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LEGAL ASPECTS OF COMBATTING DRUG TRAFFIKING IN THE SOUTH AMERICA

Drug trafficking continues to be one of the most lucrative businesses for organised crime and has become the main challenge in regions where drug cartel violence operates. Despite the fact that Latin America and the Caribbean are home to only 9% of the world's population, they represent 34% of all violent deaths.

Far from achieving a “drug-free world,” decades of intense commitment to prohibition and the drug war have witnessed vast growth in the scale of illegal drug markets. Even worse, the drug war enormously amplifies the dangers of drug use, exacerbates the damage associated with drug markets, and fuels organized crime and corruption, all generating an incalculable toll of human bloodshed and suffering worldwide.

For Latin America and the Caribbean, the “war on drugs” is no mere metaphor, but a lived reality with devastating consequences for millions of people—the brunt of the harms felt by the most vulnerable communities, whether in the form of brutal repression, callous abandonment, or both.

The South Atlantic route has as its starting point the countries of the American arc of the South Atlantic— especially Colombia, Venezuela, Brazil, and Argentina - and the United States and Europe as its destination, commonly using African countries as pitstops. This route “has the world's most concentrated net of drug trafficking”. This route is responsible for overflowing the production of narcotics to Europe from South America, where are located the major cocaine producers in the world: Colombia, Bolivia, and Peru, in this exact order. Colombia has around 70 percent of the global area under coca cultivation, Peru 20 percent, and Bolivia 10 percent. That means the region concentrates almost the totality of world production.

The performance of one country alone is not enough to combat international drug trafficking. To fight this practice, international cooperation in international organizations whether from states or is more than important: it is a sine qua non condition, without which international drug trafficking must not only last but also intensify. Cooperation at sea, from the sharing of information to the crossing of maritime borders in the line of duty, to actual joint operations, can enhance public safety and security. Money is saved, and effectiveness improved when neighbours agree to share information from their radars or sensors, operational infrastructure, lessons learned from recent operations, and intelligence. Security cooperation has strategic benefits: dialogue and cooperation on matters of security promote international understanding, confidence and peace.

The United Nations Convention on the Law of the Sea - UNCLOS is the main instrument to govern state relations over the sea. It has only two articles concerning drug trafficking. The first one is Article 108, which imposes the state obligation to “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 allows the States to request the cooperation of other States whenever there is “reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances”. On the other hand, there is Article 27, which forbids the States to exercise their criminal jurisdictions – that means arresting any person or conducting any investigations - over foreign ships during its innocent passage through the territorial sea, unless “such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances”. This absence of objective rules and duties for the states is explained by the differences in economic, organizational, and social power between coastal states – either signatories or not. It is not possible to demand the same actions and level of commitment from developed and developing states, so that is impossible to establish a single general rule for all.

Just as UNCLOS, the 1988 Vienna Drug Trafficking Convention has a specific article concerning drug trafficking via sea – its Article 17. Conforming to the Convention, it imposes a general duty to “cooperate to the fullest extent possible to suppress illicit traffic by sea”. However, unlikely UNCLOS the Vienna Convention confers objective prerogatives to the signatory states, such as the right to board and search and take appropriate actions with respect to the vessels of other State parties engaged in illicit drug traffic - promptly informing the flag State concerned of the results of that action. The two international conventions mentioned before

should be applied together to get a broad view on the legal framework in order to fight against drug trafficking by sea.

The United Nations Office on Drugs and Crime (UNODC) is the agency linked to the UN responsible for studying, gathering data, provide information, and encourage the development of national and international instruments to combat drug trafficking. The Office bases its actions into five normative areas of activity: Strengthening Member States' capacity to confront threats from transnational organized crime; Tackling corruption and its catastrophic impact on societies; Strengthening crime prevention and building effective criminal justice systems; Countering terrorism; Supporting Member States in implementing a balanced, comprehensive and evidence-based approach to the world drug problem that addresses both supply and demand. In this sense, UNODC has launched its Global Maritime Crime Programme (GMCP). Initially, it was created in response to United Nations Security Council resolutions calling for a concerted international response to address piracy off the Horn of Africa. Then it was gradually expanded and today it aims to fight crimes committed at sea in five different regions: Latin America and Caribbean; Gulf of Aden and Red Sea, Indian Ocean (East and West), Pacific Ocean, and Atlantic Ocean.

In addition, it is also important to demonstrate the actions taken by the two main international actors involved in the situation: the United States of America and the European Union - the main foreign donors of South Atlantic security initiatives. Their interest in the region goes beyond the fact that they are the final destinations on the South Atlantic Route and the consumer markets for the trafficked narcotics. The U.S. is interested in maintaining the security of the region, ensured by the presence and activities of state and multilateral actors, combating drug trafficking, illegal immigration and ensuring freedom of navigation. For that reason, Department of Defense created the Unified Combatant Command, the United States Africa Command (USAFRICOM) in February 2007. A military division primarily responsible for planning and leading military in Africa but formed also by civil staff to face other humanitarian activities in conformity with the US defense strategy for preventing conflicts⁴¹. On the other hand, the European Union action on the matter can be divided into two categories: declaratory policy (output), operational policy (outcome). The first one consists of the elaboration of policies and documents of interregional cooperation (EU–Africa and EU–Latin America) aimed at combating drug trafficking on the South Atlantic Route, such as the European Pact to Combat International Drug Trafficking – Disrupting Cocaine and Heroin Route (Council of the European Union, 2012). Besides that, worths mentioning that the EU has adopted several projects to support

South America primarily in order to reduce the narcotics supply in its territory. The main one is the Cooperation Programme on Drugs Policies (COPOLAD) which aimed to “improve the coherence, balance, and impact of drugs policies, through the exchange of mutual experiences, bi-regional coordination and the promotion of multisectoral, comprehensive and coordinated responses”.

In view of all the exposed in this paper, it is possible to conclude that, despite the increasing numbers of apprehensions and international attention focused on drug trafficking on the South Atlantic Route, all efforts that were undertaken to combat this practice - whether regional or international - do not demonstrate to be sufficient for this purpose. As a matter of fact, although impressive and extremely necessary, the presented initiatives lack a harmonical and effective strategy against the structural sources of transnational organized crime and seem to be much more responsive than preventive, not attacking the cause of the problems - just their consequences. The growth of the drug trade through the South Atlantic drug trade is particularly troublesome because there is not a clear or harmonic strategy for countering it. This is partly due to the organizational and cooperative level of the countries of South America and West Africa. First, the South Atlantic regional organizations do not have anything equivalent to the range and functionalities of the European Union’s border and maritime agencies. Regional organizations with security roles around the South Atlantic have acquired increasing relevance and functionality, but they do not perform regulatory tasks with cross-jurisdictional authority and institutional and operational structures.

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