



# BULLETIN

No. 8 (8) • February 2, 2009 • © PISM

Editors: Sławomir Dębski (Editor-in-Chief), Bartosz Cichocki, Mateusz Gniazdowski,  
Beata Górka-Winter, Leszek Jesień, Agnieszka Kondek (Executive Editor), Łukasz Kulesa

---

## International Action against Somali Pirates

by Rafał Tarnogórski

*Operation Atalanta, the first maritime operation within the framework of the European Security and Defense Policy, and the presence of non-EU ships, should bring about a reduction of pirate activity. The consent to land operations from the Somali Transitional Federal Government potentially offers the prospect of a systematic action to dismantle the pirates' bases, although in practice the land operations will very likely be confined to attacks on selected targets, carried out as the need arises. The threat of losses has acted as an effective deterrent for potential participants in a Somali stabilization mission.*

**Background.** The passage of Resolution 1816 by the UN Security Council on 2 June 2008 came as a clear signal that the international community perceived pirate activity in Somali waters as a problem and a threat. Other-country warships were authorized for six months to freely enter the Somali territorial waters while preventing and fighting acts of piracy with the use of all the necessary means (including arms). The 2008 Djibouti accord, aiming at Somali normalization, also offered hopes for the fight against armed robbery at sea to gather momentum. This was important in view of the fact that—according to the International Maritime Organization—in 2008 there were 111 attacks off the Somali coast (mainly in the Gulf of Aden), with pirates succeeding in hijacking 42 units with 819 hostages. As of December 2008, 14 vessels were still kept with a total of 268 captured crew members (including the Sirius Star super-tanker with Poles aboard, released after ransom payment in early January 2009). The intense pirate activity along a much frequented sea lanes began to generate additional expenses for shipowners, also in the form of higher insurance costs and, in the event of hijacking, of ransom money—translating into an increase in shipment costs on route from the Indian Ocean to the Mediterranean via the Suez Canal, used for much of Gulf oil shipment. Additionally, the seizure of vessels with Somalia-bound humanitarian aid has had the effect of worsening the already unenviable situation of the civilian population.

But the deployment of naval forces in the region—the US Combined Joint Task Force—Horn of Africa (CJTF—HoA) and the international Combined Task Force (CTF—150)—has yet to produce a curtailment of attacks. In October 2008, as part of Operation Allied Provider, a seven-warship NATO mission entered Somali waters for escort operations, and in addition the US have announced the formation of a new Combined Task Force 151 (CTF—151). Other countries interested in the protection of shipping routes, among them Russia, China and Canada, have also begun their missions in the Gulf of Aden.

In its Resolution 1838 of 7 October 2008, the Security Council called on all interested parties to cooperate with the Somali Transitional Federal Government (TFG) in fighting acts of piracy and armed robbery at sea, and it extended the mandate of Resolution 1816 for another half-year. And after the launch of Europe's Operation Atalanta, the Security Council, acting at the request of the Somali authorities, extended the mandate to operate on Somali territorial waters for a year, until 2 December 2009 (Resolution 1846). On 16 December 2008, Resolution 1851 was adopted, authorizing the countries operating under Resolutions 1816 and 1846 to undertake—in the whole of Somalia—all measures that are appropriate to suppress acts of piracy and armed robbery at sea, which translates into a go-ahead for the use of force also in land operations.

**UE Military Operation Atalanta.** On 10 November 2008, the EU Council decided to launch a military operation to deter, prevent and repress acts of piracy and armed robbery off the Somali waters, codenamed Atalanta (EU NAVFOR Somalia). This is the first maritime operation conducted by the European Union. Its headquarters is located in Northwood, UK, with British Rear Admiral Phil Jones in command. The EU force now comprises four frigates, and if the need arises it may be expanded to six frigates and three surveillance aircraft, with a total personnel of some 1,200. Budgeted at €8.3 million. Operation Atalanta aims to protect World Food Programme (WFP) vessels carrying food aid under Resolution 1814 mandate, protect other vessels off the Somali coasts, and deter, prevent and repress acts of piracy and armed robbery in accordance with the norms of international law. The force, which is deployed in waters off Somalia and other neighboring countries for up to 500 nautical miles, can arrest, detain and transfer persons who have committed, or are suspected of having committed, acts of piracy or armed robbery, and also seize vessels caught in the act. The operation can liaise with states, organizations and entities working in the region, particularly with CTF-150 and CTF-151.

Regarding the pirates and the property used in acts of piracy and detained by EU ships, they are as a rule transferred to the appropriate Somali bodies, unless, under a separate agreement with Somalia, a member state or a third country expresses the intention to transfer such people or property to its own courts, especially because of the citizenship of victims, citizenship of perpetrators or the attacked vessel's flag. Based on Somalia's acceptance of Operation Atalanta countries' and third countries' jurisdiction, and pursuant to Article 105 of the UN Law of the Seas Convention, the detained pirates and seized property are transferred to the authorities of the state under whose flag the seizing ship was flying or, if that country cannot or does not want to exercise jurisdiction, to a member state or third country ready to exercise such jurisdiction. None of the detained persons can be transferred to a third country if the terms of such a transfer have not been endorsed in accordance with international law (including human rights provisions), ensuring that nobody is subjected to capital punishment, torture or any other cruel, inhuman or humiliating treatment.

**Conclusions.** A small military mission of the African Union posted in Mogadishu has neither the mandate nor the capacity to tackle piracy. As demonstrated by the growth of pirate activity, the local power structures are unable to control state territory—and in this context, the return to power by Sheikh Sharif Ahmed, former leader of the Islamic Courts Union, should be seen as a chance. The permission to let international forces into territorial waters was in itself exceptional, and its extension to include anti-piracy land operations confirms a durable inability to resolve the problem. If the international forces were to enter the land, this would have the character of a quasi-stabilization operation, much sought by the provisional government which fails to control most of the country's territory. But it must be emphasized that the Atalanta mandate does not include land operations, and the experiences of failed peace operations in the 1990s provide a deterrent against such intervention. It is impossible to rule out single operations undertaken by individual states against land-based targets (such as firing at bases or deployment of special units), but action against the pirates will only prove effective once their land base is destroyed durably. Paradoxically, if territorial waters were to be cleared of piracy, this would have unfavorable effects by postponing an all-round solution of the Somalia problem. As it is, the piracy problem helps to stimulate the international community's interest in the country.

Some problems may also arise with regard to jurisdiction over the detained pirates, given that the countries participating in the operation may be unwilling to prosecute them, while the Somali judicial system is wanting in capacity and credibility. A solution could be provided by reaching a separate international agreement or perhaps—a less likely option—setting up an international piracy court.