

Government Response to the House of Lords European Union Committee

Government Response to the House of Lords European Union Committee's follow-up report on the EU's Operation ATALANTA and beyond.

September 2012

68. Containment of piracy has to remain the primary aim of the current mandate of Operation Atalanta. Nonetheless, elimination must be the longer term goal. This can be achieved only through the stabilisation of Somalia. The new EU Horn of Africa strategy and its CSDP missions are a welcome, but modest, step towards that goal.

69. We welcome the growing involvement of African institutions, such as the African Union (AU), in the resolution of regional issues and we call on the EU, through its Head of Mission and Special Representative, to continue to build a strong relationship with the AU.

Paras 68 & 69 –

We agree that the long-term elimination of piracy in Somalia can only be achieved by tackling the underlying causes of instability that affects Somalia. Following the political transition in Somalia, there is now a real opportunity to address these challenges. We welcome the election of President Hassan Sheikh Mohamud and will encourage the new Somali government to set out its priorities at an early stage. Bringing about long-term stability will certainly be significant in tackling the causes of piracy. We will continue to work with the UN, the EU, and the international community to coordinate a package of support for Somalia, in return for the Somalis' commitment to accountability and transparent resource management.

The EU is addressing the stabilisation challenges in Somalia using its wide range of tools. The launch of EUCAP Nestor, which will help support the region generate the capabilities to tackle piracy themselves, is a key part of this strategy. Combined with EUTM Somalia's ongoing training of the National Security Forces, the EU Special Representative's growing diplomatic efforts and substantial funding programmes from the Commission, the EU is taking an increasingly important role. Fundamental to the EU's efforts is the principle of encouraging greater African ownership, including the African Union (AU). All the EU activities are taken forward in close collaboration with regional partners and with recognition of the need for long term regional ownership.

70. It is widely recognised that Operation Atalanta has been a success, but under current political conditions in Somalia, any reduction in effort will quickly result in a renewed upsurge of pirate activity. There is therefore a need for sustained commitment by the EU.

71. The mandate of Operation Atalanta should be extended beyond December 2014. This would send a clear signal to those organisations and individuals that organise piracy that the EU will not walk away from confronting piracy in the Indian Ocean.

Paras 70 & 71 - We welcome the firm support of the Committee for the mandate of Op ATALANTA, and agree that pressure on the pirates must be maintained in order to prevent a significant resurgence of activity. Whilst any formal decision to extend Op ATALANTA's mandate beyond 2014 is unlikely to be taken in the immediate future, the EU has

demonstrated a firm commitment to its counter-piracy efforts including through enhancing the mandate with agreement on the use of Autonomous Vessel Protection Detachments (AVPDs) and the Disruption of Pirate Logistics Dumps (DPLD). Additionally, the launch of EUCAP NESTOR and a growing EU diplomatic role send further strong signals of increasing EU engagement.

72. Despite the evidence we received recommending that Operation Atalanta should undertake greater protection of Somali fishery grounds, we do not believe that the mission can undertake this additional role as well as protecting shipping. This task should be taken up by another organisation.

73. Although most of the Committee's previous concerns about capability shortfalls have been addressed, problems remain about the Operation's ability to conduct surveillance over such a vast area, given that the piracy has spread so far into the Indian Ocean. We commend in particular the role of the Seychelles in making that broad operational cover far more effective than when we published our earlier report.

Paras 72 & 73 – Currently, the Op ATALANTA mandate includes monitoring fishing off the coast of Somalia. We believe that there is a need for greater protection of the fisheries, though in this regard we note that Somalia has not formally declared its Exclusive Economic Zone, which will be a crucial first step in protecting its maritime resources up to 200 nautical miles from the coastline. Op ATALANTA is only one part of the EU's Horn of Africa Strategy and the international approach to tackling piracy. EUCAP NESTOR ultimately can help build regional capacity to tackle the protection of Somali fishery grounds themselves and help improve regional surveillance.

74. However, the speed with which intelligence gathered in operational centres is transmitted to interested parties is a problem. This must be remedied.

Clearly efficient information transfer is fundamental to the success of responsive counter piracy operations. Both the EU and international partners have invested in improving communications and will continue to make this a priority.

75. We note with satisfaction the high degree of practical cooperation which has evolved since our last report between the very varied international anti-piracy operations and national navies in the Indian Ocean. This includes Russia, China and India.

76. We welcome also the strong spirit of practical cooperation between different international operations located in operational centres such as the Seychelles. This should act as a model for military cooperation in other theatres, especially EU-NATO cooperation.

Paras 75 & 76 - Whilst there is always room for improvement, the three core international counter-piracy forces (the EU's Op ATALANTA, the US-led Combined Maritime Force (CMF) Combined Task Force 151 and NATO's Op OCEAN SHIELD) complement each other well. The three operations provide a variety of effective framework opportunities for third state contributions to anti-piracy efforts to further enhance international cooperation. The Shared Awareness and De-confliction mechanism (SHADE) has helped to ensure that military efforts in the region are effectively coordinated between international partners.

As has been identified, there is good cooperation between the EU's Op ATALANTA and NATO's Op OCEAN SHIELD, both at sea and at the command level in Northwood. We often see that EU and NATO cooperate well in the operational sphere. The main challenge is to ensure that communication improves at the political – strategic level.

77. Given the appreciation of the UK's leadership of this naval operation we recommend strongly that the Government should continue in this role at the next review. UK leadership of Atalanta is effective and it brings credit to the UK.

The UK is committed to continued command of Op ATALANTA from Northwood for the current mandate and welcomes the support from the Committee.

78. It would be desirable for the UK to increase its contribution of vessels to Operation Atalanta. However, we recognise the financial constraints and consider that its command role is a compensation for its limited contribution of vessels.

The UK continually assesses how it can best balance its contribution of naval assets in support of multilateral operations. Whilst we remain committed to identifying opportunities for vessels to participate in multinational naval operations in the region, this must be seen in the context of wider priorities as set out in the Strategic Defence and Security Review (SDSR). Although we currently have no assets under Op ATALANTA, our continued command of the operation demonstrates our ongoing strong commitment to the Operation and we welcome the Committee's comments to this effect. Further, we will look for opportunities to contribute naval assets, where possible.

79. We welcome the EU Atalanta attack on the pirate land base as an effective demonstration to the pirates that they are not invulnerable on land.

We agree with the Committee's assessment. This provides an additional option for the Operation Commander to further enhance his counter piracy strategy to undermine the pirates' operating model.

80. We have revised our view on the carriage of armed guards on ships in the light of the fact that no ships carrying armed guards have so far been successfully pirated and violence has apparently not escalated. We now believe that this practice should continue, provided that the guards are properly trained to a high standard to avoid accidental injury to innocent seafarers, and accredited. The Government and the EU High Representative should so advise all EU Member States.

The government is working to establish a voluntary, internationally recognised regulatory system for private security companies (PSCs) that will help to raise standards globally. We want a system that is effective and affordable and applies to those working at sea and on land. We are playing a leading role in the development of a governance and oversight mechanism for the International Code of Conduct (ICOC) for Private Security Service Providers which has now been signed by over 460 PSCs, a third of them British. Almost half the ICOC signatory companies work in the maritime sector.

We therefore welcome the decision of the IMO's Maritime Safety Committee (MSC) in May 2012 to support the International Standards Organisation (ISO) develop robust professional standards for armed guards working on vessels in the high risk area. The UK and other EU member states are actively engaging in this work.

81. The programme of agreements for judicial process with countries of the region has been successfully initiated, but now needs to be pursued vigorously. The Seychelles appears so far to be bearing a heavier burden than other countries and steps should be taken to ease the pressure on the Seychelles.

There are 1,045 suspects or convicted pirates held in 21 states across the world. The Seychelles currently holds 101 whilst Kenya holds 147; taking the comparative sizes of these countries into account this situation does create a burden across the justice sector in Seychelles. However, there are a number of steps being taken to reduce this burden.

Capacity building assistance is being provided to the Seychellois justice sector by the international community. For example, the UK has provided funding to the UN Office on Drugs and Crime for the work of its Counter Piracy Programme, which has included work with Montagne Posée prison in Seychelles. A new 60 cell block was opened at Montagne Posée in September 2011 to help with the detention of suspected and convicted pirates. UK has provided assistance to the Attorney General's Office by seconding two prosecutors from the Crown Prosecution Service to assist with the prosecution of suspected pirates.

A longer term solution to pressure on Seychellois detention facilities is being implemented by the UNODC's Post Trial Transfer Programme, which returns pirates convicted in regional jurisdictions to Somalia to serve out the balance of their sentences. The programme has so far transferred 17 convicted pirates from the Seychelles to Somaliland under the terms of a bilateral memorandum of understanding (MOU), the agreement of which was facilitated by the United Kingdom at the London Conference on Somalia. Further transfers from Seychelles are anticipated this year.

82. We have some doubts about the wisdom of transferring sentenced pirates back to Somalia. This policy should be pursued with caution, ensuring that all pirate prisons are staffed by personnel who are properly trained and equipped to prevent breakouts. The EU should work with the UN to monitor these prisons.

Regional prison capacity, or lack of it, is the one of the biggest challenges of the regional prosecution model. Regional countries have limited prison capacity, which is now under increased pressure from the detention of suspected and convicted Somali pirates. The long term sustainable solution to this challenge is to build the capacity of the penal sectors in Somalia. In 2011 UK provided £8.75m funding to UNODC's Counter Piracy Programme, \$400k of which was spent on refurbishing Hargeisa Prison in Somaliland to comply with the UN's international prison standards. UNODC have judged that this standard has been reached and Hargeisa is currently the only prison in Somalia to which regionally convicted pirates have been returned.

A British UNODC mentor is currently in post at Hargeisa to assist the prison superintendent with the management and running of the prison e.g. improvements to security and providing more structured programmes for prisoners. Developing best practice in this way will deliver long term benefits to Hargeisa and to the wider prison service in Somalia. The value of this assistance cannot be underestimated – it is a significant achievement to have a Somali prison operating in full compliance with UN international standards.

83. We have concerns about the difference in quality between UN constructed pirate prisons and local prisons, which must lead to problems for the countries concerned, but we see no way of avoiding the problem as the international

community is unlikely in the foreseeable future to pay to upgrade all the prisons in the countries affected.

UN refurbished and constructed prisons are owned and managed by the Somali authorities, albeit with the continued assistance of the UNODC. They are not exclusively for the imprisonment of convicted pirates alone. The intended long term effect of UN assistance is to build capacity and raise the standard across the Somalia penal service as a whole. Continued investment from the international community will help achieve this and should be actively encouraged.

84. We accept fully that imprisonment should be seen as a very real deterrent but the agencies involved should introduce some measure of rehabilitation for those convicted for piracy, particularly for younger prisoners.

UK prison expertise has provided advice, support and training to prisons in Somalia and other countries in the region to introduce or improve their rehabilitation programmes. We will continue to offer this support and will continue to work closely with the UNODC to deliver the provision of opportunities for learning and skills development to all convicted pirates.

85. We reiterate our previous conclusion in our 2009 report that those involved in assembling ransoms in the United Kingdom have a duty to seek consent for its payment and that not to do so, if necessary by filing a Suspicious Activity Report, may result in the commission of a criminal offence. We request that the Government now respond substantively to this recommendation.

Whilst there is no UK law against the payment of ransoms, we counsel strongly against doing so, as we believe making concessions only encourages such activity.

Under the Proceeds of Crime Act if an individual knows or suspects they are dealing with criminal property and if they wish to obtain a statutory defence for carrying out that activity, then they should submit a Suspicious Activity Report (SAR) to SOCA and obtain consent. To obtain the consent of SOCA, they would need to provide SOCA with sufficient information so a properly informed consent decision can be taken. SARs are designed to assist the Government in detecting financial crimes. However, if we are to oblige a person to make a report to SOCA when they assemble a ransom payment using clean monies and with clean hands, this would require a change in the law to either make paying a ransom illegal, or to create a new offence of not notifying SOCA of any ransom payment. Indeed, it was acknowledged in a letter of 31 January 2012 from the House of Lords European Union Committee to the Home Office: "that to require those assembling a ransom to report that activity, and where appropriate to seek consent before payment of the ransom, would be a new departure." We stand by this assertion.

Evidence was provided to the Committee in 2009 and with a previous response to the report generated (Cm 7718 – Annex C) which stated: "We do not believe that it is for the Government to tell a person in what circumstances to seek consent from SOCA. Our view remains that decisions on whether consent is required should be made on a case-by-case basis." Granting consent does not imply Government approval; rather, consent is granted or withheld only according to the requirements of the legislation. If they are concerned about jeopardising the secrecy of ransom negotiations by reporting or seeking consent, it is possible that they may have a reasonable excuse for not seeking consent until after the

transaction, although of course the final determination of what constitutes a reasonable excuse in any case is a matter for the courts.

SOCA has considered whether the proceeds of piracy are making their way into the UK financial system and has found no evidence that this is occurring. The issue will continue to be monitored and should this assessment change the Government will consider the appropriate channels for communicating this to partners.

86. We welcome the involvement of China in countering piracy off the Horn of Africa as evidence of their increasing cooperation with the international community.

We agree that China's involvement in countering piracy off the Horn of Africa, including their active participation in SHADE and their regional capacity building efforts, is positive. We continue to encourage China to define its interests broadly, thereby supporting unified international approaches to the key regional security and humanitarian challenges of our time.

87. We believe that a greater effort should be made to involve the Gulf States in solving the problems of both piracy and the situation in Somalia, given their close links with Somalia and their evident interest in keeping the shipping lanes clear.

We work closely with a number of Gulf States on addressing piracy and wider issues related to the situation in Somalia and discuss these issues with them regularly.

- The UK Maritime Component Commander is based in Bahrain and helps ensure closer cooperation between Gulf States and international counter-piracy efforts.
- Oman provides vital logistical support to UK, EU and NATO naval operations through the provision of port facilities and other shore-side services. These services are highly valued and one example of a key enabler to international operations in and around Omani territorial waters.
- The UAE facilitate the hosting of UKMTO in the British Embassy in Dubai, provide support to the combined maritime forces in Bahrain, provide assistance to the Seychelles Coast Guard, and engage closely with the UK on broader Somalia issues, in particular the Joint Financial Management Board.
- Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates and Yemen all attended the London Conference on Somalia, as did the League of Arab States and the Organisation of Islamic Cooperation.

88. We commend the High Representative's efforts to formulate a comprehensive plan for the EU's activity in the Horn of Africa by encompassing all the EU's activity under the Strategy for the Horn of Africa.

The UK fully supports the EU's Strategy for the Horn of Africa and its intent to approach the complex challenges that the region faces strategically, working in partnership with the region itself and key international partners. We also welcome the appointment of an EU Special Representative for the Horn of Africa, who is already playing an important role in ensuring that the EU's engagement is well coordinated. The combination of the EU's tools (diplomatic, financial and missions / operations) provides a unique opportunity to tackle the crises faced in the region through a holistic, coherent response.

89. The EU's Training Mission for Somali security forces in Uganda (EUTM Somalia) has produced useful results and should be continued. The EU should pay attention to the retention of these forces with continuing stipends for those who have been trained.

The UK strongly welcomes the success of the mission to date and believes that it has an important role to play in building up the Somali security sector. EUTM Somalia has provided a high standard of training to elements of the Somali National Security Force and this has led to an increasing confidence amongst representatives of the international community that credible reform of the security sector is possible. Member States are currently discussing the future of the mission as part of a strategic review. We will consider these findings carefully. We would look for any future iterations of the mission to find increasing synergies with the wider EU engagement in the region under the EU's Horn of Africa strategy and to engage closely with the African Union and wider international partners.

90. The aim of the new EUCAP Nestor mission to improve the capabilities of the coastal states of East Africa will be one of the most significant developments in combating piracy from the land. It should be built up to strength as soon as possible and supported in its development. EUCAP Nestor could and should be the gateway to a permanent solution to Somali piracy.

We strongly agree with the Committee's assessment of the importance of the EUCAP NESTOR mission. With the launch of the new mission the EU is taking a comprehensive approach to tackling piracy at sea through Op ATALANTA, and now along the coast with EUCAP NESTOR. Working to complement the activities of other actors in this arena, EUCAP NESTOR has the strong potential to deliver long term improvements in maritime security with its significant personnel and budget. The mission will help equip the host countries with the capacity and capability to address the scourge of piracy themselves and ensure a lasting legacy of the EU's investment in the region.

91. The EU's development aid will continue to be necessary for the foreseeable future. It should focus on providing alternative livelihoods for the Somali people to assist with reducing the need felt by some Somalis to resort to piracy. It should also aim to develop Somali capacity, thereby reducing aid dependency in the longer term.

The EU's development priorities are likely to remain the same for the 11th European Development Fund (EDF 11). The EU is a major supporter of alternative livelihoods in Somalia and their livelihoods programme has increased to 180m Euros under EDF 11 (mainly focused on livestock, fisheries and agriculture). The resilient and lucrative nature of piracy means that alternative livelihoods programmes do not offer a 'quick-fix' to piracy. However, there is a clear need to pursue alternative, non-military counter-piracy strategies in parallel to military efforts, as ultimately the solution to piracy remains on land.

The EU is continuing to work on building Somali capacity through close collaboration with various Government Ministries, and through the Technical Vocational and Education Training programme, which builds technical skills in a range of areas.

92. We commend the support given by the EU to AMISOM, which is aiming to remove the threat of Al Shabaab and improve the security of the Somali people.

We strongly welcome the EU's continuing support to AMISOM through its links with EUTM Somalia, through the escorts of AMISOM ships by OP ATALANTA and through funding AMISOM troop allowances. We are encouraging the EU to continue with this support as part of a long term strategy for ensuring African ownership of the regional security challenges.