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Organization of American States

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Secretariat for Multidimensional Security

Guide for Law Enforcement Officials to Help Ensure Successful Prosecutions of Maritime Law Enforcement Cases

Preamble

Effective narco-trafficking maritime law enforcement can be viewed as a cycle of activities that is selfperpetuating when done well. It starts with intelligence and/or information leading to detection and interdiction of suspect vessels, apprehension and detention of the suspect vessel, followed by an investigation into the activities of those on board and those ashore in a supporting role, and successful prosecution that generates additional intelligence that feeds the cycle. In the detection, interdiction, apprehension and detention phase, activities are carried out by officials with appropriate maritime law enforcement experience and expertise. Once the prosecution process is initiated, law enforcement officials may encounter prosecutors and judges who are not familiar with the unique aspects of maritime law enforcement. This is because in many jurisdictions, maritime interdiction cases are rarely docketed, which consequently increases the challenges for law enforcement officials to describe the situation and elements of the offense in a clear way.

Representatives from Argentina, Bolivia, Brazil, Colombia, Ecuador, El Salvador, Mexico, Panama, Peru, Trinidad & Tobago, and the United States (Coordinator) participated in the work group that prepared this document.

This Guide was prepared in consideration of the international agreements that form the basis for cooperation in countering maritime narco-trafficking. Member states are invited to apply it, respecting their domestic legislation and regulations. This document is not a legal instrument, and therefore does not establish any obligations for the member states, and does not abolish, limit, or suspend existing maritime control systems.

Summary Results of Questionnaire

Twelve countries filled out the questionnaire that formed the basis for the Work Group's efforts. As a result, the Group changed the focus of the guide from one emphasizing informing the judiciary regarding maritime narco-trafficking cases to one that focuses on helping law enforcement officials

present the best possible evidence package in consideration of the possibility that the judge may have little or no prior experience in maritime cases.

Challenges

There are numerous challenges that law enforcement officers face when trying to prosecute maritime narco-trafficking cases. Many of these challenges are similar to those that police officers must address in executing land-based cases. However, some challenges are unique to the maritime arena, and others may be exacerbated by the circumstances associated with operating in this environment. The following challenges must be recognized and addressed by law enforcement officials when executing a case and preparing an evidence package to support a prosecution:

- Unique Nature of Maritime Cases
 - Relative rarity of maritime-related cases tried compared to those involving suspects engaged in illegal activities landside
 - Vessels operate primarily in international waters and outside of any state's territorial jurisdiction
 - Ability of vessels to easily move between jurisdictions; exclusive flag state jurisdiction
 - Unpredictable meteorological conditions
 - Ability of vessels to travel through 360 degrees
 - Ability of vessels to evade detection because of their profile, low radar signature, or operating at night without lights
 - No law enforcement back-up support readily available
 - Multinational crews
 - Variations between nationality of owner, master, crew, passengers, coastal state and flag state
- Application of Law
 - International law considerations
 - Questions of jurisdiction
 - Is necessary domestic law in place and enforceable
- Destruction of Evidence
 - o Jettison
 - o Scuttle
 - o Burn
- Due Process of Law
 - Ability to get suspects ashore before an appropriate judicial authority in a timely manner
 - Detention vs. arrest
 - Preserve rights of suspects
- Operational Procedures

- How to safely and effectively locate, signal, stop, board, inspect, examine search and seize a vessel and its cargo consistent with applicable international and domestic law
- Ensuring All Information is Accurate
 - Geographical location/position
 - Vessel course and speed
 - Observed and claimed activities
 - Indicia of nationality
 - Description of suspicious activities
 - Description and condition of suspect vessel
 - Means used to determine identity and nationality of master/crew
- Determining Where Suspects Will Be Prosecuted
 - Getting suspects before Judicial Authorities in a timely manner
 - Consideration of location/distance to port
 - Time to collect and preserve evidence
 - Investigation of other vessels in area for possible connections
 - Minimizing loss of patrol time
 - Disposition of suspect vessel
- Communications with Suspects Who Speak Another Language
 - Availability/use of interpreters
 - Ensuring clarity of questions and understanding of responses
 - Cultural differences
 - Communicating rights before questioning
- Protecting Informants and Other Intelligence Sources
 - Presenting strong and convincing evidence in a way that does not compromise sources
 - Protecting classified materials/sources/tools used in finding suspect vessels or hidden compartments
- Learning to be a Good Witness
 - Always tell the truth
 - \circ $\,$ Make and keep good notes and refer to them $\,$
 - Consistency
 - Even-tempered testimony
 - Don't speculate; stick to the facts

Importance of a Complete Evidence Package

While post-seizure paperwork, trial preparation, and court appearances can be time consuming, it is crucial that law enforcement officials devote the time and effort necessary for successful prosecutions. The government spends enormous amounts of time and money in order to place law enforcement assets on scene. While making seizures is a significant step, units must also spend the requisite time and effort after an arrest to fully complete the mission. Successes and failures in court are carefully noted by senior officials, legislatures, and potential smugglers. Prompt communications and cooperation between unit personnel and government lawyers can make a real difference when a case comes before a court.

Evidence Collection

Law enforcement units should make all efforts to obtain usable audio recordings and/or imagery to capture key events during an interdiction, such as initial spotting, communications with the suspect vessel, crew activities on deck and connection with cargo (i.e., cargo jettisoning), failure to heave to, and boarding. If possible, make a videotape of the vessel as it appears on first approach. Make a complete circle, showing the condition of the vessel and any indicators of nationality. It is critical to thoroughly document suspect vessels near the time of interdiction and before conducting a search for evidence to establish a baseline in order to be able to later refute arguments, at trial, of evidence tampering. Before completion of the boarding, take video of the vessel's interior, showing every compartment, and documenting the condition of the vessel, its crew, and cargo. Document key items such as installed communications and navigation gear, pumps, and other specialized equipment so that a jury may see where these items were when the boat was boarded. If contraband is discovered in a hidden compartment, document the finding with both video and still imagery while it is in the compartment. Always turn on the date/time stamp of video cameras, if so equipped. Appropriate labeling and an accompanying statement of the contents of the tapes/discs/rolls of film are very helpful in determining what is being portrayed. Label every disk, cassette, or other recording. The label should include the witness's name in print, the witness's initials, and the date. Do not cut film negatives or delete photos from diskettes; missing photographs may be deemed as improperly withheld evidence. It is highly desirable to link what is portrayed on a tape with such key information as location (Latitude and Longitude), date, and time.

Issues to Consider/Explain

In addressing the above challenges, there are numerous issues that will impact the success or failure of a prosecution depending on how well they are addressed in the evidence package and in subsequent testimony in court. In developing an evidence package, each of the following issues must be addressed and, in many cases, explained in a context that will be familiar to prosecutors and judges:

Decision to Board

- Determine Authority to Take Law Enforcement Action
 - Vessel Location/Activity
 - o Jurisdiction
 - o Application of Domestic Laws
- Leverage Bilateral or Multilateral Agreements (when appropriate)
- How Vessel Detected and Position/Course/Speed Determined
- How Vessel Reacted to Law Enforcement Presence (photos and/or video can be very helpful)
- Reason to Board/Indicators of Drug Trafficking
 - In Flagrante Delicto (caught in the act)
 - o Suspicious Activity/Appearance of Vessel and Crew
 - Traveling along Known Trafficking Routes
 - Intelligence Information
 - Inconsistencies
 - o No or Conflicting Indicia of Nationality

- Lack of Proper Equipment for Claimed Activity
- To Protect Safety of Life at Sea (SOLAS)
- o Right of Visit (ROV)
- Weather/Sea Conditions

Stopping/Boarding the Vessel

- Vessel Communications
- Actions to Engage/Stop Vessel (photos and/or video can be very helpful)
- Use of Force (photos and/or video can be very helpful)
- Standard Operating Procedures
- Legal Limitations for Law Enforcement Action

Inspection/Search/Investigation/Evidence Collection

- Identification of Master and Vessel Officers (for commercial vessels) (photos and/or video can be very helpful)
- Identification of Crew (photos and/or video can be very helpful)
- Use of Biometrics
- Identification of Owner
- Vessel's Documents
- Use of Contraband Detection Devices
- Linkage of Drugs to Vessel and Crew (photos and/or video can be very helpful)
- Elements of the Offense including Illicit Activities not Drug Related
- Space Accountability/Hidden Compartments (photos and/or video can be very helpful)

Detention/Seizure/Arrest

- Treatment of Suspects (photos and/or video can be very helpful)
- Determine and Report Medical Condition of Suspects
- Rights Given to Suspects/Rights Waived
- Level of Suspect's Cooperation
- Suspect's Fear of Reprisal
- Consulate Notification if Applicable
- Potential Linkage of Suspects with Other Criminal Cases
- Length of Detention
- Inventory of Equipment/Material on Board
- Evidence Collection
- Chain of Custody

Disposition Decisions

• Condition of Vessel (photos and/or video can be very helpful)

- Boarding Team Certification, Training, and Experience
- Certification of Law Enforcement and Navigation Equipment Used
- Coordination with Prosecutor and Other Law Enforcement Agencies

ANNEX I - LAW ENFORCEMENT CASE PACKAGE CHECKLIST

PART I

GENERAL				
Unit:	Date:	Time:	Language:	
Questioner:		Interpreter:		
	INITIAL VESSEL INFORMATION	Ň		
Course:	Speed:	Latitude:	Longitude:	
Туре:	Rig:	Hull Color:	Superstructure Color:	
Hull Material:		Activity:		
Other:				
Check one:	High Seas	EEZ	Territorial Sea	
	Internal	Contiguous	Foreign Territorial Sea	
DICUT OF ADDOA CH				
RIGHT OF APPROACH Vessel Name:		Homeport:		
Flag State:		Document/Registration Numb	er:	
Flag State Claim Via:	Verbal		Vessel Markings	
PRE-BOARDING QUESTIC	DNS	F	F	
Master Name:		Nationality:	Date of Birth:	
Vessel Owner:		Vessel Length:		
Number Crew:	Nationality:			
Check one:	Cargo	Passenger	Fish	
	Other:			
Purpose of Voyage:				
Last Port of Call:		Date Departed:		
Next Port of Call:		Date of Arrival:	ate of Arrival:	
MISCELLANEOUS Weapons Aboard:	Yes	No	Don't know	
Hazardous Materials Aboard:	☐ Yes		Don't know	
Hazardous Materials type:				
Law Enforcement Database Check:	Source:	Negative	Positive	
Amplify when positive:				

PART II

VESSEL INFORMATION				
Time of Initial Acquisition:	Method of Initial Acquisition:			
Distance and Direction from Prominent Point of Land:				
Time Visually Acquired:	Course:	Speed:		
Vessel Response:	1			
•				
Name on Hull:	Hailing Port on Hull:			
Other Indications of Vessel Name/Identity:				
Numbers on Hull:	Flag Flown:			
Other Indications of Vessel Nationality:				
Vessel Activity:	How is Vessel Riding in Water:			
Obvious violations of law and/or suspicious activity:				
obvious violations of law and/or suspicious activity.				

BASIS OF BOARDING (Check all that apply)

Special Circumstances
Consensual Boarding
Right of Visit
Rendering Assistance to Persons/Property
Flag or Coastal State Authorization
Special Arrangement
Bilateral/Multilateral Agreement
Shiprider Provision
Ship Boarding Provision
Other International Agreement
Vessel flagged in Same Country as Law Enforcement Agency
Foreign Flag Vessel Subject to Jurisdiction of the Flag State of the Law Enforcement Agency
In Internal Waters
In Territorial Sea
In Contiguous Zone
In EEZ
Hot Pursuit

Constructive Presence		
Vessel Without Nationality		
Vessel Assimilated to Vessel Without Nationalit	ty	
BOARDING TEAM INFORMATION		
INCLUDE KEY BRIDGE PERSONNEL AND AVIATION DETACH. UPDATE THIS LIST WITH CURRENT CONTACT INFORMATION APPLICABLE, THE CASE HAS GONE TO TRIAL AND ALL APPE	FOR ALL PERSONNEL WITH INVOLVEMENT IN THE C	,
Name:	Position/Unit/Rotation Date:	
Time Small Boat Launched:	Distance to Contact Vessel:	
Position of Cutter at Small Boat Launch:	Latitude:	Longitude:
Time Arrived on Contact Vessel:		

CREW AND PASSENGER INFORMATION Nationality Position Nation of Residence Name Nationality Position Nation of Residence Image: State St

VESSEL DOCUMENTS AND PAPERS (CHECK ALL THAT APPLY)				
Certificate of Number:		Number:	State:	
Certificate of Document:		Number:	Date:	
Foreign Document:		Number:	Issued by:	
Certificate of Inspection:		Number:	Date:	
Certificate of Financial Resp	oonsibility:	Number:	Date:	
Load Line Certificate:		Number:	Date:	
International Oil Pollution P	revention Certificate:	Number:	Date:	
Ship's Log:				
Operator's License:				
Cargo Manifest or Bill of La	ding:	Date:		
Foreign Fishing Permit:		Number:	Date:	
FCC Station License:		Number:	Date:	
SOLAS Safety Equipment C	Certificate:	Number:	Date:	
SOLAS Construction Certifi	cate:	Number:	Date:	
Customs Clearance Papers:				
Immigration Documents:				
Zarpe:				

PURPOSE OF VOYA	GE		
Cargo	Fishing	Passenger	Recreation
Other:			
Usual Trade and Route:			
Type, Amount, and Loc	ation Aboard of Cargo/Fish:		
When and Where Cargo	Loaded/Fish Caught:		

MASTER/OWNER/OPERATOR INFORMATION				
Owner Aboard:	Yes	🗌 No		
Owner Name:	Owner Name: Owner Nationality:			
Owner Address:				
Master Aboard:	Tes Yes	🗌 No		
Master Name:	Master Nationality:			
Master Address:				
If Claimed	that Master is Not Aboa	rd:		
Master's Name on Vessel Documents:	Tes Yes	🗌 No		
Date Master Departed:				
Vessel Location When Master Departed:				
How Master Departed:				
Reason Master Departed:				
Owner/Agents Aware Master is not Aboard:	Tes Yes	□ No		
Name and Address of Person in Charge:	I			

SEIZURE AND ARREST				
Vessel Seized:	Yes	🗌 No		
Date of Seizure:	Time of Seizure:			
Basis for Seizure (i.e., statutory cite):				
Arrestee/Detainee Information				
1. Name:	Date of Birth:	Nationality:		
Check one:	Arrested	Detained		
Date:	Time:			
Basis for Arrest or Seizure:				
Questioned After Arrest/Detention:	TYes T	🗌 No		
Rights Given Prior to Questioning:	The Yes	🗌 No		
Rights Waived:	TYes T	□ No		
2. Name:	Date of Birth:	Nationality:		
Check one:	Arrested Detained			
Date:	Time:			
Basis for Arrest or Seizure:				
Questioned After Arrest/Detention:	TYes T	□ No		
Rights Given Prior to Questioning:	Tes Yes	□ No		
Rights Waived:	The Yes	□ No		
3. Name:	Date of Birth:	Nationality:		
Check one:	Arrested Detained			
Date:	Time:			
Basis for Arrest or Seizure:				
Questioned After Arrest/Detention:	TYes T	□ No		
Rights Given Prior to Questioning:	The Yes	🗌 No		
Rights Waived:	Yes No			
4. Name:	Date of Birth:	Nationality:		
Check one:	Arrested	Detained		
Date:	Time:			
Basis for Arrest or Seizure:				
Questioned After Arrest/Detention:	The Yes	🗌 No		
Rights Given Prior to Questioning:	🗌 Yes	🗌 No		
Rights Waived:	The Yes	🗌 No		

5. Name:	Date of Birth:	Nationality:
Check one:	Arrested	~ Detained
Date:	Time:	
Basis for Arrest or Seizure:		
Questioned After Arrest/Detention:	Yes	🗌 No
Rights Given Prior to Questioning:	Yes	🗌 No
Rights Waived:	🗌 Yes	🗌 No
6. Name:	Date of Birth:	Nationality:
Check one:	Arrested	Detained
Date:	Time:	
Basis for Arrest or Seizure:		
Questioned After Arrest/Detention:	Yes	🗌 No
Rights Given Prior to Questioning:	Yes	No
Rights Waived:	🗌 Yes	🗌 No
7. Name:	Date of Birth:	Nationality:
Check one:	Arrested	Detained
Date:	Time:	
Basis for Arrest or Seizure:		
Questioned After Arrest/Detention:	🗌 Yes	No
Rights Given Prior to Questioning:	Yes	No
Rights Waived:	Yes	No
8. Name:	Date of Birth:	Nationality:
Check one:	Arrested	Detained
Date:	Time:	
Basis for Arrest or Seizure:		
Questioned After Arrest/Detention:	🗌 Yes	No
Rights Given Prior to Questioning:	Yes	No
Rights Waived:	Yes	No
9. Name:	Date of Birth:	Nationality:
Check one:	Arrested	Detained
Date:	Time:	
Basis for Arrest or Seizure:		
Questioned After Arrest/Detention:	Yes	No
Rights Given Prior to Questioning:	Yes	No
Rights Waived:	Tes Yes	No

POTENTIAL WITNESSES (OTHER THAN BOARDING TEAM MEMBERS)				
Name	Unit	Position		

CUSTODY CREW				
Name	Position	Time(s) Aboard Vessel		

CHAIN OF CUSTODY(Print and sign name on evidence tags)			
Vessel			
Seizure Tag:	[]Yes	s 🗌 No	Number:
Description:			
Turnover:	Date:	Time:	Position:
Official Accepting Turnover:			Organization:

CONTRABAND/EVIDENCE		
Seizure/Evidence Tag:	Yes No	Number:
Description:		
Seizure/Evidence Tag:	🗌 Yes 🗌 No	Number:
Description:		
	Γ	
Seizure/Evidence Tag:	Yes No	Number:
Description:		
Seizure/Evidence Tag:	🗌 Yes 🗌 No	Number:
Description:		
Seizure/Evidence Tag:	Yes No	Number:
Description:	1	

VIDEO AND PHOTOGRAPHIC EVIDENCE				
Videotape Taken:	Yes No	🗌 Digital 🗌 Tape	Number:	
Photos Taken:	Yes No	🗌 Digital 🗌 Film	Number:	
Photo/Video Log Attached: 🗌 Yes 🗌 No				
NOTE: Ensure the name and unit of photographer and videographer is included in the photo/video log. Photo/Video logs should be listed as an enclosure to the completed seizure package. Ensure a proper chain of custody is maintained on all videotapes and film to be used as evidence.				

DRUG DETECTION AND IDENTIFICATION EVIDENCE						
Drug Detection Device Used:		Yes No				
Check all that apply:	☐ IONSCAN		CINDI		Canine	
	Buster		Other:			
Personnel Conducting Drug	Detection		-			
Name: De		Device:		Date/Time:		
Name: Devic		Device:	Device:		Date/Time:	
Name:		Device:		Date/Time:		
Name:	Device:			Date/Ti	me:	
Drug Detection Documentation or Other Evidence Attached: Yes No						
Describe:						
Drug Identification Device Used:		Yes No				
Check all that apply:	NIK/ODV		Other:			
Personnel Conducting Drug Identification						
Name: Device:			Date/	Date/Time:		
Name: Device:		Device:	vice:		Date/Time:	
Name: Device:		ice:		Date/Time:		
Name: Device:			Date/	Time:		
Drug Detection Documentation or Other Evidence Attached: Yes No						
Describe:						

EVIDENCE OF DRUG QUANTITY AND DESTRUCTION					
Type of Narcotics:			Quantity:		
	🗌 Marijuana		Quantity:		
	Heroin		Quantity:		
	Hashish		Quantity:		
	Other:		Quantity:		
Weighing Method and Sampli	ng Method (if used	l):			
Scale Used:					
Personnel Weighing the Drugs					
Name:		Role:		Date/Time:	
Name:	Role:			Date/Time:	
Name:	Role:			Date/Time:	
Name:	Role:			Date/Time:	
Drug Packaging (describe each distinct type):					
Authority for Destruction:					
Date/Time of Destruction:		Quantity Destroyed:			
Method of Destruction:					
Location of Destruction:					
Personnel Conducting Destruction					
Name:		Role:			
Name:		Role:			
Name:		Role:			
Name:		Role:			

CONTRABAND DEBRIS FIELD – JETTISON INFORMATION

Number of bales recovered:

Estimate size of debris field:

Estimated position (Latitude/Longitude/geographic reference) of center of debris field:

Position where vessel began jettisoning (Latitude/Longitude/geographic reference):

Position where vessel ceased jettisoning (Latitude/Longitude/geographic reference):

Position where vessel was stopped (Latitude/Longitude/geographic reference):

Distance in nautical miles from position where vessel was stopped to closest bale:

Distance in nautical miles from position where vessel was stopped to estimated center of the debris field: Distance in

nautical miles from position where vessel was stopped to farthest bale:

Time of recovery of first bale:

Time of interdiction of the suspect vessel:

ATTACHMENT CHECKLIST	
U Witness Statements	Uvideo Log
Unit Smooth Log (copy)	Photo Log
Message Traffic	Prisoner Log
Radiotelephone Log	Drug Detection/Identification Evidence
Chain of Custody Documents	Evidence of Drug Quantity/Destruction
Diagram of Seized Vessel Layout	Sample Drug Packaging
Representative Drug Sample	