



Operation Sophia's world Changes and challenges

by Thierry Tardy

Over the past decade EU military operations have evolved in at least three directions: first, they have to some extent adapted to the changing nature of threats, and, in doing so, have embraced a broader security – rather than strictly defence – agenda; second, they have increasingly operated at the juncture between external and internal security, thus testing the boundaries of the Common Security and Defence Policy (CSDP); third, they have moved into the maritime domain whereas ground operations had been the norm in the past.

Operation EUNAVFOR Med Sophia provides an example of such evolution. Launched in May 2015 to respond to the surge of migrants crossing the Mediterranean Sea from Libya, it has *de facto* become a police – and also rescue – operation, while also generating added-value as a maritime security instrument.

Two and a half years after its creation, Operation Sophia is very different from what it was meant to be initially. The situation in Libya has not permitted the full implementation of the operation's planned mandate, which has changed as a consequence. But EU member states have also displayed a degree of lassitude *vis-à-vis* the added-value of the operation and the unintended consequences it generated, in particular in

relation to its growing humanitarian dimension. At a time when refugees in Libya are the victims of major human rights violations, what Operation Sophia is really about is still uncertain, and it is furthermore dependent upon parameters that are beyond the EU's own reach.

Mission impossible

Operation Sophia's mandate originally consisted of four different phases: 1) support the detection and monitoring of migration networks through information gathering and patrolling on the high seas; 2) conduct boarding, search, seizure and diversion on the high seas of vessels suspected of being used for human smuggling; 3) do the same as in phase 2 in the territorial and internal waters of Libya, provided that the EU obtains a mandate from the UN Security Council (UNSC) or the consent of the Libyan authorities (the Council decision does not explicitly mention Libya but refers to the 'coastal State concerned'); and 4) take all necessary measures against a vessel and related assets, including through disposing of them or rendering them inoperable in the territory of Libya (again with a UNSC mandate or with the consent of the Libyan authorities, and ideally with both).



The first phase was completed in late September 2015, which allowed the operation to move to phase two in October 2015. Almost all EU member states have contributed to the operation, which is commanded from the EU Operational Headquarters in Rome and counts – as of November 2017 – six ships, two helicopters and three maritime surveillance aircraft.

While the operation's mandate was initially quite ambitious, political and legal issues have prevented its full implementation by making the move to the most intrusive phases (the last two) impossible.

First, the volatility of the situation in Libya and the absence or weakness (after the formation of a Government of National Accord in December 2015) of a unitary government have hindered the granting of formal consent to an EU presence in Libyan territorial waters, as well as the passing of a UN Security Council resolution. Strictly speaking, a UNSC resolution adopted under Chapter VII of the UN Charter would suffice to allow the EU to enter Libyan territorial waters. However, not only is such a resolution highly unlikely given the Russian and Chinese positions within the Council, but it would also provide the operation with limited legitimacy.

Second, although this has remained theoretical, moving to the territorial waters of Libya would have increased involvement in 'Safety of Life at Sea' (SOLAS) cases and raised the inextricable question of the 'legal finish', i.e. the legal basis of prosecution of suspected smugglers caught in Libyan waters. When caught in international waters, suspected smugglers can be prosecuted in an EU member state (mainly Italy), but this would not apply to Libya's territorial waters. Furthermore, in case a suspected smuggler is caught by the EU Operation in Libyan waters, the *non-refoulement* principle – whereby the transfer of people to a third country cannot take place if there are doubts about human rights standards in that country – would prevent any transfer to Libya, and the suspect would therefore have to be released. The EU and its member states could still try and conclude an agreement with Libya that would allow the prosecution of suspects in certain EU member states, but this is a

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sensitive issue as it impinges on Libyan sovereign prerogatives.

These various parameters have directly impacted Sophia's mandate as the operation was eventually confined to international waters, with little hope today that this may change. This has undermined the effectiveness of the operation, as the part of the mandate concerning the disposal of boats and neutralisation of smugglers and traffickers could only be partially achieved without entering Libyan waters. Two major consequences have followed. First, ships have become involved in rescue operations with little influence on the source of the problem the operation was supposed to tackle. Second, EU member states' support has faded away as a result of the imposed passivity of the mission, which was then significantly downsized. This, in turn, has led to a gradual evolution of the operation's mandate.

In June 2016, the mandate was amended to include two supporting tasks, namely a) capacity-building and training of the Libyan coast guard and navy; and b) contributing to the implementation of the UN arms embargo on the high seas off the coast of Libya in accordance with UN Security Council Resolutions 2292 (2016) and 2357 (2017). By building the capacity of the Libyan coast guards and navy, the EU is partly responding to the impossibility of moving closer to the Libyan coastline.

The mandate was amended once again in July 2017 to include surveillance activities on illegal trafficking (mainly of oil exports from Libya) in accordance with UN Security Council Resolutions 2146 (2014) and 2362 (2017), thereby contributing to situational awareness and maritime security in the central Mediterranean. More information-sharing with the Libyan authorities and with EU law enforcement agencies – such as EUROPOL or FRONTEX – was also added.

Achievements and challenges

It is difficult to measure what Sophia has achieved over the last 30 months. The operation has been criticised for its modest impact on migrant flows and smugglers' activities, yet the extent to which

anything could be achieved in international waters alone is very uncertain. According to official figures provided by the operation, since its inception 491 boats have been neutralised, 117 suspected smugglers arrested (and transferred to the Italian authorities), and more than 40,000 migrants have been rescued in 272 SOLAS events. None of those has been repatriated (the return of irregular migrants is the responsibility of individual member states).

Sophia has established relations with a number of other international actors present in the same area, with which information-sharing seems to have been relatively seamless – most notably with FRONTEX, EUROPOL, the UN Mission (UNSMIL), the UNHCR, the International Organisation for Migration (IOM), INTERPOL and NATO (through its Allied Maritime Command – MARCOM). Relations with non-governmental organisations (NGOs) had been more difficult until they were eased by the adoption of a Code of Conduct (which is still largely criticised by those same NGOs).

And while lessons learned from the Gulf of Aden could hardly be directly transposed to the central Mediterranean because of important differences between the two situations, some mechanisms established there were also put in place in the Mediterranean Sea. This is the case of the Shared Awareness and De-confliction in the Mediterranean (SHADE-Med), a forum where various actors concerned by the migratory phenomenon can meet to de-conflict and coordinate their activities by sharing situational awareness, assessment of the evolution of trends and best practices.

Finally, together with inter-institutional coordination inside or outside the SHADE-Med mechanism, the maritime security component of Operation Sophia has increased the EU's situational awareness in its area of operation and may have deterred, or at least complicated, illegal trafficking.

This said, there is little evidence that the presence of Operation Sophia has helped stem the flow of migrants across the central Mediterranean Sea. FRONTEX data on the number of migrants arriving in Italy through this route do not indicate any tangible reduction over time. The number slightly

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decreased in 2015 compared to 2014 (from 170,000 to 154,000), but increased in 2016 to reach a peak of 181,000. Data for 2017 does show a significant decrease as of July (105,000 from January to September 2017) yet the explanation is unclear and it is difficult to ascertain a causal link between the presence of Operation Sophia and the fluctuations in numbers.

Furthermore, the number of migrant fatalities recorded in the central Mediterranean has remained high for the last three years, with 1,764 casualties in 2015, 2,484 in 2016, and 2,158 from January to June 2017 (IOM data, 2017). These figures make the central Mediterranean the deadliest migration route in the world.

Unintended consequences

Operation Sophia raises a number of issues that are specific to its environment or more pertinent to the broader CSDP debate.

In general terms, the way Sophia's mandate has evolved to become a police or humanitarian operation is not specific to this operation. As a matter of fact, most CSDP military operations have had a central police dimension, and this is the case for the other two ongoing executive operations, in Bosnia-Herzegovina (Althea) and the Gulf of Aden (Atalanta). This shows the *security* rather than *defence* character of CSDP, but it also says something about the nature of the threats and how they can be tackled. On the one hand, operations like Sophia demonstrate the ability of the EU and its member states to adapt to the changing environment by embracing a broad security agenda; on the other, Sophia questions the relevance of making available scarce, high-end defence capabilities for relatively low-end security threats.

In this context, the humanitarian nature of the operation is not to be dismissed as it is part of the EU values-based approach. The humanitarian evolution of Sophia, however, was not deliberate but rather the result of the Law of the Sea's obligation to provide assistance to persons in distress at sea. The questions are whether this humanitarian role should be assigned to the military and how this may shape

CSDP. Incidentally, the humanitarian facet of the mission makes it more difficult to terminate it in the absence of an alternative rescue element.

In the same vein, Sophia has led to a number of unintended consequences, most specifically a ‘pull factor’ whereby the operation’s presence has created the impression of a safer route (with migrants picked up by either Italian coast guards, FRONTEX ships, NGOs or Sophia’s vessels) and therefore did not act as a deterrent to migrants. Such a ‘pull factor’ is, however, to be nuanced, first because, as said before, the central Mediterranean remains the deadliest migratory route, and second because the overall number of rescues carried out by Sophia is limited compared with those enacted by others.

Furthermore, while the primary objective of Sophia was to disrupt the business model of smugglers, they have adapted their *modus operandi* to the situation, notably by using inflatable boats (picked up at the limit of Libyan territorial waters) rather than larger vessels, and thus acting further away from Sophia’s area of operation. This nuances the ‘safer route’ argument even further, as the use of dinghies in Libyan waters has increased the risk, and occurrence, of accidents.

Third, Operation Sophia is confronted with a situation that all CSDP missions face, i.e. the difficulty to produce any tangible and lasting results in the absence of a relatively stable and cooperative host state. In the case of a maritime operation, host state cooperation is, of course, different from more traditional ground operations. Yet, as is the case in the Gulf of Aden (where achieving a certain degree of stability in Somalia is crucial to the long-term success of Atalanta), very little will be possible in the Mediterranean as long as Libya’s instability endures.

Fourth, the EU’s policy *vis-à-vis* illegal migration cannot be analysed through the sole prism of Operation Sophia. This is because it is, at best, only one component of a much broader response which needs to be multi-faceted and include action in Africa (in Libya itself but also Niger and other countries), at sea with the other actors present and within Europe. This also implies synergies with other EU activities in Libya, be they CSDP-related (like EUBAM Libya and the EU Liaison and Planning Cell which supports the UN Political Mission), the EU Delegation (through development programmes but also with its counter-terrorism expert), or member states’ own policies, some of which are being run in parallel with the EU’s. Operation Sophia is a targeted and limited response to a structural problem: it can therefore be judged only against the limited mandate that it could eventually carry out, not against

the one initially designed or the general problem of illegal migration.

Maritime security vs. capacity-building

These various challenges raise the question of the future of Operation Sophia and how it can best impact the situation given the many constraints. The two supportive tasks incorporated in Sophia’s mandate in 2016 provide an indication of where the operation might go next. The capacity-building mandate assumes that the flow of migrants will be more restricted as the Libyans themselves intervene: this requires that their own capabilities be significantly upgraded. Both the EU operation and Italy are currently doing this. The EU has run training programmes for the Libyan coast guard and navy either at sea or in Greece, Malta, and Italy. The UNHCR, the IOM and FRONTEX participate in the training with modules on human rights, refugee law and law enforcement, while EUROPOL, the UN Political Mission, INTERPOL and some member states contribute to the vetting process of Libyan trainees.

Similarly, as of last summer, Italy has run capacity-building programmes for the Libyan navy and coast guards (outside of its national operation ‘Mare Sicuro’). Interestingly, coordination between these two tracks has only recently started to be organised. Ultimately, the training and monitoring of 200 Libyan navy personnel and coast guards by the EU (with an additional 90 due in 2018) and the setting up of a maritime rescue centre in Tripoli by the Italians (with EU funding, to be operational by 2018) aim at improving safety in Libyan territorial waters. While capacity-building has become an important domain of CSDP activities, the rationale for having training programmes (conducted outside of Libya) as part of a CSDP operation can, however, be questioned.

Simultaneously, Sophia has embraced a maritime security mandate that is not just focussed on migrants and is likely to become an essential part of the EU’s security role in the area. This includes participation in the implementation of the UN arms embargo and fighting against various illegal traffics as well as situational awareness. This allows the EU to reshape its maritime presence and, incidentally, position itself in a domain where NATO is also present. But then, with three different facets of its mandate (rescue and smugglers’ disruption, capacity-building, and maritime security), it is the overall coherence of the operation that is at stake – and, in the end, its ability to have a tangible impact.

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