

EUNAVFOR MED sets sail in troubled waters

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Apprehending pirates in the Indian Ocean is one thing. Defeating the networks through which smugglers traffic migrants through northern Africa is quite another. The European Union's new naval force deployment in the Mediterranean - EUNAVFOR MED - drew criticism from international partners and the general public alike when plans for a "boat-sinking" operation were unveiled, raising fears about unacceptable levels of violence and collateral damage; a European version of Mexico's drug war. Yet the problems of EUNAVFOR MED lie less in clumsy public diplomacy than in the perilous mismatch between its stated objectives and the absence of a clear strategy and mandate, and this creates both operational and political risks for member states. Phase 1 of the operation: surveillance and assessment, has begun with no legal mandate to carry out the crucial phases 2 and 3: seek and destroy, whose military planning and outcomes are undetermined. Despite these limitations, the naval force could nevertheless mark a turning point in the EU's security narrative, because it means that the Union is finally addressing the threats to security and the humanitarian tragedies in its southern neighbourhood.

The EU's 'need for speed'

The EU, through High Representative/Vice-President (HR/VP) Federica Mogherini, has congratulated itself on the unanimity and speed with which a decision was taken, on June 22nd, to launch a common military response - two months after 900 migrants lost their lives in a single shipwreck.

Seen through the narrow prism of the Common Security and Defence Policy (CSDP), the time needed to move from the political initiative to conceive the operation; to identify capabilities; to build consensus for activation by Council decision and start deployment has indeed been remarkably short, even compared to previous fast EU deployments in Congo in 2003 (Operation Artemis) and Georgia in 2008 (a civilian monitoring mission).

The CSDP military operation in the southern central Mediterranean has a mandate to "identify, capture and dispose of vessels as well as enabling assets used or suspected of being used by migrant smugglers or traffickers". Force generation, the usual headache of mounting EU operations (witness Chad in 2008), took only one month to be agreed upon, in line with the initial intention to finalise planning by the Foreign Affairs Council in June 2015.

From a broader angle, however, 'better late than never' may actually be a more appropriate comment, given member states' impotence to deal jointly with the humanitarian tragedy that has been unfolding in the Mediterranean for the past

decade.¹ But it was against the backdrop of a massive loss of life at sea this year (the International Organization for Migration (IOM) estimates 1,200 deaths in April alone, compared to approximately 3,000 throughout 2014) that a somewhat hyperactive Federica Mogherini (with added pressure from her former boss, Italian Prime Minister Matteo Renzi) managed to rally support from all member states for a common naval assault operation. The point of showing solidarity with southern member states to forge a common response to the migrant crisis in the Mediterranean was not lost on those EU member states more exercised by maintaining consensus to address Russia's aggressive foreign policy towards Ukraine.

Scope of the operation and the 'comprehensive approach'

The operational model of EUNAVFOR MED is largely inspired by the EU's naval force Operation Atalanta off the Horn of Africa and in the Western Indian Ocean. Launched in 2008, Atalanta has allowed the EU to acquire valuable know-how in maritime security, namely in deterring and disrupting acts of piracy and armed robbery, not just on the high seas but also ashore (cf. the helicopter gunship attacks to destroy pirates' logistical bases on the coast). This operational experience helped the EU to plan for EUNAVFOR MED, which is embedded in a holistic approach to migration. The latter aims to respond to the immediate need to save lives and address emergency situations, tackle the roots causes of irregular migration and fight traffickers. Indeed, it is only in conjunction with an effective internal strategy that the EU's external action can work. Using her double-hatted mandate, HR/VP Mogherini assembled the first-ever joint meeting of foreign and interior ministers to discuss the migration crisis. The April and June European Councils have also bridged the EU's internal/external policy dialectic in its attempt to reach fair burden-sharing arrangements between member states (for example, relocation, resettlement and return) and cooperation with countries of origin and transit (e.g. readmission, reintegration, development aid and local capacity-building). Thus, EUNAVFOR MED fits into the EU's so-called comprehensive approach to security and development launched in December 2013. One initiative within the framework of the CSDP was to beef up the civilian mission EUCAP Sahel Niger to reinforce local authorities' capabilities in tracking migratory streams.

¹ The origins of the CSDP operation go back 18 months, to the coast of Lampedusa. In November 2013, Italian Foreign Affairs Minister Emma Bonino and Defence Minister Mario Mauro asked HR/VP Catherine Ashton for various measures - including the establishment of a naval rescue operation and the fight against traffickers, the strengthening of FRONTEX, and a discussion with third countries on migration. The options developed were military, civilian and diplomatic. Italy and Greece agreed to act together, but their push towards other member states failed; most refused to fund the Italian-run rescue operation 'Mare Nostrum' and the European Council of December 2013 ended without result. Rome and Athens did not give up, however, and supported by Malta, Spain and Bulgaria, they demanded more European solidarity.

At the same time, Mogherini has spearheaded EU efforts to establish partnerships with, inter alia, the IOM, the UN High Commissioner for Refugees and other members of the UN family, as well as regional partners (such as the African Union and the 'G5' of the Sahel: Mali, Mauritania, Niger, Chad, Burkina Faso) to tackle some of the root causes of fragility in the regions of origin, namely poverty, unemployment and crisis, and decide on joint approaches to stemming migratory streams and fighting human traffickers. These efforts are not restricted to Africa but also extend to Syria, Yemen and other parts of the Middle East.

Unclear strategy and incomplete mandate

In many respects, EUNAVFOR MED is the trickiest CSDP operation in years. Public diplomacy has clearly lagged behind its inception process. Partly as a result of this, civil society organisations and some international partners (namely Ban Ki-Moon during his visit to the European Parliament on May 27th) have reacted negatively to an operation that appears to heighten humanitarian risk by putting migrants in the cross-fire. Mogherini has been on the defensive; stating time and again that the targets are not migrants but “those who are making money on their lives and too often on their deaths”. For the first time in years, the EU is being criticised for overreaction rather than its absence from crises.

The real blind spots of the operation, however, have to do with its strategy, legal mandate and operational practicalities. Phase 1 does not need a UN Security Council resolution, because surveillance is executed in international waters and airspace. But beyond this point there is little indication of what EU forces should do during phases 2 and 3; which means and budget should be used to carry out these tasks; and what conditions have to be met for the Council to decide on the transition beyond phase 1, into Libyan territories.

Success is not assured, either. Attacking traffickers and destroying their means may lead to counter-attacks by the militias that protect these resources, benefit from or organise trafficking in one way or another. Indeed, the EU must calibrate its military activities, particularly when moving within Libyan territorial waters or ashore, to avoid destabilising a political process by collateral damage, by disrupting legitimate economic activity or by creating a perception of having taken sides.

These considerations are especially pertinent in view of the protracted discussions with Russia and China on the language of a UN Security Council resolution. Russia, in particular, is insisting on a watertight mandate to prevent a repetition of what it considered to be an abuse by western nations of a resolution to intervene militarily in Libya in 2011. The discussions in the Security Council revolve, inter alia, around the word “disposal” (read: sinking) of vessels and related assets, “before use”, and the legal definitions of “traffickers” and “smugglers”, who, unlike pirates, fall outside the scope of classic international law.

The alternative legal justification for the implementation of phases 2 and 3 of EUNAVFOR MED would be for the EU to act on the invitation of the legitimate government of Libya. However, with two power centres vying for dominance, any strategy that hinges on the invitation of one of the rivalling parties (i.e. that of the internationally recognised 'government' in Tobruk) risks irking the other (i.e. the Islamist 'government' in Tripoli). The EU's operation would carry serious political risks and might even end in impasse. For this reason the EU is supporting the efforts of UNSG Special Envoy Bernardino de León to mediate an agreement that could lead to the formation of a unity government in Libya.

Implications for the EU's assertiveness in the Mediterranean

Ultimately, as former HR/VP Javier Solana has pointed out, all operations have unknowns and risks. Waiting until all the elements fell into place to execute a detailed Mediterranean operation could have posed a far greater risk. The strategic uncertainty and related risks surrounding EUNAVFOR MED are the by-product of ten years of strategic inertia.

In the current regional climate, action cannot be deferred. A more assertive European presence in the Mediterranean is badly needed, as civilian measures alone have proved ineffective - particularly after the decision in August 2014 to withdraw staff from the EU's Border Management Mission in Libya due to the deterioration of the security situation. Cooperation with NATO's Operation Active Endeavor may contribute to a long-term strategic partnership and mutual support in an area of strategic interest for Europe. It is also significant that military efforts are part of a comprehensive approach to address the root causes of fragility. EUNAVFOR Atalanta demonstrated the EU's capacity to act as an effective security provider in conflict prevention, peace-building and post-conflict reconstruction. EUNAVFOR MED is following the same model, and will, hopefully, be the beginning of more proactive European engagement to restore stability to the Mediterranean.

Although it is too early to draw lessons, four recommendations could help to achieve this goal after phase 1, presumably in September:

1. secure a solid legal base to apprehend and prosecute traffickers, including a precise definition of what is a migrant, a refugee and a trafficker;
2. ensure a strong protection force, adequate military assets and robust rules of engagement to meet the challenges and threats from certain areas near Libya;
3. develop stronger public diplomacy; and, last but not least
4. devise a comprehensive strategy for the Mediterranean as part of both a reviewed European Neighbourhood Policy as well as a revised European Security Strategy, thereby clarifying the EU's tasks in terms of peace enforcement and conflict prevention.

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