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**CIVILIAN OPERATIONS COMMANDER OPERATIONAL GUIDELINES
ON
MARITIME SECURITY**

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References

- A. Civilian Operations Commander Operational Guidelines on Border Management
- B. Civilian Operations Commander Operational Guidelines on Public Order Policing (Crowd and Riot Control)
- C. Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice (UNODC-2006)
- D. European Coast Guard Functions Forum (<http://www.ecgff.eu/>)
- E. European Convention on Human Rights (ECHR, Council of Europe/European Court of Human Rights, Rome)-1950
- F. European Union Maritime Security Strategy (11205/14)-2014
- G. Human Rights Standards and Practice for the Police (OHCHR)-2004
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- Q. United Nations Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169-17 December 1979
- R. United Nations Convention against Transnational Organised Crime (UNTOC) adopted by General Assembly Resolution 55/25-15 November 2000
- S. United Nations Convention on the Law Of the Sea (UNCLOS)
- T. Study on the feasibility of improved co-operation between bodies carrying out European Coast Guard functions (ICF International), Final Report-June 2014

A. Purpose

1. The overall purpose of the Civilian Operations Commander Operational Guidelines on Maritime Security is:
 - To increase the Civilian Planning and Conduct Capability's (CPCC) capacity to plan, conduct and review Missions at the operational/strategic level in this field of action
 - To further improve the capacity of civilian Common Security and Defence Policy (CSDP) Missions in the field of Maritime Security, both at the strategic and operational/tactical level within a framework of a Maritime Security reform or Capacity Building activity. Also, to define the fundamental principles and approaches to this subject, so as to achieve greater consistency across civilian CSDP Missions.

B. Scope

2. The Civilian Operations Commander Operational Guidelines (hereinafter 'Guidelines') on Maritime Security should be:
 - Used in the framework of operational planning (Concept of Operations-CONOPS and Operational Plan-OPLAN) as well as during the Mission's conduct phase in the framework of mandate review/Mission refocusing
 - As appropriate, used by Missions as guidance for the implementation of their respective Lines of Operations as well as for theatre-level operational planning (Mission Implementation Plan)
 - Reflected in and presented during relevant CSDP related pre-deployment training.

The Guidelines divide possible support by the Mission into three phases (situational assessment, support to Maritime Security policy/reform formulation and planning and support to key areas of Maritime Security reform), which are outlined in Sections E.2-E.4 of these Guidelines. An indicative timeline flowchart of the ideal sequencing of actions is provided at Annex B.

3. The Guidelines will be focused on the definitions of Maritime Security/Maritime Law enforcement and Maritime Safety, mainly based on internationally-agreed definitions and other commonly-used definitions within EU Member States. These Guidelines are not intended to be a manual on the tactical level on how to carry out maritime surveillance or law enforcement at sea, but rather to be a practical guide for the Mission's tasks/activities, when delivering support in strengthening/reforming Maritime Security of host State authorities.

A balance between general principles and practical approaches has been sought. The Guidelines are meant to be generic enough to be used by all Missions, allowing for flexibility to accommodate the local context. They include a description of the aspects related to key Mission's tasks/activities that, in a general scenario, would need to be addressed to achieve sustainable results in the field of Maritime Safety and Law Enforcement at sea.

4. In order to develop these Guidelines, the Civilian Operations Commander, with the support of the CPCC, has consulted with the two current civilian CSDP Missions engaged in Maritime Security-EUCAP Nestor (established 2012) and EUBAM Libya (established 2013) and with relevant EEAS departments. The Directorate-General for Maritime Affairs and Fisheries (DG MARE), the European Fishery Control Agency (EFCA) and the Maritime Safety Agency (EMSA) have also been consulted.

C. Rationale

5. Civilian CSDP Missions are frequently mandated to assist host States authorities to improve their means and concepts for Maritime Law Enforcement related to Maritime Security. The expected reader of these Guidelines is a person either in theatre or within CPCC who has professional knowledge about Maritime Security in a developed country context, but is less experienced in implementing, delivering, planning or supervising advice on reform and conduct related to Maritime Security in a post-conflict context, i.e. when developing/implementing or reviewing civilian CSDP support to host State authorities. Another target audience may be a person who has experience in planning or supervising reforms and capacity building in a civilian CSDP context, but who has less experience in Maritime Security. Thus a certain focus is also given to key international definitions and conventions related to Maritime Security.
6. The Guidelines will therefore *inter alia* explain to the user/reader:
- Which general principles should be applied for a sustainable support to host State authorities in the broader framework of a transition strategy (these principles will have to be related, for instance, to long term sustainability, local ownership or coordination of efforts)
 - What fundamental key elements need to be included/taken into consideration in order to assist host State authorities refining their policies/methods/structures for Maritime Security (i.e. drafting laws and rules, staffing, equipment, etc.)
 - The importance of the sequencing of different activities/tasks; i.e. why some activities should not start in a process before others have first been initiated or sometimes even completed
 - Definitions of activities connected to Maritime Security and Safety.
7. The Guidelines have been designed to be as much "hands-on" as possible. Without ignoring existing academic studies, recognised best practices, or guidelines from other international organisations (in particular the United Nations Department of Peacekeeping Operations (UN DPKO) Guidelines on Police Capacity-Building and Development), these Guidelines will however not adopt the format (or length) of an academic report/study. They will rather seek to be a comprehensive user guide providing recommendations on how to provide support to the strengthening/reform of Maritime Security in theatres of operations in which civilian CSDP Missions operate. Maritime Security is related to Border Management. Please note therefore that there is also a Civilian Operations Commander Operational Guideline related to Border Management.

D. Definitions

Maritime Security is a relatively new working area in CSDP crisis management Missions/operations. Similar to policing, each State has normally organised its Maritime Security in its own unique way, however with due respect to a number of different international conventions and definitions related to Maritime Security. The most essential of these international conventions, definitions and EU strategies related to Maritime Security are outlined below.

8. A **Law Enforcement Officer** is commonly defined as a public-sector employee whose duties primarily involve the enforcement of laws. He/she is usually responsible for the prevention, investigation, apprehension and detention of individuals suspected or convicted of offences under the criminal laws. He/she can be a police officer, a customs officer, a border patrol officer, an immigration officer or a coast guard officer. According to UN doctrine, the term "law enforcement official" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In these Guidelines we will refer to maritime staff with law enforcement power to carry out Maritime Security duties.
9. **Maritime Security.** In June 2014, the European Union adopted the European Union Maritime Security Strategy (EUMSS) (11205/14) which states that "Maritime Security is understood as a state of affairs of the global maritime domain, in which international law and national law are enforced, freedom of navigation is guaranteed and citizens, infrastructure, transport, the environment and marine resources are protected."
10. **Maritime Security interests.** The strategic Maritime Security interests of the European Union (EU) and its Member States are described as:
 - The security of the EU, its Member States and their citizens
 - The preservation of peace in line with the Charter of the United Nations, the peaceful settlement of maritime disputes in accordance with international law, the prevention of conflicts and the strengthening of international security, including through EU engagement with international partners, without prejudice to national competences. This promotes international maritime cooperation and the rule of law and facilitates maritime trade and sustainable growth and development
 - The protection against Maritime Security risks and threats, including the protection of critical maritime infrastructure, such as specific areas in ports and port facilities, off-shore installations, energy supply by the sea, underwater pipelines, seabed cables, as well as the promotion of scientific research and innovation projects
 - The preservation of freedom of navigation, the protection of the global EU supply chain and of maritime trade, the right of innocent and transit passage of ships and the security of their crew and passengers
 - The protection of economic interests, including the safeguarding of maritime energy resources, the sustainable exploitation of natural and marine resources in

the different maritime zones and the high seas, the control of Illegal, Unregulated and Unreported (IUU) fishing, the security of Member States' fishing fleets and the delimitation of maritime zones, such as the exclusive economic zone, which presents a potential for growth and jobs

- The promotion and development of common and validated maritime situational awareness
- The effective management of the Union's maritime external borders and maritime areas of EU interest in order to prevent and counter cross-border illegal activities
- The protection of the environment and the management of the impact of climate change in maritime areas and coastal regions, as well as the conservation and sustainable use of biodiversity to avoid future security risks.

11. **Maritime Security risks and threats.** Maritime Security threats are multifaceted, pose a potential risk to European citizens and can be detrimental to the EU and its Member States' strategic interests. The following risks and threats have been identified:

- Threats or use of force against Member States' rights and jurisdiction over their maritime zones
- Threats to the security of European citizens and to economic interests at sea following acts of external aggression including those related to maritime disputes, threats to Member States' sovereign rights or armed conflicts
- Cross-border and organised crime, including but not limited to, maritime piracy and armed robbery at sea, trafficking of human beings and smuggling of migrants, organised criminal networks facilitating illegal migration, trafficking of arms and narcotics, smuggling of goods and contraband
- Terrorism and other intentional unlawful acts at sea and in ports against ships, cargo, crew and passengers, ports and port facilities and critical maritime and energy infrastructure, including cyber-attacks
- The proliferation of weapons of mass destruction, including chemical, biological, radiological and nuclear (CBRN) threats
- Threats to freedom of navigation, such as the denial of access to the sea and straits and the obstruction of sea lanes
- Environmental risks, including unsustainable and unauthorised exploitation of natural and marine resources, threats to biodiversity, Illegal, Unregulated and Unreported fishing IUU, environmental degradation due to illegal or accidental discharge, chemical, biological and nuclear pollution, in particular sea-dumped chemical munitions and unexploded ordnance
- Potential security impact of natural or man-made disasters, extreme events and climate change on the maritime transport system and in particular on maritime infrastructure
- Illegal and unregulated archaeological research and pillage of archaeological objects.

What standards to be used? In general, EU standards and definitions of Maritime Security should be used in civilian CSDP Missions. However, definitions need to be adapted to the legal system in the host State in order (as long as those are in line with general international conventions) to ensure a buy-in of both host State authorities and the population in general, which in turn leads to longer term, sustainable effects of the Mission. (CPCC)

12. **Coast Guard Function.** A Coast Guard Function can be defined as an expression of a State's competence in carrying out maritime surveillance activities such as border control, maritime safety and security, maritime customs activities, fisheries control, marine environment protection and general law enforcement. At its most simple level for a state to exercise this competence it must:

- Know, or have the ability to know in a timely manner, what is happening in its waters and what threats are present or evolving
- Have the authority to intervene as needed
- Have the capacity to act across all of the necessary functional areas.

Different aspects of the Coast Guard Function may be carried out by different agencies (police, customs, military/navy, coast guard etc.) in different countries, sometimes in parallel.

"Coast Guard vs Coast Guard Function"

It is important to distinguish between "a Coast Guard" and "Coast Guard Function." The term "Coast Guard" merely refers to the name of a governmental institution which may have different tasks in different countries, depending on the respective national legislation. However, any authority (Navy, Maritime Police or Maritime Administration etc.) may assume a "Coast Guard Function" if it carries out any of the activities described below. (CPCC)

13. **Coast Guard Function Activities.** Activities carried out under the Coast Guard Function are mainly defined, in no particular order of priority, as:

- Maritime safety, including vessel traffic management
- Maritime, ship and port security
- Maritime customs activities
- The prevention and suppression of trafficking and smuggling and connected maritime law enforcement
- Maritime border control
- Maritime monitoring and surveillance
- Maritime environmental protection and response
- Maritime search and rescue
- Ship casualty and maritime assistance service
- Maritime accident and disaster response
- Fisheries inspection and control
- Activities related to the above Coast Guard Functions.

14. **Maritime Zones.** Under international law, the different maritime zones are described in the United Nations Convention on the Law of the Sea (UNCLOS, part 2, 5, 6 and 7). In general, the different zones can be divided into the following six areas: Internal waters (water inside a State's baseline), Territorial Sea, Contiguous Zone, Exclusive Economic Zone (EEZ), Continental shelf and the High Seas (International Waters). It should be noted that States may define these zones differently in their domestic law and that, in many States, international law will only apply if it has specifically been incorporated into domestic law. When working with a particular State the domestic law should therefore be ascertained.

- **Internal waters.** Defined as waters on the landward side of the baseline of the territorial sea form part of the internal waters of a state (UNCLOS, part 2, section 1, article 8)
- **Territorial sea.** The sovereignty of a coastal State extends beyond its land territory and internal waters to an adjacent belt of sea, described as the territorial sea in the UNCLOS (Part II); this sovereignty extends to the air space over the territorial sea as well as its underlying seabed and subsoil; every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles; the normal baseline for measuring the breadth of the territorial sea is the mean low-water line along the coast as marked on large-scale charts officially recognised by the coastal state; the UNCLOS describes specific rules for archipelagic states
- **Exclusive economic zone (EEZ).** The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in UNCLOS part 5, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention (UNCLOS, part 5, article 55)
- **Contiguous zone.** According to the UNCLOS (Article 33), this is a zone contiguous to a coastal State's territorial sea, over which it may exercise the control necessary to: prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea; punish infringement of the above laws and regulations committed within its territory or territorial sea; the contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured (e.g. the US has claimed a 12-nautical mile contiguous zone in addition to its 12-nautical mile territorial sea)
- **Continental shelf.** The UNCLOS (Article 76) defines the continental shelf of a coastal State as comprising the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance; the continental margin comprises the submerged prolongation of the landmass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise; wherever the continental margin extends beyond 200 nautical miles from the baseline, coastal States may extend their claim to a distance not to exceed 350 nautical miles from the baseline or 100 nautical miles from the 2500 meter isobaths; it does not include the deep ocean floor with its oceanic ridges or the subsoil thereof
- **Exclusive fishing zone.** While this term is not used in the UNCLOS, some States have chosen not to claim an EEZ, but rather to claim jurisdiction over the living resources off their coast; in such cases, the term exclusive fishing zone is often used; the breadth of this zone is normally the same as the EEZ or 200 nautical miles
- **International waters, high seas.** The International waters or “High Seas” include the sea that is not included in the Exclusive Economic Zone, the territorial sea or the internal waters of a State, or in the archipelagic waters of an archipelagic State (UNCLOS, part 7, article 86).

15. **Maritime sovereignty.** The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea (UNCLOS, part 2, section 1, article 2).
16. **Baseline.** The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State (UNCLOS, part 2, section 1, article 5).
17. **Freedom of the high seas.** The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by UNCLOS and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:
- Freedom of navigation
 - Freedom of overflight
 - Freedom to lay submarine cables and pipelines
 - Freedom to construct artificial islands and other installations permitted under international law
 - Freedom of fishing
 - Freedom of scientific research.
(UNCLOS, part 7, article 87).
18. **Maritime Situational Awareness (MSA).** Maritime Situational Awareness is a vital part of carrying out Coast Guard Function activities. MSA could be understood as the overall understanding of the activities at sea which have an impact on maritime safety and security, customs and border control, maritime pollution and maritime environment, fisheries control, general law enforcement, defence as well as the economic interests of the individual states.

Situational awareness is formed by connecting different elements and information. From the authorities' point of view, there has to be at least basic information concerning the actors at sea, additional information about the targets and incidents happening at sea, as well as information concerning the authorities own resources and ability to respond to threats or other occurrences.

Maritime Situational Awareness could be divided into the following components:

- Maritime surveillance picture
- Maritime intelligence.

The maritime surveillance picture could be seen as a combination of surveillance measures as well as national and international joint measures that provide a basic surveillance picture of traffic and activity in the maritime domain. Typical information that provides for the maritime surveillance picture is identification and movement data on objects and actors which is formed out of Automatic Identification System (AIS), radar or satellite systems and observations from units within the authorities. Additional

information could be used to enhance the maritime surveillance picture. This additional information could for example consist of information from different obligatory reporting systems such as notification of vessels movements (border control or fishing activities etc.).

Maritime intelligence is also needed to achieve MSA, as it may provide information about targets, phenomena and development trends etc. This also includes gathering, handling, interpretation and sharing of information in support of decision making. Information stemming from other resources (e.g. gathered by vessels) is another contributing factor. Combined with a State's (alternatively: an actor's) ability to respond to threats or other irregularities, the maritime situational picture and additional information and intelligence provides for basic Maritime Situational Awareness.

19. **Anomalies.** Several countries have developed programmes that detect anomalous behaviour at sea. If a ship diverts from what is considered normal behaviour in the area, or does not follow the reported plan of navigation etc., these programmes alert the respective Coast Guard Function agency of the country, enabling them to act early on suspicious behaviours at sea, or connected areas.

E. Guidelines

E.1 Generic Principles (applicable to all Civilian Operations Commander Operational Guidelines)

- **Awareness and understanding of the local context:** A thorough assessment (baseline study) of the local context as well as the political, legal and administrative framework should be conducted as a pre-requisite, which should ideally be endorsed by the host State authorities
- **Adoption of global intervention logic:** The intervention logic should ideally not be limited to a single sector but encompass the wider security and rule of law reform process (comprehensive approach). Nevertheless, the mandate of the Mission should prevail
- **Engagement of all host State stakeholders and adherence to local ownership:** To ensure buy-in and cross-societal consensus, the entire society should be engaged in the reform process. Host State authorities/institutions should be in the lead while the wider population should also be targeted in large communication/outreach activities, notably through civil society organisations and non-state actors
- **Adoption of a clearly structured phased approach:** Such an approach should be agreed with host State authorities for the Mission's activities, ideally through technical and/or political level jointly agreed documents
- **Incorporation of sustainability goals:** Sustainability should be integrated into every stage of any civilian CSDP Mission's task/activity planning, implementation and monitoring/evaluation
- **Adherence to European values, international standards and benchmarks:** Adherence to these standards is paramount while respect and understanding of the cultural context, as well as flexibility, should also always guide the action
- **Promotion of integrity, accountability, transparency and equitable representation:** These key principles are critical in terms of raising legitimacy in the eyes of the public and ensuring long-term sustainable effects, with the possible establishment of oversight structures to that end
- **Respect for and protection of human rights, minorities and vulnerable groups:** Any

civilian CSDP action should promote the participation of all groups at the various decision-making levels, while the outcome sought should ensure human rights protection

- **Mainstreaming of gender equality:** The participation of men and women should be guaranteed at all levels through the adoption of gender policy documents, statements or codes of conduct
- **Coordination with the EU family and other international donors:** Regular coordination with the EU Special Representative office's activities, the EU Delegation programming, Member States bilateral projects and other international donors' activities should be pursued to avoid overlap/duplication, ensure complementarity, explore possibilities of support and ensure sustainability. Possible projects to be conducted under the Mission's Project Cell or under the Capacity-Building in support of Security and Development (CBSD) should also be identified;
- **Overall,** While promoting European values and international standards, local ownership and the local context should always be kept in mind at every stage of any civilian CSDP Mission's task/activity in order to have longer term and sustainable effects enabled through the buy-in from both the host State authorities and the population more widely.

E.2 Situational Assessment

In this section follows an outline regarding the importance to make a baseline study and early reflection on sequencing of actions. Different elements to be assessed, and interlocutors to interact with, have been listed. Some of those listed elements and interlocutors would be no different from conducting a baseline study in a developed country, while others may be unfamiliar for readers not used to the post-conflict context. The different elements to be assessed will subsequently assist the reader to describe a "Gap analysis" mentioned in the last paragraph of this section.

Map the Maritime Security Landscape (make a baseline study)

20. **Sequencing of different actions.** As already mentioned in paragraph 6, in order to achieve sustainable goals, it is important to identify if and where there is a need for "sequencing of different actions" and, if so. For instance, a thorough situational assessment (baseline study) must be conducted before starting to provide support to the Maritime Security institutions of the host State.

The situational assessment should also identify the existing problems including potentially hindering/delaying factors of change/improvements efforts. It could consist (with a correct sequencing of actions) of a prioritisation table of actions, highlighting the urgency importance of the needed activities.

Ideally, the assessment(s) should be endorsed by the host State authorities, so as to have a jointly-agreed baseline, and should involve the Maritime Security institutions and the law enforcement units currently employed in carrying out Maritime Security duties. Different scenarios for sequencing activities are outlined in paragraph 74 and Annex B.

When should you start to train and equip?

Often training and equipping are instantly being thought of as important tools to assist a host State Maritime Security institution. Training and equipping will indeed be likely to become an essential part of creating a new maritime related capacity at some point... However, to invest substantial efforts into training and equipping at the wrong time and sequence will not

pay off well in terms of sustainability and efficiency as both the UN and the EU have learned in many theatres of operations. If there is no common understanding on what the laws are, what the maritime related concept will be and who the actual maritime related police officers will be, it will of course be impossible to tailor and target the right training and equipping needs. Nevertheless to conduct a limited amount of training and equipping at a not optimum time for a carefully selected audience may sometimes be important for other reasons, such as endorsement by a counterpart. However, do not fall into the trap of thinking that training and equipping will be the ultimate solution to everything-it won't! Timing and sequence of training & equipping will be highly essential.(CPCC)

21. **How to assess and what to assess?** The point of departure in any assessment is the host State's Maritime Security history and role in an eventual conflict¹. Consulting with a wide range of state and civil society stakeholders and seeking views of people in rural areas as well as urban centres will help providing a fuller picture of the local context. Getting the support of host State authorities in conducting assessments will naturally also be critical to their accuracy². At the end of the process, all provided information should be re-checked for validity. While conducting the assessment, Missions should focus on the areas listed in the paragraph 67 and at Annex B.

What are others doing related to your field?

It is of utmost importance to gather information regarding development progress implemented by other actors, starting by the EU e.g. by the European Commission's Directorate-General for International Cooperation and Development (DG DEVCO) or the Directorate-General for Neighbourhood and Enlargement negotiations (DG NEAR), as well as bilateral projects of EU Member States. Third countries and/or international organisations may also conduct projects in the context of Security Sector Reform. (EUCAP Nestor)

22. **Policy, legislative and regulatory framework.** At the start, Missions need to examine the host State authorities' existing Maritime policy, legislative and regulatory framework. This includes all administrative levels, beginning with the ministerial level followed by the agencies and their headquarters. It would also *inter alia* involve examination of legal acts/documents (or equivalent) such as the Maritime Act, the Police Powers act, Internal Maritime law enforcement policies and guidelines, procedures governing the use of force, laws and regulations on budgeting procedures and procurement activities. If applicable, it should also comprise an assessment of the division of labour and responsibilities between different actors involved in Coast Guard Functions.

Attention should also be paid to the handling of complaints related to maritime law enforcement, disciplinary rules, procedures and oversight bodies.

Some practical questions might be: What are the cultural aspects that need to be understood? What is the local acceptance of different types of maritime disorder, e.g. violation of fishing regulations? What rules and regulations related to a Maritime Security/law enforcement policy are currently in place and enforced?

¹ UN-DPKO, Guidelines on Police Capacity-Building and Development, 1 April 2015, page 5

² OECD-DAC Handbook on Security System Reform-Supporting Security and Justice, 2007, page 42-43

The assessment needs to identify existing legal and regulatory gaps in the field of Maritime Security and propose solutions to address them to the executive branch, legislature and/or the relevant authority of Maritime Security leadership³.

23. **Existence of a Threat and Risk Assessment.** A national strategic Threat and Risk Assessment should ideally be carried out by the host State authorities in order to determine the Maritime Security/law enforcement capability and capacity to mitigate eventual threats⁴. It is important to mention that this assessment should be constantly reviewed. In case it does not already exist, Missions could advise or support host State authorities in conducting such a threat assessment. Many key elements should be taken into account: what is the political backdrop for state action (i.e. post-conflict, fragile, in transition to democracy)? What is the historical context of the country (i.e. colonial rule, military dictatorship, long-standing democracy)? Who are the drivers of change and what may be impediments (i.e. systems/ institutions/actors processes enabling change, underlying factors providing resistance to change, etc.)?⁵ Intelligence gathering, dissemination and utilisation for decision making should also be carefully assessed, in particular with regard to cross-agency coordination.

Assessing the threat

When carrying out a threat and risk assessment, it is important to make sure that the host State is in the lead. Mission personnel should however actively assist as appropriate. It may often prove challenging for the host State authorities, which often are in a transitional process, to lead and it may affect the time of delivery. However, it is essential that the host State is aware and fully committed to mitigate identified risks and threats. (EUCAP Nestor)

24. **Host State authorities and other stakeholders relevant for Maritime Security.** Assess the political, economic, social, cultural, climatic, geographic, infrastructure and other relevant aspects of the environment within which the Maritime Security agencies work and which limit or restrict their resources and relationship with the public and non-governmental entities.

Make good use of interaction with other EU actors

EU Delegation Somalia hired specialised consultants to carry out the mapping of Somali Maritime Security actors, to achieve a higher understanding of how the EU could support the country to reach a higher level of Maritime Security. The findings of the consultants were then cross-referenced with information collected by the CSDP Missions deployed to the Horn of Africa. (CPCC)

Obtaining relevant information

The required information could be gathered within the relevant ministries but also among others applicable host State actors. Use the experience and the knowledge of the EU Delegation and the Embassies of the Member States to get a full picture of the situation in the country.

³ UN-DPKO, Guidelines on Police Capacity-Building and Development, 1 April 2015, page 10

⁴ EUAM Ukraine, A new Public Order Policing Approach for the Ukrainian National Police, 19 August 2015, page 15

⁵ OECD-DAC Handbook on Security System Reform-Supporting Security and Justice, 2007, page 52

The stakeholder analysis aims to assess the problems, interests and the potential of different groups in relation to the conclusions drawn from the situational assessment. It is used to identify potential stakeholders related to the Maritime Security reform and planning and to determine their interests, constraints, influence, power and whether that influence is positive or negative to the reform. It is important to consult a wide range of actors beyond the narrow sector considered a priority. For instance, in the case of Maritime Security, it will also be important to interview other officials from Maritime Security authorities, police, justice and corrections to look at potential linkages in the Maritime Security reform programme.

25. **EU and international stakeholders active in the field of Maritime Security/Law Enforcement.** In order to identify what should be done in the specific field and to avoid overlapping, an analysis of the past and present activities of EU and international actors in support of Maritime Security/law enforcement (and in the wider context of the Security Sector Reform and Rule of Law) should be done and regularly updated.

Mapping

In mapping the landscape it is important to also identify what has been provided in the past, how did it affect the situation, what topics to focus on and what to avoid. It is also important to consider the mapping as an continuously ongoing activity. Things might change quickly and dramatically and therefore the Mission need to be ready to adapt to new situations. (EUBAM Libya)

26. **Policy framework.** The existence/relevance/implementation of a national policy on Maritime Security should be assessed. Similarly the existence/relevance/implementation of a reform plan on Maritime Security should be assessed, including its insertion in a broader Security Sector Reform (SSR) plan.
27. **Institutional framework.** The **organisational structure** has to be based upon a law or decree. The purpose of the assessment of the institutional framework is to ensure that the Maritime Security agencies/units have the required organisational structure to allow a professional implementation of their duties. Therefore, a comprehensive and holistic assessment of the organisational structure at central, regional and local level including the staffing related to their tasks, the representativeness, the gender, the chain of command, the location of the units/departments is essential. On central level, the senior management is usually *inter alia* responsible for the policy development, the legislative drafting, the operational oversight and high level communication.
28. The assessment of the institutional framework contains the analysis of an **existing Maritime Security Strategy** and related concepts. This means the creation of policy and strategy at the highest executive levels, where also accountability mechanisms including disciplinary rules and procedures should have been designed.

Accountability mechanisms (i.e. disciplinary rules and procedures, oversight bodies) should be in place to tackle the misuse of public resource, ensure integrity, good performance and to address misconduct. Missions should also assess whether a Maritime Security Code of Ethics exists, and if so, how closely it is adhered to. In this context in relation to criminal acts allegedly committed by staff, particular attention should be paid to the modalities of cooperation between Maritime Security agencies and prosecution.

29. **The allocation of budget** to these institutions/Maritime Security agencies/units should be analysed, to determine whether it is sufficient/proportionate.
30. **The existence/use/professionalism of a 24/7 Crisis/Operation Centre** at national and/or regional levels should be assessed, including the existence/use of Terms of References and activation procedures. How is maritime safety and security managed in different situations, such as unexpected emergency situations, etc? The organisation of the Command and Communication Centres is crucial for a successful daily activity.
31. **The administrative systems** (logistics, equipment and infrastructures): the assessment should cover the quantity and the quality of Maritime Security equipment, as well as the procurement process in place. The evaluation should also encompass the level and quality of boats, vehicles, communications systems and weapons, including the related supply and maintenance chain. With regard to the infrastructures for maritime law enforcement dedicated units, the existence of a training facility for general maritime law enforcement training should be considered as a priority for every maritime law enforcement/police force.

To collect the required information, it would, in agreement with the host State authorities, usually be an advantage to monitor the maritime law enforcement units at the operational level for a certain period of time. This is to make sure that dedicated experts and advisers get a full understanding of the situation and can give reliable and sustainable advice and support. Missions often work with a time constraint but it is important to give experts enough time to fully understand the situation and build trust. Preferably, experts should be imbedded/co-located within authorities full time. (EUCAP Somalia)

32. **Procedures.** Procedures define how the work of the agency is done by identifying responsibilities and giving a detailed description of how to implement a specific task. Clear procedures enhance consistency and avoid arbitration; e.g. that similar cases are handled in the same way. Procedures can take the form of decrees, instructions, circulars or manuals. Clear procedures enable law enforcement officers to act in a majority of more routine/normal cases without asking for supervision and approval in each and every case. Consequently it is of interest to scrutinise if the current procedures in the host State authority are detailed enough to enable its target audience/staff to act without specific direction in a majority of cases and situations. There has also to be a clear regulation in which situations superiors need to be informed in order to give guidance and decision making. The collection of procedures should also include the internal fiscal budget. It is of particular interest with transparency mechanisms and mechanisms for financial oversight.

Similarly with the same aspects in mind, procedures for **human resources management** are also of interest. The procedures and mechanisms for the **exchange of information**, including classified intelligence among host State agencies and government entities are also of interest to assess.

33. **National Intelligence Model.** The procedures of any existing National Intelligence Model and the use of intelligence in operational decision making and the allocation and direction of resources should be analysed. Intelligence gathering, dissemination,

utilisation for decision making should also be carefully assessed, in particular with regards to cross-agencies coordination.

34. **Oversight, transparency and accountability.** Assess the mechanisms for oversight, transparency and accountability as well as the mechanism to identify and rank posts in terms of corruption vulnerability.
35. **Use of force and weapons policy applied in maritime law enforcement.** Similarly, this is a particularly important aspect to be assessed in the framework of Maritime Security capacity development. What are the local principles framing the use of force? Are the military forces involved at a certain stage in the management of maritime law enforcement tools/scale? Do the law enforcement authorities recognise and abide by UN principles and international standards associated with the use of force and firearms? The generic principles to be followed for the use of force are: a graduated response, proportionality and absolute necessity to use it. When are the authorities allowed to trigger the use of force and according to what kind of rules (i.e. written agreement given to the police authorities on the ground/at sea)?
36. **Human Resources.** Sometimes the host State has “lost track of their staff”. An assessment of the available **human resources** should then be carried out if needed in order for the host State to regain control. A census and identification programme pursues one fundamental and simple objective of identifying the boundaries in terms of personnel for the law enforcement agency: its primary purpose is to assess membership, not individuals, based on an objective and easily verifiable standard of recognised membership of the law enforcement agency⁶.

A census of the available human resources might take time to be gathered and can be more sensitive to conduct than one would imagine at first glance. The figures might not be readily available; there might also be (political) resistance within the host State authorities or government to share the precise figures due to many different reasons, sometimes connected to the initial conflict. A census and identification programme should not be confused with vetting of staff (CPCC).

The competence, the skills and the integrity of staff in the Maritime Security units and in the related Headquarters are essential to the quality of the service delivered. The competent staff should be recruited in a transparent selection procedure according to objective criteria. The maritime specific training is as crucial as the training on basic skills in law enforcement. The promotion system should be transparent and merit-based.

37. **Training capacity.** The training capacity in Maritime Security should be assessed including the training institutions, their facilities, capabilities and methods.

The current training programmes and the current training curricula for the basic as well as the advanced and the specific training courses that should form part of an overarching organisation wide Training Management System within the applicable Human Resource

⁶ UN-DPKO, Guidelines on Police Capacity-Building and Development, 1 April 2015, page 6-7

Management Plan should be assessed. The training curricula for specialised training should *inter alia* incorporate risk analysis, document examination, Maritime Security techniques. The courses for the management level should *inter alia* include leadership, Human Resources management, Project management, communication strategies, Command and Control of joint operations. The basic training should integrate cross-cutting issues as such as human rights, gender and anti-corruption.

38. **The professionalism and integrity** of personnel involved in Maritime Security /policing functions (be it at the relevant Ministry, Headquarters or Units level) should also be evaluated: knowledge and skills (i.e. awareness of the role of a Maritime Security officer, knowledge of the law, tactical skills, report writing, etc.) to deliver Maritime Security/policing services, including Command and Control issues for the high and middle management.
39. **Communication and information exchange.** The Communication, Command and Control system, the information management including the existence of a 24/7 Crisis/Communication Centre should be assessed. Special observation should be put on Command and Control during operations. A structured communication and information flow should facilitate an efficient/rapid exchange of the required information and an effective documentation. The system of information exchange should be described in operational instructions, which should also include standardised form and templates for the reporting and the submission of statistical data. Conditions allowing, an electronic based information system would be an asset.
40. The processing of the **required information and data for the risk analysis** and its linkage as a basis for the operational planning should also be analysed.
41. The capacity to **implement and evaluate the operational planning cycle should be examined:** situation-planning-orders-implementation-results-evaluation.
42. The cooperation between Maritime Security **law enforcement agencies and prosecution should be assessed with regard to information flow**, periodical meetings and exchange of staff.

<i>A crosscheck if the procedures on communication and information exchange are implemented is part of the monitoring task. By observing and asking your counterparts on all levels, you will complete your picture on this topic step by step.</i>

43. **Infrastructures and equipment.** The level, quality and allocation of the basic law enforcement equipment (such as uniforms, boots, handcuffs, bullet proof vests and weapons) and specialist equipment for Maritime Security (safety equipment, life vests, helmets, body protection etc.), communication equipment at both tactical and operational level and logistics should be assessed. Similarly the infrastructures at both units and HQs level, including the continuing training areas, maintenance workshops for boats, vehicles and warehouses, should be assessed.

44. **The activities of international actors** in support of the Maritime Security/Policing Units in the field of equipment and infrastructures should be analysed, including the programmes carried out by the EU (EU Delegation, EU Member States) or in the framework of a potential support through the Capacity Building for Security and Development (CBSD-initiative).
45. **Additional areas to be mapped.** Assess the public perception of the Maritime Security units/institutions. This could for example be done by conducting polls or by interviewing interlocutors. There should be also tools to evaluate, what is the cause for the possible mistrust and lack of confidence in the Maritime Security units/institutions, e.g. corruption, poor performance and how to remedy this and communicate to the public in order to improve public perception and support of the population.
46. **Broaden capacity building beyond Maritime Security authorities: justice and corrections.** In respect of law enforcement functions, an accountable maritime police, navy or coast guard contributes little if prosecution, courts or prisons are dysfunctional. Capacity building of Maritime Security needs therefor ideally to take place in concert with improvements in the broader justice areas to ensure the sustainability of overall international rule of law support. It also has to be taken into account that different agencies most likely report to different ministries like the Ministry of Justice, Ministry of Interior, Ministry of Transport, Ministry of Defence etc. In case the Mission's mandate does not cover these areas, Missions are encouraged to identify and/or engage with possible other EU/international actors involved in such areas.

It is important that the Mission follows the development of maritime infrastructures, such as ports etc., even if it is not mandated for the Mission. As the Mission might have to participate in different fora outside the mandate, it is crucial to have a clear understanding of the development of topics related to the Mission's mandate and activities. (EUCAP Nestor)

47. **Clarify responsibilities between the Mission and the host State.** Missions need to encourage the host State authorities to express its support for the capacity building at the highest governmental level by endorsing a Development Plan and to provide funding for the process. The Plan needs to set target dates for the completion of various activities, expected outcomes and performance indicators, and ensure that the roles and mutual responsibilities of the host State and the Mission towards the implementation of the plan are clearly defined.

Needs Assessment

48. **Gap analysis.** The situational assessment should enable the identification of the existing Maritime Security capacity and resources. On that basis, Missions should ascertain what is needed to reach the desired performance level; this is done through a gap analysis, the purpose of which is to help identify the gap between the current situation and the future level that the host State authorities, with the support from the Mission, want to reach. However it will be important to check that the ambitions of the host State authorities are realistic and within the means of the budget allocated to sustain personnel costs and to maintain logistics. This gap analysis, including recommendations on how to address this gap and prioritise most urgent activities, should ideally be endorsed by the host State

authorities. This will then help to structure the way the Mission will implement its tasks, in line with its mandate.

E.3. Support to Maritime Security Policy/Reform Formulation and Planning

Once the Situational Assessment and Gap Analysis are completed, including recommendations for reform/development, Missions can start planning their support to the Maritime Security policy/reform. Accordingly, this section lists important stakeholders to address. It also outlines general recommendations for the planning support to assist readers who are less familiar with a post-conflict context.

"The Desired End State"

This is what EU MS, in agreement with the host State authorities, would like to achieve. It could for example be limited to "the revision of the legislative framework related to Maritime Security". On the other hand, "the Desired End State could be more ambitiously formulated such as: "The maritime law enforcement units, composed of trained personnel, are operational and able to react to maritime crimes in line with international standards with full respect for the human rights. A maritime law enforcement management system is established, with a functional Command and Control structure in place". (CPCC)

Stakeholders' Engagement

49. **Engage stakeholders throughout the process and set up a Maritime Security Reform Steering Board.** Engage identified stakeholders within and outside the Maritime Security agency/ies. Stakeholder engagement should start from the outset during the assessment phase and continue during the policy design phase as well as the implementation phase. A Maritime Security Reform Steering Board, supported by various sub-working groups characterised by plurality, should ideally be established with the national authorities in the lead, consisting of governmental agencies, international partners, civil society organisations, etc.

In order to avoid resistance to the change management process, it is essential to ensure the strongest political buy-in combined with the local ownership for all proposed activities, notably from the highest political authorities, e.g. the President, Prime Minister, relevant Ministers. If necessary, the EU Delegation and Member States Missions should contribute in that regard.

The aim is to establish a mechanism to design, monitor, evaluate and if necessary, adjust the Maritime Security development plan, as well as to coordinate donors support to the host State.

The establishment of a Maritime Security Reform Steering Board is aimed at ensuring that host State authorities assume strong ownership of any changes. The Board should ensure that an adequate budget for the Maritime Security reform is allocated, and that relevant stakeholders are effectively coordinated. However, Missions should check and ensure that the established mechanism is conducted at the right pace (i.e. by performing the Secretariat role, especially if the Board is funded by the Mission). (CPCC)

50. **Government.** Missions need to encourage the Government to be represented at a senior level on the Maritime Security Reform Steering Board and to regularly chair and inject momentum in the Board discussions. The Government is also responsible for ensuring sufficient and timely budgetary allocation for the Maritime Security reform activities. Members of Parliament (budgetary committee) could be involved with regard to the Maritime Police/Maritime Law Enforcement/Coast Guard budget.
51. **Public prosecutors and courts.** These authorities are important as they provide judicial oversight and are usually expected to prosecute if there has been Maritime Security action that would constitute criminal acts committed by individuals. This is notwithstanding the fact that in order to strengthen accountability there should also be internal mechanisms within the Maritime Security agency responsible for enforcing a Code of Conduct and possibly taking disciplinary action.
52. **Civil Society Organisations (CSO), media and professional Maritime Security association.** CSO (human rights NGOs, women's groups, vulnerable groups, etc.) can be extremely useful for a democratic-oriented and gender-oriented Maritime Security reform planning, as a source of information throughout the policy process. Media might have an important role in reporting on achievements and/or exposing Maritime Security authorities' shortcomings. Professional Maritime Security associations, if existing, could offer a valid contribution.
53. **Managing donors relationships.** If not already existing, set up or rather support the host State authorities in setting up a donors committee, that will meet regularly, putting host State authorities in the driver's seat. The donors committee is set up only for a certain period of time, with the aim of reaching sustainability as soon as conditions allow. In close coordination with the EU Delegation, Missions could explore if the Capacity Building in support of the Security Development (CBSD) concept within the EU mechanisms may be applicable.

<i>It is vital to create functional and close cooperation with all international actors in theatre, participate in regular coordination meetings and adjust the implementation plan to avoid overlapping and find joint complementary. (CPCC)</i>

54. **Mitigation strategy.** In order to avoid that stakeholders in the Maritime Security authorities or other affected groups/individuals try to counteract parts of the Maritime Security reform, it would be essential to continue to secure the strongest political buy-in and ownership of all the proposed activities, notably from the highest political authorities and the relevant Ministries. If needed, the EU Delegation should contribute to this effect. It could be useful to enlist the support of those divisions/Ministries that are not directly involved so as to avoid an "us versus them" mentality.

General Recommendations for the Planning Phase

55. **How to plan the Maritime Security policy/reform.** Before undertaking the policy planning, it is fundamental to immediately identify political will and guidance in the field of Maritime Security. Then, a common goal with the host State authorities and the

steps that lead towards it, have to be defined. Clear roles, responsibilities and timelines need to be identified, engaging national stakeholders in the process. Timelines and roadmaps should be endorsed by the host State authorities. All levels of hierarchy should be targeted and involved in the capacity building activities. Close cooperation with the relevant authorities and political leadership should be carried out in order to ensure a full understanding of the policy reform and its process. In order to ensure concreteness and buy-in, existing organisational systems and procedures should be integrated into Mission plans.

56. **Project management tools** are commonly used in many European Maritime Security /Police forces and civil administrations and they will more frequently also be used for the most important activities of civilian CSDP Missions. In order to align a mutual understanding of planning and performing of any supportive activity it often proves to be valuable to use interactions with the host State authorities to ensure a common understanding of progress.
57. **Support needs to be adapted to the context.** Missions need to be sensitive to local culture and traditions. Mission personnel should not ignore ground realities, still recognising and incorporating fundamental international principles and standards.⁷

The balance between introduction of modern equipment and adaption to the context.

Quickly the International Community and the UN inter alia introduced brand new computers, forensics equipment and cars to the newly established Police National in Timor Leste (PNTL) in 2002-2005. Everything looked to be like a sunshine story and the UN Mission was subsequently rapidly downsized by the UN Security Council to a minimum in 2006. After a couple of months the operational capability of the PNTL all collapsed. Among the reasons for the collapse it could afterwards be established that way too little attention had been spent on mechanisms to maintain and keep such (modern) equipment functioning within the PNTL.

The UN, Kofi Annan made the following recommendations in his report (S-2006/628) to the UN Security Council on 8 August 2006, in order to better ensure a more sustainable institutional and operational functioning of the PNTL:

"Insofar as insufficient logistical support, lack of resources and inadequate administrative systems significantly constrain the operational functioning of PNTL, it would be essential for the force's communications and information systems, fleet management and maintenance, budget and finance, power supply systems and other critical logistical functions to be reinforced in order to strengthen PNTL as an institution." (UN DPKO)

58. **Absorption capacity.** Depending on the past history of the host State, the Law Enforcement Agencies' absorption capacity might be very limited. Plans should be adapted to the target audience. Priorities to be endorsed by the host State authorities

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Relevant international standards could be found in the European Convention on Human Rights (ECHR, Council of Europe/European Court of Human Rights, Rome, 1950) and in three UN publications:

- Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice (UNODC, 2006);
- United Nations Criminal Justice Standards for United Nations Police (UNODC, 2009);
- Human Rights Standards and Practice for the Police (OHCHR, 2004)

must be identified and explained accordingly. Missions should also keep in mind that host State authorities may not be capable of "digesting" overly complex plans and communication. Therefore, any plans should be kept simple, with the style assumed in communications adapted to the target audience. Any reform priorities which host State authorities are expected to endorse must be identified and set forth in an understandable manner.

59. **Maritime Security policy/reform as part of a broader Law Enforcement/SSR plan/strategy.** Particular attention needs to be paid to ensuring (as much as possible) that the Maritime Security reform plan is integrated into the broader Law Enforcement/SSR reform plan/strategy of the host State authorities. In this regard, and prior to the implementation of any reform/change approach, some basic conditions of the wider Maritime Security policy/reform must be clarified in order to target the right addressees, as well as to "fine-tune" the concept:

- Future structure and future staffing of the Maritime Security personnel at national level, human resources policy included
- Future available budgets
- Future approach towards Maritime Security personnel general education and training system⁸.

60. **The Maritime Security policy/reform plan/strategy must be feasible and targets achievable.** All identified policy objectives should be SMART (Specific, Measureable, Achievable, Realistic-in terms of resources available and Time-bound) and aligned with national priorities⁹. Ideally, a of several years plan/strategy with a time span will be further detailed into Maritime Security/development annual plans and the host State will have to align budget to annual goals based on sound financial assessment. Maritime Security equipment expenses will be included based on a credible needs analysis.

"Easier to do it yourself?"

Since a Mission usually has high-level experts at its disposal, it may at first glance seem faster and more effective for the Mission to "take over tasks and processes of the host State", for instance drafting of legislative proposals. It will be crucial that any Mission aims to build up a long term and self-sustainable capacity in the host State. This requires that the host State assumes primary responsibility and that the Mission actively supports the work and processes at an appropriate level. (CPCC)

61. **Support host State authorities in ensuring wide dissemination/implementation, training, and compliance.** A solid legal and policy framework is an important step towards a responsive, representative and accountable maritime law enforcement but it must be matched by the rigorous enforcement of these policies. Accountability will be achieved by wide dissemination and consistent enforcement of the key rules and regulations (e.g. a pocket book for all Maritime Security personnel, integration of legal

⁸ EUAM Ukraine, A new Public Order Policing Approach for the Ukrainian National Police, 19 August 2015, page 20

⁹ OECD-DAC Handbook on Security System Reform-Supporting Security and Justice, 2007, page 69

provisions and policies in basic and specialist training, monitoring of compliance and sanctions for non-compliance), investigation of serious misconduct cases and exemplary conduct by senior managers, serving as role models. Missions might support the development/strengthening of such enforcement capacities/procedures.

E.4. Support to Key Areas of Maritime Security Reform

This section provides an outline regarding key areas related to Maritime Security reform to take in particular consideration for readers who are not familiar with a post-conflict context. The common denominator for all these key areas is that they tend to be less debated and less controversial in a domestic context. However, in a post-conflict and international context each one of them has proven to be an area in where "things can go wrong".

Maritime Security Legislative, Regulatory and Institutional Framework

62. **Support to the review or update of the Maritime Security legislative/regulatory framework.** Missions could be asked to provide support to the drafting or to the review of relevant legislation and regulations on Maritime Security institutions. The legislative process could, for instance, be commenced with an anti-piracy law. In doing so, it is essential to cooperate with other institutions involved for a broader oversight (e.g. prosecution services, intelligence services, military forces, correctional service, etc.). Attention needs to be paid also to the regulatory framework and procedures, which need to be in compliance with the requirements of the law.

Sequencing of actions

Support to the legislative, regulatory and institutional framework must ideally precede capacity building support. Training conducted in the absence of a regulatory framework is much less likely to be sustainable.

63. **Maritime Security systems.** From an international perspective, there is a range of different Maritime Security systems (or Coast Guard Functions) that could be adopted and that would be acceptable within international standards and conventions. Each State tends to have its own unique Maritime Security system-often influenced by this State's history and traditions.

Which Maritime Security /Coast Guard system is better?

There is no straight-cut answer to this question. It depends on a variety of factors, such as the size of the area to be controlled/patrolled by the State, the organisation of police and judiciary systems etc. As a rule of the thumb, Mission personnel should try to retain as much as possible of the previous Maritime Security system-as long as it is within acceptable international standards and as long as it is what host State and the public continue to want. Any conclusion that significant changes to the Maritime Security system are needed should be driven by the needs agreed with the host State and by needs that may have evolved as a result of an initial domestic conflict. Introducing an entirely new (foreign) Maritime Security system will often prove to be much more challenging and politically sensitive. (CPCC)

64. **Support to the reform of Maritime Security related institutions, departments or units** (as a follow-up to a clarified division of responsibilities between the central and local level as referred to above). Advice might be provided on institutions', departments', units', terms of reference and mandates, on job descriptions and on **human resources** and staffing aspects, including a possible link with the Ministry of Finance for the budgetary aspects (key for sustainability). In that context, Missions might have to support/advise host State authorities on some critical processes when reforming Maritime Security structures:
- The possibility of political influence on activities of the personnel should be minimised (de-politicisation)
 - A civilian model of operations and relations with the personnel should be preferred to the military one (de-militarisation)
 - If determined to be feasible, de-centralisation should be encouraged
 - Inter-agency Anti-corruption Strategies as well as Common Code of Conduct should be developed.
65. **Role of a Maritime Security force with military status (i.e. Gendarmerie, Navy Coast Guard, National Guard)**. The existence of a Maritime Security force with military status has to be taken into account, with the subsequent need to clarify its role with regard to the hierarchical line: when performing Maritime Security duties, a Maritime Security force with military status will (ideally) need to serve under the Ministry of Interior, Justice or civilian regional authorities in charge of Maritime Security services and not under the Ministry of Defence. In policing, a variety of command structures may be in accordance with accepted international standards; however it must not affect the core values of democratic policing, civilian oversight and sound human resource management.

Navy/Coast Guard-military-civilian? In many EU Member States, several agencies which assume Coast Guard Functions in carrying out Coast Guard Function activities have dual tasks and chain of commands. For example, the Italian Coast Guard is part of the Navy under the Ministry of Defence, but carries also out tasks under auspices of the Ministry of Transport. In relation to the latter cases they therefore also report to the Ministry of Transport and the Prosecutors Office. (CPCC)

Maritime Security Operational Aspects

66. **Coherence must always be sought**. When a new Maritime Security model has been identified and inserted in the policy/reform context, a maximum of coherence must be sought throughout the implementation phase (i.e. avoid using different doctrines in training, policy development and in the tactical procedures). Giving technical advice in the training activity conducted by other partners could ensure more coherence and consistency. Mission personnel should always seek coordination with other international/bilateral initiatives in the Maritime Security area in order to avoid confusion or overlapping. In order to prevent the above mentioned problem of happening, it would be useful to pro-actively engage with other actors, previously identified with an accurate mapping.

Which Maritime Security Concept should be used? Once a study has been completed and a suitable Maritime Security concept has been identified as being optimum for a specific country, it should be avoided at all cost to change the chosen concept. This will be important to keep in mind also at rotations of Mission personnel. Though incoming Mission personnel may be used to a different concept in their home country, it is important to keep in mind that a wide variety of different acceptable Maritime Security concepts exist and are being used in democratic states, including EU Member States. All of these concepts have their advantages and disadvantages. Thus, it is not advisable to change an already chosen concept merely because incoming Mission personnel is used to a different concept in his/her home country. This will likely confuse the host State Maritime Security agency/ies and create significant delays. (CPCC)

67. **Operational Guidelines, Standard Operating Procedures (SOPs).** The following areas of local capacities/expertise should be covered:

- Strategic Leadership: key elements to be covered are, in particular, the local capacity to set clear strategic objectives, to agree tactical parameters and to establish/use various levels of delegated authority
- Operational Command: the local capacity to take fast decisions and make a flexible use of resources should be considered as a key element
- Tactical Command: in particular the local capacity to develop tactical options on the basis of an overall methodology. The latter should comply with international standards
- Establishment or implementation of inter-ministerial Command and Control/coordination arrangements, as well as coordination/cooperation arrangements with prosecution services
- Existence of a Crisis/Operation Centre (C/OC): key elements to be covered are, in particular, the development/review of ToRs and responsibilities for the C/OC and its activation/procedures and use;
- Situational Awareness: in addition to obvious equipment related aspects, key elements to be covered are, in particular, the development, review and use of procedures for the gathering and exchange of information with relevant services, with the aim of deploying resources based upon real time threat assessments (see also below “Use of Intelligence”)
- Communication Flow: in order to establish an efficient exchange of time critical information, a development/review of the communication procedures should be conducted
- Effective interoperability between different agencies and units is needed. The development or review of the division of responsibilities and related procedures/SOPs should be established or checked, with a view to maximising the use of all available assets-internal and external-especially in case of an unexpected threat
- Personnel identification and reallocation (match resources to demand), based upon the above mentioned threat/risk assessment, should be conducted.

Very often, the implemented Crisis/Operation Centre (C/OC) lacks the most important feature: real time information. A C/OC is a facilitating element to make correct decisions. The only way that a Commander seated in a C/OC can actually do it is when (s)he is fed with updated info in a given moment. A C/OC without detailed charts, real time video streaming and proper communications is virtually worthless. (EULEX Kosovo)

68. **Use of Intelligence.** Intelligence-led maritime patrolling is the model which probably fits better into Maritime Security than a more reactive approach. It treats data as a foundation stone of decision-making, with pre-emptive function, and helps the Maritime Security authority decide more effectively on priorities, resource allocations and crime-reduction strategies. Information gathering could also be carried out through patrolling and surveillance throughout the area of responsibility. The following areas of local capacities/expertise are considered essential elements for a proper use of intelligence in the context of Maritime Security.
- Development/review and use of procedures:
 - For the timely gathering and distribution of intelligence to inform command decision-making (both pre-event and real time)
 - For a coordinated process of intelligence analysis within all relevant agencies, to provide a comprehensive picture and avoid duplication of efforts
 - For regular after action reviews/debriefs to identify lessons learned
 - Provisions of intelligence briefings for all relevant staff
 - Development/review and use of assets to fill identified intelligence gaps, including intelligence gathering teams.
69. **Maritime Security operational planning.** Missions' support should cover the following areas of local capacities/expertise, considered essential elements for a sound operational planning capacity:
- Capacity to plan based on clear methodology, including strategic objectives and tactical parameters, as well as threat and risk analysis
 - Capacity to start planning at an early stage and in consultation with relevant stakeholders
 - Capacity to regularly update generic plans as well as develop viable contingency plans
 - Development/review and use of procedures for regular after action reviews or debriefs to identify lessons learned.
70. **Maritime Security operational procedures.** Mission's support should concentrate on the development/review/use of such procedures. Utmost attention must be paid to the obligation of law enforcement officials to respect and protect the life and the security of all persons. For that purpose-as in all other law enforcement activities-the authorities must abide by the principles of **legality, necessity, proportionality and precaution**, i.e.:
- Their action must pursue a legitimate (i.e. lawful) objective

- It must be necessary in order to achieve a legitimate objective (i.e. there is no less restricting measure available that would achieve the same objective)
- Any restriction of fundamental rights must be proportionate to the legitimate objective
- All precautions must be taken to avoid excessive use of force or endangering and injuring uninvolved persons, and the authorities must take all possible measures to minimise damage.

71. **Use of force/weapons policy.** An excessive use of force is often at the core of the distrust between the host State Law Enforcement authorities and local population.¹⁰ Mission personnel should ensure that the development/review of the use of force/weapons policy is in full compliance with international human rights and criminal justice standards. The establishment/development of a Code of Ethics could also contribute to form a new organisational culture of the host State Maritime Security authorities.

Based upon law, the terms of reference with respect to graduation of the use of force should be explained in a document, endorsed by the head of Maritime Security agency and ministries as appropriate. The sequence of the levels to be applied by using different technical means should be clear. This will give the proper background support to the use of force in the theatre of operations. International conventions allow for "the proportionate use of force with a wide range of different technical means"(tear gas, dogs, water cannons, assault rifles, sub machine guns etc). However, the more technical means for the use of force that are allowed to be used by the Maritime Security agency, the more training for staff will be needed to ensure appropriate handling of those different technical means. Additionally most technical means will continuously need to be substituted/updated and/or maintained. (CPCC)

Enabling Services

Maritime Security equipment, infrastructures and logistics. Missions could provide support in developing or reviewing the equipment/infrastructures/logistics policy, including spare parts, maintenance, procurement. Options for synergies with other security services should be explored.

In order to ensure the necessary maintenance and repair of boats, engines and vehicles of the Seychelles Coast Guard, EUCAP Nestor developed a maintenance and storage concept for the agency. The Mission provided support to establish a plan of regular maintenance including training and inventory of tools and spare parts. (EUCAP Nestor)

Maritime Security Accountability

Accountability is a key principle of policing/law enforcement. Fundamentally, Maritime Security authorities are accountable for their performance, the use of public funds allocated to them and for the way in which they exercise coercive powers

¹⁰ UN DPKO, Guidelines on Police Capacity-Building and Development, 1 April 2015, page 10

entrusted to them by the law. Assisting the host State Maritime Security agencies in establishing or strengthening police accountability mechanisms is frequently an integral part of Missions' mandate. This is naturally valid for the entire Maritime Security services, not specifically only to Maritime Security.

72. **Oversight mechanisms/bodies.** Missions should provide support in the set up/development of internal and external oversight mechanisms/bodies, if not existing or not correctly functioning. They will be relevant for all policing and not only for Maritime Security duties. With reference to the field of Maritime Security, the oversight functions will mainly be related to legitimacy:
- Whether measures taken are legal and have been proportionate
 - Whether agreed procedures have been respected
 - Whether there is accountability of the service and its personnel for their actions.
73. **Other accountability mechanisms.** A system of rewards (e.g. promotion) and sanctions (oversight and prosecution) should also be put in place. A close cooperation with the public and local communities should be implemented in the framework of a service model focused on solving issues faced by the community.

Maritime Security Training Related Aspects

74. **Sequencing of activities.** The sequencing of activities is particularly important in the training sector. For instance, it would likely be less sustainable to start training Maritime Security officers in combatting piracy or Illegal, Unreported, and Unregulated (IUU) Fishing etc, if there is no common understanding with the host State authorities on concept/equipment/tactics, relevant legislation and available funding for maritime control. However, it may still be required to start conducting training for other reasons, such as attracting visibility and overall support for reform. Thus Mission personnel need to keep in mind that deviation from the preferred sequence may affect the sustainability factor. As outlined in Annex B, the ideal sequencing of actions would start from the Needs Assessment / Gap Analysis. It should be followed by the development or revision of a Policy Framework, Legislative Framework, Institutional Framework, Procedures and finally Capacity Building. It must be taken into consideration that this sequence may vary depending on the situation in the host State.
75. **Development/strengthening of local Maritime Security training departments.** In a coordination with the local training institutions and Maritime Security counterparts, Missions should provide support to the development or strengthening of a Maritime Security training department/capacity within Maritime Security training institutions, which may comprise the following divisions: planning, safety, navigation, maintenance, boarding, arrests techniques, self-defence, use of weapons, hand-defensive tactics etc. Registration and certification procedures of the trainees should always be ensured. In theory, most of the areas indicated above would require an appropriate targeted training to take place only once census and vetting of staff have been completed, new procedures have been established, new doctrine developed, etc. While this "perfect scenario" rarely happens, it needs at least to be kept in mind that greater deviation will severely affect impact, output and sustainability of any training conducted.

76. **Development/review of manual/curricula/training schemes.** Based on a prior training needs assessment, support will also be provided in the development/review of manuals/curricula/training schemes and in the trainers/trainees selection. Missions should also pay attention to the importance of human rights, gender, anti-corruption and accountability/sanctions to be mainstreamed into training curricula to be developed or reviewed by the host State authorities. Support to the host State authorities could be given in providing direct training with the aim of handing-over training responsibilities (i.e. Train the Trainers activity). If this is the case, ensure that training curricula used by Mission personnel have been agreed or accredited by the host State authorities.
77. **Support the sustainability of training resources.** To deliver Maritime Security management training in a sustainable way, Missions need to support the identification of a pool of qualified local Maritime Security personnel with good or potentially good training skills to become trainers, including by delivering training of trainers. A framework regarding status, selection/generation process, funding for these trainers should be developed, not least to ensure the sustainability of the training resources.

Monitoring, Review and Evaluation Phase

78. **Monitoring, review and evaluation of the achievements/performance of Maritime Security actors.** Even if this phase comes at the final stage of the process, it should be planned and integrated from the very beginning, setting aside the required human and financial resources. Missions should select quantitative or qualitative indicators that will provide clear means of measuring achievements or help assess performance and determine the data collection methods (documents review, questionnaires, surveys, interviews, etc.). Links with the Mission's Mission Implementation Plan (MIP)/OPLAN benchmarking have to be established. The measurement of the Maritime Security performance should be part of the evaluation system of the wider Security Sector performance.
79. **Monitoring and evaluation of the policy/reform plan/strategy by the host State authorities.** Support the development/review of monitoring and evaluation capacity within the host State authorities. Regularly track the implementation of approaches that work well and those that need refinement.

Maritime Component in Civilian CSDP Missions

Depending on the mandate and task of a Mission, a dedicated team working with Maritime Security issues should be appointed. The Component should be a part of the Mission's Operations and should therefore be attached to the Head of Operations (or other office depending on the setup of the Mission). As an example, the Maritime component could consist of the following functions:

- 1. Senior Maritime Adviser**
 - Functional chain of command of the Maritime Component.
- 2. Maritime Law Expert(s)**
 - Should have legal policy and law drafting expertise
 - Should have sound knowledge of international laws and conventions.
- 3. Maritime Law Enforcement Expert(s)/Adviser(s)**
 - Depending on the task of the Mission, the expertise should cover:
 - Border control
 - Fishery control
 - Maritime customs
 - Sea traffic control
 - Other maritime crimes (piracy, illegal broadcasting, slavery etc. in accordance with UNCLOS).
- 4. Maritime Engineering Expert(s)/Adviser(s)**
 - Depending on the requirements/needs of the counterpart, the expertise should cover:
 - Maintenance system
 - Outboard engineering
 - Maritime electronics.
- 5. Maritime Policy Expert(s)/Adviser(s)**
 - Depending on the task of the Mission, the expertise should cover:
 - Experience from work on ministerial level on how an effective Coast Guard Function is set up in states with a Blue Border/Economy.
- 6. Maritime Situation awareness Expert(s)/Adviser(s)**
 - Should have expertise in different maritime surveillance (Radars, AIS, VMS etc.) and information sharing systems.
- 7. Maritime handling Expert(s)/Adviser(s)**
 - The expertise should cover/
 - Navigation Expertise
 - Expertise in use of maritime communication equipment

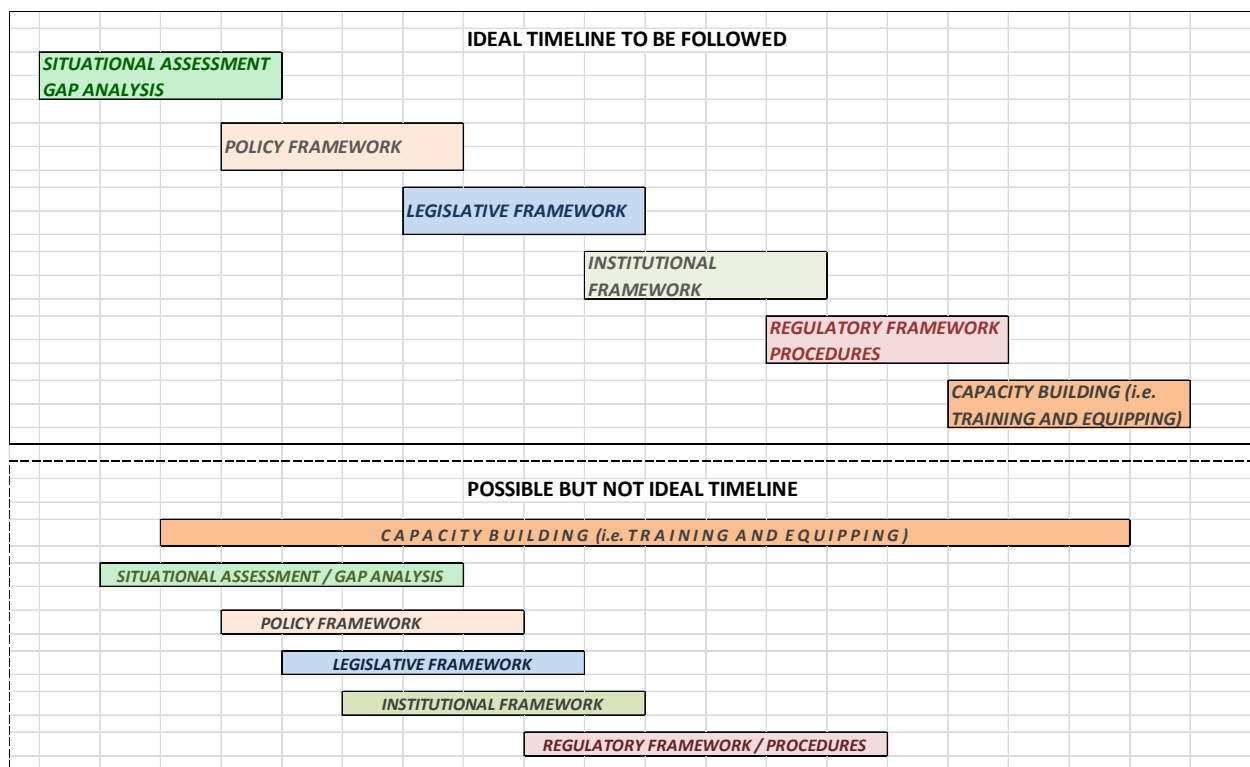
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- Training and watch keeping expertise (in accordance with STCW)
- Goods handling expertise, with a focus on handling dangerous goods at sea (in accordance with IMDG) and secure loading of goods at sea.

8. Search and Rescue Expert(s)/Adviser(s)

- Should have sound knowledge of UNCLOS/SOLAS and other regulations and standards covering Search and Rescue.

Maritime Security Indicative Timeline Flowchart



Key International Conventions and Standards

1. **United Nations Convention of the Law Of the Sea (UNCLOS)** is a key convention for international maritime law. The convention sets out the legal basis for freedom of navigation on the high seas and when it is legally justified to interrupt this freedom. Fight against piracy is one situation for when the freedom of navigation can, and should, be interrupted is defined in Article 100-107. There are four other situations when the freedom of navigation can legally be interrupted, in accordance with UNCLOS; Illegal transmission; inspection of a ship that is suspected to be involved in slavery, determine the nationality of a ship that does not fly a flag and control of a ship with the same nationality as the controlling/law enforcement vessel.
2. **International Convention for the Safety of Life at Sea (SOLAS).** International standards of maritime safety are described in the International Convention for the Safety of Life at Sea (SOLAS). Examples of standards are: Ship construction and equipment, training of crew and labour conditions
 - Transport of goods and passengers
 - Routing and nautical charts
 - Assistance in distress situations.
3. **The International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW).** This Convention sets out the basic requirements on training, certification and watch keeping for seafarers on an international level.
4. **The IMO White List.** A list which compiles countries which have ratified the minimum training standards in accordance with STCW. Ships flying flags of countries that are not on the White List might be increasingly targeted by Port State Control inspectors.
5. **The International Convention for the prevention of Pollution from Ships (MARPOL).** The International Convention for the prevention of Pollution from Ships contains regulations aiming to prevent ships from polluting the environment. It contains regulations of how a vessel should be constructed and how the transportation of petroleum products and other dangerous chemicals in ships should proceed. In Annex III of MARPOL there are rules on how water pollutant (Marine Pollutants) substances in packaged form should be handled.
6. **The International Maritime Dangerous Goods (IMDG)-code.** The International Maritime Dangerous Goods Code was developed as a uniform international code for the transport of dangerous goods by sea, covering such matters as packing, container traffic and stowage, with particular reference to the segregation of incompatible substances.

7. **FORUM of the HEADS OF EUROPEAN COAST GUARD FUNCTIONS (ECGFF)** (Full title: Forum of the Heads of the Coast Guards Functions of the European Union and Schengen associated countries). The launch of the European Coast Guard Functions Forum was agreed during the first Conference for the Heads of the Coast Guards of the EU Member States and Schengen Associated Countries organised in Poland on April 2009. Representatives of the EU Member States and associated countries approved the development of inter-agency cooperation, coordination and multifunctional performance for the joint approach to the future challenges in the fields of border control, maritime safety and security, maritime customs activities, fisheries control and marine environment protection and general law enforcement.

The ECGFF is a non-binding, voluntary, independent and non-political forum whose membership includes the Heads of the Coast Guard Services or equivalents of each European Union maritime nation and associated Schengen countries, the European Commission and its institutions and Agencies with related competencies in Coast Guard Functions. Other Coast Guard fora are getting together both EU Member States and third countries covering also the European basins such as the North-Atlantic Coast Guard Forum, Black Sea Coast Guard and Border Forum and the Mediterranean Coast Guard Functions Forum.

8. **Convention on Transnational Organised Crime (UNTOC) and Protocols.** The main international instrument in the fight against transnational organised crime. It is further supplemented by three Protocols, which target specific areas and manifestations of organised crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.
9. **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).** This international agreement aims are to ensure that international trade in specimens of wild animals and plants does not threaten their survival. There is a connection to maritime law enforcement insofar as the maritime area also extends to ports and harbours. Since endangered species are often transported illegally on ships, this is something a Coast Guard Function Authorities at sea also needs to look out for.
10. **International Convention Against the Taking of Hostages (The Hostages Convention).** In this international treaty, states agree to prohibit and punish hostage taking. It includes definitions of "hostage" and "hostage taking" and sets out the principle of aut dedere aut judicare-that a party to the treaty must prosecute a hostage taker if no other state requests his or her extradition for prosecution of the same crime.