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Illicit Drug Trafficking in International Waters

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1. THE CONVENTIONS

a. The 1961 Single Convention on Narcotic Drugs

The scope of this thesis is to analyze the conventions, treaties and international organs that aim at the interdiction or at the seizure of international drug trafficking.

Approximately ninety percent of international trade is transported through maritime routes, including illicit narcotics.

The first drug traders in history emerged out of China, smuggling opium into the California coast using a merchant ship.

However, the first act aiming at restricting the sale of drugs was the “Pharmacy Act” of 1868¹ implemented by the UK due to the national increase in the use of opium. The British Act was followed forty four years later by the first international drug control treaty, the “International Opium Convention”. The Convention was signed at the Hague in 1912 by Germany, Netherlands, US, China, France, UK, Japan, Italy, Persia, Portugal, Russia and Siam. The Convention was a response to the increasing criticism of the opium trade and its primary objective was to introduce restrictions on exports in order to avoid the total ban and the criminalization of the use and cultivation of opium, coca and cannabis.

This resulted in the withdrawal of the US and China which were oriented towards prohibitionist approaches, in fact the Convention only provided: “The contracting Powers shall use their best endeavours to control, or to cause to be controlled, all persons manufacturing, importing, selling, distributing, and exporting morphine, cocaine, and their respective salts, as well as the buildings in which these persons carry such an industry or trade²”

It is only in 1961 with the “Single Convention on Narcotic Drugs” that the prohibition of the production and supply of specific drugs is implemented. The Convention consolidated the “International Opium Convention” and its revised version of 1925, the “International Convention relating to Dangerous Drugs”, and broadened their scope. In the same year, the International Narcotics Control Board, born together with the International Opium Convention, was in charge of controlling international trade, drug production and dispensation.

The 1961 Single Convention entered into force on 13 December 1964 and remains the cornerstone of international legislation concerning drug control in the world today. However in regards to drug trafficking in international waters, it offers little.

There are in fact, mainly two provisions in which the Convention mandates that states shall combat illicit traffic of narcotics, but no reference is made to the high seas areas.

¹ Resolution of the British Parliament, adopted in November 1868, relative to the restriction of the drug sale

² Art. 10, International Opium Convention.

Art 28, paragraph 3 requires states to adopt measures preventing the misuse and illicit traffic in cannabis leaf. Art 35, instead requires that all states party to the Convention shall adopt penal provisions for any drug activity contravening the law and which therefore is illicit.³ However, this latter Article simultaneously recognizes the sovereign competency of each state in regards to such offences occurring within its territory, though it supports extradition where such is feasible.

In Article 40 and 42 we can observe the confirmation of the principle of non-applicability of the anti-trafficking provisions to areas beyond the territorial limits of states.

It should also be noted that, the 1961 Single Convention in no way modifies the Law of the Sea in regards to flag state jurisdiction⁴, which will be discussed later in the thesis.

We can consider the 1961 Single Convention as more of an instrument established in order to determine the basis by which drugs are to be transported and produced to meet licit requirements, rather than an instrument which focuses on the illicit dimension of drug-trafficking. To that end, the Convention promotes consensus on the need for drug control on the global level by providing provisions demanding harmonization and standardization in the national anti-drug laws of the states party to such Convention. However, it relies solely on the states to fulfill their treaty obligation.

The reason why the convention did not incorporate the sea within the scope of the Convention, is based on a theoretical basis included in the objectives of this Convention. In fact, had the treaty succeeded in its purpose of getting every state to upgrade their national laws regarding anti-drug measures, the need for international laws and measures applicable to the extraterritorial areas would have been unnecessary.⁵

Taking this into consideration, we could argue that the 1961 Single Convention has not, in reality, met its objectives envisioned, thus the need for the 1988 Vienna Convention. The reason for this disattainment, lies in the fact that the Convention was drafted in a different era. Perspectives were different regarding how to suppress the illicit drug trade on the international level and the ignorance of the drafters was supplanted by idealism and optimism for the future.⁶

Many developments in the fight against drug smuggling have been achieved in the global community thanks to a general international will to end this severe crime. The United Nations have adopted several conventions and established organs with the purpose of interdicting the traffic of illicit drugs. The latter will be the object of discussion in this first part.

Subsequently, the issue of drug trafficking will be analyzed within a European framework, and to that end, the interdiction organs operating in Europe will be explained with relative reports and data.

³ Articles 28 and 35, Single Convention on Narcotic Drugs, 1961.

⁴ B. R. AUNE, *The Maritime Trade in illicit drugs: the experience of the coastal member states of O.E.C.D.*, 1989, pg 368-371.

⁵ *Ibidem*

⁶ *Ibidem*

The third and last part of this thesis, instead, will focus on explaining the main pathways undertaken by drug traffickers. In particular, a focus will be given in explaining what is the journey of narcotics coming into the Mediterranean.

Lastly, a case study about Spain will be reported, the latter will give the readers a practical understanding of the mechanism of drug interdiction interventions on the high seas and their applicability to the Law of Universal Justice.

b. UN Convention on the Law of the Sea

The Law of the Sea is the branch of international law essential for determining the extent to which states may exercise jurisdiction, both individually and collectively, on the sea. In doing so, it establishes the juridical status of the various maritime zones and measures the extent to which states may project their sovereignty or sovereign rights therein.

As mentioned before, maritime routes are the principal paths of global commerce. This results in the sea being also one of the biggest drug distribution channels.

In order to have a better understanding of this concept we shall now examine in detail the legal maritime framework, and analyze the degrees of jurisdictional powers retained by the coastal states in regards to the different sea zones.

Under the United Nations Convention on the Law of the Sea the different sea zones are distinguished as: territorial waters, contiguous zone, exclusive economic zone and the high seas or international waters.

The coastal State enjoys sovereign powers in its territorial waters, which extend up to 12 nautical miles from the baseline. The baseline is the low-water line along the coast from which the different sea zones are measured.

The contiguous zone is the sea zone juxtaposed to its territorial waters, its extension cannot exceed 24 nautical miles measured from the baseline. The Convention provides that within the contiguous zone “the coastal State may exercise the control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

(b) punish infringement of the above laws and regulations committed within its territory or territorial sea”⁷

The Exclusive Economic Zone (EEZ) is the sea zone situated beyond the territorial sea and it stretches from the baseline out to 200 nautical miles. Over this area the coastal State has the sovereign rights regarding the exploration and exploitation of the marine resources. Differently from the territorial sea in which the State has full sovereignty, in the exclusive economic zone the State has merely a “sovereign right” which refers to the states’ rights below the surface of the sea. Coastal states have the right to use this area for the

⁷ Art. 33, UNCLOS.

establishment and use of artificial islands, installations, structures, scientific research and also for activities such as energy production from water and wind. The States must also ensure that the sea zone is not endangered by over exploitation and it shall do so by use of proper conservation towards all living creatures.

However, the Convention also refers to the law enforcement rights of a State over its exclusive economic zone:

“1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.”⁸

Under the 1958 Convention on the High Seas held at Geneva, the high seas are all parts of the sea that are not included in the territorial sea or in the internal waters of a State.⁹ However this definition was modified in 1982 under the Convention on the Law of the sea which defines the high seas, or international waters, as the sea zone outside the exclusive economic zone, territorial waters, internal waters and archipelagic waters.

It is clear how through the years there has been a strengthening of the concept of “mare liberum”. This idea was first introduced by Hugo Grotius in 1609, he in fact proposed the doctrine of the “freedom of the sea” in which the high seas were to be open to all nations in times of peace. However, the doctrine had to wait three centuries before being accepted as a principle of international law.

Freedom of the high seas is enjoyed also by land-locked States and it comprises :

“(a) freedom of navigation;

(b) freedom of overflight;

(c) freedom to lay submarine cables and pipelines, subject to Part VI;

(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;

(e) freedom of fishing, subject to the conditions laid down in section 2;

(f) freedom of scientific research”¹⁰

The Convention also defines the rights of the states regarding the nationality and status of ships. By the concept of “Nationality of ships” the Convention provides that “ships have the nationality of the State whose flag are entitled to”. Also, every state has to grant its nationality to its ships and register them in its territory.

Regarding the “Status of ships” instead, ships navigating in international waters are under exclusive jurisdiction of the State which has granted it the flag.

Although freedom of navigation on the high seas is provided by the Convention, UNCLOS establishes a number of exceptions whereby other States are authorised to stop, board and even detain a foreign ship on the high seas when it is engaged in activities prosecuted and

⁸ Art 73, para. 1, UNCLOS.

⁹ Art. 1, Convention on the High Seas.

¹⁰ Art. 87, para.1, from letter a) to f), UNCLOS.

punished by international law or when it is found in violation of the laws and regulations of the State concerned.

The activities that fall on the list of exceptions to the principle of exclusive jurisdiction include piracy¹¹, the transport of slaves¹² and the illicit trafficking of narcotics and psychotropic substances¹³.

In relation to the illicit trafficking of narcotics, UNCLOS has reached a major step forward the international suppression of these illegal practises. As described in Art 108 of the Convention all States shall cooperate in the suppression of illicit drug-trafficking carried out by ships in the high seas, and any State that believes that a ship flying its flag it's involved in illicit traffic of narcotic drugs or psychotropic substances may request the cooperation of other States in order to suppress such illegal activity.

It is worth noticing that UNCLOS focuses on the concept of cooperation between States to put down illicit drug-trafficking, but leaves undetermined the modality and mechanisms of such cooperation. Thus leaving the States free rein to establish bilateral and multilateral agreements through which cooperate and give reciprocal authorization to intercept vessels navigating on international waters and flying their flag, whenever there is reason to believe that the vessels are transporting narcotics.

This mode of action adopted by the international community will be explained in better detail in section two, when talking about the bilateral agreements and the organs that Europe has established in order for all the member states to cooperate in the repression of drug smuggling. Instead, in this first part we will focus on the international organs and treaties that have that exact aim.

c. U.N. Convention against Transnational Organized Crime

Adopted in 2000 in the city of Palermo, the Palermo Convention is a multilateral treaty promoted by the United Nations against transnational organized crime.

The Convention and the protocols thereto are the following:

- Protocol to prevent, suppress and punish trafficking in persons, especially women and children;
- Protocol against the smuggling of migrants by land, sea and air;
- Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

As stated in Article 1, the purpose of the treaty is to “promote cooperation to prevent and combat transnational organized crime more effectively”.

The Convention shall be considered one of the main pilaster representing the willingness of the global community to cooperate at the interdiction and cease of transnational crimes.

¹¹ Art. 107, UNCLOS.

¹² Art. 99, UNCLOS.

¹³ Art. 108, para. 1, UNCLOS.

For this purpose, a state party may request to another state party to have jurisdiction in its territory to the greatest possible extent within its domestic laws, over a crime covered by the Convention.

Also, for the purpose of efficiency each state party has to give copies of its laws and regulations, and also copies of any subsequent change, that aim at fulfilling the scope of the Convention, to the Secretary-General of the United Nations¹⁴.

However, the Palermo Convention also stresses the concept of protection of sovereignty¹⁵. In fact, each state has to carry out their obligations respecting the principles of sovereign equality and territorial integrity of states and for that end the state shall also respect the principle of non-intervention in the domestic affairs of other states.

d. U.N. Office on Drugs and Crime

The United Nations Office on Drugs and Crime plays a central role in the fight against the illicit traffic of narcotics. In order to gain a more comprehensive understanding of their networkings and their dynamics, it continuously monitors and investigates global illicit drug markets.

The UNODC is to be considered as the guardian of the United Nation Convention against Transnational Organized Crime, which was discussed above, and the United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances, which is to be discussed next.

The 2013 Issue Paper “Maritime Crimes” provided by the UNDOC, gives us an overview of the problems and challenges in the legal framework of drug trafficking at sea.

An example could be the challenge arising from the geography of certain areas, such as the Caribbean area. The latter in fact, provides drug smugglers with many alternative routes of transit through the jurisdictional zones of many different States in the region. This raises issues in granting consent within multilateral cooperation, and whether the establishment of jurisdiction should be under the coastal states or the interdicting states.

In order to obtain a better understanding of this challenge an example will be presented. If we consider that the coastal state has primary jurisdiction, this raises the question whether the forum state has sufficient legal basis for the assertion of jurisdiction by its domestic courts over an act within the coastal state’s sovereign waters. In this precise scenario, the only way for the forum state to sentence the offenders is to invoke the principle of universal jurisdiction, which doesn’t require a nexus between the offence and the forum state.¹⁶

However, it should be noted that drug trafficking is not included in the list of international crimes for which universal jurisdiction is afforded.

¹⁴ Art. 13, para. 5, UN Convention against Transnational Organized Crime.

¹⁵ Art. 4, para. 1, UN Convention against Transnational Organized Crime.

¹⁶ Issue Paper of UNODC, of 2013, regarding Maritime Crimes.

This controversy raises rather different approaches and trends, for example during the drafting of the ICC participants debated whether drug trafficking should be considered as a universal crime but ultimately rejected the proposal to include the former in the Court's jurisdiction.¹⁷ However, as described in Principle No. 2 of "the Princeton Principles of International Law" (2004) there is a possibility for such development.

In addition regarding the issues of the establishment of jurisdiction and communication between states' authorities, it should be noted the relevant gap regarding mutual legal assistance provisions within multilateral agreements. In fact the UNODC, urges the need for "the adoption of additional legislative measures or the amendment of current legislative provisions" in order to have better cooperative actions in the collection of evidence, transfer of witnesses and extradition of offenders.

In the "Maritime Crimes" issue paper, the UNODC also emphasizes the success of regional networks of cooperation, e.g. the Maritime Analysis and Operation Centre-Narcotics (MAOC-N). The Office on Drugs and Crime stresses the efficiency of such cooperation model, aimed at enhancing intelligence and at a coordinated police action on the high seas, with the purpose of intercepting vessels carrying cannabis and cocaine.

Also the United States has entered partnership agreements with countries in the Caribbean. In fact it has launched combined and joint operation in close coordination with UNDOC, the Organization of American States (OAS), INTERPOL, IMO, the Caribbean Community (CARICOM), the Association of Southeast Asian Nations (ASEAN) and the Maritime Organization of the West and Central Africa (MOWCA), which led to several success in countering the illicit drug trafficking networks.¹⁸

Lastly, the UNODC defines another challenge: corruption. Citing the 2009 United Nation International Drug Control Programme (UNIDCIP) the Office on Drugs and Crimes underlines the difficulty in the functioning of a democratic system where drug cartels have the means to gain political support and votes at every level of the society. Not only the growing corruption culture will weaken a government's credibility and functioning but it will also frustrate the economic development of that region.

Regarding instead the modality through which the threat from drug trafficking at sea is carried out, the UNODC states that despite the variety of methods of transit utilized by drug traffickers, the use of private and commercial vessels is a long standing issue.

In particular, this is the case with cannabis, cocaine, opium and its derivatives. As UNODC has reported:

"Cocaine is trafficked to Europe mostly by sea, often in container shipments. Colombia remains the main source of the cocaine found in Europe, but direct shipments from Peru and the Plurinational State of Bolivia are far more common than in the United States market".

Also, drug-traffickers in Central America have become very sophisticated in regards to their means, narcotics are in fact transported by the so called "go-fast" vessels, which are boats

¹⁷ A. LAMBERT, *Caribbean anti-money laundering update*, in *Florida journal of International Law*, 2004, pg. 371-387.

¹⁸ Issue Paper of UNODC, of 2013, regarding Maritime Crimes.

capable of sustaining a speed of 20-40 knots in 1-3 feet seas. They also use semi-submersible vessels, which are very hard to be seen and therefore to be properly stopped and searched.

Illicit drug-trafficking by sea has led to several initiatives adopted by the consumer states, such as European countries and the US.

As we will observe later while talking about the Vienna Convention, there is a policy of tackling vessels both in the territorial waters of the consumers states and on the high seas and also in the territorial waters of transit states.

Such policy comprehends, for example, the receipt of ad hoc consent of the the flag state, or through bilateral and multilateral agreements.

e. UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances

Regarding the cooperation between States aimed at the seizure of drug-trafficking vessels, the 1988 Vienna Convention establishes a mechanism whereby the flag State can authorize vessels serving another State to intercept a ship on the high seas engaged in illicit activities.¹⁹ In the early 1980s, the existing legislation regarding drug trafficking were very limited in their scope, and only provided a basic international legal framework regarding the suppression of illicit drug-trafficking. This resulted in the will of the international community to establish a new instrument that not only aimed at intensifying coordination procedures and strategies, but also at determining a specific mechanism for tackling the illicit traffic of narcotics through the implementation of coordinated actions.²⁰

The basic characteristics of the Vienna Convention are the criminalization and the punishment of the illicit traffic, considered as a fundamental step towards achieving the objectives established. A great importance is given to improvement of the efficiency of the domestic criminal justice system related to drug trafficking.²¹ In fact, national implementations and regulations are fundamental and necessary conditions for the establishment of an effective international cooperation. Furthermore, although the 1988

¹⁹ Art. 17, Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances.

²⁰ R. GARCÍA-LLAVE, F. PINIELLA, M. ACOSTA-SANCHEZ, *Maritime Interdiction on the High seas: A case study of Spain and the concept of "Universal Jurisdiction"*, in *Journal of Maritime research*, Vol XII, N III, 2015.

²¹ Art. 3, U.N. Convention against Illicit Traffic in Narcotics Drugs and Psychotropic substances.

Convention establishes the minimum legislation to be applied by all parties, it does not prevent the adoption by states of more stringent measures. The articles frame the criminal offence of illicit traffic in narcotic and psychotropic substances carried by sea within the concept of “transport”, since this term includes carrying by any means, i.e. sea, land or air.²² For this purpose, each state shall establish as criminal offences under their domestic law, the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms, brokerage, dispatch, dispatch in transit, transport, importation and exportation of any narcotic drug or psychotropic substances contrary to the provisions of the 1961 Convention.

An aspect to be underlined, is the binding nature of the measures set out by the Convention. In this case, we do not find the predecessors’ safeguard clause “subject to the provisions of its constitution” because the aim of the authors is for the text to have a fully binding nature.

In Article 4, we can observe how the Vienna Convention regulated the issue of prescriptive jurisdiction, establishing two types of jurisdiction: mandatory and discretionary.

Regarding the mandatory aspect, the Convention provides that is mandatory for each party to take such measures, necessary to establish its jurisdiction over the crime when it is committed on board a vessel flying a party’s flag or registered under its laws at the time the crime is committed. The Convention underlines the importance of eliminating loopholes that could be exploited by traffickers, and stipulates that the parties shall adapt their domestic legislation to incorporate crimes committed on vessels within their territorial waters.

Regarding issues arising due to concurrent jurisdiction, the articles do not specify which state should exercise jurisdiction, providing that it falls under the responsibility of each domestic legislative system to solve problems arising from shared jurisdiction through bilateral or multilateral mechanisms.

Regarding discretionary jurisdiction, intended as optional rather than mandatory, the 1988 Convention provides that each party may establish its jurisdiction when the crime is committed on board a vessel flying its flag and when that party has been authorized to take appropriate action as stated in Article 17. The latter Article also provides that such jurisdiction may be exercised only on the basis of agreements and arrangements and recognizes the universal principle of establishing jurisdiction based on nationality or habitual residence of the offender. However, there is no definition of the concepts of nationality and habitual residence, and the latter is considered as a purely factual notion.²³ In fact, in cases of dual or multiple nationalities, the state belonging to the nationalities of the offender shall establish its jurisdiction on this basis.

However, It should also be highlighted that within the Convention there is no mention about the implementation of legislative powers over ships without nationality, i.e. flying no flag, that are engaged in international drug trafficking. In fact, also according to the U.N. Convention on the Law of the Sea, if no-flag ship is taken to be stateless, so would any jurisdiction on that ship. This issue requires special attention since many trafficking networks make use of stateless vessels to transport narcotics and other illegal substances.

²² R. GARCÍA-LLAVE, F. PINIELLA, M. ACOSTA-SANCHEZ, *Maritime Interdiction on the High seas: A case study of Spain and the concept of “Universal Jurisdiction”*, in “Journal of Maritime research”, Vol XII, N III, 2015.

²³ *Ibidem*

Lastly, we could say that there is a complementarity between Art. 17 of the Vienna Convention and Art. 108 of UNCLOS designed at promoting international cooperation in the suppression of the illicit traffic by sea, thus establishing cooperative measures between the parties.

The cooperation is framed as mandatory, subject to International Law of the Sea, thus directly linked to UNCLOS. The cooperative mechanism explained in the 1988 Convention is based on a system of request-authorization by the flag-state.

2. DRUG INTERDICTION ORGANS IN EUROPE

Various instruments have been adopted in the European Union to promote strengthened cooperation among member states in combating illicit drug trafficking. The June 9, 1997 Joint Action (97/372 JHA) enhance the development of customs cooperation and the October 25, 2004 framework decision (2004/757 JHA) establishes national standardization methods and lays the foundations for a judicial and police cooperation at the European level²⁴. Within the framework of European cooperation aimed at suppressing illicit drug-trafficking by sea, we shall talk about the MAOC-N which I've already mentioned in part c.

The intergovernmental working group is constituted by seven European countries: France, Ireland, Spain, Italy, the Netherlands, Portugal and the United Kingdom. The mission is based in Lisbon and, as already mentioned before, its main aims are to improve criminal intelligence and coordinate police action in international waters.

Since its creation, the MAOC-N has worked in close collaboration with several European organs, such as the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the European Maritime Safety agency (EMSA), European Police Office (Europol), the European Union's Judicial Cooperation Unit (Eurojust) and the International Police (INTERPOL).²⁵

Therefore we can conclude that the European Union sees the fight against drug trafficking by sea in its goal as its preferred Maritime Policy.

²⁴ V. DELICATO, *Maritime Security And The Fight Against Drug Trafficking In The Mediterranean And Atlantic Approaches*, in *Mediterranean Paper series*, 2010, pg 9.

²⁵ R. GARCÍA-LLAVE, F. PINIELLA, M. ACOSTA-SANCHEZ, *Maritime Interdiction on the High seas: A case study of Spain and the concept of "Universal Jurisdiction"*, in *Journal of Maritime research*, Vol XII, N III, 2015.

In this second part I will focus on some of the European organs aimed at the prevention and interdiction of the illicit transport of drugs, such as: Europol, Interpol and Maritime Safety Agency.

f. Europol

Europol is a European agency since 2010 and is democratically managed on the basis of a system of controls, checks and supervisions of governance. We could say that it is accountable to relevant ministers from every EU member states, if we consider that it is ultimately accountable to the Council of Ministers for Justice and Home Affairs.

Also, the European Parliament plays an important role in overseeing Europol, in fact together with the Council, it approves Europol's budget and adopts regulations related to Europol's work.

The Management Board is the Europol's main governance body and it functions as the leader of the Agency. Its main tasks are to ensure Europol's continued development, to provide strategic guidance and oversee the implementation of its work programmes. It is composed of one representative from each member state and one representative from the European Commission.

Looking at the European Parliament report about the fight against drugs we acknowledge that 60% of all inquiries coming to Interpol relate to drugs and about 80% of one million messages transmitted by this Agency involve Europe. For this issue Europol has to obtain information about drugs and drug trafficking with the ability to analyse it and carry out investigations resultant upon this analysis.

According to the 2017 SOCTA report made by the Europol, the EU retail drug market is estimated to be worth at least 24 billion euros a year, this huge profits generated from the drug trade are funding various other criminal activities proving that drug markets remain the largest criminal markets in the EU.²⁶

In the European Union illicit drug markets are accounted to make up about one-fifth of global crime proceed and they have been estimated to account for 0.1-0.6% of the GDP of nine of the member states, in fact, EU countries represent roughly 46% of global drug revenue but only 34% of the drug weight²⁷ and the total retail drug market is estimated to be worth at least 24 billion a year.²⁸ It should also be noted that the ramifications of the drug market go far beyond the harms caused by the drug use. Its impact has consequences on society regarding also their financial weight, but not only that. As well as generating vast sums of money, illicit drug trafficking is able to interact with other illicit markets and activities, to the point of reaching government institutions and installing a corruption mechanisms, as well as hindering legitimate businesses activities and the wider economy.²⁹

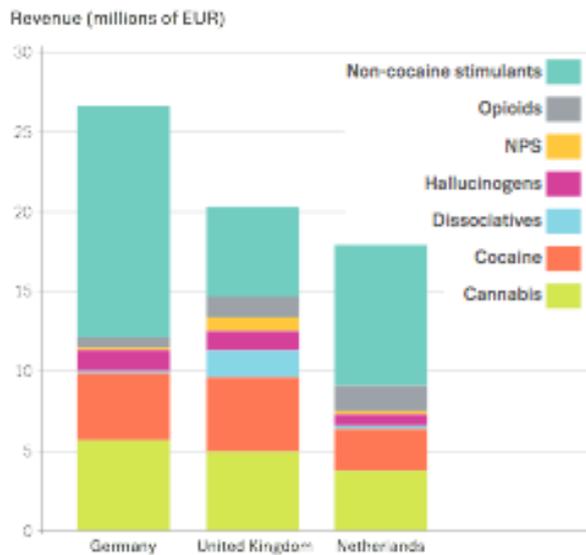
²⁶ Report by Europol, of 2017, relative to Serious and Organized Crime Threat Assessment (SOCTA).

²⁷ Report by Europol and EMCDDA, of 2017, relative to Drugs and the Darknet.

²⁸ Report by Europol and EMCDDA, of 2016, relative to EU Drugs Market.

²⁹ *Ibidem*

Among the European member states, Germany, U.K. and the Netherlands are found to be largest sellers of illicit narcotics.³⁰



As mentioned before, the drug trade has both indirect and direct impacts on legitimate businesses activities, for example, open or street drug sales can negatively affect local economic activities by weakening the attractiveness of that area to costumers and the general public.

Another mechanism that is generated from this illegal market is the absorption of resources from the legal economy, in fact money spent on illicit drugs is denied to governments in the taxation process but also to producers of other goods.³¹ A large proportion of illegal profits gained from the drug trade is, in most of the cases, not reinvested in illegal activities but channelled back into the legal economy.³²

Considering the several challenges due to an increasing illicit drug trafficking, the Europol urges the need to improve the understanding of the widespread ramifications of the drug market through several tasks, such as the collection of more detailed data drug demand, so as to increase the accuracy of market size estimates. These data will also be helpful in the development of drug policies. There is also the need for a continued monitoring and developing of data collection aimed at measuring the linkages between violent criminal acts and drug trade.

The European police also focuses on the need to increase knowledge sharing and cooperation to ensure coherence between policy areas, and to that end it states that the EU should develop programmes to assist countries most affected and increase the shared expertise and best practice for tackling corruption. In order to safeguard coherent actions and regulations, the Union should reduce duplication between drug control policies and international development and assistance programmes in significant transit and production areas.

³⁰ Report by Europol and EMCDDA, of 2017, relative to Drugs and the Darknet.

³¹ Report by Europol and EMCDDA, of 2016, relative to EU Drugs Market.

³² B. UNGER, E. M. BUSUIOC, *The Scale and Impact of Money Laundering*, 2007.

Lastly, Europol underlines the necessity to develop responses to drug markets by targeting drivers and interlinkages such as an elaboration of a framework to describe illicit enterprises from a business perspective associated with the study of case-level data on the phenomenon. This process may be helpful at highlighting cost-effective and innovative opportunities for intervention. Conducting parallel financial investigations and sharing financial intelligence would lead to a comprehensive framework useful for interventions targeting criminal finances and money flows. Also, in order to assess the cost-effectiveness of interventions, improvements in the systematic monitoring of national expenditures in the EU on drug supply are needed.

Regarding instead the shipments of illicit drug-trafficking in the European Union (Figure 1), in particular that of cannabis resin, Europol has found that it is mostly of Moroccan origin and its supply is largely in the hands of OCGs. The Europol has also noted that members of the Italian Camorra mafia group organise cannabis resin shipments from Spain to Italy, either directly or via the Netherlands.

For what concerns the transport of narcotics by sea from Morocco to Europe the European police has noted an increasing development regarding the use of ships that transport the resin eastwards on the Mediterranean Sea to countries in the north of Africa. There, the OCGs can use the unstable security environments to their advantage.³³

Main trafficking flows of cannabis in Europe

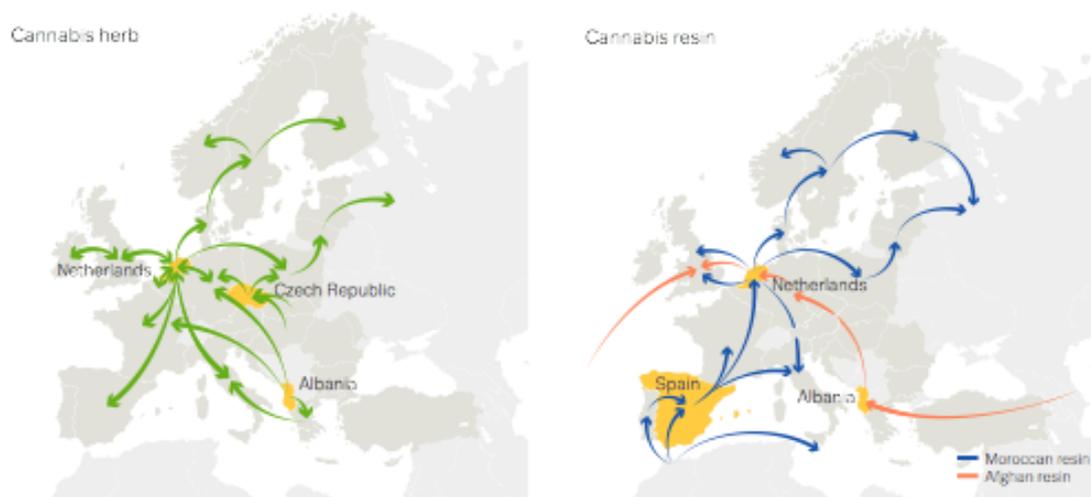


Figure 1, Source: Europol

This is also proven by the various large seizures in the region (Figure 2).

As mentioned before, Moroccan criminal groups are the major players in the supply of cannabis resin to Europe. In fact, some Moroccan OCGs are able to control the whole chain of trafficking, from production to retail sales. Also, their control over wholesale imports and sales enable them to exert significant influence on most markets in Europe.

³³ Report by Europol and EMCDDA, of 2016, relative to EU Drugs Market.

The MAOC-N reports that during the last few years, it has been actively involved in the seizure of over 100 tonnes of drugs off the coast of North Africa, some of which was thought to have been destined to Europe.³⁴

Seizures of cannabis reported in Europe, 2006–14

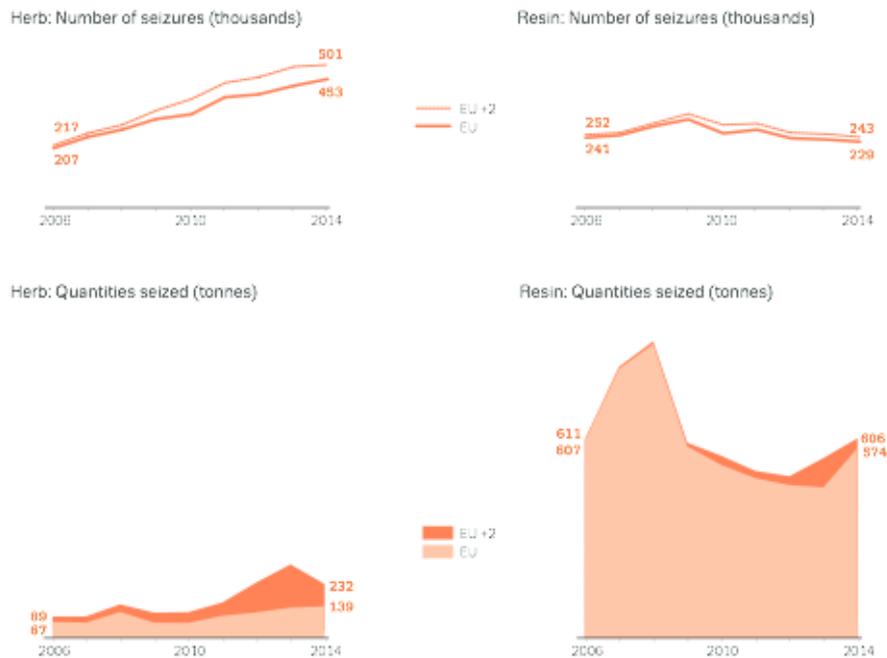


Figure 2

g. Interpol

The International Police was first created in 1923 and the 190 members of which is composed of, have established a connection with each other through a network of National Central Bureaus (NCBs). A safe communication system helps them coordinate in real time to advance and conclude multi-jurisdictional criminal investigations, conduct transnational operations and share actionable intelligence, which could lead to a shared identification, location and arrest of suspects.³⁵

Since its inception, Interpol has been working to grant and promote mutual assistance between all enforcement authorities within the limits of the law and in the spirit of the Universal Declaration of Human Rights.

Regarding the strategic response to drug trafficking, Interpol has enlisted several transversal policing capabilities that constitute the grounds of its contribution to helping member countries address the issue of drug trafficking. It stresses the importance of communication tools and databases that allow for the exchange, storage and cross-referencing of information;

³⁴ Report by Europol and EMCDDA, of 2016, relative to EU Drugs Market.

³⁵ Contribution of the Interpol to United Nation General Assembly Special Session (UNGASS), of 2015, regarding the Drug Problem.

subsequently this information structure is deployed to National Central Bureaus, strategic border points (i.e. international airports) and specialized policing units in each member country.

Another important aspect of international cooperation stated by the International Police is the collection of criminal analysis of post-seizure data. The sharing of new trafficking techniques or emerging trends provided by national drug law enforcement agencies which leads to the production of analytical studies, it is of significant relevance in identifying criminal links between reported cases.

For what concerns the coordination of transnational law enforcement operations, we should consider one of the latest Interpol coordinated operation in 2015: Operation FOLOSA.

The latter targeted the traffic of narcotics from Latin America to Europe via Africa, it involved law enforcement officials from 22 countries which operated controls on departing, transiting and arriving passengers at international airports on known smuggling routes.³⁶

The operation was led by the International Police with the support of the United Nations Office on Drugs and Crime and the World Customs Organization (WCO) which led to the seizure of 170 kilograms of drugs worth an estimated 10 million of Euros.³⁷

Also, Interpol cooperates closely with Europol, it is in fact associated with several Europol operational action plans in combating drug trafficking. However, Interpol urges for the need of a greater understanding concerning the main hubs and points of entry being used to move drugs. As an example of intelligence-led policing, this kind of information needs to be translated into local outcomes, either via national police forces or support through Interpol, and should guide international law enforcement strategies in this respect.³⁸

Interpol also stated the need for peacekeeping communities to better interact with the police, in order to gain information on drug trafficking in those conflict zones where peacekeeping operations and military have a presence. “Greater discussion is needed on how this information and intelligence can be extracted, shared, and operationalized”, those the exact words of the International Police.³⁹

In 2010, Interpol has helped coordinating investigative activities and flow of information between several European countries, such as Germany, Belgium, Switzerland and the United States to dismantle an organized crime group trafficking cocaine to the Union from South America. It should be noted, in fact, the close relationship between drug trafficking and organized crime. Drug trafficking can be understood as a group of commodities exploited by those criminal groups to generate profits who rely on specific pathways to move these commodities from one point to the next.

As shown from the following graph, we can observe the relationship found by the Canadian Centre for Justice Statistics between drug-related incidents committed for the benefit of

³⁶ *Ibidem*

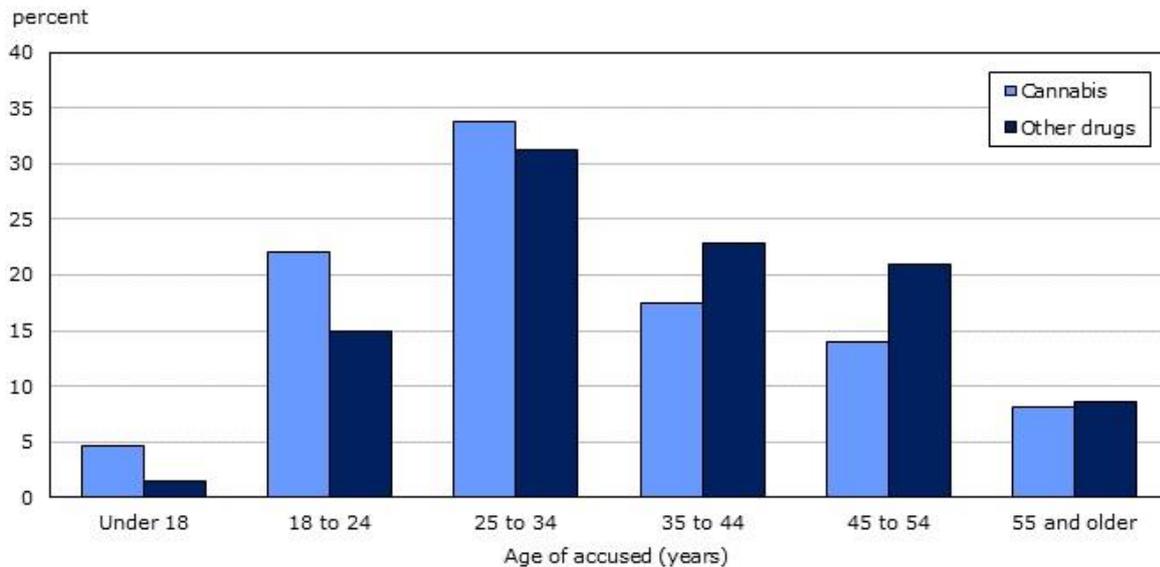
³⁷ *Ibidem*

³⁸ *Ibidem*

³⁹ *Ibidem*

organized crime associations in Canada:

Chart 5
Age of accused in drug-related incidents committed for the benefit of organized crime, selected police services, 2014



Note: Selected police services: Participants in Phase II 2014: Waterloo Regional Police Service, Regina Police Service, Vancouver Police Department, and Victoria Police Department. Data are not nationally representative. These data only include the participating police services in the Uniform Crime Reporting Survey (UCR) pilot project on organized crime. These data are limited to UCR incidents of trafficking and production of heroin, cocaine, cannabis, methamphetamine, methylenedioxymphetamine, and other *Controlled Drugs and Substances Act* incidents.

Source: Statistics Canada, Canadian Centre for Justice Statistics, Uniform Crime Reporting Survey, Organized Crime Pilot Project.

A recent Interpol operation worth of notice is Operation Lionfish-ASEAN, which targeted drug trafficking across Asia and the Pacific and involved more than 2000 police officials across fourteen countries. The operation lasted two weeks and saw the seizure of 350 Kg, 50 litres and 2175 tablets of illicit drugs worth an estimated 18 million dollars.

Operation Lionfish is of significant notice because was conducted by the Interpol's project "AMEAP" (Africa-Middle-East-Asia-Pacific), supported economically by the United Arabian Emirates via the Interpol foundation for a Safer World.

AMEAP is a five year project which provides a coordination platform for a range of anti-drug trafficking operational plans either led by, or involving Interpol, including:

- Interflow, aimed at helping police forces to detect, identify and arrest drug traffickers across Africa;
- CRIMJUST, managed jointly with the UN Office on Drugs and Crimes, and Transparency International, funded by the European Union to strengthen criminal investigations and cooperation along drug routes in Latin America, the Caribbean and Africa.

- AIRCOP- (Airport Communication Project), aimed at fighting illicit drug trafficking and transnational organized crime, funded by the European Union Cocaine Route Programme.⁴⁰

h. European Maritime Safety Agency

The set up of the European Maritime Safety Agency (EMSA) was proposed by the European Commission after the “Erika” accident. It based it in Lisbon and it provides technical, operational and scientific assistance to the European Commission in the field of maritime security and maritime safety. Its assistance is particularly relevant in the constant process of updating and developing new legislation, monitoring its implementation and measuring the effectiveness of the regulations in place.⁴¹

A relevant directive indirectly useful for the tackling of the drug trafficking, is the 2016/1624 EMSA directive on Port States Control (PSC), which focuses on the inspection of foreign ships in national ports.

PSC is the most effective tool to verify the condition of the ship and its equipment and if it complies with the requirements of international regulations. Inspections should be carried out by each member states, in accordance with the principle of harmonization, to grant that there is effective control of ships within the Union ports and ensure that ships sailing in European waters have been constructed and maintained in the appropriate manner.⁴²

When the Commission requests it, the PSC officers visit member states’ ports and maritime administrations to check compliance with the PSC rules and procedures, during the inspections the Agency also ensures a consistent approach in the performance of the of the PSC officers within the European Union.

The 2016/1624 regulation stresses the separation of responsibilities between the Agency and the national authorities and the member states. The formers are responsible for surveillance operations and border control tasks, while the latter ones retain primary responsibility for the management of their external borders in their interest and in the interest of all member states. However, the Maritime Safety Agency should support the application measures relating to the management of the external borders by assessing and coordinating the actions of member states. Also, the European border management does not alter the competences of the European Commission and member states in the customs areas, regarding controls, risk management and exchange of information.⁴³

⁴⁰ Contribution of the Interpol to United Nation General Assembly Special Session (UNGASS), of 2015, regarding the Drug Problem.

⁴¹ European Commission on mobility and transport regarding the European Maritime Safety Agency (EMSA), available online.

⁴² Directive 2009/16/EC of the European Parliament and Council, of April 23rd 2009, on Port State control.

⁴³ Regulation 2016/1624, of the European Parliament and of the Council, of September 14th 2016, on the European Border and Coast Guard.

The main purpose of the directive is stated in Article 1, where the aim is given to the establishment of a vessel traffic monitoring and information system within the Community, for the purpose of enhancing the safety and efficiency of maritime traffic by the improvement of authorities “response to incidents, accidents or potentially dangerous situations at sea”. The ultimate goal of the Agency’s visit is to view and document the system in place in the member state used for their vessel traffic and information system.

The agency, although it is not exactly an interdiction organ aimed at the seizure of vessel trafficking narcotics, it has a key role in monitoring the ships movements and equipment within European harbours. Since its main role is to verify the compliance of the vessel’s structure with European regulations, we’ll shall say that the EMSA is able to find out whether a vessel docking at one of the Union ports is carrying drugs or psychotropic substances, and if that is the case, the Agency will be able to warn national or international authorities which will proceed with the seizure of such vessel and the arrest of the traffickers.

3. DRUG TRAFFICKING IN THE MEDITERRANEAN

Illicit traffic in narcotics in the Mediterranean Sea and in the Atlantic are subject to different legal systems. The Law of the Sea and criminal jurisdiction cover the most relevant aspects of drug related issues. When those occur in the high seas, the general rules legitimating controls of the vessel of a state without nationality apply. However, interventions in international waters have to be regulated by international agreements or have the consent of the flag state of the ship concerned.

The Maritime Analysis and Operations Centre-Narcotics (MAOC-N) is, as already stated before, one of the most efficient centre in Europe destined at the fight against illicit drug trafficking in Europe. It covers an area extending from the eastern part of the Atlantic Ocean to European and Western African coastal states, European Commission representatives participate as liaison officers in the corresponding U.S. Agency (Joint Interagency Task Force-South;JIATF-S).

However, the Lisbon Operation centre is not the only one operating in the Mediterranean Sea, in fact in 2008, France set up the Centre de coordination pour la lutte anti-drogue en Méditerranée (CeCLAD-M), a coordination structure with the same functions as the MAOC-N but with a specific focus on mare nostrum.⁴⁴

This third part will focus on the main routes of drug trafficking coming to Mediterranean Sea with an emphasis on geographical conditions that may favour the cultivation and production of specific drugs.

⁴⁴ V. DELICATO, *Maritime Security And The Fight Against Drug Trafficking In The Mediterranean And Atlantic Approaches*, in *Mediterranean Paper series*, 2010, pg. 9.

Finally, a case study on Spain will be analyzed in which actions regarding the intervention of narcotic drugs on the high seas will be explained in relation to the principle of Universal Justice.

i. The Main Routes

Geography regulates the character and structure of the maritime drug trade while economic gain is the motivator. All physical and operational flow matrices and patterns of drug consumption are determined by precise geographical factors. In analysing the drug market two aspects become readily apparent: firstly, geography has a profound impact on both the structure of various flow systems found and modes of conveyance used. Secondly, in order to have a better understanding of the geographical aspect of drug trade, three visions need to be considered: the global vision, the macro vision and microscales.⁴⁵ The global is most general explanation and takes into account the world as a whole and relates the distribution of cultivation regions to consumption areas, within the spatial arrangement of land and sea. The macroscale concerns the national and regional levels of scale, depending on the state or region in question it gives us particularities regarding the phenomena of drug trade in those specific areas. The peninsular configuration of Italy, for example, is an example of macroscopic structure.

On the other hand, the structure of ports, harbours and coastal sites, as well as the nature of vessels, is part of the microscopic scale. Where drug smuggling issues are considered in precise detail.⁴⁶

The Mediterranean Sea is particularly affected by illicit trafficking in drugs⁴⁷ because, given its strategic position, it is a crucial crossroads for smuggling cocaine, heroin and ecstasy.

The pathways by which drugs reach Europe are extremely diversified. Yet, these patterns are in constant change on the basis of transnational connections and safety precautions.

One of the main route is the two-way use of the Balkan route, with an increased flow of drugs from Western Europe into Central and Southern Europe and Turkey. Smugglers use all means of transport available, even though the largest amount of drugs are transported by ships, in fact notice should be given to the maritime flows of cocaine from South America passing through Western Africa, as well as of ecstasy produced in Europe created for Australian markets.

⁴⁵ B. R. AUNE, *The Maritime Trade in illicit drugs: the experience of the coastal member states of O.E.C.D.*, 1989, pg. 77-78.

⁴⁶ *Ibidem*

⁴⁷ Report by Europol, of 2007, regarding the European Union Cocaine Situation.

Within Europe, the ports of Lisbon, Malaga, Marseille as well as Italy's Thyrranian port (i.e. Gioia Tauro harbour) and also Sicilian ports are particularly involved.⁴⁸

For what concerns coca, we should say that it is the most unique among the drug plants because it is confined to one region of the world, that is the western and northwestern part of South American continent. The basis for this region of the world of being the only area of coca cultivation appears to be a peculiar combination of topography, climate, agronomy and geographic isolation. For this reason, it should be noted that optimal production yields occur where the temperature averages 25° with 70-80% of humidity.⁴⁹ In fact, the highest purity coca is grown on the slopes of the Andes Mountains at elevation ranging between 500- 1200 meters. However, coca equally grows in jungle areas at the base of both sides of the Andes mountain, where the environment offers watershed areas, river basins and where the rainy season prevail.⁵⁰

Cocaine trafficking patterns start mainly in Colombia, Venezuela, Bolivia and Peru, the latter are the prime sites of high quality production since the existence of ideal areas meeting the above criteria. In Peru, the best quality of coca leaf is found in Huallaga River basin where the natural setting is perfectly adequate, while in Bolivia illicit coca cultivation occurs in the Chepare and Valle Alto sections of the site of Cochamba.⁵¹

Four main routes for cocaine are established, the first one is the Latin American route, which through the Caribbean islands reach Canada, United States, Paraguay, Argentina and Europe; the second one is the North Pacific route, which reaches the United States through Mexico; the third one is the Atlantic route, which via various African countries reaches Europe and the US from Venezuela, Colombia, Brazil and Argentina; and the fourth one is the Isthmus route, to the United States via Central America and Mexico.⁵²

Regarding instead the maritime routes through which cocaine is brought to European countries, three main flows have been identified: the first one, from the Caribbean, passing through to the Azores, to Portugal and Spain; the second one comes from South America towards Europe, passing via Capo Verde and the Canary Islands; and the third one, from South America to Western Africa and from there to Spain and Portugal.⁵³

⁴⁸ V. DELICATO, *Maritime Security And The Fight Against Drug Trafficking In The Mediterranean And Atlantic Approaches*, in *Mediterranean Paper series*, 2010, pg 2.

⁴⁹ B. R. AUNE, *The Maritime Trade in illicit drugs: the experience of the coastal member states of O.E.C.D.*, 1989, ch. IV.

⁵⁰ *Ibidem*

⁵¹ *Ibidem*

⁵² V. DELICATO, *Maritime Security And The Fight Against Drug Trafficking In The Mediterranean And Atlantic Approaches*, in *Mediterranean Paper series*, 2010, pg 2-3.

⁵³ *Ibidem*



Cannabis, on the other hand, is a plant type found globally in the warmer climatic regions of land areas. The latitudinal range extends from the tropics to the higher latitudinal boundaries of the temperate zone. However, there can be exceptions in the inner areas of continents where particular summer seasons occur permitting permutation of the boundary beyond the typical limits to envelop those areas. An example could be seen in the territory of northwestern Canada including the Yukon and other northwestern regions.⁵⁴ Because water is an essential element for the well growth of the plant, the latter is naturally born in areas that possess the necessary mix of climatic and agronomic characteristics. In fact, when the soil's nutrient content is lacking and precipitation is either lacking or excessive, the plant requires artificial inducements such as fertilizers, accurate irrigation and attention. In regions of constant warmth the plant is capable of two crops per year and so it is cultivated to produce two harvests per year, but usually the autumn harvests will yield a larger volume.⁵⁵

The relationship of the growth criteria affects the THC content of the plant, and this determines the type and grade of cannabis that the plant produces, i.e. hashish, marijuana etc..).⁵⁶

For what concerns the cannabis route, Northwest Africa plays a key role in the trafficking of hashish destined for Europe, which is the largest consumer of this substance.

⁵⁴ B. R. AUNE, *The Maritime Trade in illicit drugs: the experience of the coastal member states of O.E.C.D.*, 1989, ch. IV.

⁵⁵ *Ibidem*

⁵⁶ *Ibidem*

However, hashish reaches Italy through the Balkan route, via the Mediterranean. Regarding the traffic of marijuana instead, for the last years it has been registered a relevant trafficking between Italy and Albania where the substance is transported from the ports of Durres to the Apulian ports of Bari, Brindisi and Otranto.

The most significant threat is the cocaine traffic, and as trafficking has increased as along the African coast, also increases the amount of seizures have been registered in the same area.⁵⁷

In 2008 the largest cocaine seizure was carried out at the port of Vado Ligure, amounting to almost 500 Kilograms in a single operations.⁵⁸

I. Case Study: Spain and the Intervention of Narcotic Drugs in International Waters and Applicability of Universal Justice

Before I start analyzing the case study, I should say that the latter is entirely based on an article published in 2015 by the “Journal of Maritime Research” Vol XII, No. III, written by R. Garcia-Llave, F. Piniella and M. Acosta-Sánchez.

In 1955 Spain created what was originally called Special Fiscal Surveillance Service. It is now called the Customs Surveillance Service and it is deployed under the Ministry of Finance and framed within the Department of Customs and Excise. This agency, focused on the fight against illicit traffic by sea, has eight hundred marine officers and a fleet of thirty seven ships (i.e. high speed craft, medium-sized patrol boats and ocean-going patrol boats).

Although primarily operating in the territorial waters, the agency operated significant interventions also on the high seas, thus the agency placed twenty five maritime bases situated in strategic positions playing a key role in the fight against maritime drug trafficking. In the period of time when Spain applied the principle of Universal Jurisdiction (i.e. before 2014), Spain became the leading country in Europe in combating drug trafficking, as proven by the extraordinary increase in seizures, mainly in international waters (Figure 1).

⁵⁷ V. DELICATO, *Maritime Security And The Fight Against Drug Trafficking In The Mediterranean And Atlantic Approaches*, in *Mediterranean Paper series*, 2010, pg. 3.

⁵⁸ *Ibidem*

Type of substance	Operation	Date (month-day)	Location	Quantity seized (kg)	Arrests
Cocaine	ALBATROS	05-29	Vigo-Pontevedra (Galicia)	3,300	5
Cannabis	-	05-31	Malaga (Andalusia)	16,057	14
Cocaine	RANA	07-16	Las Palmas GC (Las Palmas)	500	5
Cocaine	MATRIX-TARUGO	09-02	Cadiz (Andalusia)	800	15
Cannabis	MONTEVIEJO	11-04	Cadiz (Andalusia)	9,421	13
Cocaine	MARTYRIUM	11-29	Las Palmas GC (Las Palmas)	554	2
TOTAL QUANTITY SEIZED				30,632	

Figure 1: seizures operated on the high seas in 2013.

Original source: Maritime Unit of the Customs Surveillance Service

However, in March 2014, Spain has experienced a policy reversal regarding the principle of Universal Justice, leading to a considerable reduction of the Customs Surveillance Service's actions, to the extent that Spain no longer undertakes any operation upon ships travelling on the high seas. (Figure 2)

Type of substance	Operation	Date (month-day)	Location	Quantity seized (kg)	Arrests
Cannabis	BERK KAPTAN	02-14	Almeria (Andalusia)	12,088	4
Cannabis	-	03-06	Almeria (Andalusia)	9,851	8
TOTAL QUANTITY SEIZED				21,939	

Figure 2: seizures operated in the first six months of 2014.

Original source: Maritime Unit of the Customs Surveillance Service

All drug types are intercepted at sea, but mainly cocaine and cannabis (Figure 1).

Historically, the cannabis consignments were centered around the Strait of Gibraltar, however there has been a change since the same consignments have now been placed towards areas further away.

Also the traditional patterns of routing cocaine through the Atlantic and cannabis through the Mediterranean have broken down, in fact, both pathways are now used for both drugs.

In Spain, specifically, cannabis is arriving from northern Morocco along the southern and Mediterranean coast and interception on the high seas operated by Spanish authorities has accounted for 70% of total interventions at sea made by Spain (before 2014), it is for this reason that the country has acquired a large fleet of vessels in recent years (Figure 3-4-5).

HIGH-SPEED PATROL BOAT

Patrol boat	Launched	Maritime base	Δ TM	Crew	Length overall (metres)	Beam (metres)	Draught (metres)	Maximum speed (knots)
Águila -I	Vigo 2008	Galicia (Vilagarcía)	21.75	4	17.33	3.8	2.1	45
Águila II	Vigo 2009	Valencia (Castellón)	21.75	4	17.33	3.8	2.1	45
Águila III	Vigo 2008	Balearic Islands (Ibiza)	21.75	4	17.33	3.8	2.1	45
Águila IV	Vigo 2008	Andalusia (Algeciras)	21.75	4	17.33	3.8	2.1	45
Águila V	Vigo 2008	Galicia (Marín)	21.75	4	17.33	3.8	2.1	45

Figure 3

MEDIUM-SIZED PATROL BOATS

Patrol boat	Launched	Maritime base	Δ TM	Crew	Length overall (metres)	Beam (metres)	Draught (metres)	Maximum speed (knots)
Abanto	Vigo 2005	Murcia (Cartagena)	87.5	8	31.36	6	3.4	35
Paño	Vigo 2006	Catalonia (Barcelona)	87.5	8	31.36	6	3.4	35
Albatros	Vigo 2007	Valencia	87.5	8	31.36	6	3.4	35
Sacre	Vigo 2007	Canary Islands (Las Palmas)	87.5	8	31.36	6	3.4	35
Alcatraz	Vigo 2008	Andalusia (Huelva)	87.5	8	31.36	6	3.4	35
Alca	Vigo 2009	Andalusia Almeria	87.5	8	31.36	6	3.4	35
Alcotán	Vigo 2009	Galicia (La Coruña)	87.5	8	31.36	6	3.4	35
Halcón	Vigo 2009	Galicia (Vigo)	87.5	8	31.36	6	3.4	35

Figure 4

'SPECIAL OPERATIONS' OCEAN-GOING PATROL BOATS

Patrol boat	Launched	Maritime base	Δ TM	Crew	Length overall (metres)	Beam (metres)	Draught (metres)	Maximum speed (knots)
Fulmar	Vigo 2005	Andalusia Cadiz	580	17	61	9.9	6	21.5

Figure 5

Original source: Maritime Unit of the Customs Surveillance Service

Regarding the Spanish power of jurisdiction over offences of illicit trafficking in narcotics on the high seas, Spain has extended its jurisdictional power to prosecute crimes related to those issues since 1986. However, this power has been reduced on two occasions, in both the 2009 GSp and, more intensely, in March 2014 with GSp 2014 following a reform by emergency procedure of the Organic Law on Judicial power, which the aim was limiting the exercise of Universal Jurisdiction by Spanish Courts.

The updated provisions in relation to offences committed at sea are to be seen in Article 23.4.d of the reform which states that: "...committed in maritime spaces, in the cases provided for in treaties ratified by Spain or in the regulatory acts of an international organisation of which Spain is a party". While Article 23.4.i can be considered of general scope but exclusively concerning Spain as the main actor, either as the perpetrator of the crime or as the offended party: "...1. the proceedings are directed against a Spanish citizen; or 2. In the case

of carrying out acts to implement one of these crimes or forming a criminal group or organisation with a view to committing it in Spanish territory”.⁵⁹

It is clear here, how the will of the new reform is to exclude any type of operation or proceeding that does not concern Spain related issues, and thus also excluding any intervention in international waters aimed at the interdiction of foreign vessels trafficking illicit narcotics. The mode of the application is thus based on the principle of personality (crime committed by a national) and the principle of protection (effects on the territory of the State).

Due to the retroactive nature of the new Law on Universal Justice, many cases regarding drug interventions on the high seas were dismissed and closed. Even the drug traffickers were released because the Spanish courts lacked the jurisdiction to prosecute such acts since the accused were not of Spanish nationality nor it was able to prove that the narcotics they were transporting had Spain as the final destination of consignment.

Among the several cases that had to be dropped the most notorious ones were two: the first one was the result of an operation carried out on the 6th of March 2014 and the second one on the 16th of the same month. The first one saw the seizure of a twenty five metre long fishing boat without flag or marks of registry, caught when thirty two miles off the coast of Algeria and sixty seven miles from Cabo de Gata in Almeria. The amount of drug seized was 9.8 tons of cannabis.

The intervention effected on March 16th instead, was a merchant ship named “Mayak”, flying the flag of Sierra Leone and caught fifty two miles southwest of Alboran Island and sixty five miles south of the coast of Malaga. The consignment seized was 12 tons of cannabis.

The situation that arose from these last events was very inconsistent with the goal of the provision of the 1988 Convention and given the considerable social alarm due to such events, many judges expressed their disagreement and declared themselves in favour of maintaining Spanish jurisdiction to prosecute. For that purpose, the Supreme Court has passed two judgements giving a new interpretation of the rule. In doing so, the Court considered the provisions of paragraph d) of Article 23.4 as *lex specialis*, a law which only governs general matters and it has a preference application, as in this case it relates to the high seas.

Basically, what the Court did was considering the two provisions (Art. 23.4.d. and i.) as separate and independent from one another and it concluded that section d) must be specifically applied in the case of illicit acts carried out in international waters, whereas section i) must apply whenever this is not the case. Even though the provisions refer to the same type of conduct, such as illegal trafficking in drugs, narcotics and psychotropic substances, they absolutely differ in the scope of their application.

⁵⁹ Art 23, para. 4, letters i) and j), Ley Organica del Poder Judicial.

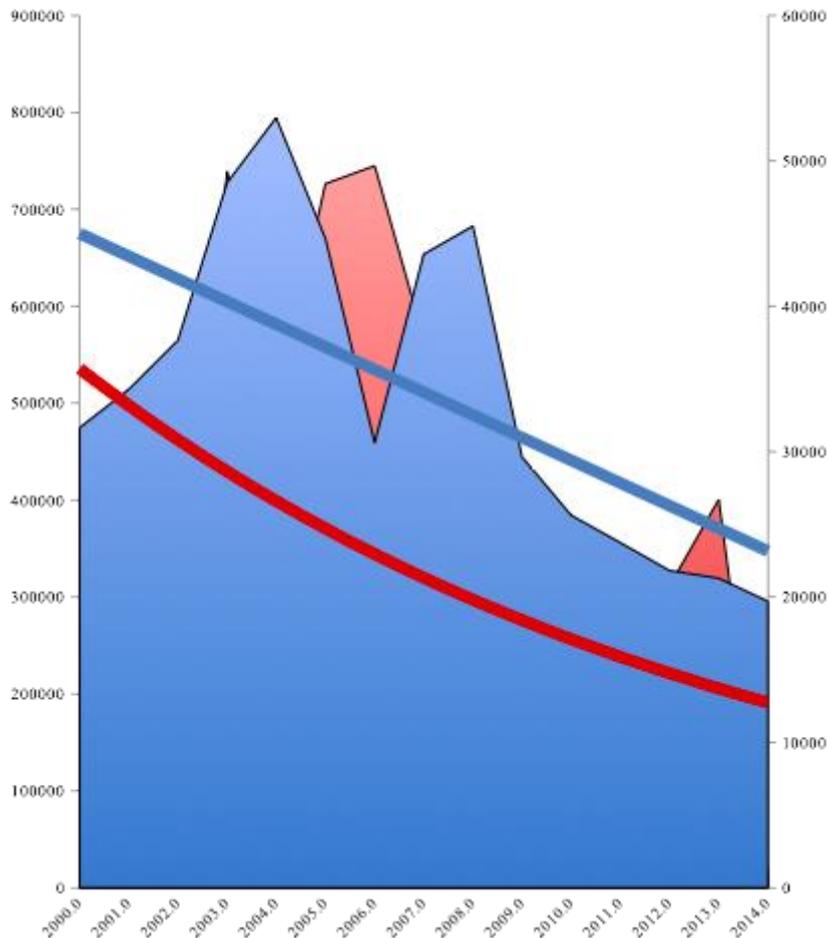


Figure 6

The above figure 6 indicates the cannabis (blue line) and cocaine (red line) interventions and trends from 2000 to 2014. The graph is just another proof of how seizures of both cannabis and cocaine has started to intensely diminish going towards 2014.

If we consider instead the change of quantity of drugs seized from 2013 to the first months of 2014, we shall look at Figure 1 and 2. In 2013 the number of operations amounted at six and the total amount of drug seized of both cocaine and cannabis was of 30,632 which also saw the arrest of fifty four people. In the first six months of 2014, so after the reversal policy regarding the Universal Justice reform was applied, the amount of quantity of drug seized (only cannabis) was of 21939, only two operations were made and the total people arrested were twelve. From 2013 to 2014 we observe a decrease of 28.4% of total amount of drug quantity seized, more precisely the quantity seized in the first six months of 2014 is the 71.6% of the 2013 total quantity.

The case study of Spain reported here, can be considered as an example of how an amendment of the Law on Universal Jurisdiction can entail the scope of the international will of combating the illicit traffic of narcotics by sea, and even affect the number of detentions arose from such offence, since the powers of the Spanish court to prosecute such cases have been limited.

However, the Supreme Court has decided to affront the situation by providing a new and clear interpretation of the legal provisions that gave birth to such controversy. In doing so, the Court declared paragraph d) of Art. 23.4 as of specific scope while the provisions contained in paragraph i) as of a general scope.

Regarding the former paragraph, the legislature has grouped together a series of crime, such as piracy, terrorism, illegal trafficking of toxic drugs, narcotics and psychotropic substances etc., to which coastal states should pay attention when these are perpetrated at sea, and to that aim it should use all the means available to not only protect the Spanish territory but the entire international community regardless of the nationality of the offenders or whether the final targets of the criminal acts are other countries.

Furthermore, given the transnational nature of such crimes, and their frequent engagement in distribution activities included in the final objective of the crime, this provision establishing jurisdiction should be applied when the offence is perpetrated in maritime areas.

This new interpretation of the provision, subsequent to the Universal Jurisdiction reform, enabled the agencies responsible for undertaking interventions against vessels trafficking drug by sea, to keep intercepting ships on the high seas with the consequent social and economic benefit for Spain and the international community.

m. Conclusion

Throughout this thesis we have acknowledged the regulations regarding measures of prevention and cooperation aimed at the interdiction of illicit drug trafficking in international waters, in doing so a number of Conventions have been analyzed with the aim of giving a better understanding of how the international community is combating such illicit activities.

Subsequently, an overview of the Organs engaged with the fight against drugs have been introduced and discussed about. Through reports issued by such organs, we have seen how the trafficking of narcotics can hinder the legitimate business within a country and how the whole national economy can suffer from it. However, despite numerous successful operations conducted by the Europol and the Interpol, both organs argue the need for an increased cooperation among countries and national authorities with a membership to those agencies. They urge, for example, for the necessity in an increase in the sharing of data collection, an update on the communication tools and databases that allow for the exchange, storage and cross-referencing of information and an improvement in the understanding of the widespread ramifications of the drug market through more accurate drug market estimates and relative drug demand. Also, the international organs state the need to better analyze the great deal of linkages between drug trafficking and transnational organized crime, defining the former as a “part of a group commodity” used by the latter.

Regarding the European Maritime Safety Agency, instead, we have been able to observe a fundamental directive concerning the safety and security of the European ports. The Agency’s directive on Port State Control, focuses on the control and inspection of foreign

ships in national ports, to that end it verifies that the ship and its equipment is in compliance with European regulations.

In the last part of this thesis, instead, the focus was on the main routes that the traffic of narcotics undertakes across the world and what was the geographical relation in respect to production and cultivation of cannabis and cocaine.

In particular, the pathways within the Mediterranean sea have been particularly examined, arriving to the conclusion that illicit narcotics are mainly transported from Northwest Africa and Albania for what concerns marijuana. While from the Caribbean and South America for what concerns cocaine.

Lastly, in order to have a better understanding of how a country affront interventions against drug trafficking in international waters, a case study on Spain has been reported. The latter, other than analyzing the structure of maritime operations against such offence, focuses also on the amendment on the Law of Universal Justice that Spain experienced in 2014. The latter caused the dismissal and closing of various interventions made on the high seas, which eventually followed also the release of many drug traffickers.

The case study reports how the Spanish Supreme Court addressed the situation and how it has reinterpreted the reform in order to be consistent with the goal of the provisions set by the 1988 Vienna Convention.

Finally, it shall be said that what has been drawn from the thesis could be classified into three principal areas of scope.

The first one, sees as its main actor the sea and the related obligations any state must endure whereby criminal acts, such as illicit drug trafficking, are carried out in maritime areas.

The second one, concerns the transnational nature of such crime. Drug trafficking is part of a group of commodities used by transnational organized crime groups to generate profits and weaken the social, economical and political structure of a certain state.

While the challenges can be peculiar when it comes to narcotics, the trafficking of those cannot be entirely separated from the larger problem of transnational organized crime, which requires a comprehensive and coordinated response from the entire international community.

The third one, focuses on the objectives of international law and the related extent and mode of application that each sovereign state decides to pursue. As we observed with the Spanish case, the Supreme Court has been able to react and give a response towards the policy reversal regarding the amendment of the Law on Universal justice. The court in fact, had the capacity to reinterpret the provisions and turn around the reform, in doing so, not only it acted in the best interest of Spain but in the best interest of the whole international community.

Following this example we can also understand that in pursuing the best of the national territory, one can, at the same time, act in favor of the entire global community, since it rarely can be determined what is the final destination of the several consignments.

This issue, however, is not only confined to drug related issues but it shall be considered as the main motive and objective given to our community by international law, which is not a punitive law, but rather focuses on intensifying the global will of cooperation and coordination towards issues affecting the international community in its entirety.

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o. Sintesi dell' elaborato

La comunità internazionale, mossa da un bisogno e desiderio comune, ha stabilito vari principi giuridici nella lotta contro il traffico illecito di droga e sostanze psicotrope. Le Nazioni Unite sono state, in prima linea, paladine di questa battaglia, adottando e stabilendo convenzioni e creando organi internazionali volti ad arrestare questo crimine.

Vari trattati adottati dalle Nazioni Unite sono stati analizzati durante l'elaborato. Per primo, la "Convenzione Unica sugli stupefacenti" del 1961. Sebbene quest'ultima sia il pilastro della legislazione internazionale riguardante la lotta al narcotraffico, non offre una sostanziale risposta al problema del traffico di droga in acque internazionali. La convenzione, infatti, si limita a descrivere l'obbligo delle Parti nell'adottare misure penali per ogni attività illecita nell'ambito della droga.

Non è presente però, nessun riferimento al contrabbando marittimo di tale sostanza. Piuttosto, il trattato sottolinea l'importanza della competenza sovrana delle Parti qualora il crimine venisse perpetrato all'interno del loro territorio.

Un diverso impatto avrà invece "La Convenzione sul diritto del Mare" del 1982.

Tale trattato è di fondamentale rilevanza riguardo la soppressione del traffico di droga via mare e la prima disposizione in merito appare nel testo dell'Articolo 108. In tale norma viene espresso un generico obbligo di cooperazione tra gli Stati nella repressione del crimine *de quo*. Tuttavia tale norma non impone alcun meccanismo coercitivo di lotta al narcotraffico che vada oltre l'interazione con lo Stato di bandiera della nave in questione.

Infatti, secondo un principio generale comunemente riconosciuto dall'ordinamento internazionale, lo Stato della bandiera è il solo soggetto normalmente legittimato a esercitare poteri coercitivi nei confronti delle navi iscritte nei propri registri.

La Convenzione del 1982 quindi, conferisce piena libertà agli Stati su come organizzare tale cooperazione, non avendola specificata negli articoli. Ad esempio, è conferito agli Stati il

potere di stabilire trattati bilaterali e multilaterali volti all'adempimento di una coordinazione prestabilita, concentrata sulla lotta al narcotraffico in acque internazionali.

Nel 1988 con il trattato di Vienna contro il Traffico illecito di Narcotici e Sostanze Psicotrope, il volere della comunità internazionale si espande ulteriormente, non fermandosi solo al potenziamento della cooperazione tra Stati e strategie volte alla soppressione del traffico di droga, ma anche a determinare un meccanismo specifico nell'affrontare tale crimine attraverso la realizzazione di precise azioni coordinate. Infatti, il meccanismo cooperativo spiegato da questo trattato si basa su un sistema di "richiesta-autorizzazione" da parte dello Stato di bandiera. Inoltre, uno degli obiettivi principali del trattato è quello di criminalizzare il traffico illecito, considerato come step fondamentale verso la realizzazione degli obiettivi prescritti nella convenzione.

Il miglioramento dell'efficienza del sistema giuridico dello Stato e la natura vincolante del trattato, sono due aspetti fondamentali della convenzione di Vienna. Il primo è volto a sottolineare l'importanza di un sistema legislativo nazionale efficiente, visto come requisito necessario alla cooperazione internazionale. Il secondo, esprime il volere degli autori del trattato di creare misure che siano vincolanti per gli Stati.

Nel 1997 nasce l' "Ufficio delle Nazioni Unite per il controllo della droga e la prevenzione del crimine" (UNODC), creato con la funzione di salvaguardare il trattato di Vienna del 1988 e la Convenzione di Palermo nata successivamente nel 2000. L'Ufficio ha un ruolo fondamentale nella lotta al narcotraffico, in quanto monitora e opera una grande azione di ricerca al fine di ottenere un' ampia comprensione delle dinamiche e dei networks del traffico illecito di droga. Attraverso report dell' UNODC, possiamo osservare come il mare sia la principale via attraverso cui la cocaina entra in confini Europei, nella maggior parte dei casi con spedizioni provenienti dalla Colombia e in generale dall'America Centrale.

In Europa sono stati creati diversi organi volti al rafforzamento della cooperazione fra gli Stati Membri nella lotta al narcotraffico. Un importante gruppo intergovernativo Europeo è il MAOC-N (Maritime Analysis and Operations Centre- Narcotics), attivo dal 2006 e con sede a Lisbona che svolge un ruolo fondamentale nella coordinazione di azioni anti-droga. Gli stati Europei che fanno parte di questa agenzia sono il Portogallo, la Spagna, il Regno Unito, l'Irlanda, la Francia, l'Olanda e l'Italia. L' accordo che ha stabilito il MAOC-N prevede che

l'agenzia provveda alla creazione di un forum internazionale per una cooperazione multilaterale volta alla soppressione del traffico illecito di droga via mare e via aerea.

Il MAOC-N lavora in stretto contatto con altri organi europei ed internazionali, come la Polizia Europea (Europol), la Polizia Internazionale (Interpol) e l'Agenzia Europea per la sicurezza marittima (EMSA), dei quali è stato parlato nella tesi con particolare enfasi.

L'Europol è un'agenzia Europea dal 2006 e il suo ruolo è quello di assistere le autorità nazionali nel contrasto di forme gravi di criminalità internazionale e terrorismo.

Secondo il report SOCTA del 2017 elaborato dall'Europol, si stima che il mercato di droga europeo valga almeno 24 miliardi di euro all'anno. Questi enormi profitti generati dal commercio di droga entrano nei finanziamenti di varie attività criminali dimostrando come questo traffico illecito sia il più grande mercato criminale nell'Unione Europea. Infatti, l'impatto del traffico di droga ha varie conseguenze sul benessere della società di uno Stato. Attraverso questo meccanismo di collaborazione presente tra traffico di droga e traffici di altre attività illecite, si indebolisce il sistema economico di un paese danneggiando attività imprenditoriali legittime a svantaggio del libero mercato. Inoltre, nei casi più estremi, questo tipo di crimine può addirittura arrivare alle istituzioni politiche di un paese innestando un meccanismo di corruzione.

A questo proposito l'Europol si concentra sulla necessità di incrementare la condivisione di dati e strategie di cooperazione per garantire coerenza tra le varie politiche pubbliche nazionali, a tal fine la polizia Europea afferma che l'UE dovrebbe sviluppare programmi volti all'assistenza dei paesi più colpiti e rafforzare tutte le misure che vanno a contrastare la corruzione all'interno di uno Stato.

L'Interpol, ovvero la Polizia Internazionale, è costituita da 190 membri i quali sono connessi tra loro attraverso una rete di uffici centrali nazionali (National Central Bureaus). Attraverso questo meccanismo, i vari membri hanno costituito un sistema di comunicazione sicuro volto ad una coordinazione in tempo reale utile per concludere indagini criminali multi giurisdizionali, condurre operazioni transnazionali e condividere informazioni che potrebbero portare all'identificazione e eventuale arresto di sospetti comuni.

L' Interpol opera in modo parallelo all'Europol. Come questa sottolinea l'importanza della condivisione della raccolta di dati durante le indagini oltre che ad una attenta analisi dei dati post sequestro.

L'ultima agenzia che viene discussa durante l'elaborato è l'Agenzia europea per la sicurezza marittima (European Maritime Safety Agency). Con sede a Lisbona, l'agenzia fornisce assistenza tecnica, operativa e scientifica nel campo della sicurezza marittima. La sua funzione è di particolare rilevanza in quanto monitora e misura l'efficacia di tutte le normative in vigore oltre che sviluppare e aggiornare nuove legislazioni.

Una delle direttive più importanti rilasciate dall'agenzia è la direttiva sul Controllo dei Porti (2016/1624 Port States Control). Lo scopo principale della direttiva è enunciato all'Articolo 1, in cui l'obiettivo è quello di istituire un sistema di monitoraggio e informazione del traffico navale all'interno della Comunità, al fine di migliorare la sicurezza e l'efficienza del traffico marittimo attraverso il potenziamento delle autorità nazionali in modo da avere una pronta risposta ad incidenti, o situazioni potenzialmente pericolose in mare.

La direttiva è uno strumento efficace per verificare le condizioni della nave e delle sue attrezzature e per verificare la sua conformità ai requisiti delle normative internazionali. Le ispezioni devono essere effettuate da ciascuno Stato membro, conformemente al principio di armonizzazione, per garantire che vi sia un controllo efficace delle navi all'interno dei porti dell'Unione.

L'agenzia, sebbene non sia nata come organo volto al perseguimento del traffico illecito di droga o altri crimini, ha un ruolo chiave nel monitoraggio dei movimenti delle navi all'interno dei porti europei. Tale ruolo le conferisce la capacità di verificare qualora le navi che attraccano in porti europei, trasportino droga. In tal caso, l'agenzia ha il potere di notificare le autorità nazionali e internazionali che procederanno al fermo della nave e l'arresto dei trafficanti.

Il MAOC-N)è, come già affermato, uno dei centri più efficienti in Europa, destinato alla lotta contro il traffico illecito di stupefacenti. Copre un'area che si estende dalla parte orientale dell'Oceano Atlantico agli stati costieri Europei fino a raggiungere quelli dell'Africa occidentale. Tuttavia, il Centro operativo di Lisbona non è l'unico operativo anche nel

Mediterraneo, infatti nel 2008 la Francia ha istituito il Centro di coordinamento per la lotta anti-drogue en Méditerranée (CeCLAD-M), una struttura di coordinamento con le stesse funzioni come il MAOC-N ma con un focus specifico sul mare nostrum.

L'ultima parte dell'elaborato si concentrerà appunto sulle rotte del traffico di droga che arrivano nel Mediterraneo.

Il Mar Mediterraneo è particolarmente colpito dal traffico illecito di stupefacenti perché, data la sua posizione strategica, è un crocevia cruciale per il contrabbando di cocaina, eroina ed ecstasy. È da notare che i percorsi attraverso i quali le droghe raggiungono l'Europa sono estremamente diversificati e in costante cambiamento. Una delle vie principali è l'uso a doppio senso della rotta balcanica, con un maggiore flusso di droga dall'Europa occidentale verso l'Europa centrale e meridionale. I trafficanti utilizzano tutti i mezzi di trasporto disponibili, anche se la maggior quantità di droghe viene trasportata via nave, infatti i principali flussi marittimi di cocaina provengono dal Sud America e attraversano l'Africa occidentale.

Potremmo stabilire quattro vie di commercio principali per la cocaina: la prima è la rotta latinoamericana, che attraverso le isole dei Caraibi raggiunge il Canada, gli Stati Uniti, il Paraguay, l'Argentina e l'Europa; la seconda è la rotta del Pacifico del Nord, che raggiunge gli Stati Uniti attraverso Messico; la terza è la rotta atlantica, che attraverso vari paesi africani raggiunge l'Europa mentre dagli Stati Uniti viene importata da Venezuela, Colombia, Brasile e Argentina; e la quarta è la rotta dell'Istmo, attraverso la quale la cocaina arriva negli Stati Uniti passando per l'America centrale e il Messico.

Per quanto riguarda invece le rotte marittime attraverso le quali la cocaina viene portata nei paesi europei, sono stati identificati tre flussi principali: il primo, da i Caraibi, passando per le Azzorre, verso il Portogallo e la Spagna; il secondo viene dal Sud America verso l'Europa, passando per Capo Verde e le Isole Canarie; e il terzo, dal Sud America all'Africa occidentale e da lì a Spagna e Portogallo.

Per quanto riguarda la rotta della cannabis, l'Africa nord-occidentale ha un ruolo chiave nel traffico di hashish destinato all'Europa, che è il più grande consumatore di questa sostanza.

Tuttavia, la cannabis raggiunge l'Italia per mezzo della rotta balcanica, attraverso il Mediterraneo. Per quanto riguarda il traffico di marijuana, invece, negli ultimi anni è stato

registrato un traffico rilevante tra l'Italia e l'Albania dove la sostanza viene trasportata dai porti di Durazzo ai porti pugliesi di Bari, Brindisi e Otranto.

Nella parte finale dell'elaborato, viene riportato un case study sulla Spagna in cui vengono spiegati le operazioni relative al sequestro di stupefacenti in alto mare in relazione al principio di giustizia universale.

Nel 1955 la Spagna creò quello che in origine era il Servizio speciale di sorveglianza fiscale. Ora è chiamato Servizio di vigilanza doganale ed è posto sotto il Ministero delle Finanze e inquadrato all'interno del Dipartimento delle dogane. Questa agenzia, focalizzata sulla lotta contro il traffico illecito via mare, detiene ottocento ufficiali marini e una flotta di trentasette navi.

Pur operando principalmente nelle acque territoriali, l'agenzia ha condotto operazioni significative anche in alto mare, pertanto l'agenzia ha collocato venticinque basi marittime situate in posizioni strategiche che svolgono un ruolo chiave nella lotta al narcotraffico marittimo. Nel periodo in cui la Spagna ha applicato il principio di giurisdizione universale (vale a dire prima del 2014), è diventata il paese leader in Europa nella lotta al traffico di droga, come dimostrato dallo straordinario aumento dei sequestri, principalmente nelle acque internazionali.

Tuttavia, nel marzo 2014, la Spagna ha subito un'inversione di politica in merito al principio di giustizia universale, che ha portato a una considerevole riduzione delle azioni del Servizio di Customs Surveillance.

Questa nuova riforma vedeva come principale obiettivo quello di escludere qualsiasi tipo di operazione e intervento non riguardanti questioni relative alla Spagna (i.e. qualora il criminale fosse di nazionalità spagnola o qualora i crimini fossero rivolti contro la Spagna, art. 23.4), escludendo quindi qualsiasi intervento in acque internazionali. A causa della natura retroattiva della nuova legge sulla giustizia universale, molti casi riguardanti interventi anti-droga in alto mare sono stati archiviati e chiusi. Persino molti trafficanti sono stati rilasciati perché i tribunali spagnoli non detenevano più il potere di perseguire tali atti.

La situazione generata da questi eventi ha creato scandalo all'interno della Spagna e molti dei giudici hanno espresso il loro disaccordo riguardo la riforma. Tuttavia, al fine di risolvere la

questione, la corte suprema spagnola ha emesso due sentenze che forniscono una nuova interpretazione della riforma.

Questa nuova interpretazione della disposizione, successiva alla riforma della giurisdizione universale, ha permesso alle agenzie incaricate di intraprendere interventi contro navi che trafficano droga via mare, di continuare a intercettare navi in alto mare con il conseguente beneficio sociale ed economico per la Spagna e la comunità internazionale.