

ZOOM IN

The question:

EUNAVFOR MED Operation Sophia one year after: An effective measure to tackle human trafficking and migrant smuggling networks?

Introduced by Francesca De Vittor and Francesca Mussi

On 18 May 2015 the Council of European Union adopted Decision 2015/778 establishing the European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED), with the aim of undertaking systematic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by migrant smugglers or traffickers, in order to ‘disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean’ and ‘prevent the further loss of life at sea’ (Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED) [2015] OJ L122/31). On 22 August 2015, the military operation was renamed Sophia in honour of a refugee girl who was born on a boat participating in the Operation. Since 7 October 2015, the Operation moved to phase 2, which involved boarding, search, seizure and diversion of vessels suspected of being used for human smuggling or trafficking on the high seas. This was done in accordance with UN Security Council resolution 2240 (2015) of 9 October 2015, authorizing inspections and seizure of both unflagged and flagged vessels on the high seas for a period of one year from the date of the adoption of the resolution.

Far from reaching its end, the mandate of EUNAVFOR MED Operation Sophia was extended until 27 July 2017 by Council Decision 2016/993 of 20 June 2016 (Council Decision (CFSP) 2016/993 of 20 June 2016 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA) [2016] OJ L162/18). Taking into account the readiness expressed by the President of the Presidency

Council of the Libyan Government of National Accord to cooperate with the Union (Council conclusions on EUNAVFOR MED operation Sophia, 23 May 2016 <www.consilium.europa.eu/en/press/press-releases/2016/05/23-fac-eunavfor-sophia/>), the 2016 Decision added two further supporting tasks to the Operation's mandate: to improve capacity building and training of the Libyan Coastguard and Navy, based on a request by the legitimate Libyan authorities; and to contribute to information sharing, as well as implementation of the UN arms embargo on the high seas off the coast of Libya on the basis of Security Council resolution 2292 (2016) of 14 June 2016.

Ten months on from the transition of EUNAVFOR MED Operation Sophia from phase 1 to phase 2 and in anticipation of its development for the next year, it is worth evaluating the effectiveness of the Operation, especially its adequacy for countering the criminal network of smugglers and traffickers. Indeed, despite constant reminders of the criminal nature of smuggling and trafficking and of the primary role of the United Nations Convention against Transnational Organized Crime (UNTOC Convention) and its two Protocols against the Smuggling of Migrants and the Trafficking in Persons, neither the UN Security Council Resolution nor the different EU Council Decisions address the question of judicial cooperation with the countries where the criminal organizations are based or the issue of the exercise of criminal jurisdiction over human smugglers and traffickers captured in the context of the Operation.

In the absence of specific rules established in the legal framework of the Operation, we have asked two distinguished legal scholars to address the question of the exercise of criminal jurisdiction, encompassing both investigation and prosecution, under the general framework of international, European and national law.

In particular, Matilde Ventrella, after assessing the relevant EU law provisions on judicial cooperation, will evaluate the impact of Operation Sophia on the exercise of criminal jurisdiction against smugglers and traffickers in light of the investigations recently undergone by Italian prosecutors. From the different perspective of international law, Efthymios Papastavridis will address the issue of the legality of extraterritorial assertion of jurisdiction.

