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From:	European External Action Service (EEAS)
To:	Political and Security Committee (PSC)
Subject:	Military Advice on the "Draft Crisis Management Concept for a possible CSDP operation to disrupt human smuggling networks in the Southern Central Mediterranean"

Delegations will find attached document EEAS(2015) 696 REV 2.

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To	Political and Security Committee All Military Representatives COPS, CSDP/PSDC, EEASDOC, COMAG, COMED, PESD
Title / Subject	Military Advice on the "Draft Crisis Management Concept for a possible CSDP operation to disrupt human smuggling networks in the Southern Central Mediterranean"
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Delegations will find attached the Military Advice on the "Draft Crisis Management Concept for a possible CSDP operation to disrupt human smuggling networks in the Southern Central Mediterranean" that has been approved by EUMC on 11 May 2015.

References:

- A. Draft Crisis Management Concept for a possible CSDP operation to disrupt human smuggling networks in the Southern Central Mediterranean (EEAS (2015) 10148) dated 30 April 2015.
- B. PSC Conclusions on 05 May 2015 tasking for a Military Advice on the "Draft Crisis Management Concept for a possible CSDP operation to disrupt human smuggling networks in the Southern Central Mediterranean".
- C. European Council statement, 23 April 2015.

A. INTRODUCTION AND AIM

- 1. On 05 May 15, the PSC discussed a possible EU Military CSDP operation to disrupt human smuggling networks in the Southern Central Mediterranean, based on a draft CMC (Reference A) developed in response to the European Council (Reference C) tasking "the HR to begin preparations for a possible CSDP operation to fight the migrants traffickers IAW international law, undertaking systematic efforts to identify, capture and destroy vessels before they are used by traffickers" (para 3 c) d) of the statement), and requested a Military Advice. The aim of this paper is to provide this Military Advice.

B. ADVICE

- 2. The EUMC considers that the term people smuggling should be clearly defined in subsequent operational documents, and that the Initiating Military Directive (IMD) should include a section with definitions of other key terminology, including smuggling, human trafficking, refugees, migrants, interdiction, assets etc.
- 3. **MILITARY PLANNING:** the EUMC welcomes the draft CMC and assesses that it provides an appropriate basis for further military planning. However, further development and elaboration are needed in the IMD in order to guide subsequent planning. Moreover, the EUMC considers that additional political and military directives and guidance need to be given at a later stage, in particular before any transition between phases.
- 4. In order to enable a rapid response to the migratory crisis in the Southern Central Mediterranean, the EUMC recognises that there is insufficient time to develop and obtain Council approval of Military Strategic Options. Therefore, the EUMC determines that a robust IMD is required to further address the issues identified in this Military Advice.

5. The EUMC emphasises that in the absence of identified political strategic objectives in the CMC it will be necessary to develop clear military strategic objectives in the IMD.
6. The EUMC welcomes the early activation of the pre-identified OHQ planning staff by IT and the support provided by this staff, and by EUNAVFOR ATALANTA and MT personnel, to the EUMS in order to conduct parallel planning as fast as possible, while safeguarding the required quality for such a complex operation.
7. **MISSION:** The EUMC assesses that a military CSDP operation, as reflected in reference A, is militarily challenging given the extraordinarily complex situation at sea and on shore, but militarily feasible under the premises of a robust legal framework and rules of engagement. Such an operation can contribute to EU efforts to disrupt the business model of migrant smuggling networks. Sustainable success of the operation will heavily depend on the implementation of a genuine comprehensive approach.
8. **PHASING AND TRANSITION BETWEEN PHASES:** The EUMC considers a phased approach as appropriate in order to launch the operation as rapidly as possible and to better shape the mission within the legal framework. In particular, the EUMC highlights the importance of Phase 1 and that this can be commenced as soon as possible within the current legal framework and status. However, the EUMC considers that, in the absence of the appropriate legal framework to commence certain executive aspects of Phase 2 and the complete Phase 3 and fully meet the European Council task for a CSDP operation, the effects of Phase 1 could be very limited. The legal framework and ROE must also acknowledge that Phase 1 operations may have to engage in some activities described in Phase 2, depending on the situation. It should also be noted that the effects of Phase 2 could also be limited. Therefore consideration should be given in order to be prepared to adapt the operation or end it at Phase 2 if necessary. The seizure of smugglers' vessels may depend on national MS law and/or United Nations Security Council Resolution (UNSCR) under Ch. VII of the Charter.
9. Decisions to transition between phases should be made by the PSC based on a recommendation from the OpCdr and supported by EUMC advice, once appropriate conditions - as articulated in the OPLAN - are met. The EUMC notes that phases should be seen as an accumulation of tasks and not as independent activities. However the decision to

go from Phase 2 to Phase 3 needs additional legal requirements.

10. **TIMING:** the EUMC considers that the timeline is challenging but achievable, pending the resource provision, and political and legal preconditions. Therefore, the EUMC emphasises that any delay in the decision process will make it difficult for the OpCdr to activate his Operation Headquarters (OHQ), seek augmentation and develop the planning documents for a desired decision to launch the operation at a future Council, possibly in late June 2015.
11. **TASKS:** the EUMC notes the list of illustrative tasks presented in the CMC and recognises that additional implied tasks will be determined by the OpCdr within the planning documents.
12. The EUMC emphasizes that preservation of human life at sea is a legal obligation in accordance with Safety of Life at Sea (SOLAS) and UN Convention on the Law of the Sea (UNCLOS). In addition, EUMC highlights that, when assisting search and rescue operations, assets will act coordinated by the competent Maritime Rescue Coordination Centre (MRCC) within its SAR region. Furthermore, for intervention under the SOLAS obligations, coordination agreements with FRONTEX and other relevant authorities, for the transfer of rescued people, both migrants and smugglers, should be established. Rescue operations led during this operation should not be publicised in order to avoid providing an incentive to migrants.
13. The EUMC underlines that the guidance to be provided in the IMD has to be sufficiently flexible to allow the OpCdr to conduct military strategic/operational planning. The IMD should also emphasise the need to calibrate military activity with great care, particularly within Libyan internal waters or ashore, in order to avoid destabilising the political process by causing collateral damage, disrupting legitimate economic activity or creating a perception of having chosen sides.
14. The EUMC also highlights that the CSDP operation would, within means and capabilities, provide protection to FRONTEX operations assets, if requested and when in danger due to armed smugglers. This must be carefully coordinated to ensure that EU Operation's assets are not fixed, that should be committed to counter migrants smuggling/trafficking networks.
15. **DURATION:** The EUMC supports the proposal that the initial duration of the EU operation

should be for one year, to enable a meaningful review of progress to be undertaken.

16. **END STATE:** The EUMC considers that the political End State is not clearly defined in the CMC. Therefore, an additional political guidance from the PSC would be desirable. Nevertheless, there are guidelines in the CMC to allow the OpCdr to develop the military objectives and the military End State. The EUMC considers an indicative military End State to be: the flow of migrants and smugglers activities have been significantly reduced. The End State for Phase One should be a sufficient understanding of the migrants' smuggling and trafficking business models, financing, routes, places of embarkation, capabilities and identities, such that interdiction operations can commence with the maximum probability of success and the minimum risk.
17. The EUMC recommends that benchmarks are defined by the OpCdr in the planning documents, allowing the assessment of progress to be made towards the overall End State.
18. The EUMC recommends that timely (3-monthly or whenever so deemed by the Operation Commander) reports are completed in order to provide a point for further political and military direction and guidance, to initiate any future planning and allowing a further force generation. A Strategic Review 6 months after the launch of operation, would be appropriate.
19. **COMMAND AND CONTROL:** the EUMC agrees that an OHQ and FHQ - structure matches the requirements and welcomes the Italian offer for the EU OHQ, FHQ, and OpCdr and FCdr.
20. The EUMC underlines the need for early identification of key staff with sufficient joint capabilities to augment the pre-identified OHQ in order to start operational planning and liaison with minimal delay. In particular the EUMC emphasises that the reinforcement of the OpCdr planning team with additional specialised EUMS and Member States planning officers could be envisaged during the preparation of the planning documents.
21. The EUMC considers that the military operation should be embedded within a comprehensive EU approach to the region.
22. **FORCE GENERATION:** the EUMC underlines that MS must commit rapidly to support the OpCdr with sufficient means and personnel to match the mission specified in the forthcoming

planning documents, noting the CMC focus on seizure and disruption. In this framework, the EUMC recommends that force sensing should start immediately under the lead of the DG EUMS.

23. The EUMC highlights the importance of the domestic law of participating MS, in particular as regards the arrest and prosecution of smugglers and the seizure, handling or neutralization of smugglers' vessels and enabling assets (logistic facilities, fuel, communication equipment). MS should identify and communicate as early as possible any caveats in this respect, and in respect of a possible UNSCR.
24. The EUMC considers that a potential force multiplier could be to utilise MS naval assets transiting through the Southern Med en-route to other areas of operation and that investigation into such a measure be included in future planning. The EUMC considers that MS give consideration to the use of their naval assets in such a manner, permitting flexibility outside of the Force Generation process.
25. Furthermore the EUMC emphasises that generation of additional resources, not identified or deployed at the time the operation is launched, will be necessary especially before Phase 3.
26. **FORCE COMPOSITION:** the EUMC highlights that the force composition at Reference A is indicative only and that due to the mission and the size of the possible area of operation, many resources and different capabilities will be required.
27. The EUMC stresses the importance of a provision of comprehensive Legal Advice as well as the provision of Legal Advisors and a Rule of Law advisory capacity to the operation, given the complexities of the legal issues involved and importance of ROE aspects. The final composition (structure and size) will be subjected to a detailed evaluation by the OpCdr ahead of force generation.
28. **SUPPORT AND COORDINATION FROM/WITH OTHER STAKEHOLDERS:** The EUMC highlights the importance of effective cooperation with a broad range of authorities and other stakeholders, with responsibilities over the anticipated Area of Operation (AOO) and adjacent areas. This cooperation will need to be conducted directly, or through liaison officers to ensure the exchange and sharing of information and intelligence, advice and support. In particular, the EUMC underlines the key role of the EU Delegations in the region,

augmented with security experts where appropriate.

29. Therefore, the EUMC highlights the relevance to identify and establish early mechanisms for interaction, including information exchange and coordination of the use of military assets where appropriate, with partners including the UN, NATO, AU, Arab League, Third States (inter-alia Egypt, Tunisia and when feasible with a Libyan legitimate Government), EUROPOL, INTERPOL, EUROSUR, EASO, EUROJUST, EUBAM Libya, EUCAP Sahel Niger, EUCAP Sahel Mali and other EU stakeholders (e.g. ECHO, EU MS etc.). The EUMC considers such interaction essential in order to draw maximum synergy from activities, to share information and intelligence through the development of an inter-agency approach and to clearly delineate responsibilities. In particular, the EUMC underlines that a clear distinction in terms of mission, tasks, areas of operation and Command and Control (C2) between the operational activities of FRONTEX, other naval forces as required and a CSDP operation is a necessity. In addition to this, the coordination of the Operation with FRONTEX would require establishing specific and permanent links with this agency and its operations in the Mediterranean Sea (TRITON, POSEIDON and INDALO). Attention will need to be paid to any changes made to their operational mandates.
30. The EUMC underlines the need to establish a specific liaison with UNSMIL. In this framework, best use should be made of the newly established EU Liaison and Planning Cell in Tunis.
31. **FORCE PROTECTION:** the EUMC emphasizes that Force Protection is paramount in all phases, but will have particular significance when confronted by hostile smugglers and for any engagement within the Libyan sovereign area .This will need to be considered on the basis of a robust Threat Assessment updated throughout the operation's duration and following force generation process.
32. **OPERATIONAL RISK:** the EUMC considers that the threat to the force should be acknowledged, especially during activities such as boarding and when operating on land or in proximity to an unsecured coastline, or during interaction with non-seaworthy vessels. The potential presence of hostile forces, extremists or terrorists such as Da'esh should also be taken into consideration. The threat emanating from the mere handling of large volumes of mixed migrants flow need also to be considered. These risks should be included in the

further development of the operational documents.

33. **SITUATION AWARENESS:** The EUMC notes, that as of now, there is not yet a clear and sufficient understanding of the business model used by the migrants smuggling networks in the Southern Central Mediterranean region. Therefore, the EUMC highlights that timely Situational Awareness (SA) will be paramount for the OpCdr to allow the conduct of the operation. In this framework the EUMC underlines that a broad exchange of information with FRONTEX to reinforce SA is necessary.
34. The EUMC underlines the need to establish an extensive intelligence analysis and assessment capability, drawing on the full range of surveillance, intelligence and information capabilities available to MS and Partners, and supported by Brussels (inter-alia EEAS Single Intelligence Analysis Capacity-SIAC).
35. **USE OF FORCE:** the EUMC considers that the operation will require a set of validated and robust ROE, in particular for the seizure of vessels in a non-compliant situation, for the neutralisation of smugglers' vessels and assets, for specific situations such as hostage rescue and for the temporary detention of those posing a threat to the force or suspected of crimes. In addition, the operation will also need appropriate ROE for the handling of migrants and smugglers.
36. The EUMC highlights that the operation will be conducted in compliance with international human rights, humanitarian and refugee law and other relevant legislation.
37. **AREA OF OPERATION:** the EUMC assesses that clear guidelines should be given in the IMD to better define the joint operation area and area of operation, and its potential key focus zones, including clear delineation of responsibilities when overlapping with FRONTEX operations. It must be, also, taken into account during the planning phase of the operation that the confrontation of the migratory flows in the Southern Central Mediterranean could lead to the increase of the migratory flows in other areas, especially in the Western and the Eastern Mediterranean.
38. **INFORMATION STRATEGY:** the EUMC identifies a risk to EU reputation linked to any perceived transgressions by the EU force through any public misinterpretation of its tasks and objectives, or the potential negative impact should loss of life be attributed, correctly or

incorrectly, to action or inaction by the EU force. Therefore, the EUMC considers that an EU information strategy from the outset, is essential in order to emphasize the purpose of the EU operation and to facilitate expectation management. Military information operations should be an integral part of this EU strategy.

39. The EUMC notes that the information strategy should avoid suggesting that the focus is to rescue migrants at sea but emphasise that the aim of the operation is to disrupt the migrants smuggling business model. By doing so the operation will indirectly contribute to reduce loss of life at sea. The target audience should include Libya and North African regional neighbours.

40. **LEGAL REQUIREMENTS:** The EUMC stresses the need for uncertain legal issues to be resolved by the EU relevant services and MS as soon as practicable. The EUMC acknowledges the complexities of the legal aspects and considers that due to their importance and complexity, those specific to the operation should be further developed and set in a single document, summarizing the current situation, what freedom of action exists, the open legal issues and the actions to be taken to solve these issues. This work should be undertaken by the legal services of all EU relevant services and by MS when appropriate. A first version of this document should be handed over to the OpCdr as soon as possible after the Council Decision to establish, and in any case before the Decision to launch has been taken and updated during the planning phase and the conduct of the operation.

41. The EUMC emphasizes the importance of clearly defining processes for, *INTER-ALIA*, the efficient and timely exchange of classified intelligence, the embarking and handling of migrants (including the potential readmission at the point of departure), boarding and neutralising of vessels, detaining and/or prosecuting individuals (smugglers) and possible transfer of detainees to Third State jurisdictions. These powers and limitations are all key components in ensuring EU deterrence and actions are both effective and credible. Taking also into account the fact that the OpCdr and unit commanders can be considered as personally responsible for an action executed under their command, in order to protect them and EU reputation, the EUMC notes the need to have clear legal frameworks and protocols in place prior to Operation launch, ideally with a UNSCR under Chapter VII and a complementary invitation by a legitimate LBY government.

42. The EUMC underlines that although the tasks of FRONTEX and the CSDP operation are different, clear arrangements must be in place with FRONTEX and relevant actors as appropriate, for the management and transfer of migrants, possible detention and prosecution of smugglers and to dispose, or to tow the seized vessels. The EUMC considers that such arrangements could have an impact on force generation, and are therefore, essential, and should be available before the Operation launch.
43. **LESSONS:** the EUMC emphasizes the need to draw experience from the lessons from previous and ongoing operations, notably EUNAVFOR ATALANTA and FRONTEX TRITON and POSEIDON operations as well as EU MS operations (e.g. MARE NOSTRUM).

C. RECOMMENDATION

44. The EUMC recommends that the PSC:
- a. Agrees this Military Advice.
 - b. Welcomes the Italian offer for the EU OHQ and OpCdr, and recommends their designation to the Council.
