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Integrated Approach for Security and Peace Directorate

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Possible scenarios for ATALANTA
following the technical roll out of the UNSCR on Somali piracy

I. INTRODUCTION

1. In the negotiations leading to the UNSC vote on the renewal of the UNSCR 2554 (2020) on piracy and armed robbery at sea off the coast of Somalia on 3 December 2021, the Federal Government of Somalia (FGS) gave its consent for only a 3-months (not 12 months, as previously) technical rollover of the Resolution “*to allow negotiations and transition to a bilateral maritime cooperation agreement within Somali national waters*”. Such FGS posture towards the international presence (the FGS is similarly positioning itself vis-à-vis the AU/AMISOM) is also to be seen in the context of ongoing electoral process, notably increasing tensions and electoral fragmentation. President Farmajo, whose term has expired since February 2021, will be seeking re-election in the Presidential elections, which are likely to take place in June 2022.
2. While the FGS has been explicit in its statements that for them “*piracy is no longer posing a significant threat to the regional peace and security*” and encouraging future partners to reinforce Somali national Coast Guard and Navy, the Somali position on further renewal of the UNSCR has been rather ambivalent. The first FGS consent letter, as sent to the penholder (US) on 2 December 2021, stated that “*it is vital that the new resolution reflect Somalia’s progress and is aligned to our vision... the FGS will negotiate with its international partners to put together a new resolution*”. The subsequent letter by the Somali Permanent Representative to the UN in New York no longer included such an intent.
3. The follow up outreaches conducted with the President Farmajo and the Minister of Foreign Affairs and International Cooperation Abdisaid Muse Ali further suggest there could be an opening in the Somali approach, as the FGS might have finally realised the potential consequences of the absence of the UNSCR. It seems that the FGS could be accepting to maintain the UNSC framework to counter-piracy, if the text of the UNSCR is revised to notably reduce the perceived negative language towards Somalia.

4. The recent outreaches with the FGS seem to also demonstrate, that the FGS would prioritize the support to countering Illegal, Unregulated and Unreported (IUU) fishing and toxic waste dumping, both being complex and long standing issues. It is important to note in this context that the Operation ATALANTA has been regularly facing destabilising information stating that the Operation “protects the illegal fishing vessels”.
5. It will also remain important to understand what are the alternative partnerships that the FGS has probably in mind for cooperation on maritime security and would like to formalise through bilateral cooperation agreements in addition or to replace the UNSC framework.

II. CONSEQUENCES ON ATALANTA’S MANDATE OF A NON-RENEWAL OF THE UNSC RESOLUTION

6. In the absence of a new UNSCR, ATALANTA would lose the authorisations initially granted by OP 10 of UNSCR 1846 (2008) and OP 6 of UNSCR 1851 (2008) to *"use within the territorial waters of Somalia ... all necessary means to repress acts of piracy at sea" and to "undertake all necessary measures that are appropriate in Somalia for the purpose of suppressing acts of piracy and armed robbery at sea, pursuant to the request of the TFG (currently FGS)"*. There would therefore be no more legal basis for ATALANTA to fight armed robbery in Somali territorial waters or on its territory, and no UNSCR umbrella to fight piracy off the coast of Somalia
7. But ATALANTA will still have the legal basis to perform its remaining tasks. To fight piracy, UNCLOS (United Nations Convention on the Law of the Sea) authorises States to seize ships and arrest suspected pirates on the high seas and gives authorisation to the flag state of the ship, which made the arrest to prosecute.
8. The UNSC Resolution 2607 (2021) adopted by the Security Council on 15 November 2021 related to the arms embargo will give the Operation the framework to ensure strict implementation of the arms embargo on Somalia in Somali territorial waters and on the high seas off the coast of Somalia, extending to and including the Arabian sea and Persian Gulf, vessels bound to or from Somalia.

9. The Operation will perform its secondary executive task linked to countering narcotic drugs trafficking off the coast of Somalia in the context of The United Nations Convention against illicit traffic in Narcotics Drugs and Psychotropic Substances of 20 December 1988.

III. PROPOSED COURSE OF ACTION

1) Priority to be given to the renewal of the UNSCR

10. An initial assessment of the recent outreaches with the FGS suggests that the priority should be to build on this slightly positive momentum and enhance the outreach towards the FGS, in close coordination with the penholder (US), in order to ensure the further renewal of the UNSCR. In the coming outreaches with the FGS, the EU should use its assistance to Somalia, notably EUTM Somalia and EUCAP Somalia, as well as assistance measures to the Somali National Armed Forces under the EPF and broader cooperation support, as a political leverage to the extent possible.
11. Outreach to like-minded States and other UNSC Members, partners, the WFP and the Maritime and Energy Industry will be important to increase pressure on the FGS in order to get its consent on a new UNSCR on Somali piracy and armed robbery, or at least another technical rollover of the current UNRSC for an additional period of time (preferably 9 months, until December 2022).

2) Alternatively, ensure continuation of the Operation without a UNSCR

12. This would require an adjustment of the mandate in the short term.

2.1 Without any specific new legal base to fight armed robbery in Somali territorial waters

In this case, the Operation would:

- protect vessels of the WFP delivering food aid to displaced persons in Somalia, protect vulnerable vessels cruising off the Somali coast, and deter, prevent and repress acts of piracy on the basis of UNCLOS, outside Somali territorial waters;
- implement the United Nations arms embargo on Somalia in accordance with the UNSCR 2182 (2014) (only after the FGS notification to the UNSG which is still to come); and

counter narcotic drugs trafficking off the coast of Somalia in the context of the United Nations Convention on the Law of the Sea and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988;

- contribute, as a non-executive secondary task, within existing means and capabilities and upon request, to the EU's integrated approach to the Horn of Africa and in the region and the relevant activities of the international community, thereby helping to address the root causes of piracy and its networks;
- work in the region to combat acts of piracy off the Somali coast outside territorial waters , in particular in cooperation with the 'Combined Task Force 151' maritime force which operates within the framework of 'Operation Enduring Freedom';
- monitor, as a secondary non-executive task, narcotic drugs trafficking, arms trafficking, illegal, unreported and unregulated (IUU) fishing and illicit trade in charcoal off the coast of Somalia;
- support the regional maritime security architecture and cooperate with regional actors and missions (ROCC, RFMIC, CMF and Operation AGENOR).

2.2 Considering a bilateral agreement with the FGS to allow Operation ATALANTA to act in Somali territorial waters, and, potentially to act on land

13. Negotiations with the FGS would then have to be conducted bilaterally. Capability, at least, to pursue pirates and armed robbers in Somali territorial waters remains indeed important for an effective counter-piracy mission. Ability to act on land would be even better.
14. Considering an agreement with the FGS on certain executive tasks to be performed by the Operation would be a precedent for a CSDP mission/operation (so far, the only agreements concluded with host countries are related to Status of the Mission /Status of the Forces Agreements (SOMA/SOFAs). It remains to be seen whether entering into negotiations on such agreement could be done consistently with the principle of autonomy of decision-making of

the EU. In addition,, the capacity of Somali authorities to conclude the necessary agreement within a few months can be doubted. It is also not clear at this stage what would be the FGS demands in that context.

IV.WAY AHEAD

- a) Increase pressure towards the FGS, in close cooperation with the penholder (US), in order to negotiate a new UNSCR on Somali piracy or at least a technical rollover for another 9 months (until December 2022).
- b) Reach out to the like-minded States and other UNSC Members, partners, the WFP and the Maritime and Energy Industry, as required, to gather their support for the renewal/extension of the UNSCR.
- c) Without prejudice to the ongoing negotiations and as part of a cold planning process, the EEAS prepares the adjustment of the mandate of ATALANTA, in case of a non-renewal of the UNSCR.
- d) Take the opportunity to remind the FGS on the necessity to resend the notification letter to the UNSC, in accordance with the relevant procedures, in order to activate ATALANTA's secondary executive task on arms trafficking, in accordance with the UNSC Resolution 2182 (2014).
- e) Confirm the political readiness of the Seychelles, Mauritius and Djibouti to continue with the Legal Finish even without a UNSCR on anti-piracy, and pursue the ongoing negotiations to extend the legal finish to suspected arms and drugs traffickers.
- f) In the context of the next Strategic Review of the CSDP engagement in the Horn of Africa, assess the specific demands for support made by the FGS to strengthen maritime security off the coast of Somalia, including countering IUU fishing and toxic waste dumping.
- g) Revert to PSC before 15 February 2022.