



A Geopolitical Balancing Game?

EU and NATO in the Fight Against Somali Piracy

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Abstract

This paper examines the EU's decision to launch a maritime military EU mission (Operation Atalanta), to fight piracy off the Somali coast, instead of strengthening and extending the humanitarian North Atlantic Treaty Organization (NATO) operation that was already operating in the area. This is a particular puzzle as several of the member states have been sceptical to establish autonomous EU operations, and were initially in favour of instead establishing a long-term, strong NATO operation. However, with Atalanta, it is the EU and not NATO who has taken the lead in the military fight against piracy, both politically and militarily. Why is this so? The analysis suggests that the decision to prioritize the EU can be explained in two phases. In a first phase, which may be accounted for from a neo-realist perspective, France, who held the EU Presidency, used a set of favorable geopolitical conditions to put an autonomous EU operation on the negotiation table. However, agreement on the EU option cannot be explained as a result of strategic bargaining. Instead, in a second phase and in line with an alternative hypothesis building on communicative action theory, the EU member states supported the French suggestion due to legitimacy considerations linked to its legal framework.

Keywords

Bargaining - EU - European Security and Defense Policy - Legitimacy -
Military operation -NATO - Piracy - Somalia

Introduction

When maritime piracy exploded in the Bay of Aden in 2007/2008, it became an international economic and security problem. Taking whole ships and their crew hostage, Somali pirates threatened the free passage of ships going through the Suez Canal, strongly affecting the commercially and geopolitically important shipping lanes that link Asia and the Middle East with Europe. An increasing problem was moreover that pirates also attacked ships going with food aid to Somalia for the World Food Programme (WFP) – aid that more than a million people relied on in their daily life. Watching these developments on live TV, not only the shipping industry but also publics from around the world asked their governments to react.

Against this background, the United Nations Security Council (UNSC) called for states and international organizations to take action against piracy outside Somalia in a number of resolutions (UNSCR). Responding to the situation, the United States of America (the US) established a ‘coalition of the willing’ Combined Maritime Task Force¹ (CTF-151) designated to fight piracy as part of ‘enduring freedom.’ And following a direct request from the UN Secretary-General, the North Atlantic Treaty Organization (NATO) launched the humanitarian operation ‘Allied Provider’ to protect WFP shipments in October 2008.

Why then did the EU just one month later, in November 2008, decide to launch an additional, more long-term and bigger naval military mission in the same theatre? With EU NAVFOR Somalia, operation Atalanta (Atalanta), today there are three ongoing multilateral mission in the area as well as several different unilateral, including Russian and Chinese, naval operations. However, the EU is a far more important actor in this geopolitically and economically significant region than NATO. The EU force has been bigger militarily, and it is the EU, and not NATO, who together with the US has taken the lead at the international political level (Behr et al. 2013). Why is this so? In light of the already ongoing NATO operation – why also launch, and so clearly prioritize, an autonomous EU mission?

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¹ See more on the mission and history of the Combined Task Force 151 (CTF-151) on counter-piracy at <<http://combinedmaritimeforces.com/ctf-151-counter-piracy/>> [last accessed 12 March 2014].

Previous research has shown that the preparatory work done by the European Union Military Committee (EUMC) is important for understanding the launch of Atalanta (Cross 2010). Furthermore, that the initial main aim behind the mission was to protect humanitarian seaborne aid going to Somalia (Riddervold 2011a). However, why the EU member states agreed to conduct a distinct operation under EU command, when there already was a newly established ongoing humanitarian NATO operation in theatre that instead could have been strengthened and extended, remains unaccounted for. After all, there is only a limited amount of military resources that can be deployed by the European states at any time. The choice of prioritizing the EU over NATO is a particular puzzle not only given the fact that NATO was already conducting a humanitarian operation in support of WFP chartered vessels, and that the EU had no previous history of conducting naval missions. What is more, in 2008 it was far from evident that an EU mission was the preferred option. To the contrary, from the position of many of the EU member states who are both members of NATO and the EU, one would rather expect them to go for an extension of the NATO mission and deploy their resources under NATO command instead of under EU command. The United Kingdom (UK) has been particularly sceptical towards EU military defence cooperation, preferring NATO as Europe's main security provider. Still, the UK did not only support but also took an operational lead of an autonomous EU mission. Also governments in traditionally more integration-friendly member states, such as the Netherlands and Germany, initially planned to send troops to the first NATO operation, 'Allied Provider', but later changed and sent troops to the Atalanta mission instead. How can this be accounted for? How can we explain that the member states so clearly prioritized the EU in their multilateral fight against Somali piracy? Answering this question is important as EU Atalanta challenges the conventional assumption that EU security cooperation will remain limited, in particular when involving military means. It also challenges the widely-held belief that the European states will chose to act through NATO if dealing multilaterally with international security issues.

In order to contribute to an answer, this article asks how we can explain that the EU member states reached agreement on launching an autonomous EU operation despite, and at the expense of, strengthening and extending the then ongoing NATO operation. In doing this, the article is organised as follows: First, I present the case with a focus on when and what type of international operations have been established to protect commercial and humanitarian shipments off the Somali coast. Building on existing theory on security cooperation, I proceed to develop alternative explanations as to why the member states established an autonomous EU operation despite the already ongoing NATO operation. I then shortly outline the methodological approach, followed by the analysis. Given the conventional 'truth' in the international relations (IR) litera-

ture claiming that the actors' material interests determine their foreign policy behaviour, I first examine whether there is evidence to support two alternative neo-realist hypotheses. One suggests that Atalanta was launched in agreement with the US and NATO as part of a geopolitical balancing game on the Horn of Africa. The other submits that particular geopolitical factors changed the internal EU bargaining game, allowing member states with an interest in EU security integration to push through a mission that would otherwise not have been agreed upon. I then examine the extent to which an alternative hypothesis building on communicative action theory linking the EU choice to normative considerations can be substantiated. Lastly, I sum up the main findings and discuss some of their empirical and theoretical implications. The focus here is thus on why the EU member states decided in favour of the EU instead of the NATO option at the time, and not on the member states positions when dealing with other security issues or on how the EU has performed.

The puzzle: Piracy and the attempts to stop it

In 2008, Somali pirates were behind more than half of all reported piracy incidents in the world, attacking both merchant ships and ships going with aid for the WFP. Threatening to close the economically and strategically important shipping lines going through the Suez Canal and hindering aid to a million Somalis, from 2007 piracy increasingly became a severe economic, geopolitical and humanitarian problem. As a first response, France, Denmark, the Netherlands and Canada unilaterally started escorting aid shipments in 2007. Then, in October 2008 and following a request from the UN Secretary General to help secure WFP aid shipments, NATO, who had a Standing Maritime Group passing through the area, launched the humanitarian operation 'Allied Provider.' 'Allied Provider' ended in December 2008. However, three months later, in March of 2009, NATO launched the anti-piracy operation 'Allied Protector' composed of so-called Rotating Standing Maritime Groups.² In August 2009, 'Allied Protector' was replaced by the still ongoing mission 'Ocean Shield'. The US, who has had a military presence in the area since 2002 as part of 'Enduring Freedom', established a 'Coalition of the Willing' special force, designated to fight maritime piracy, CTF-151. In addition, different countries, including China and Russia, have since 2008 launched unilateral anti-piracy missions.

Within this geopolitical environment, characterized by an already unprecedented level of different actors and coalitions, the EU also decided to launch a naval military mission in the same theatre. The operation, called EU

² On the NATO counterpiracy operations, see <http://www.nato.int/cps/en/natolive/topics_48815.htm> [last accessed 12 March 2014].

NAVFOR Somalia – Operation Atalanta, was launched in November 2008, only one month after NATO launched its first operation, (Council of the European Union 2008). The EU decided not to draw on the Berlin Plus agreement and use NATO's capabilities, but rather to use one of the EU national, operational headquarters, in Northwood, UK. Gradually extended, its mandate is to provide protection for vessels chartered by the WFP; to provide protection of African Union Mission on Somalia (AMISOM) shipping; to contribute to 'the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast,' to the 'the protection of vulnerable shipping off the Somali coast'; and 'to the monitoring of fishing activities off the coast of Somalia' (Council of the European Union 2012). Atalanta is the EU's first naval military operation. It was initially scheduled for a year, but has been extended several times, most recently until December 2014. Conducted in the framework of the Common Security and Defence Policy (CSDP), Atalanta is an intergovernmental ad-hoc operation, and operational contributions are voluntary. However, most EU member states have contributed militarily and/or with personnel to the operational headquarters (ibid.).

But why did the EU member states come to this decision? Why not instead focus on extending and strengthening the NATO mission that was already there? As argued by Cross:

NAVFOR Atalanta was somewhat controversial in the beginning because ESDP had never executed a naval operation before. Not all the Member States were on-board. Moreover, NATO ships were already in the region, as were those of non-EU nations. At the same time, some believed that action against piracy could be taken without a formal ESDP operation.

(Cross 2010: 19)

Although previous research has shown that humanitarian concerns were important for understanding a military response, it remains particularly puzzling that the European states who are both members of the EU and NATO so clearly chose to focus their political and military resources against piracy through the EU instead of NATO. After all, there is only a limited amount of military resources that can be provided at any time. The international political discussions on piracy has moreover been led by the US and EU – not NATO. Why is this so? Why did the member states decide to go for the EU option?

Possible explanations

In order to account for why the EU member states agreed to act militarily through the EU rather than strengthening and extending the already ongoing NATO mission, I study the relevance of three hypotheses that may help

explain EU security operation. The first two builds on neo-realist approaches. The first ('the band-wagoning/division of labour hypothesis') builds on the neo-realist concept of band-wagoning, and suggests that a junior partner (i.e. the EU) joins forces with the hegemon (the US) as part of a geopolitical balancing game (Walt 1985. See also Grieco 1997; Hyde-Price 2006; Mearsheimer 1994/1995). More precisely, this hypothesis suggests that Atalanta was part of an agreed-upon strategic division of labour between the US/NATO on the one hand and the EU on the other. NATO and the US led coalition would be conducting the 'hard' military task of fighting piracy and protecting merchant shipping, while the EU mission when launched would take over the 'softer' responsibility of securing WFP shipments. A main aim of this band-wagoning would moreover be to regionally balance the other great powers, China and Russia, who also had shown strong strategic and economic interests in the area (Helly 2009). The very fact that China now has forces outside Africa for the first time in modern times is for instance a clear indicator of the importance it attaches to the area. This hypothesis would be in line with studies suggesting that rather than seeking to balance the US (Posen 2006), EU defence policies have developed in partnership with the US (Howorth 2007: 50-51). 'To promote the sharing of risks, capabilities and tasks, and to facilitate the interoperability of armed forces' (Mérand and Angers 2013: 4-5). '[p]artnership, not rivalry, is increasingly the name of the game on both sides' (Howorth and Menon 2009: 738). According to some studies, a division of labour between the US and the EU is moreover developing when dealing with international conflict. While the US responds militarily to crisis, 'post-conflict reconstruction is the real trademark of the EU and the ESDP' (ibid.: 741).

It would also be in line with the argument that there is a 'brewing geostrategic competition between the US and China over the Indian Ocean' (Behr et al. 2013: 41) and that the EU and the US share an interest in cooperation to protect 'US leadership against rising powers' (Youngs 2010: 32).

A second neo-realist hypothesis instead focuses on the internal strategic EU bargaining game, in particular between the most powerful member states, and how this is affected and conditioned by geopolitical factors (Carlsnaes 2006: 36; Hyde-Price 2006, Howorth and Menon 2009). It suggests that a change in particular geopolitical factors strengthened the position of member states with an interest in a stronger EU foreign policy, allowing them to act as political mobilizers and push through a decision on a military EU mission that would otherwise not have been agreed upon. There is one member state that might have had a particular interest in strengthening the EU's global role by establishing an autonomous EU mission - France. France has traditionally shown a strong interest in increased EU integration within the field of security and defence (Marsh and Rees 2012: 53). France moreover held the EU presi-

dency when Atalanta was launched. It might thus have used the upsurge in piracy and the Security Council's call for multilateral military action as a window of opportunity to ally with other pro-integration member states, and, through the use of threats and promises, make the more reluctant member states support an EU mission. This hypothesis would be in line with studies suggesting that EU foreign policy initiatives have been taken by states acting as 'political mobilizers' (Hynek 2011). Moreover, such initiatives have been particularly successful when 'linked to a country which held the rotating presidency and chaired the Political and Security Committee (PSC)' (ibid.: 96-97). It would also be in line with studies suggesting that EU policies are made through aggregative strategic bargaining, where outcomes reflect the member states' interests and relative strengths (Carlsnaes 2006; Hyde-Price 2006, 2008; Moravcsik 1998).

In response to neo-realist and other rational choice based accounts, students of EU foreign policy have however argued that EU foreign policy in many cases is based more on norms of how to behave than on the member states' aggregated strategic and/or economic interests.³ On this basis, an alternative explanation of the EU option suggests that the member states may have prioritized to act through the EU due to particular normative standards. This explanation of the EU choice would be in line with empirical studies, including of the Atalanta mission, suggesting that norms are important for understanding EU foreign policies (Cross 2010; Lucarelli and Manners 2006; Riddervold 2011a; Sjursen 2006a). It would also be in line with the fact that the EU almost consistently presents itself as a humanitarian foreign policy actor, emphasizing that its foreign policies are based on human rights and an attempt to consolidate 'a rule-based international order for the future' (Ferrero-Waldner 2006). Building on Habermas's theory of communicative action, this article however takes this argument a step further by specifying the mechanisms by which norms may influence state preferences and thus common EU security and defence policies (Deitelhoff 2009; Eriksen 2005; Habermas 1998/1996; Risse 2004; Risse and Ulbert 2005; Sjursen 2004). More precisely, it suggests that the member states' preferences on a particular policy may change during the policy-making process due to what can be called argument-based learning - because they are convinced to change positions due to arguments referring to non-material standards such as norms or facts (Riddervold 2011b). On this basis, what might be called 'the legitimacy hypothesis' suggests that the EU member states agreed to establish an autonomous EU operation despite the ongoing NATO mission, because at least some of them became convinced that this option, due to certain characteristics, was more legitimate than the NATO option. This hypothesis

³ For discussions and overviews on this, see Sjursen 2006a.

builds on a different understanding of actor rationality than the one underlying the different versions of the neo-realist hypothesis. Instead of assuming strategically rational actors, the legitimacy hypothesis rests on the assumption that policy-making actors are communicatively rational and that they operate in a given social context where they coordinate behaviour through language. By communicative rationality I understand that the actors have the ability to not only justify and explain their preferences and actions but also to consider and evaluate arguments presented by others (Deitelhoff 2009; Eriksen 2005; Risse 2004; Risse and Ulbert 2005; Sjørnsen 2004). The expectation is thus that they have the ability to learn from presented arguments and on this basis change their initial positions and behaviour accordingly. If enough actors change positions due to the arguments presented, agreement on a common policy may thus be reached (Deitelhoff 2009; Deitelhoff and Müller 2005; Eriksen 2005; Riddervold 2011b; Sjørnsen 2004). By this, one allows for the possibility that the member states' decision to establish an autonomous EU mission may have been based on aggregated interests and relative strengths, as suggested by the two versions of the neo-realist hypothesis developed above. However, in addition, one allows for the possibility that policy-making actors may change positions because they are convinced by arguments referring to other non-material standards, to facts or norms (Riddervold 2011b). Being communicatively rational, they can also 'reflect on the validity of different norms, and why they should be complied with' thus allowing for the possibility that preferred the EU option due to legitimacy considerations (Sjørnsen 2006b: 88).

Empirical expectations

What would we expect to find if any of the explanations developed above can explain the EU option?

If the EU with Atalanta is band-wagging with the US, and Atalanta thus was part of an *agreed upon division of labour* between NATO, the US and the EU, one would expect to find references to the strategic importance of establishing a strong Western force to balance against China and Russia. One would further expect to find evidence of a clear division of labour in theatre: the EU focusing mainly on humanitarian tasks and the NATO and CTF-151 forces mainly conducting anti-piracy missions, such as escorts, surveillance, deterrence and the capturing of suspected pirates. The EU and the US would cooperate closely, but would not cooperate with China or Russia, neither politically nor in the field.

If the internal *strategic bargaining hypothesis* helps explain the EU choice, one would expect to find evidence of successful bargaining tactics within the EU leading to the decision to launch Atalanta. If so, one would expect, first, that

there were certain policy entrepreneurs in favour of the EU option. Second, there would be evidence to suggest that the(se) policy entrepreneur(s) allied with other member states and formed a coalition in favour of an autonomous EU mission. Third, that they used bargaining tactics to enforce reluctant member states to change positions in favour of an EU operation. There would thus be evidence to suggest that at least some of the member states changed their positions in favour of acting through the EU due to suggested package-deals or as a response to concrete threats.

Lastly, if the *legitimacy hypothesis* helps explain that the EU member states prioritized to act through the EU, one would expect evidence to suggest that the EU alternative was seen as more legitimate than the NATO alternative. If this hypothesis can explain the member states' agreement one would expect that the EU actors refer to differences between the EU and NATO when justifying an autonomous EU operation. In particular, they would refer to the higher legitimacy of the EU operation due to particular characteristics of the two operations. Second, if this can explain agreement to go for an EU mission amongst the EU member states one would expect evidence to suggest that at least some of the member states came to support the EU option because they were convinced of the higher legitimacy of this option when dealing with piracy.

Methodology

In order to explain the EU option, I seek to trace the Atalanta policy-making process in order to identify what factors that led to agreement on this option instead of extending and strengthening the NATO operation amongst the EU member states (Checkel 2006). Although research has already shown that the EU member states agreed to conduct a military mission to protect WFP shipments, the fact that they did so by establishing an EU mission, instead of strengthening and extending the ongoing NATO mission, is, as argued in the introduction, not an obvious choice. To discover what led to this decision, I study the reasons behind it from the actors' point of view (Eliaeson 2002: 52), controlling for actual behaviour. More precisely, the methodological approach is to trace the arguments that led to the EU option amongst the EU member states, thus functioning as what Sjørnsen calls mobilizing arguments (Sjørnsen 2002). Applying this approach does not mean that I aim to discover the actors' 'true' motives. As rational choice based perspectives maintain, motives as reasons for action are impossible to discover. However, as all decisions on military EU missions follow from intergovernmental procedures, I assume that common EU foreign policies are agreed upon through voluntary, verbal discussions between the member states. To explain a common policy thus means to identify the arguments that led to agreement on a decision on a particular policy, controlling for actual behaviour.

In line with the three hypotheses, I conduct the analysis in three steps. Given the conventional 'truth' in the international relations (IR) literature claiming that policy outcomes follow from the actors' material interests, I first examine whether there is evidence to support the neo-realist hypotheses. I start by looking at whether the decision was taken in cooperation with the US and NATO as part of a regional geopolitical balancing game. I then turn to study if changes in the internal EU bargaining game is important for understand the member states endorsement of the EU choice. Having studied the relevance of geopolitical factors and internal bargaining powers, I proceed to examine the extent to which the norm-based hypothesis of the EU option can be substantiated. Although analytically distinct, I thus expect these theoretically derived hypotheses to overlap empirically. A strength of using this step-wise approach is moreover that it allows me to study how different factors together might give a fuller picture of the EU choice. By studying the relevance of one hypothesis and stepwise adding and discussing the relevance of others, I expect to be able to provide a better account of the decision to go for the EU option than if only looking at the relevance of one of the hypothesis (see for instance Checkel 2006).

To improve the reliability of its assessments, the analysis uses a triangulation of different data and methods to conduct the analysis. First, altogether 17 interviews were conducted⁴. In 2013, I interviewed nine policy-makers from six different countries, of which five (from different member states, one interviewed 18 June 2013, four 19 June 2013) were directly involved in the EU decision-making process leading to the joint decision to launch Atalanta in 2008. I also interviewed two high-level persons from the EUs operations centre who coordinate EU missions and policies in Somalia, with two high-level officers working with piracy in NATO, and with one person working as an advisor on security and defence issues in the European Parliament. In 2010, I conducted interviews with two naval military specialists who had key position in the NATO mission at the time of Atalanta's launch, and with two foreign policy specialists involved in the international anti-piracy diplomacy that took place in the International Maritime Organization (IMO) from 2008. Second, written documents from the period leading up to the decision to establish Atalanta, (2007 and 2008) were downloaded from the EU institutions' web-pages, including: Council legal basis documents, Presidency conclusions, and a selection of press releases and fact sheets; Commission background documents, yearly reports and a selection of speeches and press releases, and;

⁴ An overview of the interviews can be found in the annex of this paper. The interviewees have been assigned codes, so as to differentiate between them when quotes are used. Examples of these codes are NatDel#1, IMO#1, Nato#1, and EUOpCen#1.

European Parliament (EP) motions for resolutions, debates, reports, adopted texts and press releases regarding Atalanta.⁵ Lastly, as the UK's decision not only to join but also to take operational lead of Atalanta as will be shown is important to understand agreement on the EU option, the UK House of Lords' report on Atalanta (House of Lords 2010a) has been an important source. This report is also valuable as it contains hearings of leading Atalanta military personnel, UK ministers of defence and state, UK ministry officials, representatives of the shipping industry and security specialists.

Why an autonomous EU mission?

A division of labour?

First we look at the relevance of the division of labour/band-wagoning hypothesis. On the one hand, and in line with a strategic division of labour hypothesis, when establishing Atalanta, the EU quickly took over the task of escorting WFP shipments. This has since been its prioritized task (EUOpcen#1). Cooperation with other actors and in particular the US led CTF-151 was moreover underlined already in Atalanta's mandate (Council of the European Union 2008. See also Helly 2009; Riddervold 2011a). In the field, 'the EU force and the Combined Maritime Forces [...] are working hand in glove' (House of Lords 2010b). All the interviewees moreover confirmed that the US 'very much welcomed any additional force coming into the theatre, particularly a force with a focus on counter-piracy, which clearly Operation Atalanta has' (House of Lords 2010c) In general, as one of the interviewees put it, 'each time we launch a military operation it is always discussed with the US' (NatDel#2).

On the other hand, contrary to what one would expect if Atalanta was a division of labour/band-wagoning with the US to balance Russia and China's rising power, there is little evidence to suggest an ongoing EU/US – China balancing game on the Horn of Africa. Instead, NATO, EU, Chinese and Russian forces cooperate in theatre (EUOpcen#1, EUOpcen#2, see also Helly 2009; Riddervold 2011a). Neither has the EU operation been limited to humanitarian tasks. Also, the EU force from the beginning conducts anti-piracy operations, and increasingly so. Moreover, with Operation Ocean Shield, NATO has taken a wider approach to counter-piracy efforts than what is usually the case with NATO operations, including 'a new element of regional-state counter-piracy capacity building'.⁶ This is opposed to what one

⁵ Downloaded in 2009-2010. Selection based on search-words 'piracy' and 'Somalia'.

⁶ On the NATO counter piracy operations, see: <http://www.nato.int/cps/en/natolive/topics_48815.htm> [last accessed 12 March 2014].

would expect if Atalanta was part of a planned division of labour between the EU and the US. To the contrary, instead of suggesting that the EU is the US' 'junior partner' (Walt 1985), left with the 'soft' humanitarian tasks, leaving the hard core military tasks to the US-led coalition and NATO:

[T]he two key forces in the area are the EU force and the American-led force, which is not NATO. NATO is now co-operating, but it is clear that it is an ESDP lead; it is a European force first, and NATO co-operates with it.

(House of Lords 2010d)

This EU lead was confirmed by all but one of the interviews - including the interviewed NATO officials (Interviews 2010 and 2013). After Atalanta's launch 'NATO came [...] as a follow-on' (NatDel#5).

Most importantly and in contrast to a planned division of labour hypothesis, both member state interviews and data on parliamentary debates (House of Lords 2010a; Peters et al. 2011; European Parliament 2008) indicate that the decision to prioritize EU was politically controversial, both in the EU and in NATO. In many countries who are members of both organizations it was controversial not least because 'there was a lot of NATO-minded maritime people were like oh, what is the EU going to do? [...] no, this should be a NATO thing. And so there was this sort of tension' (NatDel#5). The discussion on whether or not NATO was the organization to use was also evident in the UK, where amongst other things members of the House of Lords questioned the EU choice. In the UK, as in many other countries:

[T]here is [...] a tension that the Royal Navy faces [...] in terms of where it should place its assets, because there are political reasons why some say it should go with the CMF forces, or with the NAVFOR, or with the NATO group. So there is a complex political challenge for the UK when deciding with whom to place the one asset that it may have every now and again.

(House of Lords 2010e)

Thus, while '[o]ver time we have managed to work around the majority of those issues' (House of Lords 2010c), in 2008 'there was this NATO issue as a factor' (NatDel#2). 'It was not certain how this [EU mission] would affect relations to NATO' (Nato#4). As argued by an interviewee, 'there is competition between NATO and the EU, they fight about the resources. So this is a choice the countries made' (Nato#1).

Strategic bargaining?

So far, there is thus little data to support the band-wagoning/division of labour hypothesis. However, there is still the possibility that the geopolitical situation in 2008 was used as a window of opportunity by particular EU member states with an interest in stronger EU foreign policy integration to affect the EU bargaining game, in line with the second neo-realist hypothesis. Is there evidence to suggest that some of the EU actors acted as political mobilizers and used this situation to put a maritime EU military option on the table and push through such an operation? As we recall, if so, one would expect first, that there were certain policy entrepreneurs in favour of the EU option. Second, there would be evidence to suggest that they formed a coalition in favour of an autonomous EU mission and third, that they used bargaining tactics to enforce reluctant member states to change positions in favour of an EU operation.

France as a political mobilizer?

With Atalanta, France stands out as a possible political mobilizer. It held the Presidency when Atalanta was launched, it was already in theatre, unilaterally providing military assistance to WFP shipments, and it has a strong tradition of favouring European foreign policy cooperation outside the NATO framework. According to all the interviewed member state officials who were directly involved in the process it moreover acted as one. When asked who suggested a naval EU mission in the first place, all five referred to France. For example, '[t]he French [...] raise(d) it within the EU. Because it was the French presidency, which was a big thing, and they wanted to move forward the CSDP (NatDel#4). The French 'were the more active, because [...] it was the French presidency of the European Union' (NatDel#2).

Holding the presidency, France, together with Spain, quickly started working on establishing an EU military mission, 'of doing it at a wider scale' (NatDel#2). 'It started with a whole lot of lobbying from the French, together also with the Spanish who had strong fishing interest' (NatDel#5). 'Also Spain was engaged in pushing it forward, and they had the lead in coordination mechanism' (NatDel#1). 'The Spaniards and the French pushed it' (NatDel#5). For the member states in favour of enhanced EU security and defence cooperation it was moreover 'easy to choose this particular thing [...] because there are few risks involved for the military personnel' compared to for instance a land-based operation (Nato#1). Thus, for the member states in favour of increased EU military cooperation, this was a situation in which 'something had to be done, and this was something that the EU could do' (Nato#4). This was a chance to 'show that we can. Here the EU had the opportunity to start something' outside the NATO framework (Nato#4). '[T]his was an opportunity to launch a maritime operation under the ESDP' (House of Lords 2010c).

Striking a deal through strategic bargaining?

France, together with Spain, in other words seem to have used the window of opportunity created by the rise of piracy, the UNSC's call for action and the US' support to suggest and put the EU option on the table. However, if the strategic bargaining hypothesis can explain the agreement on an autonomous EU mission instead of strengthening the NATO mission, there must also be evidence to suggest that a pro-EU coalition used bargaining tactics to get other member states on board. And most importantly: That they did so successfully. Was this so? Is there evidence to suggest that a French-led coalition got support for the suggestion to launch an EU operation through strategic bargaining – i.e. that other member states submitted to this proposal due to presented threats and/or suggested package deals?

There is no evidence in the collected data to suggest that the member states' decision to launch Atalanta instead of trying to strengthening and extending the ongoing NATO operation resulted from submissions given by reluctant countries due to threats and/or suggested package deals. Instead, when asked why their own country supported the EU mission instead of promoting a strengthened, longer term NATO mission, all the interviewees referred to normative differences between the EU and NATO operations. In particular, they all referred to the importance of the EU's early focus and success in establishing a legal framework for legitimately dealing with pirates by negotiating transfer agreements with countries in the region (Interviews 2010 and 2013). 'It was because NATO did not have arrangements to transfer pirates, and the EU did. So that was in the end the big advantage of doing it through the EU. If you caught pirates you could hand them over' to third countries in the region (NatDel#4). The member states were concerned that 'if one captures pirates, they should not be able to apply for asylum' (NatDel#5) but they also wanted to make sure that 'their basic human rights are going to be well looked after' (House of Lords 2010c) Having negotiated transfer agreements with Kenya, and later Tanzania and the Seychelles, this could be provided by the EU. 'The legal aspects were clearly the added value of the EU to the NATO one' (NatDel#2).

These quotes thereby point towards the third hypothesis of the EU option, namely that the agreement on launching an EU operation at the expense the ongoing NATO operation was based on normative considerations regarding the two operations' legitimacy, in particular linked to their legal frameworks for the dealing of suspected pirates. As we recall, if this hypothesis can explain the member states' agreement to go for the EU option one would as already indicated by the data expect the EU actors to refer to particular normative differences between the EU and NATO when justifying an autonomous EU operation. To explain agreement on the French-led suggestion to launch an

autonomous EU operation despite the ongoing NATO operation, one would also expect evidence to suggest that at least some of the traditionally more reluctant member states supported the EU option because they were convinced of the higher legitimacy of this option when dealing with piracy. Is there evidence to suggest that other member states, including the actor that one would expect would most clearly opt for NATO and oppose an EU operation, the UK, supported the French suggestion because the EU operation was perceived as more legitimate than the NATO operation?

A more legitimate operation?

First, we look at the UK's decision to not only support but also to take operational lead of *Atalanta*. On the one hand, a NATO official and two of the member state officials suggested that 'the British took responsibility for leading the operation because it saw that it would be adapted anyway' (Nato#4). Similarly, one member state official claimed: 'I think in the end their assessment was quite pragmatic, that there would be an EU mission, whether they would like it or not. They made the assessment [...] that it was better to not rob this mission, but to get on board and to get the OHQ' (NatDel#2). According to NAVFOR Rear Admiral Jones, by taking the lead, the UK moreover 'had an opportunity to influence the shaping of the political direction that was given to the EU operation [...] to work alongside the EU military staff in crafting the initiating directive within which we did our planning, and then, indeed, we effectively wrote the Operation Plan' (House of Lords 2010c). At the same time, France and the other pro-EU mission countries wanted the UK fleet and military experience in order to establish a strong maritime operation. As argued by an interviewee, 'the member states had already agreed on it and when the UK took the lead it could work in practice' (Nato#1).

However, although there may also have been some pragmatic concerns behind the UK decision to take operational lead of EU *Atalanta*, the key reason behind the UK's endorsement was normative. Rather than submitting to threats or accepting *Atalanta* as part of a strategic package-deal, the UK supported an EU operation from the very beginning due to its legal aspects regarding the treatment of suspected pirates (House of Lords 2010a; 2010b; 2010c; 2010d; Interviews 2013). Faced with an increasing piracy problem, UK policy-makers both in the Government and in the Parliament were concerned with finding a way of legitimately dealing with captured pirates *before* *Atalanta* was suggested and before NATO's 'Allied Provider' was launched. As the then UK Minister for Africa, Asia and the UN Malloch-Brown explained in a hearing in the House of Lords 'at the beginning [...] we were extremely reluctant to bring pirates back to the United Kingdom for trial for fear that they would then try to claim refugee status' (House of Lords 2010d). At the same time, 'we are very clear;

our policy is that we will not allow transfer to third states for prosecution unless we are satisfied that they will not be subject to cruel treatment, death penalty or face a trial which is grossly unfair' (ibid.). For these reasons, the UK had signed an agreement with Kenya on the transfer of captured pirates already before Atalanta was launched. Thus, when international discussions on taking multilateral action against piracy started in 2008, finding a way in which a multilateral operation could deal with pirates in a legitimate way – avoiding the asylum problem but at the same time securing pirates' rights – was of key importance to the UK (House of Lords 2010a, 2010b, 2010c, 2010 d; Interviews 2013).

This concern is key to understand the UK's support of Atalanta. The French-led coalition put the option on the table, but when presented with this possibility, the UK endorsed it because it understood that it was the EU that could provide the necessary legal framework and thus the type of multilateral operation it wanted (ibid.). 'The legal aspect was clearly the added value of the EU to the NATO' (NatDel#2). And 'once on board, the UK became the main driving force' behind Atalanta (Nato#1).

Other EU member states, who shared the UK's concerns, also learned that the type of law-enforcement multilateral operation they wanted could best be provided by the EU. A key policy-maker from another country that is a member of both NATO and the EU for example said the French suggestion on an EU mission led to internal discussions on where to place his country's forces. In the end, an EU mission was the preferred option due to its legal aspects:

Internally there was [...] discussion with people who were more attached to the NATO side. But [...] as I said, one of the arguments was, that the rules of engagement were more robust, so actually they could do more under the EU flag than under the NATO flag.

(NatDel#4)

Further underlining the importance attached to establishing a multilateral operation with a legitimate legal framework for dealing with pirates, a key decision-maker from a third member state referred to his government's (closed) discussions on Atalanta '[as] quite challenging. We had to have debates on all these legal provisions, it was very complicated, I mean, legally, to apprehend pirates. [...]. So I remember that there was a lot of discussions, we even had extra working sessions' before agreement was reached on supporting and deploying forces to Atalanta (NatDel#4).

As a last example, both interview data and other studies indicate that legitimacy concerns were important for understanding the German Bundestag's support of Atalanta (Interviews 2010 and 2013; Pieters et al 2011). Following German law,

German troops can only be deployed if the Bundestag gives its prior consent, and 'the members of the Bundestag are usually very sensitive concerning the deployment of troops' (Peters et al. 2011: 7). The German government wanted to take action against piracy also before Atalanta was suggested, but the Bundestag did not support German troop deployment to NATO (Nato#1). However, it supported German contributions to Atalanta after having 'posed questions to the government, mostly asking for detailed information about the number of participating soldiers and of escorted WFP ships and about the procedure of detaining suspected pirates' in a possible EU mission (Peters et al. 2011: 6). Being assured that the EU mission would be conducted according to certain legal standards, where pirates' rights would be secured, it was endorsed by the Bundestag and Germany could deploy forces in December 2008.

A different type of organization conducting a different type of operation

The member states' concern with conducting a military mission that could fight piracy in a way in which pirates' rights were secured while at the same time avoiding asylum-seeking pirates is in other words key for understanding that the French led group of pro-CSDP countries got support for the suggestion to launch a distinct EU mission despite, and much at the expense of, a strengthened and extended NATO mission.

Knowing the member states' concerns, France 'started thinking of that right from the beginning' (NatDel#2). It actively used the Council secretariat and the Commission to start working on third country agreements once it took over office as President of the Council (NatDel#2, NatDel#4). This was a focus area until agreements with explicit human rights clauses were reached first with Kenya, later with the Seychelles and Tanzania. As argued also by Rear Admiral Jones, when asked about the treatment of pirates in the House of Lords, 'the EU legal services in support of the EU Council in Brussels are almost daily sending fresh teams out to negotiate with a whole range of regional states looking for where the opportunities might be to negotiate these arrangements' (House of Lords 2010c). When piracy exploded and the UN called for multilateral action:

[I]t became apparent [to the EU member states] that there was a need for robust legal arrangements for the eventualities of when you catch a pirate. What do you do with the pirate? And that started, the military operation starts to resemble a police operation.

(NatDel#1)

Both according to the EU member states themselves, EU military personnel and NATO officials, in 2008 the EU member states wanted to conduct an operation that was legitimate according to particular standards regarding the

treatment of suspected pirates – they wanted a law-enforcement operation, not a military operation (Council of the European Union 2008; European Parliament 2008; House of Lords 2010a; Interviews 2010 and 2013). . This could best be provided by the EU: ‘This is a job for the EU because this is a law enforcement operation and not a military operation’ (EUOpCen#2).

The EU’s approach of focusing on establishing a law-enforcement operation based on third country agreements was different from the approach taken for instance by the US-led coalition at the time. For instance, according to an interviewee, ‘the CMF’s legal advisors did not understand why the EU was so concerned with the legal issues. For them it was more like going in, destroy or fix and get out again’ (NatDel#5). Most importantly, it was different from the approach taken by NATO. Being a military alliance, NATO simply ‘didn’t have the means’ needed to provide legal arrangements regarding captured pirates and thus to establish and conduct the type of law-enforcement operation the EU member states preferred (NatDel#2).

[NATO] did not have the leverage to make states coordinate these transfer agreements. Through the EU we managed to make some transfer agreements, because there were some benefits for the countries who signed the transfer agreements. They got in return some financial support from the EU [...]. And these kinds of things NATO could not provide.

(NatDel#2).

As argued by an interviewee, ‘the EU is much more of the comprehensive approach, where all the different parts work together to reach the final result. While what NATO is doing quite frankly is fighting symptoms at sea’ (EUOpCen#2). Since the EU is an established political organization, France could draw on a wide area of expertise both from the Council and the Commission when working on establishing Atalanta. By working with the Commission, the Presidency could moreover draw on different ‘first pillar’ tools such as development aid to reach agreements with countries in the region. As explained by interviewees from different member states:

In the EU we were able to build a coherent approach against piracy. We were able to negotiate transfer agreements with the countries in the region, and to use our financial instruments in order to push for a conclusion of these agreements. So the European approach was more sophisticated. On the NATO side there was a military operation and nothing more.

(NatDel#2)

[A]s for the EU, the benefit comes from being able to coordinate with the other efforts that are going on in the EU framework.' The EU is better [at this] than NATO because the EU is a political organization with military ambitions while NATO is a military organization with political ambitions (EUOpCen#1)

Thus, in 2008, 'we had to find a way out and the EU track was the only possibility to find a solution in a multinational context' (NatDel#2). And due to legitimacy consideration the EU - not NATO - was the preferred option:

[A]s I am constantly reminded by the Member States of the EU, we have to make sure that those arrangements are conducted with regional states who have a policy for handling those pirates that is in accordance with the European Convention on Human Rights.

(House of Lords 2010c)

Concluding remarks

This article asked how we can understand that Atalanta was launched despite the at the time already ongoing humanitarian NATO mission. I find that the decision to prioritize the EU option can be explained in two phases during which different mechanisms were at work. In a first phase, which may be accounted for from a neo-realist perspective, France, who held the Presidency during the autumn of 2008 used the favourable geopolitical conditions caused by the upsurge of piracy, the UNSC's call for multilateral action and the US support to put an autonomous EU operation on the agenda. However, agreement on the EU option cannot be explained as a result of strategic bargaining. Reluctant member states were not threatened into submission. Instead, the member states, including the key actor that one would expect most clearly would opt for the NATO option, the UK, endorsed the French suggestion quite voluntarily due to legitimacy considerations. The member states wanted a law-enforcement operation that solved the asylum problem but that also was based on human rights standards. While NATO is a purely military organization, the EU is a political organization and could therefore take a more comprehensive approach, coordinate policies across different policy-areas and draw on tools linked to policy-areas outside of the CFSP framework to establish agreements with third countries in the region. Faced with an increasing problem and the UN's call for multilateral action, the member states learned that the EU could provide the most appropriate response.

What then are the more general implications of these findings?

One important empirical implication is that the analysis shows that NATO is not necessarily the preferred European security actor even amongst the more transatlantic oriented EU countries. Clearly, the preference for the EU should not be exaggerated, as many countries, including the UK, as argued above also have contributed with forces to the NATO and/or US-led forces. However, the consequence of launching Atalanta was that NATO came as an add-on to the EU and not the other way around. The EU was the prioritized choice.

At the same time, the EU choice was not linked foremost to geopolitical balancing game or the interest of some states to increase the EU's relative powers, as one would expect following a conventional perspective on foreign policy. Instead, the analysis suggests that it was not the organization as such that mattered the most for the EU member states' choices, but rather what it could deliver. And most importantly - that considerations regarding the value of this delivery are not necessarily linked to material interests but rather to normative considerations. Key member states such as France has always preferred EU cooperation within the field of security and defence. But in this case it seems that at least some of the other member states that are members of both organizations were convinced that the type of operation needed in this situation could best be provided by the EU - not NATO.

There are also theoretical implications to be drawn. To understand the member states' choices when launching multilateral military missions outside Somalia we need a theoretical framework that can help us capture not only how norms may influence state preferences, but also how such preferences may change. When choosing security framework in a given geopolitical situation, the preferences of European states that are members both of the EU and NATO are not predetermined by geopolitical factors and material interests. Instead, faced with security threats such as those posed by piracy, they consider their different options and base their positions not only on instrumental but also normative considerations. To be able to capture this, we need a framework that allows decisions based on normative considerations to be considered rational. And most importantly - that allows for the possibility that the actors can learn and change their positions on the basis of such considerations. Communicative action theory proved helpful in this regard.

One may however argue that maritime piracy is a special security case and that these findings therefore are not necessarily generalizable. Faced with a more traditional security threat such as a territorial conflict or a direct threat to one or more of the European states who are members both of NATO and the EU, the choice might have been in favour of the NATO option, as was the case for instance with the multilateral actions taken in Libya. However, one may also argue the opposite, namely that this case may be more, or at least *as*

typical of today's security challenges than these more traditional cases. Instead of being different, piracy outside Somalia and its international responses exemplifies the changing security contexts in which the European countries operate. Not only is the field of security and defence policy becoming more complex in the sense that the threats and challenges towards states' security are different than during the Cold War. Foreign policy actors with many different and often conflicting interests also operate in more complex geopolitical contexts, characterized by the involvement of a variety of different actors, including non-state actors and international organizations, and there are often unclear boundaries between defence and other policy-issues. This security complexity in terms of unclear threats, many different types of actors and often overlapping policy fields may thus trigger different and additional concerns with the European states than the purely military ones, as was the case with Atalanta. In this case, the member states did not only want a multilateral military response to piracy – they also wanted it to be conducted in a legitimate way. And for this they needed a political organization with a wider spectrum of available policy-tools that could take a more comprehensive approach to the situation and which had more tools at its disposal than what a traditional defence alliance such as NATO could provide. Thus, under similar circumstances, it might be that the EU also in future cases can best provide the type of response wanted by the member states – not NATO. This might be all the more so in a geopolitical context where the US is turning its strategic focus towards Asia. Although it is impossible to predict the future, rather than being a special case, maybe Atalanta says more about the future security structure of Europe. One might at least hypothesize that in a world where European states concerned with human rights protection are faced with different types of threats in a changing security context, this is not the last time the EU is seen as the most appropriate security provider.

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Annex

List of interviews

EP#1: Interview 17 June 2013

EUOpCen#1: Interview 17 June 2013

EUOpCen#2: Interview 17 June 2013

IMO#1: Interview 21 June 2010

IMO#2: Interview 30 May 2013

NatDel#1: Interview 19 June 2013

NatDel#2: Interview 19 June 2013

NatDel#3: Interview 19 June 2013

NatDel#4: Interview 19 June 2013

NatDel#5: Interview 18 June 2013

NatDel#6: Interview 4 June 2013

NatDel#7: Interview 23 May 2013

NatDel#8: Interview 18 June 2013

Nato#1: Interview 17 June 2010

Nato#2: Interview 27 August 2010

Nato#3: Interview 17 June 2013

Nato#4: Interview 24 June 2010

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14/04	Marianne Riddervold	A Geopolitical Balancing Game? EU and NATO in the Fight Against Somali Piracy
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12/05	Falk Daviter	Framing Biotechnology Policy in the European Union
12/04	Morten Egeberg	Experiments in Supranational Institution Building: The European Commission as a Laboratory
12/03	Cathrine Holst	Equal Pay and Dilemmas of Justice
12/02	Helene Sjursen	From Fly in the Ointment to Accomplice: Norway in EU Foreign and Security Policy
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11/09	Irena Fiket, Espen D. H. Olsen and Hans-Jörg Trenz	Deliberations under Conditions of Language Pluralism: Insight from the Europolis Deliberative Polling Experiment
11/08	Daniel Gaus	The Dynamics of Legitimation
11/07	Ian Cooper	A "Virtual Third Chamber" for the European Union?
11/06	Martin Marcussen and Jarle Trondal	The OECD Civil Servant between Scylla and Charybdis
11/05	Erik Oddvar Eriksen and John Erik Fossum	Representation through Deliberation: The European Case
11/04	Espen D. H. Olsen	European Citizenship: With a Nation-state, Federal or Cosmopolitan Twist?
11/03	John Erik Fossum	Nationalism, Patriotism and Diversity: Conceptualising the National Dimension in Neil McCormick's Post-sovereign Constellation
11/02	Agustín José Menéndez	United They Diverge? From Conflicts of Law to Constitutional Theory? On Christian Joerges' Theory
11/01	Agustín José Menéndez	From Constitutional Pluralism to a Pluralistic Constitution? Constitutional Synthesis as a McCormickian Constitutional Theory of European Integration
10/16	Cathrine Holst	Martha Nussbaum's Outcome-oriented Theory of Justice: Philosophical Comments
10/15	John Erik Fossum and Agustín José Menéndez	The Theory of Constitutional Synthesis: A Constitutional Theory for a Democratic European Union

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