

Maritime Security and Piracy - New Challenges for the EU

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ABSTRACT

Der Bereich der maritimen Sicherheit ist für die Europäische Union von großer Bedeutung. Fast der gesamte Außenhandel der EU wird über See-wege abgewickelt und 22 EU-Mitgliedstaaten verfügen über Küstenzugang. Durch das in jüngerer Zeit verstärkt wieder auftretende Phänomen der Piraterie erlangt die Frage der Meerespolitik der EU und auch ihres sicherheitspolitischen Engagements vor dem Hintergrund der ersten maritimen Operation EUNAVFOR Atalanta vor der Küste Somalias eine neue Dimension. Es stellt sich dabei die Frage, ob die EU in der Lage ist, ihre Interessen abzusichern und auch gleichsam als Seemacht aufzutreten. Dabei zeigt sich, dass neben den notwendigen Fähigkeiten auch ein gemeinsames Regime, wie mit den Piraten umzugehen ist, fehlt.

Maritime security is a global issue with a European dimension. 90% of EU external trade and 40% of EU internal trade rely on maritime routes. Taking these figures into consideration, it is obvious that European security interests are at stake in the Strait of Malacca or at the Somali coast, as well as in the Strait of Gibraltar or in the British Channel. Out of the 27 member states, 22 are coastal states. Due to EU enlargement in 2004, the Baltic Sea has virtually become an inland sea for the Union, of which the only non-member is Russia. In total, Europe has a 70.000km coastline along two oceans and four seas i.e. the Atlantic and Arctic Oceans, the Baltic Sea, the North Sea, the Mediterranean and the Black Sea. Thus, the coastline of the EU is seven times longer than that of the US and four times that of Russia.

The EU's maritime regions account for around 40% of its GDP and population. With more than 400 million sea passengers passing each year through European ports, passenger ships and ferry services have a direct impact on the quality of life of citizens living on islands and in peripheral regions. The majority of the activities at sea, such as shipping, are of global dimension and consequently require global rules to ensure a level-playing field for European companies and their workforce.

Furthermore, the maritime surface areas under the jurisdiction of the member states are larger than their terrestrial territory. Including the outermost regions, the maritime territory of the European Union is the world's largest. Similarly, effects of human activities on the marine environment transcend national borders. With this in mind, the Commission noted in its Strategic Objectives for 2005-2009 'the particular need for an all-embracing maritime policy aimed at developing a thriving maritime economy and the full potential of sea-based activity in an environmentally sustainable manner'. In 2003, the European Security Strategy (ESS) qualified piracy as a new dimension of organized crime and in 2008, the report on the implementation of the European Security Strategy (ESS) highlighted piracy as a single issue with respect to the stabilization of the neighbourhood of the EU.

Looking at the issue of maritime security and keeping in mind the structure of the EU, one can clearly see that maritime security can only be dealt with by applying a combination of instruments under the community method as well as second pillar elements. Furthermore, a combination of cross-sectoral policies such as transport, environment, energy, migration, etc. applies. As a consequence of its complex

nature, the Commission started a public debate with the so-called Green Paper on Maritime Policy, proposing a comprehensive approach to issues as diverse as fisheries, shipbuilding, tourism, energy, environmental protection and maritime safety. The main aim of the paper was to combine sectors which were treated separately under a single heading.

An Integrated Maritime Policy (IMP) of the Union

After a full year of consultation which started with the adoption of the Green Paper on Maritime Policy on 7 June 2006, the Commission adopted a Blue Book on Maritime Policy on 10 October 2007. The results of that consultation have been brought together in a separate communication. The Maritime Policy Blue Book sets out a very comprehensive action plan. Therefore, the Blue Book can be seen as a decisive first step towards unlocking the potential of Europe's oceans and seas, and towards facing the challenges of a Maritime Europe. Protecting the maritime ecosystems and at the same time creating new economic growth and jobs is the range of tasks falling under the IMP. The IMP should on the one hand help the EU to make the most of its maritime assets and on the other it should prepare the EU



to face future challenges. The Blue Book identifies five areas of action necessary to launch an Integrated Maritime Policy for the European Union:

- ★ sustainable use of oceans and seas,
- ★ knowledge and innovation,
- ★ quality life in coastal regions,
- ★ European leadership in international maritime affairs and, finally,
- ★ visibility of maritime Europe and its heritage.

Since 2007, the IMP has been providing a framework for a wide range of policy actions and dialogues. It functions as a hub and a catalyst for all EU sea-related policies. Overcoming sectoral divisions, the IMP enhances synergies and stimulates joint initiatives that may not have happened otherwise. Its governance structure consisting of a steering group of 10 commissioners and its inter-services working group, is emulated by national, regional and local authorities, resulting in more effective measures and increased involvement of citizens and economic actors. The action plan from 2007 provided the basis for an ambitious work program. According to the EC progress report, all these areas have seen good progress and all actions announced are on track.

An Integrated Maritime Policy for the European Union.

Brussels, 10 October 2007

Out of 65 actions in the action plan, 56 have been completed or launched so far. Only nine actions remain without any adopted documents. In addition, the EC has commenced a number of maritime activities which were in the beginning not foreseen in the action plan. Therefore, the IMP helps to overcome conflicting competences between various sectors related to the maritime area and provides a basis for an efficient use of the EU's maritime potential. However, a new danger

to Europe's maritime usage has become evident in recent months, namely piracy.

Piracy in Somalia and EUNAVFOR Atalanta

Initially, piracy off the Somali coast was only a threat in the Mogadishu port area where trading ships and humanitarian aid were looted. In 2007, pirate activities spread towards the Gulf of Aden where bigger gains could be made by pirates. Looking at the geopolitical importance of Somalia it is rather obvious why it is a good spot for pirates: More than 15 per cent of global trade passes through the Suez Canal and the Gulf of Aden annually.

A significant part of European energy and commodity supplies and exports thus depends on transit through the Gulf. Thus, maritime freight in this area is an important security issue not only for the EU and Europe in a broad sense, but for all major markets including India, China and the US.

As a consequence of several pirate attacks in 2008, the EU launched its first ESDP naval operation on 10 November 2008 in order to deter and combat piracy off the coast of Somalia and in the Gulf of Aden. This military operation, named EUNAVFOR Somalia - Operation Atalanta, was launched supporting the Resolutions 1814, 1816, 1838 and 1846 adopted by the United Nations Security Council in 2008.

The aims of the operation are as follows:

- ★ the protection of vessels of the World Food Programme (WFP) delivering food aid to displaced persons in Somalia;
- ★ the protection of vulnerable vessels sailing in the Gulf of Aden and off the Somali coast and the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast.

The area of operation (AOO) of a total of 1.4 million square nautical miles is composed of several zones: the south of the Red Sea, the Gulf of Aden and Southern coasts of Somalia up to 500 miles and the

area surrounding the Seychelles islands representing an area comparable to that of the Mediterranean. Several other naval forces such as the US-led coalition CTF-151, NATO, Russian, Indian, Japanese and Chinese vessels also operate in this zone. EUNAVFOR is in permanent liaison with these forces. Each merchant vessel wishing to pass through the Gulf of Aden or off the coast of Somalia shall register in advance on the website of the Maritime Security Center-Horn of Africa, which was set up to facilitate the coordination of maritime traffic.

More than 15 per cent of global trade passes through the Suez Canal and the Gulf of Aden, annually.

As regards law enforcement, measures consist of arrest, detention and transfer of suspects. However, not only military action applies, but there was also a clear need for personnel with judicial expertise. The issued Rules of Engagement allow the EUNAVFOR troops to board ships and use force against pirates where necessary. The military personnel involved in the operation can arrest, detain and transfer persons who are suspected of having committed or who have committed acts of piracy or armed robbery in the areas where they are present. Moreover, they can seize the vessels of the pirates or the vessels captured following an act of piracy or an armed robbery and which are in the hands of the pirates, as well as the goods on board. The suspects can be prosecuted, as appropriate thus far, by an EU member state or by Kenya under the agreement signed with the EU on 6 March 2009 giving the Kenyan authorities the right to prosecute. An exchange of letters concluded between the EU and the Republic of Seychelles on 30 October 2009 allows the transfer of suspected pirates and armed robbers apprehended

by Atalanta in the operation area. This arrangement constitutes an important new contribution to the counter-piracy efforts and is based on the same conditions and framework as the Kenyan agreement.

The operation was scheduled for an initial period of twelve months, till December 13, 2009. After a positive evaluation on 17 November 2009 where the Council welcomed the leading role taken by EUNAVFOR Atalanta in the coordination between the multinational, national and regional naval forces operating in the area to ensure de-confliction, shared awareness and coordination in the disruption of piracy, the Council of the EU decided on 8 December 2009 to extend EUNAVFOR Atalanta for another year, until 12 December 2010. During the first year, more than twenty vessels and aircraft took part in EUNAVFOR, i.e. more than 1 800 military personnel. At present, the following EU member states make a permanent operational contribution to the operation: the Netherlands, Spain, Germany, France, Greece, Italy, Sweden, Belgium and Luxembourg. In addition, a number of other EU military personnel supplement the team at the Northwood Operational Headquarter. But not only EU member states are presently taking part in the operation, Norway has participated since August 2009 and Croatia and Montenegro have also announced their participation in the operation.

EUNAVFOR Atalanta:

www.eunafor.eu

The joint funding of the operation amounts to EUR 8.3 million in the first year. This budget, which is shared between the EU member states on the basis of their GDP, mainly covers the running costs of the OHQ and the FHQ. The common costs for supplying the force are covered according to the principle of cost lie where they fall, so that each country bears the cost of the resources it provides (notably deployment costs, logistical support and pay).

A comprehensive EU approach for Somalia

Operation EUNAVFOR has to be seen in the context of the global action conducted by the EU at the Horn of Africa to deal with the Somali crisis, which has not only political and security but also humanitarian aspects. The EU supports the Djibouti process for peace and reconciliation in Somalia, facilitated by the UN. In this context, the EU welcomed the election of President Sheikh Sharif Sheikh Ahmed on 30 January 2009. Since then, the EU has been trying to support the peace process and has called on all parties in Somalia to ease the suffering of the population and to seize this opportunity to work towards stabilization and development in and around Somalia. The government has also been mandated to elaborate a new constitution which has to be adopted by referendum. Furthermore elections shall take place at the end of the transition period in August 2011. Moreover, the EU and its member states provide financial support in terms of planning and capacity building to the African Union's military mission to Somalia (AMISOM), in order to increase, in particular, the efficiency of the Somali police force and to combat any abuse and serious violation of human rights. EUNAVFOR therefore also has the task of protecting ships helping to sustain AMISOM or deploying AMISOM reinforcements.

The Joint Strategy Paper for Somalia for 2008-2013 provides an allocation of EUR 215.8 million under 10th European Development Fund (EDF) comprising three main sectors of cooperation: governance, education and rural development. On 22 and 23 April 2009, an International Conference was held in Brussels to support the Somali Security Institutions and the AMISOM. Almost USD 213 million was pledged to help the new Somali Transitional Federal Government (TFG) bring about peace and stability. On 17 November 2009, besides welcoming the work of EUNAVFOR, the Council approved a Crisis Management Concept on a possible ESDP operation to contribute to the training of TFG Security Forces and requested further

planning work. The European efforts will be closely coordinated with all relevant actors in the field, in particular the UN and the African Union.

The way ahead

As was demonstrated, the maritime policy and questions of maritime security are gaining importance within the EU. There already exists quite a comprehensive set of legal norms with respect to this policy. However, there is no doubt that further steps have to be undertaken. In addition to cooperation among national authorities of the member states and properly functioning regional arrangements, it is just as important to develop cooperation among various other authorities within the EU. Looking at the current case it would have been necessary to agree between the member states on rules for dealing with pirates. Furthermore, EUNAVFOR Atalanta has clearly shown that new capabilities need to be developed. Without naval capability and numbers, question marks will remain over Europe's maritime security.

Power game in a maritime dimension.

Besides, the example of EUNAVFOR Atalanta underlines that the power game among the various global powers has also evolved in a maritime dimension, and thus it was necessary that the EU is also present and able to dialogue with global and regional maritime players like China and Russia, in addition to the links it has established with the US-led coalition in the area.

Operation EUNAVFOR Atalanta also indicates that the issue of piracy can only be successfully dealt with in a comprehensive manner, including rule of law and support for the judicial systems in the region. This facilitates the prosecution of pirates in fragile countries, such as Kenya



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or the Seychelles, according to international human rights standards. However, the judicial structures in these countries need to be further strengthened. But also with regard to the EU and its member states, the question of judicial harmonisation in the field of piracy needs to be addressed. The United Nations Security Council has passed a series of resolutions under its Chapter VII that give these forces unprecedented legal authority to pursue pirates. While the traditional definition of piracy under international law restricts military responses by outside powers to those carried out on the high seas, the 2008 Security Council resolutions authorize the use of military force within sovereign Somali waters and territory. However, there are only limited options available for prosecuting captured pirates. This leads to the fact that shippers increasingly turn to private security companies and other do-it-yourself solutions. Such a privatization of security implies the danger of vigilantism. Therefore, not only the naval capabilities, but also the European and international legal framework of how to prosecute deterred pirates need to be enforced so as to effectively combat piracy.

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