



Maritime Interdiction on the High Seas: a Case Study of Spain and the Concept of ‘Universal Jurisdiction’

R. García-Llave¹, F. Piniella^{2,*} and M. Acosta-Sánchez³

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ABSTRACT

This paper presents an analysis of illicit maritime trafficking of psychotropic substances and law enforcement policies within the context of ‘Universal Jurisdiction’. To this end, we examine the case of Spain and its Universal Jurisdiction reform, which has led to the dismissal of numerous proceedings initiated for alleged drug trafficking and release of the perpetrators, with consequent limitations on the actions of Spanish agencies responsible for the investigation, suppression and prosecution of illicit trafficking by sea.

First, we analyse the regulatory context in which such interventions take place. Next, we present an overview of Spanish maritime policy, before and after the Universal Jurisdiction reform. We conclude this paper with the interpretation and approach adopted by the Supreme Court in recent judgements, which leave open the possibility of applying Universal Jurisdiction to prosecute the crime of illicit trafficking of narcotic drugs and psychotropic substances.

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1. Introduction

Illicit trafficking in toxic drugs, narcotics and psychotropic substances has become a serious problem in society today (Griffiths et al. 2008). Not only does it violate national laws and international treaties, but it also engenders antisocial and illegal activities such as organised crime, illegal criminal cartels, bribery, subornation and intimidation of public officials, tax evasion, violations of banking legislation, money laundering, violation of import and export regulations, firearms offences and crimes of violence (UN, 1987).

Concepts such as the freedom of navigation (Wendel, 2007) and the principle of exclusive jurisdiction of the flag State (Art. 87 and 92, International Convention on the Law of the Sea, UNCLOS) (UN, 1994 & McClean, 2007) protect vessels on the

high seas, but in doing so render this the preferred route for drug trafficking, since it enables large volumes of illicit substances to be transported with less risk of being intercepted (MAOC, 2014).

The UNCLOS Agreement and later the Vienna Convention on Traffic in Narcotic Drugs and Psychotropic Substances (UN, 1990) were designed to tackle this issue by providing legal mechanisms for the maritime policy on interception of ships on the high seas engaged in illicit drug trafficking, partly by establishing a system of cooperation between the States (Boister, 2012), and also by conferring a range of possible State powers for prosecution based on the principles of territorial and extraterritorial jurisdiction (Mainer, 1996).

In regard to the exercise of authority and jurisdiction, the Parties, in order to more effectively combat illicit trafficking by sea, crimes of an inherently transnational nature, and in application of the principle of ‘Universal Jurisdiction’, have gradually extended their powers and have created legal mechanisms that allow the States to declare jurisdiction over this type of crime committed on the high seas (Guilfoyle, 2009 & Klein, 2011). Such is the case of Spain, a country traditionally considered a gateway for the entry of drugs into Europe due to its proxim-

¹EAT - Servicio Marítimo de Vigilancia Aduanera. Department of Maritime Studies, Universidad de Cádiz, Spain. E-mail address: ruth.garcia@uca.es.

²Director R&D Group Maritime Policy. Department of Maritime Studies, Universidad de Cádiz, Spain. <http://segumar.uca.es>.

³Department of International Law, University of Cádiz, Spain. e-mail address: miguelangel.acosta@uca.es.

*Corresponding author: francisco.piniella@uca.es

ity to the African continent and its extremely long coastline. In recent years, the Spanish State has devoted considerable effort to establishing the means to suppress illicit trafficking by sea, developing an extensive regulatory framework that confers upon judges the power to indict these crimes when carried out in international waters.

2. International Legislation on Illicit Trafficking in Narcotic Drugs and Psychotropic Substances on the High Seas

International legislation on illicit trafficking of narcotic drugs and psychotropic substances currently rests on two Conventions. The first of these, UNCLOS, devotes only one article to the subject in question (Art. 108), which was designed to promote cooperation between States to suppress such activities when conducted on the high seas. The second, the Vienna Convention, in complement to UNCLOS, defines the crime as such and establishes a request-authorisation system to facilitate cooperation between States, as well as a system of powers.

2.1. United Nations Convention on the Law of the Sea

Freedom of navigation, a fundamental activity on the high seas throughout history, is considered a principle of international customary law which has been codified in UNCLOS by establishing that every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas (Art. 90) (Byers, 2004 & Stratē et al. 2006).

In practice, this freedom of navigation on the high seas has two fundamental and complementary effects: No State may impede the navigation of ships flying the flag of another State, nor impose on them its jurisdiction.

A direct consequence of this is the establishment of the principle of exclusive jurisdiction (Anderson, 1982), according to which, each vessel on the high seas is subject to the exclusive jurisdiction of the State which has granted it the flag.

Although freedom of navigation on the high seas is provided for in the above principle, UNCLOS establishes a number of exceptions whereby other States are authorised to stop, board and even detain a foreign ship on the high seas when it is engaged in activities prosecuted and punished by the international community or when it is deemed to have violated the laws or regulations of the State concerned. In their entirety, these provisions constitute a list of exceptions to the exclusive jurisdiction of the flag State.

Activities, which do not comply with international law, include piracy, considered a universal crime by the Convention (Art. 100-107), the transport of slaves (Art. 99), trafficking in narcotic drugs and psychotropic substances (Art. 108), and unauthorised broadcasting (Art. 109). Any interference carried out in respect to the above shall be conducted through the exercise of the right of visit⁴ (Barry, 2004), where the established

cases and circumstances exist (Art.110)⁵, or through the right of hot pursuit (Poulantzas, 2002) where applicable (Art. 111).

In relation to illicit trafficking in narcotic drugs and psychotropic substances on the high seas, UNCLOS represented a major step forwards in international regulations aimed at suppressing these practices, not only with respect to the 1958 Convention on the High Seas (UN, 1962), but also as regards the various international Conventions on the subject and in force at the time of drafting⁶ (UN, 1975). It established a specific regulation concerning illicit acts of this type carried out at sea, establishing that all States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions, and that any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic (Art.108).

This wording only established the general obligation of all States to cooperate, but did not determine any specific mechanism for cooperation, leaving the door open for States to establish bilateral or multilateral agreements through which, either in analogous or similar terms, they gave reciprocal authorisation to intercept vessels on the high seas flying their flag wherever there was reason to believe that these were transporting toxic drugs, narcotics or psychotropic substances (Forbes, 2014).

Lastly, UNCLOS explicitly refers to the assistance that a State may request with respect to vessels flying its flag when there are reasonable grounds to believe that these are engaged in illicit traffic of narcotic drugs and psychotropic substances, without making any mention of a request for assistance from a State other than the flag State, which is the case which has provoked most difficulties internationally due to its repercussions for the principle of exclusive jurisdiction of the flag State (Papastarvridis 2014a, 2014b).

2.2. The Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

A mechanism of cooperation was established by Article 17 of the Vienna Convention, whereby the flag State can authorise vessels serving another State to intercept a ship on the high seas engaged in illicit activities.

2.2.1. Background to the International System of Drug Control and Law Enforcement

Ever since the consumption and trafficking of drugs has been considered a social problem of an international nature, international legislation has been based on three international

⁵The right of visit is provided in the case of trafficking in narcotic drugs and psychotropic substances and in the case where the ship is carrying out unlawful acts against the safety of maritime navigation (what is now called "maritime terrorism"), but subject to prior request and authorisation by the flag State. Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, concluded in London on October 14, 2005. Entered into force on 28 July, 2010.

⁶Art. 35 of the 1961 Single Convention and Art. 21 of the 1971 Convention on Psychotropic Substances.

⁴See the case U.S. Supreme Court. The Marianna Flora, 24 US 11 Wheat. (1826).

Conventions negotiated under the auspices of the United Nations and considered the backbone of the drug control and law enforcement system. These are: The 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

In the early 1980s, both the Commission on Narcotic Drugs⁷ and the International Narcotics Control Board (INCB)⁸ expressed their concern about the increasing incidence of drug abuse and illicit trafficking in drugs, a situation which they considered a threat to public health and a source of corruption and organised crime, activities that could seriously affect the security of States and their economic, social and cultural structures⁹ (UN, 1985, 1984, 1981).

Taking the consensus view that the existing legislation only provided a basic international legal framework and that its criminal law provisions concerning the suppression of illicit traffic were limited in scope, the international community, and particularly the States party to the international conventions on drug control, agreed to formulate a new instrument that besides serving to intensify efforts and coordinate strategies, would also provide a mechanism for tackling the problem through cooperation and the implementation of agreed actions.

Thus, the Vienna Convention established that its purpose (Art. 2) was to promote cooperation among the Parties so that they could address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension¹⁰. In carrying out their obligations under the Convention, the Parties were to take the necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2.2.2. *Crime of Illicit Traffic in Narcotic Drugs and Psychotropic Substances*

The criminalisation and punishment of illicit traffic is one of the basic characteristics of the Vienna Convention, considered a fundamental step towards achieving the established objectives and the ultimate goal, namely to promote cooperation between

the Parties in order for them to more effectively tackle the various aspects of illicit traffic in narcotic drugs and psychotropic substances that have an international dimension.

To this end, the Parties are required to take the legislative measures necessary to establish a modern code of criminal offences related to the various aspects of illicit trafficking, and to ensure that these illegal activities are treated as serious crimes by the judicial authorities of each State party.

This classification of the criminal offences and their corresponding sanctions (Art. 3) is clearly based on the philosophy that improving the efficiency of domestic criminal justice systems related to drug trafficking is a necessary condition for the establishment of effective international cooperation. Importantly, although the Vienna Convention establishes the minimum legislation to be applied by all Parties, it does not prevent the adoption by States of more stringent measures, although these must always be consistent with the rules of international law, and in particular with those relating to the protection of human rights. The Convention frames the criminal offence of illicit traffic in narcotic drugs and psychotropic substances carried by sea within the concept of ‘transport’, since this term encompasses carrying by any means, i.e., land, sea or air¹¹. To this end, each State shall establish as criminal offences under its domestic law, when committed intentionally, the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

As can be seen, the measures set out are binding for all Parties and make explicit reference to the provisions of the previous instruments, with the only difference being that its predecessors contained the safeguard clause “subject to the provisions of its constitution¹²” which it was not considered appropriate to include here because the authors of the Convention intended the text to have a fully binding nature.

2.2.3. *Jurisdictional Powers Regarding the Criminal Offence of Illicit Trafficking on the High Seas*

In line with the general approach taken in previous multilateral conventions on international crimes, the Vienna Convention regulated the issue of prescriptive jurisdiction in a specific provision (Article 4), establishing two types of jurisdiction: mandatory and discretionary (Sorensen, 1990).

In the case of the former, the Convention stipulates that it is mandatory for each Party to take such measures as may be necessary to establish its jurisdiction over the offence when it is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed.

⁷The Commission on Narcotic Drugs, composed of 53 member States, was created on February 16, 1946 (Resolution E/RES/1946/9 (I)) by the Economic and Social Council of the United Nations, to serve as the principal agency responsible for formulating policies regarding the United Nations’ narcotic drug control system.

⁸An independent and quasi-judicial body consisting of thirteen experts which was established in 1968 under the 1961 Single Convention on Narcotic Drugs through the merger of two bodies, the Permanent Central Narcotics Board, established by the International Opium Convention of 1925, and the Narcotics Control Board, established under the 1931 Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs.

⁹The General Assembly noted in 1981 that “the scourge of drug abuse” had reached “epidemic proportions in many parts of the world”.

¹⁰The General Assembly, after referring to the shared concern about the “dreadful and harmful effects of drug abuse and illicit drug trafficking” and for the purposes of carrying out “universal action to combat the drug problem in all its forms at national, regional and international level”, decided to convene an International Conference on Drug Abuse and Illicit Drug Trafficking to be held in Vienna in 1987.

¹¹No contract of carriage is required; free transportation is included in the scope of the provision.

¹²1961 Convention, paragraph 1 of Art. 36; 1961 Convention as amended, subparagraph a) of paragraph 1 of Art. 36; 1971 Convention, subparagraph a) of paragraph 1 of Art. 22.

As with other instruments, the text stipulates that jurisdiction shall be ‘established’ but not necessarily that it shall be ‘exercised’, since in some cases it may be more appropriate for alleged offenders who have carried out criminal activities in another State to be extradited for trial in that State. It should also be noted that each coastal State has sovereignty not only over its land space but also over territorial sea and airspace under the rules of international law, both customary and conventional. To eliminate any loopholes those could be exploited by traffickers, and bearing in mind the importance of suppressing trafficking by sea, the Parties shall adapt their domestic legislation to incorporate crimes committed on vessels within their territorial waters. Lastly, in relation to issues that may arise concerning concurrent jurisdiction, the Vienna Convention does not determine which State shall exercise jurisdiction, stating that it shall be the responsibility of each domestic legislative system to solve problems arising from shared jurisdiction or to resolve them through bilateral or multilateral mechanisms.

Regarding discretionary jurisdiction, i.e. optional rather than mandatory jurisdiction, the Vienna Convention states that each Party may establish its jurisdiction when the offence is committed on board a vessel concerning which that Party has been authorised to take appropriate action pursuant to Article 17, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements, and is committed outside its territory with a view to the commission, within its territory, of one of the established offences. First, however, reference is made to extraterritorial offences committed by nationals and habitual residents. In this case, the Convention recognises the universal principle of establishing jurisdiction based on the nationality or habitual residence of the offender. However, the concepts of nationality and habitual residence are not defined, and the latter is considered as a purely factual notion. In cases of dual or multiple nationalities, it shall be for the State corresponding to each of the nationalities of the alleged offender, which shall establish its jurisdiction on this basis. The second basis for establishing jurisdiction, although couched in vague terms, requires the States to exercise mandatory jurisdiction in order to endow Article 17¹³ with full effectiveness, as it would not be viable to board and search a foreign ship on the high seas whose crew was exclusively composed of foreign nationals if it were not possible to initiate proceedings for the transport of illicit drugs¹⁴.

It should also be noted that although the Convention establishes that a Party has jurisdiction over offences committed on ships flying its own flag and on those perpetrated on ships flying the flag of another Party, no mention is made about the assumption of legislative powers over ships without nationality

that are engaged in international traffic in narcotic drugs and psychotropic substances. There is a remarkable absence of provisions in this regard, given that Article 17 refers to requests for assistance to suppress the use of this type of ship for illicit traffic. International practice has shown that this issue requires special attention because many trafficking networks make use of stateless vessels to transport illegal substances¹⁵.

2.2.4. *International Cooperation in the Context of Illicit Trafficking at Sea*

As previously mentioned, illicit traffic by sea is covered in Article 17 of the Vienna Convention (Gilmore, 1991). This article comprises a provision designed to promote international cooperation in the suppression of illicit traffic by sea, and is complementary to UNCLOS (Art. 108), establishing cooperation between the Parties as the initial premise and starting point of the Convention (ESC, 1995).

This cooperation is framed as mandatory, subject to the International Law of the Sea, is directly linked to UNCLOS and is endowed with a general scope, since the text employs the term “by sea”, unlike that used in Article 108, “on the high seas”. The text of this article establishes a cooperation mechanism based on a system of request-authorisation by the flag State (UN, 1988), but does not make any reference to the exercise of jurisdiction by the State requesting authorisation to intervene, the subject of analysis in this article.

3. Traffic by Sea of Psychotropic Substances

In the last decade, drug trafficking has become an increasingly complex and dynamic phenomenon with a strong criminal and social impact. Any study of drug market trends must necessarily include an evaluation of supply and demand indicators, and even more importantly, an analysis of the dynamics of the process through which the illegal trade in drugs is carried out (EMCDDA, 2014a). One of the most important external variables that must be considered with respect to the supply of narcotic substances is the increasing prominence that global trade networks have attained from a qualitative point of view, resulting in market globalisation. This situation has led to a constant variation in trafficking methods due to the need to adapt to the dynamics and global characteristics of trade routes. In this context, criminal organisations interact with other heterogeneous criminal groups, with the risk of spawning new associations between groups of different nationality.

Trafficking routes are identified through a joint analysis of the intelligence data provided by international organisations and the information obtained from police action at national level (EMCDDA, 2014b).

This analysis has demonstrated a continuous diversification in the trafficking methods employed by drug traffickers and their constant search for alternative, and especially maritime, routes, which are often bizarre and unimaginable. Some of

¹³ Illicit traffic by sea.

¹⁴ The Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Strasbourg, 31.I.1995) in Art. 3 establishes that this jurisdiction is mandatory: “For the purposes of implementing this Agreement, each Party shall take the necessary measures to establish its jurisdiction over the relevant offences committed on board a vessel flying the flag or displaying the marks of registry or other indication of nationality of another Party to this Agreement. Such jurisdiction shall be exercised only in accordance with this present Agreement”.

¹⁵ According to UNCLOS, if no-flag ship, is taken to be stateless, so would any jurisdiction the ship of state.

them, which on initial assessment might appear uneconomical due to their complexity and impracticality, in fact present fewer risks for the consignment and greater difficulties for law enforcement agencies as regards establishing the point of origin and final destination of the goods.

4. Europe against Illicit Traffic by Sea: Legislation and Actions

With the aim of progressively establishing a common criminal policy within the European Union, and aware of the need to strengthen ties with regard to cooperation against illicit traffic by sea, the Council of Europe adopted an Agreement on illicit traffic by sea based on implementation of Art.17 of the Vienna Convention¹⁶ (CE, 1995 & Nagler, 1997). This Agreement reiterates the provisions of Art.17 and attempts to clarify some of the provisions that, from a practical perspective, contained omissions, such as in the case of the exercise of jurisdiction in the event of ships without nationality. To this end, the Agreement states that each Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences committed on board a vessel which is without nationality, or which is assimilated to a vessel without nationality under international law (Art. 3) (Gilmore, 1996). Another novelty is related to the exercise of preferential jurisdiction (Art. 14), i.e., when a ship is intercepted by a State other than the flag State. In these cases, it shall be the flag State which, based on evidence of the commission of offences within the scope of the Agreement, shall expressly notify the intervening State of its desire to exercise jurisdiction. If the flag State fails to do this within a period of fourteen days, it shall be deemed to have waived the exercise of its preferential jurisdiction (CE, 1995).

Within the framework of European cooperation to suppress illicit traffic by sea, an intergovernmental working group (MAOC-N) was created in 2007 at the initiative of seven European countries (France, Ireland, Italy, Spain, the Netherlands, Portugal and the United Kingdom). Based in Lisbon, its mission is to improve criminal intelligence and coordinate police action on the high seas for the suppression of trafficking in cannabis and cocaine destined for Europe (Nagler, 1997). Since its inception, MAOC-N has worked closely with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the European Maritime Safety Agency (EMSA), European Police Office (Europol), the European Union's Judicial Cooperation Unit (Eurojust) and the International Police (INTERPOL). Therefore, we can say that the European Union considers the fight against illicit traffic by sea in its objectives as his preferred Maritime Policy.

5. Case study: Spain and Intervention of Narcotic Drugs on the High Seas, Applicability of Universal Justice

In the fight against illicit traffic by sea, Spain deploys an agency under the Ministry of Finance and framed within the

Department of Customs and Excise, called the Customs Surveillance Service. This agency, created in 1955 and originally called the Special Fiscal Surveillance Service, has eight hundred marine officers and a fleet of thirty seven ships (high-speed craft, medium-sized patrol boats and ocean-going patrol boats) distributed along the Spanish coast at twenty five maritime bases situated in strategic locations, which play a key role in the fight against illicit traffic by sea. Although now primarily operating in territorial waters, in the years when Spain applied the principle of Universal Jurisdiction there was an extraordinary increase in seizures, mainly on the high seas, and Spain became the leading country in Europe as regards suppression of this type of practice. However, since March 2014, the policy reversal entailed in the Universal Justice reform has led to a considerable reduction in the agency's actions, to the extent that Spain no longer undertakes any intervention in the case of ships in international waters, despite the success of previous operations (Table 1).

All kinds of drugs are intercepted at sea, but mainly cocaine and cannabis, since synthetic drugs and heroin are primarily transported by other means. Cannabis (see evolution in Figure 1) is brought in from northern Morocco along the length of the southern and Mediterranean coast, and even as far as France, using speedboats equipped with various large outboard motors. Hence there has been a change in the traditional areas for receiving cannabis consignments, previously centred around the Strait of Gibraltar, towards areas further away. The pattern of routing cocaine via the Atlantic and cannabis via the Mediterranean has also broken down, and both routes are now used for both drugs. There are two routes for cocaine: the 'classic' one that includes direct transport from South America by all means of transport (ships, containers, flight passengers, etc.) and the 'African route'. Interception on the high seas is essential, and where it has been legally possible this approach has accounted for almost 70% of interventions: it is for this reason that Spain has acquired a large fleet of vessels in recent years (Figures 2–4).

5.1. Spanish Power of Jurisdiction over Offences of Illicit Traffic in Narcotic Drugs and Psychotropic Substances on the High Seas

To complement these interventions, since 1986 Spain has extended its power of jurisdiction to prosecute crimes related to illegal trafficking of toxic drugs, narcotics and psychotropic substances committed by Spanish citizens or foreigners outside Spanish territory (GSp 1985). This power has been reduced on two occasions (as can be seen in the detentions shown in Figure 1): in both 2009 (GSp 2009), and more especially, in March 2014 (GSp 2014, Sánchez-Legido, 2014 & Segura-Serrano, 2014), following a reform carried out by emergency procedure of the Organic Law on Judicial Power, which limited the exercise of Universal Jurisdiction by Spanish courts, whose powers in relation to such offences is recognised in two provisions, the first of which explicitly refers to offences committed at sea (Art. 23.4.d): "[...] committed in maritime spaces, in the cases provided for in treaties ratified by Spain or in the regulatory acts of an international organisation of which Spain is

¹⁶Paragraph 9 of Art. 17 establishes that: "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".

Tabla 1. Seizures in international waters.

2013

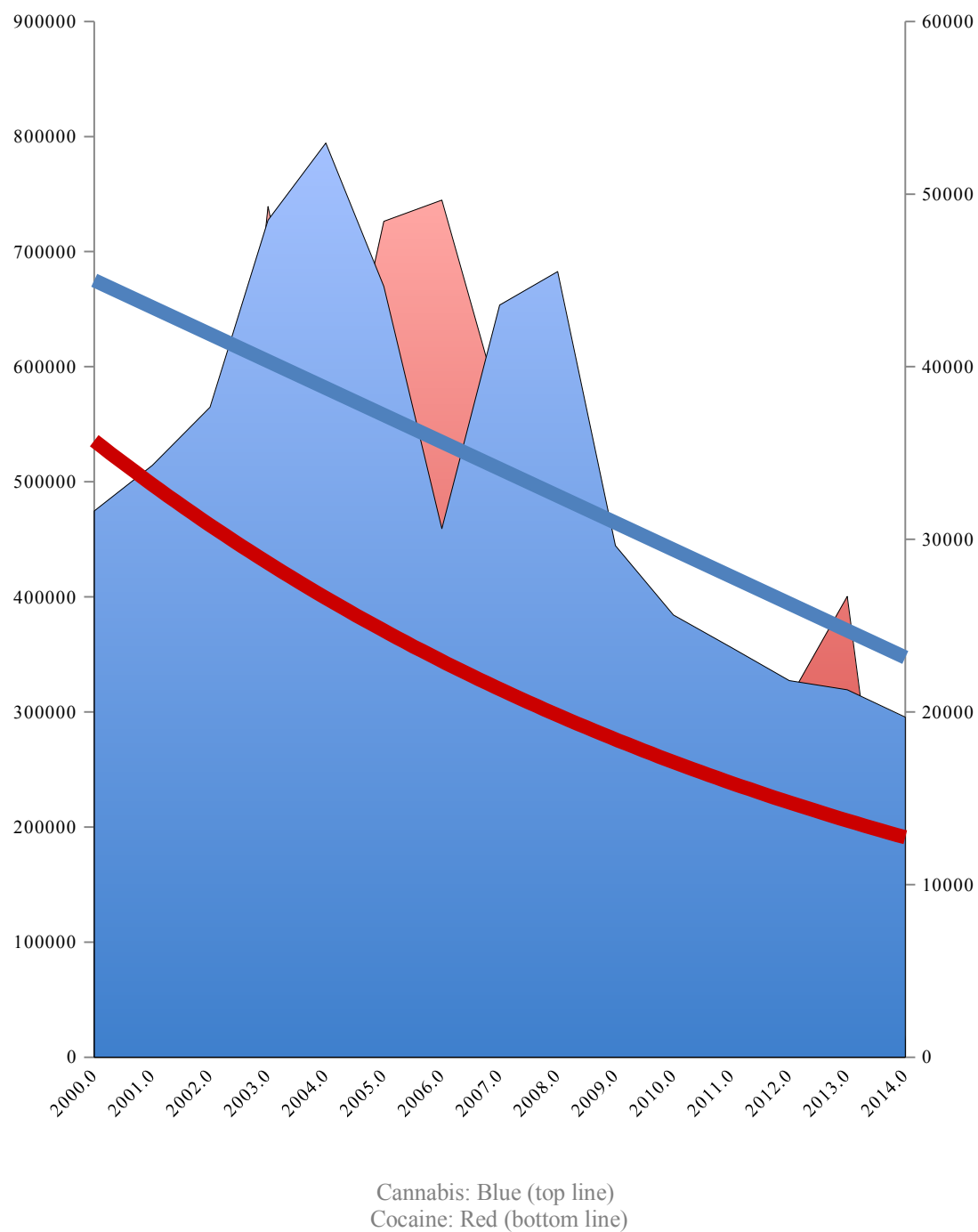
Type of substance	Operation	Date (month-day)	Location	Quantity seized (kg)	Arrests
Cocaine	ALBATROS	05-29	Vigo-Pontevedra (Galicia)	3,300	5
Cannabis	-	05-31	Malaga (Andalusia)	16,057	14
Cocaine	RANA	07-16	Las Palmas GC (Las Palmas)	500	5
Cocaine	MATRIX-TARUGO	09-02	Cadiz (Andalusia)	800	15
Cannabis	MONTEVIEJO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

1st SIX MONTHS OF 2014

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

Source: Compiled from data supplied by CICO (Intelligence Centre for Organised Crime, Spanish Ministry of the Interior)

Figure 1: Cannabis and cocaine interventions and trends



Source: Compiled from bulletins of the National Central Narcotics Office, Spanish Ministry of the Interior

Table 2. Specifications of the customs vessels of figures 2–4

HIGH-SPEED PATROL BOAT

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

MEDIUM-SIZED PATROL BOATS

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

'SPECIAL OPERATIONS' OCEAN-GOING PATROL BOATS

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

Source: Maritime Unit of the Customs Surveillance Service

Figure 2: Customs vessels: Medium-sized patrol boat



Source: Maritime Unit of the Customs Surveillance Service

Figure 3: Customs vessels: Ocean-going patrol boat



Source: Maritime Unit of the Customs Surveillance Service

Figure 4: Customs vessels: High-speed patrol boat



Source: Maritime Unit of the Customs Surveillance Service

a party”, and the second, which can be considered of general scope and which would encompass illicit trafficking in any scenario provided that (Art. 23.4.i): “[...] 1. the proceedings are directed against a Spanish citizen; or 2. in the case of carrying out acts to implement one of these crimes or forming a criminal group or organisation with a view to committing it in Spanish territory”.

5.2. Practical Application of the Law of Universal Jurisdiction in Spain

Due to the retroactive nature of the new Law on Universal Justice, once it entered into force numerous cases under consideration that were the result of drug interventions in international waters were dismissed and closed and the drug traffickers released, based on the allegation that Spanish courts lacked the jurisdiction to prosecute such acts since the established requirements had not been met, i.e., the accused were not of Spanish nationality, there was no demonstrable link with Spain and nor could it be shown that Spain was the final destination of the consignment. From among the releases that have ensued since the reform came into force, the most notorious ones and those with the greatest social impact were the first two, effected on the 8th and 11th of April, respectively, in which a total of 16 people of Egyptia¹⁷ (SHC, 2014a) and Syrian¹⁸ (SHC, 2014b) nationality were released, who had previously been detained following the seizure of two ships on the high seas carrying a total of 21 tons of cannabis. These events received widespread media attention and generated considerable social alarm, leading many judges to express their disagreement and declare themselves in favour of maintaining Spanish jurisdiction to prosecute (SHC, 2014c, 2014d).

To address the situation thus created, which was largely inconsistent with the goal of the provisions of the Vienna Convention, the Supreme Court has passed two judgements giving a new interpretation of the rule (SC 2014a, 2014b). In these judgements, the Court considered that the two provisions for establishing jurisdiction mentioned above were “separate and independent”, and that even though they referred to the same type of conduct (illegal trafficking in toxic drugs, narcotics and psychotropic substances), they differed in one fundamental aspect: the scope of application. The Court concluded that section d) of Article 23.4 shall be specifically applied in the case of acts carried out in maritime areas (international waters), whereas section i) shall apply when this is not the case.

Specifically, the Supreme Court considered the provisions of paragraph d) of Article 23.4 as *lex specialis*, a law which only governs general matters and it has a preference application, as it relates to a particular area, which is the “Maritime

¹⁷Intervention effected on March 6, 2014, of a 25 metre long fishing boat without flag or marks of registry seized when 32 miles off the coast of Algeria, and 67 miles from the Cabo de Gata (Almería). The consignment seized was 9.8 tons of cannabis.

¹⁸Intervention effected on March 16, of a merchant ship named “Mayak” flying the flag of Sierra Leone and seized 52 miles southwest of Alboran Island and 65 miles south of the coast of Málaga. The consignment seized was 12 tons of cannabis.

Areas”, based on international law applicable or binding acts of international organizations for Spain. These international standards would be founded in the 1988 Vienna Convention, which promotes cooperation among States in combating drug trafficking, allowing the operation of a ship on the High Seas (prior authorization of the flag State). Otherwise, paragraph i) of Article 23.4 would refer to other extraterritorialities areas, other than those “Maritime Areas”, and basing its application on the principles of personality (crime committed by a national) and protection (effects on the territory of the State).

6. Conclusions

It is evident from the number of measures presented in this article that the high seas represent one of the main routes used by drug traffickers to bring consignments into any territory. The case of Spain studied here is an example of how a change in government and the amendment of the Law on Universal Jurisdiction has in principle entailed a radical reversal in the number of detentions, since the powers of the courts to prosecute such cases has been curtailed. Furthermore, unclear wording has given rise to very restrictive interpretations that have led to the dismissal of numerous cases under consideration for these crimes by sea.

However, the Supreme Court has redirected this situation by providing a new and clear interpretation of the legal provisions that generated such controversy, arguing that the provision contained in section d) of Article 23.4 was of specific scope while that contained in section i) of the same Article was of general scope. Thus, each refers to a different scope of application and are based on different underlying principles. Indeed, in the paragraph corresponding to section d), the legislature has grouped together a number of crimes (piracy, terrorism, illegal trafficking of toxic drugs, narcotics or psychotropic substances, trafficking in human beings, the rights of alien citizens and crimes against the safety of navigation) to which coastal States should pay attention when these are perpetrated at sea, using the means available to protect the entire international community regardless of the nationality of the perpetrators or whether the eventual targets of the commission of the criminal acts are other, inland countries. Given the transnational nature of these kinds of crime, and since the activity involved is characterised by its association with distribution activities, it is impossible to guarantee that drugs carried on ships not destined for a Spanish port may not have Spain as their final destination. Consequently, this provision for establishing jurisdiction has a special scope with respect to the others and should be applied preferentially when the offence is committed in maritime spaces. It is only necessary that jurisdiction can be established under the provisions of an international treaty for the State concerned to declare its jurisdiction by means of a legislative act.

This has been the case in Spain, which, conscious of the social and financial problems generated by the illicit traffic in drugs, and given that public health is a protected legal right under domestic law, had developed a system of jurisdictional powers under the terms of the respective international resolution that conferred on Spanish courts the power to indict crimes

of illicit trafficking and prosecute their perpetrators, thus closing a circle that began with the investigation, persecution and subsequent intervention of ships on the high seas engaged in illicit traffic in narcotic drugs and psychotropic substances. This new interpretation of the provision has turned around the situation created after the Universal Jurisdiction reform and has paved the way for continuity in the actions of investigation and suppression of drug trafficking by sea, enabling the agencies responsible for undertaking these activities to continue intercepting ships on the high seas, with the consequent social and economic benefits for Spain and for the international community.

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