

LOSS PREVENTION GUIDANCE FOR SHIPOWNERS ON MEASURES TO PREVENT NARCOTICS SMUGGLING AT PORTS IN MEXICO

A) INTRODUCTION

The unlawful traffic of drugs is a problem faced by government all over the world and Mexico is no exception to it. As a matter of fact, in the last few years the Mexican government has made amendments to the law and changed policies on the handling of cases.

The reforms to the law go as high as amending constitutional provisions that require a Judge to order imprisonment of alleged drug traffickers during pendency of the corresponding investigation; this is, prior to being sentenced after due process. Other reforms call for the prolonged arrest or even the confiscation of assets involved in this traffic.

The most aggressive approach from the authorities was seen around 2018 when several vessels and their crews were imprisoned for alleged drug smuggling, which required the shipowners to engage in litigation and also in dialogue with the authorities in order to put together a policy that could encourage prevention on the side of vessel interests and a shift in policy on the side of the government. As always with these types of problems, it is a work in progress for both sides.

B) APPROACH.

In alignment with the Political Constitution of the Mexican United States and the National Code of Criminal Procedure, this guidance establishes a comprehensive framework for shipowners aimed at preventing narcotics smuggling at ports in Mexico.

Recognizing the severe implications associated with drug trafficking, which can include legal repercussions, financial penalties, and reputational damage, it is imperative that shipowners adopt proactive measures to mitigate these risks. Effective preventive strategies not only ensure compliance with domestic and international legal obligations but also play a crucial role in upholding the integrity and reputation of maritime operations.

This guidance draws on international best practices, including information contained in the International Maritime Organization (IMO) 'Revised Guidelines for the prevention and suppression of the smuggling of drugs, psychotropic substances and precursor chemicals on ships engaged in international maritime traffic', adopted as resolutions MSC.228 (82) and FAL.9(34), as well as relevant local regulations and case studies that reflect the unique challenges faced within Mexican maritime contexts. It outlines a series of actionable steps and best practices that shipowners can implement to establish a robust security posture against narcotics smuggling.

CHAPTER 1 - MEXICO'S ROLE AS A TRANSIT COUNTRY

Mexico's geographical location serves as a pivotal nexus for trade among North, Central, and South America. Its extensive coastlines along the Pacific Ocean and the Gulf of Mexico, coupled with its proximity to major shipping routes, facilitate efficient maritime trade. This strategic positioning enables the seamless movement of goods across the Americas, making Mexico an ideal transit hub for various commodities, including narcotics.

Mexico is at the intersection of critical maritime routes that connect major ports in the Americas, allowing for the swift transportation of goods and drugs alike. The country's ports, such as Manzanillo, Veracruz, Lazaro Cardenas and Altamira, amongst others, are vital points for international shipping and trade, providing traffickers with opportunities to blend illicit shipments among legitimate cargo.

The logistical infrastructure within Mexico supports its role as a transit country, with well-developed highways and rail networks linking ports to inland markets. This allows traffickers to transport narcotics quickly and efficiently to various destinations within North America and beyond, further complicating enforcement efforts.

The narcotics trade in Mexico is dominated by powerful drug trafficking organizations (DTOs) that have established extensive networks to control the production, transportation, and distribution of narcotics.

The combination of Mexico's strategic location, the influence of powerful drug cartels, and the continuous evolution of smuggling techniques presents significant challenges for maritime security.

As traffickers become more adept at concealing their operations, port authorities and shipping companies must enhance their security measures to detect illicit activities. This includes employing advanced cargo scanning technologies, improving inspection protocols, and ensuring thorough training for personnel. Effective counternarcotics measures require close cooperation between shipping companies, port authorities, and law enforcement agencies. Sharing intelligence, conducting joint training exercises, and improving communication can help bolster efforts to combat narcotics smuggling. Shipping companies must conduct thorough risk assessments to understand their exposure to narcotics trafficking and implement comprehensive compliance programs to mitigate risks. This includes adherence to international standards for cargo handling and security measures.

CHAPTER 2. LEGAL FRAMEWORK

International and Local Regulations: The maritime industry is subject to a complex web of international conventions, national laws, and local regulations designed to combat drug trafficking. Understanding the legal landscape, including potential liabilities and penalties, is vital for compliance and risk management. Shipowners should remain informed about changes in regulations, such as amendments to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and recent amendments to the Mexican Constitution forbidding the production, distribution and sale of toxic substances, chemical precursors, unauthorized synthetic drugs and fentanyl. It is baffling to find that the Mexican Constitution will now mention fentanyl and we expect to see further reforms to the Criminal Code and other laws dealing with health issues and traffic therefore we consider that it is of the utmost importance to keep up with the amendments and the effect this may have in shipping so as to work on prevention and maintain seafarer safe from criminalization.

CHAPTER 3. PREVENTION AND REACTION.

1. Reasonable Preventive Actions

To mitigate the risk of narcotics being smuggled aboard the vessel, it is crucial to implement reasonable preventive measures. The term "reasonable" originates from the Vienna Convention of 1988 and is often subject to interpretation. However, based on recent case analyses in Mexico, effective preventive actions may include:

- **Proper Keeping of Log Books:** Maintain comprehensive and accurate logbooks for all visitors to the vessel, including purpose and duration of visits. This ensures accountability and traceability.
- **Crew Training:** Conduct regular training for the crew in corporate compliance and the International Ship and Port Facility Security (ISPS) Code. This training should encompass crime prevention strategies and a whistleblowing policy to encourage reporting suspicious activities.
- **CCTV Surveillance:** Install closed-circuit television (CCTV) systems to monitor loading and discharge operations, as well as throughout the voyage. This serves as a deterrent and a means of documenting vessel activities.

2. Reporting Suspicion of Drugs Onboard

According to International Maritime Organization (IMO) recommendations, it is vital to report any suspicions of drug presence on board to the next port of call as per MSC.228(82). Prompt reporting is highly recommended because authorities may view this action favorably, recognizing the vessel's interest in cooperating with law enforcement. However, given the absence of a

streamlined mechanism for early warnings in Mexico, simply notifying the Harbour Master may be insufficient for evidence protection. Thus, both the vessel and the owner are encouraged to take proactive measures and report suspicions as soon as possible to the police or the Office of the Prosecutor, thereby enhancing their position during any investigations.

A) Administrations and Ship Operators

To enhance maritime security and combat narcotics smuggling, it is crucial for both administrations and ship operators to adopt a collaborative and proactive approach. Below are key actions that should be undertaken:

1. Recognize that the shipping industry cannot address the challenges of drug trafficking alone. A united front involving all stakeholders is essential.
2. Establish active partnerships among seafarers, shipping companies, port operators, shipping agents, security firms, law enforcement, and border control agencies. Engaging representatives from shipping companies in national and port-level maritime facilitation committees can facilitate this collaboration.
3. Embrace the principle that security is not a competitive arena. Encourage two-way information sharing between customs, law enforcement, and the shipping industry. This includes sharing insights on emerging trends, concealment methods, traffickers' tactics, and vulnerabilities in port security. All shared information should be treated with confidentiality and utilized for voyage risk assessments.
4. Establish durable and resilient committees and communication mechanisms, grounded in written standard operating procedures. This will ensure continuity and effective response in the event of personnel changes.
5. Counter drug trafficking measures should be aligned with other security and border control protocols, consistent with the FAL Convention. This integration will create a more effective framework for addressing maritime security challenges.
6. Leverage new technologies, including machine learning and artificial intelligence, to enhance risk assessment and interdiction capabilities. These innovations can provide valuable insights and improve decision-making processes.
7. Onboard vessels, both physical and procedural "target hardening" measures should be implemented to elevate security standards. This includes reviewing ship security procedures to integrate these measures effectively.
8. Develop and implement comprehensive crew training programs that focus on recognizing suspicious behavior, understanding how to avoid compromise, and knowing how to report and respond to potential threats.
9. Encourage team-building activities onboard to enhance the mental well-being of seafarers while simultaneously fostering a strong culture of security awareness.

10. Ensure that crew members are thoroughly briefed on the laws and regulations of destination countries to mitigate legal risks.
11. Emphasize the importance of leveraging diplomatic channels to engage with Member States in cases where seafarers are unjustly detained, as this has proven to be an effective method for securing their release.
12. Strive for greater transparency within the maritime sector. Identify ports that fail to provide adequate security or engage in cooperative efforts to counter drug trafficking. This information will empower ship operators to make informed decisions regarding port selections.
13. Consider the lessons learned from the aviation industry. The relationship between airports and airlines is well-defined, with airports serving as critical service providers. Additionally, the attitude of border control authorities towards aircrew is generally more reasoned, as airline captains are seldom arrested when drugs are discovered in cargo or concealed within the aircraft. This perspective should be mirrored in maritime operations to ensure that seafarers are not unduly penalized for illicit activities beyond their control.
14. Establish comprehensive procedures to demonstrate that all reasonable measures have been taken to prevent drug trafficking. This includes recording actions taken, conducting thorough searches, and documenting training and oversight measures.
15. Effective cooperation and coordination among various stakeholders are critical. Secure channels should be established for feedback and information sharing between the point of narcotics detection and relevant authorities at the departure point, enhancing prevention strategies.

CHAPTER 4. NATURE OF NARCOTICS SMUGGLING

Narcotics smuggling via maritime channels is a complex and evolving challenge that often involves sophisticated tactics and networks. For shipowners and maritime operators, understanding the multifaceted nature of these illicit activities is essential for developing effective preventive measures. The following components highlight the key characteristics and methodologies employed in narcotics smuggling:

4.1. CONCEALMENT TECHNIQUES

In discussions with enforcement officials, they often make the point that unlawful traffickers are quite resourceful, which forces the authorities to act on the defensive to face new concealment techniques. The IMO, in collaboration with the industry, has enhanced its guidance by providing best practices and strategies to combat maritime crimes, discussing the most common techniques for drug trafficking including the following:

- **Concealed Cargo:** Smugglers often use innovative methods to hide narcotics within legitimate cargo. This can include packing drugs within shipping containers, mixing while loading with clams or conveyor belts,

behind or inside legitimate goods, or even within the vessel's structure (e.g., hidden compartments in hulls or machinery spaces). Identifying the typical cargo and monitoring for any anomalies during loading and unloading operations are crucial for detecting such concealment methods.

- **False Bottoms and Double-Hulled Containers:** Some smugglers employ specially designed containers with false bottoms or double walls that can house illegal substances without detection. Regular inspections and the use of scanning technology can help uncover these concealment strategies.

4.2. USE OF THIRD-PARTY ACCOMPLICES

- **Crew Complicity:** The authorities seem convinced that crew members, motivated by financial incentives or coercion, have become complicit in drug trafficking activities. Training and awareness programs should emphasize the importance of following security protocols, cooperation with the authorities and reporting suspicious behavior among crew members and the legal consequences of involvement in narcotics smuggling.
- **Port Personnel and Local Criminal Networks:** Investigations ran by authorities and shipping companies suggest that smugglers often exploit relationships with port workers, agents, or customs officials who may facilitate the movement of illicit goods through corrupt practices. Shipowners should establish stringent vetting processes for all personnel involved in cargo operations and foster relationships with reputable partners.

4.3. MANIPULATION OF SHIPPING DOCUMENTATION

- **Falsification of Shipping Papers:** According to investigations published by the authorities, smugglers attempt to alter or falsify shipping documentation, such as bills of lading, manifests, and customs declarations, to disguise the true nature of their cargo. Comprehensive training for administrative and operational staff on the importance of document integrity and verification processes can help mitigate this risk.
- **Misleading Shipping Routes:** Criminal networks may use deceptive practices to change the documented shipping routes of vessels, creating a façade of legitimacy while engaging in drug trafficking. Regular audits of shipping routes and cargo logs can help identify discrepancies or irregularities.

4.4. EVOLVING TACTICS AND TECHNOLOGIES

- **Drones and Unmanned Vehicles:** The experience of the authorities and even media publications suggest that recent advancements in technology have led to the use of drones and unmanned vehicles for smuggling operations. These devices can be deployed to transport small quantities of narcotics to vessels at sea, bypassing traditional security measures. Awareness of such emerging threats and the implementation of countermeasures is essential.
- **Cybersecurity Risks:** With the increasing reliance on digital systems for shipping and logistics, smugglers may also target cybersecurity vulnerabilities to disrupt operations or gain unauthorized access to shipping data. It is suggested that the shipping industry invest in robust cybersecurity measures, including regular system audits, employee training on phishing and social engineering tactics, and incident response plans.

CHAPTER 5. THE ROLE OF VESSEL INTERESTS' WHEN FACING AN INVESTIGATION.

The primary objective of the investigation run by the authorities is to identify any unlawful introduction of prohibited substances, such as narcotics, through maritime channels and assess the vessel's involvement in such activities. This encompasses a thorough analysis of shipping logs, crew activity, and any unusual patterns of behavior that may indicate illicit activities. If the vessel is determined by the authorities to be instrumental in the alleged crime, its continued detention secures its availability for potential legal actions, including confiscation if warranted. This process not only aims to gather evidence but also ensures that any relevant facts are preserved for future legal proceedings.

The investigation will also focus on the crew's role and responsibilities related to the vessel's operations. Crew members may be interviewed to gather information about operational practices, security measures, and any unusual activities observed during the voyage. Their cooperation is vital, as investigators will evaluate their knowledge of the vessel's activities and adherence to maritime laws. The conduct of the crew will be scrutinized to identify any breaches of duty or negligence that may have contributed to the vessel's involvement in illicit activities, including a review of their training records and operational compliance.

It is essential to uphold the legal rights of crew members throughout the investigation. They should be informed of their rights and any available legal assistance during interviews or questioning. Transparency in communication regarding their employment rights and the status of the investigation is crucial, especially if the ongoing investigation affects their employment status or even their freedom, as they may end up arrested on a precautionary basis or sentenced to prison. Collaboration with maritime labor organizations may also be necessary to ensure that crew members receive adequate support and

representation throughout this process, thereby protecting their well-being while maintaining the integrity of the investigation.

To effectively carry out the investigation, the authorities may employ various methods, including:

- **Surveillance Operations:** Monitoring the vessel's activities, including its routes and cargo, to identify suspicious behavior or contacts with known criminal entities. This should include also surveillance of handling of cargo and equipment in port terminals.
- **Interviews and Interrogations:** Engaging with crew members, the registered owner, and other relevant parties to gather testimonies and corroborate evidence.
- **Forensic Analysis:** Examining the vessel for any physical evidence of drug trafficking, including hidden compartments or residue of controlled substances.
- **Document Review:** Analyzing shipping documentation, contracts, and communications to trace any illicit transactions or agreements. These investigative procedures will be conducted in accordance with Mexican law and international human rights standards, ensuring that all actions are legally justified and respect the rights of those involved.

CHAPTER 6. RELEASE OF VESSEL AND CUSTODIANSHIP

As mentioned, in most cases where unlawful transport of drugs is investigated, it is likely that the vessel will be detained or arrested as this is considered by the authorities as an essential measure to secure evidence and support a comprehensive investigation. Vessel arrest under such circumstances serves to maintain control over potential evidence and preserve jurisdictional authority throughout the investigation process that the consider may end up in the confiscation of the vessel.

Open cooperation with the authorities is highly recommended as it may result in the release of the vessel in full. Litigation is also an alternative to obtain the full release of the vessel in most circumstances.

Another option to afford Owners the right to take possession of the vessel and employ her while the arrest remains in force is to apply for the temporary custodianship of the vessel, which may be granted to the registered owner at the discretion of the authorities, allowing for limited commercial use under carefully regulated conditions. This custodianship is contingent upon a strict compliance framework designed to ensure that vessel operations do not interfere with the ongoing investigation, compromise potential evidence, or conflict with public interests and security.

Granting custodianship involves a detailed evaluation by investigative authorities to confirm that temporary release will not disrupt evidence collection, risk international protocols, or interfere with cooperative law enforcement efforts.

The custodianship framework mandates rigorous reporting and monitoring protocols, which may include mandatory security deposits, monthly reporting on the vessel's location, and restrictions on asset transfers.

In the criteria of the authorities, this approach enables a balance between safeguarding due process and upholding the operational rights of the registered owner, allowing the vessel to engage in restricted commercial activities that adhere to all legal conditions and respect the investigative authority's jurisdictional requirements.

To materialize Custodianship, the registered owner or possessor of the vessel must appoint an authorized representative who holds a power of attorney to accept custodianship. This individual must be a qualified custodian who is readily accessible in Mexico to ensure effective communication with the authorities conducting the investigation.

The appointed custodian should have a clear understanding of their responsibilities and the legal implications of custodianship. It is advisable for the custodian to be familiar with maritime law, customs regulations, criminal law and any relevant compliance frameworks.

In addition to appointing a Custodian, the registered owner must provide a security deposit, which can take the form of either a bond or cash deposit. This deposit serves as a guarantee to ensure compliance with the custodianship conditions set forth by the Prosecutor's Office. The amount and terms of the security deposit will be determined based on the specific circumstances of the investigation, the market value of the vessel and the assessed risk of non-compliance.

During the custodianship period, the registered owner is strictly prohibited from transferring, encumbering, or modifying the vessel's ownership status. These asset management restrictions are in place to preserve the integrity of the asset and ensure compliance with the terms of release. The custodian must ensure that all financial transactions related to the vessel are transparent and properly documented.

CLOSING REMARKS.

Throughout history, intoxication with narcotics has affected society across the world, always bringing unwanted results. This is one of the main reasons why the shipping industry should deal with unlawful drug traffic.

There may be plenty of methods to fight drug traffic in the shipping industry and as technology, markets and routes evolve, this will always be a work in progress.

We suggest to always consider at least three phases:

- 1.- Prevention within the industry and also by working with government worldwide, is provided for in the Vienna Convention and others.
- 2.- Dialogue and cooperation with the authorities when cases arise, in order to update prevention methods, aiming at protecting the crews from criminalization and endeavour to quickly release the vessels involved.
- 3.- Modernize industry standards and maintain the good reputation of shipping.

For further clarification, tailored guidance, or assistance in applying this information to specific cases, please do not hesitate to contact us anytime at info@murillo.legal.

Authors: Rafael Murillo & Adel Asrawi

Murillo Romero Attorneys

Mexico City, Mexico



**MURILLO ROMERO
ATTORNEYS**