

FRANCE'S ACTION AGAINST MARITIME PIRACY AND THE CGPCS: INTERESTS, INTERACTIONS AND PRIORITIES

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SUMMARY

France is an active participant in the Contact Group and in its working groups. Since 2009, the France has attempted to draw attention to the situation in Somalia, arguing that the destabilization of Somalia directly threatens European and international security. As an EU member state, France has called for responsibility and respect of international legal norms. Within the framework of the Common Security and Defence Policy, France plays a key role in promoting notably the coordination between civilian and military actors in maritime surveillance. This paper addresses issues concerning the contribution of France within the different CGPCS working groups. It focuses on attendance, discussions and impetus protecting various international, European and national interests. For example, the role of France has to be appreciated regarding the EU presidency of the Contact Group.

The very concept of piracy has evolved over the years. From Homer's epic poems¹ until codification in the 20th century,² the definition of acts of piracy has always been influenced by national and international diplomacy and economics. Even though pirates are generally described as *hostis humanis generis*, there has been a time when piracy was not a crime as such, when lawful and unlawful pirates did effectively coexist.³

In recent times, particularly since the creation of competent international organisations and its resurgence in the 70's, piracy became a major security issue. It is important to remember that legal international

¹ Power J. 2008. Maritime Terrorism: A New Challenge for National and International Security, *Barry Law Review*, 10, p.112

² Tuerk H. 2012. *Reflections on The Contemporary Law of the Sea*, Leiden-Boston: Martinus Nijhoff, p. 72

³ Gaurier, D. 2012. The Pirate's Path: Becoming the Enemy of All Mankind, in, Norchi Ch. H., Proutière-Maulion G., *Piracy in comparative perspectives : Problems, Strategies, Law*, Paris: Pedone-Hart, pp.25-40

standards can only emerge when the interests of a large number of States coincide.⁴ Piracy constitutes a perfect example of this convergence, especially during 1973-1982 when the United Nations worked on the law of the sea.⁵

Acts of piracy are now defined by art. 101 of the 1982 Montego Bay Convention on the Law of the Sea (UNCLOS). This provides a universal competence for states who, when having seized persons that have illegally taken control of a ship, have autonomy over the penalties imposed (UNCLOS, art. 105 to 107). Such a legal mechanism should lead to an effective fight against piracy. Nevertheless, its enforcement takes place on an expressly voluntary basis by states. Its effective application thus depends on the existence of places of discussions, negotiations, cooperation and coordination of national strategies and means of action.

Many national naval actions have been taken place over the past decade to protect and prevent acts of piracy against merchant ships transiting through waters off the Horn of Africa. Different instruments are now playing a key role in deterring acts of piracy. The number of national and regional naval forces and initiatives demonstrates the great importance attached by both States and Non-Governmental Agencies to the containment of the phenomenon: the action of national navies, the European union (EU) operation Atalanta, the US CTF-151, the creation of the Shared Awareness and Deconfliction (SHADE) but also the work

of the IMB Piracy Reporting Centre, the creation of the Internationally Recommended Transit Corridor (IRTC), the Best Management Practices (BMPs), the Djibouti Code of Conduct *etc.*⁶ The most prominent feature of the fight against piracy, as it is conducted today, appears to be the operational capacity of the concerned and involved states, as well as the capacity of inter-governmental and international organisations.

The Contact Group on Piracy off the Coast of Somalia (CGPCS) could be seen as a forum of discussion, facilitating the coordination of counter-piracy activities in the region. Nevertheless, its independence has to be noted: "one positive feature of the CGPCS is that it is not a UN contact group, which allows it to act independently and do things that a UN contact group would not be able to do in terms of bureaucracy and procedure."⁷ The Contact Group is indeed part of an international political process on maritime piracy, with particular characteristics.

The fight against piracy involves a set of political wills and operational measures dedicated to the protection of national, international, economic and security interests. France's external action falls within different frameworks, discussed in political and diplomatic forums, including the CGPCS. Therefore, France's contribution to the Contact Group can only be appreci-

⁴ Ladreit de Lacharrière G. 1983. *La politique juridique extérieure*. Paris: IFRI, p.286

⁵ Houry C. 2014. *La piraterie maritime au regard du droit international. Incertitudes et évolutions contemporaines*, Paris : L'Harmattan, p.260

⁶ For an overview of the different mechanisms: Kraska J. 2011., *Contemporary Maritime Piracy*, Santa Barbara, Praeger, p.253

⁷ Zach D. A., Conor Seyle D., Vestergaard Madsen J. 2013. *Burden-sharing Multi-level governance : A Study of the Contact Group on Piracy Off the Coast of Somalia*, One Earth Future and Oceans Beyond Piracy Report, p.56 (Footnote 151 : Interview with James Hughes, February 22, 2013).

ated with regard to other national initiatives, consistent with the EU Common Security and Defence Policy.

FRANCE AND THE ESTABLISHMENT OF THE CGPCS

Contemporary counter-piracy mechanisms originally emerged at state level. Coping with an alarming resurgence of piracy in 2007, France was one of the first states that volunteered to provide military ships to ensure the safety of the World Food Program (WFP) in Somalia. To this end, operation ALCYON was launched to accompany the vulnerable humanitarian ships. This operation was conducted primarily by France, and then relayed by Denmark, the Netherlands and Canada.

Considering the positive results of the French operation, the United Nations Security Council (UNSC) adopted Resolution 1814 (2008) about the situation in Somalia, reiterating its support for the contribution made by some States to protect the WFP maritime convoys. Subsequently, a series of Resolutions authorized operations within Somalia's territorial waters or even on its soil.⁸ These encouraged and permitted the EU to establish a coordination unit in charge of supporting the surveillance and protection activities carried out by some Member States off the Somali coast (EU NAVCO) and then to launch operation

ATALANTA (initially dedicated to the protection of WFP vessels).⁹

Pursuant to UN Security Council Resolution 1851 (2008), the CGPCS was established on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia. The statements of Resolution 1851 (2008) are particularly important in assessing the context of the CGPCS' creation. For example, India initially approved and supported the creation of the group,¹⁰ mentioning the necessity "to institutionalize operational coordination among navies in the area, and to set up a mechanism, such as a contact group, for those involved in the anti-piracy effort."¹¹ Such an outlook was not universally shared. For its part, France supported "a phased United Nations involvement" and initially described the efforts made towards the creation of a coordination mechanism without specifically mentioning the Contact Group.¹²

As with any Contact Group, the CGPCS aims at promoting discussions at a political and diplomatic level to resolve a crisis. France supports this primary task that contributes not only to fight maritime piracy, but also to rebuild an effective Somali State. This required "a clear political strategy. After a 20-year vacuum of political power, there was a need for new institutions that represented the country."¹³ The French contribution¹⁴ to the Trust Fund to Support Initiatives of States Countering Piracy off

⁸ Guilfoyle D. 2010. Counter-Piracy Law Enforcement and Human Rights, *International and Comparative Law Quarterly*, vol. 59, Issue 1, pp. 141-169

⁹ Leboeuf C. 2012. Operation ATALANTA, in Norchi, C. H. and G. Proutière-Maulion (eds.), *Piracy in comparative perspective: Problems. Strategies, Law*, p. 225-248.

¹⁰ Kraska. *Contemporary Maritime Piracy*, p. 160

¹¹ UN Doc. SC/9541, 6046th meeting, December 16, 2008

¹² UN Doc. SC/9541, 6046th meeting, December 16, 2008

¹³ UN Doc. SC/10792, 6848th meeting, October 16, 2012; see also, UN Doc. SC/10648, 6770th meeting, May 15, 2012

¹⁴ Details available at : <http://mptf.undp.org/factsheet/fund/APF00>

the Coast of Somalia¹⁵ demonstrates a strong will to encourage a jurisdictional response to the offshore phenomenon and its onshore origins. As an international, *ad hoc* political forum, the CGPCS has a certain interest to 'Somalise' the solutions.¹⁶ Given the existing instruments dedicated to operational cooperation and coordination of national naval means, it could be considered as a supplementary level of decision.

COORDINATION OF NAVAL OPERATIONS: THE CGPCS' ADDED VALUE

Three coalitions are conducting naval operations (EU, NATO, United States) against Somali piracy, in combination with naval and civilian actions of numerous other independent states. These naval missions constitute an *ad hoc* security scheme in the Indian Ocean. Nevertheless, naval operations are conducted solely under national command, challenging the forum's legitimacy.¹⁷ As mentioned earlier, the coordination scheme raises both political and operational issues.

At the political level, France participates fully in CGPCS debates as a member of the EU and as a contributor to the European naval mission (EUNAVFOR-ATALANTA). In 2012, some difficulties appeared to have

arisen from the political cooperation of the naval actions,¹⁸ notably within the Shared Awareness and Deconfliction (SHADE) mechanism.¹⁹ The CGPCS might be seen as a complementary solution to overstep political issues. The CGPCS' different meetings and the current studies about the future of the five working groups demonstrates a truly prospective and political reflection on a regional undertaking of the fight against piracy.

Increasing the participation of the coastal states, and the reinforcement of their maritime security capacities, represents one of the major recurring objectives. Since 2010, France is actively engaged in this process, notably through the project MARSIC, directed by *France Expertise Internationale* (European Commission financial support). This project supports the setup of a Regional Training Centre in Djibouti and Information Sharing Centres in Mombasa (Kenya), Dar-es-Salam (Tanzania) and Sanaa (Yemen). These different centres are part of the ongoing commitments of 21 regional States embedded in the Djibouti Code of Conduct (January 2009). France supports the implementation of this Code, which constitutes an effective tool to promote initiatives in the Indian Ocean. The European Union Mission on Regional Maritime Capacity-Building in the Horn of Africa (EUCAP Nestor), launched on January

¹⁵ Trust Fund Terms of reference, approved by the 13th plenary of the CGPCS on 11 December 2012, 4-5: « *The overall purpose of the Trust Fund is to help defray the expenses associated with prosecution of suspected pirates, as well as other activities related to implementing the Contact Group's objectives regarding combating piracy in all its aspects. [...] Specifically, the Trust Fund shall: expand the current possibilities available to both States and the private sector to make tangible contributions to combat piracy off the coast of Somalia; permit the payment of expenses associated with prosecution and detention of suspected pirates as soon as possible; provide for an expedited distribution mechanism to allow for the*

payment or reimbursement of short-term prosecution related expenses; and support relevant legal capacity-building activities ».

¹⁶ Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, Annex to the letter dated 24 January 2011 from the Secretary-General to the President of the Security Council, UNSC S/2011/30, January 25, 2011, p.79

¹⁷ Roger-Lacan V. (2012), *Lutter contre la piraterie, facteur structurant de sécurité en océan indien?*, *Hérodote*, n° 145, pp. 118-128

¹⁸ Leboeuf. Operation ATALANTA, pp. 225-248

¹⁹ See Guilfoyle D. (2013), *Modern Piracy: Legal Challenges and Responses*, Cheltenham: Edward Elgar, p.53

11, 2013²⁰ also contributes to a regionalization of maritime security mechanisms. The French Government supports this mission, whose Head, Etienne de Poncins, was formerly the French Ambassador in Nairobi.

At the operational level, most of the coordination is performed through existing bodies expressly dedicated to this task. The CGPCS Working Group 1 was initially dedicated to the coordination of naval operations but also focused on capacity building. One can argue that its primary mission could supplement or even challenge the work of the SHADE mechanism, since this body is designed to effectively promote and enhance information sharing between all concerned actors. Despite being launched in December 2008 by the Combined Maritime Forces, SHADE is not designed to be a joint operation mechanism.

France appears to consider SHADE to be a sufficient coordination body, where military, civilian, non-governmental organisations and shipping representatives are present. Moreover, SHADE offers access to military communications system called MERCURY (real-time information sharing about situations), which is largely depoliticized.²¹ However, the politicisation of the

SHADE,²² and the eventual loss of control and command of the national forces, constitute the principal arguments in favour of a supplementary body of tactical discussions, such as the CGPCS.

The following points of view help to put this in perspective:

*“Over time, WG1 and SHADE would mutually influence each other’s development.”*²³ As Hopkins explained, SHADE *“became the center of gravity for naval coordination, because it needed less political support over time. One of the great successes of the whole contact group,”* she remarked, *“was how it politically supported the development and evolution of the SHADE mechanism for operational coordination.”*²⁴

Those interactions have to be recognised as a major driver of overall cohesion. States participate in political discussions, regardless of whether they are members of a joint naval force, thus helping to overstep some of the aforementioned political and diplomatic issues. Interactions between SHADE and the CGPCS are basically needed to move from military coordination to political action in order to restore the rule of law in Somalia.²⁵

²⁰ Political and Security Committee Decision, on the establishment of the Committee of Contributors for the European Union Mission on Regional Maritime Capacity-Building in the Horn of Africa (EUCAP NESTOR), 2013/41/CFSP, January 11, 2013 ; See EMA (7th May 2013), Piraterie : Formation des garde-côtes djiboutiens , [online] : <http://www.defense.gouv.fr/operations/actualites/piraterie-formation-des-garde-cotes-djiboutiens>

²¹ Bueger, C. 2013. Counter-Piracy, Communities of Practice and New Security Alignments, *Journal of Regional Security*, 1, pp.49-62.

²² Experts quoted in Helly D., Lessons from ATALANTA and EU counter-piracy policies, EU Institute for Security Studies, Seminar Reports, Paris, 23-24 March 2011 / Brussels, 17 June 2011, p. 11: *“we make sure we don’t raise discussions at the political level, otherwise it stops to talk. [...] there is the “impression of a beauty contest between the EU, NATO and CMF” It is the fourth time*

NATO and the EU simultaneously deploy forces in the same area and with the same mandate [...] From an outsider’s point of view, EU-NATO competition on piracy has grown and is a matter of concern for the industry. The EU and NATO also compete for media coverage and visibility and it was underlined that “while success is not shared, failure is..”

²³ Authors’ footnote: Interview with Chris Holtby, January 28, 2013

²⁴ Interview with Donna Hopkins US counter-piracy and maritime security coordinator, November 8, 2012, quoted in Zach et al. *Burden-sharing Multi-level governance*, p. 21.

²⁵ Proutière-Maulion G. forthcoming. Les enjeux de la sécurisation du transport maritime au service de l’action extérieure de l’Union européenne, *Annuaire de Droit Maritime et Océanique*. Conference, international Symposium *La piraterie de la mer au cyberspace*, Univ. Nantes, 5-6 June 2014

A POLITICAL RELAY FOR FRENCH AND EUROPEAN PRIORITIES

The first operations initiated by France, then followed by the ATALANTA Mission of the EU, reveal a strong commitment to secure the waters off the Horn of Africa. The pioneering role of France in this field has shown the value of the permanent pre-positioning of the French military in this particular region,²⁶ where the risks related to the strategic interests are particularly high.²⁷ That commitment remains valid; according to the 2013 French White Paper on Defence and National Security, “the current rebalancing of the US military towards the Asia-Pacific region is [...] an important factor for France’s commitment as a sovereign power and a player in the security of the Indian Ocean and the Pacific.”²⁸

This statement is fully shared by the EU, which has argued that the region should be stabilized not only because of the risks to energy and resources supply, but also as a means of achieving lasting peace, security and justice, good governance based on the democratic principles of inclusion, the rule of law and respect for human rights.²⁹ The recently approved EU maritime security strategy,³⁰ based on a comprehensive approach, faithfully transpose these two dimensions. As Chairman of the CGPCS, the EU clearly affirms its will to assume international responsibility in the Horn of Africa. The EU priorities have been rapidly

defined: 'Zero/zero', (zero ships and zero seafarers in the hands of Somali pirates); to document the CGPCS Lessons Learned; the refinement and optimisation of the structures and working procedures of the CGPCS as a means of making the Contact Group as relevant, efficient and cost-effective as possible and to increase the regional involvement in the CGPCS.

The EU objective to refine and optimize the structures of the CGPCS may appear to be merely a formal change. Indeed, some other measures need to be set or at least more strongly addressed, as for example the arrest of pirate instigators/chiefs. The arrest of Mohammed Abdi Hassan (AKA Afweyneh or Big Mouth) should give incentive for states to cooperate in this direction. But this would lead to political issues, such as those that were raised from the arrest of the aforementioned pirate chief. The latter was indeed traveling with a Somali diplomatic passport.³¹

Even if some valuable UN reports or studies suggest a solution to the problem of piracy by building and strengthen the prison capacity of the regional states, one of the highest priorities today should be the arrest of pirate networks leaders. A commitment that, “requires inevitably intelligence gathering, strategic analysis, effective investi-

²⁶ Valin G. (2009), La lutte contre la piraterie au large de la Somalie, *EchoGéo*, n°10, p.8

²⁷ See Mallet J.-Cl. (June 2008), *Livre blanc sur la Défense et la Sécurité nationale (volume 1)*, Paris, Odile Jacob - La documentation française, p. 350

²⁸ *White Paper on Defence and National Security*, 2013, p.29, [online]: http://www.livreblancdefenseetsecurite.gouv.fr/pdf/the_white_paper_defence_2013.pdf

²⁹ EU Council (14th November 2011), *Conclusions on the Horn of Africa*, 3124th Foreign Affairs Council meeting, Brussels

³⁰ EU Council (24th June 2014), Press release: EU maritime security strategy approved, Luxembourg, 11177/14 PRESSE 356

³¹ Letter dated 27 June 2012 from the members of the Monitoring Group on Somalia and Eritrea addressed to the Chairman of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, 50, [online]: http://www.somaliareport.com/downloads/UN_REPORT_2012.pdf (released by the BBC News, [online]: <http://www.bbc.com/news/world-europe-24519520>)

gation, prosecution and police cooperation.”³² To achieve this objective, political discussions are essential to move beyond practical and recurrent identified issues (lack of sufficient evidence or information sharing mechanisms for example).³³ France financially supports regional projects dedicated to that particular objective. From the INTERPOL EVEXI (2011-2012) and EVEXI II (2013-) projects emerged a series of standardized procedures for interviewing captured pirates and released hostages, gathering legally admissible physical and testimonial evidence, and sharing of intelligence to support existing and future investigations and prosecutions.³⁴ The creation of a special unit in 2012 and of a regional joint investigation team in November 2013³⁵ constitute a solid framework to this end.³⁶ This infrastructure is sufficient according to France. In even broader terms, this is part of the construction of global governance,³⁷ of which one of the first steps is the set-up of common information sharing for effective judicial procedures.

CONCLUSION

As a state which has been highly concerned by the piracy phenomenon, France demonstrates a real capacity to effectively contribute to the existing anti-piracy mechanisms, including the CGPCS. As part of an overall system to fight piracy, the CGPCS offers an additional possibility to coordinate efforts for states that desire not be part of multinational naval missions. As a contributor to the EU naval mission, France participates actively dedicated counter-piracy bodies and institutions. The SHADE or INTERPOL actions should be seen as a *continuation* between operations, judicial treatment, governance, security and development,³⁸ as do current UN initiatives.³⁹

Nevertheless, the fight against piracy is an arena in which both national and international interests are at stake.⁴⁰ First of all, states consider the protection of their nationals as a duty. However, besides the protection of their nationals, there is also a responsibility to insure an “optimum public order of the oceans”,⁴¹ through the sharing of burdens and responsibilities. The study of the current counter-piracy mechanisms

³² Interview with V. Roger-Lacan, Special Representative for Anti-Maritime Piracy, Ministry of Foreign Affairs, France, 21 July 2014

³³ Council of Europe, European Committee on Crime Problems, *Sea Piracy (Background working paper)*, Strasbourg, 24 September 2012, cdpc/docs 2012/cdpc (2012) 11 - e

³⁴ INTERPOL (21st March 2014), Media Release: INTERPOL anti-piracy meeting reviews key evidence against network leaders

³⁵ INTERPOL (4th November 2013), Media Release: INTERPOL anti-piracy meeting targets network leaders with new regional Joint Investigation Team

³⁶ Gottlieb Y. (Forthcoming), *Combating Maritime Piracy: Inter-Disciplinary Cooperation and Information Sharing*, *Case Western Journal of International Law*, 47

³⁷ Struett M. J., Carlson J. D., Nance M. T. (2013), *Maritime Piracy and the Construction of Global Governance*, New York – London: Routledge, p.226

³⁸ Interview with Jocelyne Caballero (former French special representative for the international coordination of

the fight against piracy about the aforementioned UN Jack Lang's report), *Partenaires Sécurité Défense*, n° 267, Fall 2011, p. 13

³⁹ Proutière-Maulion G., Lecture on *Multilateral diplomacy and cooperation between USA, Russia and EU : the example of the fight against piracy*, Annual Conference on Cultural Diplomacy, Berlin, 2013: *Under the leadership of the UN Political Office for Somalia (UNPOS), the UN Office of Drugs and Crime (UNODC), the UN Development Programme (UNDP), and the IMO, several actions to end pirate impunity have been initiated: tightening domestic laws in several countries, improving prosecution systems, and stepping-up detention capacity.*

⁴⁰ Audebaud N. 2010. *La lutte internationale contre la piraterie somalienne : représentations et enjeux*, Roland M. (dir.), Mémoire de master 2 de recherche Etudes africaines, Université Paris 1 Panthéon-Sorbonne, p.314.

⁴¹ Norchi C. H. 2012. Piracy and the Public Order of the Oceans, in, Norchi C. H. and G. Proutière-Maulion (eds.), *Piracy in comparative perspectives*, pp. 425-446

has demonstrated that national actions are the exercise of a sovereign will, pursuing the benefits of an increased international exposure. At the institutional level, this reveals some gaps to be filled, notably within the CGPCS:

- the lack of collaboration and coordination between the national institutions of the regional states and;
- the lack of cooperation between the states which are not integrated in the cooperation and the coordination between the navies.

For France, the Indian Ocean Commission (IOC) appears to be a necessary body to enhance the participation of regional states. It is an organisation that “has continuously put greater emphasis on the enhancement of regional cooperation particularly at the strengthening of the legal framework for dealing with various maritime threats in the region.”⁴² The Indian Ocean Commission is now co-chairing the CGPCS Working Group 1 on Capacity Building. Its expertise and previous actions would be of significant interest, especially for preparation of the much-anticipated paper on key priorities and capabilities (end of 2016), which might lead to the ‘*Somalisation*’ of approaches to tackle piracy.

Finally, it seems necessary to highlight the necessity to refocus the current means to combat maritime piracy and to promote a preventive way. “In a really near future, the focus should be on the search and prosecution of pirate networks leaders,”⁴³ which is the fundamental basis to the continued

search for a lasting solution to a phenomenon that endangered national, regional and international security.

⁴² Belle J. (June 2012), *The Legal Process: The Indian Ocean Commission's Effort to Promote Regional Harmonization of Laws against Piracy*, Institute for Near East and Gulf Military Analysis (INEGMA) on behalf of the

second United Arab Emirates Counter Piracy Conference, Dubai

⁴³ Interview with V. Roger-Lacan, Special Representative for Anti-Maritime Piracy, Ministry of Foreign Affairs, France, 21 July 2014

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