04-786

# AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS CONCERNING COOPERATION TO SUPPRESS THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION, THEIR DELIVERY SYSTEMS, AND RELATED MATERIALS BY SEA

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

**Deeply concerned** about the proliferation of weapons of mass destruction (WMD), their delivery systems, and related materials, particularly by sea, as well as the risk that these may fall into the hands of terrorists;

**Recalling** the 31 January 1992 United Nations Security Council Presidential statement that proliferation of all WMD constitutes a threat to international peace

and security, and underlines the need for Member States of the UN to prevent proliferation;

**Also recalling** United Nations Security Council Resolution 1540 (2004), which calls on all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

**Recalling further** the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris 13 January 1993; the Treaty on Nonproliferation of Nuclear Weapons, done at Washington, London and Moscow 1 July 1968; and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow 10 April 1972;

**Further recalling** the International Ship and Port Facility Security Code, adopted by the International Maritime Organization on 12 December 2002;

**Acknowledging** the widespread consensus that proliferation and terrorism seriously threaten international peace and security;

**Convinced** that trafficking in these items by States and non-state actors of proliferation concern must be stopped;

**Guided** by the Statement of Interdiction Principles for the Proliferation Security Initiative;

**Inspired** by the efforts of the International Maritime Organization to improve the effectiveness of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome 10 March 1988;

**Reaffirming the importance of** customary international law of the sea as reflected in the 1982 United Nations Convention on the Law of the Sea, done at Montego Bay, 10 December 1982;

**Committed** to cooperation to stop the flow by sea of WMD, their delivery systems, and related materials to or from States or non-state actors of proliferation concern;

Have agreed as follows:

## Article 1
## Definitions

In this Agreement, unless the context otherwise requires:

1. "United States" means the Government of the United States of America.

2. "Marshall Islands" means the Government of the Republic of the Marshall Islands.

3. "Proliferation by sea" means the transportation by ship of weapons of mass destruction, their delivery systems, and related materials to or from States or non-state actors of proliferation concern.

4. "Weapons of mass destruction" (WMD) means nuclear, chemical, biological and radiological weapons.

5. "Related materials" means materials, equipment and technology, of whatever nature or type, that are related to and destined for use in the development, production, utilization or delivery of WMD.

6. "Items of proliferation concern" means WMD, their delivery systems, and related materials.

7. "States or non-state actors of proliferation concern" means those countries or entities that should be subject to interdiction activities because they are or are believed to be engaged in: (1) efforts to develop or acquire WMD or their delivery systems; or (2) trafficking (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.

8. "Security Force" means:

    a. for the United States, the United States Coast Guard and the United States Navy; and

    b. for the Marshall Islands, the National Police Force of the Marshall Islands.

9. "Security Force Officials" means:

    a. for the United States, uniformed or otherwise clearly identifiable members of the U.S. Security Force, who may be accompanied by uniformed or otherwise clearly identifiable members of the

Departments of Homeland Security and Justice, and others duly authorized by the United States and notified to the Competent Authority of the Marshall Islands; and

b. for the Marshall Islands, uniformed or otherwise clearly identifiable members of the law enforcement authorities of the Marshall Islands Security Force.

10. "Security Force vessels" means warships and other vessels of the Parties, or of third States as may be agreed upon by the Parties, on which Security Force Officials of either or both Parties may be embarked, clearly marked and identifiable as being on government service and authorized to that effect, including any vessel and aircraft embarked on or supporting such vessels.

11. "Warship" means ships belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew that is under regular armed forces discipline.

12. "Suspect vessel" means a vessel used for commercial or private purposes in respect of which there are reasonable grounds to suspect it is engaged in proliferation by sea.

13. "International waters" means all parts of the sea not included in the territorial sea, internal waters and archipelagic waters of a State, consistent with international law.

14. "Competent Authority" means for the United States, the Commandant of the United States Coast Guard (including any officer designated by the Commandant to perform such functions), and for the Marshall Islands, the Commissioner of Maritime Affairs of the Office of the Maritime Administrator (including any officer designated under Marshall Islands law to perform such functions) appointed under Sections 103, 104 and 105 of Title 47 (The Maritime Act 1990, as amended) of the Laws of the Marshall Islands.

## Article 2
## Object and Purpose of Agreement

1. The object and purpose of this Agreement is to promote cooperation between the Parties to enable them to prevent the transportation by sea of items of proliferation concern.

2. The Parties shall carry out their obligations and responsibilities under this Agreement in a manner consistent with the principles of international law pertaining to the sovereign equality and territorial integrity of States.

3. The Parties shall cooperate to the fullest extent possible, subject to the availability of resources and in compliance with their respective laws.

## Article 3
## Cases of Suspect Vessels

Operations to suppress proliferation by sea pursuant to this Agreement shall be carried out only against suspect vessels, including suspect vessels without nationality, and suspect vessels assimilated to vessels without nationality, but not against a vessel registered under the law of one of the Parties while bareboat charter registered in another State not party to this Agreement.

## Article 4
## Operations in International Waters

1. Authority to Board Suspect Vessels. Whenever the Security Force Officials of one Party ("the requesting Party") encounter a suspect vessel claiming nationality in the other Party ("the requested Party") located seaward of any State's territorial sea, the requesting Party may request through the Competent Authority of the requested Party that it:

    a. confirm the claim of nationality of the suspect vessel; 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 Security Force Officials of the requesting Party; and

ii. if evidence of proliferation is found, authorize the Security Force Officials of the requesting Party to detain the vessel, as well as items and persons on board, pending instructions conveyed through the Competent Authority of the requested Party as to the actions the requesting Party is permitted to take concerning such items, persons and vessels.

2. Contents of Requests. Each request should contain the name of the suspect vessel, the basis for the suspicion, the geographic position of the vessel, the IMO number if available, the homeport, 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 by facsimile or e-mail as soon as possible. the requested Party shall acknowledge to the Competent Authority of the requesting Party in writing by e-mail or facsimile its receipt of any written or oral request immediately upon receiving it.

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 Security Force Officials;

ii. authorize the boarding and search by the Security Force 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 through its Competent Authority requests made for the verification of nationality within four hours of its acknowledgment of the receipt of such requests.The requesting Party shall acknowledge to the Competent Authority of the requested Party in writing by e-mail or facsimile its receipt of any written or oral response from the Requesting Party immediately upon receiving it.

c. If the nationality is not verified within the four hours, the requested Party may, through its Competent Authority:

i. nevertheless authorize the boarding and search by the Security Force Officials of the requesting Party; or

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

d. If there is no response from the Competent Authority of the requested Party within four hours of its acknowledgment of 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 proliferation by sea.

4. Right of Visit. Notwithstanding the foregoing paragraphs of this Article, the Security Force Officials of one Party ("the first Party") are authorized to board suspect vessels claiming nationality in the other Party that are not flying the flag of the other Party, 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, the foregoing paragraphs of this Article apply. If no documentation or other physical evidence of nationality is available, the other Party will not object to the first Party assimilating the vessel to a ship without nationality consistent with international law.

5. Use of Force. the authorization to board, search and detain includes the authority to use force in accordance with Article 9 of this Agreement.

6. Shipboarding Otherwise in Accordance with International Law. This Agreement does not limit the right of either Party to conduct boardings of vessels or other activities consistent with international law whether based, *inter alia*, on the right of visit, the rendering of assistance to persons, vessels, and property in distress or peril, or an authorization from the Flag or Coastal State, of any other party, or other appropriate bases in international law.

## Article 5
## Exercise of Jurisdiction over Detained Vessels, as well as Items and Persons on Board

1. Jurisdiction of the Parties. In all cases covered by Article 4 concerning the vessels of a Party located seaward of any State's territorial sea, that Party

shall have the primary right to exercise jurisdiction over a detained vessel, cargo or other items and persons on board (including seizure, forfeiture, arrest, and prosecution), provided, however, that the Party with the right to exercise primary jurisdiction may, subject to its Constitution and laws, waive its primary right to exercise jurisdiction and authorize the enforcement of the other Party's law against the vessel, cargo or other items and persons on board.

2. Jurisdiction in the contiguous zone of a Party. In all cases not covered by Article 4 involving the vessel of a Party that arise in the contiguous zone of a Party and in which both parties have authority to board and to exercise jurisdiction to prosecute--

   a. except as provided in paragraph (b), the Party which conducts the boarding shall have the primary right to exercise jurisdiction.

   b. in cases involving suspect vessels fleeing from the territorial sea of a Party in which that Party has the authority to board and to exercise jurisdiction, that Party shall have the primary right to exercise jurisdiction.

3. Disposition Instructions. Consultations as to the exercise of jurisdiction pursuant to paragraphs 1 and 2 of this Article shall be undertaken without delay between the Competent Authorities.

4. Form of waiver. Where permitted by the Constitution and laws of a Party, 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 appropriate diplomatic channel, without prejudice to the immediate exercise of jurisdiction over the suspect vessel by the other Party.

## Article 6
## Exchange of Information and Notification of Results of Actions of the Security Forces

1. Exchange of Operational Information. the Security Forces of both Parties shall endeavor to exchange operational information on the detection and location of suspect vessels and shall maintain communication with each other as necessary to carry out the purpose of this Agreement.

2. Notification of Results. A Party conducting a boarding and search pursuant to this Agreement shall promptly notify the other Party of the results thereof through their Competent Authorities.

3. Status Reports. the relevant Party, in compliance with its laws, shall timely report to the other Party, through their Competent Authorities, on the status of all investigations, prosecutions and judicial proceedings and other actions and processes, arising out of the application of this Agreement.

**Article 7**
**Conduct of Security Force Officials**

1. Compliance with Law and Practices. Each Party shall ensure that its Security Force Officials, when conducting boardings and searches pursuant to this Agreement, act in accordance with its applicable national laws and policies and consistent 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 Security Force Officials from Security Force vessels and vessels and aircraft embarked on or otherwise supporting such Security Force vessels, as well as by vessels and aircraft of third States as agreed between the Parties.

   b. The boarding and search teams may operate from Security Force vessels of the Parties and from such vessels of other States, according to arrangements between the Party conducting the operation and the State providing the vessel and notified to the other Party.

   c. The boarding and search teams may carry arms.

**Article 8**
**Safeguards**

1. Where a Party takes measures against a vessel in accordance with this Agreement, it shall:

   a. take due account of the need not to endanger the safety of life at sea, including, but not limited to:

i. taking precautions not to hazard unduly the vessel or the vessel's crew while boarding; and

ii. taking account of vessel location, *e.g.,* in a traffic separation scheme, to avoid inadvertently endangering other vessels in the vicinity in the course of boarding;

b. take due account of the security of the vessel and its cargo;

c. not prejudice the commercial or legal interests of the Flag State;

d. ensure within available means, that any measure taken with regard to the vessel is environmentally sound under the circumstances;

e. ensure that persons on board are afforded the protections, rights and guarantees provided by international law and the boarding State's law and regulations;

f. ensure that the master of the vessel is, or has been, afforded the opportunity to contact the vessels' owner, manager or Flag State at the earliest opportunity and provided the necessary information to file a claim pursuant to Article 13, paragraph 2.

2. Reasonable efforts shall be taken to avoid a vessel being unduly detained or delayed.

**Article 9**
**Use of Force**

1. All uses of force pursuant to this Agreement shall be in strict accordance with the applicable laws and policies of the Party conducting the boarding and applicable international law.

2. Each Party shall avoid the use of force except when and to the degree necessary to ensure the safety of Security Force vessels and officials and where Security Force Officials are obstructed in the execution of their duties.

3. Only that force reasonably necessary under the circumstances may be used.

4. Boarding and search teams and Security Force vessels have the inherent right to use all available means to apply that force reasonably necessary to defend themselves or others from physical harm.

**Article 10**
**Exchange and Knowledge of Laws and Policies of Other Party**

1. Exchange of Information. To facilitate implementation of this Agreement, each Party shall endeavor to ensure the other Party is appropriately informed of its respective applicable laws and policies, particularly those pertaining to the use of force.

2. Knowledge. Each Party shall endeavor to ensure that its Security Force Officials are knowledgeable concerning the applicable laws and policies in accordance with this Agreement.

**Article 11**
**Points of Contact**

1. Information. Each Party shall inform the other Party, and keep current, the points of contact for communication, decision and instructions under Articles 4 and 5, and notifications under Articles 6 and 10 of this Agreement. Such information shall be updated by and exchanged between the Competent Authorities.

2. Availability. the Parties shall ensure that the points of contact have the capability to receive, process and respond to requests and reports at any time.

**Article 12**
**Disposition of Seized Property**

1. Except as otherwise agreed by the Parties, cargo and other items seized in consequence of operations undertaken onboard vessels subject to the jurisdiction of a Party pursuant to this Agreement, shall be disposed of by that Party in accordance with its laws.

2. The Party exercising jurisdiction may, in any case, transfer forfeited cargo and other items or proceeds of their sale to the other Party. Each transfer

generally will reflect the contribution of the other Party to facilitating or effecting the forfeiture of such assets or proceeds.

**Article 13**
**Claims**

1. Injury or Loss of Life. Any claim for injury to or loss of life of a Security Force Official of a Party while carrying out operations arising from this Agreement shall normally be resolved in accordance with the laws of that Party.

2. Other Claims. Any other claim submitted for damage, harm, injury, death or loss, including for loss or damage suffered as a result of a vessel being unduly detained or delayed as provided in Regulation XI-2/9.3.5.1 annexed to the International Convention for the Safety of Life at Sea, 1974 as amended, resulting from an operation carried out by a Party under this Agreement shall be resolved in accordance with the domestic law of that Party, and in a manner consistent with international law, provided the vessel has not committed any act justifying the measures taken. All such claims shall be forwarded to the relevant addressees included in the information provided pursuant to Article 8, paragraph 1(f).

3. Consultation. If any damage, harm, injury, death or loss is suffered as a result of any action taken by the Security Force Officials of one Party in contravention of this Agreement, or any improper or unreasonable action is taken by a Party pursuant thereto, the Parties shall, without prejudice to any other legal rights which may be available, consult at the request of either Party to resolve the matter and decide any questions relating to compensation or payment.

**Article 14**
**Disputes and Consultations**

1. Disputes. Disputes arising from the interpretation or implementation of this Agreement shall be settled by mutual agreement of the Parties.

2. Evaluation of Implementation. the Parties agree to consult as necessary to evaluate the implementation of this Agreement and to consider enhancing its effectiveness. the evaluation shall be carried out at least once a year.

3. Resolving Difficulties. In case a difficulty arises concerning the operation of this Agreement, either Party may request consultations with the other Party to resolve the matter.

**Article 15**
**Effect on Rights, Privileges and Legal Positions**

Nothing in this Agreement:

a. shall alter the rights and privileges due any person in any administrative or judicial proceeding conducted under the jurisdiction of either Party.

b. shall prejudice the position of either Party with regard to international law.

**Article 16**
**Cooperation and Assistance**

1. The Competent Authority of one Party may request, and the Competent Authority of the other Party may authorize, Security Force Officials to provide technical assistance, such as specialized assistance in the conduct of search of suspect vessels, for the boarding and search of suspect vessels located in the territory or waters of the requesting Party.

2. Nothing in this Agreement precludes a Party from authorizing the other Party to suppress proliferation in its territory, waters or airspace, or to take action involving suspect vessels or aircraft claiming its nationality, or from providing other forms of cooperation to suppress proliferation.

**Article 17**
**Entry into Force and Duration**

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

2. Provisional Application. Beginning on the date of signature of this Agreement, the Parties shall apply it provisionally. Either Party may discontinue provisional application at any time. Each Party shall notify the

other Party immediately of any constraints or limitations on provisional application, of any changes to such constraints or limitations, and upon discontinuation of provisional application.

3. Termination. This Agreement may be terminated by either Party upon written notification of such termination to the other Party through the diplomatic channel, termination to be effective one year from the date of such notification.

4. Continuation of Actions Taken. This Agreement shall continue to apply after termination with respect to any administrative or judicial proceedings regarding actions that occurred during the time the Agreement was in force.

**Article 18**
**Rights for Third States**

1. The Parties agree that the Government of the Republic of the Marshall Islands may extend, *mutatis mutandis*, all rights concerning suspect vessels claiming its nationality under the present Agreement to such third States as it may deem appropriate, on the understanding that such third States shall likewise comply with all conditions set forth in the present Agreement for the exercise of such rights, and on the understanding that the Government of the Republic of the Marshall Islands and such third States agree on the designation of points of contact in accordance with Article 11.

2. Such third States shall enjoy rights and be subject to all conditions governing their exercise as set forth in paragraph 1 of this Article, effective on the date of notification by the third State to the Government of the Republic of the Marshall Islands that it will comply with the conditions for the exercise of those rights.

3. Such rights shall be revocable by the Government of the Republic of the Marshall Islands or renounceable by the third State in writing. Such rights shall be revoked, and the conditions governing their exercise shall cease to apply, effective on the date of notification.

4. Such rights shall be subject to modification by mutual concurrence in writing of the Government of the Republic of the Marshall Islands and the third State. Upon establishment of such mutual written concurrence, such rights shall be modified on a mutually agreed date, which shall be specified in the written concurrence.

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

DONE at Honolulu, this thirteenth day of August, 2004, in duplicate, both texts being equally authentic.

FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA:

FOR THE GOVERNMENT
OF THE REPUBLIC
OF THE MARSHALL ISLANDS: