Normative Power and Military Means

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CHAPTER 7

UN-authorization and the EU as security actor[75]

7.1 Introduction

In the preceding chapters, I have mainly focused on two dimensions to assess the character of the EU's military operations: justification and policy-embeddedness. In this chapte, I focus on the third aspect that is of critical importance to assess the EU's use of military force: political authorization.

The discussion about a "normative" use of military force goes back to the work of Thomas Aquinas (13th century). Aquinas distinguished between three conditions that have to be met for a "just" war: right authority, just cause, right intention (Aquinas 1947). After the horrors of the Second World War, the UN came to play a central role in surveilling all three conditions under international law. The "right authority" was presumed to be institutionalized in the United Nations Security Council[76] and subsumed the other two conditions. The UN charter bans the use of armed force except for self-defence and collective action to "maintain or restore international peace and security" authorized by the Security Council (UN Charter 1945).[77]

UN-authorization serves to underline that the military intervention is provoked by a fundamental breach of international peace and security rather than an attempt to settle an old score or other particularistic interests. Moreover, it signals a willingness to bind oneself and to act within the constraints of international law. This is especially important as there is no internal legal review in the EU (i.e. CSDP does not fall under jurisdiction of the Court of Justice of the European Union, CJEU) nor external review (i.e. the EU is not a member of the European Convention on Human Rights, ECHR) of CSDP missions. At the same time UN-authorization raises serious dilemmas. As I already pointed out in section 3.2.3, the discussion about UN-authorization is closely related to a more fundamental debate about legitimacy and legality. Ideally a military intervention is both legitimate and legal. However, a legal operation does not always perfectly approximate notions of international legitimacy. Moreover, the lack of UN-authorization is prone to be used strategically, covering up for inaction as well.

To contribute to this debate, this chapter aims to answer the question what role the UN mandate plays in the authorization of EU military missions. So far there has been no systematic analysis of the role of the UN mandate in initiating CSDP operations. Existing research on the political authorization of EU military operations has primarily focused on the role of parliamentary oversight (e.g. Bono 2004; Gourlay, 2004; Huff 2015; Peters et al. 2008; Wagner 2006). Moreover, research on the relationship between the EU and the UN concerning military deployment has mainly focused on the organizational cooperation in Africa (e.g. Charbonneau 2009; Gowan 2009a/b; Major 2008; Peters 2011).

In chapter 3, I have elaborated upon the necessity and sufficiency of UN mandates for different international power identities. Let me shortly summarize the main expectations (see Table 7.2).

First, a realist power will determine its course independently from a UN mandate. Hence, a mandate is neither necessary nor sufficient for a military intervention, but neither is the absence of a mandate for refraining from action. In contrast, a liberal power has a more legalistic view of UN a mandate. Hence, for a liberal power a UN mandate is necessary for a military intervention. However, it is not a sufficient

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75   An article based on this case study is currently under review. An earlier draft was presented at EUIA (2016) and UACES (2016).

76   A preceding attempt to institutionalize this "right authority" was the League of Nations.

77   The need for UN-authorization in case of the "intervention by invitation", i.e. the explicit request of the host country, is a matter of debate. While some argue that intervention by invitation may make UN-authorization obsolete, the High Level Panel claims that UN-authorization has to be sought in all cases of military intervention, "recognizing that in some urgent situations that authorization may be sought after such operations have commenced" (HLP 2004: 85).

requirement. From this follows that the absence of a mandate is sufficient for non-action but not necessary, as a liberal power may refrain from action for domestic reasons of risk averseness as well. Finally, a normative power adheres strongly to UN-authorization, but may for substantive reasons of human security act without a UNSC-resolution (i.e. UN-authorization is a quasi-necessity). So, the absence of a mandate is neither necessary nor sufficient for non-action. Whenever there is a mandate in line with human security, however, there is the obligation to act (i.e. sufficient).

Table 7.1 Necessity and sufficiency of UN-authorization

	Mandate	No Mandate
Realist power	Neither necessary nor sufficient for action	Neither necessary nor sufficient for non-action
Liberal power	Necessary, but not sufficient for action	Sufficient, but not necessary for non-action
Normative power	Sufficient and quasi-necessary (strong preference) for action	Neither necessary nor sufficient for non-action

This chapter examines the role of the UN mandate in the authorization of CSDP operations to assess whether the European Union has indeed behaved consistently with its self-proclaimed normative power identity. Since the EU launched its first military operation (Concordia, FYR Macedonia) in 2003, showing its ability to collectively use military force, the question of how to deal with (the lack of) UN-authorization has steadily gained political weight. The crucial issue is how the absence of a mandate is dealt with in the case of a misfit between the EU's position and that of the UN. As the discussion above has pointed out, the nature of the arguments that are provided can be taken as cues as to the character of the EU as a security actor.

Below I first explain the EU's formal position vis-à-vis UN-authorization and the operational relation between the two international organizations (Section 7.2). Subsequently I focus on EUNAVFOR Sophia, an operation that was launched in 2015 in the Mediterranean Sea, in which UN-authorization has become a particularly acute concern (Section 7.4). To appreciate the dynamic and broader implications, it is useful to compare this case with two preceding cases: Congo (2008) and EUFOR Libya (2011) (Section 7.3). All three cases highlight the tensions that (the absence of) UN-authorization may raise on the legitimacy and legality of a military intervention, and the instrumental and strategic use of UN-authorization.

7.2 The EU and UN-authorization

7.2.1 Formal position
The European Union has been one of the world's powers that prides itself on being committed to supporting the UN-system and international law (Treaties on European Union, TEU 3.5; 21.1&2; 42.1; Declaration 13). As stated in the EU Treaties:

> The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations (TEU 21.1).

Building upon this treaty-base, different documents have elaborated the EU's position concerning the use of force in its relation to the UN. In the 2003 Communication *The European Union and the United Nations: The choice of multilateralism,* the EU defines the UN as "the pivot of the multilateral system" and aims at a "more active, and indeed militant multilateral poise" of the EU (European Commission 2003). It conceives of the EU as "a front-runner" and "a model to others in implementing – and even going beyond – its international commitments." Subsequent joint-declarations focus on UN-EU cooperation in crisis management (2003; 2004; 2007; 2011) in terms of the planning, training, communication and the exchange of best practices.

The founding document of the EU as a security actor is the European Security Strategy (2003; updated in 2008). Effective multilateralism is one of its strategic objectives:

> We are committed to upholding and developing International Law. The fundamental framework for international relations is the United Nations Charter. The United Nations Security Council has the primary responsibility for the maintenance of international peace and security. Strengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, is a European priority (ESS 2008).

The EU's emphasis on international legal norms stands in stark contrast to the US' pre-emptive strike doctrine, as expounded in the US National Security Strategy (2002).[78] As such, De Baere and Paasivirta (2013: 23) conclude that the EU has a "constitutional rather than instrumental attitude towards the UN system." Similarly, others point out that the EU "accepts its legal subordination to the UN" (Tardy 2009: 44) and "recognizes the UN's authority to confer political legitimacy and legality" (Major 2008: 8). However, in the European Security Strategy (2003) there is no explicit requirement for a UN mandate to deploy military force. As Drent (2010) points out, the ESS speaks of "effective" rather than "principled" multilateralism – opening up space for unauthorized action when the UN does not act as deemed appropriate to the EU. Similarly, Haine (2009) argues that for the EU multilateralism is a condition for success, but not a legalistic or formal obligation (see also Kurowska and Seitz 2011: 27/28). As such, it can easily become an alibi for inaction as well (Ibid.). Moreover, the Treaty-provisions refer to a strong commitment to the *principles* of the UN-Charter, which leaves room of manoeuvre concerning *UN-procedures*.[79] This would be in line with a Normative Power-identity in which UN-authorization is highly valued as a procedural feature that gives legitimacy to military action, but for which it not an absolute requirement whenever human security concerns, i.e. UN-principles, are at stake.

Upon request of the EU High Representative Solana, a "human security doctrine for Europe" was developed in 2004 (Barcelona Report). Under the Finnish Presidency a follow-up report was delivered, "A European way of Security", in 2007 (Madrid Report). Both reports aimed at squaring normative power with the use of military force. Among other things they reflect upon the EU's stance towards multilateralism and the role of UN-authorization in deploying military force:

> If there is to be a complement to the Security Council route at all, it should be very narrow and unambiguous. Most states tend to claim that the wars they wage are 'just'. If the European Union were to decide to open the way to intervention without Security Council authorization, then a legal framework should include the criteria and legal basis for such interventions (Barcelona Report 2004: 21).

These reports are thus very careful not to disconnect legitimacy from legality. In its justification, both reports warn that without a reliance on the legal UNSC route the EU's "living by example" may have adverse consequences.

7.2.2 Operational

In terms of EU operational support to UN crisis management, we have to distinguish between UN mandated and UN-led missions. Since the EU's CSDP has become operational, the EU's support for the UN in crisis management seems to focus primarily on participation in UN mandated missions, rather than in UN-led missions (cf. Major 2008). This trend can be interpreted in two ways. On the one hand, it suggests that the EU aims to stay in control, rather than to follow the UN's lead. On the other hand, it may point at a division of labour, which is supported by the fact that several EU-operations are deployed parallel to, or in direct support of, an UN-mission (e.g. Artemis/EUFOR Congo and MONUC; EUFOR Chad and MINURCAT; EUFOR/EUMAM RCA and MINUSCA; EUTM Mali and MINUMSMA). A notable exception is UNIFIL (Lebanon, 2006), which has been characterized as an "EU-led military force with an UN-logo" (Ginsberg and Penksa 2012: 181; see also Gross 2011).

As Table 7.2 shows, all EU military operations have a clear authorization from the UNSC. However, for several operations the reliance of the EU on a UN mandate needs to be qualified. First, the character of EUFOR Congo (2006) was defined prior to the UNSC resolution; the UN did not have, or did not use, the opportunity to influence the EU planning process (Major 2008). Second, in the case of EUFOR Chad, the UN secretariat was "uneasy" about sending troops to Chad (Gowan 2009b). These two observations suggest attempts of "uploading" EU-operations, i.e. EU actors pushed for a resolution to have their intended mission authorized, rather that it was asked on (independent) initiative of the UN. In both cases they succeeded in acquiring UN-authorization. More recently, in the case of EUFOR RCA, the UNSC simply referred to the letter of the EU High Representative to authorize the operation, without an explicit determination of the justification of the operation (cf. Törö 2015: 523). So, although UN-authorization can be perceived as a constant for EU military action, the EU-UN relations concerning CSDP operations are not without contestation.

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78   While the ESS initially did include the notion of "pre-emptive engagement", upon Germany's insistence it was replaced by "preventive" engagement (cf. Norheim-Martinsen 2012: 47).
79   Credits go to Wolfgang Wagner for highlighting this distinction

Table 7.2 Authorization EU military operations

Operation (Country)	Period	Political Authorization
Concordia (fYROM)	2003 Pre-Lisbon	UNSC resolution 1371 (2001) and invitation by FYR Macedonia authorities
Artemis (Ituri province, DR Congo)	2003 Pre-Lisbon	UNSC resolution 1484 (2003)
EUFOR Althea (Bosnia and Herzegovina)	2004 – now Pre-Lisbon	UNSC resolution 1551 (2004)
EUFOR RD Congo (DR Congo)	2006 Pre-Lisbon	UNSC resolution 1671 (2006) and welcomed by DRC authorities
EUFOR Tchad/RCA (Chad – Central African Republic)	2008-2009 Pre-Lisbon	UNSC resolution 1778 (2007) and welcomed by authorities of Chad and CAR
EU NAVFOR Atalanta (coast of Somalia)	2008 – now Post-Lisbon	UNSC resolutions 1814 (2008), 1816 (2008) and 1838 (2008)
EUTM Somalia (Training Mission, Uganda and Somalia)	2010 – now Post-Lisbon	UNSC resolution 1872 (2009), 1897 (2009), appreciation by TFG and welcomed by African Union and Uganda
EUFOR Libya	2011	UNSC resolution 1970 (2011) & 1973 (2011) + OCHA-request
EUTM Mali (Training Mission, Mali)	2013 – now Post-Lisbon	UNSC resolution 2071 (2012) and invitation by government
EUFOR RCA/ EUMAM RCA	2014 – now Post-Lisbon	UNSC resolution 2134 (2014) and welcomed by ECCASS and government (EUFOR RCA). Invitation by the government (EUMAM RCA)
EUNAVFOR Sophia	2015 – now Post-Lisbon	UNSC resolution 2240 (2015)

UN-authorization has become particularly acute with EUNAVFOR Sophia. To appreciate the dynamic and broader implications, it is useful to compare this case with two preceding cases: Congo (2008) and EUFOR Libya (2011). All three cases highlight the tensions, and the instrumental and strategic use of UN-authorization. For each case, I first provide some background information and a chronology of the interaction between the EU and the UN. Subsequently, I interpret what this evidence tells us about the EU as an international security actor.

7.3 UN-authorization: not sufficient

The first two cases point at opposite logics of UN-authorization. Whereas the case of Congo 2008 points at a situation in which the EU did not follow up on a UN request, the situation of EUFOR Libya in 2011 is about the UN not answering to an EU proposal.

The case study on Congo, 2008 (Section 7.3.1) builds upon data that was already provided in chapter 6. The analysis of the role of UN-authorization in the case of Libya, 2011 (section 7.3.2) is based upon the case studies of Koenig (2014), Engberg (2014) and Lindström and Zetterlund (2012).

7.3.1 Congo 2008

From 1994 until 2003 Congo was afflicted by war. The EU launched its first autonomous military operation (Artemis) in Congo in 2003 to "contribute to the stabilization of the security and humanitarian situation in Bunia, including (…) the protection of the civilian population" (Council of the European Union 2003c). In 2006 the EU returned with a second military operation to support the UN-operation MONUC during the election process (Council of the European Union 2006d).

In the fall of 2008, Congo experienced an upswing of violence. Against the backdrop of the EU's earlier involvement, it came to no surprise that France, supported by High Representative Solana and Belgium, called for an EU military operation (Deutsche Welle 2008). In contrast to the UN-operation already on site, the EU's operation would focus on providing aid, not on fighting rebels (Ibid.). However, this proposal was blocked by severe resistance of Germany and the UK, who were both leading a standby battlegroup in the second half of 2008, and hence, would need to deliver the bulk of the necessary troops (Ibid.).

The topic returned to the EU agenda when, early December, a letter of UN Secretary-General Ban Ki-moon arrived, which explicitly asked for an EU-force based on the Artemis-model. On 11 December, Solana tabled four military options to meet the request: a fully-fledged ESDP mission, an ad-hoc force, contributing forces to MONUC and a "coalition of the willing restricted in size" (Traynor and Borger 2008; US Embassy Brussels 2008a). The main advocate of the operations were Belgium, Spain, Sweden and Finland (cf. US Embassy Brussels 2008a). They pointed out that this situation was a textbook example for the battlegroups: "if we don't send them to Congo, where do we send them?" (Vogel 2008).

Nevertheless, the main advocates, supported by calls from NGOs and prominent figures (see Borger 2008; Oxfam 2008a/b), lacked the necessary military capabilities to counter the undiminished resistance of Germany and the UK in a convincing way. France played a crucial role in this regard. Initially, France did support and actively

promoted the idea of an EU military mission by mouth of Foreign Minister Kouchner. However, by December it reduced the pressure as President Sarkozy called upon Kouchner to do so (former French official 2016). Instead, France made sure that the EU's anti-piracy Atalanta would be successfully launched during its Presidency (Ibid.; see also Chapter 6).

To sum up, though there was an explicit request of the UN in 2008, the EU decided not to answer this request to deploy a third EU military operation in Congo. This shows two things. First, a UN request is not a sufficient condition for EU military action. Second, the internal decision-making process suggests that a UN request will not succeed without the support of the Big Three (France, the UK and Germany).

7.3.2 EUFOR Libya

No-Fly Zone (NFZ)

Early 2011, the "Arab Spring" reached Libya, to which Libyan leader Gadhafi responded with massive violence and repression. In response, several UN resolutions were adopted imposing an arms embargo and targeted sanctions (UNSC 2011a), and authorizing a no-fly zone (NFZ) and "all necessary means to protect civilians and civilian-populated areas" (UNSC 2011b).[80]

In the run up to these resolutions, the EU considered several forms of collective engagement (DPA 2011). At the PSC, on 8 March, an EEAS Option Paper was discussed, including military support for evacuation, the enforcement of a maritime embargo and a humanitarian mission with Battlegroup deployment (cf. Engberg 2014: 153). On 10 March, Sarkozy and Cameron sent a letter to European Council President Van Rompuy proposing action to establish a no-fly zone. The European Parliament (2011a) called for a no-fly zone as well. On an extraordinary European Council, the next day, this proposal was rejected (Traynor and Watt 2011; Lindström and Zetterlund 2012). The same applied to the Italian proposal for a maritime CSDP operation to enforce the arms embargo, which was declined by both the UK and Germany (Koenig 2016).

Strong proponents for a forceful EU response were France and the UK, supported by the European Parliament and European Council President Van Rompuy.

However, they met fierce opposition to establish a NFZ from Germany[81] and High Representative Ashton. Merkel was quoted to have said:

> What is our plan if we create a no-fly zone and it doesn't work? Do we send in ground troops? (…) We have to think this through. Why should we intervene in Libya when we don't intervene elsewhere? (Tisdall 2011).

Moreover, in addressing the Bundestag German Foreign Minister Westerwelle highlighted the political and military risks involved:

> There's no such thing as a "surgical intervention." Every military operation claims civilian victims. We know that from our own painful experience. When we consider what stance to adopt on the international stage and whether and where we could participate in any operation, we always have to remember that there will be victims, civilian victims. I know we've discussed this often enough in the context of the Iraq or Afghanistan missions. I therefore remind you that we always have to take into account the lessons learned from our recent history, also from recent military operations, when we make decisions today (Auswaertiges Amt 2011).

Also, Ashton paid close attention to those Member States uncomfortable with the EU playing a leading military role and was instrumental in ensuring that the EU took a back seat (Howorth 2011). Ashton clearly preferred NATO to do the job, as she declared before the European Parliament: "It should be NATO but I don't know when (…) NATO would definitely be the way forward" (European Parliament 2011b).

Rather than by the EU (or by NATO), the no-fly zone came to be enforced by a coalition of the willing, led by the UK, France and the US (Operation Odyssey Dawn, from 19 March onwards).[82] Cameron justified the operation as necessary, legal and right (Rettman 2011). By the end of March 2011, the NFZ became part of NATO's operation Unified Protector.

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80   UNSCR 1973 was adopted by 10 votes in favour (Bosnia-Herzegovina, Colombia, France, Gabon, Lebanon, Nigeria, Portugal, UK, South Africa and the US) and five abstentions (Brazil, China, Germany, India and Russia).

81   While the upcoming German elections and the position of the FDP have been mentioned as explanatory factors for Germany's position, the broad support for the Government's position in the Bundestag suggests "a more deep-seated conviction" (Engberg 2014: 155).

82   The other EU Member States that participated in enforcing UN resolution 1973 (2011) with air strikes were Denmark, Belgium and Italy. Air support was provided by Sweden, Spain, the Netherlands and Greece. Bulgaria and Romania participated in the naval operation to enforce the arms embargo (cf. Lindström and Zetterlund 2012: 54).

EUFOR Libya

Subsequently the debate shifted to the possibility of a humanitarian operation. On April 1, the EU adopted a decision for a military operation to support humanitarian assistance and evacuation in Libya (EUFOR Libya). In the CONOPS the tasks are further defined: secure the sea- and airport to allow for aid delivery, operate bulk fuel storage and distribution points, provide security to humanitarian assistance agencies in exceptional circumstances (in: Engberg 2014: 159). Upon the insistence of a.o. Germany and the UK this operation was made conditional upon a request from the UN's Humanitarian Aid Office (OCHA) (cf. Koenig 2016: 65).[83]

This request never came. OCHA-representative Amos informed the EU about its reluctance to make the request to EUFOR Libya by April 10 (cf. Philips 2011; see also Pilkington et al. 2011; Traynor 2011). On 20 April, she went public at a press conference stating that an EU mission was not needed at the moment (Phillips 2011). Moreover, it is telling that in a press-encounter with Van Rompuy, on 16 April, UNSG Ban Ki-moon did not even mention the operation that had explicitly been put at the service of the UN (cf. Koenig 2014).

Concerning the humanitarian operation EUFOR Libya, the EU decision-making dynamic was not constructive or cooperative either. On April 12, Sweden (framework nation for the Battlegroups that were on standby, together with the Netherlands) blocked the Concept of Operations of EUFOR Libya (Pop 2011).[84] On 15 April the EU and NATO "deepened their coordination for a potential EU military mission to deliver urgent humanitarian aid" (…) "after the EU overcame Swedish objections to a potential military-humanitarian mission" (AFP 2011).

To sum up, the contestation over enforcing an UN-authorized no-fly zone underlines that a UN resolution is no sufficient condition for EU military action. Moreover, the OCHA-clause in EUFOR Libya's mandate was deliberately intended "to invite

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[83] Interviewees support the strategic intention of putting the OCHA-request in the mandate. "We attached great value to the request of OCHA, although we knew that OCHA's request would never come. I can't say more on this, but you can draw your own conclusions" (PMG-Representative A 2013). "The assumptions the operation was based upon were not the right one, namely that it should get a request from OCHA while it was clear that there would not be such a request. Germany has been very cautious – it was also opposing within NATO" (Polish diplomat 2013).

[84] This opposition contrasts with Sweden's participation in enforcing a NFZ. Although Swedish participation did not entail strikes on Libyan ground forces (Taylor 2011), its participation was interpreted as favoring NATO's "military interventionism" over a humanitarian support mission (Behr 2014). According to Engberg (2014: 160) Sweden had been skeptical from the start about an EU-military operation in Libya because of the lack of a strategic framework and political guidance. Rather, it aimed at an EU-role in support of the UN, NATO and regional organizations. At the same time as the decision-making over EUFOR Libya took place, Sweden decided to contribute to Operation Unified Protector instead (cf. Engberg 2014: 161). This position is puzzling in the light of its assumed Human Security-foreign policy identity.

inaction" (Youngs 2014: 173). This reveals that UN-authorization is strategically used to raise the thresholds for EU operational military action.

7.4 Operation Sophia: an operation in search of a resolution

Already in 2013 Italy called for an EU military operation to stop the trafficking of migrants (DPA 2013). However, only after the public outcry, sparked by the drowning of more than 1000 refugees in the Mediterranean in April 2015, EU Member States became receptive to this idea. In an emergency meeting on April 20, the EU's Foreign and Interior Ministers agreed on a 10 point plan on migration, presented by the European Commission. This plan included "a systematic effort to capture and destroy vessels used by the smugglers", referring to EUNAVFOR Atalanta off the Somali coast as a source of inspiration (European Commission 2015b). In a special meeting of the European Council on the 23rd this proposal was maintained, inviting the High Representative "to immediately begin preparations for a possible CSDP operation."

The UNHCR (2015) "took note" of the EU's plans and voiced serious concerns, arguing that "law enforcement measures must be accompanied by efforts aimed at reducing the need for migrants and refugees to turn to smugglers in the first place" and that deterring smuggling "will be in vain unless measures are adopted to address overly restrictive migration policies in Europe, as well as the push factors of conflict (…)." Instead, the UN called for a "more holistic plan consistent with international norms and standards." Similarly, Secretary-General Ban Ki-Moon stated that "destroying the boats is not the appropriate way, it's not the good way" (Financial Times 2015), and that the "EU should focus on saving migrant lives at sea rather than sinking smuggling boats. The priority should be given to lifesaving and strengthening SAR [Search and Rescue]" (Deutsche Welle 2015).

On 5 May the EU Member States agreed upon a Crisis Management Concept. Italy submitted a draft-proposal for an EU military operation in the Mediterranean to the European countries at the UNSC (Laan 2015). Subsequently, on 11 May, High Representative Mogherini attended a Security Council Session to get support for the EU's military action. She emphasized that "it is not only a humanitarian emergency, but also a security crisis" (UN 2011: 2). This underlines that the EU aimed at an operation that would go beyond search and rescue. Moreover, she highlighted the EU's commitment to multilateralism and preference to work with the UNSC and United Nations High Commissioner for Refugees (UNHCR) (Ibid.: 3).

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To this plea of Mogherini, African Union-representative Antonio responded:

> It is our conviction that ad hoc solutions that place the emphasis solely on one specific aspect – for example, focusing on trafficking without addressing either the reasons pushing people to flee their home countries or even the almost total breakdown of law and order – which have allowed human trafficking to flourish are unlikely to bring about the much-needed change that will prevent people who do not have livelihoods from looking for greener pastures elsewhere (UN 2011: 5).

Libya's ambassador to the UN "expressed deep reservations" about the operation, fearing that it would violate Libya's sovereignty and complained about not being consulted (Lynch 2015). Russia justified its suspicion with reference to the 2011-resolution on Libya (Ibid.) and made its allowance conditional upon the explicit consent of the Libyan authorities.

The much desired resolution did not follow. Nevertheless, on 18 May the EU decided upon the launch of EUNAVFOR MED, with the aim to "disrupt the business model of smugglers in the Southern Central Mediterranean" (Council of the European Union 2015a).

To this end the operation consists of three sequential phases. The first phase of intelligence gathering in the "high seas" does not require a UN resolution or an invitation from Libyan authorities. The two subsequent phases, however, which include seizing and destroying vessels and equipment on the high seas (2A), in Libyan waters (2B), or even onshore (3), are put on hold as long as there is no legal mandate. They are made conditional upon "any applicable UN Security Council Resolution or consent by the coastal State concerned" (Ibid.).

Mogherini expected that: "after we take the decision today [18 May] it is more likely for the Security Council to take a resolution" (AFP 2015a). She also noted that the actual launch of the operation "depends on receiving a UNSC-mandate by then" (Maguire 2015). To facilitate UN-negotiations, the reference in the Council Decision to "destroy" was replaced by "dispose of" (EPRS 2015). Notwithstanding the fact that there still was no legal mandate nor a letter of consent from the Libyan authorities, on June 22, EUNAVFOR Med was launched – allowing for phase 1 to become operational. The Dutch Minister Koenders put the responsibility on Libya and the UN: "It is now up to Libya and the UN to ensure that we can carry on and prevent the death of thousands of boot refugees" (Laan 2015). In anticipation of a UNSC-resolution, the operation moved to phase 2A on 7 October (approved by the PSC on 28 September). On 9 October a UNSC-resolution was adopted that authorized phase 2A of EUNAVFOR Med. This phase entails the interception of suspected vessels in international waters:

> to authorise, in these exceptional and specific circumstances, for a period of one year from the date of the adoption of this resolution, Member States, acting nationally or through regional organisations that are engaged in the fight against migrant smuggling and human trafficking, to inspect on the high seas off the coast of Libya vessels that they have reasonable grounds to suspect are being used for migrant smuggling or human trafficking from Libya, provided that such Member States and regional organisations make good faith efforts to obtain the consent of the vessel's flag State prior to using the authority outlined in this paragraph (UNSC 2015).

According to the Italian Operation Commander Credendino the resolution "reinforces the legal framework applicable to EUNAVFOR Med", providing "the legal basis for all Member States to undertake these activities against suspected smugglers" (EU Military Staff 2016). By this time the operation's name changed into Operation Sophia, named after a Somalian girl that was born on a German frigate participating in the operation (cf. Valkenet 2015).

At the time of writing, the initiation of stage 2B and 3 is still blocked by the need for a UN resolution, which UNSC permanent members Russia and China have made conditional upon an invitation by Libya (EU Military Staff 2016). In June 2016, Operation Sophia was extended with another year and its mandate was expanded to include two supporting tasks (Council of the European Union 2016):

1. capacity building and training of, and information sharing with, the Libyan Coastguard and Navy, based on a request by the legitimate Libyan authorities taking into account the need for Libyan ownership

2. contributing 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 a new UN Security Council Resolution.

This suggests that, in the absence of a UN resolution that allows the EU's military operation to move to phase 2B, secondary tasks were added to keep sufficient support for the continuation of the operation.

7.4.1 Challenging the boundaries of multilateralism
Although humanitarian concerns are emphasized, EUNAVFOR Sophia is explicitly not about search-and-rescue (SAR). The latter is an international obligation that

EUNAVFOR Med adheres to, but it is not included as the operation's core task (Politico-Military Group 2015). Since the operation is not restricted to SAR but aims at seizing and destroying vessels, UN-authorization is required.

In the period from April until October 2015 the EU's involvement with the UN was characterized by testing the boundaries of multilateralism. While the EU made serious efforts to get a UN resolution authorizing its actions in both the high waters and Libyan waters, it launched phase 1 and 2A of the operation before a formal UN-authorization. Despite opposition from Libya's internationally recognized government and criticism from the UN, the EU went ahead with the early phases of the operation. This instrumental view of multilateralism suggests that there was great confidence that there would be a resolution on time (i.e. before May 18 and before June 22).

At the same time, the overall broad support for EUNAVFOR Med within the EU[85] for the early phases of the operation covers up differences in deeply held ideas about the use of force. Some countries (e.g. France & the UK) push for moving promptly to phase 2B and 3 (EEAS-official F 2016; AFP 2015b). In contrast, other countries (e.g. Germany) are quite happy with staying in phase 2A (PMG-Representative G 2015). Germany leads "the process in such a way that there will be sufficient moments of decision at which Member States can say: go forward or wait" (Dutch Diplomat 2015). This fits with an assessment of the *Deutsche Welle:*

> Things were not necessarily intended to go this quickly, nor be this radical, at least as far as the German government is concerned. Berlin is now attempting to slow things down behind the scenes (Riegert 2015).

The sequential character of the operation plays an important role here. On the one hand it allowed for a quick launch of the operation (allowing the EU to say: we're doing something). On the other hand, it is an important lever for countries that are reluctant about phase 3.

Within the EU, the rather constrained resolution that authorizes phase 2A is presented as a way to "meet the reservations" of some Member States. This shows that UN-authorization is used to silence internal opposition. More broadly, UN-authorization is the vehicle of a political game that is not just played within the EU

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itself, but also with the reluctant UNSC-veto powers. As such, it has been argued that people hoped that Russia and China would "kill this off and save everyone a lot of embarrassment" (Gowan in: Lynch 2015).

In sum, Operation Sophia is an operation in search of a resolution. It was criticized from by UN institutions that it prioritized tackling the smuggling business over search-and-rescue. The Joint Decision and actual operational launch of the operation were adopted with high uncertainty about an UNSC-resolution. Rather than acting upon an UN request, the EU seems to "upload" its operation to the UN. However, this early launch came at the political prize of sequencing in various phases, which provided the more reluctant Member States with a powerful tool to stall a quick transfer to the Libyan waters and coast.

7.5 Conclusion

This chapter shows that UN-authorization of the use of military force is an important parameter for the EU to engage in military missions but by no means a sufficient condition (see Congo 2008 and Libya 2011). Moreover, the most recent case of EUNAVFOR Med Sophia suggests that its necessity may be losing its unquestioned status.

The variation in EU responses to the presence and absence of UN-authorization has to be understood against the background of the EU's decision-making dynamics. Member States have diverging views on the justification of the use of military force. Since UN-authorization is deemed of great importance, it is a highly valued power resource during internal negotiations in attempts to stall or push for the launch of an EU military operation.

This raises important questions about the character of the EU as an international security actor. The EU's self-conception of a normative power that upholds international law and nourishes UN legitimacy is actually qualified by the EU's deliberate non-action in Congo 2008. This case highlights that UN-authorization is not sufficient to activate the EU's military engagement, which is actually in line with a liberal power orientation. Indeed, this episode stands in stark contrast to the other discussed cases of "uploading" an EU-operation to the UN level.

Whereas attempts to "upload" the authorization of EUFOR Libya to the UN could be seen as in line with a normative power, this is far from obvious in the case of EUNAVFOR Sophia. In the latter case, there has been severe criticism from UN bodies on the prioritization of tackling smugglers over save-and-rescue. While the EU has not taken operational action beyond UN-authorization, the EU performance

at the UN in this case suggests an emerging great power mentality. The inclination to stretch the limits of multilateralism questions the EU's willingness to be constrained by international law. As such, this study contributes to Finnemore's (2005) insight that international actors prefer to explore the room of manoeuvre within a multilateral framework rather than that they directly challenge multilateral institutions.

While one may question objectives, aims and motivations of using military force, when they are subject to external authorization there is at least a minimal check of "right authority." However, when the necessity of external authorization is subtly diminished, there are little institutional checks left that prevent a "qualitative shift" in the character of CSDP operations (see Tardy 2015: 3). As the EU's first military operation in its near abroad since the Balkan-operations were launched in the early 2000's, EUNAVFOR Sophia suggests that the EU's normative power identity may actually be a superficial layer that exhibits cracks as soon as its "interests" are at stake.

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