

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF MALTA
CONCERNING COOPERATION TO SUPPRESS ILLICIT TRAFFIC IN NARCOTIC
DRUGS AND PSYCHOTROPIC SUBSTANCES BY SEA**

The Government of the United States of America and the Government of the Republic of Malta (hereinafter, "the Parties");

Bearing in mind the special nature of the problem of illicit maritime drug traffic;

Having regard to the urgent need for international cooperation in suppressing illicit maritime drug traffic, which is recognized in the 1961 Single Convention on Narcotic Drugs and its 1972 Protocol, in the 1971 Convention on Psychotropic Substances, in the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereafter, "the 1988 Convention"), and in the 1982 United Nations Convention on the Law of the Sea; and

Recalling that Article 17 of the 1988 Convention provides, *inter alia*, that the Parties shall consider entering into bilateral and regional agreements to carry out, or to enhance the effectiveness of, the provisions of Article 17;

Desiring to promote greater cooperation between the Parties, and thereby enhance their effectiveness, in combating illicit traffic in narcotic drugs and psychotropic substances by sea;

Based on the principles of international law, respect for the sovereign equality of States and in full respect of the freedom of navigation;

Have agreed as follows:

**Article 1
Purpose and Scope**

The Parties shall cooperate in combating illicit traffic by sea in narcotic drugs and psychotropic substances to the fullest extent possible, consistent with available law enforcement resources and priorities related thereto.

**Article 2
Definitions**

For the purposes of this Agreement, unless the context otherwise requires:

- (a) "illicit traffic" has the same meaning as in Article 1(m) of the 1988 Convention.
- (b) "international waters" means waters seaward of any State's territorial sea, including the contiguous zone.



- (c) "contiguous zone" has the same meaning as in Article 33 of the Law of the Sea Convention.
- (d) "law enforcement authorities" means, for the Government of Malta, the Armed Forces of Malta, and for the Government of the United States of America, the United States Coast Guard.
- (e) "law enforcement officials" means, for the Government of Malta, the Armed Forces of Malta, the Malta Police Force and the Department of Customs, and for the Government of the United States of America, uniformed members of the United States Coast Guard who may be accompanied by other authorized personnel.
- (f) "law enforcement vessels" means warships or other ships of the Parties, or of third States as may be agreed by the Parties, aboard which law enforcement officials are embarked, clearly marked and identifiable as being on government non-commercial service and authorized to that effect, including any boat or aircraft embarked on such ships.
- (g) "suspect vessel" means a vessel, claiming the nationality of one of the Parties, used for commercial or private purposes in respect of which there are reasonable grounds to suspect it is engaged in illicit traffic in narcotic drugs and psychotropic substances.

Article 3
Suspect Vessels

Operations to suppress illicit traffic in narcotic drugs and psychotropic substances pursuant to this Agreement shall be carried out only against suspect vessels and vessels without nationality.

Article 4
Operations in and over National Waters

This Agreement does not authorize the conduct of operations to suppress illicit traffic in narcotic drugs or psychotropic substances by one Party in and over the waters of the other Party.

Article 5
Operations in International Waters

1. Authority to Board Suspect Vessels. Whenever the law enforcement officials of one Party ("the requesting Party") encounter a suspect vessel claiming the nationality of the other Party ("the requested Party") located in international waters, the requesting Party may request that the law enforcement authority of the requested Party:

- (a) confirm the claim of nationality of the requested Party; and



(b) if such claim is confirmed:

(i) authorize the boarding and search of the suspect vessel, cargo and the persons found on board by law enforcement officials of the requesting Party; and

(ii) if evidence of illicit traffic in narcotic drugs and psychotropic substances is found, authorize the law enforcement officials of the requesting Party to detain the vessel, cargo and persons on board pending instructions from the law enforcement authorities of the requested Party as to the exercise of jurisdiction in accordance with Article 6 of this Agreement.

2. Content of Requests. Each request should contain the name of the suspect vessel, the basis for the suspicion (including all facts and other information on which the suspicion is based), the geographic position of the vessel, the registration number if available, home port, the port of origin and destination, and any other identifying information. If a request is conveyed orally, the requesting Party shall confirm the request in writing as soon as possible.

3. Responding to Requests

(a) If the nationality is verified, the requested Party may:

(i) decide to conduct the boarding and search with its own law enforcement officials;

(ii) authorize the boarding and search by the law enforcement officials of the requesting Party;

(iii) decide to conduct the boarding and search together with the requesting Party;

or

(iv) deny permission to board and search.

(b) The requested Party shall answer requests made for the verification of nationality within four (4) hours of the receipt of such requests.

(c) If the nationality is not verified within the four (4) hours, the requested Party may:

(i) nevertheless authorize the boarding and search by the law enforcement officials of the requesting Party; or

(ii) refute the claim of the suspect vessel to its nationality.

(d) If there is no acknowledgement or response to a written request pursuant to paragraph 2 from the requested Party within four (4) hours of its receipt of the request, the



requesting Party will be deemed to have been authorized to board the suspect vessel for the purpose of inspecting the vessel's documents, questioning the persons on board, and searching the vessel to determine if it is engaged in illicit traffic.

4. Right of Visit. Notwithstanding the foregoing paragraphs of this Article, this Agreement authorizes the law enforcement officials of one Party ("the first Party") to board suspect vessels located in international waters claiming nationality in the other Party but that are not flying the flag of the other Party, are not displaying any marks of its registration or nationality, and claiming to have no documentation on board the vessel, for the purpose of locating and examining the vessel's documentation. If documentation or other physical evidence of nationality is located, then the foregoing paragraphs of this Article apply.

5. Use of Force. The authorization to board, search and detain includes the authority to use such force as may be necessary in accordance with Article 10 of this Agreement.

6. Shipboarding Otherwise in accordance with International Law. Except as expressly provided herein, this Agreement does not apply to or limit boardings of vessels, conducted by either Party in accordance with international law in international waters, whether based, *inter alia*, on the right of visit, the rendering of assistance to persons, vessels, and property in distress or peril, the consent of the vessel master, or an authorization from the flag State to take law enforcement action.

Article 6 **Jurisdiction over Detained Vessels**

1. Limitations. Neither Party shall undertake the exercise of jurisdiction and performance of functions in the territory of the other Party.

2. Waiver of Right. In all cases arising pursuant to this Agreement concerning vessels having the nationality of a Party in international waters, that Party ("the first Party") shall have the right to exercise jurisdiction over a detained vessel, cargo and/or persons on board (including seizure, forfeiture, arrest, and prosecution), provided, however, the first Party may, subject to its Constitution and laws, waive its right to exercise jurisdiction and authorize the enforcement of the other Party's law against the vessel, cargo and/or persons on board.

3. Contiguous Zone. In cases arising in the contiguous zone of a Party, not involving suspect vessels fleeing from the waters of that Party or suspect vessels having the nationality of that Party, in which both Parties have the authority to exercise jurisdiction to prosecute, the Party which conducts the boarding and search shall have the right to exercise jurisdiction.

4. Requests to Waive Jurisdiction. If the evidence so warrants, the other Party may request that the first Party waive jurisdiction.

5. Instructions as to the exercise of jurisdiction pursuant to this Agreement shall be given without delay.



6. Form of Waiver. A waiver of jurisdiction may be granted verbally, but as soon as possible, it shall be recorded in a written note from the competent authority and be processed through the diplomatic authorities, without prejudice to the immediate exercise of jurisdiction over the suspect vessel by the other Party.

Article 7
Points of Contact

Each Party shall identify to the other Party, and keep current, the points of contact for communicating with its national authorities competent to receive and act at any time on requests under Article 5 for verification of nationality and authority to board, search and detain suspect vessels, and for instructions as to the exercise of jurisdiction under Article 6, and to receive and act on notifications under Article 8, and to respond to requests for technical assistance under Article 13, in addition to any other communication necessary for the implementation of this Agreement.

Article 8
Notification of Results of Shipboardings and Actions Taken

1. Notification of Results. Each Party shall promptly, and in any case not later than 48 hours, notify the other Party of the results of any boarding and search of the vessels of the other Party conducted pursuant to this Agreement.

2. Status Reports. Each Party, consistent with its procedures, shall report in a timely manner at least every month to the other Party on the status of all investigations, prosecutions and judicial proceedings resulting from enforcement action taken pursuant to this Agreement where evidence of illicit traffic was found.

Article 9
Conduct of Law Enforcement Officials

1. Compliance with Law and Practices. Each Party shall ensure that its law enforcement officials, when conducting boarding and search activities pursuant to this Agreement, act in accordance with its applicable national laws and policies and with international law and accepted international practices.

2. Boarding and Search Teams

a. Boardings and searches pursuant to this Agreement shall be carried out by law enforcement officials from law enforcement vessels or aircraft of the Parties and from such vessels and aircraft of other States, according to arrangements between the Party conducting the operation and the State providing the vessel or aircraft.

b. When conducting boardings and searches law enforcement officials may carry



standard law enforcement small arms.

c. While carrying out boarding and search activities pursuant to this Agreement, the Parties shall take due account of the need not to endanger the safety of life at sea, the security of the suspect vessel and its cargo, or to prejudice the commercial and legal interests of the flag State or any other interested State; and shall observe the norms of courtesy, respect and consideration for the persons on board the suspect vessel.

d. Law enforcement vessels of a Party operating with the authorization of the other Party pursuant to this Agreement shall, during such operations, also fly, in the case of the United States of America, the Merchant Flag of Malta, and in the case of Malta, the United States Coast Guard ensign.

Article 10 Use of Force

1. Rules. All uses of force by a Party pursuant to this Agreement shall be in strict accordance with applicable laws and policies of that Party and shall in all cases be that force reasonably necessary under the circumstances.
2. Self-Defense. Nothing in this Agreement shall impair the exercise of the inherent right of self-defense by law enforcement or other officials of the Parties.

Article 11 Exchange and Knowledge of Laws and Policies of the Parties

1. Exchange of Information. To facilitate implementation of this Agreement, each Party shall ensure that the other Party is fully informed of its respective applicable laws and policies, particularly those pertaining to the use of force.
2. Ensuring Knowledge. Each Party shall ensure that all of its law enforcement officials acting pursuant to this Agreement are knowledgeable of the applicable laws and policies of both Parties.

Article 12 Disposal of Seized Property

1. Disposal of Property. Assets seized in consequence of any operation undertaken pursuant to this Agreement shall be disposed of in accordance with the laws of the Party exercising jurisdiction in accordance with Article 6 of this Agreement.
2. The seizing Party may transfer in accordance with its laws forfeited assets or proceeds of their sale to the flag State Party after deducting therefrom all expenses directly and reasonably connected with the seizure and disposal and any share thereof which any Party may in accordance with its legislation be entitled to.



**Article 13
Technical Assistance**

The law enforcement authority of one Party (the "first Party") may request, and the law enforcement authority of the other Party may authorize, law enforcement officials of the other Party to provide technical assistance, such as specialized assistance in the conduct of search of suspect vessels, to law enforcement officials of the first Party for the boarding and search of suspect vessels located in the territory or waters of the first Party.

**Article 14
Consultations and Dispute Settlement**

1. Consultations. In case a question arises in connection with implementation of this Agreement, either Party may request consultations with the other Party to resolve the matter.
2. Dispute Settlement. The Parties undertake to settle by consultation any disputes that arise from the implementation of this Agreement.

**Article 15
Claims**

1. Examination of Claims. Any claim for damages, injury or loss resulting from an operation carried out under this Agreement shall be examined by the Party whose authorities conducted the operation.
2. Resolution of Claims. If responsibility is established, the claim shall be resolved in favor of the claimant by that Party, in accordance with the domestic law of that Party, and in a manner consistent with international law, including paragraph 3 of Article 110 of the Law of the Sea Convention.
3. No Waiver of Other Rights. Neither Party thereby waives any rights it may have under international law to raise a claim with the other Party through diplomatic channels.

**Article 16
Miscellaneous Provisions**

Nothing in this Agreement:

(a) precludes the Parties from otherwise agreeing on operations or other forms of cooperation to suppress illicit traffic;

(b) is intended to alter the rights and privileges due any individual in any legal proceeding;



(c) shall be construed as creating any private right of action for any individual or entity;

(d) prejudices in any manner the positions of either Party regarding the international law of the sea.

**Article 17
Entry into Force**

This Agreement shall enter into force upon exchange of notes indicating that the necessary internal procedures of each Party have been completed.

**Article 18
Termination**

1. Notification. This Agreement may be terminated at any time by either Party upon written notification to the other Party through the diplomatic channel.

2. Effective Date. Such termination shall take effect 90 days from the date of notification.

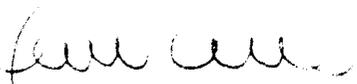
**Article 19
Continuation of Actions Taken**

This Agreement shall continue to apply after termination with respect to any administrative or judicial proceedings arising out of actions taken pursuant to this Arrangement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE AT *Valletta*, this *16* day of *June*, TWO THOUSAND AND FOUR.


FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:


FOR THE GOVERNMENT OF
THE REPUBLIC OF MALTA: