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justice and security

**EFFECTIVE COOPERATION
AND JURISDICTION IN RELATION
TO ILLICIT TRAFFICKING
IN THE ATLANTIC AND
CARIBBEAN SEA**

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SUMMARY OF THE DELIVERABLE

This deliverable systematically analyses the **scope and practical application of the national and international rules** that confer **criminal jurisdiction in extraterritorial Atlantic waters** in relation to **maritime drug trafficking**, with special attention to the **Caribbean** and cooperation with existing cooperation agencies—the **Maritime Analysis and Operations Centre - Narcotics (MAOC-N)** and **Caribbean Community Implementation Agency for Crime and Security (CARICOM IMPACS)**, among others. Based on this analysis, a number of practical issues were identified, for which various solutions and best practices have been proposed.

The substantive framework of the work is located in (i) the basic principles of the **United Nations Convention on the Law of the Sea the Law of the Sea (UNCLOS, 1982)**; (ii) the **1988 Vienna Convention (in particular, Article 17)**; (iii) developments of **regional conventions of interest** (Council of Europe Agreement of 1995; **Treaty of San José, 2003**; and **Regional Security System (RSS), 1996**); (iv) an analysis of the **existing bilateral agreements** (Spain–Italy, 1990; Spain–Portugal, 1998; **Shiprider US –Caribbean**); and (v) mapping of the rules of comparative **domestic law** in key states (major players in the EU/Caribbean/ US).

At the **institutional** level we examined the role of **MAOC-N** in its efforts to minimise bureaucracy and maximise operational activity through the presence of liaison officers, as well as **CARICOM IMPACS**, primarily with the creation of the Regional Intelligence Fusion Centre (RIFC), and **Operation Orion, successfully carried out in Colombia**. **Similarly, we conducted an in-depth examination of the main practical challenges and issues identified: flags of convenience and lack of response** from the flag State; **stateless vessels (narcolanchas—drug-smuggling speedboats—and semi-submersibles)**; **regulatory shortcomings in the mandates** of police/military/customs units and the use of force; **costs and logistics** of arrests on the high seas; and **problems with transatlantic judicial coordination**.

The main conclusions are as follows:

Fragmented regulation and spaces of impunity. Even with UNCLOS (1982) and Article 17 of the Vienna Convention (1988), the exercise of criminal jurisdiction **on the high seas is uneven**, which can create spaces **of impunity**, particularly in relation to vessels from uncooperative third states or **stateless vessels**.

Insufficient legal treatment of stateless vessels. There is a prevailing **lack of adequate criminal provisions** in national legal systems regarding *narcolanchas* and **semi-submersibles**; a **minimum level of harmonisation** would enable action to be taken on a **key aspect** of maritime drug trafficking.

Inadequate regulation of the legal status of police and military officers on naval missions. Specific regulations on the **mandates of the judicial police** and **rules on the use of force** by state forces participating in maritime anti-drug trafficking missions must be established because their absence sometimes **reduces effectiveness** and hampers the prosecution of interdictions carried out on the high seas.

Proven value of the shiprider model. The experiences of the **Treaty of San José** and **shiprider** agreements demonstrates **greater effectiveness, accelerated decision-making, and legal certainty**, and so **their adaptation to other maritime areas may be of considerable utility**.

Insufficient judicial coordination. After interdiction, **judicial cooperation in criminal matters**, particularly between Caribbean and European countries, does not usually function effectively; it is therefore proposed that judicial liaison officers be established.

The need to take action against preparatory and facilitating acts. An exclusive focus on the discovery of **drugs on board hinders operational intervention**; the **classification** (with an **extraterritorial scope**) of **preparatory acts** and logistical **facilitation** (such as, for example, the use or possession of *narcolanchas*, **fuel stockpiling**, or provision of assistance on the high seas) would make it possible to bring forward **the point at which criminal-law protection is triggered, thereby hindering the impunity of organisations and criminal groups engaged in these activities**.



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CONTEXT

The growing complexity of transnational organised crime in the Atlantic region, particularly maritime drug trafficking, has strengthened the links between Latin America and the Caribbean, Europe, and other strategic regions such as West Africa. Multiregional maritime routes have become key hubs for these illicit activities, often exploiting **regulatory discrepancies** regarding the attribution and exercise of criminal jurisdiction in extraterritorial seas, which can create **spaces of impunity**. This situation poses significant challenges for justice and security systems and calls for coordinated responses.

In this context, this analytical study forms part of the objectives of EL PAcCTO 2.0 (the Europe–Latin America Programme of Assistance against Transnational Organised Crime), aimed at strengthening cooperation between stakeholders in the criminal justice systems of the European Union and Latin America and the Caribbean throughout the entire criminal justice chain. Although the analysis **focuses primarily on the Caribbean region**, given its strategic importance in Atlantic drug trafficking routes, the approach adopted is necessarily broader. For this reason, the study also examines the legislation and practices of the **key European players** with a presence and influence in the Atlantic Ocean, whether due to their geographical proximity and historical and cultural ties to the region, such as Spain and Portugal, or because they possess overseas territories in the Caribbean, such as France and the Netherlands. Furthermore, a specific reference to the legal framework of the **United States of America**, in its capacity as a key global player in the fight against illicit trafficking and as a central partner in maritime interdiction operations, has been included.

The main issue underlying this initiative lies in the need to systematically analyse the scope and practical application of national and international rules conferring criminal jurisdiction in extraterritorial Atlantic waters, as well as their impact on maritime interdiction operations and seizures on the high seas. Based on a comprehensive analysis of the applicable regulatory framework and the experience accumulated by judicial and operational authorities, shared during two working sessions held in Lisbon, **a number of recurring practical difficulties**

that States may face have been identified. On this basis, the report sets out a series of **recommendations and best practices** aimed at strengthening legal certainty and improving operational coordination.



REGULATORY LEGAL FRAMEWORK

As a necessary first step in undertaking this analytical study, it was essential to map out the current regulatory framework relating to the subject of the research so that the legal instruments applicable to these cases could be identified. To make the analysis clearer, this study was divided into four sections: We will begin by discussing the two key international treaties in the fight against drug trafficking at sea, followed by an analysis of the main conventions in force in Europe and the Caribbean. We will then examine the bilateral treaties in place in both regions and conclude with a brief comparative analysis of the domestic legal frameworks of the main state actors.

SECTION I: INTERNATIONAL TREATIES

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

The United Nations (UN) Convention on the Law of the Sea (UNCLOS; CONVEMAR in Spanish), was signed in 1982 in the city of Montego Bay. For most academics, UNCLOS constitutes the main source of law in the regulation of international maritime relations (Churchill R., 2016). It has been signed and ratified by a total of 167 UN member states, although the United States of America, Colombia, and Venezuela—three of the most significant state actors for the purposes of this analytical study—have not ratified it¹.

¹ Although the United States played a significant role in the UN conferences leading up to the signing of UNCLOS, it ultimately declined to sign it, primarily because of the proposed regulations governing the seabed and its economic exploitation. See: (Smith, L. H. (2017). *To accede or not to accede: An analysis of the current US position related to the United Nations Law of the Sea*. Marine Policy, 83, 184–193). Furthermore, Colombia signed the Convention but did not ratify it due to concerns that its accession might affect certain historical claims, particularly the one relating to the San Andrés and Providencia archipelago. See: VegaBarbosa, G., SerebrenikBeltrán, S. & AponteMartínez, M. C. (2018). *Colombia y la Convención de Naciones Unidas sobre el Derecho del Mar: análisis jurídico frente al dilema de la ratificación*. [Colombia and the United Nations Convention on the Law of the Sea: legal analysis against the dilemma of ratification.] *Revista Chilena de Derecho*, 45(1), 105–130). Similarly, the reasons why Venezuela did not sign or ratify the Treaty were historical claims over certain islands and reefs, and over exploitation rights. See: López, C. (2017). *Venezuela y el Derecho del Mar: razones de no adhesión a la Convención de las Naciones Unidas sobre el Derecho del Mar*. [Venezuela and the Law of the Sea: reasons for not acceding to the United Nations Convention on the Law of the Sea.] *Revista Venezolana de Derecho Internacional*, 12(2), 45–68

One of the fundamental principles enshrined in UNCLOS is the **assignment of a flag to every ship, which determines the vessel's nationality and, as a general rule, its subjection to the jurisdiction of the country whose flag it flies**. In this regard, Article 91 provides that each State must lay down the requirements for granting its nationality to ships and for their registration in a register within its territory; whereas Article 92 stipulates, with regard to the legal status of ships, that all ships must fly the flag of a single State. Consequently, Article 94 imposes obligations on States in relation to ships flying their flag, requiring them to exercise effective jurisdiction and control over administrative, technical, and social matters.

Types of waters according to UNCLOS

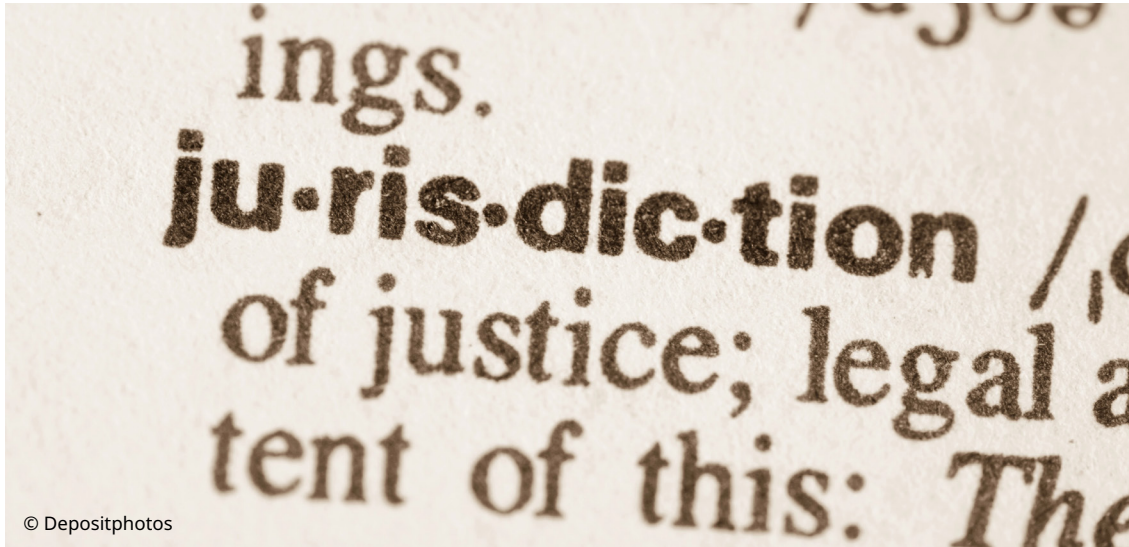
Alongside the establishment of the principle of jurisdiction based on the flag state, **UNCLOS distinguishes between different types of waters, each subject to different legal regimes**. If we exclude inland waters – that is, waters located within the territory of a state – from the study and focus on maritime waters, we can distinguish between the following types:

- *The territorial sea*: is the strip of water extending up to a maximum of twelve nautical miles from a baseline which, as a general rule, is measured from the low-water line along the coast. The coastal State exercises full sovereignty in its territorial sea (Article 2). However, it should be noted that the exercise of such sovereignty cannot be regarded as absolute and unlimited but rather, is always subject to the provisions of the Convention and other rules of international law.

With regard to these factors affecting the exercise of sovereignty in the territorial sea, two key limitations must be borne in mind for the purposes of this work: firstly, the **right of innocent passage**² through territorial seas is recognised for vessels of all states (Article 17). Secondly, Article 27 **limits the coastal State's potential exercise of criminal jurisdiction** on board a foreign vessel to the following cases:

- Where the offence has consequences for the coastal State;
 - Where the offence is of such a nature as to be likely to disturb the peace of the country or the good order of the territorial seas;
 - Where the master of the ship or a diplomatic agent or consular officer of the flag State has requested the assistance of the local authorities;
 - Where such measures are necessary for the suppression of illicit trafficking in narcotic drugs or psychotropic substances.
- The *contiguous zone*: is the zone extending a further twelve nautical miles from the territorial sea, such that it may not extend beyond twenty-four miles from the baselines used to measure the width of the territorial sea (Article 33(2)). In this maritime zone, UNCLOS empowers coastal states to adopt the necessary enforcement measures to

2 The right of innocent passage entails navigation through such waters in a swift and uninterrupted manner (Article 18) and provided that it is not detrimental to the peace, good order, or security of the coastal State (Article 19.1), with the following actions being expressly included as contrary to this principle: “the seizure or disembarkation of any goods, currency, or person, in contravention of the customs, fiscal, immigration, or health laws and regulations of the coastal State” (Article 19.2.g)



prevent and punish breaches of their laws and regulations in **customs, tax, immigration, and health matters** (Article 33.1).

Recognition of these powers does not imply that a coastal State may adopt measures to protect its general interests and national security in an unrestricted manner; rather, such powers must always be exercised within the scope of the matters expressly provided for in Article 33 of UNCLOS, as outlined above (Jiménez Pineda, 2023). Similarly, the majority of legal scholars (Eschenhagen P & Jürgens J, 2019; Tzanakopoulos A, 2024) consider that these powers of prevention and sanction can only permit general protective measures, such as boarding, searching, or inspecting, without the coastal State being able to directly exercise criminal jurisdiction unless it has the consent of the flag State or is acting under some other international instrument.

- *The high seas*: these are the waters not included in the areas described above, where freedom of navigation applies. Although UNCLOS recognises two other types of waters—the exclusive economic zone and the continental shelf³—which are subject to their own legal regime under which states may exercise sovereign rights, these powers are recognised solely for the purposes of exploiting natural resources and conducting scientific research, and do not affect freedom of navigation. Therefore, for the purposes of this paper, they may generally be regarded as falling within the high seas.
- On the high seas, no State may claim sovereign rights (Article 89), and all States are recognised as enjoying full freedom of navigation and use for peaceful purposes (Articles 87 and 88). In accordance with the principles enshrined in UNCLOS, as mentioned at the outset, **ships and vessels sailing on the high seas shall be subject to the jurisdiction and control of the State whose flag they fly**⁴.

3 The Exclusive Economic Zone (EEZ) may extend up to 200 nautical miles from the baselines of the territorial sea (Article 57), whilst the Continental Shelf comprises the seabed and subsoil extending from the natural prolongation of its territory to the outer edge of the continental margin, with a limit not exceeding 200 or, exceptionally, 350 nautical miles (Article 76).

4 For information on the registration of ships' nationalities, their legal status, and the obligations incumbent upon the flag State, see Articles 92 to 94 of UNCLOS.

Limitations and exceptions to flag state jurisdiction in respect of ships sailing on the high seas

The legal regime governing the high seas does not imply that conduct contrary to international law, or conduct that may be subject to criminal prosecution, cannot be prosecuted in these maritime areas. In this regard, the following provisions are worth highlighting:

- With regard to the **general framework for the exercise of criminal jurisdiction**, Article 97 states that in the event of any navigation incident involving a ship on the high seas which entails criminal or administrative liability for the master or any person in the service of the ship, criminal proceedings may only be instituted before the judicial or administrative authorities of the flag State or before those of the State of which such persons are nationals; and the arrest or detention of the vessel may not be ordered by any authority other than that of the flag State.
- With regard to **illicit drug trafficking**, *Article 108* imposes on all States a general duty to cooperate in the suppression of such conduct, where it is carried out by ships on the high seas in violation of international conventions; the Convention expressly permits a State to request the cooperation of others where it has reasonable grounds to believe that a ship flying its flag is engaged in illicit drug trafficking.
- Furthermore, UNCLOS sets out specific measures that states may adopt to suppress **acts of piracy**, defined as “any illegal act of violence or detention, or any act of depredation committed for personal gain by the crew or passengers of a private vessel”, directed, amongst others, against a vessel on the high seas or in a place not subject to the jurisdiction of another state (Article 101). Any state may seize a ship used for piracy, detain its crew members, and seize the goods on board (Article 105).
- UNCLOS authorises States to allow their warships to carry out **inspection visits** of other foreign vessels that do not enjoy full immunity, provided there are grounds for suspecting that they are engaged in piracy, the slave trade, unauthorised broadcasting, are without nationality, or are flying the same flag as the warship (Article 110)⁵. The inspection may involve sending a boat under the command of an officer to check the vessel’s documentation and, if suspicions remain, to carry out an on-board inspection.
- Furthermore, a **right of pursuit** is also recognised in respect of vessels suspected of having committed an infringement of the laws and regulations of the State whilst within its internal waters, the contiguous zone, or territorial sea, and which subsequently leave those waters, provided that the pursuit is not interrupted (Article 111).

1988 Vienna convention on drugs: article 17

The main international instrument in the fight against drug trafficking is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20 December 1988 (hereinafter the Vienna Convention). At present, it has been

5 For the concept of a warship, see Article 29; for the determination of which ships enjoy immunity, see Articles 95 and 96.

ratified by 192 countries, making it one of the most universally accepted international treaties⁶.

The Vienna Convention imposes numerous obligations on the signatory states in various areas, and contains a provision that is key to the purposes of this paper: its **Article 17**, concerning illicit trafficking by sea, which, given its relevance, is reproduced in full below:

1. *The Parties shall cooperate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea.*
2. *A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or marks of registry is engaged in illicit traffic 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.*
3. *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. In accordance with paragraph 3 or treaties in force between the Parties, or any other agreement or arrangement that may have been concluded between them, the flag State may authorize the requesting State, inter alia, to:*
 - a. *board the vessel;*
 - b. *search the vessel;*
 - c. *if evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.*
4. *Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested State.*
5. *The flag State may, consistent with its obligations under paragraph 1 of this article, subject its authorization to conditions to be mutually agreed between it and the requesting Party, including conditions relating to responsibility.*
6. *For the purposes of paragraphs 3 and 4 of this article, the Parties shall respond expeditiously to requests from other Parties to determine whether a vessel claiming its registry is authorized to do so, and to requests for authorization made pursuant to paragraph 3. Each State shall designate, at the time of becoming a Party to this Convention, an authority or, when necessary, authorities to receive and respond to such requests. Such designation shall be notified through the Secretary-General to all other Parties within one month of the designation.*

6 The only states that have not acceded or ratified the Convention are: The Solomon Islands, Kiribati, Papua New Guinea, Tuvalu, Somalia, and Equatorial Guinea.

7. *A Party which has taken any action in accordance with this article shall promptly inform the flag State concerned of the results of that action.*
8. *The Parties shall consider entering into bilateral or regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.*
9. *Action taken pursuant to paragraph 4 of this article shall be carried out 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.*
10. *Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.*

Firstly, the article imposes on all signatory States a **general duty of cooperation** in the fight against illicit trafficking by sea (paragraph 1), always in accordance with international law of the sea which, as previously noted, has as one of its fundamental pillars the attribution of sovereignty over a ship according to the flag under which it sails. This provision is, in turn, linked to Article 108(2) of UNCLOS, which imposed a similar general duty of cooperation.

Depending on whether the vessel sails under its flag, or under that of another State, Article 17 provides for two different mechanisms:

- When a State suspects the activity of a vessel flying its flag, it may **request assistance** from other signatory States (paragraph 2); but,
- if a State suspects the activities of a ship flying the flag of another State, it provides for the possibility that the State may notify the flag State of such suspicion so that the latter may confirm the ship's nationality (paragraph 3); and, if verified, to request subsequent **authorisation to take measures against the ship**, which may consist, inter alia, of *boarding and inspecting the ship* and, if incriminating evidence is discovered, *taking measures against the persons and the cargo* (paragraph 4). For the purposes of the aforementioned enquiries regarding nationality and the adoption of measures, paragraph 7 provides that each State shall designate one or more authorities to be responsible for responding to such requests⁷.

The procedure described is of paramount importance for the interception of vessels flying the flags of other States whilst navigating in international waters, since if such interception were to take place in the internal or territorial seas of a State, that State could directly exercise its jurisdiction on the basis of the provisions of UNCLOS discussed above.

With regard to the navigation of a vessel in international waters, according to the prevailing view (Gilmore, 1991; Guilfoyle, 2007), the authorisation granted by a State on the basis of Article 17(4) **does not derogate from the principle of the exclusive jurisdiction of the flag State**. Article 17 is intended to provide a legal framework that can serve as a basis for specific

⁷ The Directory of national authorities designated by each state has been deposited with the United Nations Office on Drugs and Crime (UNODC). It can be viewed, subject to authorisation, via the following link: <https://www.unodc.org/cld/en/st/cna/cna-directory-e-book.html>

agreements between States Parties and, therefore, does not regulate matters relating to the exercise of criminal jurisdiction, which must be resolved in accordance with agreements between states or by applying the rules of general international law (UNODC, 1998, paragraphs 17.26–17.27, pp. 333–334). This concept is reinforced by the provisions on jurisdiction set out in Article 4 of the Vienna Convention, which provide that States may adopt measures to establish their jurisdiction over offences established in the Convention where the offence is committed “...on board a vessel in respect of which that Party has been authorized to take appropriate action pursuant to article 17, provided that such jurisdiction is exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article.”, bearing in mind that paragraph 9 provides for the possibility that Parties may conclude bilateral or regional agreements to implement the provisions of Article 17.

Consequently, from the perspective of the states and on the basis of the measures set out in Article 17, there are three levels of jurisdiction in relation to vessels suspected of engaging in illicit drug trafficking:

- **If the vessel is sailing in the territorial seas of a country, or is flying the flag of the country** seeking to take action, that State shall have the power to exercise *full jurisdiction* over the vessel (Article 4.1.a).
- In the case of a **vessel belonging to a third State**, it is left to the *discretion of the parties to decide whether to take measures* to establish their jurisdiction over that vessel (Article 4.1.b.ii).
- In the case of **stateless vessels** or vessels treated as such under international law, the Vienna Convention *makes no mention whatsoever of the possibility of declaring jurisdiction*.

SECTION II: REGIONAL CONVENTIONS

Europe: the 1995 Council of Europe Convention

In accordance with the provisions of Article 17.9 of the Vienna Convention, the Council of Europe promoted an Agreement on combating illicit trafficking by sea, the purpose of which was to establish, on the basis of the aforementioned provision, mechanisms for international cooperation between States concerning the identification of the competent authorities, the exercise of jurisdiction, and the adoption of measures and procedures for the apprehension of suspect vessels.

Article 3 of the Agreement provides that each Party shall take measures to establish its jurisdiction over offences committed on board a ship, whether it flies its own flag (in which case the jurisdiction shall **take precedence**), as well as to exercise jurisdiction over stateless vessels or vessels flying the flag of another State Party, although in the latter case jurisdiction may only be exercised on the basis of the Agreement.

The Agreement allows signatory States to request cooperation from other parties to take measures in respect of ships flying their flag (Article 4) and also empowers them to take measures in respect of a stateless ship (Article 5). However, for the purposes of this report, the most relevant procedure is that provided for the adoption of measures in respect of vessels flying

the flag of a State Party to the Agreement, in respect of which there are suspicions of involvement in drug trafficking operations, and which may be summarised as follows:

1. The State taking action must request **authorisation** from the State Party under whose flag the suspected vessel is sailing to stop and board the vessel on the high seas (Art. 6).
2. The requested State must acknowledge receipt of the request and **communicate** its decision as soon as possible and, whenever possible, within *four hours* (Article 7).
3. If authorised, the intervening State may carry out a number of actions, including, in particular, the **boarding and searching** of the vessel, and the securing of any evidence and materials found (Article 9); it may also proceed to the **arrest** of persons and the **detention** of the vessel if evidence of the offence has been discovered (Article 10).
4. The intervening State shall **forward** a summary of the evidence found to the flag State (Article 13). In addition, within *14 days* of receipt, the flag State may indicate whether it wishes to exercise its right to **preferential jurisdiction**, in accordance with the provisions of the aforementioned Article 3. If no objection is raised, it shall be deemed that the right has been waived (Article 14).

The Council of Europe Agreement was opened for signature on 31 January 1995. However, despite the commendable attempt to establish an international regulatory framework inspired by Article 17 of the Vienna Convention, the Agreement has met with limited success, as only 16 states have signed and ratified it⁸, and the list does not include the main Mediterranean coastal states.

Caribbean: the 2003 Treaty of San José

In accordance with the mandate set out in Article 17.9 of the Vienna Convention, and under the auspices of the Organisation of American States and its Inter-American Drug Abuse Control Commission (CICAD), on 10 April 2003 various Caribbean states signed, in the city of San José (Costa Rica) the Convention on Cooperation for the Suppression of Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area.

The Treaty of San José, as it is commonly known, entered into force on 10 September 2008, after it had been ratified by five signatory states in accordance with their domestic procedures. To date, it has been ratified by eight countries (the United States of America, Belize, France, the Dominican Republic, Guatemala, Costa Rica, the Netherlands, and Nicaragua), while four other countries have signed the Treaty but have not yet ratified it (Jamaica, Panama, Haiti, and the United Kingdom).

The main objective of the Treaty is to promote the widest possible cooperation in the fight against illicit trafficking in Caribbean waters (Article 2), establishing for this purpose harmonised procedures and coordination tools to streamline the maritime and air policing operations carried out by states against vessels suspected of being involved in illicit trafficking. To this end and taking into account the legal framework established by UNCLOS, the Treaty of

⁸ Austria, Croatia, Cyprus, the Czech Republic, Germany, Hungary, Ireland, Latvia, Lithuania, Netherlands, Norway, Romania, Slovakia, Slovenia, Turkey, and Ukraine.

San José provides that **each State Party shall designate a competent national authority**, which shall be responsible for processing requests for verification of the nationality of vessels flying the flag of a State Party. Requests must be communicated verbally and confirmed in writing, and must be responded to as promptly as possible and, in any event, within *a maximum of four hours* (Article 6).

This expedited communication procedure enables States Parties to respond swiftly to requests for verification of nationality, and, within the same communication, to authorise the boarding and search of the vessel, as well as to permit entry into their waters and airspace (Article 7).

In addition, another key feature of the Treaty of San José is the establishment of police liaison officers able to carry out **patrols on board vessels alongside the police forces of another state party** (Article 9). These officers represent their country on board the joint patrol vessel, which enables them to grant authorisation on the spot for a police vessel to enter the waters of another state party and to detain members of a crew. Ultimately, all of this is to ensure compliance with the domestic legislation of the state in question.

The Treaty of San José also recognises the possibility of entering the territorial seas of another State Party, even without prior authorisation from that State or a liaison officer, when **pursuing suspect vessels** (Article 12), provided that the other Party is notified. In addition, where international seas are concerned, the Convention provides for three possibilities regarding the **boarding** of vessels flying the flag of a State Party to the Convention (Article 16):

- Consent may be deemed to have been granted by the mere signature of the Agreement, without the need for additional requirements;
- It may be provided that prior authorisation of the flag State is required in order to carry out the boarding. This is the procedure selected by Belize, Guatemala, and Nicaragua;
- Alternatively, consent to boarding may be deemed to have been implicitly granted if it is not expressly refused within four hours of the verbal notification to the flag State of the detection of the suspect vessel. This is the system chosen by the United States of America, the Netherlands, and France.

With regard to **jurisdiction**, Article 23 of the treaty stipulates that all Parties shall take measures to establish their jurisdiction over offences committed in waters under their sovereignty, on board a vessel flying their flag, on board a vessel flying the flag of another Party and committing the offence beyond the territorial sea of any State, or committed on board a stateless or equivalent vessel. The principle of preferential jurisdiction is also guaranteed by stipulating that the Party in question shall have jurisdiction over vessels, cargo, and persons where the offence is committed in its territorial seas or on a vessel flying its flag (Article 24), whilst also recognising the possibility of ceding jurisdiction to another Party.

Eastern Caribbean Region: the 1996 regional security space

In 1996, the member countries of the Eastern Caribbean Region⁹ signed an international treaty establishing a Regional Security System (RSS). The RSS establishes mechanisms for cooperation and coordination in various areas, expressly including the prevention and suppression of illicit drug trafficking (Article 4.1).

Although the RSS does not establish specific protocols for action under the terms of the Treaty of San José, it does recognise the possibility that member states may carry out joint operations with their police and military forces (Article. 9), and the right of member states for their operational forces to carry out 'hot pursuit' of vessels is also recognised, even when such vessels enter the territorial sea or the exclusive economic zone of another member state of the RSS.

SECTION III: BILATERAL AGREEMENTS

In addition to the multilateral agreements discussed, a number of bilateral treaties have been signed with the aim of improving the coordination and execution of operations to board vessels involved in drug trafficking. Specifically, we will briefly outline the bilateral agreements signed by Spain to combat illicit drug trafficking at sea—the only bilateral treaties of this kind in Europe—and then we will analyse in depth the Shiprider agreements sponsored by the United States of America as a complement to and further development of the San José Multilateral Treaty. We did not find any bilateral treaties in the Gulf of Guinea region that fall within the scope of this analytical study.

Europe

On the European continent, only three states have signed bilateral agreements implementing the provisions of Article 17 of the Vienna Convention, with the aim of improving cooperation and resolving jurisdictional issues in the fight against illicit drug trafficking on the high seas: These are **Spain, Italy, and Portugal**, with the latter two having signed a treaty with Spain in 1990 and 1998 respectively, to combat illicit drug trafficking at sea.

The structure of both treaties is essentially similar: after setting out definitions regarding their scope of application and criminal offences, both recognise exclusive jurisdiction to prosecute acts of drug trafficking committed in their territorial seas or on the high seas aboard vessels flying their flag. A key feature of both treaties is that they provide for a State Party to board vessels of another State beyond its territorial seas, subject to the obligation to inform the other State Party of such action (in the case of the Treaty between Spain and Portugal, prior notification is mandatory, and a response must be provided within 4 hours, unless there are grounds for expediency).

Furthermore, the general principle of **preferential jurisdiction** does not prevent an intervening State from requesting the flag State to waive its jurisdiction. To this end, it is stipulated that the request for the transfer of jurisdiction must be communicated to the flag State, which has a *period of 60 days* (in the case of the Agreement with Italy) or *14 days* (for the Agreement

⁹ Antigua and Barbuda, Barbados, Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines. In 2022, the Cooperative Republic of Guyana acceded to the Treaty.

with Portugal) to respond. If there is no formal reply, it is understood that the flag State waives the exercise of its preferential jurisdiction.

Caribbean: Shiprider Conventions

Shiprider agreements between the United States and various Caribbean countries, inspired by the San José Treaty, establish a cooperative regime for maritime patrol and boarding in order to combat drug trafficking, trafficking in persons, and other illicit activities at sea. These agreements, through the presence of agents of one or the other State, known as 'shipriders', authorise intervention measures that would otherwise be restricted under the law of the sea. In general terms, they allow vessels or aircraft of the United States of America and of the associated State concerned to carry out boarding, search, and detention of suspect vessels beyond the territorial sea, with a view to respecting State sovereignty while at the same time exercising shared or complementary jurisdiction.

The United States currently has a total of 22 Shiprider Agreements with the following countries:

COUNTRY	YEAR OF TREATY SIGNATURE
Antigua and Barbuda	1995
Bahamas	2004
Barbados	1997
Belize	1992
Colombia	1997
Costa Rica	1998
Dominica	1995
Dominican Republic	1995
Grenada	1995
Guatemala	2003
Guyana	2001
Haiti	1997
Honduras	2000
Jamaica	1997
Nicaragua	2001

COUNTRY	YEAR OF TREATY SIGNATURE
Panama	2002
St. Christopher and Nevis	1995
Saint Lucia	1995
St. Vincent and the Grenadines	1995
Suriname	1998
Trinidad and Tobago	1996
United Kingdom (with respect to its Caribbean Overseas Territories)	2000
Netherlands (regarding the former Netherlands Antilles and the Island of Aruba)	2000

Vessel boarding and measures to be taken

In accordance with the principles set out in the Treaty of San José, the Shiprider agreements authorise the authorities of one State to board and search vessels suspected of being under the flag of the other State, even when they are outside their own territorial seas. To this end, the role of liaison officer, known as a ‘shiprider’, was created; this officer takes part in joint patrols, representing the sovereignty of their state and legitimising any interception operations carried out.

These officers are legally authorised to permit entry into their country’s territorial seas, to carry out pursuits and, ultimately, to direct the interception and boarding of vessels flying their flag, ensuring compliance with their national legislation at all times.

Applicable jurisdiction rules

The Shiprider Conventions set out in detail who has jurisdiction over ships, cargo, and detained persons. They essentially follow the general principles of international law enshrined in UNCLOS, which recognise the primary jurisdiction of the coastal State over its waters and that of the flag State on the high seas. Similarly, each convention provides that the coastal State has primary jurisdiction over vessels detained in its territorial sea (or vessels flying its flag on the high seas), with the power to transfer such jurisdiction to the other State as appropriate.

In operations on the high seas (seaward of the territorial sea), the approach is similar: jurisdiction remains linked to the ship’s flag, enabling these agreements to establish consent for action on the high seas. In practice, if the US were to board a vessel on the high seas flying the flag of a Caribbean state with which it has a Shiprider Agreement, that vessel would be considered subject to the jurisdiction of that Caribbean state, unless the state in question waives such jurisdiction; and vice versa. Once a suspicious vessel has been detained, the conventions clearly stipulate who has the primary right to take further action.



Furthermore, the Shiprider Agreements stipulate that, where both Parties have jurisdiction over a case, the Party that actually took charge of the case has priority (unless national legislation provides otherwise) and that information regarding jurisdiction must be communicated between the Parties without delay.

Structural and substantive similarities and differences

Shiprider agreements between the United States and Caribbean countries share a broadly similar general structure: they typically include provisions defining the shiprider programme, describing operations in national waters and on the high seas, regulating the participation of aircraft, establishing notification and jurisdiction procedures, and containing implementation and security clauses. They all explicitly acknowledge international conventions in their preambles and operate within those legal frameworks.

The following aspects may be cited as the main **similarities** common to all the Conventions:

- **Powers of shipriders:** Virtually all of them allow a national officer to board a vessel from the other state and authorise patrols, pursuits, boarding, or searches in order to enforce their country's laws in the partner state's waters.
- **Crew assistance:** All of them follow the 'crew assist' model, whereby the lead authority takes the lead and the local crew only assist when asked to do so, whilst retaining the right to defend themselves if necessary.
- **Custody and disposal:** They require that, following a boarding, the results be reported and, where appropriate, the detainees be handed over to the relevant authorities.

- **Respect for law and human life:** These include guidelines on the use of limited force (always in accordance with the principle of using the minimum force necessary, whilst taking care to protect civilians and the suspect vessel itself), and rules governing the treatment of migrants or refugees.
- **No impact on the law of the sea:** Various articles make it clear that customary rights such as the right of access (Article 110 of UNCLOS) or humanitarian assistance are not restricted.

However, given that these are bilateral agreements, it is common for each Shiprider Agreement to contain specific provisions relating to areas on which the State in question wishes to place particular emphasis. In this regard, we can highlight the main **differences** as follows:

- **Verification procedures:** The time limits set out in the agreements vary from country to country: for example, the agreement with the Bahamas sets a time limit of 4 hours to confirm a ship's nationality following a request (Art. 8.3); whereas the UK Convention sets a time limit of 2 hours (Art. 13.1).
- **Geographical scope:** Although most treaties regard the high seas or territorial seas (generally within 24 nautical miles of the coast) as their area of application, some conventions cover a wider scope. An example is the Bahamas Convention, which permits the boarding of vessels flying the flag of that country that are located up to 200 nautical miles from its coast (Article 5.1.b).
- **Mandatory notifications:** Several agreements, such as those signed with the Bahamas, Suriname, and the United Kingdom, require prior notification to the local authorities before entering the territorial seas of the other State to pursue suspects.

At present, the Shiprider Agreements that the United States has been sponsoring with numerous Caribbean states form the primary legal basis on which the US police and military forces carry out vessel interceptions in their fight against illicit trafficking. The recognition of joint patrols and the establishment of standardised communication protocols help to ensure greater coordination between the States concerned, as well as greater efficiency in obtaining any necessary consents for the exercise of inspection powers and, where appropriate, the boarding of suspect vessels.

SECTION IV: RULES OF NATIONAL LAW

To conclude this legal study, and to ensure it is as comprehensive as possible, we shall provide a brief, schematic overview of the domestic legal provisions applicable to each of the state actors in the region, with regard to the potential exercise of criminal jurisdiction over drug trafficking offences committed on board vessels on the high seas.

Europe

- **Spain:** *Organic Law 6/1985 on the Judiciary*. Article 23 sets out the limits of Spanish jurisdiction and stipulates that Spanish courts may hear cases involving drug trafficking

offences committed in maritime areas, in the circumstances provided for in treaties ratified by Spain or in the regulatory acts of an international organisation to which Spain is a party (paragraph 4(d)), although a complaint must be lodged by the Public Prosecutor's Office (paragraph 6).

- **Portugal:** *Decree 48/95 of 15 March approving the Criminal Code and Decree 78/87 of 17 February approving the Code of Criminal Procedure*. It contains no specific provisions regarding the possible exercise of criminal jurisdiction over drug trafficking offences committed abroad or in maritime areas. Criminal jurisdiction is recognised in respect of offences committed on board Portuguese ships (Article 4(a)).
- **France:** *Law No. 94-589 of 25 July 1994*. This legislation governs the exercise of the State Police's powers at sea, and Article 5 grants French courts jurisdiction to prosecute drug trafficking offences committed outside French territorial seas, provided that they are committed within the framework of an organisation formed on French territory or established with a view to committing the offence on French territory. It also requires, as a procedural prerequisite, that a request be made to the flag State for its consent to the prosecution and trial of the perpetrators or accomplices of the offence by the French courts.
- **Netherlands:** *Opium Act (Opiumwet), Article 13*. The legislation establishes criminal jurisdiction over offences against public health, including the facilitation or preparation of drug trafficking committed in international waters, where the intervention is carried out pursuant to Article 17. The Dutch Code of Criminal Procedure (*Wetboek van Strafvordering, Article 539a*) permits the authorities to exercise jurisdiction outside the national territory 'in accordance' with public international law.

Caribbean countries

- **Antigua and Barbuda:** *Misuse of Drugs Act Cap. 283 (1994)*. Its specific legislation defining the offence of drug trafficking does not contain any provisions regarding the exercise of criminal jurisdiction abroad or in international waters.
- **Bahamas:** *Criminal Justice (International Cooperation) Act, 2000*. Chapter 213 implements the 1998 Vienna Convention and specifically addresses the prosecution of drug trafficking offences committed at sea. Under this law, the trafficking or unlawful possession of drugs on vessels registered in the Bahamas or in countries that are parties to the Convention is made a criminal offence, regardless of where such vessels are located. Action against foreign vessels outside territorial seas requires authorisation from the Bahamian Attorney General, and is granted only if there is reciprocity with the other State.
- **Barbados:** *Maritime International Cooperation Act Cap. 13c (1998)*. This provision expressly authorises the exercise of criminal jurisdiction in international waters. Article 4 establishes as an offence the transport or possession of drugs on board vessels flying the Barbadian flag, vessels of States Parties to the 1988 Vienna Convention, or stateless vessels, regardless of their location. Section 8 extends Barbadian criminal jurisdiction to these acts, treating them as if they had been committed within the territory of



Barbados. However, in order to exercise enforcement powers over foreign vessels on the high seas, the law requires the consent of the flag State and authorisation from the competent Minister.

- **Belize:** *Belize Criminal Code (Chapter 101)*. Belize's domestic legislation does not contain any specific provisions regarding the exercise of criminal jurisdiction in relation to seizures of illicit shipments on the high seas.
- **Costa Rica:** *Law No. 4573 of 4 April 1970 approving the Criminal Code, and Law No. 7594 of 10 April 1996 approving the Code of Criminal Procedure*. Neither of these two statutes contains any express provisions regarding the possible exercise of extraterritorial criminal jurisdiction in international waters, establishing only a principle of territoriality which holds that offences committed in Costa Rica fall within the jurisdiction of the country, including within this concept those committed on board vessels flying the country's flag (Article 4 of the Criminal Code and Article 47(e) of the Code of Criminal Procedure). Although there is a list of offences that may be prosecuted abroad (Article 7), drug trafficking is not included among them.
- **Colombia:** *Law 599 of 2000, enacting the Colombian Criminal Code*. Article 16 regulates the cases of extraterritoriality of Colombian criminal law, without making specific mention of offences committed on the high seas or drug trafficking, although it allows Colombian criminal proceedings to be brought against nationals of that country for offences committed abroad, provided they are present in Colombia and that the offence is punishable by more than two years' imprisonment and has not been tried abroad.
- **Cuba:** *Law 151/2022 approving the Cuban Criminal Code (Official Gazette No. 93 of 01-09-2022)*. This law extends Cuban criminal jurisdiction to crimes committed in its territorial

seas and on board vessels flying the Cuban flag, as well as to crimes committed by foreign-flagged vessels located in Cuban territorial seas (Articles 4.1 and 4.2), without establishing specific rules regarding the possible exercise of criminal jurisdiction in international waters.

- **Dominica:** *Drugs (Prevention of Misuse) Act. (Ca. 40:07), 1988.* This law imposes severe penalties for international drug trafficking and includes a specific provision (Section 21) that allows for the prosecution of anyone who, while in Dominica, collaborates with or assists in the commission of drug trafficking offenses abroad. However, the law does not expressly regulate the exercise of criminal jurisdiction over acts committed on the high seas.
- **Granada:** *Drug Abuse (Prevention and Control) Act, 1992.* This law criminalises drug trafficking, including acts related to the illegal importation, exportation, or possession of drugs. However, it does not contain any provisions that expressly extend Granada's criminal jurisdiction to acts committed outside its national territory, including adjacent areas or international waters.
- **Guatemala:** *Decree 1783 approving the Penal Code.* Article 5 deals with cases of extraterritorial application of criminal law, with paragraph 2 stipulating that criminal law applies to offences committed on a Guatemalan vessel that have not been tried in the foreign country where they occurred.
- **Guyana:** *Maritime Drug Trafficking (Suppression) Act, 2003.* It allows for the exercise of criminal jurisdiction over vessels suspected of being Guyanese-flagged, or over unflagged vessels, as well as over vessels from a third country, provided that the consent of the flag State has been obtained.
- **Honduras:** *Decree 144-83 approving the Penal Code.* Like the Guatemalan Criminal Code, Article 5 sets out the circumstances in which criminal law applies extraterritorially, stating that, provided the accused is in Honduras, proceedings may be brought against them for offences committed on a Honduran vessel that have not yet been tried or for which a sentence has not yet been served.
- **Haiti:** *Code de procédure pénale (Code of Criminal Procedure) 1835* This outdated law, which draws its inspiration from the Napoleonic Code, is based on the classic principle of criminal territoriality, without containing any provisions regarding the possible exercise of extraterritorial jurisdiction. Although a bill to reform the Criminal Code and the Code of Criminal Procedure is currently underway, available open-source information suggests that it will not yet have come into force by the end of 2025¹⁰.
- **Jamaica:** *Maritime Drug Trafficking (Suppression) Act 1998.* This regulation, issued in accordance with the provisions of Article 17 of the Vienna Convention, is based on recognition, outside the territorial sea, of the principle of flag-state jurisdiction (Article 20). The law distinguishes between operational jurisdiction, setting out mechanisms to enable its police forces to take action against suspicious vessels by pursuing, boarding, and searching them; and criminal jurisdiction, which refers to the possibility of prosecuting

10 https://www.lenational.org/post_article.php?pol=7314#

a vessel's crew. In this regard, an interesting mechanism for the **waiver of jurisdiction** is established, whereby Jamaica may apply its domestic law to prosecute the crew of a vessel apprehended on the high seas, provided that its flag state so authorises. This decision must be left to the Minister.

- **Nicaragua:** *Law 641 approving the Criminal Code*. Following a reform carried out in 2024, a principle of universality (Article 16) was introduced, which allows Nicaraguan criminal jurisdiction to be exercised over certain offences committed abroad, including drug trafficking.
- **Panama:** *Law 14 of 2007 approving the Criminal Code*. It recognises the principle of territoriality in Article 18, including the territorial sea within the territory of the Republic and extending its jurisdiction to offences committed on board vessels flying the Panamanian flag. Although Articles 19 and 20 recognise certain cases of extraterritoriality, they do not extend this to the commission of drug trafficking offences.
- **Dominican Republic:** *Law 50-88 on Drugs and Controlled Substances and Law 97-2025 with the new Criminal Procedure Code*. Its special drugs legislation contains no provisions on the possible exercise of criminal jurisdiction on the high seas, whilst its Code of Criminal Procedure recognises the principle of universal jurisdiction only in respect of the crimes of genocide, war crimes, and crimes against humanity (Articles 49 and 56(2)).
- **Saint Kitts and Nevis:** *Drugs (Prevention & Abatement of the Misuse and Abuse of Drugs) Act (Cap. 9:08), 1993*. The aforementioned legislation, which defines the offences of illegal drug trafficking, allows for the prosecution of those who, from Saint Kitts and Nevis, assist or incite the commission of drug-related offences abroad (section 20). However, there are no specific provisions relating to maritime traffic in international waters or to the prosecution of offences committed on foreign vessels or stateless vessels.
- **Saint Lucia:** *Drugs (Prevention of Misuse) Act (Cap. 3:02), 1998*. The legislation contains a clause on the exercise of jurisdiction over offences committed within the state that contribute to or facilitate the commission of drug trafficking offences abroad (Article 30), but it does not contain any provisions regarding the possible exercise of criminal jurisdiction on the high seas.
- **Saint Vincent and the Grenadines:** *Drugs (Prevention of Misuse) Act (Cap. 284)*. The legislation defines the offences of drug trafficking but contains no provisions regarding the possible exercise of criminal jurisdiction in foreign territory or international waters.
- **Suriname:** *Wet verdovende middelen (Narcotic Drugs Act), Article 14* Suriname exercises criminal jurisdiction in international waters when someone is involved in the preparation of offences against public health.
- **Trinidad and Tobago:** *Dangerous Drugs Act Chapter. 11:25 (1991)*. Part VIIIA of that Act, relating to drug trafficking offences, deals with offences committed on the high seas. Firstly, section 53 provides that any conduct which would constitute a drug trafficking offence if committed on land within the national territory also constitutes an offence if committed on board a Trinidadian vessel, regardless of the vessel's location. Section 53B extends the scope of application to foreign vessels and stateless vessels, provided that the conduct relates to the transport, possession, or concealment of drugs intended to be imported or

exported in contravention of the law of Trinidad and Tobago or the law of another State. However, the Act imposes significant restrictions on the exercise of this jurisdiction, as section 53C makes the exercise of powers of boarding, search, and enforcement outside the archipelagic waters of Trinidad and Tobago subject to the consent of the flag State in the case of ships registered in States Parties to the relevant conventions.

- **Venezuela:** *Criminal Code of Venezuela (Official Gazette No. 5,494), 2000*. Article 4 provides for certain cases of extraterritorial jurisdiction and recognises the possibility of bringing criminal proceedings against offences committed by the captains, crews, and passengers of the Republic's merchant ships (No. 8). However, there is no mention of the prosecution of offences committed on vessels flying another flag or of infringements committed in international waters.

Overseas Territories in The Caribbean

- **France:** (Guadeloupe, French Guiana, Martinique, Saint Barthélemy, and Saint Martin). These territories are legally classified as overseas departments and regions of the French Republic, which means that, in accordance with Article 73 of the French Constitution, French laws and regulations apply directly in those territories. Consequently, the provisions of *Law 94-589 of 25 July 1994*, which have already been analysed, must be taken into account.
- **The Netherlands** (Aruba, Curaçao, and Sint Maarten; and the special municipalities of Bonaire, Sint Eustatius, and Saba). Aruba and Sint Maarten have the *Landsverordening Verdovende Middelen* (National Ordinance on Narcotic Drugs), which does not confer extraterritorial jurisdiction over drug trafficking in international waters, except where such



offences are committed on board a vessel flying their flag; whereas their coastguard law (*Rijkswet Kustwacht*) allows that body to carry out operations in international waters in accordance with public international law. Curaçao and the special municipalities of Bonaire, St. Eustatius, and Saba are subject to the *Opium-landsverordening 1960*, which grants them extraterritorial jurisdiction where the transport of drugs, whether in progress or in preparation, is destined for the territory of one of the islands. Furthermore, its Coast Guard Act (*Rijkswet Kustwacht*) enables the Coast Guard to carry out operations in accordance with public international law.

- **United Kingdom** (Anguilla, Bermuda, Cayman Islands, Turks and Caicos Islands, British Virgin Islands, and Montserrat). All of these territories base their legislation on the common law of the United Kingdom and have specific laws against drug trafficking. Of these, the Cayman Islands' Drugs (Prevention of Misuse) Act 2017 is particularly noteworthy, as it allows police to exercise their powers over suspicious foreign vessels where authorisation has been granted by the flag state (section 20) and, in such cases, even permits the exercise of criminal jurisdiction.

United States of America

To conclude this analysis, it is essential to examine the domestic law of the country which, by virtue of its military and operational capabilities, is the region's leading player. Since 1986, the United States of America has had a federal law known as the **Maritime Drug Law Enforcement Act** (hereinafter MDLEA), which forms the cornerstone of US policy on combating drug trafficking at sea.

The MDLEA authorises US authorities to prosecute certain drug-related conduct committed on board vessels subject to the jurisdiction of the United States (46 U.S.C. § 70503(a)) conferring, for that purpose, powers on the United States Coast Guard, which acts as a federal maritime law enforcement authority with both administrative and criminal powers. **The Coast Guard may stop, search, and board vessels outside US territorial seas where there is reasonable suspicion that the vessel is subject to US jurisdiction**, in accordance with the terms of the MDLEA (46 U.S.C. § 70502(c), § 70502(d)).

In this regard, and although the legislation is based on the international principle that every ship is subject to the jurisdiction of the state whose flag it flies, the MDLEA adapts this concept to the interests of criminal prosecution in the US, because it considers a "vessel subject to the jurisdiction of the United States" to be not only vessels flying the US flag, **but also those flying a foreign flag in respect of which the flag State has consented to or waived the exercise of its jurisdiction** (46 U.S.C. § 70502(c)(1)). The MDLEA expressly provides that such consent may be given through diplomatic channels or via rapid operational channels, and that certification by the Secretary of State or their designee constitutes conclusive evidence of the flag State's consent or lack of objection (46 U.S.C. § 70502(c)(2), § 70502(d)(2)).

Ships flying no flag

Another important aspect of the MDLEA is that it considers 'vessels without nationality' (46 U.S.C. § 70502(c)(1)(A)), defining these as vessels that are not registered in any State or which,

upon request for verification, are unable or unwilling to prove their flag, or whose alleged State of registration denies the claimed nationality (46 U.S.C. § 70502(d)(1)).

Therefore, the determination of a vessel as 'without flag or nationality' not only enables US officials to board but automatically activates the criminal jurisdiction of the US federal courts.

Jurisdiction on the high seas

The MDLEA applies to conduct committed 'outside the territorial jurisdiction of any State' (46 U.S.C. § 70503(b)), which includes the high seas and, even, according to US federal courts¹¹, certain interventions in exclusive economic zones of third States, provided that the consent of the coastal or flag State is respected.

Furthermore, the MDLEA criminalises the possession, manufacture, or distribution of narcotic drugs on board vessels subject to US jurisdiction, **regardless of the nationality of the crew members and the final destination of the drugs** (46 U.S.C. § 70503(a), § 70506). This broad interpretation of criminal jurisdiction, which does not require any connection or functional link with the United States, has drawn significant criticism from legal scholars (Chinchilla, 2021; Sheehy, 2011), who have even questioned whether the law might be unconstitutional.

11 United States v. Alfonso, No. 22-10576 (11th Cir. June 14, 2024). Available at: <https://media.ca11.uscourts.gov/opinions/pub/files/202210576.pdf>



COORDINATION MECHANISMS

In the course of this work, we examined the role of a number of supranational institutions whose aim is to improve coordination in the fight against illicit maritime trafficking. Specifically, for the Caribbean and Atlantic Ocean region, it is possible to refer to the following institutional frameworks:

MAOC-N

The MAOC-N is the **Maritime Analysis and Operations Centre – Narcotics**. It is a body established on the initiative of eight European Union Member States (Belgium, France, Germany, Ireland, Italy, Spain, the Netherlands, and Portugal) and the United Kingdom, pursuant to an agreement signed in Lisbon on 30 September 2007, and is co-financed by the European Union's Internal Security Fund.

The purpose of MAOC-N is to establish a centre that ensures cooperation in the fight against illicit drug trafficking by sea and air across the Atlantic towards Europe and the West African coast. Specifically, and in accordance with its founding agreement, the MAOC-N has the following objectives:

- *To gather and analyse information that helps to identify the best operational outcomes in relation to illicit drug trafficking by sea and air in the area of operations.*
- *To improve the intelligence available through the exchange of information between participating States and, where appropriate, with Europol.*
- *To ascertain the availability of resources and notify the relevant authorities in order to facilitate operations to combat illicit drug trafficking by sea and air.*

As the Centre itself states on its website¹², the MAOC-N's working methods and operations are designed to **minimise bureaucracy and maximise operational activity**, through the establishment of a team of liaison officers—both civilian and military—who work together to share all available intelligence. In addition, other international organisations, such as Eurojust, Frontex, and UNODC, participate in the MAOC-N as observers.

CARICOM IMPACS

The **Caribbean Community Implementation Agency for Crime and Security** (CARICOM IMPACS) is the main regional instrument of the Caribbean Community (CARICOM) for the coordination, planning, and implementation of common policies on security, the fight against transnational organised crime, and maritime security. Its establishment forms part of CARICOM's institutional strengthening process; in 2005, CARICOM formally declared security to be the fourth fundamental pillar of regional integration, alongside economic integration, foreign policy coordination, and cooperation.

IMPACS was formally established in July 2006, during the 27th Meeting of the CARICOM Conference of Heads of Government, through the signing of an Intergovernmental Agreement which granted the Agency its own legal personality and defined it as the **operational arm of the new regional framework for crime and security**. This organisation serves all full member states of CARICOM, namely: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago, as well as, in certain contexts, the associate members and dependent territories linked to the Community.

At the organisational level, IMPACS acts as a regional hub, integrating and coordinating various specialist units, notably, in the fight against illicit trafficking by sea, the **Regional Intelligence Fusion Centre (RIFC)**¹³, which is responsible for strategic analysis and the fusion of criminal intelligence, with the aim of producing risk assessments and establishing links to facilitate the exchange of information between states.

COLOMBIA AND ITS EXPERIENCE WITH OPERATION ORION

Operation Orion is the main multinational strategy led by the Colombian government in the fight against drug trafficking and related transnational crimes. This is an international cooperation initiative of an operational, judicial and inter-institutional nature, coordinated by the Colombian Navy, which has evolved from a regional naval campaign into a global mechanism for international cooperation.

From a legal perspective, Operation Orion is based on the bilateral and multilateral cooperation agreements on defence, security, and the fight against drugs signed by Colombia with other states, as well as on the commitments undertaken under international instruments. Orion is structured as a **voluntary multinational strategy**, based on interoperability, the

12 *Who We Are – MAOC (N)*

13 *CARICOM IMPACS*



exchange of intelligence and the coordination of operational and judicial capabilities among participating states.

According to information provided by the Colombian authorities, the strategy has involved up to 62 countries across five continents, 127 national and international institutions, and 10 multilateral organisations. It is particularly worth noting the creation, as part of the operation, of an **Orion International Judicial Network (REJIO)**, which facilitates the **convergence of maritime interdiction and judicial investigation**, as seizures made during operations are accompanied by prosecution processes coordinated between public prosecutors' offices, enabling action to be taken not only against the traffickers, but also against the financiers and organisers of the criminal networks¹⁴.

14 It should be noted, however, that there is no more specific information on the constitution, operation, and capabilities of the REJIO network available through open sources.



PROBLEMS IDENTIFIED

SECTION I: SHIPS WITH FLAGS OF CONVENIENCE. LACK OF CONSENT FROM THE FLAG STATE

UNCLOS imposes a general obligation that all ships must fly the flag of a State (Article 92), which in turn must ensure the existence of a register of ships flying its flag, over which it must exercise supervisory and control functions (Article 94). However, as the UNODC points out in its practical guide on the implementation of Article 17 (UNODC, 2004, p. 18), the granting of nationality is not a mere administrative formality but entails a state's acceptance of the responsibility to exercise control over the vessel.

States do not always exercise these supervisory functions with due diligence. This leads to certain vessels flying **flags of convenience**, which are defined as the registration of a ship in the register of a country other than that of the vessel's owner. This is usually done with the aim of securing more favourable tax or employment conditions for the shipowner, but it can also be used to adopt a nationality where the regulations are much less stringent.

The International Federation of Maritime Transport Workers has drawn up a list¹⁵ of 48 countries with flags of convenience. Among these, some of the most frequently used are the flags of Panama, Liberia, Malta, Cyprus, and the islands that make up the so-called Anglophone Caribbean.

The failure of certain states to fulfil their obligations may hinder the implementation of international cooperation mechanisms that enable the interception of suspicious vessels. As we have already seen, where there are reasonable grounds to suspect that a foreign-flagged vessel is being used to transport illicit drugs, the provisions of Article 17 of the Vienna Convention establish a procedure for verifying nationality and, if the suspicions are confirmed, for requesting the flag State to allow boarding.

¹⁵ This can be consulted at: <https://www.itfseafarers.org/en/issues/flags-of-convenience/current-registries-listed-focs>

However, when ships fly a flag of convenience, a common problem arises whereby, even if an intervening state initiates the aforementioned procedure, it receives no response from the flag state or receives a delayed response; this leads to operational difficulties in proceeding with the interception of the vessel.

There are various responses from states to the failure of the alleged flag state to reply. Some countries interpret the absence of a response within a reasonable timeframe **as not precluding the exercise of the right of access** provided for in UNCLOS and proceed to carry out the access and inspection. In certain cases, a search is sufficient to locate the narcotic substances, depending always on the intelligence available.

However, from another perspective, boarding and searching a foreign vessel without the authorisation of the flag State could be interpreted as a violation of its sovereignty, with potential political or diplomatic consequences. However, **practical experience shows that flag-of-convenience states tend to show little interest in actively defending their sovereignty in such situations.** In any event, the criminal law of the intervening State itself may provide for penalties for infringing the sovereignty of another State.

Some Supreme Courts, such as those of Spain and the Netherlands, have interpreted the principle of sovereignty as protecting state interests rather than the subjective rights of individual citizens (*Schutznorm*), which implies that a failure to respond would not constitute a violation of the rights of litigants in criminal proceedings, provided that basic procedural safeguards regarding the state's rules of jurisdiction and competence have otherwise been respected¹⁶.

It might be worthwhile **to examine what measures the 1988 Convention itself provides for in response to the practice of certain States of convenience failing to respond.** The United Nations Commission on Narcotic Drugs is the body responsible for promoting policy harmonisation and the exchange of best practices. Furthermore, Article 32 of the Convention provides for a dispute settlement mechanism. A detailed analysis of a flag-of-convenience state's systematic failure to cooperate could justify the use of this diplomatic channel.

Another possible solution would be the **issuance of an interpretative declaration regarding the Convention**, stating that a failure by a flag State to respond shall be interpreted as a lack of objection to the registration of the vessel.

SECTION II: STATELESS VESSELS

Freedom of navigation is a right of States, exercised in accordance with the conditions set out in UNCLOS. As has already been discussed, it is for States to authorise vessels to fly their flag and to exercise exclusive jurisdiction over them. That is why, from the opposite perspective, **a stateless vessel cannot fully benefit from the right to freedom of navigation**, as this is, above all, an expression of state sovereignty.

16 In the words of the Spanish Supreme Court: *Intervention by the State exercising sovereignty in international waters is governed by the rules regulating relations between the respective States, in accordance with conventions such as the United Nations Convention of 20 December 1988 and the Montego Bay Convention on the Law of the Sea of 1982; however, its purpose is in no way the protection or safeguarding of fundamental personal rights, the infringement of which, under our legal system—and in particular under Article 11(1) of the Organic Law on the Judiciary—would give rise to any evidentiary nullity. Therefore, this would, in any event, be a matter to be addressed within the sphere of international relations between States, without any effect on the probative value, within the proceedings, of the evidence obtained.* (Supreme Court Judgment 2040/2008 of 15 May)

The lack of state controls over stateless vessels naturally encourages their use for criminal purposes. According to data provided by the MAOC-N, of the 254 vessels intercepted in the Atlantic Ocean, a total of 16 were unflagged, accounting for 8.16% of all interceptions carried out. Furthermore, most of the intelligence received by the MAOC-N relates to vessels of unknown nationality.

The main stateless vessels used for illicit trafficking are so-called *narcolanchas*, which, in the European context, are used to collect narcotics in the Atlantic Ocean from larger vessels or to transport drugs from Morocco; and **submersible or semi-submersible vessels**, capable of crossing the Atlantic Ocean with a significant drug cargo.

Information provided by the MAOC-N indicates an increasingly frequent presence of *narcolanchas* on the high seas; these sometimes serve as genuine maritime bases for criminal organisations, providing the necessary logistical support to such vessels, which are forced to remain at sea for several days, requiring the delivery of fuel and provisions and the rotation of crews. Furthermore, sightings of semi-submersible vessels have been reported on European territory for the first time¹⁷, marking the introduction of a new mode of transport from South America.

But is it possible to intercept a suspicious vessel of no known nationality on the high seas and exercise criminal jurisdiction over it?

Academically, the issue has been extensively discussed. A significant number of Anglo-Saxon scholars, notably A. Bennet (2012), consider that drug trafficking carried out by stateless vessels on the high seas may be prosecuted by any state, as they regard this practice as compatible with international law given that such vessels are not subject to the jurisdiction of any state and would therefore create spaces of impunity. However, according to the prevailing view (Guilfoyle, 2009; Urbina, 2021), a distinction must be drawn between the police powers that states may exercise without restriction over stateless vessels, for the purposes of boarding and searching them; and the possibility of initiating administrative and/or criminal proceedings to determine liability arising from such acts, which must necessarily be based on domestic law or other international conventions.

The conditions under public international law for intercepting a stateless vessel on the high seas

UNCLOS does not contain detailed provisions on the legal treatment of stateless vessels, although it does regulate the procedure for verifying a vessel's nationality through the **right of boarding and inspection**¹⁸. However, the Convention does not lay down explicit conditions regarding the possible exercise of criminal jurisdiction over this type of vessel.

For its part, the **1988 Vienna Convention** recognises in Article 17.3 the possibility that a State may take measures against vessels suspected of being used for illicit trafficking, whether they fly its flag *"or fly no flag at all"*; but it also makes no express mention of the possible exercise of jurisdiction.

17 The first interception of a drug-smuggling submarine took place in 2019 in Galicia (Spain). Since then, there have been further arrests in Spain and Portugal.

18 UNCLOS, Article 110(1)(d)



As regards regional conventions, the only one to have addressed this issue is the **Treaty of San José**, which, in Article 16.6, empowers the police forces of the States Parties to board suspicious stateless vessels located beyond the territorial sea, and Article 23 urges signatory States to adopt domestic legislation to establish their jurisdiction, inter alia, over offences committed on board stateless or equivalent vessels located beyond the territorial sea (paragraph c).

In our view, and in accordance with the principles of international maritime law, **there is no legal obstacle to a State exercising criminal jurisdiction over a stateless vessel**. The extraterritorial application of domestic criminal law faces few limitations under public international law, in line with the established doctrine in the *Lotus* case (Permanent Court of International Justice, 1927): provided there is a link to a legitimate interest of the intervening State, the extraterritorial application of criminal law may be permissible.

Domestic law provisions on the seizure of stateless vessels

From the results of the regulatory mapping exercise, we found that the majority of the countries analysed do not have express provisions in their domestic legislation allowing them to exercise criminal jurisdiction in international waters for the purpose of intercepting stateless vessels. The principal and most notable exception are the United States' **Maritime Drug Law Enforcement Act (MDLEA)**, which provides that stateless vessels or vessels assimilated there-to are subject to the jurisdiction of that country (46 U.S.C. § 70502(c)(1)(A)).

In our view, it would be highly desirable and consistent with the principles of international law discussed above for states to include in their domestic rules on the attribution of extraterritorial jurisdiction a provision allowing a stateless vessel to be treated in the same way as one of its flag states.

SECTION III: INTERDICTION OF SUSPICIOUS VESSELS AND DETENTION OF CREW

In our view, the interception of any vessel on the high seas should have a solid basis in the domestic law of the State of the intercepting vessel. In order to ensure effective intervention, such a regulatory framework should provide for powers that enable:

1. order the vessel to stop, including, where necessary, the use of force —such as warning shots or shots aimed at the vessel's engine— ;
2. carry out the visit and inspection of the vessel in accordance with Article 17;
3. proceed to register the vessel and seize the narcotics, evidence and, where appropriate, the vessel in its entirety;
4. detain suspicious persons;
5. immediately destroy any narcotic substances found.

With regard to the detention of persons suspected of drug trafficking on the high seas, the European Court of Human Rights has repeatedly held that any deprivation of liberty must have a clear and specific basis in national law (see, *inter alia*, the judgments in *Vassis* and *Medvedyev*). Similarly, the use of any form of force—including opening fire to stop a vessel—must be expressly authorised by domestic law, as must all other actions taken by the authorities involved.

The fact that UNCLOS implies the exercise of criminal jurisdiction on the high seas does not entail an obligation for States to establish such jurisdiction in their domestic legal systems. Although naval forces generally have most of the resources required to operate on the high seas, in many states they do not possess their own criminal investigation powers nor a clear mandate to exercise criminal jurisdiction. In some jurisdictions, it is necessary for a team of criminal investigators to board a vessel in order to carry out an anti-drug operation. From this perspective, we believe that it could be beneficial in operational practice to **grant military personnel carrying out naval missions on the high seas the legal status of judicial police**, so that they could document and process the interdiction carried out for subsequent use in legal proceedings.

The legal authorisation to use force to stop a vessel is a *conditio sine qua non* for the interception of high-speed vessels. At present, there are significant differences between the legal frameworks of European states operating on the high seas. Some naval forces are authorised to fire on vessels to stop them, whilst other state agencies—such as customs or the coast-guard—do not have this authority.

There is no fully shared view on the objectives of interventions on the high seas, in particular with regard to the usefulness of the detention and criminal prosecution of crews. Arrests in maritime areas far from the base port of the intervening vessel generate significant logistical challenges and high costs derived from the transfer of persons detained before the competent judicial authority.

In this context, the **French policy of 'decoupling'** is particularly significant, as it aims to reduce operational costs without compromising the effectiveness of the fight against drug

trafficking. This policy consists of the interception of vessels on the high seas (even with the use of force), the seizure of drugs, and release of the crew. French law provides for a specific procedure for this practice. It might be worth examining which states would be willing to adopt a similar strategy and incorporate it into their domestic law.

The mandates of the various state agencies—naval forces, coastguards, and customs authorities—in European countries vary considerably in terms of the legal frameworks governing the fight against drug trafficking in international waters. One could envisage **cooperation aimed at ensuring that available resources are used as effectively as possible**. At present, there are European countries with military vessels deployed in the Atlantic Ocean which are nevertheless unable to take action on the basis of available intelligence regarding possible drug shipments.

Ideally, a military vessel from one state could serve as an operational platform for a response team from another state that does have the necessary jurisdiction and powers. This model has been in use for years in the Caribbean Sea and the western Atlantic through bilateral *shiprider* agreements between the United States and various countries in the region. It might be appropriate to set up **a working group comprising European states with an operational presence on the high seas** to explore the feasibility of a similar model in the eastern Atlantic, for example through the deployment of a team from the Dutch navy from a Spanish customs vessel. ECOWAS (CEDEAO) is already considering the introduction of a comparable system among the States of the Gulf of Guinea.

SECTION IV: CRIMINALISATION OF PREPARATORY ACTS

Given the difficulty of obtaining specific intelligence on drug trafficking on the high seas and the limited availability of military vessels to carry out an operation, it seems necessary **to focus greater attention on the stages preceding and following the actual transport**. In particular, special consideration should be given to the criminalisation of preparatory acts, as well as the facilitation and logistical support that underpin the use of *narcoblanchas*.

It is noteworthy that the 1988 United Nations Convention expressly provides for the penalisation of the organisation and management of the offence of drug trafficking (Article 3(1)(a)(v)), as well as the assistance and facilitation of the offence (Article 3(1)(c)(iv)). However, although facilitation is covered by the Convention, the extent to which it is criminalised through preparatory offences varies significantly between States.

A number of countries have introduced legislation aimed at restricting the ownership of such vessels, the high-powered engines associated with them, or the carriage of large quantities of fuel. The question has been raised as to whether it would be advisable to move towards greater harmonisation of criteria at the European Union level.

Extraterritorial jurisdiction over preparatory offences

Appropriate and extraterritorial criminalisation of preparatory acts—including the possession of *narcoblanchas*—is key to dismantling the logistics on land. Likewise, such penalisation may be relevant in relation to the logistics of *narcoblanchas* on the high seas, provided that it is accompanied by an appropriate attribution of extraterritorial jurisdiction.

As already mentioned, it has been observed that, on numerous occasions, several *narcolanchas* remain in international waters for weeks awaiting instructions. Furthermore, in recent years, gangs specialising in attacks on merchant ships on the high seas have emerged, with the aim of stealing consignments of cocaine that have been smuggled on board without the knowledge—at least for the most part—of the commercial vessel’s crew¹⁹.

It is worth noting that, as *narcolanchas* are stateless vessels, they do not enjoy the protection afforded by the exclusive jurisdiction of a specific state. In principle, any State could act in accordance with its national law. Consequently, the possibility of intervention by state forces depends exclusively on the classification and scope of the crimes provided for in domestic law.

At this point, it is also worth noting the possible need for **greater harmonisation of national criminal codes**, potentially driven by the European legislator. There is a clear common interest in curbing drug trafficking on the high seas. However, at present, several States maintain a very limited criminal jurisdiction, limited to cases with a direct link to their territory or to the nationality of their citizens. However, large shipments of cocaine are destined for the European market, and the fight against transnational organised crime is an essential common security objective. It would be worth examining whether **a review of instruments such as Framework Decision 2004/757/JAI could allow criminal jurisdiction to be extended to all vessels on the high seas used for drug trafficking**. Freedom of navigation protects vessels with nationality, but in practice it seems to have generated the side effect of a lack of effective law enforcement with respect to unflagged vessels.

The appropriate classification, under national law, of offences relating to the preparation, aiding, or abetting of drug trafficking can significantly expand the scope for action against a *narcolancha* before it has taken on a cargo of drugs on the high seas. Provided there is reasonable suspicion, a vessel may be intercepted to determine whether it is involved in a preparatory offence. When the crew cannot offer a credible alternative explanation, the possibility of initiating criminal proceedings, including the seizure of the vessel itself, is opened.

Preparatory offences under article 17

Appropriate penalties with extraterritorial scope for preparatory offences, as well as for aiding and abetting drug trafficking, are equally important when taking action against vessels that do fly a flag and are involved in facilitating illicit trafficking.

Transatlantic drug trafficking can be articulated through several successive stages, with the participation of different vessels. It is not uncommon for a sailboat to sail to pick up drugs on the high seas from a larger vessel and subsequently transfer the cargo to another vessel closer to shore.

All vessels involved in such transport could be included in a preparatory offence even before receiving the drug cargo on board, depending on the specific definition of the criminal offence. An adequate typification of the facilitation would allow for earlier intervention against other vessels involved in traffic logistics.

Article 17 allows action to be taken on the basis of reasonable grounds for suspecting that a vessel is being used for illicit trafficking. Although, from a criminal law perspective, it may be

¹⁹ In 2025, there were reports of possible activities of these gangs—known as *micos* or *trepadores* in Latin America—on European soil.

less appealing to intervene when there is only evidence of a preparatory offence—compared to a situation where there is certainty that drugs are on board—**having this option available significantly broadens the operational window.**

In practice, the devices available for offshore operations are very limited. Expanding the possibilities for intervention can contribute substantially to the fight against transatlantic traffic. National criminal procedural law usually allows for actions based on mere reasonable suspicion of the commission of an offence. Depending on the rules governing the allocation of jurisdiction, a vessel may be intercepted on the high seas where there is sufficient evidence that it is being used for illicit trafficking, even prior to the actual receipt of the drugs.

An operation that does not result in the seizure of narcotics nevertheless contributes to the suppression of transatlantic drug trafficking, in that (1) it acts as a deterrent, (2) it enables intelligence to be gathered on the vessel and its crew, and (3) it allows, in accordance with national law, for the covert installation of tracking devices.

SECTION V: LACK OF JUDICIAL COORDINATION

At the police level, there seems to be a continuous exchange of intelligence on alleged transatlantic drug transports. The MAOC-N coordinates monthly operations on the high seas. Furthermore, in territorial seas, ports, and coastal areas, significant quantities of narcotics destined for, or originating from, countries on the other side of the ocean are routinely seized.

However, **judicial coordination between both shores of the Atlantic is insufficient.** In many cases, both the investigation and the preliminary proceedings are limited to the seized consignment and the individuals arrested at the scene. In order to tackle the underlying criminal organisations effectively, it is essential to ensure the early and swift exchange of information, including during the confidential phase of proceedings, and to focus the investigation from the outset on the higher echelons of the organisation, even if these are located in another country.

This means, for example, that the investigation must take due account of the analysis of electronic devices, the questioning of detainees regarding their recruitment and remuneration, as well as the analysis of chemical traces of the drugs and DNA found on board the vessels. It might also be advisable to **voluntarily share such information** at a very early stage with the vessel's country of origin, in order to facilitate investigations in port or the retrieval of telephone call records. A seizure of drugs on one shore of the Atlantic may constitute relevant evidence in proceedings conducted on the other.

In addition, people of Latin American nationality are frequently detained in interventions on the high seas. In these cases, the prompt issuance of a European Arrest Warrant or extradition request may be crucial to ensure their effective detention. In certain cases, it might even be more appropriate to initiate a transfer of the criminal procedure to the home State of the crew at a very early stage.

For the judicial authority in charge of an isolated seizure, the relevance of activating judicial cooperation mechanisms may not be evident. However, the planning phase prior to the intervention—and before the case is brought before the courts—is precisely the ideal time to assess which State is best placed to bring criminal proceedings.



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It might be useful to **establish, within the framework of MAOC-N and/or ORION, the role of a judicial liaison officer or adviser** with in-depth knowledge of the criminal procedure systems of the States concerned. This role could provide advice on the procedural strategy to be followed even before arrests are made and actively promote judicial cooperation once proceedings have commenced. Although there are numerous networks for judicial cooperation, it seems appropriate to have a specialist role in international criminal cooperation from the outset. This would enable a proactive approach to be taken towards the relevant judicial authorities, allow for the issuance of European arrest warrants to be coordinated in advance, and facilitate an early assessment of whether criminal proceedings should be transferred.

The main challenge in bringing in a figure with links to the judiciary or the prosecution service lies in ensuring that there is no doubt as to the confidentiality of intelligence-sharing within the MAOC-N or ORION structures. However, the added value of such an approach would be the incorporation of criminal procedural considerations right from the planning stage of operations. In practice, it may be the case that other states offer better conditions or have a greater interest in conducting criminal proceedings than the state of the investigating team itself.

Furthermore, this consultant could make recommendations to participating States on matters such as the location of the interception, the authority responsible for carrying out the boarding, the manner in which evidence is obtained, or the effective safeguarding of the rights of those intercepted.

Finally, it might be worthwhile to organise **a joint workshop involving naval forces and judicial authorities from the various states concerned**, with a view to examining the extent to which improved international judicial coordination could help to reduce the practical obstacles faced by naval forces in combating drug trafficking on the high seas.



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CONCLUSIONS

1. THE PERSISTENCE OF SPACES OF IMPUNITY RESULTING FROM REGULATORY FRAGMENTATION IN THE FIELD OF MARITIME CRIMINAL JURISDICTION

Analysis shows that, despite the existence of a widely accepted international framework—led by the 1982 United Nations Convention on the Law of the Sea and the 1988 Vienna Convention on Narcotic Drugs—the effective application of criminal jurisdiction on the high seas remains uneven. This situation creates **spaces of impunity**, particularly in cases involving vessels flying the flags of uncooperative third countries or those without nationality.

Whilst Article 17 of the Vienna Convention provides a clear basis for maritime interdiction and operational cooperation, **it does not in itself resolve the issue of the exercise of criminal jurisdiction**, which remains subject to the existence of specific agreements or to express incorporation into the domestic law of States. The lack of legislative consistency means that seizures carried out lawfully from an operational standpoint do not always lead to effective criminal prosecution, thereby undermining the deterrent effect of interventions on the high seas.

2. LIMITATIONS IN COOPERATION WITH FLAG STATES AND THE PROBLEM OF NON-RESPONSE TO VERIFICATION REQUESTS

One of the most relevant problems identified is the **lack of response, or late response**, by certain flag States, especially those associated with flags of convenience. This practice hinders the application of the procedure provided for in Article 17 of the Vienna Convention and may condition the possibility of conducting boardings and inspections on the high seas.

Although experience shows that the absence of a response rarely generates an active diplomatic reaction on the part of these States, the resulting legal uncertainty sometimes discourages the intervening authorities from acting with the necessary speed. In response to this problem, potential solutions have been identified within the existing legal framework, such as the

development of agreed interpretations of Article 17 or the use of diplomatic mechanisms provided for in the Vienna Convention to address systematic breaches of cooperation obligations.

3. INSUFFICIENT LEGAL TREATMENT OF VESSELS WITHOUT NATIONALITY AS A CENTRAL VECTOR OF MARITIME DRUG TRAFFICKING

The growing use of **stateless vessels**—in particular *narcobalchas* and semi-submersible vessels—is one of the main operational challenges currently faced. Although the Law of the Sea permits the exercise of broad powers of boarding and inspection over this type of vessel, most of the States examined have not expressly incorporated a clear basis for exercising criminal jurisdiction over them into their domestic law.

This regulatory gap stands in contrast to the practice of states that have indeed put in place specific legislative solutions, which highlights the legal feasibility of exercising criminal jurisdiction over stateless vessels where the intervening state has a legitimate interest. The report concludes that even a minimum level harmonisation of domestic laws in this area would help to close one of the main loopholes currently exploited by criminal organisations.

4. DISPARITIES BETWEEN THE OPERATIONAL CAPACITIES AND LEGAL AUTHORITIES OF THE STATES INVOLVED

The study notes a **frequent disconnect between the operational capabilities available on the high seas and the legal powers required to make full use of them**. In many States, naval forces have the means to carry out interdictions, but lack clear competencies to act as judicial police, arrest people, secure evidence, or use force in a proportionate and legally protected manner.

These asymmetries reduce the overall effectiveness of the assets deployed and create situations in which ships in strategic transit areas **are unable to act despite having relevant intelligence**. This study has identified the strengthening of the domestic legal framework—including the granting of judicial police status to naval personnel—and the development of cooperative models that enable the sharing of platforms and expertise between states, as a possible solution.



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5. THE EXPERIENCE OF THE SHIPRIDER COOPERATION MODEL

The examples examined, in particular the Treaty of San José and the bilateral Shiprider agreements, demonstrate that models of operational cooperation involving designated authorities, short timeframes, and liaison officers on board vessels make it possible to overcome many of the traditional obstacles arising from the principle of flag state jurisdiction.

The experience accumulated in the Caribbean and in the operations sponsored by the United States shows that these instruments **substantially improve the effectiveness of the interdictions**, reduce decision times, and provide legal certainty both at the operational and jurisdictional levels. The study concludes that the absence of similar mechanisms in other parts of the Atlantic is due more to political and legislative decisions than to insurmountable legal constraints.

6. A LACK OF EARLY JUDICIAL COORDINATION AS A FACTOR HINDERING THE PROSECUTION OF CRIMINAL NETWORKS

Despite the high level of exchange of police and operational intelligence, the analysis shows that **judicial and prosecutorial coordination between the various jurisdictions involved remains inadequate**, particularly in the initial stages following an interception on the high seas. In many cases, criminal proceedings are limited to the detained crew and the seized cargo, without extending to the higher echelons of criminal organisations.

This work identified the **early integration of procedural information** into operational planning and the strengthening of links between operational structures and existing judicial networks as a solution. The experience of initiatives such as Operation Orion and their judicial dimension demonstrates that better coordination between maritime interdiction and criminal investigations can enhance the strategic impact of operations.

7. THE NEED TO PARTIALLY REFOCUS THE CRIMINAL JUSTICE RESPONSE ON EARLIER STAGES OF ILLEGAL TRAFFICKING

Finally, this study concludes that the fact that law enforcement efforts are focused almost exclusively on the actual transport of narcotics limits the scope for intervention. The inherent difficulties involved in gathering intelligence on the high seas and deploying resources justify a **greater focus on criminalising preparatory and facilitating acts**, including the logistics associated with *narcoblanco* and support operations on the high seas.

The appropriate criminalisation of such conduct, combined with clear rules on extraterritorial jurisdiction, would make it possible to **broaden the operational scope**, take action at an earlier stage, and reduce reliance on a successful final interception with drugs on board, without undermining legal safeguards.



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RECOMMENDATIONS FOR FUTURE ACTION

1) TO INCLUDE IN THE DOMESTIC LAW OF STATES AN EXPRESS CLAUSE ON EXTRATERRITORIAL JURISDICTION FOR: (A) STATELESS VESSELS AND (B) THIRD-STATE VESSELS WITH CONSENT IN ACCORDANCE WITH ARTICLE 17 OF THE VIENNA CONVENTION.

It is a priority to address regulatory gaps that may hinder the criminal prosecution of interdictions on the high seas where a vessel is stateless or flies the flag of a third country. The reform must establish criminal jurisdiction in both cases—and allow for its exercise where the flag State gives its **consent**—providing a legal framework for boarding, searching, seizing property, and prosecuting, in a manner consistent with UNCLOS and Article 17 of the Vienna Convention, as well as with the best international practices identified in this work.

2) GRANT JUDICIAL POLICE STATUS TO NAVAL PERSONNEL OPERATING ON THE HIGH SEAS AND INCLUDE CLEAR AND PROPORTIONATE RULES ON THE USE OF FORCE DURING INTERCEPTIONS ON THE HIGH SEAS IN THE COUNTRIES' INTERNAL REGULATIONS.

The **lack of symmetry** between material capabilities and the legal status conferred on police forces can reduce operational effectiveness. It is recommended that **judicial police powers** be conferred, by law or regulation, on deployed naval personnel, whilst also establishing clear rules governing intervention and the use of force.

3) PROMOTION OF THE SHIPRIDER MODEL IN THE EASTERN ATLANTIC, ENABLING TEAMS WITH FULL JURISDICTION TO OPERATE FROM VESSELS OF ANOTHER STATE.

The information obtained shows that **on-board liaison officers** and the interoperability of this type of patrol **significantly enhance the operational capabilities of police forces and drastically reduces jurisdictional and competence issues**. The establishment of joint patrols involving European states with a presence in the eastern Atlantic (with pre-determined rules on consent, hot pursuit, and the transfer of jurisdiction) would enable better use to be made of available naval assets and close windows of opportunity for criminal organisations.



4) TO CRIMINALISE AND ADDRESS—WITH EXTRATERRITORIAL REACH—PREPARATORY ACTS AND LOGISTICAL FACILITATION OF MARITIME TRAFFICKING (USE/POSSESSION OF NARCOLANCHAS, HIGH-POWERED ENGINES, FUEL STORAGE, AND RELAY VESSELS).

To improve the criminal prosecution of such illicit trafficking, it is recommended that acts of **preparation and support** (including logistics at sea and onshore) be made criminal offences and that their **extraterritorial** prosecution be permitted where there is a legitimate interest on the part of the State. This will facilitate **early interventions** even when no drugs are found on board, enabling the seizure of assets and the disruption of the criminal supply chain.

5) CONSIDER THE APPLICATION OF 'DISASSOCIATION' PROTOCOLS AS A COST-EFFECTIVE ALTERNATIVE, INVOLVING THE SEIZURE OF THE NARCOTIC SUBSTANCE WITHOUT SUBSEQUENT CRIMINAL PROSECUTION OF THE CREW, WHERE SUCH PROSECUTION WOULD NOT ADD SIGNIFICANT VALUE .

In remote locations where logistics are costly, it may be more efficient **to seize the drugs, destroy them, and release the crew** when the minimum conditions for a successful criminal prosecution are not met. This option, however, requires **specific legal coverage**, with objective criteria for action.

6) ESTABLISH OPERATIONAL JUDICIAL LIAISON OFFICES WITHIN EXISTING COORDINATION CENTRES, WITH A ROLE IN PROVIDING ADVICE AND FACILITATING EARLY CRIMINAL COOPERATION.

The **convergence** of police powers of interdiction and the potential exercise of criminal jurisdiction requires the involvement of **judicial/prosecutorial** personnel from the **planning stage**, who can advise on matters such as: determining the appropriate jurisdiction, preparing **arrest/extradition warrants** or **European warrants**, coordinating **procedural transmissions**, and securing sources of evidence. This would significantly improve judicial coordination, which does not always function as effectively as it should between the states on both sides of the Atlantic.



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