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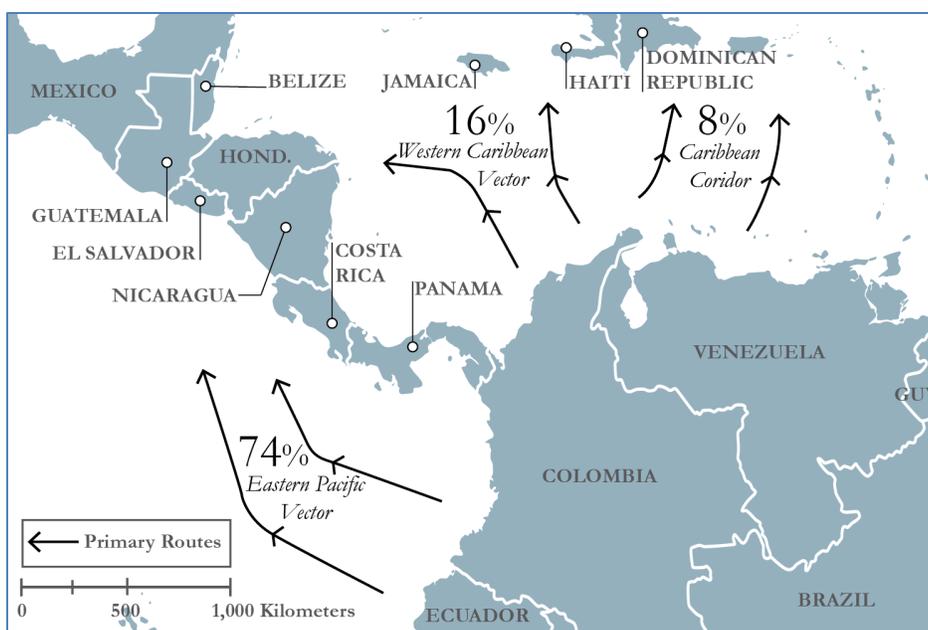
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Maritime Counter-Narcotics Agreements

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The 1988 UN Convention on Illicit Traffic of Narcotics and Psychotropic Drugs (1988 Vienna Convention) encourages States to enter into bilateral or regional agreements or arrangements to combat the illicit drug trade by sea and enhance the effectiveness of the Convention.¹ Consistent with this provision, the United States and partner nations have entered into a series of bilateral and multilateral agreements, arrangements, and procedures to facilitate the interception and boarding of vessels that are suspected of engaging in illicit drug trade by sea.



Cocaine Traffic in 2019

Agreements and Arrangements. The United States has concluded over forty counter-narcotics agreements around the world, thirty-four of which are with partner nations in the Western Hemisphere.² The U.S. Coast Guard (USCG) relies heavily on these partnerships to effectively suppress illicit trafficking by sea through the waters of the Western Hemisphere Transit Zone (WHTZ). Leveraging partner nation law enforcement and military assets using these cooperative agreements is a force multiplier, enabling the USCG to deter illicit activity in under-patrolled territorial waters and littoral regions, as well as coordinate interdiction operations on the high seas. For example,

in Fiscal Year 2019, bilateral agreements, arrangements, and procedures were used in nearly 60 percent of all USCG interdictions.³

Generally, ships navigating beyond the territorial sea are subject to the exclusive jurisdiction of the flag State, unless otherwise provided for in an international treaty.⁴ The United Nations Convention on the Law of the Sea (UNCLOS) provides an exception to this general rule for ships engaged in universal crimes like piracy, slave trade, and unauthorized broadcasting, as well as stateless vessels.⁵ However, illicit drug trafficking is not included within this exception. Accordingly, if a warship suspects that a foreign-flag vessel is engaged in illicit drug trafficking, it must first obtain flag State consent to stop, board, and inspect the vessel.

Obtaining flag State consent on a case-by-case basis to interdict a suspect foreign-flag vessel at sea is an extremely time-consuming endeavor. Once a suspect vessel is detected, it could take several hours to contact the flag State and obtain permission to board and search the vessel if working through standard diplomatic channels. If the request is made after normal working hours or on a weekend or holiday, the time could easily turn into days instead of hours. Drug traffickers may try to exploit this time lag by jettisoning contraband, destroying evidence, or fleeing into the territorial sea of another country where hot pursuit may not be allowed by the coastal State. Thus, seeking case-by-case authorization to interdict suspect foreign-flag vessels is not a viable option to stem illicit drug trafficking by sea.

Maritime counter-narcotics agreements and arrangements streamline the diplomatic process required to obtain flag State consent to interdict, board, and search suspect vessels. Although bilateral agreements are not all identical, a comprehensive agreement should include standing authority for maritime forces of the parties to have (or quickly obtain) permission to:

1. Board and search vessels claiming the flag of the other party (ship-boarding);
2. Embark coastal State ship-riders empowered to authorize patrols, boardings, searches, seizures, and arrests in the other party's territorial sea (ship-rider);
3. Pursue suspect vessels into the territorial sea of the other party with permission to stop, board, and search (pursuit);

4. Enter the territorial sea of the other party to investigate suspect vessels and aircraft, with permission to stop, board, and search (entry-to-investigate);
5. Overfly the national airspace of the other party with State aircraft in support of counterdrug operations (overflight); and
6. Relay an order-to-land in the territory of the other party (order-to-land).⁶

A comprehensive agreement could also contain provisions that allow the flag or coastal State to exercise or waive prosecutorial jurisdiction over suspected vessels or persons and provisions regarding the disposition of seized assets, to include transfer of forfeited assets or proceeds of their sale.⁷ The specific provisions included in an agreement depend on the perceived threat of drug trafficking for the nations involved, concerns of sovereignty by one or both Parties, and the operational imperative to reach an agreement. Some agreements allow for education and training for partner nations, capacity building, and combined operations and logistics support. The agreements also provide the basis for professional education and training for partner nations, fusing capacity building with operational collaboration.⁸

Cooperative Security Locations (CSL).⁹ U.S. Southern Command operates three CSLs pursuant to long-term bilateral agreements with the host nations—one at Comalapa International Airport in El Salvador, one at Reina Beatrix International Airport in Aruba, and one at Hato International Airport in Curaçao. These strategic locations are not permanent bases, but rather are tenant activities that allow U.S. and partner nation aircraft to use the airfields to support regional efforts to combat transnational organized crime, including illicit drug trafficking.¹⁰

Under the coordination of Joint Interagency Task Force-South (JIATF-South), U.S. and partner nation aircraft conduct missions to detect, monitor, and track suspected ships and aircraft engaged in drug trafficking. Host nation officials have the lead in interdicting suspect ships and aircraft within their territorial sea and national airspace, while U.S. officials are responsible for interdicting suspect vessels beyond the territorial seas and aircraft operating in international airspace. The CSL agreements provide guidance on which missions can be flown from the locations and have provisions that allow host nation riders to fly on board U.S. aircraft to expedite in-flight coordination with host nation authorities during operational missions.¹¹

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1. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances art. 17(9), Dec. 20, 1988, U.N. Doc. E/CONF.82/15/Corr.1 and Corr.2, 1582 U.N.T.S. 164, 28 INTERNATIONAL LEGAL MATERIALS 493 (1989).
 2. Dep't of Homeland Security, Fiscal Year 2020 Report to Congress, Counter-Drug Operations 6, Aug. 14, 2020.
 3. *Id.* at 4.
 4. United Nations Convention on the Law of the Sea arts. 58, 86, 92, Dec. 10, 1982, 1833 U.N.T.S. 397.
 5. *Id.* art. 110.
 6. *Hearing on International Law: The Importance of Extradition Before the Subcomm. on Criminal Justice, Drug Policy, and Human Resources of the H. Comm. on Government Reform*, 106th Cong. 79–80 (May 13, 1999) (statement of Rear Admiral Ernest R. Riutta, USCG, on maritime bilateral counterdrug agreements); Aaron C. Davenport, *Lessons from Maritime Narcotics Interdiction: Interdiction in the Maritime Source, Transit, and Arrival Zones of the Western Hemisphere*, in *MARITIME SECURITY: COUNTER-TERRORISM LESSONS FROM MARITIME PIRACY AND NARCOTICS INTERDICTION* (E.R. Lucas et al. eds., 2020).
 7. *Id.*
 8. *Id.*
 9. Formerly “Forward Operating Locations (FOL).”
 10. *Cooperative Security Locations*, U.S. SOUTHERN COMMAND, <https://www.southcom.mil/Media/Special-Coverage/Cooperative-Security-Locations/> (last visited Mar. 17, 2022).
 11. *Id.*