

Spain and the Law of the Sea: 20 years under LOSC

Migrants by Sea

Paula GARCÍA ANDRADE*

Migration by sea has become a serious concern for Spain mainly since the “*cayuco* crisis” which considerably affected our country in 2006, peaking the arrivals by sea of North-African and Sub-Saharan nationals into the Canary Islands an all-time high of 39.180.¹ After a very noticeable decrease, maritime migration into Spain has been experiencing a slight rise since 2011, within the context of the so-called “Arab Spring” and the subsequent humanitarian emergency in Libya, together with the historic movements of population provoked by the civil war in Syria.² Arrivals by sea to Spain have clearly increased in 2016,³ and again in 2017.⁴ Even though Spanish figures are moderate in comparison to the arrivals in Italy for instance,⁵ or total arrivals in the Mediterranean,⁶ the importance of migration by sea is undisputable as illegal border crossings at sea borders in the whole EU represented 71.4 % of the total amount for 2016, and 79.7% of overall illegal border crossings for the first quarter of 2017.⁷ The most serious aspect of this phenomenon is unquestionably the death toll derived from the hazardous journeys migrants undertake to reach European shores, 2016 being the deadliest year so far in the Mediterranean,⁸ and also in Spanish waters.⁹

Against this backdrop, Spanish authorities, as well as other EU Southern Member States, have been

* Associate Professor of Public International Law, Universidad Pontificia de Comillas - ICADE.

¹ Spanish Ministry of Interior, “Assessment 2015 on the fight against irregular immigration “ ([Balance 2015 Lucha contra la Inmigración Irregular](#))

² Migrants arriving into Spain by sea reached 5.443 in 2011, 3.237 in 2013, 4.552 in 2014, and 5312 in 2015 (*Ibid.*).

³ According to IOM, 8.162 arrivals, to mainland coasts only, were registered in 2016 (El País, “[Las llegadas por mar de migrantes a la Península se duplicaron en 2016](#)”, 22.1.2017).

⁴ As of 18 July 2017, the number of migrants arrived in Spain by sea reached 7.547, a rise of 104.2% compared to the same period of 2016 (El País, “[Rescatados casi 600 inmigrantes en las costas en menos de 12 horas](#)”, 17.8.2017. According to Frontex, in July 2017 “Spain continued to see the heaviest migratory pressure since 2009”: Frontex, “[Migratory flows in July: numbers fall in Italy but remain high in Spain](#)”, press release, 14.8.2017.

⁵ Only in the first five months of 2017, 60.228 migrants arrived by sea in Italy: The Guardian, “[Italy considers closing its ports to boats carrying migrants](#)”, 28.6.2017.

⁶ IOM, “[Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079](#)”, 6.1.2017.

⁷ Data extracted from FRONTEX, [Frontex Risk Analysis Network Quarterly Report](#), Quarter 1 – January March 2017, July 2017.

⁸ 5079 persons have died or went missing in Mediterranean waters in 2016, in comparison to the 3.771 fatalities of 2015 or 1.500 in 2011: IOM, “[Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079](#)”, 6.1.2017. IOM records 2.726 migrant deaths in 2017 so far: see the information published by the IOM Missing Migrants Project available [here](#).

⁹ The number of deaths of migrants trying to reach Spanish coasts in 2016 has doubled with respect to 2014, rising from 131 to 295: APDHA, [Balance migratorio Frontera Sur 2016](#), February 2017.

activating different sectors-related measures to tackle migration by sea, and both its causes and consequences, as well as to dismantle the criminal organisations which turn high profits from the smuggling of migrants.¹⁰ Undoubtedly the law of the sea is one of the main branches of law in which the State attempts to find the adequate answers to this phenomenon, which comes to be a challenge to the peaceful use of the seas. The 20th anniversary of the entry into force in Spain of the United Nations Convention on the Law of the Sea (hereinafter, LOSC)¹¹ constitutes therefore the perfect occasion to revisit the Spanish practice regarding the management of migration by sea and, especially, how the Spanish authorities have been making use of the powers set in the specific provisions LOSC which are applicable to this field.¹²

For that purpose, this contribution will be structured into three sections, corresponding to the three types of State jurisdiction. Firstly, we will examine how Spain has made use of its prescriptive or normative powers regarding the prevention and fight against migration by sea. In particular, we will analyse how the Spanish legislator has reflected in internal legal norms the LOSC provisions regarding the interdiction powers the Convention attributes to the State in the different maritime zones (A). In a second section, the analysis of Spanish enforcement powers will lead us to consider the authorities which are in charge of executing these norms and the kind of operations within which interception and rescue functions are being implemented by Spain (B). In a third section, the curial or adjudicatory jurisdiction of Spain will be briefly reviewed, by presenting the evolution of the competence of Spanish courts to try the criminal offence of smuggling of migrants committed at sea (C).

Albeit clearly focused on the Spanish practice, it will be however imperative to make some references to certain European Union norms and practice, as a consequence of the competences transferred to the Organisation in the field of immigration and borders.

(A) SPANISH PRESCRIPTIVE JURISDICTION WITH REGARD TO MIGRATION BY SEA

After a very long process, on 25 September 2014, the Spanish Law 14/2014 on Maritime Navigation, entered into force.¹³ Although it does not contain a complete regulation of the field, Law 14/2014 aims at undertaking a wide reform of the Spanish maritime law, also attempting to ensure consistency with international norms in this field, while reinforcing the protection of certain national interests in which some deficiencies have been detected, immigration being one of them.¹⁴

A first title of the Law, on the administrative regulation of navigation, is inspired, according to its preamble, by the LOSC, and includes rules on policing navigation to be applied to national and foreign ships within maritime areas over which Spain exercises sovereignty, sovereign rights or jurisdiction.

For our purposes, in addition to Spanish ports in which internal legislation on immigration applies,¹⁵

¹⁰ See, inter alia, UNODC, *Smuggling of Migrants by Sea*, Issue paper, United Nations, 2011.

¹¹ UN Convention on the Law of the Sea, [1833 UNTS 3](#) (adopted 10 December 1982, entered into force 16 November 1994) (LOSC hereinafter).

¹² See the [Spanish bibliography](#) on the Law of the sea selected by Abegón, Maestro and Vázquez.

¹³ Law 14/2014, 24 May 2014, on Maritime Navigation ([BOE No. 180](#), 25 May 2014), an English version available [here](#).

¹⁴ Preamble to Law 14/2014.

¹⁵ Art. 7 of Law 14/2014. As far as Spanish immigration legislation is concerned, cfr. Organic Law 4/2000, 11 January

Law 14/2014 states, in Article 19, that navigation through Spanish maritime spaces shall comply with the prescriptions of the LOSC, respecting however the restrictions and requirements of this law and, where appropriate, pursuant to the laws on safety, defence, customs, health, border controls and immigration. Among the exceptions to the right to navigation in Spanish waters, Article 20(1) of Law 14/2014 refers to those situations in which the passage of foreign ships is not innocent, a regime which implies the respect of laws and regulations on immigration¹⁶. The loading or unloading of persons in the territorial sea contrary to these rules entails thus a non-innocent passage for being prejudicial to the good order and security of the coastal State and therefore empowers Spanish authorities to stop vessels suspected of transporting potential irregular migrants.¹⁷ An extensive interpretation could possibly be accorded to these terms used in Article 19 LOSC so that it is not necessary for exercising interdiction powers to await for the physical unloading of migrants within the territorial sea or at the coast. This interpretation seems confirmed by Article 21(1)(h) LOSC, which authorises the coastal State to adopt legislation relating to innocent passage through the territorial sea in respect of the *prevention of* immigration laws and regulations.

In any case, *pateras*, *cayucos* and inflatable boats, normally used by migrants to arrive to Spanish coasts, should most probably be qualified as ships without nationality, which are not even entitled to the right to innocent passage, according to Article 17 LOSC.¹⁸ A verification should however be made on whether the boat is registered in any State, unlikely possibility since their small size could determine their exclusion from generally accepted international regulations and thus from the State registry of ships.¹⁹ Not being apt for navigation, those vessels would lack the status of ship.

The Law on Maritime Navigation also refers to the regime applicable to the contiguous zone, in which Spanish authorities exercise control over foreign ships in order to prevent infringements of the laws and regulations of immigration that could be committed in national territory or in the territorial sea, as well its jurisdiction to punish the authors of those infringements.²⁰ While the LOSC only refers to a necessity criterion when qualifying the kind of measures that coastal States may adopt in the contiguous zone, Article 35 of Law 14/2014 specifies that, when the competent authority is aware that a foreign vessel located in the contiguous zone has breached, is breaching or intends to breach the legislation mentioned in Article 23 —including thus immigration law—, that authority will be entitled to intercept the ship, to request information or perform the necessary inspection.²¹ In case of need, any proportional measure to prevent or punish the infraction could be adopted, including arrest and escorting it to port.²² Nonetheless, it could be argued that the latter measures should only be adopted

2000, on rights and freedoms of foreigners in Spain and their social integration ([BOE No. 10](#), 12 January 2000) and its Regulation approved by Royal Decree 557/2011, 20 April 2011 ([BOE no. 103](#), 30 April 2011).

¹⁶ Arts. 37 to 39 of Law 14/2014,

¹⁷ Art. 39 of Law 14/2014 includes this by indirect reference to those situations foreseen in the LOSC.

¹⁸ According to Art. 17 LOSC, “ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea”.

¹⁹ Art. 94(2)(a) LOSC.

²⁰ Art. 23 LOSC.

²¹ Art. 35(1) of Law 14/2014.

²² Art. 35(2) of Law 14/2014.

with the purpose of punishing the infringement of immigration regulations committed by foreign vessels in the territory or in the territorial sea, and not to prevent it as that would be clearly disproportionate.²³

At this point, it must be highlighted that Spain might be empowered to exercise its interception functions also against vessels which, crossing the Spanish territorial sea or its contiguous zone, head not towards Spanish coasts but the coast of another Member State with the intention to disembark therein. According to the European Commission, the coastal Member State, Spain in this case, would not just be entitled but even bound to intercept that vessel in Spanish waters, an obligation that would flow from EU legislation on the crossing of external borders and the establishment of an area without internal border controls.²⁴

As it is only directly concerned with maritime zones under its sovereignty or jurisdiction, Spanish normative practice does not deal with the regime applicable to the high seas, subject to freedom of navigation and to the principle of exclusive jurisdiction of the flag State.²⁵ As exceptions to that principle, the LOSC recognises the right to some kind of intervention of the State on the high seas — with different degrees of intensity— towards ships engaged in slave trade, piracy, unauthorised broadcasting, or ships without nationality. Interdiction powers against vessels suspected of being engaged in smuggling of migrants are therefore not explicitly regulated in the LOSC. However, an implicit opening can be found when the latter establishes that the right to visit a vessel on the high seas could also “derive from powers conferred by a treaty”,²⁶ a reference which, in the field of migration, should be understood as made to the Palermo Protocol against smuggling of migrants by sea of 2000.²⁷

In particular, while Article 7 of this Protocol enjoins States Parties to 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, Article 8 specifies interdiction powers against vessels suspected of being engaged in smuggling of migrants in waters beyond State jurisdiction. If the ship is of the nationality of the interdicting State, the latter may request the assistance of other State Parties, which shall render it to the extent possible within their means. If the ship is flying the flag of another State Party, the interdicting State may notify this to the flag State, request confirmation of registry and, if so, request its authorization to, *inter alia*, board the vessel, search it, or to take any other appropriate measure against the vessel, persons and cargo on board if evidence is found of its engagement in smuggling of migrants.²⁸ Consequently, as it can be appreciated, no real exception to the exclusive jurisdiction of the

²³ European Commission, Staff Working Document, “Study on the international law instruments in relation to illegal immigration by sea”, SEC 2007, 691, p. 19.

²⁴ *Ibid.*, pp. 2 and 12.

²⁵ Art. 87 and 92(1) LOSC, respectively. Law 14/2014 applies nonetheless to any ship flying Spanish flag wherever it is located and without prejudice to the powers that correspond to other coastal or port States on the basis of international treaties (Art. 5(1)).

²⁶ Art. 110.1 LOSC.

²⁷ Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against transnational organized crime (adopted 12 December 2000, entered into force 28 January 2004), [2241 UNTS 507](#) (BOE No. 295, 10 December 2003).

²⁸ In the event that the flag State does not authorise visiting and searching the ship, the right to hot pursuit could be applied in order to allow for arresting the vessel and driving it to port (Art. 111 LOSC). However, as the persecution must

flag state is granted by the Palermo Protocol. In the event that the vessel is without nationality, the Smuggling Protocol authorises the interdicting State to board and search the vessel, and if evidence confirming the suspicion is found, to take appropriate measures in accordance with relevant domestic and international law. To this purpose, the LOSC only allows for a right of visit in Article 110(1), while Spanish legislation does not deal with this issue.

In this scenario and also considering that the Spanish legislator has not specifically addressed any of the obligations imposed by the Smuggling Protocol, it is imperative to refer to EU legislation, which can be considered as part of the normative practice of Spain because of its direct integration into the national legal order. This is the case of Regulation no. 656/2014 of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in operations coordinated by Frontex,²⁹ which was adopted in 2014 to replace Council Decision 2010/252/EU.³⁰ Regulation 656/2014 advances in the detail of measures which can be adopted regarding interception in the high seas in accordance with the Smuggling Protocol, but also in the territorial sea and contiguous zone of EU Member States. It presents, however, a specific material scope of application: firstly, its rules apply to border surveillance operations carried out by Member States but in the context of operational cooperation coordinated by Frontex; secondly, interception in the high seas only concerns smuggling of migrants, while interdiction in the territorial sea and contiguous zone affect both vessels engaged in smuggling of migrants and vessels carrying persons intending to irregularly cross border checks.³¹

In particular, according to Regulation 656/2014, Spain, acting as host Member State of the operation coordinated by Frontex or as neighbouring participating Member State, is bound to authorise in its territorial sea that participating units request information and documentation on the ship and on persons on board; stop, board and search the vessels; and question persons and inform them on penalties for facilitation of the trip.³² Also, it may – not shall – authorise seizing the vessel and apprehending persons on board, ordering the vessel to alter its course or conducting the vessel or persons to the coastal Member State.³³ The two same kinds of measures are to be adopted within the contiguous zone of the host Member State or a neighbouring participating Member State,³⁴ requiring coastal State's

initiate in the territorial waters or contiguous zone of the coastal State, the most plausible reading of this right would be that the coastal State attempts to prevent or repress irregular “emigration”, in contradiction thus with the fundamental right to leave one's own country.

²⁹ Regulation (EU) No. 656/2014 of the European Parliament and of the Council, of 15 May 2014, establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ([OJ 2014, L 189/93](#)).

³⁰ Council Decision 2010/252/EU of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ([OJ 2010, L III/20](#)). Annulled by the European Court of Justice for being adopted by means of an implementing measure instead of a legislative act when it contained essential elements of the surveillance of the sea external borders of Member States: Case C-355/10, *Parliament v Council*, ECLI:EU:C:2012:516.

³¹ This is a salient and necessary distinction, as only the possible commission of the criminal act of smuggling of migrants would seem to legally justify the adoption of certain measures against vessels in the high seas.

³² Art. 6(1) Regulation 656/2014.

³³ Art. 6(2) Regulation 656/2014.

³⁴ Art. 8(1) Regulation 656/2014.

consent in case the contiguous zone corresponds to a non-participating Member State.³⁵ Quite importantly, authorisations in this maritime space relate to measures which are necessary for preventing the infringement of immigration law, and not for punishing it, confirming the idea reflected above. Measures to be applied in the high seas include requesting information and documentation; stopping, boarding and searching the vessel, its cargo and persons on board; seizing the vessel and apprehending persons; warning and ordering the vessel not to enter the territorial sea or contiguous zone or to alter its course towards another destination; conducting the vessel or persons on board to a third country, to the host Member State or to a neighbouring participating Member State.³⁶ All of them are however subject to the authorisation of the flag State, without thus softening the principle of exclusive jurisdiction of the latter.

It is interesting to note that Regulation 656/2014 and the Spanish Law 14/2014 were adopted almost simultaneously, the EU norm being enacted two months earlier than the national one. However, the common rules introduced by the EU legislator do not seem to lead to an “occupation of the field” which would have pre-empted the national legislator from regulating the interception powers of the State.³⁷ Firstly, the Spanish Law 14/2014 deals with State interdiction powers regarding any threat to maritime navigation and national interests, while Regulation 656/2014 exclusively concerns migration. Secondly, the latter is only applicable to operations of maritime surveillance deployed under the coordination of Frontex, leaving thus some discretion to Member States at implementing its international maritime obligations when carrying out its own surveillance activities outside the Frontex umbrella.³⁸

The treatment of Spanish interception powers in the high seas cannot be complete without at least a brief reference to its participation in EUNAVFOR MED Operation Sophia,³⁹ an EU military operation aimed at disrupting the business model of migrant smuggling and human trafficking in the Southern Central Mediterranean and prevent the further loss of life at sea. In October 2015, it entered in its second stage entailing boarding, search, seizure and diversion in the high seas of vessels suspected of being used for the commission of these crimes, the powers of EU participating Member States being based on a Security Council Resolution. The Security Council, acting under Chapter VII of the Charter of the United Nations, has authorised States to inspect on the high seas off the Libyan coast vessels suspected of being used for migrant smuggling or human trafficking from Libya, provided however that States “make good faith efforts to obtain the consent of the vessels’ flag State prior to using the authority outlined in this paragraph”.⁴⁰ Although EU Member States are not authorized to intervene in Libyan

³⁵ Art. 8(2) Regulation 656/2014.

³⁶ See Art. 7 Regulation 656/2014.

³⁷ In the sense of Art. 2(2) of the Treaty on the Functioning of the European Union.

³⁸ Although the margin for Member States’ independent action is less and less wide in this field, Art. 8(2) of Regulation 2016/1624 of the European Parliament and of the Council, of 14 September 2016, on the European Border and Coast Guard ([OJ 2016, L 251/1](#)) establishes that “Member States may continue cooperation at an operational level with other Member States and/or third countries, where such cooperation is compatible with the tasks of the Agency”. Nevertheless, “Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives”.

³⁹ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean ([OJ 2015, L 122/31](#)).

⁴⁰ S/RES/2240 (2015), 9 October 2015, para. 7. Para. 8 authorises the seizure of vessels inspected under the authority conferred under the previous paragraph.

territorial waters, as originally foreseen in Council Decision 2015/778, the derogation to the exclusive jurisdiction of the flag State in the high seas —or at least the transformation of obtaining its consent in a mere obligation of means for the intercepting State— is to be highlighted.

After having presented the normative practice on intercepting migration in maritime zones under Spanish jurisdiction and in the high seas, a very relevant parcel of Spanish prescriptive jurisdiction also concerns interception that takes place in the territorial waters of third countries of origin or transit of migration flows headed to Spanish soil. To that effect, Spain has concluded with Cape Verde an Agreement on joint surveillance of maritime spaces under sovereignty and jurisdiction of Cape Verde, signed in February 2008 and in force since April 2009.⁴¹ This international treaty represents a remarkable exception in the Spanish practice, as the establishment of other joint sea operations of surveillance that take place in the territorial waters of third countries has not apparently been set through the conclusion of international agreements between the States concerned but just on the basis of non-public arrangements between the police authorities.⁴² Since these operations are not founded on international agreements, they will be examined in the next section related to the Spanish executive practice, focusing thus our attention here in the Hispano-Cape Verdean treaty. This Agreement, which precisely refers in its preamble to the LOSC and the Smuggling Protocol, is aimed at setting the conditions for the joint surveillance and patrolling of the maritime spaces under Cape Verdean sovereignty and jurisdiction in order to intercept vessels suspected of engaging in different forms of organised crime such as smuggling of persons, drugs or arms. Since this cooperation is to be deployed within waters under Cape Verdean sovereignty, the exclusive powers coastal States enjoy over their territorial waters lead to the necessary granting of an explicit authorisation to States like Spain in order to carry out any kind of interdiction activity. The powers of agents from the authorised State will depend on the scope of that authorisation, contained in the Agreement in question.

On the modalities of implementation, the Agreement foresees the possibility to patrol Cape Verdean waters with aircrafts from both Parties; by means of Spanish ships and aircrafts with effective and mandatory presence on board of Cape Verdean agents; or through Cape Verdean ships and aircrafts with Spanish agents on board.⁴³ However, the following two provisions state that Spanish participation in joint patrols will be made through aircrafts and ships, while Cape Verdean participation will consist of naval and air units, as well as of personnel and military equipment on board naval and air Spanish units.⁴⁴ It is important to note, as the Agreement does, that at least one agent from the Cape Verdean coast guard shall always be on board Spanish ships and aircrafts,⁴⁵ and that, except for those situations foreseen in international law, any exercise of public authority —such as inspection, visit or capture— can only be executed by Cape Verdean authorities or under their command.⁴⁶ This would be indeed the

⁴¹ Agreement between the Kingdom of Spain and the Republic of Cape Verde on joint surveillance of maritime spaces under the sovereignty and jurisdiction of Cape Verde, done at Praia on 21 February 2008 ([BOE no. 136](#), 5 June 2009).

⁴² This was however also the case of joint patrols between Spain and Cape Verde before the Agreement, as they have been in place since March 2007 on the basis of a Memorandum: [Spanish Ministry of Defence, Press Release, 6 October 2007](#).

⁴³ Art. 3(1) of the Agreement.

⁴⁴ Art. 4 and 5 of the Agreement.

⁴⁵ Art. 6(4) of the Agreement.

⁴⁶ Art. 6(5) of the Agreement.

usual mode of action since the coastal State's legislation is to be normally enforced by its own agents.

Issues such as patrol modes, periods, length, operational procedures or exchange of information are to be planned and agreed on by the Parties.⁴⁷ The Agreement also deals with the respective responsibilities of acts carried out within joint surveillance missions and the possible claims to be filed by their respective staff or third parties.⁴⁸ One of its final clauses refer to the non-affectation of rights and obligations of both Parties under other international treaties, a provision that could be read as an implicit reference to the Geneva Convention on the Status of Refugees and other international instruments on human rights protection.⁴⁹ The commitments contained therein will be relevant for Cape Verde, but also for Spanish authorities in case their participation in interception activities activate the criteria for the attribution of international responsibility.

Although the conclusion of an international treaty for authorising this kind of limitation on State sovereignty and for distributing international responsibility is to be welcomed, this Agreement between Spain and Cape Verde is not devoid of criticism since joint patrols between both countries have been in place since March 2007, almost one year before its signature and thus only on the basis of an informal and not public arrangement.⁵⁰ Requesting the Spanish Parliament consent for the ratification of this Agreement by Spain —through Article 94 of the Spanish Constitution— one year after patrolling activities have been operationalised would also be controversial.

(B) SPANISH ENFORCEMENT JURISDICTION TOWARDS MIGRATION BY SEA

This section must start by considering which authorities are in charge of enforcing the norms previously examined. Under Spanish legislation, control of entry and exit from national territory by nationals and aliens, as well as the functions provided in the aliens, immigration and asylum legislation correspond to the national police corps,⁵¹ while the *Guardia Civil* is competent for the custody of coasts, borders and ports,⁵² being therefore the latter responsible for carrying out the above-mentioned interception powers at sea against vessels suspected of transporting irregular migrants or engaging in smuggling of migrants. In particular, Royal Decree 246/1991 confers these tasks to the Maritime Service of the *Guardia Civil*, by indicating that the functions bestowed on the *Guardia Civil* by Organic law on the State Security Forces are to be exercised in the Spanish maritime waters up to the external limit of the territorial sea, and, exceptionally, out of it, in accordance with international treaties in force.⁵³ Also within the *Guardia Civil*, reference should be made to the Centre for Coordination of Maritime Surveillance of Coasts and

⁴⁷ Art. 3(2), 6(1), 6(6), and 7 of the Agreement.

⁴⁸ Art. 8 and 10 of the Agreement.

⁴⁹ Art. 12 of the Agreement.

⁵⁰ Joint patrols between Spain and Cape Verde would have been in place since the signature, in March 2007, of a Memorandum between both countries: [Spanish Ministry of Defence, Press Release, 6 October 2007](#).

⁵¹ Art. 12(1)(A)(b) y (c) of Spanish Organic Law 2/86, 13 March 1986, on the State Security Forces ([BOE no. 63](#), 14 March 1986, as amended for the last time by Organic Law 9/2015, of 28 July).

⁵² Art. 12(1)(B)(d) of Organic Law 2/86.

⁵³ Art. 1 of Royal Decree 246/1991, of 22 February, regulating the Maritime Service of the *Guardia Civil* ([BOE no. 52](#), 1 March 1991). On the exercise of powers by the *Guardia Civil* out of the territorial sea, see the contribution in this volume by Lirola Delgado and Jorge Urbina on "[Police at sea](#)".

Borders, an advising and coordination organ that has become a key tool for the Spanish Ministry of Interior for the coordination and supervision of operations on the surveillance of sea borders, as well as for the follow-up of emergency situations and in which the information received from the sensor stations of the Integrated System of External Surveillance (SIVE) is integrated.⁵⁴ The Centre is connected with the four Regional Centres of Maritime Surveillance for the Mediterranean, in Valencia, the Strait, in Algeciras, the Atlantic, in Las Palmas, and for the Cantabrian, in La Coruña,⁵⁵ and it has been designated as national coordination centre for the EU information-exchange network on border surveillance, EUROSUR.⁵⁶

The *Guardia Civil* agents from the Maritime Service exercise therefore the interception powers described above in the waters under Spanish jurisdiction. Apart from usual surveillance activities, reference can be made here to different maritime operations coordinated by the Frontex Agency in which several Member States participate, Spain acting as host Member State in some of these operations.⁵⁷ Examples of this practice are HERA operations, running since the migration crisis of 2006 in the Atlantic region, and aimed at implementing coordinated operational activities in order to control migratory flows from West and North African countries towards the Canary Islands; as well as INDALO and MINERVA operations, both in motion since 2007 and deployed in the Western Mediterranean region in order to combat irregular immigration by sea headed towards the Spanish coast of Levante, in the case of INDALO, and towards the South of Spain, including seaports of Algeciras, Almería and Ceuta, in the case of MINERVA. These three operations have now been transformed into European Patrols Network - EPN operations.⁵⁸

A distinctive feature of the Spanish response to migration by sea is nonetheless the practice of engaging in surveillance activities, such as joint patrols, within the territorial waters of third States, particularly the African countries of origin and transit of the most significant part of migration flows arriving to Spanish soil. With the exception of the Hispano-Cape Verdean treaty mentioned above, the agreements that lie at the basis of this practice are not public. Instead, Spain would have concluded some kind of arrangements, declarations or memoranda of understanding—in short, non-legally binding agreements—with countries such as Morocco,⁵⁹ Mauritania,⁶⁰ Senegal,⁶¹ Gambia, Guinea or Guinea Bissau⁶² in order to set up joint patrols to be deployed in the sovereign waters of these countries.

As already mentioned in the previous section, the development of surveillance and interception

⁵⁴ See the Spanish *Guardia Civil* [website](#) for further information on the technical functioning of SIVE.

⁵⁵ Order PRE/2523/2008, 4 September 2008, creating the *Guardia Civil* Centres on maritime surveillance of coasts and borders ([BOE No. 215](#), 5 September 2008).

⁵⁶ Regulation (EU) No. 1052/2013 of the European Parliament and of the Council, 22 October 2013, establishing the European Border Surveillance System (Eurosir) ([OJ 2013, L 295/11](#)).

⁵⁷ Arts. 14-16 of Regulation 2016/1624.

⁵⁸ EPN is a permanent regional border security network, aimed at reinforcing monitoring and surveillance of the southern maritime border of EU Member States, by means of a multi-agency approach and through the coordination of national centres. See [here](#) more information on Frontex operations.

⁵⁹ *Maroc Hebdo International* no. 584, 12-18 December 2003.

⁶⁰ Spanish Interior Ministry, [press release of 15 May 2006](#).

⁶¹ Spanish Interior Ministry, [press release of 22 August 2006](#).

⁶² Spanish Interior Ministry, [press release of 28 February 2008](#). And before the conclusion of the bilateral treaty, also with Cape Verde, as already mentioned: see, Defence Ministry, [press release of 6 October 2007](#).

activities in the territorial sea of another coastal State is subject to the latter's consent since the use of enforcement powers in a foreign territory entails a limitation of sovereign rights. It is therefore assumed that the African country's authorisation for that purpose lies in those unpublished arrangements, subscribed in some cases —as can be inferred from available information— by the Spanish *Guardia Civil* and the other State's border authority.⁶³ While that authorisation could imply the participation of Spanish State ships in surveillance activities or allow for the presence of Spanish agents on board the coastal State's ships, it seems that coastal State's agents should always be on board the units participating in joint patrols since they would be the sole agents empowered to enforce the coastal State's legislation on migration and borders against vessels intercepted in its territorial sea. From Frontex information, it can be inferred that law enforcement officers from the coastal State would always be present on board Member States' ships and would be responsible for diverting vessels,⁶⁴ although there could be variations between the different arrangements. A similar scenario would derive from observing the rules applicable to the members of European Border and Coast Guard teams, who “may only perform tasks and exercises powers under instructions from and, as a general rule, in the presence of border guards or staff involved in return-related tasks of host Member State”.⁶⁵ Nevertheless, the host Member State may authorise members of the teams to act on its behalf,⁶⁶ something that could also happen within the framework of joint patrols agreed with third countries.

On the basis of these arrangements, to which decreases of irregular migration by sea into Spain are usually attributed by the Spanish government, national operations as well as Frontex coordinated operations have been deployed. On the one hand, as examples of the first type, ATLANTIS was a maritime operation starting in May 2006 which aimed at fighting against irregular immigration by sea with the inclusion of joint patrols in Mauritanian waters, as well as training to be provided by the *Guardia Civil*, supply of surveillance equipment by Spain, and the sending of a Spanish liaison officer.⁶⁷ The SEA HORSE project, in 2006, also comprised the strengthening of joint patrols in Moroccan waters and their extension to other African countries involved, while the “Noble Centinela” Operation, in 2006 too, included patrolling activities of the area covering Cape Verde, Senegal, Mauritania and the Canary Islands.⁶⁸ On the other hand, the above-mentioned Frontex sea operation HERA includes the deployment of joint patrols in sovereign waters of Mauritania, Cape Verde or Senegal,⁶⁹ based on the Spanish arrangements with these countries.

It is important to note that a significant part of these interception operations, regardless of the maritime zone of deployment (Spanish territorial sea or contiguous zone, high seas, or territorial waters of third countries), are transformed at some point into search and rescue operations, or at least the

⁶³ These would be thus technical arrangements implementing some sort of agreement adopted at political level, which are not public either.

⁶⁴ Frontex, “[Hera 2008 and Nautilus 2008 Statistics](#)”, news release of 23 September 2008.

⁶⁵ Art. 40(3) of Regulation 2016/1624.

⁶⁶ *Ibid.*

⁶⁷ *Guardia Civil*, Spanish Ministry of Interior, press release of 21 June 2006.

⁶⁸ Spanish Ministry of Defence, [press release of 6 October 2007](#).

⁶⁹ Frontex, News, “[Longest Frontex coordinated operation – Hera, the Canary Islands](#)”, 19.12.2006, available at For current EPN-HERA 2016 operation, see [Frontex Annual Report on the implementation on the EU Regulation 656/2014](#), 18 July 2017.

likely execution of this kind of task has to be taken into consideration when planning and deploying patrols aimed at maritime surveillance for the prevention and repression of irregular migration and smuggling of migrants. This is due to the nature and deplorable conditions of the ships in which migrants sail. Article 98 LOSC includes the duty of any State to request the masters of ships flying its flag to render assistance to any person found at sea in danger of being lost and to proceed rapidly to the rescue of persons in distress, in so far as this can be done without serious danger to the ship, the crew or the passengers, as well as the obligation of every coastal State of promoting the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and also to cooperate with neighbouring States for this purpose. This last mandate has been implemented by means of the establishment of the Spanish Maritime Safety Agency (*Sociedad de Salvamento Marítimo*),⁷⁰ assigned to the Ministry of Public Works and Transport and whose main objective is to provide the public services of search and rescue of human life at sea, the prevention and fight against marine pollution, services of maritime traffic control and monitoring, maritime safety, and vessels assistance.⁷¹ The Spanish Agency also cooperates with other States for those purposes.⁷²

The clear but scarce obligations laid down in the LOSC are complemented by the provisions of the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention), the 1979 International Convention on Maritime Search and Rescue (SAR Convention) and the 1989 International Convention on Salvage, which mainly universalize the duty of assistance “regardless of the nationality or status of such persons or the circumstances in which they are found”; enjoin States parties to promptly release assisting ships from their obligations and specify further State responsibilities for search and rescue regions, like delivering rescued persons to a place of safety.

Although Spain has not enacted additional national norms relating to the duties of assistance to people in distress at sea, Spanish executive practice on the implementation of the obligations imposed by the LOSC, the SAR and the SOLAS Convention, is abundant. Firstly, the Spanish Maritime Safety Agency has rescued in 2016 6.726 persons in 464 *pateras*, which represents a raise of 59% in relation to 2015, when emergencies related to irregular immigration lead to the rescue of 4.232 persons with assistance to 505 *pateras*.⁷³ The data evolution shows how after an exceptional peak of 30.496 persons rescued in 2006, matching with the *cayuco* crisis, assistances related to migration started to drop, experimenting however a constant increase since the current migration crisis starting in 2013.⁷⁴ The number of potential migrants rescued by Spanish State vessels within different EU operations is remarkable,⁷⁵ for instance within the framework of Spanish participation in the EUNAVFOR MED

⁷⁰ Established by the Law 27/1992, of 24 November, on State Ports and Merchant Marine ([BOE No. 283](#), 25 November 1992).

⁷¹ Art. 268 of the Royal Legislative Decree 2/2011, 5 September 2011, approving the consolidated text of the Law State Ports and Merchant Marine ([BOE No. 253](#), 20 October 2011).

⁷² See, e.g., the Cooperation Agreement on fight against marine pollution and maritime safety between the Kingdom of Spain and the Kingdom of Morocco, done “ad referendum” in Rabat on 6 February 1996 ([BOE No. 253](#), 22 October 1999).

⁷³ [Informe Anual Salvamento Marítimo 2016](#)

⁷⁴ [Informe Anual Sociedad de Salvamento y Seguridad Marítima 2015](#), at 33.

⁷⁵ See, for instance, El País, “[Rescatados casi 600 inmigrantes en las costas en menos de 12 horas](#)”, 17 August 2017.

Sophia,⁷⁶ as it is also the practice of Spanish private shipmasters of rendering assistance to migrants in distress at sea and try to disembark them, irrespective of the risks or costs in which they might incur.⁷⁷

Disembarkation of rescued migrants is precisely one of the controversial aspects for which the international law of the sea does not provide an answer.⁷⁸ In addition to certain resolutions and recommendations issued by organisations such as IMO attempting to guide or orientate State practice,⁷⁹ the legal vacuum has been partially filled, as far as Spain and the rest of EU Member States are concerned, by Regulation 656/2014. Article 10 of this EU norm indicates that disembarkation shall take place in the coastal Member State in case of interception in the territorial sea or contiguous zone; and in the third country of departure or, if that is not possible, in the host Member State of the operation in case of interception on the high seas. In case of search and rescue situations, the host Member State and the participating Member States must identify a place of safety in cooperation with the responsible Rescue Coordination Centre for the region in which the incident occurs, and to ultimately disembark in the host Member State if safety of the persons and of the participating unit allows for it. These considerations are however to be qualified by the principle of *non-refoulement* in its broad sense, comprising both the rule in Article 33 of the Geneva Convention on the Status of Refugees and in Article 3 of the ECHR, in line with Article 4 of Regulation 656/2014.⁸⁰ Although these rules do not solve those incidents in which it is a third country that denies disembarkation of potential migrants rescued at sea,⁸¹ at least they are clarifying for EU Member States. According to Frontex reports on the implementation of Regulation 656/2014,⁸² host Member States have usually assumed the responsibility for the disembarkation of persons apprehended or rescued in their territory or even beyond.⁸³

(C) SPANISH ADJUDICATORY JURISDICTION ON MIGRATION BY SEA

An analysis of the Spanish practice on State action regarding migration by sea cannot be complete without examining, at least briefly, the jurisdictional powers or adjudicative jurisdiction of the State in

⁷⁶ Spanish Navy, Spanish Ministry of Defence, “[La fragata ‘Numancia’ rescata a 436 migrantes en aguas del mar de Libia](#)”, 4 May 2016.

⁷⁷ El Mundo, “[Tres pesqueros vinculados a Santa Pola han rescatado a inmigrantes desde 2006](#)”, 14 October 2007.

⁷⁸ Just note that Art. 18 LOSC accepts that innocent passage includes stopping and anchoring only in so far as these are incidental to ordinary navigation or rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress. However, at least the Convention does not get to specify a right to access to port in these cases.

⁷⁹ IMO Maritime Safety Committee, “Guidelines on the treatment of persons rescued at sea”, [Res. MSC.167 \(78\)](#), 20 May 2004, para. 6.12.

⁸⁰ This provision states that “No person shall, in contravention of the principle of *non-refoulement*, be disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a country where, inter alia, there is a serious risk that he or she would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another country in contravention of the principle of *non-refoulement*.” The rest of the provision is inspired by *Hirsi Jamaa and others v Italy* ECHR (GC), application no. 27765/09.

⁸¹ See, *inter alia*, El País, “[Inmigrantes africanos sobreviven agarrados a una red en el Mediterráneo](#)”, 29.5.2007.

⁸² These reports are made pursuant to Art. 13 of Regulation 656/2014.

⁸³ See, e.g., [Frontex Annual Report on the implementation on the EU Regulation 656/2014](#), 18 July 2017.

this field, more particularly in relation to the smuggling of migrants or, as it is categorised in Article 318 *bis* of the Spanish Criminal Code, the criminal offences against the rights of foreigners when committed on the sea.

To this effect, the Law 14/2014 on Maritime Navigation recognises, in Article 12, Spanish criminal jurisdiction against foreign ships in Spanish ports and internal waters.⁸⁴ In its Article 44, Law 14/2014 directly refers to Article 27(1) LOSC with regard to the exercise of criminal jurisdiction against foreign vessels in Spanish territorial sea, jurisdiction which must not be exercised unless the consequences of the crime extend to the coastal State; if the crime disturbs the peace of the country or the good order of the territorial sea; at the request of the shipmaster or a diplomatic or consular officer of the flag State; or if necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances. The first scenarios seem to be easily applicable to the smuggling of migrants by sea. Finally, Article 23 of Law 14/2014, governing the regime applicable to the contiguous zone, includes also a reference to the administrative and criminal jurisdiction of Spain regarding the punishment of infractions to immigration legislation which may be committed in national territory or territorial sea.

Apart from this, no specific norm on the adjudicatory powers of the State with regard to smuggling of migrants is to be found in the LOSC, but in the United Nations Convention against Transnational Organised Crime (hereinafter UNCTOC),⁸⁵ and in the above-mentioned Palermo Protocol on Smuggling of Migrants which supplements it. While the Protocol binds Spain to establish the smuggling of migrants as a criminal offence,⁸⁶ the UNCTOC entitles the State to extend its jurisdiction to those cases in which the offence is committed outside its territory.⁸⁷ This possibility of extraterritorial jurisdiction requires, however, a connection with the State exercising jurisdiction in the sense that the offence “is committed outside its territory with a view to the commission of a serious crime within its territory”.⁸⁸

In a first stage after the ratification of these international instruments, the Spanish Supreme Court has declared Spanish jurisdiction to try cases of smuggling of migrants committed by aliens outside the territorial sea on the basis of the UNCTOC and the Smuggling Protocol combined with Article 23(4)(h) of the Spanish Organic Law on the Judicial Power (hereinafter OLJP).⁸⁹ Since this provision allowed

⁸⁴ On this question, see the contribution in this volume by Díez-Hochleitner on “[Maritime zones under sovereignty and navigation](#)”.

⁸⁵ United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003), [2225 UNTS 209](#) (BOE No. 233, 29 September 2003).

⁸⁶ Art. 3(a) of the Smuggling Protocol.

⁸⁷ Art. 15(2) of UNCTOC. Art. 1 of the Smuggling Protocol establishes that the UNCTOC applies, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

⁸⁸ Art. 15(2)(c)(i) of UNCTOC. Note also that the UNCTOC conditions the extension of jurisdiction to the offence being committed by a member of an organised criminal group, although in the Spanish Criminal Code this constitutes an aggravating circumstance (Art. 318 *bis* (3)(a), which is however acceptable on the basis of Art. 15(6) of UNCTOC.

⁸⁹ Organic Law 6/1985, 1 July 1985, on the Judicial Power (BOE No. 157, 2 July 1985). Judgments of the Spanish Supreme Court no. 561/2007, 15 June 2007; no. 582/2007 and 628/2007, 21 June 2007; no. 554/2007, 25 June 2007; no. 618/2007, 26 June 2007; no. 622/2007, 5 July 2007; and no. 788/2007, 8 October 2007. In judgment no. 606/2007, 1 June 2007, the Supreme Court accepted the jurisdiction of Spanish courts regarding a vessel rescued in the territorial waters of Morocco, carrying 131 migrants in the hold of the ship. The legality of the arrest and of courts’ jurisdiction are based on several disorganized arguments related to the LOSC and also to the right to visit ships without nationality as enshrined in the Smuggling Protocol.

for jurisdiction over offences committed outside national territory “that, pursuant to international treaties or conventions *must* be pursued in Spain”, the Supreme Court’s reasoning may be controversial in light of the optional character of Article 15(2) UNCTOC.

The Spanish legislator made however use of that option through Organic Law 13/2007, which amended Article 23(4) of the OLJP in order to include, *inter alia*, the commission outside Spanish territory of “illegal smuggling or clandestine immigration of persons, whether workers or not”.⁹⁰ The reform undertaken in 2009 considerably reduced the scope of the universal jurisdiction regarding the criminal offences in Article 23(4) by requesting their authors to be in Spain, the existence of victims of Spanish nationality or any other relevant connection with Spain, in addition to the subsidiarity of Spanish competence.⁹¹

Still a further amendment on the principle of universal jurisdiction was introduced by Organic Law 1/2014.⁹² In addition to the introduction of connection criteria related to the principles of personality and territoriality regarding several criminal offences listed in Article 23(4) of the OLJP,⁹³ paragraph d) of this provision establishes that Spanish courts are to be competent to try “criminal offences on piracy, terrorism, illegal traffic of drugs, narcotics or psychotropic substances, trafficking of human beings, against rights of foreign citizens and offences against safety in maritime navigation committed in maritime spaces, in the situations foreseen in treaties ratified by Spain or in normative acts of an International Organisation of which Spain takes part”. In spite of a questionable punctuation, the terms “in maritime spaces” shall serve to qualify any of these offences and not just the last one, mainly because some of the offences listed in Article 23(4)(d) are also included in additional paragraphs of Article 23(4) without the maritime qualification.⁹⁴ Moreover, the last sentence in Article 23(4)(d) of OLJP must be interpreted as referred to any other situations of optional or mandatory jurisdiction foreseen in international treaties or EU law acts. Paragraph p) of the same provision, mentioning cases of mandatory jurisdiction in very clear terms, favours this broad interpretation for Article 23(4)(d).

The Spanish Supreme Court supports the reading of this provision presented herein.⁹⁵ Although its doctrine has mainly been presented in cases regarding illegal trafficking on drugs committed in the high seas and in light of the scarcity of trials related to smuggling of migrants at sea after Organic Law 1/2014,⁹⁶ it seems interesting to highlight how the Court considers the criminal offences listed in Article

⁹⁰ Art. 23(4)(g) of the OLJP, as amended by Organic Law 13/2007, 19 November 2007, for the extraterritorial prosecution of illegal smuggling or clandestine immigration of people ([BOE No. 278](#), 20 November 2007).

⁹¹ See however the judgement of the Supreme Court no. 1166/2010, 21 December 2010, in which the Spanish jurisdiction regarding the commission of smuggling of migrants by a vessel intercepted in the high seas is simply founded on the corresponding provisions of the UNCTOC and the Palermo Smuggling Protocol with no basis on Art. 23(4) of the OLJP.

⁹² Organic Law 1/2014, 13 March 2014, on Universal Jurisdiction ([BOE No. 63](#), 14 March 2014).

⁹³ The salient restrictive twist given by Organic Law 1/2014 to the attributions of jurisdiction in Art. 23(4) lies at the basis of the appeal of unconstitutionality brought against it by the Socialist Group in the Spanish Congress: Appeal of unconstitutionality no. 3754/2014, whose admissibility has been declared on 22 July 2014 (still pending).

⁹⁴ This is the case of terrorism (e), illegal trafficking on drugs (i), and trafficking of human beings (m).

⁹⁵ See the Judgements of the Spanish Supreme Court (Criminal Chamber, Section 1) no. 593/2014, 24 July 2014, §5, and no. 628/2016, 14 July 2016, §2.

⁹⁶ In one of the few recent cases in this field, the Provincial High Court of Granada declared Spanish jurisdiction against the persons driving a vessel transporting 70 undocumented migrants which was intercepted outside Spanish waters on the basis of Art. 23(1) of the OLJP and thus the principle of territoriality. Quite strikingly, the judgment argues that this is a

23(4)(d) of the OLJP as those which coastal States must pay attention to when committed at the sea because they are protecting, with the means at their disposal, the whole continent and even if the destination of the authors is any of the members of the community in which they integrate, as it is the case of coastal States from the EU. This justifies, according to the Supreme Court, that the attribution of jurisdiction operated by this provision presents a special configuration and must therefore be applicable preferentially when the crime takes place at sea, the authorisation contained in international treaties being enough to promulgate, through a national legislative act, this extension of jurisdiction.

(D) SOME CONCLUDING REMARKS

The phenomenon of migration by sea has deeply affected Spain, especially since the beginning of the twenty-first century when it became established as one of the main Southern gateways to Europe. This condition has forced Spanish authorities to design and develop an elaborated and abundant practice aimed at deterring the significant influx of migrants arriving at its shores, as well as fighting against those who make profit out of their despair. Within this practice, the exploitation of the powers granted by the United Nations Convention on the Law of the Sea has been crucial. Although the “constitution of the oceans” did not explicitly foresee State prerogatives to act against irregular migration and migrant smuggling, the *effet utile* interpretation of its provisions together with the adoption of other international instruments such as the Palermo Protocol and the rescue-related conventions have provided Spain with quite useful tools to cope with migration by sea and its consequences. The legislating exercises of the European Union, such as Regulation 656/2014, have enlarged in some aspects and better specified in others how to employ the LOSC powers regarding migration. The preservation of the exclusive jurisdiction of the flag State in the high seas and the still ambiguous rules on disembarkation of apprehended and rescued migrants continue to be problematic, even though some positive steps have been taken.

Still, the most remarkable aspect of the Spanish practice over migration by sea is probably its extraterritorial character, especially from the perspective of its normative and enforcement powers. If one thing characterises the response of Spain to migrant arrivals by sea is undoubtedly the practice of concluding bilateral agreements or arrangements with the authorities of African countries of origin and transit of migration towards Spanish coasts. These instruments serve as legal basis for the deployment of joint patrols in the territorial waters of third countries, opening the latter also for surveillance activities undertaken within operations in which other EU Member States participate under the coordination of Frontex. Consequently, the need to obtain the coastal State consent to operate in its waters and the implementing mode chosen by Spain for these joint patrols may also be indicative of the importance the respect of the law of the sea rules entails. However, this does not suppress the controversies this practice creates mainly in terms of international responsibility attribution in case of

criminal offence of mere activity so that it is committed in advance, leading to the exhaustion of the action when reaching Spanish soil carried out by Spanish authorities: Judgment of the Provincial High Court of Granada (section 1), no. 348/2014, 4 June 2014, §2. In this regard, see also judgment of the Supreme Court no. 36/2008, 31 January 2008.

individuals' affectation during the patrolling activities, and also from the perspective of the numbers of returns and claims for international protection the State may be trying to avoid. The application of the law of the sea rules to migration control requests therefore to be supplemented and completed with the correct implementation of international refugee law and more generally of international human rights law, in which Spanish practice could present a quite different picture.