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States rights and obligations in case of illegal drug trafficking by the sea

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1. Introduction

1.1 Introduction

Nowadays modern society is faced with growing problem of drug abuse. According to the United Nations World Drug Report in 2012 between 162 or 3,5 % and 324 million or 7,0 % of the world community tried drugs at least once. From 16 till 39 millions of people take drugs regularly. There are 12,7 millions of people injecting drugs, and this also raises other serious problems like HIV and hepatitis C.¹

All this data shows that it is necessary for the States to take actions. It is really important for each country to make an effective system of measures against drug abuse. But at the same time, on the international level there should be established legal instruments on States actions against transnational crimes, connected with drug abuse.

One of these crimes is illegal transportation of drugs by the sea areas.

Illegal drug trafficking by the sea is a dangerous and complicated crime for prosecution.

From the one hand world trade has to be over States control in order to prevent that crime. Also all the people on board the ship are obliged to be over the restriction of the States for the same reason. So, illegal drug trafficking destroy social and economic communication between States.

From the other hand, if the drugs are transferred from one country to another, it is quite complicated for the State to prosecute that crime because the criminals, evidence, witness and other are located in different countries, within the jurisdiction of different States. Also in a process of drug transportation different maritime areas can be used. In each of the zone States have different volume of rights and obligations.

So, it is really important to identify which rights and obligations States have in case of illegal drug trafficking by the sea. This explains the choice of topic of the thesis “States rights and obligations in case of illegal drug trafficking by the sea”.

The reason of the topic choice is determined by the problematic content of the crime – illicit drug traffic by the sea.

The main legal question in the thesis is the following: Which actions are different States competent to take in case of illegal drug trafficking by the sea?

In order to answer the main legal question it is necessary to describe some sub-questions.

¹ World Drug Report of United Nations Office on Drugs and Crime, 2014. https://www.unodc.org/documents/wdr2014/World_Drug_Report_2014_web.pdf, 08.08.14, p. IX.

Firstly it is important to identify what is meant by the notion of illegal drug trafficking by the sea, its main features, characteristics and place in the system of international unlawful acts.

Secondly, it is necessary to find out the obligations of the flag State in respect of its vessels involved in illegal drug trafficking and what actions it is competent to take. As far as the flag State exercises jurisdiction over its vessels it should take actions in case of illegal activity.

Also, crime can be committed in maritime areas with jurisdiction of the coastal State. So, thirdly, it is necessary to identify what are the obligations of the coastal State in respect of foreign flagged vessels involved in illegal drug trafficking in its maritime zones and what measures it may take.

Fourthly, what measures may third states take in case of illegal drug trafficking in the high seas and in the EEZ?

1.2 Sources and methods of the thesis

Illegal drug trafficking by the sea as a crime has a variety of sources. There are different levels of sources: from global international documents and customary international law to regional, bilateral also some non-legally binding instruments and national legislation.

Two main legal sources could be defined. There are the 1982 UN Law of the Sea Convention (LOSC) and the 1988 UN Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances. One of the methodological challenges was the relationship between the two documents.

LOSC is the main legal source in law of the sea. But at the same time it gives general guidance on illegal drug trafficking by the sea. States are required to cooperate in case of illegal drug trafficking and States are entitled to a request for the help.² But it doesn't give a detailed description of measures to deal with vessels, involved in illegal drug trafficking and other problems. LOSC says about the regime of the flag and coastal State jurisdiction over the vessels. So, in case of absence of the regulation, other legal sources should be used.

UN Convention against Illicit Drug Trafficking in Narcotic Drugs and Psychotropic Substances 1988 is also an important source. The Convention includes the definition of the illegal drug trafficking, its main characteristics and also defines the main features of illegal drug trafficking by the sea.

² United Nation Law of the Sea Convention 1982, Montego Bay 10 December, (1982). Article 108.

So, that is the relationship between two of these documents, and the question is ~~and~~ how these documents should be used.

In my view, UN Law of the Sea Convention and UN Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances should be applied together. In some provisions these two documents repeat each other. For instance both of them say about the duty to cooperate in case of illegal drug trafficking by the sea. But in some cases one of the conventions regulates particular issues in a broader scope than the other one. So, according to that both conventions should be used.

Also it is really important to mention the relationship between global and regional /bilateral agreements. It is necessary because often these agreements expand the rights and obligations of the States. For instance there are few regional and bilateral agreements, which are also really important. Examples of these documents could be Agreement between Hellenic Republic and the Republic of Turkey on cooperation of the Ministry of Public Order of the Hellenic Republic and the Ministry of Foreign Affairs of the Republic of Turkey on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal immigration, Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the United States of America concerning maritime counter-drug operations, Agreement between the government of the United States of America and the Government of the Republic of Guatemala concerning cooperation to suppress illicit traffic in narcotic drugs and psychotropic substances by the sea and air, The 1995 Council of Europe Agreement.

Other source could be non-legally binding instruments. For instance IMO Resolution MSC.228(82) on Revised Guidelines for the Prevention and Suppression of the Smuggling of Drugs, Psychotropic Substances and Precursor Chemicals on Ships Engaged in International Maritime Traffic. It covers issues of the preventative and other actions in case of illegal drug trafficking by the sea. Even if a document is non legally-binding it can still be used, as far as it shows a good practice of the actions, which should be done.

However in a process of working on the thesis doctrinal sources have been used as well.

1.3 Structure of the work

As the topic of the international criminal acts is quite complicated thesis have an extensive structure. Firstly it is necessary to identify the definition of the crime - illegal drug trafficking by the sea and its place in the system of international unlawful acts (chapter 2). For the purpose of knowing which actions could be done about illegal drug trafficking by the sea

rights and obligations of the flag and coastal State should be identified (chapters 3,4 ,5). Also sometimes States other than flag and coastal States can take measures about the crime (chapter 6).

Following structure makes it possible to see the problems and all the issues arising with them from the different sides and get independent results.

2. Illegal drug trafficking by the sea as crime that has international character

2.1 Introduction

In the global world it is becoming more important for all States to cooperate, because the problems of the modern society could not be solved by the actions of only one State. One of the ways of this cooperation, and one of the more important is cooperation to prevent and stop and prevent illegal activity.

There are different types of crimes within international law, but all of them cause damage to life, health and a normal relationship between States. It is more important for the States to cooperate against international crimes because such crimes concern the rights and interests of several countries in the same time.

So, the main legal question for this part is: What is qualified as illegal drug trafficking by the sea?

In this part I am going to try to answer this question.

2.2 Types of the crimes in international law

There are two types of crimes within the modern international law: international crimes and crimes that have international character.³

Firstly, the international crimes or “core crimes”⁴ are the ones that encroach on the rights and interests of all society. And the responsibility for committing such kind of crimes is posted by whole community. These crimes are: crimes against humanity, war crimes and crimes against peace.

Secondly, the crimes that have international character also described as transnational crimes⁵. This type of crimes is established in international conventions, and their object is to ensure peace, safety, and normal relationship between States, lives and health of people.⁶ Crimes that have international character cause damage not for the whole community, but for more than one State. They include: piracy, illegal drug trafficking, human trafficking, slavery, terrorism, etc. Transnational crimes are quite dangerous because the criminals, evidence, witnesses are located in different countries, so it makes it difficult to investigate it.

These crimes could be defined though the following principles:

³ Kalamkayan. *International law: lecturies*. Moskow, Eksmo, 2009. P.290.

⁴ Robert Cryer, Hakan Friman, Darryl Robinson, Elizabeth Wilmshurst, *An Introduction to International Criminal Law and Procedure*, Cambridge University Press, 2014. P. 329.

⁵ Ibid. P.329.

⁶ Kalamkayan. *International law: lecturies*. Moskow, Eksmo, 2009. C.290.

- Responsibility for the crime is posted on the person, not on the government.
 - Objects of the crime - normal relationship between States, international cooperation, human rights and others.
 - Offences are established in national legislation, but based on international rules.⁷
- One of the crimes, that has international character is illegal drug trafficking.⁸ One of the ways to commit that crime is using sea areas to transfer the drugs.

2.3 Illegal drug trafficking by the sea and its elements

It is important to determine what is illegal drug trafficking by the sea as a crime (crime – here and after)?

According to the UN Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances all States should take measures to establish criminal offence for the following actions:

- “production, manufacture, preparation, extraction, cultivation”⁹ – means the process of making drugs, using deferent ways and also preparing for that, in business scale or for private usage;
- “offering, offering for sale, sale”¹⁰ – means actions to make other person use the drugs with or without payment;
- “distribution, delivery, dispatch, dispatch in transit, transport, importation or exportation”¹¹ – means any acts of transferring the drugs in or outside the country;
- “possession, purchase”¹² – personal usage or getting;
- Organization of the drug-making process, action for pushing someone to make illegal trafficking.

For better understanding of the sense of the crime and its main characteristics it is necessary to identify its *corpus delicti*.

First of all it is necessary to indentify object of the crime, which means the rights and legal interests violated by the crime. For illegal drug trafficking by the sea object will be a normal relationship between States, economic and social connection, lives and health of people, safety of navigation.

⁷ Panov V.P. Communication between States against international criminal acts. Moscow, Urist, 1993. P.160.

⁸ Kalamkayan. *Inernational law: lecturies*. Moskow, Eksmo, 2009. C.290.

⁹ UN Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances, Article 3(a)(i)

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid. Article 3(a)(ii).

Other part of corpus delicti is objective aspect of crime, which means different types and techniques for committing a crime. These techniques of mentioned crime include: transferring drugs from the coast on boat (It could be done by passengers, crew or cargo), transferring drugs to boats from territorial seas or internal waters (using small boats or airplane, by using boxes, which are specially lifted in a sea area and taken afterwards). Also it could be transfer of the drugs in high seas from ship to ship, or ship and aircraft.

Other relevant parts of the corpus delicti of the crime are subject and mental element of the crime. Subject in crime of illegal drug trafficking by the sea could be the crew, passengers, workers of transport companies, sender and recipient of the cargo.

Mental element of the crime means the interrelation between the subject of the crime and its criminal actions. In illegal drug trafficking by the sea it could be direct intention to commit a crime (when the person knows that his actions are illegal). For example it could be when the crew buys drugs in one country and transfers it to another one with other cargo. Also it could be indirect intention when the crew knows about the drugs on board in a cargo, but decides not to do anything about that. Also it could be total unknowns and absence of guiltiness when the crew doesn't know about the cargo or if there was a fake documentation on the cargo.

Identification of the corpus delicti of the crime is really important for the matters of identifying the guiltiness and punishment. But elements of this crime are established in more details in national legislation. Following conclusions for this part could be mentioned.

First of all it is necessary to say, that drug abuse is a serious problem of the modern society. It terribly damages not only health and lives of millions of people but also destroys social and economic communication between States.

Often to deliver drugs to the customer criminals use international ships, which transfer the goods though the sea areas. As a result drugs are transferred to different regions and countries. In order to stop drug abuse it is necessary to prevent transportation of drugs from one place to another.

For that reason United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances comprises the list of the actions, including illegal drug trafficking by the sea, which should be prohibited within the national law.

Also it is important that illegal drug trafficking by the sea as a crime has an international character, because it reflects on all the countries involved in illegal transit. It causes serious damage, but at the same time it is less dangerous than international crime like genocide or war crimes.

However, power of the whole community is needed to solve the problem of illicit transportation of drugs by the sea.

3. Flag State rights and obligations in case of illegal drug trafficking by the sea

3.1 Introduction

Often drugs are transported from State to State and through the sea areas. In order to prevent and control this activity it is really important for States to use their jurisdiction as a coastal and a flag States.

In this part I will cover the issues arising from the flag State rights and obligations in case of illegal drug trafficking by the sea.

The Flag State plays an important role in illegal drug trafficking prevention. Also, as far as the flag State gives nationality to the vessel it should exercise proper jurisdiction over it.

The main legal question for this part is: What is the flag State competent and obliged to do about its vessel involved in illegal drug trafficking?

3.3 Nationality of the vessel

According to the Article 4(1)(a)(ii) UN Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances each State shall take appropriate measures to establish its jurisdiction over the offence, committed on board of the vessel flying its flag.¹³

So, firstly it is necessary to describe relationship between the vessel and the flag State. If a crime was committed first question that will arise is the nationality of the vessel.

In international customary law principle of exclusive jurisdiction of the flag State exists.¹⁴

Also according to the LOSC Article 91 each the State is competent to give its nationality to the vessels and determine the terms for ships to get its nationality to the vessel¹⁵. A vessel can have a flag of only one country, and if it has more than one, or using it for convenience, this vessel will be treated as a Stateless vessel.¹⁶ Also LOSC Article 91 says that it should be “a genuine link between the State and the ship”.¹⁷ But what if the vessel, involved in illegal drug trafficking, and its flag State do not have this genuine link? Should the vessel be treated as a Stateless vessel?

¹³ United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988, Article 4(1)(a)(ii).

¹⁴ Yoshifumi Tanaka, *The International Law of the Sea*, Cambridge University Press, 2012. P. 155.

¹⁵ United Nations Convention on the Law of the Sea, Montego Bay 10 December, 1982, 21 *ILM* 1245 (1982), Article 91(1).

¹⁶ *Ibid.* Article 92.

¹⁷ *Ibid.* Article 91.

In my view if the fact of absence of the genuine link will be proved and there is a reasonable ground to believe that proper jurisdiction over the vessel is not to be made, vessel should be treated as stateless. And in that situation other States could take measures against the vessel. Due to the damage, which illegal drug trafficking causes it is important to be sure that guilty persons get the punishment. Also it is important for future crime prevention.

In accordance with LOSC Article 94 the flag State has obligations in respect to its vessels. Flag State should exercise jurisdiction and control in administrative, social and technical matters.¹⁸ Also each State should have a register of its vessels and give appropriate documentation, which could prove the nationality of the ship. It is important in case the vessel is found doing illegal activity and it is needed to verify its nationality.

Also, according to LOSC Article 108(1) and UN Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances Article 17(1) States are obliged to cooperate in case of illegal drug trafficking.

3.4 Actions of the flag State to prevent illegal drug trafficking

As it was mentioned above the flag State has jurisdiction over its vessel. But which actions is it competent to take in case of illegal drug trafficking? All the actions can be divided into two groups: preventative measures and measures when the crime is already committed.

First I will describe preventative actions of the flag State.

It is necessary to take actions to prevent the crime. These actions include preventive actions for controlling legal drug trafficking in the flag State maritime zones. In case if legal drug trafficking in a country has a good regulation, then it would be more difficult for the criminals to do it illegally.

LOSC is silent on the preventative actions to be taken by the flag State. It may therefore be supplemented by the 1998 Convention. According to this convention the flag State is required to take any appropriate measures to establish its jurisdiction when the crime is committed.¹⁹ The 1998 Convention includes a requirement to prohibit illegal drug trafficking in its national legislation. This is the first step as a preventive action – to make a prohibition in national legislation, because if it is not made, then other actions will not work.

¹⁸ Ibid. Article 94(1).

¹⁹ UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 3.

As a legal source in this matter legally non-binding instruments can be used. Even if its rules are not obligatory, it shows a good practice of how the system of prevention should work.

For example IMO Resolution MSC.228(82) on Revised Guidelines for the Prevention and Suppression of the Smuggling of Drugs, Psychotropic Substances and Precursor Chemicals on Ships Engaged in International Maritime Traffic²⁰ establishes actions to prevent illegal drug trafficking.

In Part 1 the necessity of preventive actions is shown– “Prevention is one of the most important aspects where illicit trafficking of narcotic drugs is concerned”.²¹ Guidelines say that preventive actions should include: “enhancing the safety and security arrangements for boarding points, ports, port facilities and ships, and supporting co-ordinated action among the competent authorities in port, particularly those operating at the ship-port interface”.²² Also Guidelines mention importance of cooperation between authorities and crew, transit companies and others. This cooperation should make prevention and prosecution easier. But at the same time it is necessary to have a balance of control measures and rights of the trade and trafficking. As far as too strict control could badly influence the international trade and trafficking of the goods.

These measures are applicable in the flag State territory, high seas, EEZ and Continental Shelf of other States. Also they could be applicable in territorial sea and contiguous zone of other State in case if they do not contradict with rules and regulations of the coastal State.

Also there could be preventive actions with general character. These measures should be oriented to make a negative image of drug abuse in society. If less people use drugs, then less criminals will try to transport drugs into the country. Also a State should have effective systems for helping drug abuse people, and same other actions. But all of them as it was mentioned above have just general character.

Are the flag States obliged to take preventive actions? In the LOSC or 1988 Convention there are no obligation to do that. But at the same time illegal drug trafficking is a crime that

²⁰ IMO Resolution MSC.228(82) on Revised Guidelines For The Prevention And Suppression Of The Smuggling Of Drugs, Psychotropic Substances And Precursor Chemicals On Ships Engaged In International Maritime Traffic.

²¹ IMO Resolution MSC.228(82) on Revised Guidelines For The Prevention And Suppression Of The Smuggling Of Drugs, Psychotropic Substances And Precursor Chemicals On Ships Engaged In International Maritime Traffic Part 1

²² Ibid.

encroaches on rights and legal interests of people, countries and world community. It is quite difficult to prosecute that crime, and it is better to try to prevent it.

3.5 Actions of the flag State when the crime is committed

Sometimes crimes are still committed even if all preventive actions are taken. And if it happens State should deal with that. It is a second part of the flag State actions.

As it was mentioned above flag State exercise jurisdiction over the vessel. And when the crime is committed it should deal with that. These actions could include actions oriented to stop illegal activity, boarding, measures for saving the evidence of the crime and returning the vessel to the port. These actions of the flag State could be made in flag State maritime zones, high seas, EEZ and continental shelf of other State. In territorial sea or contiguous zone of other State there is jurisdiction of the coastal State, according to LOSC Article 2, 33. So, in these areas the flag State could not take any enforcement measures over its vessels but it can ask coastal State to take necessary measures.

Also according to the Article 17(3) 1988 Convention if other State finds out that any ships are doing illegal drug trafficking, then it should notify the flag State. Also flag State could ask that State to take appropriate measures over the vessel. These actions could include activity oriented towards saving evidence and returning vessel to the flag State territory for prosecution.

It is necessary to underline that all these actions should be taken in accordance with international and national legislation.

Sometimes problems can arise with flag of convenience, when proper jurisdictions on the vessel are not exercised by the State. In this situation other States can take actions about the vessel. Thus in this question it is really important for States to cooperate with those States that have a good experience of crime prevention. It is also relevant for the international community to pay more attention to that problem and make other countries be involved and interested in solving the problem of illegal drug trafficking by the sea.

As it was mentioned above the flag State has exclusive jurisdiction over the vessel in the high seas. All the actions, which flag State can take include preventative actions and actions when the crime is committed. These activities are based on national legal system. However that could be a problem. According to the United Nation Drug Report Committee sometimes States don't sign the main international laws on the drug trafficking, which influence the practice of prevention in a bad way. Committee Report gives the examples of

such States: Vanuatu, Bolivia.²³ But at the same time according to the customary international law States should apply some main principles, even if they did not sign any conventions. There are freedom of the high seas principle, flag State jurisdiction, etc.

²³ World Drug Report of United Nations Office on Drugs and Crime, 2014, p 137-138.

4. Coastal State jurisdiction over the foreign vessels involved in illegal drug trafficking

4.1 Introduction

It is less complicated when the crime is committed in the high seas or in the flag State maritime territory. But often criminals can use other maritime zones in process of transferring drugs, where regime of the coastal State jurisdiction exists.

The main legal question to be discussed in this chapter is what kind of jurisdiction coastal State has over foreign flagged vessels involved in illegal drug trafficking in its maritime zones.

LOSC provide different maritime zones. There are zones within the coastal State territorial sovereignty²⁴: internal waters, territorial sea and contiguous zone. In these zones coastal State has full jurisdiction. Also there are zones within coastal State sovereign rights²⁵: EEZ, continental shelf. In these areas coastal State do not have full jurisdiction, but sovereign rights, for instance on natural resources.

I prefer to describe different maritime zones part by part how they are going from State territory. Also I will describe different volume of jurisdiction in each zone.

I am not going to cover issues concerning internal waters, because there exists jurisdiction of the coastal State without the right of innocent passage, and other complicated issues.

4.2 Territorial Sea and Innocent passage regime

The first maritime zone beyond the internal waters is territorial sea. The coastal State enjoys sovereignty over the territorial sea, which may not exceed 12 nautical miles measured from the baselines.²⁶ However, foreign vessels enjoy the right of the innocent passage through the territorial sea.²⁷

The questions to be addressed in this section are: Does a vessel involved in illegal drug trafficking navigating through the territorial sea has a right for innocent passage? If it has a right for innocent passage, may the coastal State still take measures in respect of the vessel and its crew to combat the drug trafficking?

²⁴ Yoshifumi Tanaka, *The International Law of the Sea*, Cambridge University Press, 2012. P. 76.

²⁵ Yoshifumi Tanaka, *The International Law of the Sea*, Cambridge University Press, 2012. 3 120.

²⁶ United Nations Convention on the Law of the Sea 1982, Montego Bay 10 December, (1982). Article 2 and Article.

²⁷ *Ibid.* Article 17

The right of the innocent passage is based on freedom of navigation and freedom of trade.²⁸ However, territorial sea is an area with exclusive jurisdiction of the coastal State and innocent passage regime is limited. Thus it is necessary to identify when the passage is innocent.

According to the Article 18 of the LOSC passage should be continuous and expeditious. There could be stops but if it is necessary for the ordinary navigation, force majeure situation or distress. Meaning of the innocent passage is passing through the territorial sea as long as it is not prejudicial to the peace, good order or security of the coastal State²⁹. Passage will be considered as not innocent if there is any threat or use of force against sovereignty of the State, any act of propaganda, act of pollution, fishing, research³⁰, etc. Also Article 18 of the LOSC says that passage will be not innocent if the vessel, operating in territorial sea is doing “any other activity not having a direct bearing on passage”³¹. If a vessel is involved in illegal drug trafficking it could make stops, to transfer drugs onto another vessel, sell drugs, distribute, import, etc. Does the illegal drug trafficking have a direct bearing on passage? No, because activity, which has direct bearing on passage, should be directly connected with passage and without this activity passage is not possible. Because the main purpose of the passage is passing through the territorial sea, without doing any other activity, which do not have direct connection with that purpose. Thus, illegal drug trafficking does not have direct bearing on passage. So, the vessel, involved in illegal drug trafficking, operating in territorial sea, could not apply for the innocent passage regime. Coastal State can take appropriate measures over that vessel according to its legislation.

Also, according to the Article 25 of LOSC coastal State may take appropriate measures in its territorial sea to prevent passage, which is not innocent³². Thus, if a coastal State gets the information that a vessel is going to do illegal drug trafficking in its territorial sea, it could take actions according to its legislation not to let the vessel do that activity.

Thus, in respect of illegal drug trafficking the coastal State has exclusive jurisdiction in its territorial sea. Measures, which coastal State is competent to take over the vessel are based on national legislation, according to the international law. The LOSC and UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances are not specific about these measures, so other sources can be used. The IMO Guidelines may supplement and

²⁸ Yoshifumi Tanaka, *The International Law of the Sea*, Cambridge University Press, 2012. P. 85.

²⁹ United Nation Law of the Sea Convention 1982, Montego Bay 10 December, (1982). Article 19(1).

³⁰ Ibid. Article 19(2).

³¹ Ibid. Article 19(2)(1).

³² Ibid. Article 25(1).

guide the coastal State. Part 1 Revised Guidelines For the Prevention and Suppression of the Smuggling of Drugs, Psychotropic Substances and Precursor Chemicals on Ships Engaged in International Maritime Traffic (IMO Guidelines) establish measures which can be taken by the coastal State authorities in case of illegal drug trafficking.

These actions can include:

1. Boarding.
2. Searching.
3. Arrest.
4. Seizing.³³

Also IMO Guidelines say that for the reason of prosecution and in order to stop illegal activity authorities may: mark, or cause to be marked any goods before loading; lock up, seal, mark or secure any goods carried in the ship, or in any place, or in any container; break open any place or container which is locked if the keys are withheld or otherwise unavailable. Such officers of the competent Authorities may have authority to: board or search ships when these actions are necessary to suppress illicit trafficking by sea; arrest any offender and may impose sanctions or fines, and order arrest, unless otherwise laid down in the legislation of the country.³⁴

At the same time IMO Guidelines underline that crew should help the authorities to show all the parts of the vessel and so on. Guidelines include several types of specific methods, which are also important.

As far as in territorial sea the jurisdiction of the coastal State exists, the flag State should give an appropriate help to the authorities to prosecute the crime. Also flag State representatives usually participate in the prosecution measures for protection of rights.

But, what if the vessel just illegally transports drugs on board? And if it uses innocent passage regime? For example, if the coastal State get the information that a vessel is going to transport drugs illegally, passing though State territorial waters and then going to other maritime zone. Does the coastal State have a competence to take actions over that vessel?

According to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances even illegal transportation of the drugs is already a crime³⁵. Article

³³ IMO Resolution MSC.228(82) on Revised Guidelines For The Prevention And Suppression Of The Smuggling Of Drugs, Psychotropic Substances And Precursor Chemicals On Ships Engaged In International Maritime Traffic Part 1.

³⁴ Ibid.

³⁵ United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988. Article 3.

3(1)(i) says that States shall establish criminalize under its domestic law for different types of activity, and also for transport, transit and delivery of drugs³⁶.

But, if a vessel is just passing through the territorial sea with illegal drugs on board, without stops and any other activity, it could apply for innocent passage regime. At the same time, Article 4 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances says that States should establish its jurisdiction over the offences, which was committed in its territory³⁷. And territorial sea is a part of the territory of the State.

Also, according to the Article 27 of the LOSC coastal State will have a jurisdiction over that vessel. The coastal State has criminal jurisdiction over the vessels in innocent passage if it is “..necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances”.³⁸ Thus, coastal State can take necessary actions over the vessel. Coastal State could stop the vessel, board, conduct investigation and take any appropriate steps. It is necessary to mention that all these actions should be in accordance with national legislation of the coastal State. At the same time coastal State could notify the flag State about the fact of violation.³⁹

4.3. Contiguous Zone

Next maritime zone, which goes after territorial sea is Contiguous Zone (CZ). It may not extend beyond 24 nautical miles from the baselines⁴⁰. In contiguous zone coastal State exercise the control to “prevent”⁴¹ violations of custom, fiscal, immigration or customary law in its territory of territorial sea and “punish”⁴² for the violation of laws and regulations committed in territorial sea or State territory. Coastal State may exercise only enforcement jurisdiction in contiguous zone, but not legislative.⁴³

Is illegal drug trafficking a violation of “custom, fiscal, immigration or sanitary laws”?

In order to answer that question it is necessary to interpret relevant provision. According to the Vienna Convention “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”⁴⁴.

³⁶ Ibid. Article 3(a)(i).

³⁷ Ibid. Article 4(a)(i).

³⁸ United Nation Law of the Sea Convention 1982, Montego Bay 10 December, (1982). Article 27(1)(d).

³⁹ Nation Law of the Sea Convention 1982, Montego Bay 10 December, (1982). Article 27(3).

⁴⁰ United Nation Law of the Sea Convention 1982, Montego Bay 10 December, (1982). Article 33(2).

⁴¹ Ibid. Article 33(1)(a).

⁴² Ibid. Article 33(1)(b).

⁴³ Yoshifumi Tanaka, *The International Law of the Sea*, Cambridge University Press, 2012. P. 122.

⁴⁴ Vienna Convention on the Law of the Treaties, 1969. Article 31(1).

Thus, the notion “custom laws” means rules and regulations of the transferred goods and other through the State border. In each country there is legislation about the procedure of legal import and export of drugs (for medical purpose) through the border. And if a vessel is going to be involved in illegal drug transferring through the border it means that it will violate these rules.

“Fiscal laws” mean tax regulation of different activity. For example there is tax regulation on production, manufacturing, preparation or selling the drugs for medical purpose. Thus, if a vessel is doing illegal drug trafficking it is violation of fiscal laws.

“Immigration laws” are rules and regulations under the procedure of coming to a country, different from the native one. Illegal drug trafficking could violate these rules in case if the criminals are illegal immigrants at the same time. But these rules do not cover the meaning of illegal drug trafficking in pure sense.

“Sanitary laws” mean regulations relating to health and measures for protection of health.⁴⁵ Illegal drug trafficking cause damage for life and health of people, who use drugs.

It can be concluded that according to the interpretation of the LOSC illegal drug trafficking is violation of “custom, fiscal, immigration or sanitary laws”. So, coastal State could exercise jurisdiction over the vessels involved in illegal drug trafficking in contiguous zone. But, what kind of actions can the coastal State take?

Article 33 of the LOSC includes rights of the coastal State to take preventive and punitive actions.

If the vessel is going into territorial sea though contiguous zone, and has illegal drugs on board, according to the Article, coastal State may take actions to prevent these violations. Or in case if there are reasonable grounds to believe that this vessel will sell drugs in contiguous zone and transport them by different ways to the territorial sea.

But which actions can coastal State take to “prevent”? Coastal State can ask a vessel to leave the area and notify the flag State. Also coastal State can forbid the vessel to come into territorial sea.

But can the coastal State take preventive measures over the vessel, passing through the contiguous zone with illegal drugs on board, but without the intention of coming to the territorial sea? The measures taken by the coastal State must be proportionate with the level of suspicion. One preventive measure in such situation could be for the coastal State to approach

⁴⁵ Free Dictionary. Web site <http://www.thefreedictionary.com/sanitary>, 11.08.14.

the vessel and ask for information about its identity and its port of the next call and to monitor its activity. If the level of suspicion increases, the vessel can be asked to leave the area.

Also coastal State could “punish” the vessel in case of the violation of its custom, fiscal, immigration or sanitary laws committed in territorial sea or coastal State territory. So, if a vessel commits a crime in territorial sea and operates in contiguous zone, coastal State can take appropriate measures towards that vessel. Actions to “punish” could be measures oriented to arrest the vessel, stop illegal activity, save the evidence, prosecute the vessel, etc.

4.4 Right of Hot Pursuit

When a vessel identified of being involved in illegal drug trafficking within areas under jurisdiction of the coastal State attempts to avoid enforcement by moving to an area beyond the jurisdiction of the coastal State, e.g. from the territorial sea into the EEZ, right of hot pursuit can be used.

According to the Article 111 UN Law of the Sea Convention hot pursuit is possible when a vessel violates laws and regulations of a coastal State within its internal waters, territorial sea or contiguous zone and tries to leave the area.⁴⁶

Pursuit can be carried out only by authorized governmental ship. Hot pursuit starts when the vessel is asked to stop but it tries to leave the place. Pursuit can be carried out in other maritime zone, if it started in one, mentioned in the Article, and continues without interruption as far as other State’s territorial sea (because otherwise it could violate the territorial sovereignty of the other State)⁴⁷. So if a hot pursuit started in a relevant zone it can be continue in Exclusive Economic Zone, Continental Shelf, high seas, maritime zones of other State as far as territorial sea.

It is necessary to mention that in contiguous zone, according to the Article 33 of the LOSC, coastal State can take actions towards the ship, which violated laws and regulations in territorial sea or internal waters and take actions to prevent such violations. So, in contiguous zone coastal State still may take enforcement measures towards the vessel, involved in illegal drug trafficking in territorial sea. And if a vessel attempts to avoid enforcement by moving to other area, then right of hot pursuit can be used.

Thus, according to the national law and regulations, if a crime is committed coastal State can use hot pursuit regime to catch the vessel. Also it could ask for help of the flag State. It is important for the States to have a good connection with each other in order to stop

⁴⁶ Ibid. Article 111.

⁴⁷ Yoshifumi Tanaka, *The International Law of the Sea*, Cambridge University Press, 2012. P. 164.

and prevent illegal drug trafficking. This cooperation is often carried out through bilateral agreements. In chapter 6 they will be described more precisely.

So, coastal State has jurisdiction over different maritime zones. Each of them includes different volume of rights and obligations. Only contiguous zone and territorial sea in respect of illegal drug trafficking control make sense. In contiguous zone coastal State could take actions towards the vessel if it committed a crime in its territorial sea or in coastal State's internal waters. In territorial sea regime of innocent passage exists. But, when a foreign ship is engaged in illegal drug trafficking it could not apply for innocent passage regime. And coastal State can take appropriate measures over that vessel according to its legislation. These actions could be actions oriented to suppress the illegal activity, arrest, save the evidence, work with the witness, etc. In this issue it is also important for the flag State to take part in investigation process for the purpose of cooperation with coastal State. It may include: providing relevant information, sharing knowledge, protection rights and interests.

4.5 Jurisdiction over the vessels involved in illegal drug trafficking in areas beyond Territorial Sea and Contiguous zone

As it was mentioned above coastal State has exclusive jurisdiction over the drug trafficking in territorial sea and contiguous zone. But in other maritime zones its jurisdiction is limited. And it is necessary to identify the scope of jurisdiction on drug trafficking in maritime zones such as exclusive economic zone and continental shelf.

The main question for this chapter is: Which competence does coastal State have over the vessel doing illegal drug trafficking in Exclusive Economic Zone and Continental Shelf?

In this part I am going to try to answer this question.

In exclusive economic zone coastal State exercises jurisdiction over the natural resources. According to the LOSC Article 56 coastal State has sovereign rights for "...the purpose of exploring and exploiting, conserving and managing the natural resources, (...), jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment; (c) other rights and duties provided for in Convention".⁴⁸

So, as we can see in exclusive economic zone coastal State has jurisdiction on natural resources, protection and preservation of environment.

⁴⁸ United Nation Law of the Sea Convention 1982, Montego Bay 10 December, (1982). Article 56.

Also Article 73 UN Law of the Sea Convention says that coastal State can take measures over the vessel in case of violation of rights mentioned in Article 56, that is in case of violation of the rights concerning natural resources.⁴⁹

So, it means that even enforcement measures which can be taken by coastal State are about violation of rights on natural resources. And according to the Article 58(1) UN Law of the Sea Convention vessels have a right of navigation.⁵⁰ So, it can be said that in exclusive economic zone coastal State does not have special requirements for regulating other activity than usage of natural resources.

Also according to the Article 58(2) UN Law of the Sea Convention rules for the high seas are applicable for exclusive economic zone, as far as it does not violate norms of the Part V UN Law of the Sea Convention.

So, in exclusive economic zone, in regard of illegal drug trafficking, States should exercise the same regime as in high seas.

Also, it is necessary to mention that if a crime (illegal drug trafficking) was committed in territorial sea or internal waters according to the right of hot pursuit coastal State can pursue a vessel in exclusive economic zone.

But at the same time illegal drug trafficking in exclusive economic zone has a greater influence on the coastal State: it could be the way of transferring drugs to that State. So, again it is really important for the States to cooperate in case of this crime.

Also it could be a good practice, if some countries, that know about some drug transferring channels, could take cooperative measures to stop it. As far as illegal drug trafficking is a crime that has international character, and prosecution is over individual State basis, it is really important for States to share information and take collective actions.

Under the Article 77(1) of LOSC the coastal State exercises jurisdiction over continental shelf only with a purpose of exploring and exploitation of natural resources in the sea shelf.⁵¹ Also Article 78 (1) UN Law of the Sea Convention says that legal status of continental shelf does not influence the status of water and air space over it.⁵²

So, according to the legal basis coastal State does not have special jurisdiction in continental shelf over illegal drug trafficking. And in continental shelf the regime of high seas is used in respect of drug trafficking.

⁴⁹ Ibid. Article 73

⁵⁰ Ibid. Article 58(1).

⁵¹ United Nations Convention on the Law of the Sea, Montego Bay 10 December, 1988. Article 77(1).

⁵² Ibid. Article 78(1).

One question can arise about the jurisdiction on the continental shelf. According to the Article 80 and 60 UN Law of the Sea Convention coastal State has jurisdiction over the artificial islands and installations. So, which measures is coastal State competent to take over the vessel, which is illegally transferring drugs on these installations and artificial islands?

According to the Article 60(2) UN Law of the Sea Convention coastal State has exclusive jurisdiction over islands and installations with regards to “custom, fiscal, health, safety and immigration laws and regulations”⁵³. As it was mentioned above illegal drug trafficking is a violation of these rules. Also illegal drug trafficking can seriously damage life and health of people. Coastal State can take measures about it, if a crime was committed on that installation or island. Also this rule would be applicable for the Exclusive Economic Zone.

But it is necessary to mention that States have an obligation to cooperate and if a crime is committed in continental shelf it would be easier for the coastal State (with the flag State request) to take emergency actions than for the flag State. It could be actions to stop illegal activity, save evidence, etc.

Some conclusions for that part could be made.

In areas within the coastal State jurisdiction different volume of rights and obligations exists. In Territorial sea, internal waters and contiguous zone coastal State has more rights and obligations in respect of the illegal drug trafficking.

In Exclusive economic zone and Continental Shelf coastal State don't have special rights over the drug trafficking. The reason is in nature of these areas. They exist for protection and usage of natural resources.

So, in Exclusive economic zone and continental shelf in respect of illegal drug trafficking regime of the high seas should be used.

Jurisdiction over the vessel doing illegal trafficking could only be exercised by the coastal State in case if the crime takes place on the installation or the artificial islands.

⁵³ Ibid. Article 60(2).

5. Third States rights and obligations in case of illegal drug trafficking by the sea

5.1 Introduction

Jurisdiction of the flag State and a coastal State over the vessels exists, as it was mentioned above. But sometimes their actions are not enough to stop and prevent illegal activity.

Sometimes when a State other than flag and coastal State finds out that the crime is committed it still may take actions. It is possible in areas beyond territorial sea. Because according to the Article 58(2) of LOSC rules of the high seas are applicable for the EEZ. Thus, in these areas jurisdiction of the flag State exists, according to the Article 92(1) of LOSC. But, in case if the State could not take measures third State may take actions.

So, it is really important to identify the scope of the rights and obligations of the third States in case of illegal drug trafficking by the sea.

The main legal question for this chapter is: Which actions is third States competent to take in case of illegal drug trafficking by the sea?

5.2 Rights and obligations of the third States in case of illegal drug trafficking by the sea

If a State, other than coastal or flag State, finds out that a vessel is involved in illegal drug trafficking by the sea, it still could take actions about it.

First of all it is necessary to underline that all States should cooperate in case of illegal drug trafficking, according to the Article 17(1) of the United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances.

If the State has a reasonable grounds to believe that its vessel or vessel without any nationality is involved in illegal drug trafficking it could ask the third State for help.

According to the Article 108(2) of LOSC if the third State has reasonable grounds to believe that a vessel is doing illegal drug trafficking it may notify the flag State.⁵⁴ Also third State can request the flag State to give registry confirmation of the vessel in accordance with Article 17(3) United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances.⁵⁵

⁵⁴ United Nations Convention on the Law of the Sea, Montego Bay 10 December, 1982. Article 108 (2).

⁵⁵ United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988. Article 17(3).

According to the Article 17(7) United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances the flag State “shall respond expeditiously to a request”⁵⁶. And it is essential duty of the flag State. According to the Article 94(2)(a) flag State should have a register of the vessels, flying its flag. Article 91(2) says that flag State shall give appropriate documentation to the vessels, which can prove its nationality.

Also third State can send a request to take appropriate measures over the vessel. Such actions could include:

- Boarding,
- Searching,
- If evidence of involvement in illicit traffic is found, take appropriate actions with respect to the vessel, persons and cargo on board.⁵⁷

When the third State takes any actions about the vessel it should notify the flag State according to the Article 17(8) of the United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances. Also Article 17(9) of the United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances says that third State could take actions towards the foreign vessels in respect of illegal drug trafficking according to the regional and bilateral agreements.

But the question can arise if a flag State does not give any information about nationality after third State request. Should that vessel be treated as a stateless vessel in such circumstances?

If a flag State does not give any response in appropriate time, then the third State can board the vessel for the purpose of identifying its nationality. According to the Article 110(1)(d) of LOSC warship in high seas may board the vessel if there are any reasonable grounds to suspect that the vessel does not have any nationality.

It is important to mention that in case of criminal acts like piracy or slavery or in case of stateless vessels appearing in the high seas LOSC provides right to visit these ships, but not in case of illegal drug trafficking.

Thus, warship can try to identify the nationality of the vessel. But what if after these actions nationality is still unknown? LOSC is silent in this issue. But, according to the Article 94 of the LOSC the flag State should provide its vessels with relevant documentation about nationality. So, if after boarding there is still no evidence about nationality of the vessel and

⁵⁶ United Nation Law of the Sea Convention 1982, Montego Bay 10 December, (1982). Article 17(7).

⁵⁷ Ibid. Article 17(4).

flag State still does not respond to the request it means that flag the State does not exercise proper jurisdiction over the vessel or it is the vessel without any nationality.

But provision of the LOSC does not provide with any actions towards the Stateless vessels. Upon that some scientists suggest that if a vessel does not enjoy the protection of any state because of absence of nationality, then any state can assert jurisdiction over it.⁵⁸ And at the same time other scientists believe that absence of nationality is not a reason to authorize such actions.⁵⁹

In 2008 USA established Drug Trafficking Interdiction Act, which proves the rights of the USA to take actions about the Stateless vessels involved in illegal drug trafficking in high seas. Some scientists discuss the legality of such kind of measures, because according to the LOSC in high seas there should be exclusive jurisdiction of the flag State and freedom of navigation⁶⁰. But at the same time, it is really important not to give the criminals chance to avoid punishment.

At the same time it is necessary to establish global international guidelines for the types of actions and procedures with Stateless vessels, because they are not clearly defined in existing treaties.

So, this is a procedure of actions when the third State finds out that a vessel is doing illegal drug trafficking by the sea.

In my view, it is both applicable in high seas and some maritime areas with jurisdiction of the coastal State, as far as in continental shelf and exclusive economic zone coastal State does not have a any special rights regarding illegal drug trafficking (see part 4.5). But in territorial sea and contiguous zone, third State is not competent to take any actions. If a third State finds out that the vessel is doing illegal drug trafficking in territorial sea or contiguous zone it should notify the flag State and a coastal State to take appropriate measures.

But does the third State have an obligation to take such actions? According to the wording of the treaties (Article 108(1) of LOSC and Article 17 Drug Convention) third State “may” notify the flag State. So, it means that it is not obligatory, but at the same time third State “shall” cooperate against illegal drug trafficking by the sea. And by these actions third States could actualize its obligation.

⁵⁸ Allyson Bennett. *That Sinking Feeling: Stateless Ships, Universal Jurisdiction, and the Drug Trafficking Vessel Interdiction Act*. The Yale Journal of International Law, Volume 37, 2012. P.440.

⁵⁹ Ibid.

⁶⁰ Ann Marie Brodarick. High Seas, High Stakes: Jurisdiction over Statless Vessels and an Excess of Congressional Power Over the Drug Trafficking Vessel Interdiction Act. University of Miami Review, Volume 67, 2012 – 201. Pp.255 – 275.

5.3 Rights and obligations of the third States under the special agreements

According to the Article 108(1) of LOSC and Article 17(1) UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances States shall cooperate in order to stop and prevent illegal drug trafficking by the sea.

Article 4(b)(i) UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances says that states shall exercise jurisdiction over the offence on the basis of regional or bilateral agreements.

States may according to the Article 17(9) of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances establish bilateral or regional agreements on cooperation to stop and prevent illegal drug trafficking. And these agreements are one of the ways to implement obligation to cooperate. For instance 1990 Spanish-Italian Treaty gives to the parties right to take measures over its vessels, when there are reasonable grounds to believe that a ship is involved in illegal drug trafficking.⁶¹ It is necessary to mention that all these agreements mention obligation to cooperate in preamble.

The Council of Europe Agreement (Agreement here and after) underlines the necessity of states cooperation: “The Parties shall co-operate to the fullest extent possible to suppress illicit traffic in narcotic drugs and psychotropic substances by sea, in conformity with the international law of the sea”⁶². According to the Council of Europe Agreement each Party shall establish jurisdiction over the vessels, involved in illegal drug trafficking, flying the flag of other Party⁶³, but the flag State jurisdiction will be preferential. Also according to the Article 3(3),(4) each state of the Agreement shall take appropriate measures towards the stateless vessels.

In accordance with the Article 5 of the Agreement if a State suspects—that the vessel without nationality is involved in illegal drug trafficking it shall inform other states, which are “closely affected”. A State may request acceptance from that state, which is “most closely affected”. That State shall determine which actions are needed to be taken and exercise jurisdiction under the offence.⁶⁴

Article 6 of the Agreement says, that if a State finds out that the vessel of one of the Party of the Agreement is involved in illegal drug trafficking in area beyond territorial sea, it

⁶¹ Douglass Guilfoyle, *Shipping Interdiction and the law of the sea*, Cambridge University Press, 2009. p. 79 – 96.

⁶² Council of Europe 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. Article 2(1).

⁶³ Ibid. Article 3(1).

⁶⁴ Ibid, Article 5.

may request the authorization from the flag State and then take appropriate measures. Flag State shall give the answer on the request immediately and “communicate a decision thereon as soon as possible and, wherever practicable, within four hours of receipt of the request”⁶⁵. After the authorization State may take actions over the vessel, for example: stop and board, take measures for saving evidence of the offence, search, open any containers, ask for any relevant information about the vessel and people on board, etc.⁶⁶ Also State shall notify the flag State about any actions without delay.

As it was mentioned above, according to the Agreement flag State has preferable jurisdictions. If a third State finds out that the vessel is involved in illegal drug trafficking it shall notify the flag State. And if a flag State fails to inform about the wish to exercise its preferable jurisdiction to the third State then the flag State shall be deemed as declined from exercising its jurisdiction.⁶⁷

Under the regional agreements different rights and obligations are provided. According to the Agreement between Hellenic Republic and the Republic of Turkey⁶⁸ States are agreed on measures for sharing information of the illegal traffic and bilateral operations.

Sometimes regional/bilateral agreements establish bigger scope of rights for the third States. One example is the Agreement between the USA and Trinidad and Tobacco⁶⁹ which gives for the parties right to take actions over their vessels. The USA Coast Guard vessels can take appropriate measures over the ship, doing illegal drug trafficking within the territorial sea of Trinidad and Tobacco.

Agreement between the USA and Guatemala says about combined maritime operational programs⁷⁰ for the purpose of prevention and stop illegal activity. Also it establishes the procedure for sending the request to the flag State to take appropriate measures. If there is no answer on the request within two hours then the other party could take measures such as: boarding and searching⁷¹. Agreement between the US, Honduras, Nicaragua, Panama, and

⁶⁵ Ibid. Article 7.

⁶⁶ Ibid. Article 9(1).

⁶⁷ Ibid. 14(2).

⁶⁸ Agreement between Hellenic Republic and the Republic of Turkey on cooperation of the Ministry of Public Order of the Hellenic Republic and the Ministry of Foreign Affairs of the Republic of Turkey on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal immigration 17 apr 2008.

⁶⁹ Agreement between the Government of the Republic of Trinidad and Tobacco and the Government of the United States of America concerning maritime counter-drug operations, 1996.

⁷⁰ Agreement between the government of the United States of America and the Government of the Republic of Guatemala concerning cooperation to suppress illicit traffic in narcotic drugs and psychotropic substances by the sea and air, Article 5(1).

⁷¹ Ibid. Article 7(3)(b).

Venezuela has the same mechanism.⁷² Other agreements for instance between the USA and Costa Rica provide automatic concern for boarding when there are the reasonable ground to believe that the vessel is involved in illegal drug trafficking.⁷³

Also there are some other regional and bilateral agreements. The reason to establish these documents is to take necessary actions over the vessel faster. On the one hand it is easier. Also when several States operate together to stop illegal activity it should make it more difficult for the criminals to commit a crime. But on the other hand all procedure should be clearly written in the text of the agreement to avoid collision of the jurisdiction.

In my view, regional and bilateral agreements are important. But at the same time, I believe that it is necessary to establish clear procedure of the third States actions on a global level.

⁷² Douglass Guilfoyle, *Shipping Interdiction and the law of the sea*, Cambridge University Press, 2009.

p. 89.

⁷³ *Ibid.*, p. 90.

7. Conclusions

As it was mentioned above, problem of drug abuse is huge. With growing globalization process problems are spread to the whole world. The more people use drugs, the more criminals are interested in transporting them to different areas and often through the sea areas.

In order to stop illegal drug trafficking by the sea States should use their rights and obligations according to the international rules.

First of all according to the United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances States shall establish in its legislation prohibition for the actions like: personal usage of drugs, its possession, purchase, making, selling, delivery, transfer, import, export. And States should also make an effective regime to prevent these actions.

Establishment of punishment for unlawful actions is the first step to prevent the crime. Other preventive measures of the States could be action oriented to establish an effective regime of legal drug trafficking, controlling the vessels, that are coming to its port.

Measures by the port state include controlling the vessels and its activity, monitoring the goods which come to the port, including the vessels of its nationality. If the control in ports and inside the countries is exercised in a proper way it will reduce the possibility of the illegal drug trafficking.

Also it is necessary to mention the Article 18 of the Drug Convention about free ports.⁷⁴ It says that even in free ports the control of illegal drug trafficking should be strict. It is really important not to let criminals use free ports system as an easy way to transport the drugs.

When the crime is already committed it is important for the flag and coastal States to take actions over the vessel, involved in illegal drug trafficking.

In high seas exclusive jurisdiction of the flag State exists. According to the UN Law of the Sea Convention the flag State has obligations in respect to its vessels, and when the crime is committed the flag State should take actions. For instance it could stop the vessel, arrest it, board, and take appropriate measures for saving the evidence and returning the vessel to the flag State territory. Also the flag State can ask other State for help.

But if the vessel is operating in other maritime zones regime of the coastal State jurisdiction exists. In a territorial sea and contiguous zone coastal State exercises exclusive

⁷⁴ United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances, 1988 Article 18.

jurisdiction. There is a regime of the innocent passage in territorial sea, but if a vessel is involved in illegal drug trafficking (for example by preparing drugs, selling it , etc) it could not apply for the regime of innocent passage. And coastal State could take necessary actions over it.

In case if a vessel is just transferring the drugs on board when navigating though the territorial sea without stops it can use innocent passage regime. But, according to the article 27 of LOSC coastal State still have jurisdiction over that vessel.

Also it is important to mention that if a vessel doing illegal drug trafficking tries to leave the internal water and territorial sea, then the right of hot pursuit can be used.

In the continental shelf and Exclusive economic zone coastal State do not have special jurisdiction over the illegal drug trafficking. But, at the same time jurisdiction of the coastal State over the illegal drug trafficking in these areas could be implemented when the crime is committed on the artificial islands and installations.

Sometimes when the crime is committed other States, than coastal and flag State could take actions. For instance, third States could notify the flag State and a coastal State. Under the permission of the flag State third States may take appropriate measures to save the evidence of the crime, stop illegal activity and return the vessel to the flag State territory. Also under the special regional and bilateral agreements between States third States can have a broader scope of rights and obligations.

Also the difference between the actions of the third State on illegal drug trafficking by the sea and a piracy could be mentioned.

It is known that piracy is a crime that has international character as well as illegal drug trafficking. But according to the provisions of the LOSC in case of piracy third States have more power over the vessel. If a State finds out that a vessel is engaged in piracy it may seize a ship, arrest people on board and seize the property on board without permission of the flag State⁷⁵. But for illegal drug trafficking by the sea more complicated procedure for taking actions exists. Probably the reason of that is the fact that a vessel may lose its nationality if it is a pirate ship according to the national legislation⁷⁶. In my view the system works that way because international community finds piracy more dangerous than illegal drug trafficking. On the one hand it could be true, but on the other hand illegal drug trafficking can cause a huge health, economic and social damage. In my view, system of the actions over the pirate ship could not be implemented to the vessels, involved in illegal drug trafficking because then

⁷⁵ United Nation Law of the Sea Convention 1982, Montego Bay 10 December, (1982). Article 105.

⁷⁶ United Nation Law of the Sea Convention 1982, Montego Bay 10 December, (1982). Article 104.

it could destroy normal traffic of goods between the countries. But, in my opinion, some more restrictions could be included in UN Law of the Sea Convention. For instance it could be better to make an obligation for the State to notify the flag State about the crime. Probably it is not necessary to make it obligatory to take special actions like boarding or arresting for the vessel by other State. At the same time it is important to make flag State exercise jurisdiction over the vessel. And if a State doesn't - then give the third State right to deal with vessel. For instance, if a flag State does not give any answer in some period of time – deal with vessel like a Stateless.

According to the legal basis third States also play an important role to prevent and stop illegal activity.

First of all third State should notify the flag State about the violation. Also third States could take appropriate measures about the vessel with permission of the flag State.

Also according to the regional and bilateral agreements third States could have more rights over the vessel of other nationality and in maritime zones of other State.

But at the same time the procedure of the actions, which third State can take are not clearly written in text of the UN Law of the Sea Convention and UN Drug Convention.

So, it could be said that in international law there is a special regime of the actions in case of illegal drug trafficking by the sea. But, after its analysis some problems and suggestions can be mentioned.

Firstly, it is necessary for all the States to join the main conventions such as UN Law of the Sea Convention and United Nations Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances.

Secondly, there should be a list of the third States actions clearly defined by the global international documents.

Thirdly, the process of the actions over Stateless vessels should be established in international documents.

Also, it is necessary to make it an obligation for the States to notify the flag State about the crime, especially if that State does not have jurisdiction to take actions towards the vessel.

Moreover there should be an effective regime to avoid problem of the flag of convenience.

Next point is that the third State should have the right to take necessary measures in case if the flag State is not responding on request about the nationality of the vessel in appropriate time.

And finally, it could be a good practice for the States to share the experience of the illegal drug traffic prevention.

At the end it is necessary to mention that all states have a duty to cooperate in case of illegal drug trafficking by the sea. And only with a power of the whole community problem of illegal drug trafficking by the sea could be solved.

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