Improving Mexico's Energy Security Framework: a new role for the Navy?

Ávila-Zúñiga-Nordfjeld, Adriana¹,
Dalaklis, Dimitrios²,

¹: PhDc. Maritime Administration: Maritime Safety & Security
²: Assistant Professor, (Maritime Safety & Security),

World Maritime University (WMU), -IMO, United Nations, Malmö, Sweden.
PhD programme in Maritime Affairs -Maritime Administration: Maritime Safety & Security
Improving Mexico's Energy Security Framework: a new role for the Navy?

- This paper examines the decree presented by the President of Mexico and approved by the National Congress to reform the country’s legal framework and allow the shift of maritime safety and security responsibility, as well as port state control from a civil authority (Ministry of Communications and Transport, MCT) towards a military one (Ministry of Marine, MMAR).

- The previous failures of the Mexican Designated Authority, executed by the General Direction of Merchant Marine (GDMM) from MCT resulted into an important number of security incidents and maritime accidents which have contributed in turn not only in loss of property at sea, but also loss of human life and significant marine pollution; poor inspections to tankers operating in the Mexican oil market and to Mobile Offshore Drilling Units (MODUs).
Improving Mexico’s Energy Security Framework: a new role for the Navy?

- Security concerns are always in the spotlight, with Mexico facing huge challenges related to oil theft from pipelines and distribution networks, as well as plundering of offshore platforms and confiscated vessels;

- The decree changed the control of all Masters of Harbours, from MCT to MMAR. However, there is a dualism to some extent and it is necessary to change the appointment of the Designated Authority from MCT to the MMAR to represent the country in every aspect before the International Maritime Organization (IMO) to avoid a duality of functions at these two institutions and to ensure compliance with obligations derived from IMO Conventions;

- Methodology;

- Results & Conclusions.
Master of Harbour (management’s) History in Mexico

- It was under the Ministry of Marina (the Mexican Navy), which was created in 1940.
- Until 1976 the Ministry of Marine kept the control of ports and the merchant marine.
- In 1977 the ex-president José López Portillo reformed the Organic Law of Public Federal Administration giving to the Ministry of Communications and Transport (MCT) all activities related to the development and promotion of merchant marine, as well as the construction of port infrastructure and its respective administration and operation.
- However, the MCT and particularly the Master of Harbours, also called as Port Captainships in Mexico never got the necessary equipment to exercise its authority in a satisfactory manner.
- 40 years later, this functions were reallocated to the authorities of MMAR through several reforms, such as Organic Law of Public Administration, Law of Navigation and Maritime Trade and the Law of Ports to transfer the control, inspection, vigilance and other activities related to the merchant marine and the maritime industry, including the Masters of Harbours from a civil authority (MCT) towards a military one (MMAR), but excluding port development and its administration.
- This law initiative was approved by the National Congress without any change and published as a decree on the Official Diary of the Federation (ODF) on 19th December, 2016.
- The decree establishes the new attributions of the Ministry of Marine, which shall enter into force after 180 “natural days” of its publication in the ODF, specifically on 17th June, 2017.
The decree

- However, the decree does not specify clearly enough the change of the Maritime Authority from MCT to MMAR, creating a duality of some serious attributions concerning the existence of only one entity to represent the country before international organizations for the negotiations of international treaties, and executing its obligations derived of such international conventions as an executor organ with respect to maritime safety and security, among other areas.

- The reform to the Law of Navigation and Maritime Trade empowers both, the MMAR and MCT to represent the country in the negotiations with international conventions in the maritime realm; and to be the executor organ and its interpret in the administrative sphere with respect to the attributions that according to this law, to each of them corresponds.

- It clarifies that the master of the harbours, are transferred to the Ministry of Marine, redistributing the attributions that they currently have, leaving uniquely to the Ministry of Communications and Transport those related with the regulation, organization and administration of the merchant marine.

- It provides attributions to the MMAR to approve and give the licenses for passenger & tourism maritime transport services with small boats; authorize the vessels to bear away and bear off as well as customs clearance; flag and register of vessels, administrate the national registers both, of maritime crew and ships; inspect and verify national and foreign vessels; the compliance of international conventions as well as national legislation and official Mexican norms related to maritime safety and security; safeguard human life at sea and the prevention of marine pollution; the imposition of sanctions; as well as appointing and removing master of harbours.

- It confirms the Ministry of Communications and Transport to continue leading the administration of ports, foment for port development, training and control of merchant marine: construction of port infrastructure and dredger of ocean, maritime and fluvial passages; development of the maritime industry; concessions, permissions and maritime fees and in general, all maritime business related to productive activity generator of economic resources.

- Another inconsistency is that it will be the MCT which will be the responsible institution for planning, formulating and conducting the politic programs for the development of water transport and the merchant marine and which will regulate and verify that the pilot service is offered in a safe and efficient form.
Master of Harbour duties

- **Maritime safety**
  - International Convention for the Safety of Life at Sea (SOLAS), 1974 and protocols,
  - ISM Code
  - Search and rescue operations/systems
  - Port State Control

- **Maritime security**
  - ISPS Code

- **Marine environment’s protection**
International Safety Management Code (ISM Code)


- It was amended in 2000, 2004, 2005, 2008 and 2013, according to resolutions MSC.104(73), MSC.179(79), MSC.195(80), MSC.273(85), which entered into force on 1 July 2002, on 1 July 2006, on 1 January 2009, and on 1 July 2010, respectively, and resolution MSC.353(92), which entered into force on 1 January 2015.

- The purpose of the ISM Code is to provide an international standard for the safe management and operation of ships and for pollution prevention. It establishes minimum common requirements for SMS.

- Criminal/administrative liability.

- Safety Culture on-board vessels & at the shipping company.

- Establishes diverse safety-management objectives.

- Requires a safety management system (SMS).

- «The Company»
  - Approach the ship-owning company as the primary subject of obligations.

- «Designated Person (DP)»
  - Direct access to the highest level of management.

  - Planning of ship operations on board vessels
  - Emergency preparedness.
International Ship and Port Facility Security Code (ISPS Code)

- September 11th, 2001,

- Chapter XI-2, Safety of Life at Sea (SOLAS) Convention 1974,

- Whereas part A of the Code -mandatory provisions,

- Part B not mandatory

- There is not a penalty-mechanism in place at IMO for member states that don’t effectively comply with the ISPS Code;

- Designated Authority

- Maritime Security Levels 1,2,3

- PSA / PFSA

- PSP / PFSP

- Approval & Comp. of Security plans.

- Inspections, Audits, Drills & Exercises
The decree on the Agreement for the Establishment of Safety and Security Zones; for Navigation and Overflight in the Surroundings of Offshore Installations and Integral and Sustainable Exploitation of Fishery and Aquaculture Resources in Mexican Marine Areas was presented by the current President of Mexico, Enrique Peña Nieto and published on the Diary official of the Federation (DOF) on 11th October, 2016.

It has a direct impact in maritime safety and security around the oil platforms located at the continental shelf in the Gulf of Mexico and vessels doing loading and unloading operations at the area.

A “Security and Safety Zone” in the surroundings of oil drills, platforms of “500 metres from its external border”.

ISPS Code
Standards of Training, Certification and Watchkeeping (STCW Code), 1978

- Extremely important concerning training for both, safety and security,

- Adopted on 7 July 1978 and entered into force on 28 April 1984

- Its purpose is to promote safety of life and property at sea and the protection of the marine environment by establishing international standards of training, certification and watchkeeping for seafarers.

- The Manila amendments to the STCW Convention and Code were adopted on 25th June 2010, marking a major revision of both, the Convention and STCW Code.

- Whereas part A of the Code - mandatory provisions,

- Part B is not mandatory.

- Several areas of the STCW Code that overlap with some provisions of the ISM Code, as well as the ISPS Code

- Prevent fraudulent practices related to the expedition of certificates of competency

- Strengthen the evaluation process and new requirements related to training in modern technology such as electronic charts information systems (ECDIS) and Dynamic Positioning Systems.

- Marine environment awareness training and training in leadership and teamwork.

- Updating of competence requirements for employees serving on board all types of tankers, including new requirements for personnel serving on liquefied gas tankers and for personnel serving on board ships operating in polar waters.

- Provisions to ensure that seafarers are properly trained to cope with a situation where their ship comes under attack by pirates

- Master and deck department; engine department; radio communication and radio operators; special training requirements for personnel on certain types of ships; Emergency, occupational safety, medical care, and survival functions; alternative certification; and Watchkeeping.
Research Methodology

- Semi-structured interviews made to the Master of Harbours, directors of Customs Maritime Units, directors of ports, PFSOs from ports and some terminals of hydrocarbons, presidents of UCMAR (1st Commander of the Navy Zone, Navy Sector or Navy Station) and commandants of the port and maritime police (Naval Unit for Port Security, also called NAUPS) and the Gulf’s Navy Force;

- Participant observation at the terminals and Master of Harbours installations and ports, including not only the land areas but also the maritime passages; which were visited on board oceanic patrols from the Mexican Navy (A visit of three months to maritime ports in Mexico);

- The pool of data is deemed sufficient, based on the fact that it includes eight out of sixteen Federal Integrated Ports Administrations (FIPA) in Mexico where the ISPS Code applies, representing a coverture of 50% of them and seven out of seven FIPAs situated in the Gulf of Mexico, where oil exploration and production activities take place, achieving a 100% coverture of them.

- Plus one State-Owned Integrated Port Administration (Ciudad del Carmen, Campeche) where most of the oil activity is concentrated was also included in the study.

- The total of interviewed participants was 57 persons, all of them practicing in areas of maritime safety and security.

- The data was examined line-by-line, and the main categories and themes were identified and coded using thematic analysis and constant comparison of the data.
Ports & Terminals Included in the Study

All ports located in the Gulf of Mexico, plus one of the hub ports located in the Pacific were included in the study.

Source: The Secretary of Communication and Transportation (SCT)
Results

✓ From the interviewed subjects with functions of Master of Harbour 75% expressed their approval to be transferred to the MMAR and supported the law decree, while 25% strongly disapproved the transferral between the institutions.

✓ From the interviewed directors of maritime customs units 87.5% supported the law decree.

✓ From the interviewed directors of Federal Integrated Port Administrations 75% supported the law decree.

✓ From the interviewed subjects with functions of presidents of UCMAR 100% supported the law decree.

✓ 100% of subjects with functions of commandants from the NAUPPRO (port police) supported the law decree.

✓ 87.5% from interviewed Port Security Officers (PSO) supported the transferral.

✓ 80% from interviewed subjects functioning as Port Facility Security Officers (PFSO) from hydrocarbon terminals supported the transferral.
Results

Twelve categories were identified that either prevent or promote the transferral of Master of Harbours from MCT to MMAR:

✓ (I) poor performance of Masters of Harbours from the MCT;

✓ (II) acute lack of human and material resources available for masters of harbours to comply with their duties and responsibilities in a satisfactory manner;

✓ (III) high exposure to corruption on the part of Masters of Harbours related to Mexican crime ring organizations due to death threats against them or their families;

✓ (IV) fair on the part of Master of Harbours for loosing their jobs in a late stage of their productive life;

✓ (V) uncertainty on the part of Master of Harbours with respect to their salary’s level, working rights and pension schemes;

✓ (VI) improvement of salary and working rights for Master of Harbours and their personnel with the transferral to MMAR;

✓ (VII) already high participation of the Mexican Navy performing duties that correspond to Master of Harbours;

✓ (VIII) fair on the part of directors of port administrations for lack of knowledge, stubbornness and unwillingness/inflexibility to negotiate on factors related to business issues with respect to authorities from the Mexican Navy;

✓ (IX) security improvement for offshore installations and vessels serving the oil market;

✓ (X) trust in a significant improvement of maritime safety and security on the part of directors of maritime customs units with the transferral of Master of Harbour offices to the Ministry of Marine;

✓ (XI) bigger and better capabilities to combat crime ring organizations that are using port installations for transport of drugs, weapons, money laundry and transport of stolen hydrocarbons, and finally;

✓ (XII) need of providing juridical support and attributions to the MMAR to activities already performed by the Navy and which currently are outside their attributions juridically.
Conclusions & Recommendations

The authors concluded that the decree approved by the National Congress of Mexico to reform the country's legal framework and allow the shift of maritime safety and security responsibility, as well as port state control from a civil authority (Ministry of Communications and Transport, MCT) towards a military one (Ministry of Marine, MMAR) has a high level of acceptance between the four pillar institutions involved in port and maritime safety and security.

MMAR must ensure the application of integrity and anti-corruption programs during the transferral process, to avoid the transference of old corruption practices too, with respect to ship's inspections, including revision of and issuance of crew certificates and to ensure an efficient and effective performance of its new role.

MMAR must recover the control of all control centres for maritime traffic that currently are operated and administrated by Pemex, including the centre for control of maritime traffic at the offshore and oil production area of Campeche.

MMAR must update the guidelines for the Navy Unit of Port Protection (NAUPPRO) concerning its duties and responsibilities with clear, concrete and specific duties to ensure the compliance of ISPS Code requirements at ports and port terminals. Due to the military discipline they do not follow their obligations established in the Law of Ports if they have not receive the order from their superiors.

MMAR must also avoid misuse of high security trained resources in duties that are outside their competence and specially avoid allocating to the maritime police (NAUPPRO), duties and responsibilities that actually are performed by the staff belonging to masters of harbours.

It is recommended to develop a study concerning the reduction of master of harbour Offices located around the country from 117 to 30 to ensure an efficient and effective management of these where they are really needed, especially at the Federal Integrated Port Administrations.