economy
- Social policy and employment
- Industries and corporate
- Information society
- Justice and home affairs
- Transport Media
- Other:

Please pay upon receipt of your invoice. If the invoice address is different from the delivery address, please indicate it. Note that any cancellation (no e-mail admitted) must be sent at least one month prior to the expiry date. One year subscription will automatically be renewed.
(1) Excluding VAT but including postal charges. Offer reserved to new subscribers. For multi-user licences and special discounts, please contact us. Missing information in the order form will unfortunately not be registered.
In order to keep you informed of our activities, your details will be stored on EIS's files, Rue d'Arlon 53, B-1040 Brussels. Pursuant to the law, you are free to access this information, request corrections and consult the Register of the Committee for the Protection of Privacy. Any subscription implies for the subscriber the full acceptance of general sales conditions available at www.europolitics.info.