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Bilateral Maritime Counter-Drug and Immigrant Interdiction Agreements: Is This the World of the Future?

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COMMENT

BILATERAL MARITIME COUNTER-DRUG AND IMMIGRANT INTERDICTION AGREEMENTS: IS THIS THE WORLD OF THE FUTURE?

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I. INTRODUCTION

The majority of cocaine illegally smuggled into the United States travels over maritime routes, whether by sea or by air, for at least a portion of its journey. These maritime routes, known collectively as the "transit zone," comprise a six-million square mile area including the Caribbean Sea, the Gulf of Mexico, and the Eastern Pacific.¹ In 1997, an estimated 430 metric tons of cocaine, 30 metric tons of heroin, and a large amount of marijuana were smuggled to the United States via the transit zone.² Similarly, thousands of immigrants attempting to illegally enter the United States, either on their own or with assistance from professional smugglers, travel via the transit zone.³ Smugglers continually frustrate U.S. law enforcement efforts by transiting through the foreign territorial seas and air space of coastal states along the transit zone and by using foreign-flagged ships to carry their illicit cargo.⁴

International law prohibits U.S. law enforcement authorities such as the U.S. Coast Guard from entering foreign territorial sea or air space, or from boarding a foreign flagged vessel, unless the United States first obtains the permission of the foreign

1. See James D. Hull & Michael D. Emerson, *High "Seize" Maritime Interdiction Works!*, U.S. NAVAL INSTITUTE PROCEEDINGS, Jan. 1999 at 64-65.

2. See *id.*

3. See *id.* at 64.

4. See *id.* at 65.

state.⁵ However, the process of obtaining permission is often a time consuming, and sometimes futile task. Moreover, Latin American and Caribbean nations closely guard their sovereignty, especially against the United States, and some nations simply refuse to cooperate with United States counter-drug law enforcement efforts.⁶

During the past five years, however, the United States has entered into a series of bilateral maritime agreements with twenty-nine Latin American and Caribbean States for the purpose of combating illicit drug and immigrant smuggling in the transit zone.⁷ Bilateral maritime agreements streamline the process involved in obtaining permission from a foreign State to enter their territorial sea and air space or to board one of their ships on the high seas.⁸ Additionally, bilateral maritime agreements support the goals of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Law of the Sea Convention that requires States to cooperate in suppressing illicit traffic by sea.⁹

5. See United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, U.N. Doc A/CONF.62/122 (1982) (entered into force Nov. 16, 1994), Part V, 21 I.L.M. 1261 [hereinafter UNCLOS]. Article 2 specifically states:

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

UNCLOS, art. 2, 21 I.L.M. at 1272.

6. See IVELAW L. GRIFFITH, DRUGS AND SECURITY IN THE CARIBBEAN 20-21 (1997); Ivelaw L. Griffith, *The Geography of Drug Trafficking in the Caribbean*, in FROM PIRATES TO DRUG LORDS THE POST COLD-WAR CARIBBEAN SECURITY ENVIRONMENT 106 (Michael C. Desch, et. al. eds., 1998).

7. See Maritime Counter-drug and AMIO Agreement Chart, U.S. Coast Guard, COMDT (G-OPL-L), Jan. 12, 1999 update, contained herein as Appendix A, [hereinafter Bi-lateral Agreement Chart].

8. See Interview with Lt. Donald Brown, Senior Watch Stander at the Coast Guard Seventh District Command Center, in Miami, Fla. (Jan. 15, 1998).

9. See United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *opened for signature* Dec. 20, 1988, art. 17, U.N. Doc E/CONF.82/15 (1989), 28 I.L.M. 497, 518 (requiring parties to cooperate to the fullest extent possible to suppress illicit traffic by sea in conformity with the international law of the sea, and to enter into bilateral or regional agreements to facilitate or enhance cooperation described by Article 17). See also Article 18 of UNCLOS, *supra* note 5, 21 I.L.M. at 1273, which states:

1. All States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas

The U.S. Coast Guard¹⁰ is the lead U.S. government agency charged with enforcing maritime law on the high seas and in all maritime areas subject to the jurisdiction of the United States.¹¹ Bilateral maritime agreements effectively enhance the U.S. Coast Guard's already broad law enforcement powers by providing authority and procedures for law enforcement operations when the U.S. Coast Guard has reasonable suspicion that a vessel or aircraft is breaking the law. Each bilateral maritime agreement delineates the specific authority granted to the U.S. Coast Guard by the foreign State and provides specific procedures for implementing and utilizing this authority.

Of the twenty-nine Latin American and Caribbean States that have entered into bilateral maritime agreements with the United States, each nation has elected to adopt some, but usually not all, of the provisions of the six-part model maritime agreement.¹² Thus, the U.S. Coast Guard may have standing authority to enter into one nation's territorial sea to investigate a vessel suspected of smuggling but not the territorial sea of an adjacent nation. Such jurisdictional inconsistencies have created a patchwork quilt of authority, including some notably large gaps, for the U.S. Coast Guard and other U.S. law enforcement agencies to operate within. Yet, bilateral maritime agreements have provided the U.S. Coast Guard with more flexibility than ever before to combat maritime smuggling.

This Comment will discuss the pertinent historical background of illicit trafficking in the Caribbean and explore the use of bilateral maritime agreements as a solution to interdicting maritime smugglers. Part II of this Comment will examine the U.S. Coast Guard's role in maritime interdiction and analyze the U.S. government's six-part model maritime agreement. Part III will analyze the current maritime interdiction authority provided by international law. Part IV will examine the advantages that

contrary to international conventions.

2. Any state that has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request to cooperation of other States to suppress such traffic.

10. The U.S. Coast Guard has been in existence since 1790 when Congress created it for the purpose of revenue collection. The service was originally named the U.S. Revenue Cutter Service, and its purpose was to collect revenues from ships and enforce U.S. customs laws. The U.S. Coast Guard has remained as the lead U.S. agency in maritime law enforcement since 1790. See generally R. JOHNSON, *GUARDIANS OF THE SEA* (1987).

11. See 14 U.S.C. § 89(a) (1974).

12. See Bi-lateral Agreement Chart, *supra* note 7.

bilateral maritime agreements provide. Part V will analyze several of the complex legal issues posed by bilateral maritime agreements. Part VI will analyze whether pursuing adoption of a regional multilateral maritime agreement would be more preferable, or whether the existing framework of bilateral maritime agreements should be expanded and improved upon. Finally, this Comment concludes that bilateral maritime agreements are the most pragmatic approach to combating illicit maritime smuggling, and that the ultimate solution of signing a regional multilateral maritime agreement will only become feasible by continued expansion of the existing framework of bilateral maritime agreements.

II. THE LAW OF THE SEA, U.S. COAST GUARD AUTHORITY, AND THE U.S. SIX-PART MODEL MARITIME AGREEMENT

A. *The United Nations Convention on the Law of the Sea and Traditional Maritime Interdiction Authority and Procedure*

The 1982 United Nations Convention on the Law of the Sea (UNCLOS)¹³ established a comprehensive regime for governing control of ocean space.¹⁴ The treaty's definitions of territorial seas and high seas, and the control that sovereign states may exercise over vessels located in these respective parts, are vital background concepts to understanding this Comment.

Articles 2 and 3 of UNCLOS allow every coastal State to extend its sovereignty from its land territory out over the sea and airspace surrounding it to a limit not exceeding twelve nautical miles.¹⁵ This space is commonly known as a State's territorial sea and airspace. A State may enforce its domestic laws and exercise control over its own vessels and aircraft and any other State's vessels and aircraft that come within its territorial sea or

13. UNCLOS, *supra* note 5.

14. See Bernardo Zuleta, Under-Secretary General, *Introduction to THE LAW OF THE SEA: OFFICIAL TEXT OF THE U.N. CONVENTION ON THE LAW OF THE SEA*, xix, U.N. Sales No. E.83.V.5 (1983).

15. See UNCLOS, *supra* note 5, arts. 2 & 3, 21 I.L.M. at 1272. "Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention." *Id.* art. 3, 21 I.L.M. at 1272.

airspace with some limited exceptions.¹⁶ This provides the states with the ability to protect, regulate, and control activities that take place close to their land borders.

The area extending beyond the outer limit of the territorial sea is known as the high seas.¹⁷ UNCLOS preserves freedom over the high seas in Article 89, which states that no State may subject any part of the high seas to its sovereignty.¹⁸ Moreover, UNCLOS provides, in Article 90, that all States have the right to sail ships on the high seas.¹⁹ Thus, unlike a State's territorial seas and airspace, a State is prohibited from exerting control over the vessels of another State on the high seas.

The nationality, or flag of registry, of ships is also a crucial component of UNCLOS.²⁰ Every State is allowed to register ships in its territory and grant them the right to fly their flag.²¹ A ship can only be registered in one State, and it may not change its registration mid-voyage or during a port of call unless ownership

16. See UNCLOS, *supra* note 5, art. 17, 21 I.L.M. at 1273 (providing for "the right of innocent passage through the territorial sea"), art. 18, 21 I.L.M. at 1273 (defining passage as "navigation through the territorial sea for the purpose of: (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility").

17. See UNCLOS, *supra* note 5, art. 86, 21 I.L.M. at 1286; Convention on the High Seas, art. 1, 13 U.S.T. 2312, T.I.A.S. No. 5520, 450 U.N.T.S. 82.

18. See UNCLOS, *supra* note 5, art. 89, 21 I.L.M. at 1287. It should be noted that Part V of UNCLOS, concerning the Exclusive Economic Zone (EEZ), provides an exception to article 89. See *id.* arts. 55-57, 21 I.L.M. at 1257. The EEZ is the area beyond and adjacent to the territorial sea, normally extending out to 200 miles, in which the coastal state retains the sovereign right to explore, exploit and conserve natural resources such as fisheries stocks and mineral deposits. For example, the United States can make and enforce fisheries regulations out to 200 nautical miles from its coast. However, the United States could not subject foreign vessels found in its EEZ to its jurisdiction for any other reason other than natural resources violations. Thus, for the purposes of this Comment's discussion concerning illegal trafficking of narcotics and immigrants, the EEZ is essentially the same as the high seas.

19. See *id.* art. 90, 21 I.L.M. at 1287 ("Every State, whether coastal or landlocked, has the right to sail ships flying its flag on the high seas.").

20. See *id.* art. 91, 21 I.L.M. at 1287.

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of a State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Id.

21. See *id.*

of the vessel has been transferred.²² The State under which a vessel is registered is commonly known as the vessel's flag-State.²³ If a ship claims to be registered under more than one State, it will be assimilated as having no nationality.²⁴ This is commonly referred to as a "stateless" vessel.²⁵ All nations may exert jurisdiction over a stateless vessel because these vessels are not protected by the flag of any sovereign State.²⁶

A State has exclusive jurisdiction over vessels flying its flag²⁷ and therefore may always exert jurisdiction over these vessels²⁸ except when they located within another sovereign State's territorial sea.²⁹ A State does not have jurisdiction over foreign vessels³⁰ except when they are located within the State's own territorial sea.³¹

One of the main purposes of bilateral maritime agreements is to prevent vessels and aircraft engaged in illegal activity from transiting through the territorial seas of various coastal States to escape interdiction by law enforcement authorities.³² Bilateral maritime agreements provide standing authority for law enforcement authorities to pursue and interdict illicit traffickers in and through other coastal State's territorial seas and airspace.

Without a bilateral agreement, U.S. law enforcement platforms such as a U.S. Coast Guard Cutter³³ or aircraft would normally be prohibited from entering the territorial sea or

22. See *id.* art. 92, 21 I.L.M. at 1287.

23. See *id.* art. 94, 21 I.L.M. at 1287.

24. See *id.* art. 92, 21 I.L.M. at 1287.

25. See *United States v. Cortes*, 588 F.2d 106, 107 (5th Cir. 1979).

26. See Convention on the High Seas, art. 6, 13 U.S.T. 2312, T.I.A.S. No. 5520, 450 U.N.T.S. 82. See also *United States v. Cortes*, 588 F.2d 106 (5th Cir. 1979) (holding that a stateless vessel can be stopped by any warship because stateless vessels do not have the protection provided by a flag state); *United States v. Dominguez*, 604 F.2d 304, 308 (4th Cir. 1979), *cert. denied*, 444 U.S. 1014 (1980) (stating that international law shelters only members of the international community of nations from unlawful boardings and searches on the high seas).

27. See UNCLOS, *supra* note 5, art. 92, 21 I.L.M. at 1287.

28. See *id.* arts. 2 & 92, 21 I.L.M. at 1272, 1287.

29. See *id.* art. 2, 21 I.L.M. at 1272.

30. See *id.* arts. 89 & 92, 21 I.L.M. at 1287.

31. See *id.* art. 2, 21 I.L.M. at 1272.

32. See Anthony T. Bryan, *The State of the Region, Trends Affecting the Future of Caribbean Security*, in FROM PIRATES TO DRUG LORDS THE POST-COLD WAR CARIBBEAN SECURITY ENVIRONMENT 45 (Michael C. Desch, et al. eds., 1998).

33. A "Cutter" is the term used to refer to U.S. Coast Guard law enforcement vessel. The hull of a Cutter is painted white and it has a distinctive international orange and blue slash painted on the bow.

airspace of another nation or from boarding its vessels on the high seas.³⁴ UNCLOS states that the sovereignty of a coastal State extends to both its territorial sea and airspace over its territorial sea.³⁵ As previously discussed, Article 3 of UNCLOS provides that every nation can claim a territorial sea out to twelve nautical miles.³⁶ Additionally, the United States cannot normally exert jurisdiction over a foreign flagged vessel on the high seas.³⁷

Normally, the flag-State has exclusive jurisdiction over vessels flying its flag.³⁸ Moreover, articles 87 and 89 of UNCLOS provide that the high seas are open to all states thereby preserving freedom of navigation on the high seas.³⁹ Therefore, a U.S. Coast Guard Cutter cannot board a foreign flagged vessel on the high seas without the consent of the vessel's flag-State. Essentially, a foreign flagged vessel sailing on the high seas is analogous to a portion of that country floating on the high seas; it possesses all the rights of that sovereign State.

B. U.S. Coast Guard Authority and Background

The U.S. Coast Guard is the leading U.S. maritime law enforcement agency and its mission is to "enforce or assist in the enforcement of all applicable laws on, under and over the high

34. See UNCLOS, *supra* note 5, art. 2, 21 I.L.M. at 1272. However, ships of all States are entitled to the right of innocent passage, which is essentially the right to transit through another State's territorial sea without being harassed. See *id.* art. 17, 21 I.L.M. at 1273. This right terminates when passage no longer becomes innocent, for instance when a vessel is engaged in illicit activity that violates the domestic law of the coastal State. Additionally, a foreign warship is proscribed from conducting law enforcement operations within another nation's territorial sea because if they do so, then by definition their passage is no longer innocent. Thus, while a U.S. Coast Guard Cutter is permitted to transit through another State's territorial sea, it cannot conduct law enforcement operations. It should also be noted that it is the practice of most Navies to request clearance from a foreign State for their warships to enter their territorial sea to clarify that no hostile intentions are present.

35. See *id.* art. 2, 21 I.L.M. at 1272.

36. See *id.* art. 3, 21 I.L.M. at 1273.

37. See *id.* art. 89, 21 I.L.M. at 1287.

38. See *id.* art. 92, 21 I.L.M. at 1287.

39. "The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land locked States . . ." *Id.* art. 87, 21 I.L.M. at 1286. "No State may validly purport to subject any part of the high seas to its sovereignty." *Id.* art. 89, 21 I.L.M. at 1287.

seas and waters subject to the jurisdiction of the United States.⁴⁰ The Coast Guard also has authority to enforce U.S. law in waters subject to U.S. jurisdiction, and in international waters on vessels subject to U.S. jurisdiction.⁴¹ If valid permission from the flag-State exists, as bilateral maritime agreements sometimes provide, the Coast Guard has authority to stop, search and seize a foreign vessel on the high seas if there is a reasonable suspicion of violation of U.S. law.⁴²

The U.S. Coast Guard's counter-narcotics mission originated in the early 1970s when the U.S. consumption of marijuana exceeded the production capability of domestic growers, and Latin America became the chief supplier of marijuana to the United States.⁴³ From 1973 to 1977, the Coast Guard seized 74 vessels, 1.2 million pounds of marijuana, and arrested 447 people in the Caribbean.⁴⁴ Most of these vessels and persons, however, were of U.S. nationality.⁴⁵ In the early 1980s, these amateur smugglers were replaced by professional criminal organizations from the United States and Latin America.⁴⁶ These organizations recognized the U.S. Coast Guard's legal difficulties in stopping foreign registered vessels on foreign territorial seas.⁴⁷ By lying about the nationality of their vessels, smugglers were able to stall proper identification of their vessels and thus confuse the diplomatic procedures necessary to obtain permission to board a foreign flagged vessel.⁴⁸ Moreover, such delays allowed the

40. 14 U.S.C. § 2 (1999).

41. See 14 U.S.C. § 89(a) (1974). This statute gives the U.S. Coast Guard near plenary power to make warrantless stops of vessels at sea. See G. Shelton, *The U.S. Coast Guard's Law Enforcement Authority Under 14 U.S.C. 89: Smuggler's Blues or Boater's Nightmare*, 34 WM. & MARY L. REV. 933 (1993).

42. See *U.S. v. Cortes*, 588 F.2d 106 (5th Cir. 1979); *U.S. v. May*, 470 F. Supp 384 (C.D. Tex. 1979). See also The Maritime Drug Law Enforcement Act, 46 U.S.C. App. 1901 *et seq.* (providing for the enforcement of U.S. counter-narcotics law where the flag-State consents).

43. See generally C. M. FUSS, JR., *SEA OF GRASS, THE MARITIME DRUG WAR 1970-1990* (1996).

44. See Andrew W. Anderson, *In the Wake of the DAUNTLESS: The Background and Development of Maritime Interdictions Operations*, in *THE LAW OF THE SEA: WHAT LIES AHEAD, PROCEEDINGS OF THE 20TH ANNUAL CONFERENCE OF THE LAW OF THE SEA INSTITUTE JULY 21-24*, at 15 (Thomas A. Clingan, Jr. ed. 1986).

45. See FUSS, *supra* note 43, at 10.

46. See Anderson, *supra* note 44.

47. See *id.*

48. See *id.* at 17.

smugglers to jettison their cargoes, destroy evidence, and ultimately avoid prosecution.⁴⁹

Additionally, the early 1980s saw the rise of cocaine as the drug of choice for affluent Americans.⁵⁰ Cultivation of the cocoa plant was introduced into the jungle regions of Columbia during this time to support the increasing U.S. demand for cocaine.⁵¹ The cocaine trade proved to be not only highly profitable, but also easier to conceal than marijuana. Today, smugglers often use hidden compartments on small freighters to bring cocaine into the United States.⁵² However, entry into the United States is often the final leg of a multi-leg journey. Cocaine coming from Latin America is often grown in Peru or Bolivia, processed in Columbia, and shipped north in small high speed boats (known as "go fasts"), or "air-dropped" by small planes in Puerto Rico, the Dominican Republic, Haiti, and nations in the Leeward Islands.⁵³ These multi-ton loads are then broken down into smaller loads and shipped through the transit zone on small noncommercial vessels such as coastal freighters, fishing vessels, and go fasts.⁵⁴ Currently, this type of smuggling accounts for sixty to seventy percent of the total flow through the transit zone.⁵⁵

Almost all cocaine bound for the United States travels over maritime routes for a portion of its journey and the U.S. government's job of interdiction has become much more complex.⁵⁶ Smugglers constantly take advantage of transit zone geography for both the practical and the legal advantages it provides in avoiding detection. In 1997, the U.S. Coast Guard seized or assisted in seizing 103,617 pounds of cocaine and 102,000 pounds of marijuana.⁵⁷

49. *See id.* at 18.

50. *See id.* at 22.

51. *See id.*

52. *See* Interview with Lt. Donald Brown, *supra* note 8.

53. Most of the world's cocaine supply is produced in South America, coming from Colombia, Peru, Bolivia, Brazil, Ecuador, and Venezuela. Columbia alone processes 80% of all the cocaine in the world, though only 20% is actually cultivated there. *See* GRIFFITH, *supra* note 6, at 55.

54. *See* Interview with Lt. Donald Brown, *supra* note 8.

55. *See* Hull & Emerson, *supra* note 1, at 65.

56. *See id.*

57. *See* U.S. Coast Guard Drug Interdiction Report, *Current Reports, Coast Guard Office of Law Enforcement* (visited Feb. 24, 2000) <<http://www.uscg.mil/hq/g-o/g-ops/mle/drugs.htm>>.

The U.S. Coast Guard is also the lead U.S. government agency for the maritime interdiction of illegal immigrants.⁵⁸ Two provisions of the Immigration and Naturalization Act⁵⁹ provide authority for interdicting and excluding immigrants found attempting to enter the United States illegally. Section 1182(f) grants the President authority to suspend the entry of any group of aliens that he deems detrimental to the United States.⁶⁰ Section 1185 makes it unlawful for any alien to enter the United States unless they do so in compliance with the rules set by the President.⁶¹ The U.S. Coast Guard has authority to enforce both these provisions, as they are U.S. law.⁶²

The idea of preserving absolute freedom of the seas has great merit. It would certainly be simpler and less expensive for the U.S. Coast Guard to patrol the U.S. coast out to twelve nautical miles and wait to take enforcement action until vessels enter the U.S. territorial sea. However, this has proven ineffective for various reasons. First, the Coast Guard does not have enough time to stop smugglers before they reach the shore.⁶³ Second, the U.S. coastline is simply too large to patrol and defend; Florida alone has 8,400 miles of shoreline.⁶⁴ The United States must also protect the Commonwealth of Puerto Rico and its Caribbean territories such as the U.S. Virgin Islands. Third, foreign territorial boundaries prohibit the U.S. Coast Guard from interdicting illicit traffickers along the majority of their transit to the United States even when their presence has been detected

58. See 14 U.S.C. § 89(a) (1974).

59. Immigration and Nationality Act, 8 U.S.C. §§ 1182(f) & 1185 (1999).

60. "Whenever the President finds that the entry of aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may . . . suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrant, . . . he may deem to be appropriate." 8 U.S.C. § 1182(f) (1999).

61. "Unless otherwise ordered by the President, it shall be unlawful— (1) for any alien to . . . attempt to . . . enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe; . . ." 8 U.S.C. § 1185(a) (1999).

62. See 14 U.S.C. § 89(a) (1974). The Coast Guard may also act pursuant to its duty to render assistance to distressed persons when migrants interdicted at sea are found to be in poor health from exposure, dehydration, or otherwise. See 14 U.S.C. § 2 (1999); International Convention on Search and Rescue, *opened for signature* Apr. 27, 1979, (entered into force June 22, 1985) *reprinted in* 1 INTERNATIONAL AND UNITED STATES DOCUMENTS ON OCEANS LAW AND POLICY, E1 (John Norton Moore ed, 1986); International Convention for the Safety of Life at Sea, *opened for signature* Nov. 1, 1974, 32 U.S.T. 47, T.I.A.S. No. 9700 (entered into force May 25, 1980).

63. See Hull & Emerson, *supra* note 1, at 65.

64. See FUSS, *supra* note 43, at 11.

via radar or other means. A smuggler departing the La Guajira peninsula in Colombia bound for the United States can transit up along the Central American and Mexican Coast and thereby remain within the territorial seas of the various coastal States that border this route for almost two-thirds of the journey.⁶⁵ Similarly, a vessel departing Hispaniola can transit up the Old Bahama Channel staying entirely within Cuban or Bahamian territorial seas until it is just fifty to ninety miles off the Florida coast.⁶⁶ Aircraft transporting illegal drugs can also take advantage of Cuban, Bahamian, and other foreign airspace.⁶⁷ Conversely, U.S. Coast Guard Cutters and aircraft are not permitted to patrol within or fly over foreign territorial seas without permission.⁶⁸

A large exception to the requirement of having to obtain the permission of the flag-State to board one of its vessels is a consensual boarding. The master of a foreign flagged ship can verbally consent to the U.S. Coast Guard boarding his or her vessel.⁶⁹ However, the scope of the boarding is limited to the master's consent. For example, the master of a Panamanian freighter may consent to the U.S. Coast Guard boarding the vessel but *only* for the purpose of verifying the ship's documentation. The master may withdraw consent at any time and ask the boarding team to disembark. A U.S. Coast Guard request to conduct a consensual boarding is almost never refused.⁷⁰ In fact, refusal is so infrequent, that it is considered in and of itself suspicious.⁷¹

If during a consensual boarding the U.S. Coast Guard discovers evidence of illicit activity or develops reasonable suspicion that a vessel may be engaged in illicit activity, they

65. See Interview with Lt. Donald Brown, *supra* note 8.

66. See *id.*

67. See *id.*

68. See *id.*

69. See U.S. Coast Guard Memorandum from R.R. Beardsworth, United States Coast Guard, on Boardings Pursuant to Bilateral Maritime Agreements (Sept. 26 1996) (copy on file with author).

70. See Anderson, *supra* note 44, at 32.

71. See *id.* It should be noted that the U.S. Coast Guard must be extremely careful not to use refusal to conduct a consensual boarding as leverage for probable cause. Otherwise, it could risk losing its authority under 14 U.S.C. § 89(a) to stop, board and search vessels without probable cause or a warrant.

must request additional guidance from their operational chain of command.⁷²

C. *The U.S. Government's Six Part Model Maritime Agreement*

The Six Part U.S. Model Maritime Agreement, reprinted in Appendix B, is designed to provide standing authority and procedures for the U.S. Coast Guard to take action against illicit traffickers.⁷³ The six parts are: (1) shipboarding, (2) entry-to-investigate, (3) overflight, (4) shipriders, (5) pursuit, and (6) order-to-land.

Normally, a foreign flagged vessel on the high seas is subject to the exclusive jurisdiction of its flag-State.⁷⁴ "Shipboarding" allows the U.S. Coast Guard to stop, board, and search foreign flagged vessels without the flag-State's permission when those vessels are located on the high seas and are suspected of illicit traffic.⁷⁵

With the exception of innocent passage, the U.S. Coast Guard is not permitted to enter foreign territorial sea or airspace without first obtaining permission.⁷⁶ Therefore, the second model maritime agreement provision, "entry-to-investigate," allows the U.S. Coast Guard to enter foreign territorial waters or airspace

72. See Interview with Lt. Donald Brown, *supra* note 8. Normally, this procedure involves the Cutter's operational commander requesting authority to continue the boarding from the Office of the Commandant at the Coast Guard Headquarters in Washington D.C. Officials at Coast Guard headquarters then convene a Presidential Directive 27 process, which is essentially an internal U.S. government interagency conference where officials from the Department of Justice, the Department of Immigration and Naturalization, the Department of State, the Coast Guard, and any other concerned federal agencies keep each other informed of ongoing events and determine a unified course of action. If the panel concludes that a boarding request has sufficient merit, the State Department will contact the flag-State and request permission to continue the boarding. Permission to enforce U.S. law or the flag-State's domestic law may also be requested. Occasionally, the flag-State will choose to bring in its own law enforcement officials or have the vessel brought to one of its ports. See FUSS, *supra* note 43, at 33.

73. U.S. Coast Guard officers are vital members of the multi-agency U.S. delegation responsible for negotiating bilateral maritime counter-drug and migrant agreements.

74. See UNCLOS, *supra* note 5, art. 92, 21 I.L.M. at 1287.

75. Of the twenty-nine nations with which the U.S. has bilateral agreements, fourteen have agreed to the shipboarding provision. See Bi-lateral Agreement Chart, *supra* note 7.

76. See *supra* notes 33-37, and accompanying text.

to investigate vessels or aircraft located therein that are suspected of illegal activities.⁷⁷ Ideally, this will include the authority to stop, board, and pursue such vessels.

“Overflight,” the third model maritime agreement provision, allows the U.S. Coast Guard aircraft to fly in foreign airspace when in support of counter-smuggling operations.⁷⁸ Whether foreign airspace includes the airspace over land or only the airspace over maritime areas depends on the particular agreement. “Overflight” differs from “entry-to-investigate” in that it serves as a license to patrol foreign airspace in search of illicit activity instead of only permitting entry into foreign airspace in response to a report or sighting of a suspect vessel or aircraft.⁷⁹

“Shipriders,” the fourth model maritime agreement provision, is a standing arrangement pursuant to which a law enforcement officer of one State is embarked onboard a law enforcement plane or ship of another State.⁸⁰ Once embarked, the “shiprider” can authorize certain law enforcement actions with respect to his nation’s territorial sea or vessels sailing under his country’s flag which the foreign State’s law enforcement authorities could not take on their own.⁸¹

77. Twelve of the twenty-nine nations with which the U.S. has bilateral maritime agreements have agreed to entry-to-investigate authority. See Bi-lateral Agreement Chart, *supra* note 7. The right of “entry to investigate” is often used by U.S. Coast Guard aircraft to investigate suspicious air radar tracks that correlate with a profile that is consistent with aircraft engaged in illicit activity. For example, if a plane is detected on radar coming off the North coast of South America, and there is no flight plan on file that correlates with the planes radar track, the U.S. Coast Guard may take action to visually identify the suspect aircraft. See Interview with Lt. Donald Brown, *supra* note 8. If the aircraft continues on its northerly course over Haiti, the “entry-to-investigate” provision of U.S.-Haiti bilateral maritime agreement will be implemented to provide U.S. Coast Guard aircraft with authority to enter Haitian territorial airspace and conduct a visual identification of the suspect aircraft.

78. Ten of the twenty-nine nations with which the U.S. has bilateral maritime agreements have agreed to “overflight” authority. See Bi-lateral Agreement Chart, *supra* note 7.

79. Overflight authority is often used in areas notorious for high volumes of illicit trafficking such as along the East coast of the Dominican Republic where immigrants often attempt to cross the Mona Passage into Puerto Rico in small yolas (wooden canoes). See Interview with Lt. Donald Brown, *supra* note 8.

80. Sixteen of the twenty-nine nations with which the U.S. maintains bilateral agreements have agreed to the “shiprider” provision. See Bi-lateral Agreement Chart, *supra* note 7. Most Latin American States commonly refer to their bilateral maritime agreements with the United States as “Shiprider Agreements” no matter how many of the six provisions they have chosen to adopt.

81. The use of shipriders is sometimes more attractive to nations that do not wish to

“Pursuit,” the fifth model maritime agreement provision, allows the U.S. Coast Guard to pursue aircraft or vessels suspected of illicit traffic into foreign waters or airspace. A different authority, article 111 of UNCLOS, allows a State to pursue a foreign vessel beyond its territorial sea, but only out on the high seas.⁸² This pursuit must cease when the foreign vessel enters another State’s territorial sea. “Pursuit,” however, allows the U.S. Coast Guard to continue a pursuit into foreign waters or airspace.⁸³

“Order-to-land,” the sixth element, allows U.S. Coast Guard aircraft to order aircraft suspected of illicit traffic to land in the host nation.⁸⁴ An “order-to-land” must be coordinated with ground forces who can respond accordingly.⁸⁵

III. THE ADVANTAGE OF BILATERAL MARITIME AGREEMENTS

A. *Reduction of Delays in the Traditional Boarding Process*

Reducing the inherent delay in the traditional maritime boarding process is one of the most compelling arguments for having bilateral maritime agreements.⁸⁶ With a bilateral agreement in place, a U.S. Coast Guard Cutter can simply obtain permission to implement the bilateral agreement and board a vessel suspected of illicit trafficking. Even without reasonable suspicion, a consensual boarding can be conducted. If during a consensual boarding of limited scope the boarding team develops

grant the U.S. Coast Guard blanket consent to enter their territorial seas or board their vessels on the high seas. The shiprider provides an additional element of control and oversight of U.S. Coast Guard law enforcement actions. Moreover, it often provides foreign vessels being boarded by the U.S. Coast Guard with a greater comfort factor when they recognize that one of their own officers, and not just U.S. Coast Guard law enforcement officials, are supervising the boarding.

82. See UNCLOS, *supra* note 5, art. 111, 21 I.L.M. at 1290.

83. Twelve of the twenty-nine nations with which the U.S. maintains bilateral agreements have agreed to pursuit authority. See Bi-lateral Agreement Chart, *supra* note 7.

84. Seven of the twenty-nine nations with which the U.S. has bilateral agreements with have agreed to order-to-land authority. See Bi-lateral Agreement Chart, *supra* note 7.

85. See Interview with Lt. Donald Brown, *supra* note 8.

86. See Hull & Emerson, *supra* note 1, at 66.

a reasonable suspicion of illicit activity, they can request to implement the bilateral agreement at that time.

The process of implementing the bilateral agreement is a direct process conducted solely between the Cutter and its operational commander. This is much more efficient than the multi-level "Statement of No Objection" (SNO) process where reasonable suspicion developed during a consensual boarding must be relayed to the ship, then its operational commander, and finally Coast Guard Headquarters. Implementing a bilateral agreement is also much more efficient than the "Presidential Directive 27" (PD-27) process⁸⁷ which runs both horizontally between the various interested U.S. government agencies, and vertically between the State Department and the flag-State.

Bilateral maritime agreements also set forth the procedures to be followed. This eliminates inconsistencies from the flag-State granting permission to enforce U.S. law in one case but not another.

Another important feature of bilateral maritime agreements is the requirement of reasonable suspicion.⁸⁸ The Coast Guard must have reasonable suspicion that a vessel or aircraft is engaged in illicit activity prior to implementing a bilateral maritime agreement.⁸⁹ If the U.S. Coast Guard continuously implements the ship-boarding portion of a bilateral agreement but fails to find any direct evidence of illicit activity, the flag-State could conclude that the Coast Guard is abusing the agreement and withdraw its authority. The fear of a flag-State withdrawing from a bilateral agreement is in constant tension with one of the greatest benefits that bilateral agreements provide—increased boardings of foreign vessels under the authority of bilateral maritime agreements. As long as the U.S. Coast Guard truly has the requisite reasonable suspicion, the

87. See *supra* note 72.

88. Reasonable suspicion is the particularized and objective basis, supported by specific and articulable facts, for suspecting that someone is engaged in criminal activity. See *Terry v. Ohio*, 392 U.S. 1 (1968).

89. See Interview with Lt. Donald Brown, *supra* note 8. Presently, commanding officers of Coast Guard Cutters have authority to make a determination of whether reasonable suspicion exists. See U.S. Coast Guard Memorandum from Coast Guard Commandant, 041328Z, on Boardings Pursuant to Bilateral Maritime Counter-Drug Agreements (Mar. 1996) (copy on file with author).

agreement will be implemented thereby eliminating the inefficiency of the SNO and PD-27 processes.

Thus, bilateral maritime agreements streamline the boarding process by having the flag-State agree in advance with the U.S. Coast Guard's judgment on whether reasonable suspicion exists. Moreover, these agreements also provide U.S. law enforcement the authority of the flag-State to further investigate suspicions. While these shipboarding agreements increase the speed with which a boarding can be initiated or continued, they do not remove the obligation to contact the flag-State once *direct* evidence of illegal activity is discovered. At this point, the U.S. Coast Guard Cutter must notify its operational commander, who will initiate the SNO process resulting in a PD-27 process where the flag-State is contacted and asked for disposition instructions. This means that if a flag-State has agreed to shipboarding, boarding teams can quickly implement the agreement to board the vessel; however, they may be a long time disembarking if they discover direct evidence of illicit activity.

B. Dramatic Reduction of Immigrants Interdicted at Sea

In 1992, the U.S. Coast Guard interdicted 31,438 Haitian immigrants attempting to enter the United States following the overthrow of the Haitian Government.⁹⁰ In 1994, the Castro government allowed Cubans to voluntarily depart the island resulting in the interdiction of 37,191 Cuban immigrants.⁹¹ In 1995, the U.S. Coast Guard interdicted 4,047 Dominican immigrants and, in 1996, another 5,430 Dominican immigrants were interdicted in the Mona Passage while attempting to enter the U.S. commonwealth of Puerto Rico.⁹²

In 1997, however, the Coast Guard interdicted only 394 Cuban immigrants, 774 Haitian immigrants, and 1143 Dominican immigrants.⁹³ The implementation of bilateral

90. See U.S. Coast Guard, *Alien Migrant Interdiction, Coast Guard Migrant Interdictions, Calendar Year Chart 1982-Present* (visited Jan. 25, 2000) <<http://www.uscg.mil/hq/g-o/g-opl/mle/AMIO.htm>>.

91. See *id.*

92. See *id.*

93. See *id.*

maritime agreements was a main reason for the great reduction in immigrants attempting to illegally enter the United States by sea. While the only existing counter-migrant agreement the United States has in place is with Cuba,⁹⁴ migrant interdiction procedures have been exercised with such great frequency with Haiti and the Dominican Republic that the procedure has evolved into a quasi-bilateral agreement.⁹⁵ Once immigrants discover that they will be swiftly returned to their county of origin, it provides a great deterrent to others contemplating departure.

IV. COMPLEX ISSUES WITHIN BILATERAL MARITIME AGREEMENTS

A. *Third Country Platform Boardings and Law Enforcement Detachments*

To take advantage of as many law enforcement platforms as possible, the U.S. Coast Guard has formed law enforcement detachments (LEDETs). LEDETs are small teams of Coast Guard maritime law enforcement officers who sail aboard U.S. Navy ships.⁹⁶ The use of LEDETs has dramatically expanded the U.S. law enforcement presence in the transit zone. Moreover, the Coast Guard is able to take advantage of the U.S. Navy's superior detection and monitoring capabilities to locate and interdict illicit traffickers.

The Posse Comitatus Act directly proscribes the U.S. armed forces from engaging in law enforcement activities.⁹⁷ As a result, the U.S. Navy does not have authority to directly engage in law enforcement. However, by placing a U.S. Navy ship under the

94. See Interview with Lt. Donald Brown, *supra* note 8.

95. See *id.*

96. See U.S. Coast Guard, *Tactical Law Enforcement Teams*, (visited Jan. 26, 2000) <<http://www.uscg.mil/lantarea/aofp/newpage4.htm?104,17>>.

97. See 18 U.S.C. § 1385 (1988) ("Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both."). This statute, originally enacted in 1878, was premised on the intent of the Constitution's Framers intense distrust of the military and their efforts to limit the military's role in civilian life after their experience of being subjected to rule by British troops in the American Colonies. See A. Abel, *Not Fit For Sea Duty: The Posse Comitatus Act, The United States Navy, and Federal Law Enforcement at Sea*, 31 WM. & MARY L. REV. 445, 448-49 (1990).

temporary operational control of the Coast Guard LEDET, law enforcement boardings can be conducted from the Navy ship.⁹⁸

This process is known as a Change in Operational Control or "CHOPing."⁹⁹ When a U.S. Navy ship wants to conduct a law enforcement boarding, it will advise its Navy operational commander and the Coast Guard LEDET's operational commander that it wishes to CHOP to the Coast Guard and conduct a law enforcement boarding.¹⁰⁰ The embarked Coast Guard LEDET officer will then temporarily assume operational control of the Navy ship, and will order the Coast Guard's flag to be flown from its mast.

Coast Guard LEDETs are also deployed on board Dutch or British warships assigned to patrol off the coasts of their possessions in the West Indies. These vessels are commonly referred to as West Indies Guard Ships (WIGS).¹⁰¹ Placing a LEDET aboard a foreign naval vessel allows the naval vessel to have authority of its flag-State as well as the jurisdictional authority of the United States.¹⁰² Thus, a British WIG with an embarked LEDET is able to board both British and U.S. ships on the high seas.

Complex issues of international law arise, however, when a U.S. Coast Guard LEDET embarked on a WIG boards a vessel flagged in a third state and does so under the authority of a bilateral maritime agreement between the United States and the third state. For example, assume a Dutch WIG is patrolling off the coast of Venezuela with an embarked U.S. Coast Guard LEDET. If the LEDET sights a Venezuelan vessel it suspects of illicit trafficking, is it appropriate to board the Venezuelan vessel under the authority of the U.S.-Venezuelan bilateral maritime agreement?

Venezuela may not want its vessels stopped on the high seas by Dutch warships for several reasons. First, Venezuela may

98. See U.S. Coast Guard, *Tactical Law Enforcement Teams*, *supra* note 96.

99. Interview with Lt. Donald Brown, *supra* note 8. See also Abel, *supra* note 97, at 483.

100. See Interview with Lt. Donald Brown, *supra* note 8.

101. See U.S. Coast Guard Memorandum from Commandant of Coast Guard, 272353Z, on LEDET Embarkation Aboard WIGS (May 1993) (copy on file with author).

102. See U.S. Coast Guard Memorandum from American Embassy in Caracas, 101753Z, on U.S./V.E. Maritime Counter-Drug Shipboarding Agreement-Protocol Initialed Covering U.S. Coast Guard boardings from U.K., Dutch, and French Warships (July 1997).

have concerns with who would be liable for possible damage to the Venezuelan vessel resulting from the boarding. Second, Venezuela may not want its foreign nationals stopped and possibly detained on the high seas by Dutch WIGS. Finally, Venezuela may be concerned with who is actually conducting the stop and boarding—the U.S. LEDET or the Dutch Wig?

The simplest solution to the problem of third country platform boardings is to address the issue within the terms of the bilateral agreement itself. Often times clarifications can be made to an existing agreement by means of a diplomatic note. For example, a clarification to the 1991 U.S.-Venezuela counter-drug shipboarding agreement was made on July 2, 1997, by a diplomatic note in which Venezuela authorized U.S. LEDETs to conduct boardings and searches of suspect Venezuelan vessels from British, Dutch, and French government ships.¹⁰³ However, the Venezuelan government also made clear that it would refuse future requests to exercise the U.S.-Venezuelan agreement from any country other than those mentioned.¹⁰⁴

Empowering LEDETs embarked on foreign naval vessels to exercise U.S. bilateral maritime agreements with third states pushes the limits of existing bilateral maritime agreements. In the eyes of U.S. law enforcement agencies, it is a powerful way to expand jurisdiction and patrol efforts in areas known for illicit trafficking, while at the same time working jointly with other nations to combat it. However powerful, implementing a bilateral agreement from the naval vessel of a third country that is not party to the agreement must be done judiciously and overtly to avoid the multitude of problems it has the potential to create.

B. Reciprocity: Is the United States Willing to Reciprocate?

The fact that bilateral maritime agreements are reciprocal agreements is easily overlooked. The discussion of this Comment has largely concerned itself with how the United States uses bilateral agreements to enhance U.S. law enforcement power. However, bilateral maritime agreements also grant foreign

103. *See id.*

104. *See id.*

States the same jurisdictional powers over U.S. vessels on the high seas. Allowing a Colombian Naval vessel to stop and board a U.S. commercial or recreational vessel on the high seas and detain U.S. citizens under the authority of their bilateral maritime agreement with the U.S. is a frightening prospect for the Coast Guard as well as U.S. citizens. This fear is not based solely on the assumption that the Colombian or any other foreign navy will harass U.S. vessels or citizens, but more on the fact that a U.S. citizen detained by a foreign navy would be aghast that the United States had agreed to allow a foreign sovereign to exercise such authority over them.¹⁰⁵

In fact, if the U.S. Coast Guard received a request today from a Colombian naval vessel to board a U.S. ship under the U.S.-Colombia bilateral maritime agreement, they would most likely try to bring a U.S. Coast Guard Cutter on scene prior to allowing the Colombians to initiate the boarding.¹⁰⁶ If this is not possible, the U.S. Coast Guard may deny Colombia's request to board.¹⁰⁷ However, it is highly unlikely that Latin American nations will seek to board U.S. vessels because there is no benefit in their expending resources to pursue contraband that is ultimately heading for U.S. shores. To date, these provisions have rarely been implemented.¹⁰⁸

C. *Gaps in Bilateral Coverage: The Problem of Geography*

If one were to chart the States with which the United States currently has bilateral maritime agreements with, some notable gaps in U.S. jurisdictional authority would become immediately visible. First, the United States has no bilateral counter-drug agreement with Cuba even though the island of Cuba and its surrounding twelve nautical mile territorial sea and airspace are a haven for illicit traffickers.¹⁰⁹ Cuban maritime traffickers can skirt along inside the territorial sea of Cuba on its west coast up the Yucatan Channel, or along its east coast in the Old Bahama

105. See U.S. Coast Guard Letter from Commander, Seventh Coast Guard District to Commandant, 16216, on Counter-Drug Agreement With Columbia (Mar. 13, 1997).

106. See *id.*

107. See *id.*

108. See Interview with Lt. Donald Brown, *supra* note 8.

109. See Bi-lateral Agreement Chart, *supra* note 7.

channel without ever exposing themselves to detection or boarding by U.S. law enforcement interests. The hostility between the United States and Cuba has aided this trafficking because Cuba invariably does not allow U.S. law enforcement assets to patrol its waters.

Secondly, the United States does not have a bilateral agreement with Mexico.¹¹⁰ Similar to Cuba, planes flying air-drop missions can avoid being intercepted by U.S. law enforcement assets by staying inside Mexican airspace; maritime traffickers can do this as well by skirting up inside Mexico's territorial sea from Central and South America. Thus, Mexico represents another huge gap in the barrier the United States has tried to create through bilateral agreements.

D. Immigrant Issues: The Problem of Interdicting Foreign Nationals on the High Seas

Immigrant smuggling in the Caribbean and Latin America primarily concerns Cuban, Haitian, and Dominican migrants.¹¹¹ Interdicting immigrants on the high seas who are suspected of transiting towards the United States to make an illegal entry can be legally problematic because such immigrants are technically not subject to the jurisdictional authority of the United States until they enter the territorial sea of the United States.¹¹² Therefore, every time the United States interdicts foreign nationals on the high seas suspected of attempting to illegally enter the United States, it could be argued that it is violating international law.¹¹³

However, there is often very credible evidence that immigrants interdicted on the high seas are attempting to illegally enter the United States.¹¹⁴ Such evidence is often

110. *See id.*

111. *See* U.S. Coast Guard, *supra* note 90.

112. *See* Haitian Refugee Ctr., Inc. v. Gracey, 600 F. Supp. 1396, 1400 (D. DC. 1985).

113. The constitutionality and legality of the interdiction of aliens without visas on the high seas was challenged in an action brought by the Haitian Refugee Center. *See id.* The court held that the President possessed constitutional and statutory authority to establish an at sea interdiction program and that neither the Convention Relating to the Status of Refugees nor the Protocol Relating to the Status of Refugees of 1967 provided rights directly enforceable in U.S. courts. *See id.* at 1406-407.

114. *See* Note from U.S. Coast Guard Commandant, 16246, on Migrant Interdiction Policy (Oct. 1998).

manifested by many means such as the immigrants claimed intention of going to the United States, the fact that their vessels are often dangerously overloaded or are not seaworthy, the possessions that they have with them, or current migration trends.¹¹⁵ Additionally, the U.S. Coast Guard often construes these vessels as stateless vessels because they are not flying the flag of any sovereign State, they have no registration, and they seldom make any claim as to the vessel's nationality.¹¹⁶

However, harder questions of international law arise when immigrants attempt to illegally enter the United States through a third country such as the Bahamas, especially when they do so in small numbers. For example, assume that a small Cuban fishing boat or Haitian sailboat was located in international waters, was in a seaworthy condition and not grossly overloaded, and claimed its next port of call as the Bahamas. In this case, the United States has no jurisdiction over the vessel or persons because they are simply foreign nationals on a foreign flagged vessel transiting from one foreign port to another.¹¹⁷ Even if the United States suspects they are ultimately intending to enter the United States, it may be prevented from taking any direct action.¹¹⁸ The United States has no authority, notwithstanding any bilateral or other special agreements with the foreigner's respective flag-States, until the suspect immigrant vessel actually enters U.S. territorial seas.¹¹⁹

If the vessel does enter U.S. territorial seas and the immigrants are interdicted, complex issues of disposition must then be decided.¹²⁰ Both U.S. law and international immigration law prohibit repatriating foreign nationals who can show credible evidence that they will be subject to persecution on the grounds

115. The U.S. Coast Guard may be justified in removing these people from their vessels when there is a risk of loss of life at sea due to the condition of their vessel. See *supra* note 62.

116. See UNCLOS, *supra* note 5, art. 92, 21 I.L.M. at 1287.

117. See Note from U.S. Coast Guard Commandant, 16246, on Migrant Interdiction Policy (Oct. 1998).

118. The United States can only ask the Bahamian Immigration authorities to investigate the vessel upon its arrival. Or, if the vessel is in Bahamian territorial seas, the United States can request that the Bahamians take jurisdiction over it. As another alternative, United States can ask the master of the vessel to "turnback" (return) to his country of origin.

119. See *supra* note 112, and accompanying text.

120. See Note from U.S. Coast Guard Commandant, 16246, on Migrant Interdiction Policy (Oct. 1998).

of race, religion, nationality, membership in a particular social group, or political opinion.¹²¹ Thus, it must be determined whether the immigrants are fleeing from persecution, in which case they will not be returned to their home countries, or from economic hardship, in which case they will be repatriated.

As an additional consideration, Alien Migrant Interdiction Operation (AMIO) agreements address the U.S. Coast Guard's authority to interdict vessels suspected of illegally smuggling foreign immigrants into the United States, and to repatriate these foreign immigrants.¹²² Normally, bilateral migrant agreements are independent of bilateral counter-narcotics agreements because of the vastly complex issues that arise in interdicting and repatriating foreign immigrants. However, the maritime smuggling techniques used for immigrants are remarkably similar to those used for narcotics.

Ironically, Cuba is the only nation with which the United States has a standing AMIO agreement.¹²³ The Cuban agreement essentially allows Cuban immigrants interdicted by the U.S. Coast Guard on international waters to be directly repatriated to Cuba, and provides procedures on how to arrange such repatriations.¹²⁴ These repatriations are normally conducted by placing the Cuban immigrants on a U.S. Coast Guard patrol boat which then enters the port of Cabanas, Cuba, and turns the immigrants over to Cuban authorities under the supervision of the U.S. interest section in Havana.¹²⁵ This agreement has been in place since 1995, and it continues to be exercised almost daily.

U.S. Coast Guard cutters who interdict Cuban immigrants on the high seas will normally embark Asylum Pre-Screening Officers (APSOs) from the U.S. Immigration and Naturalization Service to determine whether immigrants have a credible fear of

121. See Immigration and Nationality Act § 243(h), 8 U.S.C. § 1158(a); Convention Relating to the Status of Refugees of 28 July 1951, art. 33, 606 U.N.T.S. 268.

122. See Exec. Order No. 12,807, 57 Fed. Reg. 23,1333 (1992).

123. See Cuba-United States: Joint Statement on the Normalization of Migration, Building on the Agreement of Sep. 9, 1994, May 2, 1995, 35 I.L.M. 327.

124. See *id.* Prior to the U.S.-Cuban AMIO agreement, the United States treated all Cuban immigrants as political refugees and allowed them entry into the United States. See Douglas Farah, *Cuban Officials Stress Difficulty of Adding to Immigration Pact; U.S. Pressure to Change System Rejected*, WASH. POST., May 20, 1995, at A20.

125. See Bob Deans, *U.S. Coast Guard Sends 13 Cubans Back Home*, ATL. J., May 10, 1995, at 4A.

persecution.¹²⁶ Although APSO interviews are always conducted with Cuban immigrants, they are not normally conducted with Haitian, Dominican, or other groups of immigrants unless they first make a request for asylum.¹²⁷ This is because Haitian and Dominican immigrants are presumed to be fleeing due to economic reasons, while Cuban immigrants may be more likely to be fleeing for political reasons.¹²⁸

The diversity, complexity, and uniqueness of issues that evolve from interdicting immigrants on the high seas is probably the primary reason that foreign States have preferred to deal with these issues on an ad hoc basis, rather than entering into a bilateral AMIO agreement with the United States.

E. Bad Faith Bilateral Agreements and Decertification: The U.S. Practice of Conditioning Economic Aid on Entry into Bilateral Maritime Agreements

By March 1 of each year, the President of the United States must make a decision on whether to certify or sanction the thirty largest drug producing or transit nations.¹²⁹ The President makes this decision on the basis of the counter-drug efforts made by these nations. These efforts included evaluating whether drug production is up or down, whether the country has taken significant law enforcement action against drug organizations, and whether the country has taken legislative action to toughen its domestic laws against drug traffickers.¹³⁰

The decision on whether to certify or sanction a country effectively puts the country's entire relationship with the United States at risk over the singular issue of drugs. A decision to

126. See Note from U.S. Coast Guard Commandant, 16246, on Migrant Interdiction Policy (Oct. 1998).

127. See *id.*

128. See Kathie Klarreich, *Lack of a U.S.-Haiti Pact on Boat People Clouds Their Fate on the Seas*, CHRISTIAN SCI. MONITOR, May 2, 1995, at 1. Some commentators have suggested that this is a false distinction, which actually exists for discriminatory reasons. This argument is a subject of considerable debate and is beyond the scope of this Comment.

129. See International Narcotics Control Act, 22 U.S.C. § 2291h (1999). See also Coletta Youngers, *A Look at Drug Certification: The Process has Become an Annual Charade*, WASH. POST, Mar. 21, 1999, at B3.

130. See *id.*

sanction can bring economic harm to the foreign nation that often falls upon innocent citizens.¹³¹

The United States has used the certification process as leverage to encourage countries to enter into bilateral maritime agreements. For example, prior to the U.S.-Jamaica bilateral maritime agreement, the U.S. State Department warned Jamaica that it was in danger of de-certification for failing to assist in counter-narcotics efforts.¹³² These bargaining techniques, coupled with a decrease in aid to the Caribbean Region, have created a growing resentment towards the United States.¹³³ Latin American states view the annual certification process negatively because the United States has also conditioned domestic legislation on a foreign state obtaining certification.¹³⁴ Many states view certification as complete arrogance on the part of the United States because they perceive the problem as one of U.S. domestic consumption, and not as one of foreign production.¹³⁵ Even the bargaining aspect of the certification process is not always an advantage. In 1996, the United States decertified Columbia, which caused a slow down in negotiations on the U.S.-Columbia bilateral counter-drug agreement negotiations.¹³⁶

The distaste with which countries view the annual certification process highlights why some countries feel compelled into signing bilateral maritime agreements with the United States. It is essentially a compromise where the foreign State loses some sovereignty in exchange for limited security and protection by the United States against illicit traffickers. Conditioning bilateral agreements on certification may achieve short-term gains, but it certainly jeopardizes long-term regional cooperation.

131. See Christopher Marquis & Tim Johnson, *Columbia Awaits Decision by U.S. on Decertification*, THE TIMES-PICAYNE, Feb. 16, 1997, at A39.

132. See Bob Ford, *U.S.-Jamaica Relations Tense: Some Offended by Efforts to Crack Down on Drug Trafficking*, DALLAS MORNING NEWS, Mar. 16, 1997, at 26A.

133. See *id.*

134. See Marquis & Johnson, *supra* note 131.

135. See Youngers, *supra* note 129.

136. See Ernesto Pizano Samper, *Truth About Columbia Drug Fight Not Being Told*, HOUS. CHRON., Feb. 27, 1997, at 35.

V. THE 21ST CENTURY: IS A MULTILATERAL MARITIME AGREEMENT POSSIBLE?

As this Comment suggests, one of the difficulties for law enforcement assets in combating illicit traffickers is coping with the varying jurisdictional authority throughout the region. In one sense, bilateral maritime agreements have only exacerbated this problem because of the differing authorities they provide from State to State. Nations who have not incorporated all six parts of the model maritime agreement, as well as the nations who have thus far refused to enter into bilateral agreements at all, cite sovereignty concerns as their main objection.¹³⁷ Furthermore, some nations resent the fact that the United States has conditioned receipt of economic aid on their entry into bilateral agreements, and therefore may have entered into such agreements as less than fully cooperative partners.¹³⁸

Adopting a multilateral maritime agreement could alleviate the problems of varying jurisdictional authority, loss of sovereignty, and conditional U.S. economic aid.¹³⁹ First, a multinational agreement would ideally provide law enforcement assets with uniform authority throughout the Western Hemisphere to combat illicit traffickers. Second, sovereignty would not be a major concern because all nations in the hemisphere would be giving up an equal amount of sovereignty in exchange for an equal amount of security. Finally, a multilateral agreement would remove the ability of the United States to condition economic aid on submitting to the agreement because, by its very nature, a multilateral agreement would dilute the dominating influence of the United States.

On the other hand, a multilateral solution may simply not be feasible. Trying to bring the numerous countries in the hemisphere together and reach an agreement similar to the model maritime agreement may prove impossible. This is because of differing levels of trust between the States. For example, when it comes to sovereignty, a country may trust the

137. See GRIFFITH, *supra* note 6, at 219-22.

138. See Bryan, *supra* note 32, at 45.

139. Thirty-Eighth Strategy for Peace, U.S. Foreign Policy Conference, *Building Multilateral Cooperation in the Americas: A New Direction for U.S. Policy*, Oct. 23-25, 1997 (visited Oct. 28, 1998) <<http://www.stanleyfdn.org/CONFRPTS/USFP/SPC97/multi97.html>>.

United States more than its neighbor. Additionally, a multilateral agreement may only provide minimal jurisdictional authority and ultimately be less useful than the current set of bilateral maritime agreements. Some States may refuse to enter into bilateral maritime agreements unless they are presented with the reality of losing U.S. economic aid.

VI. CONCLUSION

U.S. law enforcement agencies, especially the U.S. Coast Guard, have greatly enhanced their already broad jurisdictional powers through bilateral maritime agreements with Latin American neighbors. While these agreements are an awesome grab of jurisdictional power by the United States, they are a viable alternative to requiring law enforcement assets to respect territorial boundaries while illicit traffickers treat these boundaries as being transparent. Moreover, the use of bilateral maritime agreements furthers the goals of the world community, as stated in Article 17 of the United Nations Convention Against Illicit Traffic in Narcotics and Psychotropic Substances.¹⁴⁰ More importantly, these agreements evidence that the nations of the Western Hemisphere are working together to combat one of the greatest threats to their security and stability. While bilateral maritime agreements have not been perfected, and some nations remain concerned over yielding their sovereignty, they are the most pragmatic approach yet to combating illicit trafficking.

By continuing to properly exercise bilateral agreements, the United States can build a record of respect for the sovereignty of foreign States and thereby encourage more states to enter into such agreements. More importantly, each State who enters into a bilateral maritime agreement or who adopts an additional part of the six-part model maritime agreement, brings the region one step closer to adopting what is really the ultimate solution—a regional multilateral maritime agreement to combat illicit trafficking.

A consensus on a multilateral maritime agreement will be much easier once trust and experience are established among the United States and Latin American by working within the

140. See United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *opened for signature* Dec. 20, 1988, U.N. Doc E/CONF.82/15 (1989), 28 I.L.M. 497.

existing bilateral framework. United States law enforcement agencies can further this process by judiciously applying the existing agreements, and ensuring that they continually respect the sovereignty of regional States. Latin American States have entrusted the United States with their sovereignty in exchange for regional security. This trust must not be abused by overzealous law enforcement action if we ever expect to build the current bilateral framework into an effective hemispheric multilateral maritime agreement.

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VII. APPENDIX

A. *Maritime Counter-Drug / AMIO Agreements*¹⁴¹

	Ship-boarding	Shiprider	Pursuit	Entry-to-Investigate	Overflight	Order-to-Land	AMIO
Antigua & Barbuda	X	X	X	X	X	X	
Bahamas		X			X		
Barbados	X	X	X	X	X	X	
Belize	X	X	X	X			
Colombia	X						
Costa Rica							
Cuba							X
Dominica	X	X	X	X			
Dominican Republic	X	X	X	X	*		
Ecuador							
El Salvador							
France (incl. FWI)							
Grenada	X	X	X	X	X	X	
Guatemala							
Haiti			X	X	X		
Honduras							
Jamaica	X	X	X	X	X	X	
Mexico							
Netherlands Antilles		X	X (CTG 4.4 control)	X (CTG 4.4 control)	X (CTG 4.4 control)		

141. Maritime Counter-drug and AMIO Agreement Chart, U.S. Coast Guard, COMDT (G-OPL-L), Jan. 12, 1999 update.

	Ship-boarding	Shiprider	Pursuit	Entry-to-Investigate	Overflight	Order-to-Land	AMIO
Nicaragua							
Panama		X					
St. Kitts & Nevis	X	X	X	X	X	X	
St. Lucia	X	X	X	X	X	X	
St. Vincent/ Grenadines	X	X	X	X			
Suriname							
Trinidad & Tobago	X	X	X	X	X	X	
Turks & Caicos		X (air only)					
United Kingdom	X	X					
Venezuela	X		X (air only)				

*B. U.S. Model Maritime Agreement*¹⁴²

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF
AMERICA
AND
THE GOVERNMENT OF _____
CONCERNING COOPERATION TO SUPPRESS ILLICIT
TRAFFIC BY SEA

PREAMBLE

The Government of the United States of America and the Government of _____ (hereafter, the "parties");

Bearing in mind the special nature of the problem of illicit maritime drug traffic;

Having regard to the urgent need for international cooperation in suppressing illicit maritime drug traffic which is recognized in the 1961 Single Convention on Narcotic Drugs and its 1972 Protocol in the 1971 Convention on Psychotropic Substances, and in the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter, the "1988 Convention"), and in the 1982 United Nations Convention on the Law of the Sea;

Recalling that paragraph 9 of Article 17 of the 1988 Convention requires the Parties to consider entering into bilateral agreements to carry out, or enhance the effectiveness of, its provisions;

142. Email from Commandant, U.S. Coast Guard, Office of Law Enforcement, Washington, D.C., to Joe Kramek (Nov. 5, 1998) (on file with author).

Desiring to promote greater cooperation between the parties, and thereby enhance their effectiveness in combating illicit traffic by sea;

Have agreed as follows:

NATURE AND SCOPE OF AGREEMENT

1. The parties shall cooperate in combating illicit maritime drug traffic to the fullest extent possible, consistent with available law enforcement resources and related priorities.

DEFINITIONS

2. In this agreement, unless the context otherwise requires:

- a. "illicit traffic" has the same meaning as that term is defined in the 1988 Convention.
- b. "_____ territory" means the land [and islands] under the sovereignty of _____.
- c. "_____ waters" means the territorial sea (insert archipelagic waters, if applicable) and internal waters of _____.
- d. "_____ airspace" means the airspace over _____ territory and waters.
- e. "law enforcement vessels" means warships and other ships, of the Parties or of third States, aboard which law enforcement officials are embarked, clearly marked and identifiable as being on government service and authorized to that effect, including any embarked boat or aircraft.
- f. "law enforcement authority" means: for the Government of the United States of America, the United States Coast Guard; and for the Government of _____, the _____.
- g. "law enforcement officials" means: for the Government of the United States of America, uniformed members of the United States Coast Guard; and for the Government of _____, uniformed members of _____.

SHIPRIDER PROGRAM AND ENFORCEMENT IN AND OVER _____ WATERS

3. Maritime counter-drug operations in _____ waters are the responsibility of, and subject to the authority of, the Government of _____.

4. The parties shall establish a joint law enforcement shiprider program between their respective law enforcement authorities. Each Party may designate a coordinator to organize its program activities and to identify the vessels and officials involved in the program to the other Party.

5. The Government of _____ may designate qualified law enforcement officials to act as law enforcement shipriders. Subject to _____ law, these shipriders may in appropriate circumstances:

a. embark on U. S. law enforcement vessels;

b. authorize the pursuit, by the U.S. law enforcement vessels on which they are embarked, of suspect vessels and aircraft fleeing into _____ waters;

c. authorize the U.S. law enforcement vessels on which they are embarked to conduct counter-drug patrols in _____ waters;

d. enforce the laws of _____ in _____ waters or seaward therefrom in the exercise of the right of hot pursuit or otherwise in accordance with international law; and

e. authorize the U.S. law enforcement officials to assist in the enforcement of the laws of _____.

6. The Government of the United States of America may designate qualified law enforcement officials to act as law enforcement shipriders. Subject to United States law, these shipriders may, in appropriate circumstances:

a. embark on _____ law enforcement vessels;

b. advise and assist _____ law enforcement officials in the conduct of boardings of vessels to enforce the laws of _____.

c. enforce, seaward of the territorial sea of _____, the laws of the United States where authorized to do so; and

d. authorize the _____ law enforcement vessels on which they are embarked to assist in the enforcement of the laws of the United States seaward of the territorial sea of _____.

7. When a shiprider is embarked on the other Party's vessel, and the enforcement action being carried out is pursuant to the shiprider's authority, any search or seizure of property, and detention of a person, and any use of force pursuant to this agreement whether or not involving weapons, shall be carried out by the shiprider except as follows:

a. crew members of the other Party's vessel may assist in any such action if expressly requested to do so by the shiprider and only to the extent and in the manner requested. Such request may only be made, agreed to and acted upon in accordance with the applicable laws and policies of both parties; and

b. such crew members may use force in self-defense in accordance with the applicable laws and policies of their government.

8. The Government of the United States of America shall not conduct maritime counter-drug operations in _____ waters without the permission of the Government of _____, granted by this agreement or otherwise. This agreement constitutes permission by the Government of _____ for United States maritime counter-drug operations in any of the following circumstances:

a. an embarked _____ shiprider so authorizes;

b. a suspect vessel or aircraft, detected seaward of the territorial sea of _____ enters _____ waters or airspace and no _____ shiprider is embarked on a U.S. law enforcement vessel in the vicinity, and no _____ law enforcement vessel is immediately available to investigate, the U.S. law enforcement vessel may follow the suspect vessel or aircraft into _____ waters in order to investigate, and board and search the vessel, and, if the evidence warrants, detain the vessel and the persons on board pending expeditious disposition instructions from _____ authorities; and

c. no _____ shiprider is embarked on a U.S. law enforcement vessel in the vicinity, and no _____ law enforcement vessel is immediately available to investigate, in which case the U.S. law enforcement vessel may enter _____ waters in order to investigate a suspect vessel or aircraft located therein, and board and search the suspect vessel. If the evidence warrants, U.S. law enforcement officials may detain the suspect vessel and persons on board pending disposition instructions from _____ authorities.

9. Nothing in this agreement precludes the Government of _____ from otherwise expressly authorizing United States maritime counter-drug operations in _____ waters or involving _____ flag vessels suspected of illicit traffic.

10. The Government of _____ shall permit aircraft of the Government of the United States of America (hereafter, "U.S. aircraft") when engaged in law enforcement operations or operations in support of law enforcement agencies to:

a. overfly the territory and waters of _____ subject to Article 10 and with due regard for the laws and regulations for its laws and regulations for the flight and maneuver of aircraft; and

b. relay, subject to the laws of each Party, orders from the competent authorities to aircraft suspected of trafficking in illegal drugs to land in _____.

11. The Government of the United States of America shall, in the interest of flight safety, observe the following institute procedures for facilitating flights by U.S. aircraft within _____ airspace.

a. In the event of planned bilateral or multilateral law enforcement operations, the U. S. Shall provide reasonable notice and communications channels to the appropriate _____ aviation authorities of planned flights by its aircraft over _____ territory or waters.

b. In the event of unplanned operations, which may include the pursuit of suspect aircraft into _____ airspace pursuant to this Agreement, the law enforcement and appropriate aviation authorities of the Parties may exchange information concerning the appropriate communications channels and other information pertinent to flight safety.

c. Any aircraft engaged in law enforcement operations or operations in support of law enforcement activities in accordance with this Agreement shall comply with such air navigation and flight safety directions as may be required by the _____ aviation authorities, and with any written operating procedures developed by _____ for flight operations within its airspace under this Agreement.

OPERATIONS SEAWARD OF THE TERRITORIAL SEA

12. Whenever U. S. law enforcement officials encounter a vessel flying the _____ flag or claiming to be registered in _____, located seaward of any nation's territorial sea and have reasonable grounds to suspect that the vessel is engaged in illicit traffic, this Agreement constitutes the authorization of the Government of _____ for the boarding and search of the suspect vessel and the persons found on board by such officials. If evidence of illicit traffic is found, United States law enforcement officials may detain the vessel, persons on board, evidence and cargo pending expeditious disposition instructions from the Government of _____.

13. Except as expressly provided herein, this agreement does not apply to or limit boarding of vessels conducted by either Party in accordance with international law, seaward of any nation's territorial sea, whether based, inter alia, on the right of visit, the rendering of assistance to persons, vessels, and property in distress or peril, the consent of the vessel master, or an authorization from the flag state to take law enforcement action.

JURISDICTION OVER DETAINED VESSELS

14. In all cases arising in _____ waters or concerning _____ flag vessels seaward of any nation's territorial sea the Government of _____ shall have the primary right to exercise jurisdiction over a detained vessel and/or persons on board (including seizure, forfeiture, arrest, and prosecution), provided, however, that the Government of _____

may, subject to its constitution and laws, waive its primary right to exercise jurisdiction and authorize the enforcement of United States law against the vessel and/or persons on board.

IMPLEMENTATION

15. Counter-drug operations pursuant to this agreement shall be carried out only against vessels and aircraft used for commercial or private purposes and which either of the Parties has reasonable grounds suspect are involved in illicit traffic, including vessels and aircraft without nationality.

16. A Party conducting a boarding and search pursuant to this agreement shall promptly notify the other Party of the results thereof. The relevant Party shall timely report to the other Party, consistent with its laws, on the status of all investigations, prosecutions and judicial proceedings resulting from enforcement action taken pursuant to this agreement where evidence of illicit traffic was found.

17. Each Party shall ensure that its law enforcement officials, when conducting boardings and searches pursuant to this agreement act in accordance with the applicable national laws and policies of that Party and with international law and accepted international practices.

18. Boardings and searches pursuant to this agreement shall be carried out by law enforcement officials from law enforcement vessels. The boarding and search team may carry standard law enforcement small arms.

19. All use of force by a Party pursuant to this agreement shall be in strict accordance with applicable laws and policies of the respective Party and shall in all cases be the minimum reasonably necessary under the circumstances. Nothing in this agreement shall impair the exercise of the inherent right of self-defense by law enforcement or other officials of either Party.

20. To facilitate implementation of this agreement, each Party shall ensure the other Party is fully informed concerning its applicable laws and policies, particularly those pertaining to the use of force. Each Party has the corresponding responsibility to ensure that all of its officials engaging in law enforcement operations pursuant to this agreement are knowledgeable concerning the applicable laws and policies of both parties.

21. Unless their status is specifically provided for in another agreement, all law enforcement and other officials of the Government of the United States of America present in _____ waters or territory or on _____ vessels in connection with this agreement shall be accorded the privileges and immunities equivalent to those of the administrative and technical staff of a diplomatic mission under the 1961 Vienna Convention on diplomatic relations.

22. Assets seized in consequence of any operation undertaken in _____ waters pursuant to this agreement shall be disposed of in accordance with the laws of _____. Assets seized in consequence of any operation undertaken seaward of the territorial sea of _____ pursuant to this agreement shall be disposed of in accordance with the laws of the seizing Party. To the extent permitted by its laws and upon such terms as it deems appropriate, a Party may, in any case, transfer forfeited assets or proceeds of their sale to the other Party.

23. In case a question arises in connection with implementation of this agreement, either Party may request consultations to resolve the matter. If any loss or injury is suffered as a result of any action taken by the law enforcement or other officials of one Party in contravention of this agreement or any improper or unreasonable action is taken by a Party pursuant thereto, the parties shall, without prejudice to any other legal rights which may be available, consult at the request of either Party to resolve the matter and decide any questions relating to compensation.

24. Except as provided in paragraph 21, nothing in this agreement is intended to alter the rights and privileges due any individual in any legal proceeding.

25. Situations not provided for by this agreement will be determined in accordance with international law.

26. Nothing in this agreement shall prejudice the position of either Party with regard to the international law of the sea.

ENTRY INTO FORCE AND DURATION

27. This agreement shall enter into force upon signature by both parties.

28. This agreement may be terminated at any time by either Party upon written notification to the other Party through the diplomatic channel, such termination to take effect one year from the date of notification.

29. This agreement shall continue to apply after termination with respect to any administrative or judicial proceedings arising out of actions taken pursuant to this agreement.

In witness whereof, the undersigned, being duly authorized by their respective governments, have signed this agreement.

Done at _____, this ____ day of ____ of 199_, in the English and _____ languages, each text being duly authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF
AMERICA

FOR THE GOVERNMENT OF

USCG RECIPROCAL SHIPBOARDING PROPOSAL

Request interagency (DOD, DOS, DOJ) clearance on below language for use in US-NI bilateral maritime counterdrug agreement. Request clearances by COB3/20.

Whenever law enforcement officials of one Party (the "first Party") encounter a vessel flying the flag or claiming to be registered in the other Party, located seaward of any nation's territorial sea and suspected of illicit traffic, the law enforcement officials of the first Party may board and search the suspect vessel and the persons found on board. Prior to conducting the boarding and search, the law enforcement authority of the first Party shall notify the law enforcement authority of the other Party by the most expeditious means of its intent to board and search. Except where it would interfere with ongoing law enforcement operations, the other Party shall not object to the boarding and search by the first Party. If evidence of illicit traffic is found, the law enforcement officials of the first Party may detain the vessel and persons on board pending expeditious disposition instructions from the other Party.

