

FROM A TACTICAL MOVE TO A STRATEGIC CHALLENGE: OPERATION IRINI

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- What is the discourse of the intervention in the Turkish-flagged vessel *ROSELINA-A*?
 - Is the operation consistent in terms of military and technical considerations?
 - What could be the outcomes of the operation against the *ROSELINA-A*?

THE DISCOURSE OF THE INTERVENTION

The EU intervened in the Turkish-flagged vessel *ROSELINA-A*, which was loaded with humanitarian assistance (construction materials and food) and heading towards the city of Misurata in Libya. The discourse of the operation is crucial in understanding whether the overall practice complies with maritime norms and is within the limits of goodwill. The primary task of Operation IRINI, which started on March 31, 2020, was declared to be the implementation of United Nations Security Council's Resolutions 2292 (2016) and 2526 (2020).¹ Resolution 2526 (2020) "allow States, acting nationally or through regional organizations, to inspect vessels on the high seas bound to or from Libya, given reasonable grounds to believe that they violate the Council's arms embargo."²

The aforementioned resolutions facilitate the states or groups of states (including regional organi-

zations) to observe the implementation of the arms embargo on the warring parties in Libya, and treat the legitimate government and the Libyan rebels with the same codes of practice. The resolutions also require the military forces, which assume the responsibility to implement the resolutions, to inform the legitimate government of the state of Libya and comply with the norms of maritime law. Meanwhile, the term "reasonable grounds" indicates specific information obtained from intelligence circles in order to start an inspection. In other words, any maritime undertaking, first, must inform Libya's legitimate government, obtain the consent of the vessel's flag country, and base the inspection on specific intelligence. In the recent inspection of *ROSELINA-A* it appears that these three conditions were inadequately addressed by the Operation IRINI HQ in Rome. In order to review these deficiencies, the discourse of the events will be evaluated in the following sections.

The Turkish Ministry of Defense announced the overall discourse of the incident pending to the timing and context of the events, although Operation IRINI has just generally announced what the activities are

1 The official webpage of Operation IRINI, available at <https://www.operationirini.eu/>, accessed on November 25, 2020.

2 The UN Security Council Resolution 2526 (2020), June 5, 2020, available at <https://www.un.org/press/en/2020/sc14206.doc.htm>, accessed on November 25, 2020.

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about. The Turkish authorities, initially, questioned the legitimacy of the EU initiative to commence Operation IRINI since it was not based on the required consultation with the Government of National Accord (GNA). The vessel *ROSELINA-A*, which is registered in Turkey and under its authority, informed the Turkish authorities that the German warship *HAMBURG* announced its presence at 12.30 hrs. on November 22 and delivered an inspection request in the open seas. The Operation IRINI HQ sent another request to the Turkish authorities to inspect *ROSELINA-A*, but the Turkish authorities refused this request at 17.44 hrs. Despite the refusal by the Turkish authorities and the captain of the vessel, which remind Turkey's sovereign rights as the flag country and the captain's authority on board, Operation IRINI started an intervention conducted by German forces at 18.00 hrs. The operation began by a forced airlift on the deck of the *ROSELINA-A* south of the Morea Peninsula (Greece) and 160 nautical miles from the Libyan coast.

The video recording of the Turkish vessel clearly shows the inappropriate treatment of seamen by the German troops who isolated them and were physically forceful despite the fact that the seamen were compliant with the inspection. The German forces remained in the vessel until 09.30 hrs of the following day although there were only declared materials on board and there were no captured materials that violated the arms embargo. The arising debate, therefore, is to what extent the self-declared EU military mission can forcefully inspect vessels despite the fact that maritime norms give the right to the flag country and captain to refuse such an inspection.

CONSISTENCY AND LEGITIMACY OF THE INTERVENTION AND INSPECTION OF *ROSELINA-A*

Operation IRINI, which was an international commitment of the EU, needs to be analyzed in terms of whether it complies with the prerequisites of international law, maritime norms, and military procedures.

Such scrutiny will also reveal whether “goodwill” exists on the part of the EU authorities.

The freedom of navigation in the open seas is a fundamental right of states. International law is very clear and committed to observing this rule because any limitation to navigate in the open seas is a just cause to declare war as was witnessed in World War I in the case of German aggression against U.S. vessels. The war had ended with a conclusive stance famously known by a series of principles of the then U.S. President Wilson. A principle of Wilson clearly framed the freedom of navigation in the open seas within the sovereign rights of the states. This approach is delineated in the United Nations Convention on the Law of the Sea under Article 87(1) which states, “The high seas are open to all states, whether coastal or land-locked.”³ Under this treatment, states are equal and sovereign in their access to open seas and the flag country is the sole authority of the maritime assets, including enforcement and jurisdiction. Articles 225 and 226 of the convention require that states do not to delay the vessels while examining the documents and the declaration certificate. Meanwhile, Article 226 clearly points out that “states shall cooperate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea.” If there proven neither of piracy or an enemy-like act of the vessel, which could provoke the right of self-defense, the vessels are exempt from any inspection unless the consent of the flag country and the captain is obtained. Hence the UN Security Council Resolutions recognize the authority of the vessel's flag country and, in the case of the implementation of the arms embargo on Libya, of the prerequisite of consent by the GNA .

Military and technical analysis of the standard procedures, and of the series of events should also be included in this assessment. The parameters for such a comprehensive review first must include the code of military conduct. If the EU argues that Operation IRI-

³ United Nations Convention on the Law of the Sea, available at https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf, accessed on November 25, 2020.

NI was conducted due to a clear violation of the arms embargo on Libya, there must be observable grounds that the ROSELINA-A was in violation of said embargo. The intelligence capability of Operation IRINI to determine whether the vessel was loaded with weapons and ammunition fell short of its target since there is no image or report aired by the IRINI HQ after the intervention. In this case, intelligence proved to be illusive since the German soldiers appeared empty-handed.

Operation IRINI was a HQ-based structure that demands a wise workflow in order to eliminate biased and misinformed operations which can cause a political crisis. Hence Operation IRINI has failed to prove that the EU is capable of professional HQ-based work based on a productive intelligence procedure. If a vessel is chosen by the information derived from Internet based vessel navigation software, it is against the UN Law of Sea because “reasonable grounds” are essential to start a military intervention and, in this case, the consent of Libya and Turkey is required. Technically, the intervention was concluded with no solid findings and without the consent of the relevant state actors that indicates no reasonable ground with concrete intelligence failure. On the other hand, the EU’s intelligence activity directly targeting Turkey is another theme that needs to be discussed since it is a hostile activity that excludes Turkey from cooperation in regard to Libya based on the decisions of the Berlin Conference, and in this sense deserves a political response.

Another issue is the ethos/principals/ethics behind a multinational military structure and the fact that Operation IRINI is an exemption to this moral code. It is a fact that multinational military HQs and force structures are more nation-driven than the common cause of the international military body. In other words, the Greeks continue to serve as Greeks – and not as “Europeans” - under the multinational force. The same attitude is valid for French or the others. This structural deficiency, which could be denied, often directs multinational forces to implement the interests of the constituting states rather than the original mission and intention. This fact may be a biased

perspective though; the outcomes of the intervention favors certain member states of the EU. Meanwhile military operations with strategic consequences are not only a matter of the military but also of EU politicians - and not the individual member states. The burden will be on the entire European Union and member states rather than individual states because Operation IRINI was an EU military commitment. In the case of *ROSELINA-A*, the EU lost its credibility after no clear incriminating evidence was found on deck.

In conclusion, Operation IRINI was inconsistent with international law, maritime norms, UN resolutions, and military prerequisites.

THE OUTCOMES OF THE INTERVENTION

This intervention’s outcome should initially be questioned in terms of who started it and why. A probable option is that Operation IRINI was either encouraged by a state or non-state actor to deceive the EU and exploit the German dedication to the Berlin Conference on Libya. A second option is that the EU purportedly implemented this mission to deny Turkey a more active role in the Mediterranean Sea in favor of Greece, Greek Cypriots, and energy politics. A third option may be that the decision was driven by the efforts of terror networks such as FETO and the PKK in Brussels, which are given credibility by the EU. If we are to believe High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission Joseph Borrell’s speech on the EU’s vision to EU ambassadors, the military has become a political apparatus rather than a military force or an armed service. Within this framework of language of power, the second aforementioned option seems to be the most likely.⁴ Whatever the options, however, all of them are beyond the “goodwill” conceptualization of international law. In this sense, a response to the treatment of the *ROSELINA-A* is within reason.

⁴ Joseph Borrell, available at <https://twitter.com/JosepBorrellF/status/133043188323330560>, accessed on November 24, 2020.

The response may be either symmetrical or asymmetrical. A symmetrical response would point to a similar attempt to search the vessels of EU countries but under the frame of international law and maritime norms. On the other hand, such an attempt will provoke the security dilemma in the neighborhood of both the EU and Turkey. Taking a symmetrical response to a higher level would be to start an IRINI-type operation to inspect vessels suspected of violating the arms embargo (if we are only discussing Libya) by the Turkish navy, perhaps in cooperation with another state. This move will clearly challenge the EU's Operation IRINI and countermeasures may be foiled due to legitimacy. Asymmetry, on the other hand, seems more prone to start a soft-conflict in the region. Once a party starts any undertaking to challenge the other, the security dilemma, with its soft context, escalates the tension.

Finally, the case can be brought before international courts with reference to current laws. The UN Court is one option to investigate the course of events. Compensation to the vessel's crew and the owner company may be claimed. It is a fact that German forces landed on the deck inappropriately and without following standard procedures. This might push Turkey to start a case before an international court. Another option is to apply the articles of the Customs Union and start a file before the Court of Justice of the European Union on the grounds that a privately owned

vessel was banned from navigation leading to damages to the brand in the public domain and in the eyes of its clients. Finally, the flag state has the right of determining jurisdiction regarding the legal acts on board the vessel. The identified individuals, who either directed or executed the intervention, may face proceedings before Turkish courts. Meanwhile, the captain represents the authority of the flag state and his inappropriate treatment by German soldiers is a matter that can be taken to court.

CONCLUSION

The military intervention in *ROSELINA-A* is not consistent with international law, maritime norms, and common practices. It ignores and breaches the sovereign rights of Turkey. If this act is a politically oriented EU move to suppress Turkey, the code of conduct is cannot promote its solidarity by pirate-like military engagements and self-claimed practices that do not fully address the requirements of the law. The wise course of action is to solve the disputes by honest negotiations that can achieve fair outcomes. Once the military becomes the essential apparatus, the dust in the air will facilitate the start of a countermove harming all sides. The intervention in *ROSELINA-A* has ignited an action, but the skilled reaction is to manage the process by international law with an appropriate response. Consequently, Turkey's optimal strategy is very clear.