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INTER-AMERICAN DRUG ABUSE
CONTROL COMMISSION

CICAD

Secretariat for Multidimensional Security

Guide for Overcoming Obstacles Relating to the Investigation and Prosecution of Maritime Narco-trafficking Cases

Preamble

At the meeting of CICAD Expert Group on Maritime Drug Trafficking held in Santo Domingo, Dominican Republic, from August 8 to 12, 2011, experts continued working on the obstacles relating to the investigation and prosecution of Maritime Drug Trafficking cases and Related Crimes, continuing the work started in the last session held by the group in 2010.

The Group was formed by representatives from Argentina, Brazil, Canada (coordinator), United States of America (coordinator), Haiti, Mexico, Panama, Dominican Republic and Suriname.

The maritime trafficking of drugs and chemical precursors is an extremely complex international problem. Maritime interdiction operations carried out by enforcement agencies are part of the efforts to combat this threat.

These efforts would be useless unless those subject to maritime interdiction and liable for maritime trafficking are duly prosecuted and their organizations are dismantled or destroyed.

A successful outcome in the prosecution will depend on several factors, including the quality and preservation of evidence gathered in the crime scene, the trial, the experience of the case investigators and of the prosecutors, and effective legislation allowing the courts to render a fair verdict in accordance with national and international laws.

The national efforts intended to prosecute those accused of maritime drug trafficking would be more successful if each country had procedural manuals in place to prosecute the cases and to cooperate internationally in this area. The purpose of this proposal is to offer a framework to identify the obstacles in the investigation and prosecution of persons accused of maritime drug trafficking and related crimes and to then recommend the appropriate tools to overcome such obstacles.

Proposal:

The Working Group prepared a questionnaire designed to identify the general obstacles relating to the investigation and prosecution, as detailed in exhibit 1 to this document. The purpose of this questionnaire would be to create a catalogue with the nature and types of problems faced by investigators, prosecutors and the court system in maritime drug trafficking and related crimes.

The countries in charge of receiving and processing the information are Canada (English) and Panama (Spanish).

After identifying the obstacles, the Working Group will prepare a series of suggestions and training assistance in a document designed to support the investigation and prosecution of persons involved in maritime trafficking of drugs and chemical precursors. This document would create a practical guide that will allow each country to adopt specific provisions that will fit each country's domestic legislation and experience.

Action Plan:

In connection with this questionnaire, CICAD Executive Secretariat is requested to send exhibit 1 to this document by email to the representatives of the CICAD Member States.

The completed questionnaires will be received by two points of contact (Canada and Panama) in the Working Group. The points of contact will compile the responses for use in the next phase of this task and the preparation of the proposed document in support of the investigation and prosecution of individuals engaged in the illicit traffic of drugs and chemical precursors by sea for consideration and approval by the Group of Experts during the proposed meeting in 2012.

Questionnaire
Guide for Overcoming Obstacles Relating to the Investigation and
Prosecution of Maritime Narco-trafficking Cases

1. Does your country have laws and/or regulations specifically related to the maritime trafficking of narcotic drugs, psychotropic substances, or precursor chemicals?

☐ Yes
☐ No

2. Does your country have laws and/or regulations that enable law enforcement personnel to investigate suspicious activities at sea, and detain or arrest suspects?

☐ Yes
☐ No

3. Does your country have laws and/or regulations related to the obligation of a suspect vessel to stop or "heave to" when ordered to do so by law enforcement authorities at sea?

☐ Yes
☐ No

4. What actions are law enforcement officers authorized to take in order to compel compliance by suspect vessels ignoring lawful orders to stop or heave to?

Check all that apply:

☐ Blocking or Shouldering
☐ Entangling Devices
☐ Water cannons
☐ Warning Shots
☐ Disabling Fire
☐ Other (specify): _____
☐ None

5. Do law enforcement officers-- acting responsibly within the bounds of their authority and agency policy-- have protection from civil or criminal liability for damages or injuries that they may cause in stopping a suspect vessel?

☐ Yes
☐ No

6. Which agencies have the responsibility, authority and jurisdiction to investigate and make arrests for suspicion of narco-trafficking in the ports? In territorial waters? In the contiguous zone? On the high seas?

Agencies	Ports	Territorial Waters	Contiguous Zone	High Seas
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. Do the agencies with this authority and jurisdiction routinely patrol/operate in these maritime areas?

☐ Yes
☐ No

8. Once authority and jurisdiction are established, what additional steps must law enforcement personnel take before they can interdict and board a suspect vessel?

Check all that apply:

- ☐ Obtain permission to board from a higher authority
☐ Identify vessel/personnel as law enforcement officials
☐ Signal the vessel to stop/heave to
☐ Communicate intent to board
☐ Other (specify): _____

9. Are different levels of suspicion required to perform certain types of law enforcement activities by your officers on a suspect vessel; i.e. boarding, searching, destructive searches, arrests, etc?

- ☐ Yes... If "Yes", go to #10. If "No", go to #11
- ☐ No

10. Boarding-

- ☐ No suspicion of illicit activity is required
- ☐ Articulatable suspicion is required
- ☐ Reasonable suspicion is required
- ☐ Proof beyond a reasonable doubt is required

Non-Intrusive Searching-

- ☐ No suspicion of illicit activity is required
- ☐ Articulatable suspicion is required
- ☐ Reasonable suspicion is required
- ☐ Proof beyond a reasonable doubt is required

Intrusive Search (drilling holes, removing paneling, etc) –

- ☐ No suspicion of illicit activity is required
- ☐ Articulatable suspicion is required
- ☐ Reasonable suspicion is required
- ☐ Proof beyond a reasonable doubt is required

Seizure/Arrests/Detention-

- ☐ Reasonable suspicion is required
- ☐ Proof beyond a reasonable doubt is required

11. Do your laws allow you to prosecute suspects interdicted outside your territorial waters who are not your nationals?

- ☐ Yes
- ☐ No

12. If not, what do you do with non-nationals interdicted on a suspect vessel outside your territorial waters?

Check all that apply:

- ☐ Repatriate
- ☐ Interrogate and release

- ☐ Fine/Administrative penalty
- ☐ Release
- ☐ Turn over to the country whose flag it flies
- ☐ Turn over to a third party country for prosecution
- ☐ Other (specify): _____

13. Do your country's laws give you authority and jurisdiction over stateless suspect vessels interdicted within your territorial waters?

- ☐ Yes
- ☐ No

Within your contiguous zone?

- ☐ Yes
- ☐ No

On the high seas (including your EEZ)?

- ☐ Yes
- ☐ No

14. If no physical evidence such as narcotic drugs, psychotropic substances, or precursor chemicals are recovered from a suspect vessel due to jettisoning, vessel sinking, or other reasons, could the suspects still be prosecuted based on photo/video/ionscan or other technical collection results or other evidence that the suspects possessed narcotic drugs or psychotropic substances?

- ☐ Yes
- ☐ No

15. Is it necessary to have the suspect vessel physically available for the prosecution and the defense as evidence?

- ☐ Yes
- ☐ No

16. Are signed and sworn statements by on scene law enforcement personnel sufficient as evidence to begin a prosecution?

- ☐ Yes
☐ No

17. How long may law enforcement officials detain a suspect at sea until they must present the suspect before a competent legal authority (e.g., judge or magistrate)?

- ☐ 0 – 24 hours
☐ 25-48 hours
☐ 49-72 hours
☐ Other (specify): _____

18. Does the amount of time allowed above depend on where a suspect is apprehended; e.g., is more time allowed if suspects are apprehended far offshore?

- ☐ Yes
☐ No

19. How does the government determine disposition of suspects interdicted at sea?

Check all that apply:

- ☐ Consultation with another Flag State having equities
☐ Consultation between different domestic agencies
☐ Based on geographic location
☐ Executive decision
☐ Other (specify): _____

20. How many maritime narcotics smuggling vessels, subject to your jurisdiction, did your country interdict or assist in interdicting last year?

- ☐ 0
☐ 1-5
☐ 6-10
☐ 10+

21. How many of those cases resulted in a prosecution?

- ☐ 0
- ☐ <25%
- ☐ 25-50%
- ☐ 50-75%
- ☐ >75%