WEAPONS

Proliferation

Agreement Between the
UNITED STATES OF AMERICA
and ANTIGUA AND BARBUDA

Signed at St. John's April 26, 2010

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

ANTIGUA AND BARBUDA

Weapons: Proliferation

Agreement signed at St. John's April 26, 2010;
Entered into force September 27, 2010.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF ANTIGUA AND BARBUDA 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 Antigua and Barbuda (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 United Nations 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;

Mindful of 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 at the International Maritime Organization on 12 December 2002 by the Conference of the Contracting Governments of the International Convention for the Safety of Life at Sea, 1974, as amended;

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

Convinced that trafficking in WMD, their delivery systems, and related 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;

Welcoming the adoption of the 2005 Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) by the International Conference on the Revision of the SUA Treaties on 14 October 2005;

Bearing in mind the longstanding cooperation between the Parties in law enforcement and defence matters evidenced by the Agreement between the Government of the United States of America and the Government of Antigua and Barbuda Concerning Maritime Counter-Drug Operations, signed at St. John's, 19 April 1995, as amended;

Reaffirming the importance of customary international law of the sea as reflected in the 1982 United Nations Convention on the Law of the Sea;

Committed to cooperation to stop the flow by sea of WMD, their delivery systems, and related materials;

Have agreed as follows:

Article 1
Definitions

In this Agreement, unless the context otherwise requires:

1. "Proliferation by sea" means the illicit transportation by vessels of items of proliferation concern to or from States or non-state actors of proliferation concern.

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

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

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

5. "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.

6. "Security Force Officials" means:

    a. For the Government of the United States of America, uniformed or otherwise clearly identifiable members of the United States Coast Guard and the United

States Navy, who may be accompanied by clearly identifiable law enforcement officials of the Departments of Homeland Security and Justice, and other clearly identifiable officials duly authorized by the Government of the United States of America and notified to the Competent Authority of Antigua and Barbuda; and

b. For Antigua and Barbuda, uniformed or otherwise clearly identifiable members of the Antigua and Barbuda Defense Force, who may be accompanied by clearly identifiable law enforcement officials, and/or other clearly identifiable officials duly authorized by the Government of Antigua and Barbuda and notified to the Competent Authority of the United States.

7. "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.

8. "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.

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

10. "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 Antigua and Barbuda, the Chief of Defense Staff of the Antigua and Barbuda Defense Force (including any officer designated by the Chief of Defense Staff to perform such functions).

Article 2
Object and Purpose of Agreement

1. The object of this Agreement is to promote cooperation between the Parties to enable them to prevent proliferation by sea of ítems 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 sovereign equality and territorial integrity of States, and non-intervention in the domestic affairs of other States.

3. The Parties shall cooperate with each other under this Agreement to the fullest extent possible consistent with the principles of international law and applicable national laws, subject to the availability of resources.

Article 3
Cases of Suspect Vessels

1. Subject to paragraph 2 of this Article, operations in international waters to suppress proliferation by sea pursuant to this Agreement shall be carried out only against suspect vessels:

   a. having, or otherwise claiming, the nationality of one of the Parties and entitled to fly its flag, or

   b. registered under the law of one of the Parties under a bareboat charter, notwithstanding an underlying registration in another State not Party to this Agreement, or

   c. without nationality or assimilated to vessels without nationality.

2. Such operations shall not be carried out under this Agreement against vessels registered under the law of one of the Parties while bareboat chartered 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 in international waters, the requesting Party shall request through the Competent Authority of the requested Party that it:

   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 Security Force Officials of the requesting Party; and

      ii. if evidence of proliferation by sea is found, authorize the Security Force Officials of the requesting Party to detain the vessel, cargo, and persons on board, pending instructions conveyed through the Competent Authority of the requested Party as to the exercise of jurisdiction in accordance with Article 5 of this Agreement.

2. Contents of Requests. Each request shall contain the basis for the suspicion, the geographic position of the vessel, and, if available, the name of the suspect vessel, the registration number, the IMO number, 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 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 confirmed, 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. A requested Party shall answer through its Competent Authority requests made for the confirmation of nationality within two (2) hours of the receipt of the initial request.

   c. If the nationality is not confirmed within the two (2) hours, the requested Party may, through its Competent Authority:

      i. nevertheless stipulate that it does not object to 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 two (2) 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 whether it is engaged in proliferation by sea.

4. Right of Visit. Notwithstanding the foregoing paragraphs of this Article, the Security Force Officials of the requesting Party are authorized to board suspect vessels claiming nationality in the requested Party that are not flying the flag of the requested 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 requesting Party may assimilate the vessel to a ship without nationality in accordance 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. Authority to Detain Suspect Vessels. If evidence of proliferation by sea is found, the Security Force Officials of the requesting Party may detain the vessel, cargo, and persons on board pending expeditious disposition instructions from the requested Party.

7. 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, the consent of the vessel's master, or an authorization from the flag or coastal State.

8. Notification to the Master. Prior to the boarding being conducted, the requested Party may, in coordination with the requesting Party, transmit to the Master of the suspect vessel notice that it has authorized the requesting Party to board the suspect vessel, and the requesting Party shall, to the extent possible, facilitate any request from the Master to contact the appropriate officials of the requested Party to confirm authorization to board in accordance with Article 8.1.f.

Article 5
Jurisdiction over Detained Vessels

1. Jurisdiction of the Parties. In all cases covered by Article 4 concerning the vessels of a party ("the flag State") located in international waters, primary jurisdiction rests with the flag State over the detained vessel, cargo or other items, and persons on board (including seizure, forfeiture, arrest, and prosecution). However, the flag State may, subject to its Constitution and laws, waive its primary right to exercise jurisdiction and consent to exercise of jurisdiction by the other Party in accordance with the provisions of this Agreement.

2. Jurisdiction in the contiguous zone of a Party. In cases arising in the contiguous zone claimed by a Party and in which both Parties have the authority to board and exercise jurisdiction, the following procedures apply:

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

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

4. Consent. A Party's consent to the exercise of jurisdiction may be granted orally, 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 Competent Authorities of both Parties shall 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. Each Party shall, on a regular basis and consistent with its Constitution, laws and regulations, inform the other Party, through their Competent Authorities, on the status of all investigations, prosecutions, and judicial proceedings resulting from the enforcement action taken pursuant to this Agreement where evidence of proliferation by sea was found.

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 with international law and accepted international practices.

2. Boarding and Search Teams shall be guided by the following procedures in the conduct of operations:

    a. Boarding and search teams shall be composed of Security Force Officials who may be assisted by crew members from Security Force vessels, including the vessels of third States as agreed between the Parties. Such personnel, when assisting Security Force Officials, shall be subject to the provision of this Agreement governing the conduct and operations of Security Force Officials.

    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 standard law enforcement arms.

Article 8
Safeguards

1. Where a Party conducts a boarding or search, or takes any other measures against a suspect vessel or persons on board, pursuant to this Agreement, that Party shall:

   a. take due account of the need not to endanger the safety of life at sea;

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

   c. take due account not to prejudice the commercial or legal interests of the Flag State;

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

   e. ensure that all persons on board are treated in a manner that preserves their basic human dignity and in compliance with the applicable provisions of international law, including international human rights law;

   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.

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

Article 9
Use of Force

1. When carrying out the authorized actions under this Agreement, the use of force shall be avoided except when necessary to ensure the safety of its Security Force Officials and persons on board, or where the Officials are obstructed in the execution of the authorized actions.

2. Any use of force pursuant to this Agreement shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.

3. Nothing in this Agreement shall impair the exercise of the inherent right of self-defense by Security Force Officials of either Party.

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 ensure the other Party is fully informed of its respective applicable laws and policies, particularly those pertaining to the use of force.

2. Knowledge. Each Party shall 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 identify to the other Party, and keep current, the points of contact for communication, decision, and instructions under Articles 4, 5, and 16, 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. Assets seized, confiscated, or forfeited in consequence of operations undertaken on board vessels subject to the jurisdiction of a Party in accordance with Article 5 of this Agreement shall be disposed of in accordance with the laws of that Party.

2. To the extent permitted by its laws and upon such terms as it deems appropriate, the seizing Party may, in any case, transfer forfeited assets 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.

3. Nothing in this Article shall prevent a party from transferring WMD, their delivery systems, or related materials to the other Party for safeguarding from onward proliferation and destruction.

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 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.

3. Consultation. If any loss, injury, or death 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.

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
Rights, Privileges, and Legal Positions

Nothing in this Agreement:

a. alters the rights and privileges due to any individual in any administrative or judicial proceeding conducted under the jurisdiction of either Party;

b. shall prejudice the position of either Party with regard to the international law of the sea, or affect the territorial or maritime boundaries or claims of either Party, as between them or with third States.

Article 16
Cooperation and Specialized 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 specialized assistance, such as in the conduct of boarding and search of suspect vessels located in the territory or waters of the requesting Party.

2. Specialized assistance under this Article may include training in the recognition, detection, safe-handling, and disposal of the items within the scope of this Agreement.

3. Nothing in this Agreement shall preclude 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.

4. The Parties may, on a case-by-case basis, consider extending the procedures of this agreement to the boarding of suspect vessels when those vessels are located in the territorial sea of a third State and that State has authorized entry for boarding.

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. This Agreement may be amended at any time after it enters into force by agreement of the Parties. The amendment shall enter into force in the manner provided for in paragraph 1 of this Article.

3. Termination. This Agreement may be terminated by either Party upon written notification of such termination to the other Party through the appropriate diplomatic channel. Such termination shall take effect six months 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 Antigua and Barbuda 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 subject to agreement by that Party and such third States 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 a notification by the third State to that Party that it will comply with the conditions for the exercise of those rights.

3. Such rights shall be revocable by that Party or 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 that Party and the third State. Upon establishment of such mutual written concurrence by that Party and the third State in question, such rights shall be modified effective on the date agreed between that Party and the third State.

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

DONE AT St. John's, Antigua, this 26th day of April, 2010, in duplicate, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA :

FOR THE GOVERNMENT OF ANTIGUA AND BARBUDA: