

Oxford Public International Law

Part II Commercial Aspects of the Marine Environment, 11 The Contribution of UNODC to Ocean Governance

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From: The IMLI Treatise On Global Ocean Governance: Volume II: UN Specialized Agencies and Global Ocean Governance

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Content type: Book content

Product: Oxford Scholarly Authorities on International Law [OSAIL]

Published in print: 26 July 2018

ISBN: 9780198823964

Subject(s):

Terrorism — Drug trafficking — International organizations

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11.1 Institutional Development and Profile of UNODC

11.1.1 The establishment of UNODC

The United Nations Office on Drugs and Crime (UNODC) is an office of the United Nations (UN) Secretariat, sharing the international legal personality of the UN. It was formally established in 2004¹ and builds upon the experience of pre-existing articulations of the Secretariat, notably:

- the United Nations International Drug Control Programme (UNDCP), which had been instituted by the UN General Assembly (UNGA) with the task to service the Commission on Narcotic Drugs and the International Narcotics Board.² The role of the UNDCP was to enhance the effectiveness and efficiency of the UN structure for drug abuse control, in keeping with the functions and mandates of the UN in this field, by facilitating the implementation of the relevant treaties;³ pursuing policy implementation and research; and operational activities.
- the Division for Crime Prevention, servicing the Commission on Crime Prevention and Criminal Justice (CCPCJ).⁴ CCPCJ was established as a functional commission of the ECOSOC in the framework of the UN crime prevention and criminal justice programme.⁵ The CCPJ is meant to be 'the principal (p. 228) United Nations policymaking body on crime prevention and criminal justice issues',⁶ also entrusted with the coordination of relevant activities,⁷ whereas the Secretariat, under the guidance of the CCPCJ, would be 'responsible for facilitating the planning, coordination and implementation of practical activities in the field of crime prevention and criminal justice, in close collaboration with Governments and interregional and regional institutes, specialized agencies, funding agencies, intergovernmental and non-governmental organizations, the activities of which should be promoted in this field'.⁸

In 1997 a realignment of these two branches of the Secretariat was decided: the Division for Crime Prevention was strengthened and reconstituted as the Centre for International Crime Prevention that formed, together with the UNDCP, the Office for Drug Control and Crime Prevention.⁹ The two branches were merged in 2004, when the Secretary General formally established the UNODC, in order to 'implement the Organization's drug programme and crime programme in an integrated manner, addressing the interrelated issues of drug control, crime prevention and international terrorism in the context of sustainable development and human security'.¹⁰ The 2004 SG Bulletin also set out the organization and functions of the office, amongst which are notably:

- Servicing the Commission on Narcotic Drugs, the Commission on Crime Prevention and Criminal Justice, the United Nations congresses on crime prevention and criminal justice, and the International Narcotics Control Board in the execution of their functions.¹¹
- Fulfilling the Secretary-General's responsibilities under the drug control, crime prevention and terrorism conventions and instruments, as well as relevant inter-governmental resolutions, and performing the functions of secretariat of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (UNTOC)¹² and the Conference of the Parties to the United Nations Convention against Corruption (UNCAC);¹³ this includes providing advice and assistance to member states on the implementation of relevant legal standards,

promoting adherence to relevant treaties, and monitoring their effective implementation, as well as coordination of the activities of the United Nations Inter-regional Crime and Justice Research Institute and ensuring cooperation with regional and affiliated criminal justice institutes (in this respect, the UNODC acts as 'guardian' of the relevant conventions and instruments).¹⁴

(p. 229) • Research, analysis, and strategic planning.¹⁵

- Acting as repository of expertise in the field of crime prevention and repression.¹⁶
- Developing, managing, implementing, and coordinating technical cooperation activities (in the form of technical assistance, which is provided through a network of field offices).¹⁷

In pursuing this mandate, the UNODC's main areas of activity currently relate to drugs, health, and trafficking; transnational organized crime; justice; corruption; terrorism; policy support and public affairs; research, trend analysis, and forensics; and independent evaluation.¹⁸

11.1.2 Governance and budget

The UNODC operates in the context of the broader UN Crime Prevention and Criminal Justice Programme. Whereas a number of different UN entities are actively involved in developing such programmes,¹⁹ the UNODC's mandate is shaped by the General Assembly and ECOSOC, through the Commission on Narcotic Drugs (CND) and the CCPCJ. At the same time, the UNODC also receives inputs from the Conferences of the Parties to the UNTOC and the UNCAC; the Conferences of the Parties thus complement its governance structure and develop the mandate decided by the CCPCJ and the CND, at times also identifying new areas of activity.²⁰ The plurality of the UNODC's constituencies does not seem to give rise to conflicts, probably also due to the almost universal participation in the UNTOC (187 parties) and the UNCAC (181 parties).²¹ Incidentally, also several other treaties of which the UNODC is a guardian have gained similarly high rates of acceptance: there are to date 185 parties to the 1961 Convention; 183 parties to the 1971 Convention; and 189 parties to the 1988 Convention. Also, conventions as regards terrorism (an area in which the UNODC is significantly involved especially, but not exclusively, as regards terrorism prevention²²) (p. 230) are widely ratified: there are notably 187 parties to the International Convention for the Suppression of the Financing of Terrorism.²³

At the same time, choices and priorities of specific members/parties significantly influence the modalities of implementation of the UNODC's mandate. One reason for this is linked to the structure of the UNODC's budget. Whereas some costs (notably those linked to servicing the Commission on Narcotic Drugs, the CCPCJ, and the Conferences of the Parties) are covered by the UN regular budget, contributions from the UN regular budget amounted to only about 8 per cent of the UNODC's budget in 2015.²⁴ These figures are in line with the situation of the previous years: in fact, over 90 per cent of the UNODC's budget consists of earmarked voluntary contributions or Special Purpose Funds.²⁵ Thus, the availability of funds by states and other entities (notably the EU) is critical to the ability of the UNODC to perform field work or technical assistance, which are carried out in the framework of specifically sponsored projects. Recent years have witnessed a gradual decline of unearmarked (general purpose) contributions; this trend is perceived as potentially detrimental to the functioning of the office²⁶ also because it may lead to imbalances in the actual implementation of the UNODC's mandate.²⁷ Hence, a specific fundraising strategy has been developed to 'enable strategic policy and operational priorities to be implemented in a coherent, predictable and sustainable manner'.²⁸

However, the UNODC's activities related to ocean governance are mostly in the form of technical assistance to states;²⁹ this implies that they are offered only to states seeking such assistance or accepting it—an element which certainly contributes to their effectiveness, although it may potentially also lead to imbalances.

11.2 UNODC and the 2030 Agenda for Sustainable Development

The UNODC's mandate draws on a broad approach to criminal justice, leading to the adoption of important standard-setting documents such as the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);³⁰ also, (p. 231) owing to the inputs of the conferences of the parties to the UNTOC and the UNCAC, it currently lays much emphasis on international cooperation in effective prevention and repression of criminal activities such as corruption and transnational organized crime. The link between the promotion of the rule of law at global level and development has long been acknowledged: thus, for instance, ECOSOC Resolution 1922/22 emphasized 'the direct relevance of crime prevention and criminal justice to sustained development, stability, security, democratic change and improved quality of life'.³¹ The Doha Declaration on crime prevention and criminal justice recently reiterated 'the importance of promoting peaceful, corruption-free and inclusive societies for sustainable development, with a focus on a people-centred approach that provides access to justice for all and builds effective, accountable and inclusive institutions at all levels'.³²

More specifically, the foundational mandates of the UNODC are in harmony with the 2030 Agenda for Sustainable Development and its policy directions are grounded therein.³³ At the same time, the 2030 Agenda has formally incorporated issues related to security, the rule of law, and social justice:³⁴ as a general stocktaking, the UNODC's activities are part and parcel of the efforts to build 'peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions'.³⁵ The UNODC's mandate is thus clearly linked to Sustainable Development Goal (SDG) No 16 ('Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'), notably to the targets of reducing violence and related death rates (16.1); end abuse, exploitation, trafficking, and all forms of violence against and torture of children (16.2); promote the rule of law at the national and international levels and ensure equal access to justice for all (16.3); by 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets, and combat all forms of organized crime (16.4); reduce corruption and bribery in all their forms (16.5); develop effective, accountable, and transparent institutions at all levels (16.6), strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime (16.a). At the same time, the cross-cutting nature of the UNODC's (p. 232) activities in the fight against crime is an exemplification of the 'integrated and indivisible' nature of the three dimensions—economic, social, and environmental—of sustainable development,³⁶ insofar as its activities have a bearing on several other 2030 Development Goals, including SDG No 14 ('Conserve and sustainably use the oceans, seas and marine resources for sustainable development').³⁷

This is also in line with the holistic approach to the problems of ocean space, which is purported by the United Nations Convention on the Law of the Sea (UNCLOS),³⁸ and lies at the basis of the UN approach to the management of the oceans. For instance, the UNGA has highlighted that 'the problems of ocean space are closely interrelated and need to be considered as a whole through an integrated, interdisciplinary, and inter-sectoral approach, and reaffirming the need to improve cooperation and coordination at the national, regional,

and global levels, in accordance with the Convention, to support and supplement the efforts of each state in promoting the implementation and observance of the Convention, and the integrated management and sustainable development of the oceans and seas'.³⁹ As shall be seen in the next section, the UNODC is fully involved—alongside other actors—in the effort to address such problems and it is growingly concerned with the effective prevention and repression of serious crime at sea or in ports, which is a key component of maritime security.⁴⁰

11.3 UNODC and Ocean Governance

11.3.1 Ocean governance and effective prevention and repression of crime at sea

In its resolutions on 'Oceans and the law of the sea', the General Assembly has noted with concern 'the continuing problem of transnational organized crime committed at sea, including illicit traffic in narcotic drugs and psychotropic substances, the smuggling of migrants, trafficking in persons and illicit trafficking in firearms, and threats to maritime safety and security, including piracy, armed robbery at sea, smuggling and terrorist acts against shipping, offshore installations and other maritime interests, and ... the deplorable loss of life and adverse impact on international trade, energy security and the global economy resulting from such activities',⁴¹ further recognizing 'the considerable need to provide sustained capacity-building assistance, including on (p. 233) financial and technical aspects, by relevant international organizations and donors to developing States, with a view to further strengthening their capacity to take effective measures against the multiple facets of international criminal activities at sea, in line with the relevant international instruments, including the United Nations Convention against Transnational Organized Crime and the Protocols thereto'.⁴²

The UNTOC indeed provides the main (albeit not the only) legal basis for the UNODC's involvement in ocean governance. Notably Chapter II of the UNTOC Smuggling Protocol is entirely devoted to the smuggling of migrants at sea. Moreover, all other predicate offences covered by the UNTOC and its Supplementing Protocols may be committed in whole or in part at sea, or may anyway entail exercise of jurisdiction over sea zones. The offences covered by the UNTOC (insofar as they are transnational in nature and involve an organized criminal group) are:

- (a) Predicate offences specifically established under the UNTOC and its Supplementing Protocols, that is participation in an organized criminal group (under Article 5 of the UNTOC); laundering of the proceeds of crime (Article 6); corruption (Article 8); obstruction of justice (Article 23); human trafficking, for the Parties to the Trafficking Protocol (Article 5 thereof); migrant smuggling, for the Parties to the Smuggling Protocol (Article 6 thereof); illicit manufacturing, trafficking and falsifying, removing or altering the markings of firearms, for the parties to the Firearms Protocol (Article 6 thereof).
- b) Any other 'serious crime'; Article 2 of the UNTOC defines 'serious crime' as 'conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty'.

Specifically, the identification of 'serious crime' is therefore left to national authorities; the notion may cover a wide range of criminal conducts, depending on choices made by domestic legislatures.⁴³ Therefore, the notion of 'serious crime' applies also to acts whose criminalization is decided as a means to implement specific international obligations other than those stemming from the UNTOC. The flexibility of this concept implies that the UNTOC often overlaps with, and indirectly fosters implementation of other treaty regimes. This is the case of the obligations under treaties of which the UNODC is a guardian (notably

the 1988 Convention, which covers also drug traffic at sea,⁴⁴ and the UNCAC, insofar as corruption facilitates crime at sea⁴⁵) but also of (p. 234) various other instruments adopted under the auspices of the UN, specialized agencies, or regional organizations. For instance, acts of piracy or armed robbery against ships may constitute an offence under the UNTOC and contextually under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention).⁴⁶ Similar overlaps may occur as regards acts of terrorism, which are also regulated by SUA and other specific instruments⁴⁷ but could, under specific circumstances, fall under the scope of the UNTOC;⁴⁸ human trafficking, whose criminalization is imposed by instruments other than the Trafficking Protocol;⁴⁹ traffic in endangered species (notably timber, but also wild fauna) protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);⁵⁰ also, fisheries crime and marine pollution can fall under the scope of the UNTOC when the relevant behaviours are treated as ‘serious crimes’ at national level.⁵¹

As mentioned above, however, the main role of the UNODC in this field is to provide normative and technical assistance to states so as to favour appropriate exercise of their jurisdiction over vessels and maritime zones. It may therefore be important to clarify the relationship between the different legal bases of the UNODC’s activities and the international law of the sea—notably UNCLOS, which was concluded in order to ‘establish ... a legal order for the seas and oceans’.⁵²

11.3.2 UNTOC, other legal bases for UNODC’s action, and UNCLOS: a coherent framework

The UNGA recently restated that the United Nations Convention on the Law of the Sea ‘sets out the legal framework within which all activities in the oceans and seas must be carried out’.⁵³ Indeed, UNCLOS is considered to be ‘the legal framework (p. 235) within which all activities in the oceans and seas must be carried out and establishes a careful balance between the sovereign rights, jurisdiction and freedoms enjoyed by States in the various maritime zones on the one hand, and their duties and obligations on the other. ... The Convention provides for the accommodation of the various uses of the oceans and also for the resolution of conflicts regarding the attribution of rights and jurisdiction of States. Its provisions apply in respect of all activities, whether military or civil’.⁵⁴

This is the case also as regards prevention and repression of crime at sea: the UN Secretary-General observed, in his 2008 Report on ‘Oceans and the law of the sea’, that ‘[t]he international legal regime for maritime security consists of a number of international instruments, all operating within the framework of the Charter and UNCLOS’.⁵⁵ The approach to ocean governance adopted by the instruments of which UNODC is a guardian is based on this assumption; while UNCLOS is not expressly mentioned therein, the relevant provisions are formulated so as to be in line with customary law of the sea, which is by and large reflected by UNCLOS. This requirement is set out, notably, by Article 7 of the Smuggling Protocol, whereby ‘States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, *in accordance with the international law of the sea*’.⁵⁶ Moreover, Article 8 sets forth the legal framework for taking measures against vessels when there is a reasonable suspicion that they are involved in the smuggling of migrants. Specifically, paragraphs 1 and 2 stipulate:

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so

requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, *inter alia*:

- (a) To board the vessel;
- (b) To search the vessel; and
- (p. 236) (c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

Article 8 of the Smuggling Protocol closely follows the model of Article 17 of the 1988 Convention, which in turn 'expands upon the obligation under article 108 of the Convention on the Law of the Sea to cooperate, through the establishment of a framework within which third party States suspecting trafficking activity may seek the authorization of the flag State to undertake interdiction efforts of its vessels located in maritime zones beyond the territorial sea'.⁵⁷ Paragraphs 3 and 4 of Article 17 state:

3. A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law, and flying the flag or displaying marks of registry of another Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel.

4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to, *inter alia*: (a) Board the vessel; (b) Search the vessel; (c) If evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.⁵⁸

Both instruments are in line with the need to respect the exclusive jurisdiction of the flag state as set out in UNCLOS: they do stipulate an obligation to cooperate in combating migrant smuggling and drug traffic by sea, but subject any measure against ships suspected of trafficking to flag state authorization.⁵⁹ Moreover, they safeguard 'the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea'.⁶⁰ More intrusive measures could be authorized by the Security Council, as with Resolutions 2240(2015)⁶¹ and 2312 (2016),⁶² which exceptionally authorize interception of vessels suspected of smuggling of migrants off the coasts of Libya in the context of Operation Sophia.

(p. 237) While other relevant instruments do not stipulate specific rules in this regard, they should be interpreted consistently with UNCLOS (or the corresponding customary

obligations) in light of the principle of systemic interpretation set forth by Article 31(3)(c) of the Vienna Convention on the Law of Treaties.⁶³

Notably as regards the UNTOC, its legislative guide expressly acknowledges: ‘Those involved in the negotiation of the Convention and its Protocols were well aware of the need for flexibility, as well as consistency and a degree of harmonization, at the international level’;⁶⁴ moreover, the Convention ‘respects and protects the sovereignty of States parties’.⁶⁵ It is also worth noting that, according to Article 4(1) of the UNTOC, ‘States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States’. According to the ICJ, ‘The purpose of Article 4 of the Convention is to ensure that the States parties to the Convention perform their obligations in accordance with the principles of sovereign equality, territorial integrity of States and non-intervention in the domestic affairs of other States’.⁶⁶ Whereas the requirement to respect sovereign rights at sea is not expressly mentioned, it may perhaps be argued that the reference to ‘territorial integrity’ encompasses also protection sovereign rights on maritime zones. In any case, the emphasis laid by Article 4 on the need to respect state sovereignty, taken together with the indications of the legislative guide and with a contextual reading of the UNTOC in light of Articles 8 and 9 of the Smuggling Protocol, imply that states parties to the UNTOC should perform their obligations by respecting sovereign rights at sea also in areas other than the smuggling of migrants. The same interpretative approach should apply as regards other relevant instruments.

At the same time, systemic interpretation cannot in itself shed light on doubts as regards the actual content of the pertinent rules of international law of the sea. For instance, practice is not entirely straightforward as regards vessel interdiction within the exclusive economic zone of other states;⁶⁷ this may lead to difficulties also as regards instruments whose implementation falls directly under the UNODC mandate. Any inter-state dispute in this regard would have to be addressed on the basis of (p. 238) agreements applicable as between the states in dispute, including notably UNCLOS,⁶⁸ the 1988 Convention,⁶⁹ and the UNTOC⁷⁰ for parties to those instruments.

On the other hand, a direct involvement of the UNODC (or, rather, of the UN) in such kinds of dispute seems unlikely—especially as the UNODC’s role in relation to the UNTOC, the Supplementing Protocols, the 1988 Convention, or other pertinent instrument does not involve any kind of direct enforcement action at sea. Should a dispute of this kind arise, the possibility of requesting an advisory opinion to the International Court of Justice under Article 96 of the UN Charter may be envisaged.

11.4 UNODC’s Contribution to Ocean Governance

The activities of the UNODC have been increasingly engaged in ocean governance—which is understood here as the international process in which the cooperation by states, inter-governmental institutions, and other actors aims at achieving the objectives laid down in UNCLOS at a local, national, regional, and global level. More specifically, capacity building through training, sharing of data and analysis, normative assistance, and other forms of technical assistance that the UNODC provides to governments on a voluntary basis, help framing national policies and regulatory frameworks that may ensure or enhance coherence with the existing international legal framework (including international human rights law) in respect of the exercise of prescriptive, enforcement, and adjudicatory jurisdiction. The UNODC also sustains domestic capacity building in the actual enforcement of the pertinent domestic and international rules, in appropriately addressing new threats to maritime security and, more generally, new forms of crime affecting the oceans in different ways. Moreover, activities of the UNODC are developed in close connection not only with states but also other governance systems affecting the oceans such as the International Maritime Organization (IMO), the International Organization for Migration (IOM) and UNICEF,⁷¹ the

World Customs Organization (p. 239) (WCO),⁷² the Food and Agriculture Organization (FAO), and Interpol.⁷³ Also, cooperation with non-governmental organizations (NGOs) and the civil society is usually good—for instance, with NGOs as regards the assistance to the victims of human trafficking, or with the shipping industry as regards the Container Control Programme (CCP).⁷⁴

A number of different UNODC programmes have an impact on the process of ocean management, although they do not focus exclusively on maritime crime. This trend is prominent, notably, as regards drug control, human trafficking, and migrant smuggling—where sea routes in the Mediterranean and other areas of the world are under constant focus,⁷⁵ although they are not the main routes in terms of numbers of people trafficked or smuggled⁷⁶—but also features in other fields, such as terrorism prevention or wildlife and forest crime. Two current UNODC programmes are more directly concerned with global ocean governance: namely, the CCP and the Global Maritime Crime Programme (GMCP).⁷⁷

11.4.1 The Container Control Programme

The CCOP, founded in 2004, is run by the UNODC in cooperation with the WCO. It operates mostly in seaports,⁷⁸ as inspection at sea is not usually possible in the case of vessels carrying containers. The programme has a prominently hands-on approach and develops coordination between different agencies operating at domestic level, through the setting-up of joint port control units;⁷⁹ it mainly focuses on enhancing national capability to profile, target, and examine containers being used for the transport of illicit goods. In a context where there is a high volume of—mostly legal—traffic (over 7 million containers worldwide in 2016), the CCP provides support and training for the purpose of quicker and more effective targeting, based on cargo manifest data, as well as promoting exchange of information on high risk cargos. This helps to minimize actual controls, managing resources efficiently and avoiding excessive hindrances to legal commercial traffic:⁸⁰ currently about 2 per cent of containers are inspected worldwide.⁸¹

The CCP helps to target many different forms of illicit traffic, notably narcotics; strategic and dual use goods; forest products and wildlife; goods infringing intellectual (p. 240) property rights; arms; stolen objects; and cultural heritage. It also helps limiting tax avoidance.⁸² It is currently seeking to extend its reach by developing inter-continental cooperation.⁸³ The programme finds its legal basis in the UNTOC and the UNCAC (as corruption in ports is often endemic). The completely voluntary basis on which beneficiaries of this programme are identified enhances the recipients' commitment, and thus the programme's effectiveness.

11.4.2 The Global Maritime Crime Programme

The GMCP is the main UNODC programme involved in ocean governance.⁸⁴ It builds on the outcomes of the Counter Piracy Programme (CPP) that the UNODC set up on the basis of Security Council Resolution 1851 (2008)⁸⁵ in an effort to coordinate activities among states and international organizations to suppress piracy off the coast of Somalia. The CPP brought together more than sixty countries and international organizations working towards the prevention of piracy off the Somali coast 'through increasing regional capacities to deter, arrest, prosecute and detain pirates'. This was done by (1) pursuing fair and efficient trials and imprisonment of piracy suspects in regional countries; paving the ground for (2) humane and secure imprisonment in Somalia; and (3) fair and efficient trials in Somalia itself, through a cooperation with the United Nations Development Programme (UNDP).⁸⁶ These efforts, combined with other factors, did bring about a decline of piracy in the Horn of Africa, although the risk of resurgence is present.⁸⁷

With its Resolution 20/5 the CCPCJ mandated the UNODC to convene an expert meeting to facilitate the investigation and prosecution of international crime at sea, including by ‘identifying gaps or possible areas for harmonization, and measures to strengthen national capacity, in particular in developing countries, to more effectively combat transnational organized crime’.⁸⁸ In 2013 the decision was taken to develop the GMCP by expanding the reach of CPP in terms both of geographical scope and crimes covered;⁸⁹ although effective counter-piracy action in the Horn of Africa remains a high priority and one of the keystones of the new programme,⁹⁰ GMCP has the much broader aim to ‘improve the capabilities and capacity of the criminal justice systems of states to carry out effective prevention and prosecution of maritime (p. 241) crimes within a sound rule of law framework’⁹¹—also in an attempt to tackle appropriately multifaceted organized criminal groups which are simultaneously engaged in different forms of illicit activities.⁹²

Thus, in 2015, the GMCP offered technical assistance to eighteen countries and addressed six main areas of concern: the smuggling of migrants and people trafficking; wildlife and forestry crime; piracy and armed robbery; Somali charcoal smuggling; fisheries crime; and narcotics trafficking on the high seas.⁹³ As the chart below shows, the programme has further expanded its geographical reach in 2016 (Figure 11.1).⁹⁴



► [View full-sized figure](#)

Figure 11.1 Countries involved in the GMCP.

As the CCP, the GMCP is also currently promoting an inter-regional approach to crime prevention and repression at sea, specifically through the institution of the Indian Ocean Forum on Maritime Crime.⁹⁵ It offers a variety of different services (ranging from an assessment of threats, capacity, and needs to legislative assistance, mentoring at operational and tactical level, support in establishing operational protocols, capability to investigate and prosecute maritime crime, and in managing prisoners detained for such crimes⁹⁶), whose exact identification is tailored according to the wishes and needs of the country/region concerned. Moreover, the broad legal basis of the GMCP and the programme’s flexibility enhance its prospects to contribute positively to the governance of the oceans, insofar as it should enable it to ‘act as a UNODC first responder to requests from States for support in relation to both emerging maritime crime issues which are not yet adequately addressed by UNODC or another organization, but also for more general counter maritime crime capacity building which transcends narrower sectoral and thematic programming concerns’.⁹⁷

(p. 242) 11.5 Conclusions

The UNODC’s specific mandate, relating to the area of crime prevention and criminal justice, touches upon central components of the promotion of the rule of law at global level; it does not have a specific focus on ocean governance. However, the analysis above shows that a significant and growing share of the UNODC’s activities, aimed at assisting states in their fight against different forms of serious crime, directly or indirectly fosters appropriate ocean governance. On one hand, these activities help achieving coherence and coordination between international and national regulatory frameworks for the exercise of prescriptive, enforcement, and adjudicatory jurisdiction over prevention and repression of crime at sea; and, on the other hand, they provide states with knowledge, expertise, and operational

capacity to target the most serious forms of crime at sea in practice effectively, in the form of technical assistance. The UNODC programmes are often developed in cooperation with other international institutions active at both global and regional level.⁹⁸ They are grounded on a variety of different legal bases, with the most relevant ones being the UNTOC and its Supplementing Protocols; those different instruments have to be interpreted in line with UNCLOS and/or customary rules of the law of the sea, in the perspective of an holistic and mutually inter-related approach to global ocean governance.

Moreover, the UNODC's policies and activities are contributing to the implementation of the UN 2030 Agenda for Sustainable Development, which is based on the premise that the rule of law and sustainable development are inter-related and mutually reinforcing. They specifically encompass prevention and repression of crime at sea and in the interconnection between land and sea (notably in ports). Indeed, even programmes with a more direct vocation to ocean governance, such as the CCP or GMCP, operate in the perspective of integrated coastal and ocean management; moreover, their cross-cutting approach allows coverage of a wide range of sea-related threats and crimes, thus strengthening the capacity of states and of the international community as a whole to implement the rule of law at sea.

Footnotes:

* I am grateful to Dr Elisabetta Bonomo (formerly University of Ferrara) for her valuable research assistance; to Judge Gioacchino Polimeni (former Director of UNICRI) and to Dr Giovanni Broussard, Dr Nicole Quijano Evans, Dr Fabrizio Sarrica, and Mr Giuseppe Sernia (UNODC) for helpful discussions. The research is updated to December 2016.

¹ Secretary-General's bulletin 'Organization of the United Nations Office on Drugs and Crime' (15 March 2004), UN Doc ST/SGB/2004/6.

² UNGA Res 45/179 (21 December 1990) UN Doc A/RES/45/179, para 3.

³ The Single Convention on Narcotic Drugs of 1953, as amended by the Protocol Amending the Single Convention on Narcotic Drugs (adopted 8 August 1975, entered into force 13 December 1975) 976 UNTS 105 (1975 Convention); the Convention on Psychotropic Substances, Vienna (adopted 21 February 1971, entered into force 16 August 1976) 1019 UNTS 175 (1971 Convention); and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (adopted 20 December 1988, entered into force 11 November 1990) 582 UNTS 95 (1988 Convention).

⁴ ECOSOC, 'Establishment of the Commission on Crime Prevention and Criminal Justice' Res 1992/1 (6 February 1992); see also ECOSOC, 'Implementation of General Assembly resolution 46/152 concerning operational activities and coordination in the field of crime prevention and criminal justice' Res 1992/22 (30 July 1992).

⁵ UNGA Res 46/152 (18 December 1991) UN Doc A/RES/46/152, para 11(b).

⁶ UNGA Res 61/252 (22 December 2006) UN Doc A/RES/61/252, para 1.

⁷ ECOSOC Res 1992/22, para III(4).

⁸ ECOSOC Res 1992/22, para I(1).

⁹ Report of the Secretary General, 'Reviewing the United Nations: A Programme for Reform', UNGA Res 51/950 (4 July 1997) UN Doc A/51/950, 48, paras 144 ff.

¹⁰ Secretary-General's bulletin 'Organization of the United Nations Office on Drugs and Crime' (15 April 2004) UN Doc ST/SGB/2004/6 (SG Bulletin).

¹¹ See SG Bulletin, s 6.

- 12** Adopted 15 November 2000, entered into force 29 September 2003, 2225 UNTS 209.
- 13** Adopted 31 October 2003, entered into force 14 December 2005, 2349 UNTS 41.
- 14** SG Bulletin (n 11), s 6(2).
- 15** *ibid* ss 7(2), 5(2)(d).
- 16** *ibid* ss 2(2)(a) and 2(3)(a).
- 17** *ibid* s 5.
- 18** See UNODC, *Annual Report 2015* (United Nations 2016).
- 19** See UNGA Res 46/152 (18 December 1991) UN Doc A/RES/46/152, para 8. Notably the United Nations Congresses on Crime Prevention and Criminal Justice (previously Congresses on the Prevention of Crime and the Treatment of Offenders) act as a consultative body of the UN Crime Prevention and Criminal Justice Programme, and provide a forum for, inter alia, the submission of suggestions, for the consideration of the CCPCJ, regarding possible subjects for the programme of work (see 'Statement of principles and programme of action of the United Nations crime prevention and criminal justice programme', Annex to UNGA Res 46/152, para 29(e); cf also UNGA Res 56/119 (23 January 2002) UN Doc A/Res/56/119, preamble. Cf R S Clark, *The United Nations Crime Prevention and Criminal Justice Program* (University of Pennsylvania Press 1994) 24 ff.
- 20** For instance, the mandate to address the problem of organ trafficking was identified by UNTOC Conference of the Parties, rather than by the CCPCJ (interview with Dr Fabrizio Sarrica, 7 December 2016).
- 21** See <https://treaties.un.org> (last accessed 23 December 2016). Ratification rates are lower, albeit significant, in the case of UNTOC's Supplementing Protocols: 170 parties ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319; 142 parties ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507; and 114 parties ratified the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (adopted 31 May 2001, entered into force 3 July 2005) 2326 UNTS 208.
- 22** See www.unodc.org/unodc/en/terrorism/index.html (last accessed 22 December 2016).
- 23** Adopted 9 December 1999, entered into force 10 April 2002, 2178 UNTS 197. Moreover, there are 169 parties to the International Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997 and 107 parties to the International Convention for Suppression of Acts of Nuclear Terrorism, New York, 13 April 2005 <https://treaties.un.org/> (last accessed 23 December 2016). For a comprehensive list of UNODC's legislative mandates see CND, 'Proposed strategic framework 2016–2017 for the United Nations Office on Drugs and Crime: Note by the Secretariat' (28 January 2014) UN Doc E/CN.7/2014/CRP.4, 22 ff.
- 24** UNODC, *Annual Report 2015* (n 18) 120. Less than 1% of the UN regular budget is thus allocated to UNODC.
- 25** See UNODC, 'Fundraising Strategy 2012–2015' 1–2 https://www.unodc.org/documents/donors/Fundraising.Strategyv._final_print_version.5_Sep.2012.pdf (last accessed 20 December 2016).
- 26** *ibid* 122.
- 27** Cf UNODC, 'Fundraising Strategy 2012–2015', 1.

- 28** *ibid* 4. This notwithstanding the situation in 2015 was not deemed fully satisfactory: UNDC, *Annual Report 2015* (n 1) 122.
- 29** See further below, section 11.4.
- 30** UNGA Res 70/176, Annex (17 December 2015) UN Doc A/70/176. For a comprehensive overview of norms and standards adopted by the UN on the basis of proposals by the CCPCJ see *The Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* (3rd edn, United Nations 2016).
- 31** ECOSOC Res 1922/22 'Implementation of General Assembly Resolution 46/152 concerning operation and coordination in the field of crime prevention and criminal justice' (30 July 1992). See also the 2012 UN Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, UNGA Res 67/1 (24 September 2012), UN Doc A/RES/67/1.
- 32** Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, 'Doha Declaration on integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation' (12-19 April 2015) UN Doc A /CONF.222/L.6, para 4.
- 33** Commission on Narcotic Drugs, CCPCJ, 'Proposed strategic framework for the period 2018-2019' (8 December 2015) UN Doc E /CN.7/2015/CRP.8-E /CN.15/2015/CRP.8, para. 13.8.
- 34** These issues were present in the Millennium Declaration (UNGA Res 55/2 (8 September 2000) UN Doc A/RES/55/2, para 24) but were not operationalized in the millennium development goals. See UNODC, note on 'Security, the Rule of Law and the post 2015 development agenda' www.unodc.org/unodc/en/about-unodc/sustainable-development-goals/sdgs-index.html (last accessed 24 December 2016).
- 35** UNGA Res 70/1 (25 September 2015) UN Doc A /RES/70/1, para 35; see also the Preamble of the Declaration.
- 36** UNGA Res 70/1 (25 September 2015) UN Doc A /RES/70/1, Preamble, para 55. See UNODC, *Annual Report 2015* (n 19) 101.
- 37** See further www.unodc.org/unodc/en/about-unodc/sustainable-development-goals/sdgs-index.html (last accessed 24 December 2016).
- 38** Adopted 10 December 1982, entered into force 16 November 1994, 1833 UNTS 3. The UNCLOS Preamble expressly acknowledges that 'the problems of ocean space are closely interrelated and need to be considered as a whole'.
- 39** UNGA Res 66/231 (23 December 2011) UN Doc A/RES/66/231, Preamble.
- 40** The notion of 'maritime security' should be distinguished from 'maritime safety'; while the latter refers to the prevention and suppression of risks affecting maritime navigation in general, 'the notion of maritime security is associated with risks to navigation resulting from wilful misconduct, thereby including prevention and suppression of all intentional unlawful acts affecting maritime navigation'. See UNODC, *Transport-related (Civil Aviation and Maritime) Terrorism Offences* (United Nations 2014) 66.
- 41** UNGA Res 70/235, Preamble.
- 42** *ibid* para 24. Cf Res 66/231, para 20.
- 43** See V Militello, 'Participation in an Organised Criminal Group as an International Offence' in H Albrecht and C Fijnaut (eds), *The Containment of Transnational Organised Crime: Comments on the UN Convention of December 2000* (Iuscrim 2002) 97 at 102; A Schloenhardt, 'Transnational Organized Crime' in R J Currie and N Boister (eds), *Routledge Handbook on Transnational Organized Crime* (Routledge 2015) 409 at 415-16; G Polimeni,

'The Notion of Organised Crime in the United Nations Convention against Transnational Organized Crime' in S Carnevale, S Forlati, and O Giolo (eds), *Redefining Organized Crime: A Challenge for the European Union?* (Hart Publishing 2017) 57–74.

44 See notably art 17 of the 1988 Convention, discussed below.

45 Specifically corruption in ports is a widespread phenomenon and is often linked to maritime crime (see further below, section 11.3.1). On the link between corruption and other crimes see J Sandage, 'Keynote Speech: Global Corruption and the Universal Approach of the United Nations Convention against Corruption' (2015–2016) 53 *Osgoode Hall Law Journal* 7, 12.

46 Adopted 10 March 1988, entered into force 1 March 1992, 1678 UNTS 221. Cf SG Report 'Oceans and the Law of the Sea' (10 March 2008) UN Doc A /63/63 (SG Report 2008) para 58; UNODC, *Issue Paper—Combating Transnational Organized Crime Committed at Sea* (United Nations 2013) 7.

47 See UNODC, *Transport-related (Civil Aviation and Maritime) Terrorist Offences* (n 40) 65 ff.

48 In adopting UNTOC, UNGA Res 55/25 (15 November 2000), UN Doc A/RES/55/25, recognized the existence of 'growing links between transnational organized crime and terrorist crimes'; see further A Annoni, 'The Relationship between Transnational Organized Crime and Terrorism: An International Law Perspective' in Carnevale, Forlati, and Giolo (eds), *Redefining Organized Crime* (n 43) 121–43.

49 See A Gallagher, *The International Law of Human Trafficking* (2010) 54 ff. In addition, trafficking may be considered as a 'serious crime' under domestic law also by states which are parties to UNTOC but not to the Trafficking Protocol.

50 Adopted 3 March 1972, entered into force 1 July 1975, 993 UNTS 244; amendments were adopted on 22 June 1979 (entered into force on 13 April 1987) and on 30 April 1983 (entered into force 29 November 2013).

51 See UNODC, *Transnational Organized Crime in the Fishing Industry* (United Nations 2011); UNODC, *Issue Paper* (n 46) 4 ff; E de Coning and G Stølsvik, 'Combating Organised Crime at Sea: What Role for the United Nations Office on Drugs and Crime?' (2013) 28 *Int'l J Maritime and Coastal L* 189, 203; M A Palma-Robles, 'Tightening the Net: The Legal Link between Unreported and Unregulated Fishing and Transnational Crime under International Law' (2015) 29 *Ocean Yearbook* 145; UNEP-Interpol, *The Rise of Environmental Crime—A Growing Threat to Natural Resources, Peace, Development and Security* (UNEP 2016) 57.

52 See UNCLOS Preamble.

53 UNGA Res 70/235 (23 December 2015) UN Doc A/RES/70/235, Preamble, quoting Agenda 21 (*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol I, *Resolutions Adopted by the Conference*, resolution 1, annex II). See also, recently, UNGA Res 66/231 (23 December 2011) UN Doc A/RES/66/231.

54 SG Report 2008, paras 46–47; para 48 further adds: 'Flag States play a particularly important role in maritime security, as they are required to effectively exercise jurisdiction and control in administrative, technical and social matters over ships flying their flag. Flag States are responsible for ensuring that their vessels act in conformity with applicable rules of international law, wherever such vessels may be located'.

55 *ibid* para 43.

56 Emphasis added.

- ⁵⁷ UNODC, *Practical guide for competent national authorities under article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* (United Nations 2004) 4.
- ⁵⁸ Both instruments stipulate that action as regards suspect vessels ‘shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect’, in line with art 107 UNCLOS (see art 9(4) Smuggling Protocol, art 17(10) 1988 Convention).
- ⁵⁹ See Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on the Smuggling of Migrants, Note by the Secretariat, ‘Smuggling of migrants by sea’ (27 August 2015) UN Doc CTOC /COP/WG.7/2015/2, 7. Cf also D Guilfoyle, *Shipping Interdiction and the Law of the Sea* (2009) 83, 184.
- ⁶⁰ Smuggling Protocol, art 9; 1988 Convention, art 17(11). This implies that the authorization of the flag state can be granted only for measures taken in zones beyond the territorial sea of other states. See D McLean, *Transnational Organized Crime—A Commentary to the UN Convention and Its Protocols* (Oxford University Press 2007).
- ⁶¹ 9 October 2015, UN Doc S/RES/2240 (2015), paras 7 and 8.
- ⁶² 6 October 2016, UN Doc S/RES/2312 (2016), which prolonged the authorization in connection with EUNAVFOR MedOperation Sophia for a further 12 months (para 7).
- ⁶³ Adopted 1969, entered into force 1980. According to this provision, a treaty should be interpreted by taking into account ‘[a]ny relevant rules of international law applicable in the relations between the parties’.
- ⁶⁴ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations 2004) xvi .
- ⁶⁵ *ibid* 16, para 32.
- ⁶⁶ *Immunities and Criminal Proceedings (Equatorial Guinea v France)* Order (7 December 2016) para 49 www.icj-cij.org (last accessed 8 December 2016). According to the ICJ, ‘the provision does not appear to create new rules concerning the immunities of holders of high ranking office in the State or incorporate rules of customary international law concerning those immunity’. Nor could art 4 be deemed to create or codify, *mutatis mutandis*, sovereign rights at sea; however the ICJ stance, which was adopted in connection with a *prima facie* assessment of jurisdiction under art 35 UNTOC, does not have any bearing on the possibility of relying on UNCLOS (or the corresponding customary rules) in the framework of a systemic interpretation of UNTOC.
- ⁶⁷ See Guilfoyle, *Shipping Interdiction* (n 59) 84.
- ⁶⁸ Part XV, arts 279 ff. The principles of peaceful settlement of international dispute and of free choice of the means of settlement, which are codified by arts 279–80 UNCLOS, would of course apply also on the basis of customary international law.
- ⁶⁹ Article 32, paragraphs 1 and 2 thereof, stipulates: ‘1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to the settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice. 2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision’.

70 Paragraphs 1 and 2 of art 35 set forth: ‘1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation. 2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court’. This clause was first relied upon in *Equatorial Guinea v France* (n 66), where the ICJ found (at least prima facie) that the case does not fall under the scope of UNTOC *ratione materiae*.

71 See eg the Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants www.unodc.org/unodc/en/human-trafficking/glo-act/index.html (last accessed 27 December 2016).

72 Specifically as regards the Container Control Programme: see below, para 3(a).

73 UNODC, *Annual Report 2015* (n 19) 51, 90; cf further www.unodc.org/unodc/en/terrorism/partnerships/operational.html (last accessed 1 January 2017).

74 UNODC, *Container Control Programme—Annual Report 2015* (United Nations 2016) 15.

75 UNODC, *Annual Report 2015* (n 19) 49 ff.

76 UNODC, *Issue Paper—Smuggling of Migrants by Sea* (United Nations 2011) 11. These numbers are rising significantly as regards Europe: for instance, according to UNODC, ‘In Italy, between January and June 2016, the number of unaccompanied minors reaching the country by sea more than doubled compared to the same period in 2015, reaching about 10,000’: see UNODC, *Global Report on Trafficking in Persons 2016* (United Nations 2016) 61.

77 A comprehensive overview of UNODC activities is provided by its annual reports www.unodc.org.

78 It should be noted that the CCP operates also in dry ports—that is, inland intermodal terminals connected to seaports by road or rail—and airports; modalities of intervention are identical.

79 UNODC, *Container Control Programme* (n 74) 9.

80 *ibid* 7, 32.

81 Interview with Dr Quijano-Evans (7 December 2016).

82 UNODC, *Container Control Programme* (n 74) 7, 9.

83 Interview with Dr Quijano-Evans (n 81).

84 See de Coning and Stølsvik, ‘Combating Organised Crime at Sea’ (n 51) 189.

85 16 December 2008, UN Doc S/RES/1851 (2008).

86 For a detailed analysis of CCP outcomes see UNODC, *In-depth Evaluation of the Counter Piracy Programme—Combating Maritime Piracy in the Horn of Africa and the Indian Ocean—Increasing Regional Capacities to Deter, Detain and Prosecute Pirates* (United Nations 2013).

87 Cf M Okano, ‘Is International Law Effective in the Fight against Piracy? Lessons from Somalia’ (2010) 53 *Japanese YB Int’l L* 178; D Guilfoyle, ‘Piracy Off Somalia and Counter-piracy Efforts’ in D Guilfoyle (ed), *Modern Piracy—Legal Challenges and Responses*

(Edward Elgar Publishing 2013) 35; UNODC, *In-depth Evaluation of the Counter Piracy Programme* (n 86) vii.

88 UNODC, *Issue Paper—Maritime Crime* (n 46) 1.

89 UNODC, *Global Maritime Crime Programme—Annual Report 2015* (United Nations 2015).

90 See UNODC, *Independent In-depth Evaluation of the Global Maritime Crime Programme* (New York 2015) ix, noting that effective counter-piracy action in the Horn of Africa remains a high priority especially for the donor community.

91 *ibid.*

92 *ibid* 1, notably as regards West Africa. The connection between illicit trafficking and the financing of terrorism has also been noted (interview with Mr Giuseppe Sernia, 30 November 2016).

93 Y Fedotov, 'Foreword' *GMCP Report 2015* (n 89) iii.

94 Courtesy of UNODC, December 2016.

95 UNODC, *GMCP Report 2015* (n 89) 3 ff; 'Independent In-depth Evaluation' (n 90) xiv.

96 UNODC, *GMCP Report 2015* (n 89) 54.

97 'Independent In-depth Evaluation' (n 90) 12.

98 de Coning, Stølsvik (n 51) 200.