

DIPARTIMENTO DI SCIENZE POLITICHE

CATTEDRA DI INTERNATIONAL LAW

THE FIGHT AGAINST DRUG TRAFFICKING
IN THE MEDITERRANEAN

RELATORE
Prof. Roberto Virzo

CANDIDATA
Chiara Manfredi
Matr. 078962

ANNO ACCADEMICO 2017/2018

Contents

Introduction	4
Chapter 1: Legal Framework	6
1.1. INTERNATIONAL CONTEXT	6
1.1.1. United Nations Convention on the Law of the Sea (UNCLOS) 1982.....	6
1.1.2. Single Convention on Narcotic Drugs 1961 (as amended in 1972)	10
1.1.3. Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988	13
1.2. THE EUROPEAN CONTEXT	18
1.2.1. The Council of Europe Agreement 1995.....	18
1.2.2. Pompidou Group.....	23
1.2.3. European Regulation 2016/1624	26
1.2.4. Treaty between Spain and Italy on the Suppression of the Illicit Traffic in Drugs at Sea (23 March 1990)	28
Chapter 2: Operational Units	30
2.1. MEDITERRANEAN DRUG TRAFFICKING FLUXES OF CANNABIS	31
2.1.1. West flux of Hashish – Morocco.....	31
2.1.2. East flux of Marijuana – Albania.....	33
2.2. ANTIDRUG AGENCIES (INFORMATIVE INTERNATIONAL COLLABORATION) 34	
2.2.1. MAOC(N) of Lisbon – Maritime Analysis and Operation Centre Narcotics.....	34
2.2.2. OLAF – European Commission and European Anti-Fraud Office	35
2.2.3. INTERPOL – International Organization of Criminal Police	38
2.2.4. DCSA – Direzione Centrale Servizi Antidroga.....	40
2.2.5. CECLAD-M – Centre de Coordination de la lutte Anti-Drogue en Méditerranée.....	42
2.3. JOINT OPERATIONS	44

Conclusions	46
Bibliography	48
Riassunto	50

Introduction

States, as the highest political authority on a defined territory, have the duty to guarantee law and order in its population and punish those who break them. However, fighting criminality is one of the hardest tasks that countries have to fulfil, especially when the offence that wants to be punished did not occur on their national territory. Although often justice was hampered by the lack of jurisdiction over the case of this kind, international treaties and specific agreements between different states have worked to provide the necessary legal basis allowing, at least, to partially resolve the issue of jurisdiction regarding the most serious crimes. In this thesis, I decided to illustrate the work made to fight against the illicit drug trafficking, which was and still is source of many discussions.

Drug trafficking is an illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws. It is one of the most practiced and developed criminal offences in a worrying number of populations and it concerns the states of the entire planet given that, especially nowadays, drug trafficking has assumed a transnational dimension. Given the vastity of the argument, I will focus my analysis only on the legal provision and the operational agencies that are fundamental for shutting down the illicit traffic of cannabis in the area of the Mediterranean Sea, since cannabis is mainly transferred by sea and I consider the work done by the coastal states in this respect (especially by European ones) among the best examples of the collaboration between countries.

This argument will be analysed throughout two chapters. The first chapter discusses the main treaties made in the international context which have provided the legal basis for international cooperation. I will start from one of the most important international arrangements, that is the United Nations Convention on the Law of the Sea of 1982. It has been the first treaty to require, although very generally, the cooperation between states to stop and seize vessels which are suspected to be engaged in drug offences. However, the vagueness of these articles undermines their efficiency, especially because they in practice provide the legal ground to intercept only stateless vessels on the high seas. For this reason, it was found necessary to draft agreements whose main focus is to enrich the legal framework concerning drug trafficking and develop all aspects linked to it. In this respect, the articles of the Single Convention on Narcotic Drugs 1961 (as amended in 1972) are not merely focused on suppressing illicit drug traffic, but also on regulating the provisions concerning drug manufacturing and rehabilitation of persons who have abused such substances. Yet, the actual turning point for a better international cooperation against drug trafficking has been the Vienna Convention of 1988, whose article 17 allows states to intercept foreign vessels, if duly authorized by the Flag State. Thanks to these provisions, it was possible to reduce the amount of issues surrounding states' jurisdiction of

intervention and the eventual application of their enforcement power over vessels flying a foreign flag.

Nevertheless, these arrangements made at international level still present many legal gaps. With the second part of the first chapter I will show how the shortcoming of the treaties previously discussed can be better reduced at regional level, such as in the example of European countries' collaboration in the Mediterranean. In particular, I will discuss how the Council of Europe Agreement of 1995 has provided specific procedures to face different possible scenarios. Along with it, the creation of the Pompidou Group and FRONTEX have significantly favoured the exchange of intelligence and the collaboration between European countries, which have improved the patrolling quality over the Mediterranean. Finally, I will conclude the European picture with the bilateral Treaty between Spain and Italy of 1990, whose provisions allow to intercept vessels without the previous authorization from the Flag State, marking an important step toward a higher collaboration for the suppression of illicit drug traffic.

The second chapter, instead, will focus on drawing a picture of the current anti-drug operational activities in the Mediterranean. First of all, I will illustrate the most significant drug routes in this area, namely Morocco, as the giant of cannabis resin from the West, and Albania, the main producer of marijuana coming from the East. In second stand, I will describe the most important and active agencies working in this respect, that is MAOC(N), OLAF, INTERPOL, DCSA and CECLAD-M, concentrating on the legal provisions that regulate their competences and internal organization. Finally, I will provide few examples of joint operations in order to facilitate the understanding of how these operational agencies comply with their functions.

In conclusion, thanks to the analysis made, I will suggest the legal mechanisms I believe will help for the further development of the legal bases for the suppression of the international illicit drug traffic, not at European level, rather at global one.

Chapter 1: Legal Framework

1.1. INTERNATIONAL CONTEXT

The main purpose of drug consumption is for medical relief, both physical and mental, but since long time people use them also for non-medical reasons, such as stimulation and narcosis. Drug abusing is not specific to a part of the society and their use and choice vary from regional to national levels comprehending different groups with different backgrounds. Serious health problems to dependent users and damages to the welfare system are only some of the consequences rising from drug abusing. Burglary, corruption and organized crime are often drug-related crimes and at the basis of the densest criminal network of every country. Then, the criminalization and punishment of illicit drug production, supply and use become crucial. However, the effective domestic control of drug abuse is impossible if other states do not (i) control illicit drug production and trafficking in their territories under their control and (ii) coordinate these efforts globally¹. In the following paragraphs I will discuss the main international and European conventions that govern anti-drug trafficking in the Mediterranean.

1.1.1. United Nations Convention on the Law of the Sea (UNCLOS) 1982

United Nations Convention on the Law of the Sea (hereinafter “UNCLOS”), also known as the Montego Bay Convention, is the last of the three conferences made to define the Law of the Sea that took place between 1973 and 1982. It entered into force on 16 November 1994 for the 157 signing countries. It is generally considered the fundamental draft which outlines the rights and responsibilities of nations regarding the uses of the oceans and their resources. Moreover, it provides the framework for further development of specific areas of the law of the sea. In this paper, I will focus my analysis on the articles that provide legal framework for the battle against drugs.

The UNCLOS only refers specifically to the illicit drug trafficking on the high seas in article 108, whose obligations apply by extension of Article 58(2) to the Exclusive Economic Zone (EEZ). In more details, paragraph 1 sets out a general obligation for all states to cooperate, when the illicit traffic contrasts with “international conventions”². However, it shall be considered as a theoretical obligation because it relies on the willing of the Nations and, above all, their real reaction capacities³. On the other hand, paragraph 2 addresses the issue of providing assistance to suppress the traffic in

¹ N. BOISTER, *An Introduction to Transnational Criminal Law*, Oxford, 2013, p. 50.

² E. PAPASTAVRIDIS, *The Interception of Vessels on the High Seas: Contemporary challenges to the legal order of the Oceans*, Oxford, 2013, p. 206-207.

³ A. BELLAYER-ROILLE, *La Lutte contre le Narcotrafic en Mer Caraïbe : une coopération internationale à géométrie variable*, in *Revue Générale de Droit International Public*, 2007, pp. 355, 365.

question, according to which only the state “which has reasonable grounds for believing that the ship flying its flag is engaged in illicit traffic” in such drugs or substances may request the co-operation of other States to suppress it. Consequentially, “article 108 falls short of providing any enforcement mechanism to complement the obligation to cooperate enshrined in paragraph 1”⁴.

Then, the real point of departure is necessarily article 110 which governs the right of visit vessels on the high seas. Unfortunately, during the negotiations of UNCLOS there have been several proposals for the adoption of boarding provisions with respect to illicit drug trafficking, but none of them were included in the final draft. As a consequence, it is submitted that the only relevant ground of action under article 110 of LOSC is “the absence of nationality”, since none of the other headings, i.e. piracy, trade, unauthorised broadcasting and the same nationality, would be applicable on a foreign vessel⁵. Several studies have highlighted that drug traffickers often operate in unregistered, stateless vessels where eventually article 110 of LOSC applies. Nevertheless, the right to visit on the high seas does not *ipso facto* entail the full extension of the jurisdictional powers of the boarding States. In other words, any boarding State, in the framework of article 110, has not enforcement jurisdiction over the vessel it intercepted and the persons on board. Enforcement jurisdiction is the State’s capability to entail measures such as bringing the vessel to its port, arrest the suspects on board, initiation of criminal proceedings and confiscation of the illicit cargo and the vessel itself. The interception of vessels and the enforcement jurisdiction fall under different legal frameworks, and on the high seas it is essential to have either a treaty provision, such as article 105 of LOSC regarding piracy, or a customary rule, such as universality principle, that assert the prescriptive jurisdiction. In this case, the fundamental principle is that it may not be exercised without the consent of the Flag State.

This distinction between jurisdictions was maintained before the Italian court in the *Fidelio* Case. In 1986 Italian naval units seized the Honduran vessel *Fidelio* on the high seas about 80 nm off the coast of Italy. Neither the captain nor any of the eleven crew members had Italian nationality and the *Fidelio* had not entered Italian territorial waters in any phase of the pursuit. In the proceeding brought against the drug smugglers, both the Tribunal and the Court of Appeal of Palermo held that Italian criminal jurisdiction could not apply to actions taking place beyond the territorial sea and declared that Italian courts lacked jurisdiction in the matter, decision that was confirmed by the Court of Cassation on 1 February 1993. Moreover, Italy did not receive, at any time, an authorisation from the Flag State to seize and board the vessel in question. The drugs by contrast, were confiscated and destroyed under

⁴ E. PAPANASTAVRIDIS, *The Interception of Vessels on the High Seas* cit., p. 207.

⁵ *Ivi.*, p. 208.

the relevant provisions of the Italian legislation. “This legislation applied in respect of the cargo (*in rem*), but not in respect of the persons on board (*in personam*)”⁶.

At this point, it should be noted that the *ad hoc* consent of the Flag State is legally considered as primary rule of international law and as secondary rule of State responsibility, since falling under the ambit of Article 20 of the International Law Commission’s Draft Articles on State Responsibility.

A source of problem often debated is whether the *ad hoc* permission of the Flag State is a sufficient condition to assert enforcement jurisdiction to the boarding State. Usually, the former is silent in this respect, but it would be often the case that the injured State would not react to any kind of enforcement jurisdiction applied on its vessel or/and persons which, in theory, would qualify as unilateral act of waiver of rights or acquiescence and in the loss of the right to invoke responsibility⁷. Nevertheless, in principle the Flag State has jurisdictional priority in this matter, but it would be particularly helpful to have more specific treaty provisions regulating such concurring claims.

One recent case, whose final judgment underlines the issue abovementioned, is *Medvedyev v. France* of 2010. In Short, The *Winner* was a Cambodian flagged vessel suspected by France to carry illicit cargo on the high seas of the Atlantic Ocean. France, therefore, made a request to Cambodia for permission to stop and search the vessel. The *note verbale* (diplomatic note) dated 7 June 2002 from the Cambodian Ministry of Foreign Affairs to the Ambassador of France in Phnom Penh responded in the following terms:

“The Ministry of Foreign Affairs and International Cooperation (...), has the honour formally to confirm that the royal government of Cambodia authorises the French authorities *to intercept, inspect and take legal action against the ship Winner*, flying the Cambodian flag XUDJ3, belonging to ‘Sherlock Marine’ in the Marshall Islands⁸ (...).”

On June 2002, the eleven crew members were charged with a series of charge offences and, in May 2005, they were found guilty of conspiring to import illegally drugs.

On 19 December 2002, the defendants brought a case before the Court claiming, on one hand, that France deprived them of their liberty unlawfully relying on Article 5(1) of the ECHR⁹, and on the

⁶ E. PAPANASTAVRIDIS, *Enforcement Jurisdiction in the Mediterranean Sea: Illicit Activities and the Rule of Law on the High Seas*, in *Int'l J. Marine & Coastal L.* 2010, p. 589.

⁷ *Ivi.*, p. 593

⁸ European Court of Human Rights judgment of 29 March 2010, Application no. 3394/03, *Medvedyev And Others V. France*, p. 3 (hereinafter: *Medvedyev And Others V. France*)

⁹The relevant parts of Article 5(1) of the ECHR, on which the defendants based their claims, reads as follows: “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.”

other hand, they claimed France breached Article 5(2) of ECHR because the defendants had waited fifteen days to be brought before a Court¹⁰.

First, France's jurisdiction was to be considered unlawful given that jurisdictional powers of France in a similar case should be applied only *vis-à-vis* other States parties to the Vienna 1988 and Montego Bay Conventions and Cambodia was not party to either of the two. In this respect, France could only act in the meaning of Article 110 of UNCLOS whether the vessel in question was stateless or of its own nationality but refusing to show its flag, and neither of them was the present case. Yet, the Court was convinced by the argument of the French government that the diplomatic note previously quoted constituted an international permission (*accord ad hoc*) granting France to visit the *Winner*. Nevertheless, such consent failed to satisfy the general principle of legal certainty, namely the conditions of foreseeability and accessibility. Indeed, the crew could not have foreseen to be judged under French law given the circumstances of the case. For this reason, France could not enforce its own jurisdiction on the persons on board and the Court agreed that a violation of Article 5(1) of the ECHR had occurred¹¹.

Regarding the second complain, the Court duly referred to *Archangelos* (whose case raised the same issue as I will better explain in the next section) as precedent and it was claimed that, for the exceptional circumstances of the case, "the time elapsed between placing the applicant in detention and bringing him before the investigating judge cannot be considered to have breached Article 5(2) and (3) of the ECHR"¹².

Medvedyev is very significant for two reasons: (1) it highlights that European States cannot act in the suppression of illicit activities if doing so may breach the norms of the European Convention of Human Rights, and (2) the norms against the illicit drug trafficking lacks customary laws and specific international or bilateral treaties that would make more efficient its punishment.

There exists an exception in which the statelessness of the vessel suffices for both the boarding and the assertion of jurisdiction, namely the Drug Trafficking Vessel Interdiction Act (DTVIA) adopted by US Congress in 2008. It addresses all submersible and semi-submersible vessels which navigate without nationality and with the intent to evade detection.¹³ Notwithstanding this case, it does not exist any similar reading of statelessness as a separate and independent head of jurisdiction under international law.

¹⁰ Article 5(2) of ECHR reads as follow: "Everyone who is arrested shall be informed *promptly*, in a language which he understands, of the reasons for his arrest and of any charge against him".

¹¹ *Medvedyev and Others v. France* 2010; p. 27-32.

¹² *Ibid.*

¹³ It shall be outlined that US could adopt this Act because formally not part of the UNCLOS, since the opposition from the Republicans in the Senate had blocked the ratification of the convention.

Finally, Article 111 is also worth to be mentioned because it regulates the right of hot pursuing a foreign ship. The main conditions under which such right is granted are, first, whenever the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Second, such pursuit must be commenced when the foreign ship or one of its boat is within the sovereign waters of the pursuing State. Third, it may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. Finally, such right may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations. The hot pursuit ceases as soon as the pursued ship enters the territorial sea of its own State or of a third State, as established in paragraph 3 of the same article. Regarding jurisdiction, in paragraph 7, the convention declares a State cannot apply its authority on the solely ground that the ship, in the course of the voyage, was escorted across a portion of the EEZ or the high seas, if the circumstances rendered this necessary. In conclusion, Article 111 requires pursuing States to compensate for any loss or damage that may have been sustained when the circumstances did not justify stopping and arresting a foreign ship outside the territorial sea¹⁴.

1.1.2. Single Convention on Narcotic Drugs 1961 (as amended in 1972)

In 1958, The UN Economic and Social Council met in a conference to discuss and adopt a single convention whose purpose was to replace the existing multilateral narcotic drug treaties, to reduce the number of international treaty organs exclusively concerned with the control of narcotic drugs, and to make provision for the control of production of raw materials of these substances. For the first objective, it succeeded to substitute ten of the existing international narcotic drug treaties. Secondly, it simplified the international drug control framework by combining two existing organs into the International Narcotics Control Board. Finally, it increased controls over the cultivation of plants grown for narcotics, provisions on medical treatment and rehabilitation of drug addicts, forbidden use of narcotics for non-medical reasons, demanded State parties to regulate particularly dangerous drugs (e.g. heroin), included measures to regulate the export and import of such substances, and improve pre-existing checks on manufacture, trade and distribution of drugs¹⁵. It was adopted in New York in 1961 and it has been in force since 1964 for the 180 State parties. Subsequently, it was amended by

¹⁴ See Art. 111, UNCLOS

¹⁵ J. KRASKA, R. PEDROZO, *International Maritime Security Law*, Boston, 2013, p. 525.

the adoption of a Protocol in 1972. The latter added provisions on technical and financial assistance and created regional centres for scientific research and education to combat the use of illegal drugs. Although the entire treaty is important in the limitation of drug abuse, we will analyse the most important articles in this matter.

First of all, Article 4 sets out the general obligations where the parties shall take legislative and administrative measures to enforce the provisions of the convention on their territory, to co-operate with other States for the same purpose and to limit for the exclusive medical and scientific objectives drug production, supply and circulation.

Article 21 limits “the manufacture and importation of drugs by any country or territory in any one year according to the quantity consumed, exported and acquired legally within the limits estimated by the Board”.

However, within Article 22, the convention does not exclude the possibility to totally prohibit the cultivation of opium, coca and cannabis whenever the State consider it as the best option to protect the public health and welfare and prevent the diversion of drugs into illicit traffic.

From Article 25 to 28, the Convention requires specific controls on drug cultivation. Relevant to our analysis is Article 28. It allows States to cultivate cannabis plants exclusively for industrial purposes (fibre and seed) or horticultural purposes, but States shall adopt necessary measures to impede the misuse of and illicit traffic in the leaves of cannabis plants.

The Convention also requests licences for the manufacture and distribution of drugs in Articles 29 and 30, except where such activities are carried out by State enterprise(s).

Regarding the international trade of drugs, Article 31 of the convention wrote down detailed special provisions to take. Generally, it prohibits any trade of this kind, but it makes an exception whether it respects the laws and regulations of that country or territory and it remains in the limits of its total of the estimates. In any case, a severe control on import and export is always required.

Finally and most importantly, the Convention provides guidelines for facing illegal traffic of narcotic drugs. In specific, Article 35 provides the actions that Parties, having due regard to their constitutional, legal and administrative system, shall take, such as making arrangements at the national level for the co-ordination of preventive and repressive actions against the illicit traffic and, to this end, may usefully designate an appropriate agency responsible for such co-ordination¹⁶.

On the other hand, Article 36 requires the Parties to adopt penal measures, within the limits of their constitutions,

¹⁶ Art. 35 letter a), Single Convention on Narcotic Drugs 1961 as amended in 1972.

“to ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery (...), transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty”¹⁷.

Any of the drugs, substances and equipment used in or intended for the commission of any of the offenses previously quoted are subject to immediate seizure and confiscation¹⁸. In alternative to these penal provisions, drug abusers that commit such offences may be required to undergo treatment, education, after-care, rehabilitation and social integration as established in Article 36 (1)(b).

Moreover, Article 36 (2) demands that these offenses shall be included as an extraditable offense in any extradition treaty existing between Parties. It also provides legal basis for extradition between Parties which do not have their own extradition treaty. However, Parties may refuse to grant extradition in cases where the competent authorities consider the offense is not sufficiently serious¹⁹.

Duly regarding at this Convention, State parties have assumed their own drug policies. In most of the States in the world, possession and cultivation of drugs is totally illegal, such as in Japan. Europe is among the stricter continent on this matter, with only Hollande that fully legalized cannabis cultivation.

Since 2011, Denmark has been allowing the use of cannabis for medical purposes, but also before this norm the use of drugs was never considered as criminal offence. On the contrary, possession and sell of drugs is regulated by law and punished with imprisonment. However, the community of Freetown Christiana placed close to Copenhagen permanently sells cannabis and hashish on its street since few years after its born in 1971. Since its apparent passage to gang-run black market, the Dane Authorities have tried first to shut it down and, then, to propose sale of cannabis regulating provisions that were all rejected.

Spain, according to the statistics, represents the country that most abuses of drugs in Europe, probably because of its proximity to Morocco, a well-known drug supplier. Spanish drug policies vary from region to region, but it generally allows the use of cannabis for medical purposes. The most legalized region is Catalonia, where it is legal to consume and supply cannabis in the, so-called, ‘cannabis clubs’.

¹⁷ *Ivi.*, Art. 36 par. 1 letter a).

¹⁸ J. KRASKA, R. PEDROZO, *International Maritime Security Law* cit., p. 528.

¹⁹ Art. 36 par. 2) letter b) (iv), Single Convention on Narcotic Drugs 1961 as amended in 1972.

In Italy, since 2017 it was allowed the cultivation and supply of light drugs whose THC level is inferior to 0,6%. However, it is in progress the discussion in the Chamber of Deputies to completely legalize the use of cannabis taking as a model the US States, which have already done it.

1.1.3. Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988

The most important multilateral instrument for the interception of vessels in the high seas is the Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (hereinafter “Vienna Convention 1988”). Indeed, it contains provisions specifically addressed to traffic at sea, including the right to board the vessels of other state parties engaged in illicit drug traffic. Moreover, “it addresses issues such as: tracing, freezing and confiscating proceeds and property derived from illegal drug trafficking; the extradition of drug traffickers; mutual legal assistance between Parties on drug-related investigations; the elimination or reduction of the demand on such substances; and controls on chemicals used to manufacture illicit drugs”²⁰.

It was Canada that, before the final redaction of the UNCLOS, raised the issue of how it should be managed law enforcement authorities to board vessels flying foreign flags²¹. Although Canada’s proposal was turned down, in 1984 the Commission on Narcotic Drugs was requested to prepare a comprehensive draft convention against the illicit traffic in narcotic drugs, whose purpose was to fill the gaps envisaged in 1961 Single Convention and 1971 Convention on Psychotropic Substances. Indeed, the UN General Assembly realized that the expanding of this criminal activity was a worldwide growing economic and social threat, at that time.

The Vienna Convention was the outcome of long negotiations between states and UN bodies. It was officially adopted in Vienna on 19 December of 1988 and entered into force since 1990 for the 170 States parties.

The most important Article is the 17, which directly governs the illicit traffic by sea. The first two paragraphs entail almost the same obligations expressed under Article 108 of UNCLOS. Indeed, Article 17(1) requests Parties to co-operate at the fullest extent possible to suppress illicit traffic by sea, respecting in any moment the provisions of international law of the sea, whilst paragraph 2 provides the legal basis to request the assistance of other Parties. However, it is not limited to the interception of its own vessels engaged in illegal traffic, but also regarding stateless vessels, which is not included in Article 108 of UNCLOS.

The distinctive part from the previous conventions is evidently paragraph 3, which reads as follows:

²⁰ J. KRASKA, R. PEDROZO, *International Maritime Security Law* cit., p. 532.

²¹ E. PAPASTAVRIDIS, *The Interception of Vessels in the High Seas* cit., p. 209.

“A Party which has *reasonable grounds* to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of *registry of another Party* is engaged in illicit traffic may so notify the Flag State, request confirmation of registry and, if confirmed, *request authorization from the Flag State to take appropriate measures in regard to that vessel*”²².

The most significant remark is that it requires the explicit authorisation of the Flag State. As is pointed out in the *travaux préparatoires*, this word was deliberately used “to stress the positive nature of the decision and of the action which the Flag State, in the exercise of its sovereignty, was to take with regard to the vessel. It is entirely on the discretion of that State to decide whether to allow another party to act against its vessel”²³.

Still, issues regarding the jurisdiction and the concomitant responsibility over the intercept vessels flying foreign flag could arise. Indeed, the wording used in paragraph 2 envisages a situation where the State party coming to the assistance of the Flag State resembles rather as an organ placed at the disposal of another state, and as such regulated under Article 6 of ILC’s Draft Articles on State Responsibility. Consequently, it would be more legally stable to leave enforcement jurisdiction to the Flag State, as also the responsibility for eventual losses and damages to the vessel in question.

On the other hand, paragraph 4 stipulates, in conjunction with paragraph 3, the possibility of the Flag State to authorise *inter alia* the requesting State to: a) Board the vessel; b) Search the vessel; and c) if evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board²⁴. The rationale behind these provisions is that any measures against a foreign vessel cannot be taken unless a previous consent of the Flag State is granted and, especially, it is necessary an individual authorisation for each process previously enumerated, namely boarding, search and detention of the vessel. This comes from the importance to underline the different natures of right to visit and to search.

While any authorisation will always be granted only if wanted by the Flag State, it will be within the spirit of the Convention and the principle of effectiveness that refusing to concede such requests should be made with moderations and be appropriately justified²⁵. In such cases, the Flag State can still request the other State to co-operate while taking itself the necessary measures to suppress the suspected illicit traffic on the vessel in question. The scope of Article 17 does not go beyond designing the detailed procedures necessary to exercise enforcement jurisdiction based on the Flag State’s consent. Such procedures could be summarized as, first, the requesting State notifying the Flag State,

²² Art. 17 par. 3), United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

²³ E. PASTAVRIDIS, *The Interception of Vessels in the High Seas* cit., p. 210.

²⁴ Art. 17 par. 4), Vienna Convention 1988.

²⁵ E. PASTAVRIDIS, *The Interception of Vessels in the High Seas* cit., p. 212.

then, requesting confirmation of the registry and, lastly, demanding explicit authorisation for all the actions that want to be taken on that vessel.

The application and effectiveness of jurisdiction, instead, is governed by Article 4. It applies to the most serious international drug trafficking offences, specified in Article 3, and States parties are required to claim jurisdiction whenever the offences in question are committed on their territory or on board of their vessels. However, jurisdiction may also be established on these offences, according to Article 4(1)(b), when committed by nationals or because that Party was authorised to take appropriate action pursuant Article 17. As a result, there could be a case in which a state is authorised to seize a vessel flying a foreign flag, and yet lacking the necessary jurisdiction to enforce its own law over the persons and the cargo on board. The lack of explicit provision in addressing whose State's jurisdiction should be applied first is likely making rise a discrete number of issues, but the general logic of article 17(4) wants the Flag State enjoying primary jurisdiction. Undoubtedly, this lack of mandatory establishment of jurisdiction undermines the effective application of Article 17 and it is regrettable that the drafters of the convention did not seek to properly solve the problem of who enjoys priority in such competing assertions. Nevertheless, the following cases that I will analyse have not presented such problem.

Archangelos is a good example of an interdiction on the high seas in full conformity with the meaning of the Convention. In January 1995, the Central Investigating Court no.1 of Spain's *Audiencia Nacional* was informed that *Archangelos*, a vessel flying the Panamanian flag, was on the Atlantic Ocean sailing toward Europe with a cargo of cocaine. After obtaining verbal authorisation from the Panamanian embassy in Spain, in accordance with Article 17(3) and (4) of 1988 Vienna Convention, the investigating judge ordered that the vessel be boarded and searched while still on the high seas.

The Spanish vessel, *Petrel I*, boarded the *Archangelos* and, after an exchange of fire with several members of the crew who had barricaded themselves into the engine room, the fourteen-member crew surrendered. The members of the crew were nationals of various States, in particular there were present two Spaniards and the captain, Mr. Rigopoulos, was Greek. After searching the *Archangelos*, the customs police officers seized sixty-eight packets of cocaine weighing 2,713 kg in total. In the following days, the embassies of the states to which the crew belonged to were informed and the persons in question had been told being detained and informed of their rights. Then, relevant judicial procedures were initiated leading to the conviction and sentencing of the Master of the *Archangelos* to nine years of imprisonment in 1998. Before this decision, Mr. Rigopoulos lodged an appeal (*recurso de amparo*) complaining that he had been illegally detained, that he had not been brought promptly before a judicial authority and that he had not been informed immediately and in a way that was understandable to him of his rights or of the reasons for his detention. The Court noted on this

point that the applicant's detention had lasted for sixteen days because the vessel under his command was boarded on the high seas of the Atlantic Ocean at a considerable distance – more than 5,500 km – from Spanish territory and that no less than sixteen days were necessary to reach the port of Las Palmas. “That being so, the Court considers that, having regard to the wholly exceptional circumstances of the instant case, the time which elapsed between placing the applicant in detention and bringing him before the investigating judge cannot be said to have breached the requirement of promptness in paragraph 3 of Article 5 of the ECHR”²⁶.

It is evident that all the measures taken by Spanish authorities perfectly relied and respected the Convention and they exercised the minimum use of force necessary to arrest the crew. Moreover, Spain applied lawfully its authority at any time during the course of the case, since that section 23 paragraph (4) of the Judicature Act of 1 July 1985²⁷ was found to assert “Spanish courts the jurisdiction over the acts committed by Spaniards or aliens outside Spanish territory if those acts constituted an offence like drug trafficking”²⁸. Moreover, no other state which could raise jurisdictional claims, namely Panama as Flag State and Greece as State nationality of the applicant did so.

On the contrary, *Regina v Charrington and others*²⁹ of 1999 raised various contentious issues under the interpretation of Article 17, especially regarding the way UK obtained the consent by Malta to board a vessel flying its flag. In short, the Royal Marine Special Boat Squadron boarded on 5 May 1997 the Maltese registered merchantman, *The Simon de Danser*, in a covert operation made during the darkness and by unmarked rigid inflatable boats while navigating on high seas. The UK authorities found four tonnes of cannabis, arrested a number of individuals and brought them to United Kingdom to be judged by the British court. However, the Court found the boarding, search and seizure of the vessel in question were *mala fides*, thus unlawful, since neither the *The Simon de Danser* was registered in UK or engaged in illegal drug traffic in British territory, and nor UK previously requested appropriately to Malta the authorisation to take such measures, as defined in Article 17 of the Vienna Convention. Then, UK had not jurisdiction, at any time, to board and enforce its law over the cargo and the persons on board. This reading was the result of various considerations.

²⁶ See judgment of the European Court Human Rights of 12 January 1999 No 37388/97, *Rigopoulos v. Spain Decision*. (hereinafter: *Rigopoulos v. Spain Decision*).

²⁷ Judicature Act No 6/1985, of 1 of July 1985 of *Poder Judicial*.

²⁸ *Ibid.*

²⁹ Judgment of the Bristol Crown Court of 2000, *Regina v. Charrington and others*, but see Real-Tune Transcription of the Stenographic Notes (hereafter: Transcript) Day 18, pp. 1018-1051.

Firstly, the British official was unable to produce evidence to the satisfaction of the court that a telephone contact to the Attorney-General of Malta had been made³⁰. However, it should not be ignored the possibility that such contact had occurred, since the Vienna Convention does not specifically request to write down any authorisation to board and seize vessels, while it is the case in 1995 European Agreement (further details will be shown to the paragraph dedicated to this topic). Indeed, both the Attorney-General and the Executive Director of the Malta Maritime Authority appeared as witnesses for the Crown and argued that, as a matter of domestic law, valid authority had in fact been granted in this instance³¹, but this interpretation of the law of Malta was not accepted by Judge Foley.

In addition, considerable attention was devoted to the content of the British request, which, as the court concluded, contained “blatantly misleading information”³² because it indicated that the vessel was exercising freedom of navigation in accordance with international law off the coast of the United Kingdom, while it later transpired was actually navigating off Funchal harbour in Madeira and not communicated at any stage to the Maltese Authorities. Hence, as it was submitted by the counsel for defence, ‘the boarding and the subsequent acts of the British authorities were unlawful because the consent of Malta was obtained through the provision of materially inaccurate information, which was, thereafter, deliberately left uncorrected’³³.

Finally, the Court questioned also the manner in which the boarding had occurred because Article 17(10) of the Vienna Convention restricts actions to be taken ‘only by warships or military aircraft, or *other ships* or aircraft clearly marked and identifiable as being on government service and authorized to that effect’ and this was not the present situation. Although it was not considered in this case, there is room for the contrary view, i.e. it would be in harmony with the principle of effectiveness to conclude that were unmarked boats set off from warships and subsequently do not violate other pertinent rules, such non-compliance with the above-mentioned requirements should not be decisive³⁴.

³⁰ W. C. GILMORE, ‘*Drug Trafficking at Sea: The Case of R. v. Charrington and Others*’ *International and Comparative Law Quarterly*, XLIX, Edinburgh, 2000, pp. 477,479.

³¹ *Ivi.*, p. 480.

³² *Ivi.*, p. 484.

³³ *Ibid.*

³⁴ E. PASTAVRIDIS, *The Interception of Vessels in the High Seas* cit., p. 217.

1.2. THE EUROPEAN CONTEXT

As I already mentioned in the section above, organizing mutual collaboration at international level against the fight of narcotrafficking is fundamental, since the majority of the drug supply comes from various countries all around the globe. Yet, it is also evident how difficult this task can be, especially in negotiating international agreements whilst complying and respecting the sovereignty and the interests of each state party. Then, the effectiveness of these conventions is undermined by the fact that important States in the international framework often decide to drop out and do not ratify these treaties. For example, the United States, despite the constant provocations from Barack Obama, still have not ratified the UNCLOS because of the Republican opposition in the Senate³⁵. For this reason, a stronger regional collaboration can result to be more efficient, especially because the countries in question can be facing similar realities and issues.

At the European level, the retail drug market is estimated to be worth at least EUR 24 billion a year³⁶, but Cannabis remain the most consumed illegal drug in the region. Cannabis traffic by land usually finds origin in Netherlands, but the main drug route by sea of resin cannabis starts from Morocco, while Albania represents 90% of the herbal traffic. In the following section I will analyse the measures taken by the European countries to strengthen their judicial and administrative instruments in the fight against drugs, in particular on the provisions taken to stop the traffic in international waters.

1.2.1. The Council of Europe Agreement 1995

The European Union is probably the best way to implement and mitigate the shortcomings of the international conventions against the illicit traffic. Indeed, thanks of being an organization *sui generis*, its member-states have partially transferred their national sovereignty into the EU competencies and, consequentially, they are more bound by its provisions and directives than the State Parties of international agreements.

The Council of Europe (hereinafter “CoE”) Agreement 1995 was made in response to the request of Article 17(9) of the Vienna Convention 1988 that calls for the establishment of bilateral and regional arrangements to enhance the effectiveness of the provisions laid down in article 17. In this regard, parties of the CoE Agreement 1995 undertake to cooperate to the fullest extent possible to interdict narcotics trafficking at sea.

Mindful of the difficulties met during the negotiations of the Vienna Convention of 1988, the CoE decided to include a non-derogation provision in Article 2(3) which provides that “Any action taken

³⁵ Reason for which it could approve the DTVIA without breaching the Montego Bay Convention.

³⁶ EU Drug Markets Report of EMCDDA and EUROPOL, of 2016.

in the pursuance of this Agreement shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction by coastal States, in accordance with the international law of the sea”.

In more details, the drafters worked to recognize and define all the eventual responses of the state parties to the most common scenarios that could occur in the interception of vessels on the high seas engaged in illicit traffic. Namely, instances where a Flag State sought the assistance of others in suppressing relevant offences committed on board of their own vessels, situations involving stateless vessels, and whether one State wishes to interdict a vessel flying the flag of another party.

For the first scenario, Article 4(1) provides when and how a particular State can request aid in suppressing the illicit traffic to another Party and how the latter can respond. In greater details:

“A Party which has reasonable grounds to suspect that a vessel flying its flag is engaged in or being used for the commission of a relevant offence, may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.”

Article 5(1)³⁷ very similarly outlines the same provisions regarding vessels without nationality. In both situations, one Party can request another State, for example whose geographical position is ideal to initiate law enforcement action, to intervene whether there are evidences that one of the serious offences above enumerated are in course. Nevertheless, there is no obligation for State to respond affirmatively to a request of authorisation in neither of the scenarios. It is for the requested state alone to assess whether it possesses the relevant means. “The need for such a self-judging approach was reinforced by the decision, reflected in Article 25(1), that the costs of any such intervention, which may well be considerable, ‘shall normally be borne by the Party which renders assistance’”.³⁸

One of the distinctive features of this agreement is that it tries to well define which State enjoys jurisdiction in every situation. Article 3(3) provides the legal framework for a Party to establish its jurisdiction over the relevant offences committed on board of a vessel recognized under international law as without nationality. But, it also requires, under Article 3(2), that the domestic legislation of each State Party provides for the jurisdictional base for the same crimes committed on board the vessels of all other members³⁹. These provisions represent a big step forward the resolution of judicial

³⁷ “A Party which has reasonable grounds to suspect that a vessel without nationality or assimilated to a vessel without nationality under international law, is engaged in or being used for the commission of a relevant offence, shall inform such other Parties as appear most closely affected and may request the assistance of any such Party in suppressing its use for that purpose. The Party so requested shall render such assistance within the means available to it.”

³⁸ W. C. GILMORE, Narcotics interdiction at sea: *The 1995 Council of Europe Agreement*, in *Marine Policy*, 1996, p. 5.

³⁹ *Ivi.*, p. 6.

issues that often are debated and critiqued in the Vienna Convention of 1988. However, such jurisdiction “shall be exercised only in conformity with its Agreement”⁴⁰ and, then, it remains confined to the European context.

This approach will ensure that all participating countries have an appropriate legal framework within which to consider requests to render assistance to a Flag State. Indeed, in the following paragraphs of Article 4, the Flag State may also authorise the intervening State to take all measures necessary to the case, such as arrest and imprison the persons on board. Finally, the provisions of this Agreement in respect of the rights and obligations of the intervening State and the Flag State shall, where appropriate and unless otherwise specified, apply to both parties⁴¹.

In addition, CoE Agreement, differently from the previous international conventions, provides more detailed guidance on the critical issues of law enforcement measures against foreign flag vessels taken upon the initiative of the intervening state. After long negotiations and proposals, it was decided that such intervention cannot occur without a prior authorisation of the Flag State, as Article 6 establishes⁴². Its wording affirms, first, that there is no obligation for a Flag State to affirmatively respond to this kind of request. Second, the article duly specifies that such request may be done related to vessels “engaged in or being used for” the commission of a drug trafficking offence. The intent here was to specify all the possible scenarios in order to “cover more clearly the situation where a ‘mother ship’ had unloaded drugs to a smaller vessel to be transported to the coast”⁴³. Finally, it is not a requirement that the vessel is directly involved or exclusively engaged in the illicit traffic. The involvement of one or more members of the crew in such illicit activities, would, for instance, be sufficient. Regarding this case, the drafting Committee did not fear the possible abuse by States of such provision in minor cases because it would be duly punished under Article 3(1) of the 1988 UN Convention.

The clarity of the Agreement further pushes on specifying, in Article 21, that the request moved to the Flag State must include details of the suspected offence. In the interest of ensuring equivalent treatment at any moment, the requesting State must guarantee that “such action would be taken if the vessel concerned had been flying the flag of the intervening State”⁴⁴. In the eventual case of a negative

⁴⁰Art. 3 par. 2), The Council of Europe Agreement 1995.

⁴¹*Ivi.*, Art. 4 par. 3).

⁴²Art. 6, The Council of Europe Agreement 1995 reads as follow: “ Where the intervening State has reasonable grounds to suspect that a vessel, which is flying the flag or displaying the marks of registry of another Party (...), the intervening State may request the authorisation of the Flag State to stop and board the vessel in waters beyond the territorial sea of any Party, and to take some or all of the other actions specified in this Agreement. No such actions may be taken by virtue of this Agreement, without the authorisation of the Flag State”.

⁴³ W. C. GILMORE, *The 1995 Council of Europe Agreement* cit., pp. 7, 8.

⁴⁴ Art. 21 letter d), The Council of Europe Agreement 1995.

response, the Flag State shall provide the reasons of such decisions, such as pointing out the facts that were perceived to be trivial in nature.

Another reason for which a Flag State may deny its approval is regarding the safety of life of its nationals at sea. Indeed, regarding the question of operational safeguards, Article 12 establishes that “Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and cargo and not to prejudice any commercial or legal interest”⁴⁵. *Inter alia*, they are required use only the minimum force necessary and taking into account all dangers involved in boarding the vessel. Moreover, any use of firearms, as of the case of death or injury of any person on board, shall be reported as soon as possible to the Flag State. If this eventuality occurs, States shall fully cooperate with the authorities of the Flag State in any investigation that the latter may hold into any such death or injury.

Having received authorisation, the intervening State must comply with all the conditions and limitations to which the Flag State’s authorisation was released upon. In order to reduce the possibility of misunderstanding, each Party is to take the necessary steps to inform the owners and masters of its vessels about the content of the Agreement⁴⁶. Then, the intervening State will proceed to stop and board the vessel, establish effective control over it, and thereafter search it for evidence that a relevant offence has been committed⁴⁷. The State may take the vessels and persons on board into its territory to carry out further investigations where sufficient evidence is uncovered⁴⁸. In this case too, the Flag State must be informed without delay.

The Agreement is also concerned about the issue of paying any compensation loss, damage or injury following an intervention. Differently from Article 17(6) of the Vienna Convention (where the authorisation could be subject to “conditions relating to responsibility”) the issue here is treated in detail in the framework of Article 26. Paragraph 1 provides that the intervening State is obliged to pay compensation when loss, damage or injury results from “negligence or some other fault” attributable to it. The following paragraph retains fair to pay a compensation whether the action of the intervening State is “taken in a manner which is not justified by the terms of this Agreement” and “if the suspicions prove to be unfounded and provided that the vessel boarded, the operator or the crew have not committed any offence”⁴⁹. Instead, the Flag State can be retained liable and required to pay for compensation whenever the damage was a result of negligence or some other fault

⁴⁵ *Ivi*, Art. 12 par. 1).

⁴⁶ W. C. GILMORE, *The 1995 Council of Europe Agreement* cit., p. 9.

⁴⁷ See generally Art. 9, The Council of Europe Agreement 1995.

⁴⁸ *Ivi.*, See Art. 10 par. 3).

⁴⁹ *Ivi.*, Art. 26 par. 2).

attributable to that State⁵⁰. It is relevant to point out that no compensation is foreseen by the mere fact that no drugs were found on the vessel. The action of the vessel itself, the operator and the crew are of direct relevance too. Moreover, liability does not exist where suspicions prove to be unfounded, but the damage results to be on the mere interference with the freedom of navigation.

A problem that was addressed during the negotiations was the approach adopted by the Committee in Article 3, whose wording confers to both the boarding and Flag State concurrent jurisdiction over relevant offences. Within the Pompidou Group, it was decided to follow the approach of some bilateral treaties (such as the 1990 Agreement between Italy and Spain⁵¹), which accords prior rights to the Flag State. Hence, it was called ‘preferential jurisdiction’, which is, “in relation to a Flag State (...), the right to exercise its jurisdiction on a priority basis, to the exclusion of the exercise of the other State’s jurisdiction over the offence⁵²”. It was found necessary given that in some countries, such as Germany, there exist some particular constitutional sensitivities concerning the treatment of nationals. Nevertheless, in order to apply its own jurisdiction, the Flag State must, first, acknowledge forthwith receiving all the evidences discovered in boarding the vessel. Second, it shall communicate its decision upon the case in no more than 14 days. Failure to do so constitutes an implied waiver of the exercise of the preferential jurisdiction⁵³.

The rights of the Flag State in this frame are contained in Article 15, which design the surrender of vessels, cargos, persons and evidences. The term ‘surrender’ was preferred to ‘extradition’ to stress the fact that the intervening state is acting under authorisation of the Flag State and the latter can intervene and apply its own jurisdiction at any moment, if complying with the terms of the CoE Agreement 1995. Hence, whether the boarding State applied their domestic law on the vessel and persons on board, the Flag State may request their immediate release⁵⁴.

The only major exception in which the intervening State may refuse to do so is when the individuals under investigation risk to be subject to death penalty if convicted of drug trafficking offences in their own country. While this does not represent a risk in Western Europe where the capital punishment has been abandoned to all intents and purposes in peace time, other countries that might be joining to the Agreement could not share the same value. Indeed, according to Article 28, non-member States of the Council of Europe may be invited to accede to this Agreement, making possible the eventuality of such circumstance. Then, it was decided to provide that “the surrender of any person may be

⁵⁰ *Ivi.*, See Art. 26 par. 3).

⁵¹ Bilateral Treaty between the Kingdom of Spain and the Republic of Italy to combat Illicit Drug Trafficking at Sea, 23 March 1990.

⁵² Art. 1 letter b), The Council of Europe Agreement 1995.

⁵³ *Ivi.*, See Art. 14 par. 2).

⁵⁴ *Ivi.*, See Art. 15 par. 5).

refused unless the Flag State gives such assurances as the intervening State considers sufficient that the death penalty will not be carried out”⁵⁵.

The last articles do not require a special treatment, but four points of general interests shall be highlighted. First, both the CoE Agreement and the Vienna Convention contains few and weak provisions regarding the dispute settlement mechanism. Article 34 of the CoE Agreement states that such dispute shall seek, in the first place, a settlement as between themselves (following as precedent Article 33 of the UN Charter). Second and in marked contrast with the 1988 Convention, the treaty here adopts a very restrictive view of the right of States to subject their participation to reservations. Such action is permissible only in respect of three provisions (including the opt-out from the contentious jurisdiction of the World Court under Article 34(5)). Third, as addressed in Article 30(1), “this Agreement shall not affect rights and undertakings deriving from the Vienna Convention or from any multilateral conventions concerning special matters”. Finally, it was found appropriate to establish a committee which would monitor the practical operation of the Agreement. In this regard, non-parties and representative of international organizations or bodies may be called to attend its meetings as observers.

1.2.2. Pompidou Group

The Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs is the first collaborative organisation for intergovernmental cooperation in the area of drug policy in Europe. It is regulated by a Partial Agreement⁵⁶ linked with the Council of Europe, but since all the Member States are also part of the UN conventions, these treaties constitute also the legal mechanisms for judicial cooperation. It is more commonly known as the Pompidou Group, name derived from Georges Pompidou, former President of France from 1969 to 1974. The Group was initiated in 1971 on his proposal as response to the increasing use of drug among young European people during the 1960s and 1970s. According to Pompidou, this phenomenon could not be solved by national policies alone but required international cooperation at the European level. From here the idea of creating an informal forum where anti-drug specialists could meet and exchange strategies and information to combat drug crimes.

At the beginning, the group comprehended only seven European countries, namely France, Belgium, Germany, Italy Luxemburg, the Netherlands and UK, whose purpose was to exchange experience in the field of drug policy, looking at the expanding problems of drug abuse and illicit trafficking,

⁵⁵ *Ivi.*, Article 16.

⁵⁶ Resolution of the Committee of Ministers, 27 March 1980, No (80) 2.

including all areas of drug control, rehabilitation of addicts, epidemiology and research, as well as the work of police and customs authorities⁵⁷.

Along the 1970s, other countries started cooperating within the Group, therefore in 1980 the Committee of Ministers adopted Resolution (80) 2, for the purpose of integrating the Pompidou Group into the CoE, in particular under the Directorate of Economic and Social Affairs. The CoE was chosen as institutional basis for this cooperation because it appeared that drug issues such as health, social, human rights and security aspects had multiple links with the core activities of this institution. In this resolution, the eleven signatory States agreed, first, that the aim of the Group should be to make a multidisciplinary study of the problems of drug abuse and illicit trafficking in drugs; second, the working methods employed hitherto by the Group should be maintained under the above mentioned Partial Agreement; and lastly, that any other Member State of the CoE, but also States that were not members, could be admitted to the Group.⁵⁸ This last provision demonstrates that they considered from the very beginning including countries beyond central Europe. During the 1990s various countries from Central and Eastern Europe joined the Group as preparatory step to access to the EU. Later, in 2001, Azerbaijan acceded as the first non-European Member, followed by the Kingdom of Morocco in 2011, Israel in 2013 and Mexico in 2017. On the other hand, founding Members as UK, Denmark, Germany, the Netherlands, and Spain, withdrew from the Group. In 2018, the Group comprised thirty-nine Member States. Further cooperation was found with international institutions and agencies too, such as EU (in particular the European Commission, the EMCDDA and EUROPOL), the UN (in particular UNODC), the INCB (International Narcotics Control Board), UNAIDS, WHO (World Health Organisation), WCO (World Customs Organizations) and Interpol. The Pompidou Group is structured in three levels: The Ministerial Conference, the Permanent Correspondents, and the Secretariat.

The Ministerial Conference is the high level political forum which comes together every four years. It is attended by ministers who are responsible for drug policies in their respective countries⁵⁹. Its main purpose is to formulate the strategic aims and priorities of the work of the Pompidou Group and, then, approve the work programme for the next four-year period, establishing the political orientation for the years to come. Also, in this session the Presidency and Vice presidency for the next cycle are elected. The Presidency is charged of overseeing the work of the rest of the organs.

⁵⁷ W. SIPP, *Co-operation group to combat drug abuse and illicit trafficking in drugs (Pompidou group)*, in *The Council of Europe: its law and policies*, Oxford, 2017, p. 414.

⁵⁸ *Ibid.*

⁵⁹ *Ivi.*, 416.

The Permanent Correspondents are the main decision-making body of the Pompidou Group during the four-year cycle. It is composed by the delegates (in this context called Permanent Correspondents) appointed by each Member State and who formally represent their government. Other important tasks are to supervise the budget, resume a steering role regarding the activities of the Group, prepare the Ministerial Conference by drafting the next Work Programme and ensure that the activities of the Group are adequately relayed back to their national authorities.

The Secretariat is the last layer of the Pompidou Group. It constitutes a department of the General Secretariat of the CoE (precisely within the Directorate General I – Human Rights and the Rule of Law) and is thus governed by the CoE's Staff Regulation. It provides the Group with the organisational and practical support for the preparation, implementation and facilitation of the Group's activities, organises its meetings and manages its budget. This body directly reports to the Permanent Correspondents.

The annual budget is decided by the Ministers of the CoE whose State of belonging is part of the Pompidou Group. They decide the amount of annual contribution that all Member States must pay. Such budget and eventual voluntary contributions are managed under the financial rules and regulations of the CoE.

Since its birth, the Pompidou Group was pioneer of several practices which helped to reduce drug trafficking and to rehabilitate drug addicted. For example, between the 1970s and 1980s it developed – through its group of epidemiology experts- a concept of indicators describing the population of users. It resulted to be very important for the improvement of the quality and comparability of data on drug use in Europe. This concept was completely new at the time and, later, it was taken over and developed further by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA⁶⁰). The Pompidou Group also launched the European Drug Prevention Prize in 2004. It is awarded every two years to the three projects that fully involve young people in drug prevention activities. It encourages young people, especially those at risk, to actively prevent drug use in their communities⁶¹. Another of its biggest achievement was to be the first body to promote policies for effectively dealing with open drug scenes in cities. Their significant reduction in Europe in the past fifteen years can be attributed to a great extent to the Pompidou Group's work.

⁶⁰ The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) was established by the Regulation No 302/93 of the Council of the European Communities, of 8 February 1993 on the establishment of a European Monitoring Centre for Drugs and Drug Addiction. Inaugurated in Lisbon in 1995, it is one of the EU's decentralised agencies. The EMCDDA exists to provide the EU and its Member States with a factual overview of European drug problems and a solid evidence base to support the drugs debate. Today it offers policymakers the data they need for drawing up informed drug laws and strategies. It also helps professionals and practitioners working in the field pinpoint best practice and new areas of research.

⁶¹ W. SIPP, *Pompidou group*, cit., p. 420.

The Group also works to share experiences among the Member States regarding certain specific topics, such as treatment as alternative to imprisonment; treatment standards for young drug users and women; drug addiction treatment in prison; or principles and guidelines that lead to a reduction in drug-related HIV/AIDS infections⁶². These treatments, which use an approach aiming to link policy with practice and research, contribute to the integration of drug users into society. At this point, it is important to highlight that the Pompidou Group's approach is the only one which addresses ethics and human rights issues related to drug policies in the area of prevention, treatment, rehabilitation and, as well, law enforcement.

Since 2007, it has been created a network for multi-agency stakeholders at the frontline level (such as institutions, municipalities, NGOs, etc.) whose purpose is to facilitate the exchange of knowledge and experiences about what is happening at frontline level in individual countries and promote good practices.

Finally, since the very beginning the Group established cooperation groups of drug control in both European airports and ports, which are the main ways of transporting drugs from one country to another.

1.2.3. European Regulation 2016/1624

The European Parliament and the Council on 14 September 2016 adopted the European Regulation 2016/1624 of 14 September 2016 which established the European Border and Coast Guard Agency, but commonly called FRONTEX as the agency existing before, although this Regulation have radically changed its previous organization. Indeed, some scholars believe that it has completely substituted the previous one. Under article 56 of the same regulation, the seat of FRONTEX is Warsaw, Poland.

Originally, FRONTEX was regulated by the Council Regulation 2007/2004⁶³ which led to the establishment of the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union, but the abovementioned regulation repealed the provisions taken in 2007.

As common misunderstanding, the public opinion believes that the main purpose of FRONTEX is to control migratory challenges and eventually rescue migrants at the sea. Actually, the mission of this agency is “to promote, coordinate and develop European border management in line with the EU fundamental rights charter and the concept of Integrated Border Management”⁶⁴. This does not mean

⁶² *Ibid.*

⁶³ Regulation No 2007/2004 of the European Council, of 26 October 2004, establishing a European Agency for the Management of Operational Cooperation at the External Borders. (hereinafter: Regulation 2007/2004)

⁶⁴FRONTEX, *Mission & Tasks*, 2017. April 27, 2018, available online.

that FRONTEX is not involved in the migratory issue, but only that its scope is wider. In more details, the European Regulation 2016/1624 requires the Agency to manage the crossing of the external borders regarding the migratory challenges and addressing potential future threats at those borders that might contribute to the establishment of serious crimes with a cross-border dimension⁶⁵. Then smuggling, human trafficking, terrorism, the illicit drug trafficking, illegal fishing and provoking relevant pollution fall into the latter category because defined as either transnational crimes or potential threat at the European borders. In this regard, FRONTEX shares any relevant intelligence gathered during its operation with national authorities and Europol. It also coordinates and organises joint operations and rapid border interventions to assist Member States at the external borders, including in humanitarian emergencies, rescue at the sea and intercepting smugglers.

The top body of FRONTEX is the Management Board, but the agency is managed by an Executive Director whose functions and powers are defined in Article 68 of Regulation 2016/1624. He or she shall be completely independent in the performance of his or her duties. As chief of this agency, “the Executive Director is responsible for the preparation and implementation of the decisions taken by the Management Board and for the taking of decisions related to the operational activities of the Agency with this Regulation”⁶⁶. In this respect, the European Parliament and the Council have granted him or her a number of powers necessary to comply with his or her functions.

The Executive Director is assisted by a Deputy Executive and supported by four Divisions, namely the Operational Response, Situational Awareness and Monitoring, Capacity Building, and Corporate Governance. A new Division (International European Cooperation Unit) has been planned to be developed in 2018. Along with the divisions, a Cabinet and specialized Offices (e.g. Data Protection) and Teams (e.g. Management Board and Cross-Divisional Secretariat) contribute in assisting and performing the main functions of the agency.

To assure consistency, an independent Fundamental Right Officer reports directly to the Management Board and cooperates with the Consultative Forum which assists the Executive Director and the Management Board by giving independent advice in fundamental rights matters.

⁶⁵ Regulation 2016/1624 of the European Parliament and of the Council, of 14 September 2016, on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC. (hereinafter: Regulation 2016/1624), p.1

⁶⁶ *Ivi.*, Article 68 par. 3).

1.2.4. Treaty between Spain and Italy on the Suppression of the Illicit Traffic in Drugs at Sea (23 March 1990)

Finally, in the European region, it was drafted and implemented a bilateral instrument between two of the main illegal drug import countries in the Mediterranean, namely Italy and Spain. In the light of the usefulness of this treaty, Spain similarly concluded the same agreement with Portugal in March 1998⁶⁷. As already mentioned before in this section, the main routes by sea come from the South-West and South-East, and they especially affect their closest neighbours, respectively Morocco for Spain and Albania for Italy. The provisions of the 1990 Treaty had been a reference in drafting the CoE Agreement 1995 and similar bilateral treaties were negotiated at the time using it as a model.

The Treaty is based on Article 17 of the 1988 Convention with the main objective of reducing the illicit traffic in the waters outside the parties' territorial limits.

The cooperation established under its provisions is based on the exercise of exclusive jurisdiction in each party's territorial seas, the recognition of each party's competence and the possibility for Flag States to renounce their preferential jurisdiction outside territorial seas⁶⁸. In greater details, it focuses on the questions of jurisdiction and the right of intervention, which are not very clear in the Vienna Convention. It must keep in mind that the entire treaty was drawn up in the hope that the Flag State would renounce on its preferential jurisdiction.

Regarding the issue of jurisdiction, Article 4 of this treaty is intended to remedy the deficiency of Article 17 of the Vienna Convention. First, it entails that, within the waters under its sovereignty, sole jurisdiction shall be exercised by the coastal state, even if the offence was commenced and terminated in the other state. It also retains necessary to remind that, when the extent of territorial seas of each contracting party is doubtful, then the maximum limit stipulated by the law of one of the Parties will be taken as threshold. This issue may rise, for example, regarding baselines and historic bays. Second, Article 4 stipulates that preferential jurisdiction shall be exercised by the Flag State over vessels of their nationality⁶⁹.

The possible renunciation of jurisdiction can be found in the scope of Article 6. Such renunciation may occur after the intervention has taken place. In specific, the party intervening may request the Flag State to renounce and transfer its jurisdiction in favour of the boarding state. The former shall examine the request and answer within 60 days. When no response has been provided in the timeframe, "jurisdiction will be deemed to have been renounced"⁷⁰ by the Flag State and it will be

⁶⁷ Treaty between the Kingdom of Spain and the Portuguese Republic to combat Illicit Drug Trafficking at Sea of 2 March 1998 (I-37501).

⁶⁸ P. J.J. VAN DER KRUIT *Maritime Drug interdiction in international Law*, Utrecht, 2007, p. 174.

⁶⁹ See Art. 4, the Bilateral Treaty between the Kingdom of Spain and the Republic of Italy, 23 March 1990.

⁷⁰ *Ivi.*, Art. 6 par. 4).

regarded as a tacit consent. When boarding the vessel in question resulted from the urgency of the situation, the domestic law of the intervening state should apply without causing any judicial problem. In other words, this treaty has introduced the possibility to board other parties' vessels on the high sea suspected to be engaged in illicit traffic with no need of prior authorisation. Obviously, in the case the Flag State does not renounce on its jurisdiction and communicates the decision before the deadline expires, no question of concurrent jurisdiction may rise. The Flag State has priority and the boarding state shall transfer all evidence, arrested persons and all other elements relevant to the case, as established in Article 6(3). One possible source of discussion in this frame is when transferring arrested persons, which may raise a problem of extradition. The Italian delegation has admitted that this was indeed a delicate question but stated that transfers had not been envisaged by the parties from the point of view of extradition⁷¹.

Finally, Article 6 requires defining the authorities empowered to forward requests for the exercise of the jurisdiction, which are respectively the *Audience Nacional* in the case of Spain, and the Ministry of Justice, after consulting the public Prosecutor, regarding Italy.

The second major point is the right of intervention stipulated in Article 5(1). It can be read as the advance authorisation from the other party to stop and search suspected vessels of that party on the high seas. Nevertheless, no intervention shall be executed if there are not reasonable grounds to suspect the vessel of committing drug offences.

Paragraph 2 of the same Article enumerates the actions that a party can apply when intervening, and they are namely pursuing, arresting and boarding a suspect ship, checking documents and questioning persons aboard. Such actions can be carried out by warships and other duly authorized or visibly identifiable as ships at the service of the State.

Regarding the applicable law, the drafters stated in Article 5(3) that the intervention shall be in accordance with the general rules of international law. That means that the interception shall take place under the law of the intervening state, with respect to the rules of international law.

In the latter paragraphs, Article 5 requires acting always in the safeguard of the suspect vessel, including the cargo and the crew. It should be applied the proportionality principle in order to preserve any commercial interests. Moreover, the boarding State shall be considered liable for any damage, injury or loss (even small) incurred if the action took place without adequate grounds for suspicion. If facing disputes on this matter, both Parties have accepted the jurisdiction of the Arbitration Section of the International Chamber of Commerce in London to judge the case.

⁷¹ Draft Report of the Pompidou Group Working Group, held in Paris, 19-20 September 1991, PC-NU (92) 6, and Strasbourg, 17 November 1992, p. 9.

The treaty dedicates Article 2 on describing the offences that both parties shall prosecute and punish, namely all drug-related acts on board ships connected with the possession for the purposes of distribution, storage, transport, trans-shipment, sale, manufacture or processing⁷². The seriousness of the offences, is not mentioned because it resulted to be a very sensitive issue during the negotiations of the Vienna Convention 1988 and both Italy and Spain retained better not to include it in the Treaty. But, it is in the opinion of the present author that the gravity of the offence will be established by the Party which will lead the investigations.

The greatest feature of this treaty is that it introduced the possibility of waiving the system of authorisation on a case-by-case basis. When one state renounces upon its jurisdiction, it also intrinsically recognizes another state's right to intervene, while at the same time establishing conditions to protect freedom of navigation. Such Agreement could work on the case of Italy and Spain because they have similar national legislations and it is easier to reach consensus on the renunciation of preferential jurisdiction than in the case of multilateral treaties.

Chapter 2: Operational Units

Chapter 1 has shown as collaboration between countries is necessary to establish an efficient legal framework for the fight against the illicit traffic of drugs, especially in assessing jurisdiction when the offence takes place outside States' territories. Additionally, treaties and agreements are the legal ground for the establishment of operational agencies whose main purpose is coordinating the exchange of information between countries and the eventual joint operations to seize and stop vessels engaged in illegal trafficking or to dismantle drug cultivations.

In the following section, I will analyse the operational units, other from FRONTEX, that collaborate to fight the illicit drug traffic in the Mediterranean and eventually provide few examples of their activities. However, I will focus on how these agencies work to stop, or at least reduce, the traffic of cannabis, given that in the overall drug seizures in this area cannabis products dominate (followed by cocaine and heroin). For example, the last year, MAOC(N) (anti-drug agency that I will analyse in the next paragraph) operations have reckoned an overall seizure of cannabis of 350 thousand kg, with an estimated value of almost 4 billion euros. There are two main reasons for its predominance. First, it is a drug easily transported by sea, most commonly by merchant vessels⁷³. Second, the production countries are relatively closer to recipient ones in the Mediterranean zone.

⁷² P. J.J. VAN DER KRUIT, *Maritime Drug interdiction in international Law* cit., p. 177.

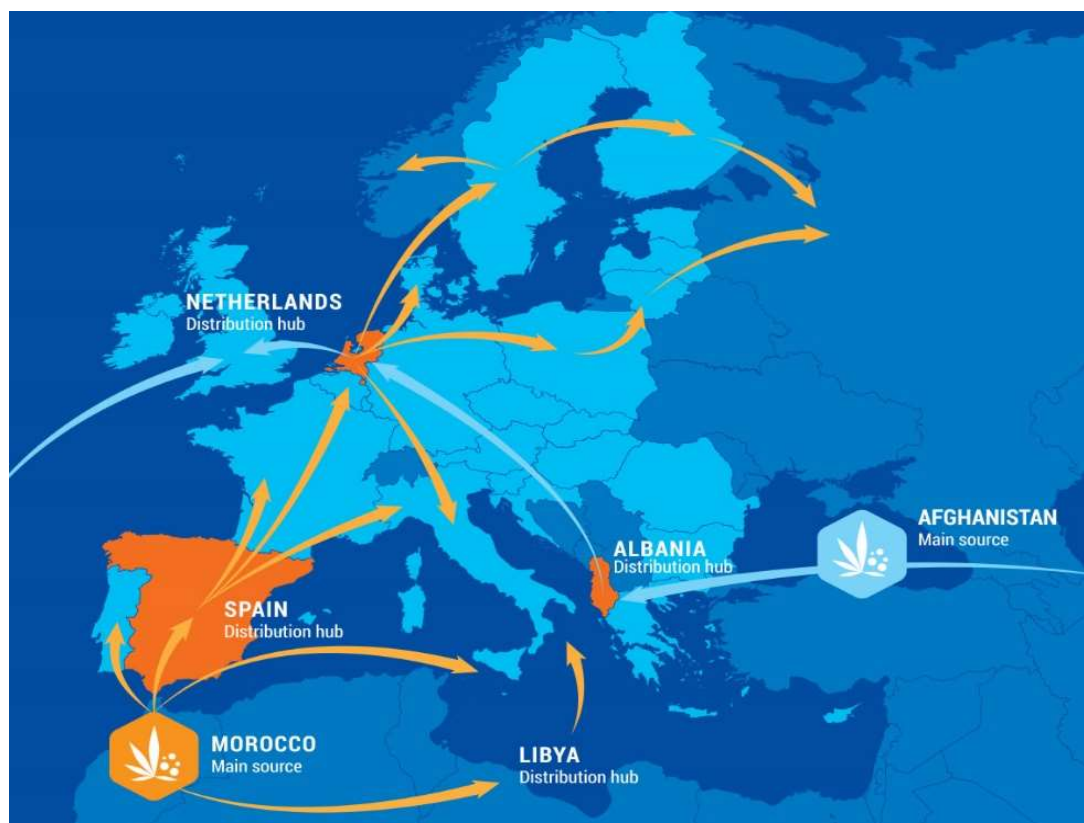
⁷³ MAOC, *Statistics*, 11 May 2018, available online.

Before entering in any details, I will first provide a picture of the current main fluxes of drug in this area in order to better understand the operational procedures implemented and why certain countries are likely to be more involved than others.

2.1. MEDITERRANEAN DRUG TRAFFICKING FLUXES OF CANNABIS

2.1.1. West flux of Hashish – Morocco

As already anticipated before, Morocco is the main producer of cannabis resin in the Mediterranean. Cannabis resin is the starting stage to produce hashish, making Morocco the main supplier from the West. According to the latest UNODC Drug Seizure Report⁷⁴, in 2015 Morocco found and confiscated 235 tons of hashish. Nevertheless, from the same report it was recorded an even higher amount of herbal cannabis (313 tons), but such drug tends to remain within the African borders.



Source : EMCDDA & EUROPOL EU Drug Markets Report 2016.

Hashish reaches the European countries through well-established routes. Spain is the European hub for the reception and storage of large quantities of this substance that will be then channelled towards

⁷⁴ Individual Drug Seizure Report of UNODC, as Reported by Country/ Territory Representatives, for the years 2010-2015.

the consumption of European markets, especially to the French and Italian ones⁷⁵. In particular, Italy presents some criminal groups, namely Camorra and ‘Ndrangheta, which have well-established interests in the Iberian Peninsula. “In this case, drug trafficking is mainly operated overland, by lorries belonging to Italian companies (fruit and vegetables sector) or by adequately equipped cars (having false compartments which can be opened with sophisticated hydraulic systems⁷⁶)”.

Instead, cargos are commonly used for the traffic oversea, especially for the routes that directly connect Morocco to Italy where the most common destinations are the Gulf of Taranto and between the region of Lazio and Campania, and Liguria and Tuscany.

Because of the increased patrolling of the Mediterranean zone by the EU countries and the constant use of legal instruments provided by the implementation of art. 17 of UN Vienna Convention, over the past few years North-African drug traffickers have been searching alternative routes in the East, such as Libya, Egypt and Turkey.

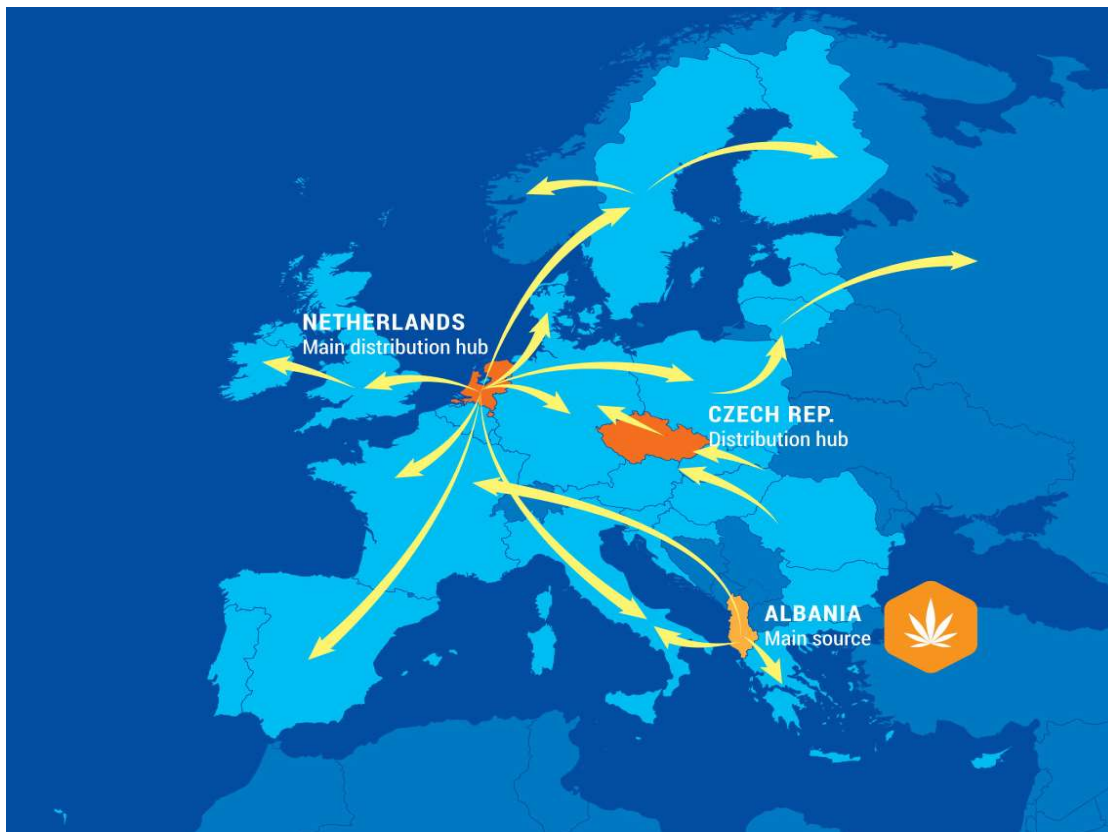
Beyond Spain, Morocco uses also The Netherlands as distribution hub, especially to traffic hashish in the North, Central and East Europe.

⁷⁵Annual Report of Polizia di Stato, of 2016, p. 13.

⁷⁶ *Ivi.*, p. 14.

2.1.2. East flux of Marijuana – Albania

The major marijuana supplier in the East Mediterranean is with no doubts Albania. In 2014, UNODC Drug Seizure Report⁷⁷ recorded 551,414 plants of herbal cannabis cultivated in Albanian territory, which managed to seize around 102 thousand kg of marijuana.



Source : EMCDDA & EUROPOL EU Drug Markets Report 2016

Oversea, Albania is especially bounded to Italy whose proximity allows drug trafficker to reach Puglia, Calabria and Sicilian coasts by high speed rubbers. Additionally, drug suppliers are well-connected with the local organized crime which constructed an efficient aerial network. In this respect, both Albanians and Italians pilot light and ultralight planes, using improvised take off and landing strips *ad hoc* realized in isolated areas in Albania. “To this purpose, a remarkable domestic production must be taken into consideration: it is ensured by illicit crops mainly located in the warm and sunny South Italy regions (approximately 725 thousand plants were seized from 2014 to 31 December 2016⁷⁸)”.

Overland, Albania manages to reach France and Greece, but The Netherlands, as the main distribution hub, covers the traffic of marijuana in West, North and Central Europe. Czech Republic are the second major distribution hub and focuses its traffic on Central and partially East Europe.

⁷⁷ The latest data regarding Albania gathered by UNODC Drug Seizure Report dates back to 2014.

⁷⁸ Annual Report of Polizia di Stato, of 2016, p. 14.

2.2. ANTIDRUG AGENCIES (INFORMATIVE INTERNATIONAL COLLABORATION)

2.2.1. MAOC(N) of Lisbon – Maritime Analysis and Operation Centre Narcotics

It is an inter-governmental working group or taskforce comprising seven EU Member States, namely Spain, France, Ireland, Italy, the Netherlands, Portugal and the UK. Co-founded by the Internal Security Fund of the European Union, the Centre is a European Law Enforcement unit with military support charged of coordinating maritime and aviation intelligence, resources and trained personnel in order to face up the illicit drug traffic transported by maritime and air means⁷⁹. It was officially established when the seven Parties signed on the 30 September 2007 in Lisbon the International Agreement linked to MAOC. However, it was already operational from April 2007.

The headquarters is based in Lisbon and staffed by Country Liaison Officers (CLOs), who represent both the main police and other authorities of the participating European nations. Any States or International Organization sharing the same objectives are invited to become an observer by decision of the executive Board, and eventually participate in joint operations when their intervention is considered useful. Its observers are the European Commission, EUROPOL, EMCDDA (The European Centre for Drugs and Drug Addiction), EEAS (The European External Action Service), FRONTEX, EDA (European Defence Agency) and EUROJUST. Also, countries like the United States are among the permanent observers and the latter complies with this function through the Drug Enforcement Administration, Lisbon Country Office, and the Joint Interagency Task Force South.

The International Agreement assesses jurisdiction to the agency by sea and air across the Atlantic towards Europe and the West African Seaboard, with the possibility of extending its operations, inter alia, into the Western Mediterranean basin, hereinafter referred to as the “operational area”. For this purpose, the Parties shall, through the Centre, first, collect and analyse information to assist in determining best operational outcomes in relation to illicit drug trafficking by sea and by air in the operational area. Second, they are required to enhance intelligence through information exchange among themselves and, in the appropriate manner, with Europol. Finally, they should endeavour to ascertain the availability of their assets⁸⁰ which, were possible, shall be notified in advance in order to facilitate interdiction operations.

MAOC(N) information flow works as follow. The participating States appoint National Representatives which share information with other members. These National Representatives

⁷⁹ MAOC(N), *Who We Are*, 11 May 2018, available online.

⁸⁰ See J. F. LEITE, *Improving responses to organised crime and drug trafficking along the Cocaine Route*, 30 May 2013, available online.

compound the JOCC operational where all the intelligence information pass by. All the information gathered are, then, eventually shared with EUROPOL.

MAOC(N) agreement established that the Executive Board shall be composed of a senior representative from each Party, who shall be liaison officer for the Centre. This Board is required “to meet at least twice a year and its main functions are to develop the Agency’s strategic direction, invite and admit additional observers, establish committees where necessary, adopt Procedure Handbook and any subsequent amendments, approve the annual budget and report, and finally appoint the Director of the Centre”⁸¹.

The Participating countries fund and borne equally the costs related to the budget. Any participation in the operations by a Party is completely voluntary, given that each Party will bear their own costs. Additional funding may be sought from sources within the European Union or elsewhere.

One good example of successful activity of MAOC is the one carried out at Cape Verde. There, it was implemented a training and capacity building efforts which have improved cooperation and increased operational results. Two successful interdictions have been supported and coordinated through this agency.

MAOC(N) is probably the most active agency in stopping drug trafficking in the Mediterranean and in Europe and the main centre where most of the European intelligence pass through. For this, it must thank the provisions that regulate it, which provide specific procedure and funds, allowing MAOC(N) to create strong bonds with other European national agencies and develop efficient anti-drug programs.

2.2.2. OLAF – European Commission and European Anti-Fraud Office

The European Commission and European Anti-Fraud Office (hereinafter OLAF) is an important European agency whose main purpose is preventing and protecting the Union from financial offences such as fraud, corruption and any activity connected to it. Indeed, drug trafficking requires to launder money into national systems and, by doing so, drug traffickers committee fraud, reason for which OLAF is often collaborating with national and international organization to stop and seize illicit drug traffic.

OLAF body exists since 1999, but it already existed before in another form. In the 1980s, The European Community faced a worrying number of reports denouncing the shortcomings of the Courts of Auditors and the Budgetary Control Committee in fighting against the European Funds evasion. In this respect, the Commission decided to create a “*unité de coordination de la lutte anti-fraude*”

⁸¹ *Ibid.*

(hereinafter called UCLAF), as required by an internal report about anti-fraud fighting activities of 1987⁸². During the 1990s, this body was particularly supported after the numerous scandals of corruption and misuse of power by representative from many member states (such as Italy, France, Belgium, Spain, Portugal, Germany and United Kingdom) and the alarming Mafia's activities from Eastern countries after the end of the Cold War. Moreover, the European Community had the necessity to deal urgently with cross-border crime following the attacks of 9/11 and the Enron scandal⁸³ in the United States. However, this earlier version of OLAF was completely coordinated by the European Commission in charge, factor which undermined its independency and was disliked by national security agencies. This may partly explain its failure. The report which led to the resignation of the Santer Commission had clearly shown UCLAF's shortcomings in terms of co-ordination between the various authorities in the member states. Among the several reasons of its failure, the Report of the Committee of Wise Men denounced "sensitive questions of sovereignty, lack of knowledge about UCLAF's role, reluctance to give judicial information to a body which is part of the Commission, and probably scepticism about UCLAF's competences and way of working"⁸⁴. OLAF is the fruit of exceptional circumstances in the aftermath of a scandal and the necessity of restoring credibility in the Commission. It was established by an independent investigative mandate⁸⁵, and an agreement on internal investigations within EU institutions.

For this purpose, it was granted a dual statute which aimed at giving the Office the necessary operational independence, while it remained within the Commission for its budget and administration. More precisely, OLAF is currently under the responsibility of the Commissioner in charge of Budget and Human Resources, Günther H. Oettinger. Additionally, Regulation 1073/1999⁸⁶ declares that OLAF, together with ECSC and Euratom, shall exercise the powers of investigation and its work shall be monitored by the Supervisory Committee, a body of five outside experts, as additional guarantee of OLAF's independence. Although it encountered the desire of the political authorities, this semi-autonomous state is the main source of OLAF's problems. Indeed, OLAF is an administration with investigative powers but lacks a legal personality and, as such, cannot impose

⁸² See Report of the Commission of the European Communities, of 20 November 1987, on tougher measures to fight against fraud affecting the community budget, COM (87) 572, p. 15.

⁸³ The *Enron scandal* was a financial scandal that eventually led to the bankruptcy of the Enron Corporation, an American energy company based in Houston, Texas, and the *de facto* dissolution of Arthur Andersen, which was one of the five largest audit and accountancy partnerships in the world. In addition to be the largest bankruptcy reorganization in American history at that time, Enron was cited as the biggest audit failure.

⁸⁴ V. PUJAS, *The European Anti-Fraud Office (OLAF): a European policy to fight against economic and financial fraud?*, in *Journal of European Public Policy*, 2003, p. 786.

⁸⁵ Decision No 1999/352 of the Commission, of 28 April 1999, establishing the European Anti-Fraud Office (OLAF).

⁸⁶ Regulation No 1073/1999 of the European Parliament and of the Council of 25 May 1999, concerning investigations conducted by the European Anti-Fraud Office (OLAF).

penalties, reason for which the relationship between this body and the other European institutions and organs remains problematic⁸⁷.

Since its birth, the most important achievements reached by OLAF are, first of all, setting up the Hercule Programme which aims to protect the EU's financial interests by supporting actions to combat irregularities, fraud and corruption affecting the EU budget. It started the first time in 2004⁸⁸, later extended under the Financial Perspectives for the years 2007-2013⁸⁹, and renewed for 2014-2020⁹⁰. The second achievement is when the Fraud Notification System (FNS) was launched by OLAF in 2010. Such system allows citizens to pass on information concerning potential corruption and fraud online. Finally, in 2013 entered into force a new EU regulation⁹¹ which has significantly changed the OLAF's way of working and the relations with its various stakeholders. In details, the Regulation further defines the rights of persons concerned, introduces an annual exchange of views between OLAF and the EU institutions and requires that each Member State designate an Anti-Fraud Coordination Service.

As an example of its work in the prevention of drug traffic, the 12 December 2017 OLAF has contributed in seizing a total of 2.3 tons of cannabis and arresting six people during the Joint Customs Operation "Pascal 2017" in July. It had been made in collaboration with The Regional Directorate of Customs Coast Guard of Marseille and the Spanish Customs Surveillance Directorate, which deploy maritime and air assets to set a large-scale operation in the Mediterranean Sea where they tracked down and halted drug traffickers that were smuggling cannabis resin from North Africa to the European Union via the Strait of Gibraltar. OLAF's main role has been to process all information in real time within the joint operational centre in Madrid, Spain. In particular, OLAF provided the Virtual Operations Coordination Unit (VOCU), an application of the Anti-Fraud Information System (AFIS), for the secure exchange of information during the operation.

Although it was not born to comply with the specific task of dismantling drug trafficking, OLAF works efficiently with the other agencies because it retains the sufficient jurisdiction to intervene into

⁸⁷ V. PUJAS, *The European Anti-Fraud Office (OLAF)*, cit., p. 792.

⁸⁸ Decision No 804/2004/EC of the European Parliament and of the Council of 21 April 2004, establishing a community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule Programme).

⁸⁹ Decision No 878/2007/EC of the European Parliament and of the Council of 23 July 2007, amending and extending Decision No 804/2004/EC establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule II programme).

⁹⁰ EU Regulation No 250/2014 of the European Parliament and of the Council of 26 February 2014, establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC.

⁹¹ EU Regulation No 883/2013, of the European Parliament and of the Council of 11 September 2013, concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999.

European cases. Not the same can be said at global level, where OLAF cannot investigate because its powers are limited to one geographical area, Europe.

2.2.3. INTERPOL – International Organization of Criminal Police

The International Organization of Criminal Police (hereinafter INTERPOL) is the world's largest international police organization, with 192 member countries, whose purpose is to ensure that police around the world cooperate. The idea of funding INTERPOL dates back to 1914 at the first International Police Congress held in Monaco, where police officer, lawyers and magistrates from 24 countries met to discuss arrest procedures, identification techniques, centralized international criminal records and extradition proceedings⁹². Officially created in 1923 as the International Police Commission, with headquarters in Vienna. After falling completely under the Nazi control in 1942, Belgium led the rebuilding of the Organization after the end of WWII. In 1956, within the adoption of a modernized constitution, it became known as the International Criminal Police Organization-INTERPOL, or as just INTERPOL. In the following years, the United Nations granted the Organization the consultative status as intergovernmental organization and, after the Headquarters Agreement with France⁹³, INTERPOL's office was moved to Lyon. Now, it owns a liaison office in New York and opened the Office of the Special Representative to the European Union in Brussels. Since 2005, the United Nations and INTERPOL strictly cooperate.

INTERPOL functions under international law and the norms set out in its Constitution, adopted in 1956 in Vienna, which establishes the mandate of the Organization and guides the way for effective international police cooperation. In details, Article 2 of the Constitution declares that the aims of INTERPOL are basically two. First, "to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights". Second, INTERPOL shall lead in establishing and developing the institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes. In order to comply within its obligations, it is severely forbidden for INTERPOL "to undertake any intervention or activities of a political, military, religious or racial character"⁹⁴, as established by Article 3 of the Constitution. Because of the requirement to be impartial at any time, Article 3 is sometimes referred to as "the neutrality clause"⁹⁵.

⁹²INTERPOL, *History*, 14 May 2018, available online.

⁹³Agreement of 1972 between the International Criminal Police Organization-INTERPOL and the Government of the French Republic, regarding INTERPOL's headquarters in France.

⁹⁴ See Art. 3 of the Constitution of the ICPO-INTERPOL.

⁹⁵INTERPOL, *The Constitution*, 14 May 2018, available online.

In the last Strategic Framework (valid for the years 2017-2020), there were defined five specific goals that INTERPOL shall achieve. First, the Organization shall serve as the worldwide information hub for law enforcement cooperation by, inter alia, giving access to criminal database and reinforcing the technical infrastructure. Second, INTERPOL shall deliver state-of-the-art policing capabilities that support participating states in fighting and preventing crimes of transnational dimension, especially by working directly with National Central Bureaus and specialized agencies. Third, INTERPOL shall globally lead the innovative approaches to policing. In this moment, the Organization is reinforcing its role as global police think tank in order to create a forum or exchange at expert level, with emphasis on future trends and strategic foresight. Fourth, it must maximize its role within the Global Security Architecture which will cover all information gaps, strengthen cooperation between relevant sectors and entities and raise political awareness and support for INTERPOL'S programmes. Finally, INTERPOL is demanded to consolidate resources and governance structures for enhanced operational performance. In this way, the Organization keeps evolving within the law enforcement development.

Subsequent parts of the Constitution outline the structure of the Organization and give a definition and role for each body belonging to it. In hierarchical order, the top body is the General Assembly, composed of delegates appointed by each member country. It meets annually to take all the important decisions related to policy, resources, working methods, finances activities and programmes. The General Assembly is also charged to appoint the Executive Committee, whose purpose is to provide guidance and direction to the Organization and oversee the implementation of decisions made annually by the leading body. As implementing body, the General Secretariat has seven regional bureaus around the world, while the National Central Bureaus are charged to maintain national police and INTERPOL global network linked. The advisers and the Commission for the Control of Files oversight that INTERPOL's rules are always respected.

Regarding the fight against the illicit drug trafficking, INTERPOL is very active. Its criminal intelligence officers focus on the most commonly used and trafficked narcotic drug (cannabis, cocaine, heroin, psychotropic substances). The Organization, in the first place, works to identify new drug trafficking trends and criminal organizations operating at the international level and to assist all national and international law enforcement bodies concerned with countering the illicit production, trafficking and abuse of drugs. For this purpose, INTERPOL has often collaborated within European anti-drug agencies or the national government of States belonging to the Mediterranean. In this respect, INTEPOL collects and analyses data obtained from the member countries for strategic and tactical reports and delivering to the concerned countries; It responds to and supports international drug investigations; it helps to coordinate drug investigations involving at least two member

countries; It organizes operational working meetings between member countries where INTERPOL has identified common links in cases being investigated in these countries; And finally, it organizes regional or global conferences on specific drug topics to improve investigative techniques and cooperation.

INTERPOL is the only agency working to face drug trafficking in Europe which is not limited to Europe but can work and collaborate with countries of all over the world. Its international nature could work as intermediary between European states and the countries of the rest of the world and eventually extend the cooperation of European agencies to other organizations of the same type. Consequentially, it would help to further develop the international anti-drug provisions that still remain too vague and impede to duly punish criminals engaged in illicit drug traffic.

2.2.4. DCSA – Direzione Centrale Servizi Antidroga

Direzione Centrale Servizi Antidroga (hereinafter DCSA) is an Italian agency which works to contrast the illicit drug traffic at national and international level.

Initially born as Direzione Antidroga (DAD), the Italian inter-ministerial Decree No. 16 of 15 January 1991 suspended the beforementioned agency and transferred tasks and powers to the newly created DCSA. It is composed by inter-police forces with equal representation, namely Polizia di Stato, Polizia dell'Arma dei Carabinieri, Polizia dell'Arma della Guardia di Finanza and the Civil Administration of the Interior. The Agency is managed according to a three-year rotational basis by each of the police forces (more specifically, the Polizia di Stato will be represented by its General Director, while Carabinieri and Guardia di Finanza by their own Generals of Division.)

Within the Inter-ministerial Decree of 15 June 1991, they were established the internal organization and functions of the agency, which established the division of DCSA in three different Services of two divisions each.

Service I (I Servizio) is denominated “General and International Affairs” whose functions is to implement the norms laid down in the D.P.R 9 October 1990 No 309 regarding the regulation of drugs and psychotropic substances and the prevention, cure and rehabilitation of people who may have abused such substances. In this respect, the organs working in Service I have three functions. First, they work and propose initiatives to create and strengthen international bonds. Usually in collaboration with Security Expert Networks of foreign countries, DCSA develops projects with the United Nations, the European Union and other international organization or Regional Platforms, such as Gruppo Roma, Lyon G7, MAOC(N), maritime Analysis and Operations Centre (Narcotics), AMERIPOL, Paris Pact and International Drug Enforcement Conference (IDEC). Second, Service I manages training activities (such as courses, seminars, workshop, study visits or training

collaboration in a specific sector) to improve and modernize investigative techniques and strengthens collaboration with other international organizations. Finally, it is a consultative body regarding technical-juridical issues. In details, it gives advice on law drafts normative acts regarding psychotropic drugs that refers to illicit drug traffic. In this respect, DCSA can also propose new laws to fight against drug phenomenon that will be evaluated, and eventually adopted, by the institutional organs in charge.

Service II (II Servizio) works for “Studies, Researches and Information” sector, where active in operational research and anti-drogue intelligence necessary to dismantle illicit drug trafficking. In particular, Service II conducts strategic analysis regarding national and international drug traffic where it elaborates studies, researches and reports on the national and regional situation, on the internal consumptions and routes, and the ethnical populations which are most greatly involved in such offence. Moreover, it controls all the chemical sectors which manage drugs by analysing all the relative commercial operations communicated to the DCSA. Always in this respect, it monitors the evolution of new psychotropic substances that might represent a threat and not being in conformity with the substances outline by the Ministry of Health. This function may be performed also, at national level, thanks to the National System of Early Warning (Sistema Nazionale di Allerta Precoce) which alerts the appearance of new substances on the territory or, at international level, in collaboration with the International Narcotics Control Board of the United Nations. Additionally, Service II uses DASIS (Direzione Antidroga Sistema Integrato Statistico) informative system which gathers and elaborates information on fluxes of psychotropic substances.⁹⁶ Finally, all researches and additional materials about the several aspects of drug phenomenon are archived in the *Centro di Documentazione* and available for internal use.

One example of its activity may be seen in the last report issued in 2017, in which DCSA declared that there have been seized 75 tons of marijuana on the Italian territory, against the 41 tons of the previous year. Although it is not yet stabilized, this data remarks an obvious increase in the illicit traffic confirms that marijuana as the most demanded drug and also reveals a considerable cannabis production in this nation.

Third and last organ is Service III (III Servizio), dedicated to “Antidrug Operations”. To comply with its purpose, Service III coordinates the activities of the Italian police forces to face the illicit drug traffic. Namely, it is the intelligence body which provides investigative strategies and operations on the territory and promotes eventual collaborations with other national or international agencies. It also deploys technical and logistic support to national departments which need additional resources.

⁹⁶ DCSA, *Direzione Centrale per i Servizi Antidroga*, 16 May 2018, available online.

It ensures the informative support for the most complex investigations by elaborating operational analysis. Service III makes also use of other instruments that help him to complement with its tasks. For example, the operational section known as *Drug@Online* monitors websites and social networks in order to detect suspicious conversations and exchange of information that might lead to the illicit traffic. Eventually, it may issue advice regarding the drug production, transfer and traffic. It is composed of 20 security experts and one Officer in charge of the communication within the field offices, currently placed in America (Ottawa, Santo Domingo, Mexico City, Bogota, Caracas, La Paz, Brasilia e Buenos Aires), Africa (Rabat, Dakar e Accra), Asia (Istanbul, Beijing, Tashkent, Kabul e Teheran), and finally Europe (Madrid, Barcelona, Skopje, Vienna- at UNODC and OSCE-, Lisbon at MAOC(N)).

According to the last analysis, last year in Italy there have been executed 20.557 antidrug operations (an average of 62 operations per day) and denounced 26.336 people for drug-linked offences, data that remark the high activity of antidrug agencies, especially of DCSA, at least in the Italian territory. DCSA is a perfect example of how the development of diplomatic relations have allowed national agencies to cooperate with other organisations out of their own territory, increasing the amount of successful yearly anti-drug operations. Still, DCSA would not operate outside the Mediterranean or European geographical area, but future relations with other non-European countries will most probably widen the area of intervention of this agency.

2.2.5. CECLAD-M – Centre de Coordination de la lutte Anti-Drogue en Méditerranée

The *Centre de Coordination de la lutte Anti-Drogue en Méditerranée* (hereinafter CECLAD-M) was the product of negotiations and discussions of a seminary that took place in Toulon in 2008 which comprehend representatives from 22 coastal States to the Mediterranean. Such agency was an initiative of the Minister of Interior of France and Spain, who both were worried about the increasing abuse of drugs in their countries. When responding to the interviews, the French Minister, Michèle-Alliot-Marie, answered that drug phenomenon was a large-scale plague concerning the entire world which destabilized societies, corrupted economies and affected in depth the health of her nationals⁹⁷. Additionally, she pointed out that the Mediterranean Sea had become one of the most important routes for transit of cannabis, cocaine and heroin and it was a matter of urgency to create an agency which would collect and analyse the information coming from all the countries concerned with such offence. Indeed, from 2006 to 2008 the French navy and customs have indicated having intercepted thirteen high-speed boats transporting a total of 7.5 tons of drug, but they recognized it to be only a small

⁹⁷ REUTERS BOURSIER.COM, *Création d'un centre de coordination anti-drogue en Méditerranée*, 24 September 2008, 17 May 2018, available online.

amount respect to what they estimated to circulate in the entire Mediterranean. Equally the Spanish Minister of Interior, Alfredo Perez Rubalcaba, remarked how both France and especially Spain at that time were privileged drug traffic centres because of their geographical position. Already in 2008, half of trafficked hashish passed through Spain and this only highlighted the urgency of facing this phenomenon.

Then, the *arrêté* of 31 December 2008⁹⁸, composed of four articles, provides the legal basis for the formation of CECLAD-M. According to the Article 1, CECLAD-M has the mission of contributing in the fight against the illicit drug traffic in the Mediterranean, both by sea or air, and improving sharing information with other antidrug agencies placed on the national territory or abroad. In order to better comply with its purpose, Article 1 also specifies the tasks that CECLAD-M must perform. First, it must reinforce the exchange of information between participant countries; Second, it must centralize and analyse all the information available transmitted by the collaborating agencies; Third, once complied with the second task, it shall transmit to these agencies the useful information to progress with their investigations. Above all, CECLAD-M shall help identifying and tracking down drug criminals and commanding operations to stop and seize suspicious vessels or airplanes transiting over the Mediterranean area. Finally, CECLAD-M shall identify the services in charge of intercepting operations.

The last three articles are concerned in assessing jurisdiction in the various functions of the agency. Article 2 establishes that the administrative and functional operation management is under the authority of the General Director of the French police. Article 3, instead, declares that all the services in charge of issuing action at the sea are under the authority of the Port Admiral, the representative of National Gendarmerie and customs, as well as the Officers which represent agencies of foreign police forces and international organizations concerned with the topic of fight against the illicit drug traffic. Finally, article 4 requires that the General Directors of French police, of the National Gendarmerie and of customs and indirect rights to implement and oversee the execution of the Decree of 31 December 2008 in their respective areas of concern.

The headquarters have been placed in the naval base of Toulon, France, where twenty or more people from the Ministry of the Interior, Customs and National Marine collaborate under the authority of the Port Admiral⁹⁹. Michèle Alliot-Marie, at the time of CECLAD-M's creation, justified the choice of Toulon by the fact that its port was the centre of the main routes and networks that transfer drugs across the West Mediterranean. Such common interest of fighting drug trafficking between the

⁹⁸ *Arrêté* of 31 December 2008, bringing to the formation of a coordination centre for the anti-drug fight in the Mediterranean, NOR: IOCC0828637A (hereinafter French Decree 31 December 2008).

⁹⁹ As already specified in Art. 3 of the French Decree of 31 December 2008.

Mediterranean countries is the main reason that brought to the formation of CECLAD-M, evidencing that international collaborations starts better at regional level between the nations facing the same kind of problems and, then, eventually including other countries.

2.3. JOINT OPERATIONS

Since I have just resumed the most active and important agencies in the fight of illicit drug traffic in the Mediterranean and outlined in the first chapter the laws and norms that cover this matter, I now consider opportune and very useful to present few examples of joint operations to see how the agencies have collaborated, always in respect of the international and national law.

As first example, I will talk about the operation known as LIBECCIO INTERNATIONAL executed on 15 October 2015. It was an international operation led by Italy and closely supported by France, Spain and EUROPOL. The suspected vessel (in this case merchant in type) was recorded within the name of *Jupiter* in the Cook Islands, but on board the crew was formed of different nationalities.

The Operation was launched by the Guardia di Finanza and DCSA, closely supported by the French OCTRIS-DCPJ and CECLAD-M, Spanish Guardia Civil and Europol. On the evening of 26 September 2015, the vessel was located by the air and naval forces of the Italian Guardia di Finanza, assisted by a Spanish Guardia Civil aircraft. After boarding and securing the vessels, the members of the Guardia di Finanza arrested 10 Syrian citizens, while six Indian citizens were taken into custody for further investigations¹⁰⁰. In conclusion of the operation at the sea, the police authorities in charge escorted the vessel to the Port of Cagliari, Sardinia. The boarding of the vessel took place in compliance with Article 17 of the U.N. Convention against Illicit Traffic in Narcotic Drugs of 1988. “After long and extremely complex search activities carried out by the Gruppo Operativo Antidroga, Counter Narcotics Unit of the Guardia di Finanza (Nucleo di P.T. di Cagliari), the enormous illegal load was found skilfully stashed in a large false bottom under the hold of the vessel with its only access hidden by hundreds of tonnes of granite being used as legal cargo”¹⁰¹. In total, there were found over 20 tons of cannabis resin.

French OCRTIS representatives played an important role of assistance during the investigative stages. Indeed, their work was essential to the discovery of the illegal activity behind the shipment. EUROPOL, Guardia di Finanza (Nucleo di P.T. di Palermo) and other specialist tools, on the other hand, provided essential intelligence analysis services, such as “facilitating the exchange of

¹⁰⁰Unclassified Report of EUROPOL, of 6 April 2016, regarding Europol’s Contribution to the United Nations General Assembly Special Session (UNGASS 2016) on the World Drug Problem, p. 7.

¹⁰¹ *Ibid.*

intelligence between the key countries and the subsequent criminal intelligence analysis, hosting and financially supporting operational meetings and providing on-the-spot support”¹⁰².

The success of the mission has to be attributed also to the joint operation cooperation frameworks, which has facilitated the constant monitoring of the drugs shipment along its journey and enabled to implement the most effective planning. Moreover, all the above-mentioned law enforcement authorities have invested their own resources, expertise and strengths.

As second example, I will explore the operational procedure implemented by FRONTEX since the launch of Operation Triton. It started since November 2014 and formally substituted the previous operation called Poseidon. Its primary focus is border control and surveillance, but search and rescue remain a priority too. Within Triton more forms of cross border crimes have been included into its focus and now the assets deployed, which are all under the command of the Italian Ministry of Interior, increasingly contribute to the detections of drug smuggling, illegal fishing and maritime pollution. The operational area of Triton covers the territorial waters of Italy as well as parts of the search and rescue (SAR) zones of Italy and Malta. It stretches 138 nautical miles (hereinafter called NM) from South of Sicily. 26 EU countries (only Cyprus and Ireland do not participate) with Switzerland and Norway all take part in operation Triton by deploying either technical equipment or border guards.

The operational activities come from the maritime patrolling of the air-naval police forces at the sea. With Madia Reform¹⁰³, in force since the first January 2017, all the Guardia di Finanza’s forces used in this respect have been unified in one single unit. Usually the operational activity is set out with the Offshore Patrol Vessel placed beyond 70 NM, whose purpose is to provide support to the external borders and to the Coastal Patrol Boat. Given the reduced dimension, the latter remains within 12NM from the coast and it is used for the latter stages of hot pursuing or patrolling specific areas of interest. Between the two assets, a Coastal Patrol Vessel is placed. Because of its high speed, it is called to collect cargos of psychotropic substances (or immigrants intercepted at the sea) or to function as barrier during hot pursuing. In other situations, also the Offshore Patrol Vessel can be called to exercise these functions. All the relevant information regarding the phases I just described are gathered and sent by a Fixed Wing Aircraft, while one helicopter guides the maritime police forces at the vessel of interest and oversees the interception.

Intelligence agencies such as MAOC(N), INTERPOL, EUROPOL and similar constantly cooperate with FRONTEX by analysing and reporting into a list all vessels which appear to be suspicious.

¹⁰² *Ibid.*

¹⁰³ Italian Law No. 124/2015 of 13 August 2015, regarding delegations to the government in subject of ri-organization of the public administration.

The abovementioned procedure provides the best coordination between all the agencies involved and a better patrolling of the external borders. In the last reported mission, they have been seized 29,910 kg of marijuana and 350 kg of pure cocaine that brought to the arrest of 27 members of the crew. Unfortunately, further details cannot be published for security reasons.

The efficient cooperation between these agencies would not have been possible without the regional agreements made along the years, and it can still improve if the states concerned with this phenomenon continue to strengthen regional collaboration and be open to extend it also to other countries of the rest of the world.

Conclusions

Throughout this analysis, it was possible to see the great improvements have been done along the years in setting better international norms for the fight against the illicit drug traffic. Article 108 UNCLOS remains very general and creates not few doubts in conferring jurisdiction when facing drug offences. Article 110 UNCLOS is definitely more effective in granting right to visit to countries having *reasonable grounds* to suspect that a vessel is engaged in illicit traffic, but the only legal ground that could be used in this framework is whenever regarding stateless vessels. The Single Convention on Narcotic Drugs 1961 (as amended in 1972) represented an important step forward since it was one of the first treaties completed committed to the fight of drug abuse, yet it did not prescribe specific procedure in overlapping jurisdiction or grant further powers to the countries in with the aim of stopping drug trafficking in areas out of their legislation. Their shortcomings were discussed and partially corrected by Article 17 of the Vienna Convention 1988, which remains, at the moment, the most advanced form of global collaboration against the illicit drug traffic. Nevertheless, the limits of these international treaties are evident, and they are mainly two. First, they are incapable in assessing mandatory jurisdiction, such as in Article 17 Vienna Convention 1988 as duly referred in section 1.1.3. Second, they remain too general in prescribing how to intervene and whose jurisdiction is prevailing. Consequentially, States' jurisdiction is easily undermined by legal technicalities.

In my opinion, two are the possible ways that might be taken in order to further improve anti-drug traffic norms having transnational dimension.

The first way might be reached using two means. On one hand, drug smuggling could be recognized as part of universal crimes. Thanks to this, drug offences would have universal jurisdiction and any State could enforce their law whenever they retain duly right, without needing any additional discussion. Some scholars think we already are on this direction, but only time will tell if it ever happens. On the other hand, all states could modify already existing international treaties on this

matter or properly negotiate new ones which would, first, specify and require detail procedure of intervention in order to prevent issues of different nature (such as regarding overlapping jurisdiction or because authorisation was not given in a written form like in *Regina v. Charrington and Others*). Second, they would confer more freedom of action to States that want to intercept suspicious vessels, by granting the possibility of boarding them before receiving the proper authorisation from the Flag State, as in the case of the Bilateral Treaty between Spain and Italy. Just likely Article 6 of the beforementioned agreement, the Flag State may call out its sovereignty over the case before the deadline expire, otherwise jurisdiction will be deemed to have been renounced. However, either mean just listed might be hard to achieve, especially in the short run, because countries are not willing to approve global laws that would result in strictly binding them. Moreover, it shall be noted that during negotiations of international treaties drafters must combine the different interests of all participating states, which do not always concede.

For this reason, I personally think that the second way I suggest for improving the fight against the illicit drug traffic might be more accessible and efficient. As we saw in the Mediterranean, states belonging to more specific regional collaborations are more willing to give up to some of their sovereignty or to agree to more binding rules of procedure since they often share the same type of threats and consequences coming from drug offences. The CoE Agreement 1995, for example, not only implemented the norms of Article 17 of the Vienna Convention 1988, but also tried to eliminate its shortcomings by defying and duly provide specific procedures for all common scenarios that could occur in the interception of vessels on the high seas engaged in illicit drug traffic. Thanks to the closeness of the countries involved, it was possible to create several anti-drug agencies which work both at national and international level, strengthening and improving cooperation among states every year more. In my opinion, by creating and developing always more regional collaborations, it will be easier to detect countries' common interests in the fight against illicit drug traffic and, consequentially, improve its norms and practices at global level.

Although the practical application of any of my suggestions might result difficult, there is no doubts that any form of further international collaboration is absolutely necessary because drug trafficker have already developed global network for the illicit drug traffic, and if states think they can fight it by their own, they will come out defeated.

Bibliography

- M. ANDERSON, *Policing the World: Interpol and the Politics of International Police Cooperation*, Oxford, Oxford University press, 1989.
- A. BELLAYER-ROILLE, *La Lutte contre le Narcotrafic en Mer Caraïbe : une coopération internationale à géométrie variable*, in *Revue Générale de Droit International Public*, 2007.
- N. BOISTER, *An Introduction to Transnational Criminal Law*, Oxford, Oxford University press, 2013.
- R. BOIVIN, *Drug Trafficking Networks in the World-Economy*, in *Crimes and Networks*, 10, 2013.
- C. CHATWIN, *Multi-level governance: The way forward for European illicit drug policy*, in *International Journal of Drug Policy*, 18, 2007.
- F. CILLUFFO, *The Threat Posed from the Convergence of Organized Crime, Drug Trafficking, and Terrorism*, in *Center for Strategic & International Studies*, 2000.
- V. DELICATO, *Maritime Security and The Fight Against Drug Trafficking in The Mediterranean And Atlantic Approaches*, Washington, German Marshall Fund of the United States, 2010.
- W. C. GILMORE, *Drug Trafficking at Sea: The Case of R. v. Charrington and Others*, in *International and Comparative Law Quarterly*, XLIX, 2000.
- W. C. GILMORE, *Narcotics interdiction at sea: The 1995 Council of Europe Agreement*, in *Marine Policy*, 1996.
- N. KLEIN, *Maritime Security and the Law of the Sea*, Oxford: Oxford University Press, 2011.
- J. KRASKA, R. PEDROZO, *International Maritime Security Law*, Boston, Leiden: Martinus Nijhoff, 2013.
- R. McLAUGHLIN, *Authorisations for Maritime Law Enforcement Operations*, in *International Review of the Red Cross*, 98, 2016.
- E. PAPASTAVRIDIS, *The Interception of Vessels on the High Seas: Contemporary challenges to the legal order of the Oceans*, Oxford, Portland Or:Hart, 2013.
- E. PAPASTAVRIDIS, *Enforcement Jurisdiction in the Mediterranean Sea: Illicit Activities and the Rule of Law on the High Seas*, in *Int'l J. Marine & Coastal L.* 2010.
- E. PAPASTAVRIDIS, *'Fortress Europe' and FRONTEX: Within or Without International Law?*, in *Nordic Journal of International Law*, 79, 2010.

- V. PUJAS, *The European Anti-Fraud Office (OLAF): a European policy to fight against economic and financial fraud?*, in *Journal of European Public Policy*, 2003.
- K. ROBERTSON, *The European Monitoring Centre for Drugs and Drug Addiction in European Journal on Criminal Policy and Research.*, 1998.
- I. A. SHEARER, *Problems of Jurisdiction and Law Enforcement against Delinquent Vessels*, in *The International and Comparative Law Quarterly*, 35, 1986.
- W. SIPP, *Co-operation group to combat drug abuse and illicit trafficking in drugs (Pompidou group)*, in *The Council of Europe: its law and policies*, Oxford, Oxford University Press, 2017.
- P. J.J. VAN DER KRUIT, *Maritime Drug Interdiction in International Law*, Utrecht, Utrecht University Repository, 2007.
- T. B. VAN SOLINGE, *Drug Use and Drug Trafficking in Europe*, in *Tijdschrift Voor Economische en Sociale Geografie*, 89, 2003.
- P. WILLIAMS, *The Nature of Drug-Trafficking Networks*, in *The Nature of Drug-Trafficking Networks*, 97, 1998.

Riassunto

Lo Stato, ricoprendo il ruolo di più alta autorità sovrana di un territorio ben definito, ha il dovere di garantire l'ordine pubblico, far rispettare la legge e, eventualmente, punire coloro che non la rispettano. Tuttavia, la lotta contro la criminalità è un'impresa dura e piena di difficoltà, specialmente quando il crimine che si vuole punire viene commesso al di fuori del territorio sovrano. Tale problema di giurisdizione è Stato oggetto di discussione in molte negoziazioni le quali, infine, hanno portato alla creazione di trattati e accordi internazionali provvedenti le necessarie basi legali per intervenire, almeno, quando vengono commessi i crimini più gravi. In questa tesi, ho deciso di analizzare le normative realizzate per far fronte al traffico illecito di droga, un crimine diffuso in tutto il mondo ma che ancora oggi manca di solide fondamenta per combatterlo a livello internazionale.

Il narcotraffico non è solo riferito al traffico illegale di sostanze stupefacenti, ma comprende anche la coltivazione, produzione, distribuzione e vendita di tali sostanze. Oggi più che in passato, il narcotraffico ha assunto una dimensione transnazionale, motivo per cui è Stato necessario ampliare le normative internazionali che lo regolano e intensificare la collaborazione tra i vari Stati. Data la vastità del tema, concentrerò la mia analisi sulle leggi e le unità operative che affrontano il traffico illegale di cannabis nel Mar Mediterraneo, dato che tale droga è principalmente trasportata via mare e il livello di collaborazione degli Stati di quest'area (soprattutto tra gli Stati europei) è da considerarsi tra i migliori nel campo internazionale. All'inizio, affronterò il tema considerando le normative che regolano il narcotraffico a livello internazionale, poi a livello europeo, per infine completare il quadro con le unità operative attive sulla zona mediterranea e delle procedure applicate per compiere operazioni antidroga.

Tra gli accordi più importanti che hanno affrontato per primi il tema del narcotraffico c'è la Convenzione delle Nazioni Unite sul Diritto del Mare emendato per l'ultima volta nel 1982 (in seguito "la Convenzione ONU 1982"). Sebbene solo generalmente, l'articolo 108 della Convenzione ONU 1982 richiede, prima di tutto, che tutti gli Stati collaborino quando il traffico illecito va contro le normative delle convenzioni internazionali. Inoltre, specifica nel secondo paragrafo che gli Stati dovrebbero dare assistenza nel sopprimere tale traffico se lo Stato di bandiera della nave in questione ha prove sufficienti per credere che sia implicata in crimini di droga. Ovviamente, il carattere vago dell'articolo 108 lascia poco spazio d'intervento in altri casi che non siano quello citato nel paragrafo due. Ragion per cui gli Stati agiscono per lo più in conformità all'articolo 110 della Convenzione ONU 1982, il quale governa il diritto di visita nelle acque internazionali. Tuttavia, nessuna delle disposizioni elencate conferisce giurisdizione d'intervento nel caso specifico del narcotraffico e l'unico caso in cui gli Stati potrebbero intervenire in tal senso al di fuori del loro territorio nazionale

è quando le navi sospette non battono bandiera di nessun paese. Ciò nonostante, anche nel caso in cui i trafficanti di droga viaggiassero su un vascello senza nazionalità dando la possibilità di visitarlo, non è detto che lo Stato interventista possa incriminare l'equipaggio e, di conseguenza, far valere la sua giurisdizione. Infatti, avere la giurisdizione per intervenire e far rispettare la propria legge su un vascello che si trova al di fuori del proprio confine sovrano sono temi che ricadono in ambiti diversi, come specificato dalla sentenza della Corte di Cassazione Italiana del primo febbraio 1993 nel caso *Fidelio*. Nel caso delle acque internazionali, gli Stati possono far valere la propria legge se in conformità a un trattato internazionale o perché il crimine commesso ha giurisdizione universale. Riguardo al narcotraffico, dato che nessuno delle due è applicabile, si discute se il consenso dello Stato di bandiera è una condizione sufficiente per far valere la legge dello Stato che interviene. Solitamente, lo Stato di bandiera non reagisce in questi casi, ma di principio è colui che ha priorità. Questo problema di giurisdizione è stato rimarcato nel caso *Medvedyev e Altri v. Francia* del 2010, il quale è molto significativo perché, prima di tutto, evidenzia che gli Stati europei non possono sopprimere il narcotraffico se così facendo violano le norme della Convenzione Europea sui Diritti Umani e, secondo, sottolinea che le norme contro tale attività criminale mancano di diritto consuetudinario e di trattati bilaterali e internazionali più specifici che evitino problemi di giurisdizione.

Già prima del caso *Medvedyev*, si era affrontato questo problema e molte negoziazioni furono fatte per trovare una soluzione. La Convenzione Unica sugli Stupefacenti del 1961 (emendata nel 1972) fu fatta specificatamente per affrontare il fenomeno di traffico illecito di stupefacenti, ma anche per regolarizzare a livello globale la produzione di droghe e la riabilitazione degli individui che hanno abusato di tali sostanze. Con questo scopo, è riuscita a incrementare il controllo sulle piante stupefacenti, le normative che regolano l'uso di sostanze particolarmente pericolose (come l'eroina), i controlli sulle esportazioni e importazioni e rafforzato le norme già vigenti sulla produzione, commercio e distribuzione di tali droghe. In questo frangente, l'articolo 35 e 36 richiedono di fare uso di azioni penali nei confronti di individui che commettono reati collegati alla droga, come l'immediata confisca di tali sostanze e l'incarcerazione dei colpevoli. In ogni caso, anche la Convenzione Unica sugli Stupefacenti del 1961 (emendata nel 1972) lascia gran spazio di manovra agli Stati segnatari, i quali hanno assunto le proprie politiche antidroga non necessariamente uguali le une con le altre.

Il vero punto di svolta arriva con la Convenzione di Vienna del 1988, il quale contiene specifiche per visitare un vascello che batte bandiera straniera. L'articolo che più ci interessa è il 17, che regola il traffico illecito in mare. Mentre i primi due paragrafi richiamano le stesse norme dell'articolo 108 della Convenzione ONU 1982, il terzo paragrafo permette di intervenire su una nave di nazionalità

diversa se dovutamente autorizzati dallo Stato di bandiera. Questa significa che è totalmente a discrezione dello Stato di bandiera decidere se e quando autorizzare un'altra parte ad intervenire su un suo soggetto. Inoltre, lo stesso articolo permette non solo di visitare il vascello, ma di intraprendere azioni penali contro i colpevoli nel caso lo Stato di bandiera lo autorizzasse specificatamente. Ciò nonostante, anche nel caso della Convenzione di Vienna 1988 potrebbe risultare un conflitto di giurisdizione, dato che l'articolo 4 della stessa non esclude che lo Stato di bandiera possa applicare la sua legge nel caso autorizzi un'altra parte a intervenire. Certamente, la logica ci porta a pensare che in tal caso è lo Stato di bandiera ad avere priorità di giurisdizione, ma è sicuramente una grave mancanza non averlo specificato per iscritto.

Se in conformità con le sue norme, gli Stati possono agire liberamente nella soppressione del narcotraffico in acque internazionali, come nel caso di *Rigopoulos v. la decisione della Spagna* del 1999. Tuttavia, non mancano alcune incomprensioni di interpretazione dell'articolo 17, come fu evidente nel caso *Regina v Charrington e altri* del 1999. In particolare, la mancanza di una prova scritta dell'autorizzazione a intervenire, l'inesattezza del contenuto di tale richiesta e l'utilizzo di barche non contrassegnate ad essere al servizio dello Stato hanno portato a giudicare l'intera operazione avvenuta in *mala fides*, ossia illegale.

Per questo motivo, sarebbe necessario sviluppare ancora più a fondo le norme e le procedure che regolano le operazioni antidroga. Sfortunatamente, questo spesso risulta difficile a compiersi a livello internazionale perché durante queste negoziazioni bisogna prendere in considerazione gli interessi specifici degli Stati partecipanti. Inoltre, l'efficacia di tali trattati è spesso compromessa perché importanti nazioni come gli Stati Uniti hanno a volte evitato di ratificare alcuni dei trattati in cui avevo partecipato, come ad esempio la Convenzione ONU del 1982. Di conseguenza, le collaborazioni regionali possono risultare molti più efficienti perché raccolgono i paesi che affrontano simili realtà e problemi. I paesi europei, ad esempio, hanno lavorato molto intensamente per aumentare la loro collaborazione, soprattutto per far fronte ai due principali flussi di droga provenienti dal Marocco e dall'Albania.

L'accordo del Consiglio Europeo del 1995 è sicuramente il modo più efficace per ratificare le normative dell'articolo 17 della Convenzione di Vienna 1988 e per limitarne i difetti. Infatti, gli autori dell'accordo hanno fatto in modo di definire tutte le possibili reazioni degli Stati da intraprendere negli eventuali scenari che si possono presentare nell'intercettare una nave sospettata di trasportare droga. Nel dettaglio, secondo l'articolo 4 paragrafo 1, uno Stato può richiedere ad un altro di intercettare una nave sospetta se questa batte la propria bandiera o di una nave senza nazionalità, come specificato nell'articolo 5 paragrafo 1. In entrambi i casi, agli Stati viene richiesto di utilizzare i propri mezzi nell'intervento. Però, il punto che è più rivoluzionario è l'articolo 3 che richiede, *inter*

alia, agli Stati partecipanti di provvedere a normative legislative nazionali che creino la base giurisdizionale necessaria per applicare la propria legge non solo sui vascelli della propria nazionalità, ma anche su quelli appartenenti agli altri membri, risolvendo molti dibattiti e critiche fatte nei confronti della Convenzione di Vienna 1988. Ovviamente, questo provvedimento può essere esercitato solo in conformità all'Accordo del Consiglio 1995 e, quindi, rimane confinato all'Europa. Questo, insieme all'articolo 4 dichiarante che lo Stato di bandiera può autorizzare un altro Stato di prendere le misure necessarie contro i criminali quali siano arresto e incarcerazione, permette agli Stati partecipanti di applicare efficacemente la propria legge anche su vascelli stranieri.

Riguardo a intercettare vascelli di nazionalità diversa, l'articolo 6 stabilisce che nessun intervento dovrebbe avvenire senza la dovuta autorizzazione dallo Stato di bandiera, e tale richiesta la si può fare sia per le navi che commettono il crimine sia se solo usate per tale scopo, in modo da non tralasciare i casi in cui la nave madre scarica la merce illegale su altro mezzo. Tuttavia, la richiesta deve includere tutti i dettagli che sono stati trovati durante l'investigazione e assicurare che lo stesso tipo di misura sarebbe stata effettuata se il vascello in questione fosse appartenuto allo Stato interventista. Lo Stato di bandiera può rifiutare l'autorizzazione adducendo, tra le varie motivazioni, la presenza di elementi che possano mettere in pericolo la sicurezza del vascello, del suo carico e degli interessi commerciali con altri Stati.

Sempre per evitare gli stessi errori commessi nella Convenzione di Vienna 1988, fu deciso, con il Gruppo Pompidou, di accordare la priorità di giurisdizione allo Stato di bandiera, principio definito come "giurisdizione preferenziale". A questo riguardo, l'articolo 15 richiede il completo trasferimento del vascello, del carico, delle persone e delle prove concernenti il caso. Solamente nella circostanza in cui le persone perseguite rischiano la pena di morte nel loro paese per aver commesso crimini di droga, lo Stato interventista può rifiutarsi di consegnare gli individui. Questo provvedimento fu preso perché l'Accordo del Consiglio 1995 non è limitato agli Stati appartenenti all'Unione Europea, ma è aperto ugualmente ad altri paesi.

Per aumentare l'efficacia di questa cooperazione regionale, l'Unione Europea ha costruito due infrastrutture legate ai suoi trattati. La prima è il Gruppo di Cooperazione per Combattere l'Abuso di Droga (o più comunemente conosciuto come il Gruppo Pompidou) e il secondo è l'agenzia FRONTEX.

Il Gruppo Pompidou è la prima organizzazione collaborativa per la cooperazione intergovernamentale, ed è regolato dalla risoluzione del Comitato dei Ministri del 27 marzo 1980, un accordo parziale legato al Consiglio dell'Europa. Il gruppo è un forum informale dove specialisti antidroga si incontrano periodicamente per scambiarsi strategie e informazioni in modo da migliorare la lotta contro i crimini di droga. All'inizio comprendeva solo sette paesi, la Francia, Germania, Italia,

Belgio, Lussemburgo, i Paesi Bassi e il Regno Unito, ma ora comprende trentotto Stati membri, tra cui quattro non-europei. Grazie alla sua composizione, il Gruppo Pompidou è Stato pioniere di nuove pratiche che hanno ridotto notevolmente il narcotraffico e riabilitato le persone dipendenti, come con l'iniziativa *European Drug Prevention Prize* del 2004.

L'agenzia FRONTEX (ufficialmente conosciuta come l'agenzia di Guardia di Frontiera e Costiera Europea) fu introdotta la prima volta con il regolamento del Consiglio 2007/2004 del 26 ottobre 2004, ma fu abrogato dal regolamento del Consiglio 2016/1624 del 14 settembre 2016 istituendo un nuovo tipo di agenzia. L'opinione pubblica ritiene che lo scopo principale di FRONTEX sia di controllare i flussi migratori e eventualmente recuperarli dal mare, ma in realtà la sua missione è più ampia e comprende di promuovere, coordinare e sviluppare la gestione dei confini europei in conformità con i diritti fondamentali dell'Europa e il concetto di *Integrated Border Management*. Questo implica che FRONTEX è tenuta a intervenire per sventare possibili future minacce ai confini europei che possano, inoltre, contribuire ad accrescere attività criminali di tipo transnazionale, come ad esempio il narcotraffico.

A completare il quadro legale europeo vi è il trattato bilaterale tra il Regno di Spagna e la Repubblica Italiana del 23 marzo 1990 per la repressione del traffico illegale nel mare. Non a caso, questo trattato è stato fatto tra i due paesi europei che più sono colpiti dalle attività di narcotraffico del Marocco e dell'Albania e, di conseguenza, hanno trovato necessario sviluppare una cooperazione superiore, almeno per quanto riguarda i vascelli di nazionalità spagnola e italiana. Il punto distintivo di questo trattato è l'articolo 6 che permette di intercettare un vascello sospetto senza richiedere precedentemente l'autorizzazione allo Stato di bandiera. Dopo tale operazione, lo Stato di bandiera può reclamare la propria giurisdizione sul caso entro 60 giorni, termine oltre il quale tale giurisdizione è automaticamente persa. Questo provvedimento è sicuramente uno dei passi più importanti che sono stati fatti per aumentare il controllo di attività criminali tra le acque che dividono la penisola iberica e quella italiana, e dovrebbe considerarsi un modello da imitare.

Per quanto concerne le unità operative che sono nate da questi accordi regionali, le più importanti agenzie che lavorano sulla zona mediterranea sono sicuramente il Centro Operativo Narcotici e di Analisi Marittima (MAOC(N)), la Commissione Europea e l'ufficio Antifrode Europeo (OLAF), l'INTERPOL, Direzione Centrale Servizi Antidroga (DCSA) e il Centro di Coordinamento della lotta Antidroga nel Mediterraneo (CECLAD-M). MAOC(N) è probabilmente l'agenzia più attiva nello smantellare i traffici di droga europei e il centro operativo dove passa la maggior parte dell'informazione dell'intelligence europea. Il suo efficiente lavoro è possibile grazie ai forti legami che possiede con le altre agenzie nazionali dell'Europa, con le quali ha anche sviluppato molti programmi antidroga. OLAF è un ufficio della Commissione Europea incaricato di prevenire e

proteggere l'Unione dai crimini finanziari. Dato che i trafficanti di droga sono tenuti a riciclare il proprio denaro in modo da nascondere le loro attività illecite, spesso OLAF si è ritrovato a collaborare con le agenzie antidroga. Tale collaborazione è risultata efficiente perché OLAF possiede la giurisdizione sufficiente per lavorare sul territorio europeo, anche se a volte è stata criticata per essere troppo dipendente dalla Commissione. L'INTERPOL è la sola organizzazione di polizia criminale che non è limitata all'ambito europeo. Per questa sua natura internazionale, l'INTERPOL può servire come intermediario tra gli Stati europei e i paesi del resto del mondo e, eventualmente, aiutare ad estendere la cooperazione delle agenzie europee ad altre organizzazioni della stessa tipologia. Di conseguenza, aiuterebbe a sviluppare i provvedimenti antidroga internazionali che ancora adesso rimangono troppo vaghi e impediscono di punire a dovere i colpevoli. La DCSA, invece, è un centro operativo antidroga italiano. È un perfetto esempio di come l'intensificarsi delle relazioni diplomatiche ha permesso ad agenzie nazionali di cooperare con organizzazioni che lavorano al di fuori del loro territorio, estendendo di conseguenza le loro competenze e attività. Ovviamente, la DCSA non può ancora operare al di fuori del contesto mediterraneo, ma future relazioni con paesi non-europei porteranno ad aumentare l'area d'intervento di questa agenzia. Infine, la CECLAD-M è il prodotto di un seminario avuto luogo a Tolone, Francia, nel 2008 tra i rappresentanti di ventidue paesi mediterranei, riunitisi per fronteggiare il preoccupante aumento delle attività di narcotraffico in quell'area. La formazione di questa agenzia è una prova che le collaborazioni internazionali cominciano meglio a livello regionale, dove i paesi si raccolgono per fronteggiare minacce comuni. Alla fine di questa analisi, ritengo di aver raggiunto le competenze necessarie per proporre due possibili sentieri che si potrebbero intraprendere per sviluppare ulteriormente i provvedimenti internazionali concernenti la lotta contro il narcotraffico. La prima possibilità è da intraprendere a livello globale. Da una parte, il traffico illecito di stupefacenti potrebbe essere riconosciuto come parte dei crimini con giurisdizione universale, come lo sono ad esempio il genocidio o i crimini di guerra. Dall'altra, gli Stati di tutto il mondo dovrebbero negoziare nuovi trattati per conferire maggiori libertà ai paesi che vogliono intercettare vascelli stranieri su acque internazionali, seguendo come modello i principi elencati nel trattato bilaterale tra la Spagna e l'Italia. Ciò nonostante, prendere questa via potrebbe richiedere molto tempo prima che gli Stati accettino di limitare il proprio potere sovrano per un bene comune.

Per questa ragione ritengo la seconda opzione più valida e accessibile a breve termine. L'esempio del Mediterraneo ha dimostrato che gli Stati sono più disposti a rinunciare a parte della propria giurisdizione per collaborare con Stati che affrontano lo stesso tipo di minacce. Questo non solo ha permesso di concludere trattati più specifici, ma anche di creare unità operative che lavorano su tutto il territorio e scambiano costantemente informazioni e strategie. Di conseguenza, sarebbe auspicabile

sviluppare queste collaborazioni regionali fino ad estenderle ad altri paesi, come nel caso del Gruppo Pompidou, fino a raggiungere una collaborazione globale.

Sebbene le mie conclusioni siano di difficile realizzazione, non ci sono dubbi che ulteriori sviluppi in questo ambito siano assolutamente necessari, dato che i moderni traffici di droga sono intensamente organizzati a livello globale. Se gli Stati credono di essere in grado di smantellarli da soli, ne usciranno sconfitti.