

MARITIME MATTERS

Law Enforcement and Shiprider

**Agreement Between the
UNITED STATES OF AMERICA
and FIJI**

Signed at Suva November 12, 2018

Entered into force November 12, 2018



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.”

AGREEMENT
BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF FIJI
AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA
CONCERNING COUNTER ILLICIT TRANSNATIONAL MARITIME
ACTIVITY OPERATIONS

The Government of the Republic of Fiji and the Government of the United States of America (hereafter, the "Parties");

BEARING IN MIND the complex nature of the problem of detecting, deterring, and suppressing illegal activity at sea, including, without limitation, fisheries offenses and illicit maritime drug trafficking;

RECALLING that conventional international law requires concerted international effort to prevent and suppress illicit drug trafficking, particularly in view of the fact that narcotic drugs and psychotropic substances pose a serious threat to health and the welfare of human beings, adversely affect the economic, cultural, and political foundations of society, and threaten the stability, security, and sovereignty of States;

RECALLING the International Convention for the Safety of Life at Sea, 1974, with annex (hereinafter, "the SOLAS Convention") and international law as reflected in the 1982 United Nations Convention on the Law of the Sea (hereinafter, "the 1982 Law of the Sea Convention");

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, and in the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter, "the 1988 Convention");

HAVING FURTHER REGARD to the urgent need for international cooperation to prevent and combat transnational organized crime, as reflected in the United Nations Convention against Transnational Organized Crime (hereinafter, "2000 UNTOC");

HAVING FURTHER REGARD to the urgent need for international cooperation in suppressing the trafficking in persons, as reflected in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing United Nations Convention against Transnational Organized Crime, signed at Palermo, December 12-15, 2000 (hereinafter, "the Palermo Protocol");

HAVING FURTHER REGARD to the urgent need for international cooperation in suppressing the smuggling of migrants by sea, as reflected in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, signed at Palermo, December 12-15, 2000 (hereinafter, "the Palermo Protocol") and in United Nations General Assembly Resolution 48/102, adopted December 20, 1993; and in suppressing the unsafe transport of migrants, as reflected in International Maritime Organization (IMO) Circular MSC/Circ.896, December 16, 1998; in IMO Resolutions A.867(20), adopted November 27, 1997, and A.773(18), adopted November 4, 1993;

ACKNOWLEDGING the international obligations of the Parties under the 1963 Vienna Convention on Consular Relations, and noting the principle of non-refoulement reflected in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereinafter, "the Refugee Convention and Protocol") and in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

RECALLING that Article 17 of the 1988 Convention provides, inter alia, that the Parties shall cooperate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea, and shall consider entering into bilateral and regional agreements to carry out, or to enhance the effectiveness of, the provisions of Article 17;

FURTHER RECALLING that paragraph 9 of IMO Circular MSC/Circ. 896 and Article 17 of the Palermo Protocol call on Parties to consider the conclusion of bilateral agreements, or operational arrangements or understandings, aimed at establishing the most appropriate and effective measures respectively to prevent and combat unsafe transport of migrants, and to prevent and combat smuggling of migrants;

HAVING FURTHER REGARD to the urgent need for international cooperation in preventing proliferation of weapons of mass destruction, as reflected in United Nations Security Council Resolution 1540 of 2004, which affirmed that proliferation of nuclear, chemical and biological weapons, and their means of delivery, constitutes a threat to international peace and security and reaffirmed the need for Member States to prevent proliferation in all its aspects of all weapons of mass destruction;

RECALLING FURTHER the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris January 13, 1993; the Treaty on Nonproliferation of Nuclear Weapons, done at Washington, London and Moscow July 1, 1968; 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 April 10, 1972;

RECALLING the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted on August 4, 1995;

DESIRING TO promote greater cooperation between the Parties, and thereby enhance their effectiveness, in detecting illicit transnational maritime activity; and

BASED ON the principles of international law, respect for the sovereign equality of States and in full respect of freedom of navigation and overflight and other lawful uses of the sea as reflected in the 1982 Law of the Sea Convention;

Have agreed as follows:

I. Purpose and Scope

1. The Parties shall cooperate to the fullest extent possible in combating illicit transnational maritime activity, as defined in this Agreement, consistent with international law and the Parties' available law enforcement resources and priorities related thereto. This shall include the sharing of information between the Parties concerning specific instances of illicit transnational maritime activity by sea and air.
2. Counter-illicit transnational maritime activity operations in the territory of the United States of America are the responsibility of, and subject to the authority of, the Government of the United States of America.
3. Counter-illicit transnational maritime activity operations in the territory of the Republic of Fiji are the responsibility of, and subject to the authority of, the Government of the Republic of Fiji.
4. Except as authorized pursuant to Articles IV and V, nothing in this Agreement shall be construed as authorizing a law enforcement vessel or law enforcement aircraft of one Party to unilaterally patrol within the territory of the other Party.
5. Operations to suppress illicit transnational maritime activity shall be carried out only against suspect vessels, including vessels without nationality and vessels assimilated to vessels without nationality.

II. Definitions

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

1. "Contiguous Zone" has the same meaning as in Article 33 of the 1982 Law of the Sea Convention;
2. "Illegal entry" means crossing borders without complying with the necessary requirements for legal entry into the territory of a Party;
3. "Illegal, Unreported, and Unregulated Fishing" or "IUU Fishing" refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;
4. "Illicit Transnational Maritime Activity" means drug trafficking, migrant smuggling, the unsafe transportation of migrants, proliferation by sea of weapons of mass destruction and their delivery systems and any related materials, and IUU Fishing, to the extent enforcement is authorized by the laws of both Parties;
5. "Law enforcement aircraft" means aircraft of the Parties, including military aircraft and other aircraft clearly marked and identifiable as being on government non-commercial service and authorized to that effect on which law enforcement or other officials of either or both Parties are embarked, engaged in law enforcement operations or operations in support of law enforcement activities;
6. "Law enforcement authorities" means:
 - a. For the Government of the United States of America, the United States Coast Guard and the Department of Homeland Security; and
 - b. For the Government of the Republic of Fiji, the Ministry of Fisheries and Forests or the Ministry of Defence and National Security;
7. "Law enforcement 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
 - b. For the Government of the Republic of Fiji, uniformed or otherwise clearly identifiable licensing officers, police officers, customs officers, honorary fish wardens, and any other officer empowered to enforce the laws of Fiji by the Minister for Fisheries and Forests or by the Minister of Defence and National Security;
8. "Law enforcement vessels" means warships and other vessels of the Parties, clearly marked and identifiable as being on government service and authorized to that effect,

including any boat or aircraft embarked on such vessels, as well as third Party platforms aboard which law enforcement officials of the Parties are embarked;

9. "Migrant" means a person attempting to enter illegally, or being transported for the purpose of entering illegally, into the territory of a Party of which the person is not a national or permanent resident;

10. "Migrant smugglers" means persons engaged in smuggling of migrants;

11. "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;

12. "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 weapons of mass destruction;

13. "Shiprider" means a law enforcement official of one Party authorized to embark on a law enforcement vessel or aircraft of the other Party;

14. "Shiprider Program Coordinator" means, for the Government of the United States of America, the Commander, Seventh Coast Guard District, for operations in the Caribbean Basin, the Commander, Eleventh Coast Guard District, for operations in the Eastern Pacific, the Commander, Fourteenth Coast Guard District, for operations in the Western and Central Pacific, and/or the Commander, Atlantic Area, for operations in the Eastern Atlantic and for the Government of the Republic of Fiji, the Ministry of Foreign Affairs;

15. "Smuggling of migrants" or "migrant smuggling" means the procurement or attempted procurement of the illegal entry of a person into the territory of a Party of which the person is not a national or a permanent resident, including where such conduct is intended to obtain a financial or other material benefit;

16. "Suspect aircraft" means an aircraft used for commercial or private purposes in respect of which there are reasonable grounds to suspect that it is engaged in illicit transnational maritime activity;

17. "Suspect vessel" means a vessel used for commercial or private purposes for which there are reasonable grounds to suspect is engaged in illicit transnational maritime activity;

18. The "territory" of the Parties means:

- a. For the Government of the United States of America, the territory, internal waters, territorial sea, and airspace over such territory and waters, in accordance with international law;
- b. For the Government of the Republic of Fiji, the territory, internal waters, territorial sea, archipelagic waters, and airspace over such territory and waters, in accordance with international law;

19. "Unsafe transport of migrants" means, with regard to transport by sea, the carriage of migrants on board a vessel that is:

- a. Operating in conditions which violate fundamental principles of safety of life at sea, including but not limited to those of the SOLAS Convention; or
- b. Not properly manned, equipped or licensed for carrying passengers on international voyages;

and that thereby constitutes a serious danger for the lives or the health of the persons on board, including the conditions for embarkation and disembarkation;

20. "Vessel" means any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service;

21. "The Waters of a Party" or "Waters of a State" means the territorial sea of that State and, with respect to Fiji, its archipelagic waters, determined in accordance with international law as reflected in the 1982 Law of the Sea Convention and, where an operation relates to the sovereign rights or jurisdiction of the State with respect to fisheries resources, the exclusive economic zone and continental shelf of the State, in accordance with international law as reflected in the 1982 Law of the Sea Convention; and

22. "Weapons of mass destruction" or "WMD" means nuclear, chemical, biological and radiological weapons.

IF AERIAL SURVEILLANCE CONTEMPLATED:

23. "Aircraft riders" shall refer to representatives of cooperating host or third states who are invited to participate in aerial sorties to facilitate the performance of aerial counter-illicit transnational maritime activity detection, monitoring, and tracking missions in connection with this agreement.

24. "Contractors" means business entities and individuals that have entered into contracts with the United States Government in connection with this agreement.

25. "Contractor employees" means those individuals who are employed by any contractor, as defined in this agreement, who are present in the Republic of Fiji in connection with this agreement, and who are not nationals of, or normally resident in, the Republic of Fiji.

26. "Facilities" means those sites, installations, structures, and areas to which the United States is authorized access and use, pursuant to the terms of this agreement, and any amendments thereto.

III. Shiprider Program

1. The Parties shall establish a law enforcement shiprider program between the law enforcement authorities of the United States of America and the law enforcement authorities of the Republic of Fiji.

2. The Parties may designate qualified law enforcement officials to act as law enforcement shipriders. Subject to the Constitution and laws of the Parties, these shipriders may, in appropriate circumstances:

- a. Embark on law enforcement vessels of the other Party;
- b. Authorize the pursuit, by the law enforcement vessel on which they are embarked, of suspect vessels fleeing into the territory of the shiprider's State;
- c. Authorize law enforcement officials to assist the shiprider in the conduct of boardings of vessels to enforce the laws of the shiprider's State;
- d. Enforce, seaward of the territorial sea of either Party, the laws of the shiprider's State where authorized to do so;
- e. Seaward of the territorial sea of either Party, authorize the law enforcement vessel on which they are embarked to assist in the enforcement of the laws of the shiprider's State;
- f. Authorize the law enforcement vessel on which they are embarked to conduct counter-illicit transnational maritime activity patrols in the territorial sea and, as applicable, the archipelagic waters of the shiprider's State;
- g. Enforce the laws of the shiprider's State in that State's territorial sea, or seaward therefrom, in the exercise of the right of hot pursuit or otherwise in accordance with international law; and

- h. Authorize the law enforcement authorities aboard the vessel on which the shiprider is embarked to assist in the enforcement of the laws of the shiprider's State in the Waters of the shiprider's State.
3. When a shiprider is embarked on the other Party's vessel, and the enforcement action being carried out is pursuant to the shiprider's authority, any search or seizure of property, any detention of a person, and any use of force pursuant to this Agreement, whether or not involving weapons, shall be carried out by the shiprider, except as follows:
 - a. Crew members of the other Party's vessel may assist in any such action if expressly requested to do so by the shiprider and only to the extent and in the manner requested. Such request may only be made, agreed to, and acted upon in accordance with the applicable laws and policies of both Parties; and
 - b. Such crew members may use force in self-defense, in accordance with the applicable laws and policies of their Government.
 4. When a shiprider is embarked on the other Party's vessel, and subject to the availability of appropriated funds and resources, the other Party shall facilitate regular communications between the shiprider and the shiprider's headquarters and shall provide messing and quarters for the shiprider in a manner consistent with law enforcement officials of the other Party of the same rank.

IV. Operations in the Territorial Sea and Archipelagic Waters of the Republic of Fiji

1. Neither Party shall conduct counter-illicit transnational maritime activity operations in the territorial sea and archipelagic waters of the other Party without permission from that Party, granted by this Agreement or otherwise. This Agreement constitutes permission by the Government of the Republic of Fiji for the Government of the United States of America to conduct counter-illicit transnational maritime activity operations in the territorial sea and archipelagic waters of the Republic of Fiji in any of the following circumstances:
 - a. An embarked shiprider so authorizes;
 - b. A suspect vessel, encountered seaward of the territorial sea of a Party, flees into the territorial sea or archipelagic waters of the Republic of Fiji, and is pursued therein by a law enforcement vessel of the United States without a shiprider embarked, in which case any suspect vessel may be boarded and searched, and, if the evidence warrants, detained pending disposition instructions from the coastal State's authorities; and

- c. A shiprider is unavailable to embark on a law enforcement vessel of the United States, in which case the law enforcement vessel may enter the territorial sea and archipelagic waters of the Republic of Fiji in order to investigate or board and search any suspect vessel, other than a flag vessel of the Republic of Fiji, and, if the evidence warrants, detain any such vessel pending disposition instructions from the coastal State's authorities.
2. Nothing in this Agreement precludes the Republic of Fiji from otherwise expressly authorizing operations by the United States in its territorial sea or, in waters beyond the territorial sea of any State, aboard its flag vessels suspected of illicit transnational maritime activity.

V. Overflight and Order-to-Land Operations and Procedures

1. The Republic of Fiji shall permit law enforcement aircraft of the United States to:
 - a. Overfly the territory of the Republic of Fiji;
 - b. Land and remain in national airports on the occasions and for the time necessary for proper performance of the operations necessary under this Agreement, including logistics items; and
 - c. Transmit orders from the competent authorities of either Party to suspect aircraft to land in the territory of the Republic of Fiji, subject to the laws of each Party.
2. In the interest of flight safety, the Parties shall observe the following procedures to facilitate overflight of the Republic of Fiji's territory:
 - a. In the event of planned bilateral or multilateral law enforcement operations, the Parties shall provide reasonable notice, communications channels, and a flight plan to the appropriate aviation authority of the Republic of Fiji of planned flights by its aircraft over the territory (including the territorial sea and, as appropriate, archipelagic waters) of the Republic of Fiji.
 - b. In the event of unplanned operations, which may include the pursuit of suspect aircraft over the territorial sea and archipelagic waters of the Republic of Fiji pursuant to this Agreement, the law enforcement and appropriate aviation authorities of the Parties shall exchange information concerning communications channels and other information pertinent to flight safety.
 - c. Any aircraft engaged in law enforcement operations or operations in support of law enforcement activities pursuant to this Agreement shall comply with such air navigation and flight safety rules as may be required by aviation authorities of the Parties, and with any written operating procedures

developed pursuant to this Agreement for flight operations within its national airspace.

Except as otherwise provided in this agreement, law enforcement aircraft of a Party shall not enter the national airspace of the other Party without express authorization of that Party.

VI. Operations Seaward of the Territorial Sea

1. 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, seaward of any State's territorial sea, whether based on, *inter alia*, 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.
2. Whenever law enforcement authorities of the United States encounter a suspect vessel flying the flag of the Republic of Fiji or claiming to be registered in the Republic of Fiji, located seaward of any State's territorial sea, this Agreement constitutes the authorization by the Republic of Fiji for the boarding and search of the suspect vessel and the persons found on board by such officials.

If evidence of illicit transnational maritime activity is found pursuant to this paragraph, law enforcement authorities may detain the vessel and persons on board pending expeditious disposition instructions from the Government of the Republic of Fiji.

VII. Steps for Verification of Nationality

1. Whenever the law enforcement officials of one Party ("the requesting Party") encounter, seaward of any State's Waters, a suspect vessel claiming nationality in the other Party ("the requested Party"), the requesting Party may request that the law enforcement authority of the flag State:
 - a. Confirm the claim of nationality of the flag State; and
 - b. If such claim is confirmed, the flag State may:
 - 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 transnational maritime activity 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 VIII of this Agreement.
2. A request pursuant to paragraph 1 of this Article should contain as much of the following information as available: the name of the suspect vessel, the basis for the suspicion, the geographic position of the vessel, the registration or IMO number (if available), home port, the ports of origin, departure, 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. In all cases, following the verbal communications, the District Command Center will confirm them immediately, in writing by fax or e-mail using standard forms agreed to by the Parties.
3. A requested Party shall respond to requests pursuant to this Article as expeditiously as possible.

VIII. Jurisdiction Over Detained Vessels

1. In all cases arising in the territory of a Party, or seaward of any Party's Waters in respect of a vessel having the nationality of a Party, that Party shall have the primary right to exercise jurisdiction over a detained vessel, cargo, and persons on board, including seizure, forfeiture, arrest, and prosecution, provided, however, that that Party 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 and persons on board.
2. In cases arising in the contiguous zone of a Party, where applicable, not involving suspect vessels fleeing from the territory of that Party or suspect vessels claiming the nationality of that Party, in which both Parties have the authority to exercise jurisdiction to prosecute, the Party that conducts the boarding and search shall have the primary right to exercise jurisdiction.
3. Instructions as to the exercise of jurisdiction pursuant to paragraph 1 of this Article shall be given promptly.
4. A Party's consent to the exercise of jurisdiction by the other Party may be granted verbally, but as soon as possible, it shall be clearly communicated in writing through diplomatic channels, without prejudice to the immediate exercise of jurisdiction over the suspect vessel by the other Party.
5. Each Party agrees to permit the return of seaworthy vessels subject to its jurisdiction and take measures, consistent with the laws and regulations of the Party, to prevent any such vessel from again engaging in illicit transnational maritime activity.

6. Each Party confirms the importance of complying with its notification obligations under the Vienna Convention on Consular Relations.

IX. Special Procedures for Cases Involving the Unsafe Transport of Migrants by Sea and the Smuggling of Migrants

1. Each Party agrees no person found on board a suspect Vessel, including once disembarked, shall be involuntarily returned to a country in which:

- a. That person has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, except on grounds recognized as precluding protection as a refugee under the Refugee Convention and Protocol, or,
- b. It is more likely than not that the person would be tortured.

2. In all cases, including cases arising from operations to suppress unsafe transport of migrants by sea and smuggling of migrants in and over the waters of a Party, the Government of the Republic of Fiji agrees, upon prior notification, to facilitate and accept without undue or unreasonable delay the return pursuant to this Agreement, having Fijian nationality, citizenship, or permanent residence, and, regardless of their nationality or country of origin, to give due consideration to any request by U.S. law enforcement authorities to accept the return of migrants found aboard vessels, wherever located, subject to the jurisdiction of Fiji or operated by Fijian nationals.

3. Each Party agrees, where appropriate and to the extent permitted by its law, to prosecute migrant smugglers and to confiscate vessels involved in smuggling of migrants.

4. Each Party agrees to take appropriate action against masters, officers, crewmembers and other persons on board suspect vessels engaged in the unsafe transport of migrants by sea.

5. The relevant Party shall report unsafe or illegal practices associated with the smuggling or transport of migrants by sea and measures taken in accordance with the relevant guidance of the IMO.

X. International Maritime Interdiction Support

1. Each Party may permit, after request to and coordination with appropriate officials, on the occasions and for the time necessary for the proper performance of the operations required under this Agreement:

- a. The temporary mooring of law enforcement vessels of the other Party at national ports in accordance with international norms for the purpose of resupplying fuel and provisions, medical assistance, minor repairs, weather avoidance, and other logistics and purposes related to this Agreement;
- b. Entry by other means of additional law enforcement officials of the other Party;
- c. Entry of suspect vessels not having the nationality of either Party escorted from waters seaward of either Party's territorial sea by law enforcement officials of the other Party, subject to the requesting Party complying with any obligations with respect to the flag State in accordance with international law;
- d. Law enforcement aircraft operated by the other Party to land and temporarily remain at international airports in its territory for the purposes of resupplying fuel and provisions, medical assistance, minor repairs, weather, and other logistics and purposes related to this Agreement; and
- e. Law enforcement aircraft operated by the other Party to disembark and embark in its territory law enforcement officials of the other Party, including additional law enforcement officials.

2. The Government of the Republic Fiji may permit, after request to and coordination with appropriate officials, on the occasions and for the time necessary for the proper performance of the operations required under this Agreement:

- a. The escort of persons, other than its nationals, from suspect vessels detained and escorted by law enforcement officials from the United States through and exiting out of its territory; and
- b. Law enforcement aircraft of the United States to disembark and embark in its territory persons, including migrants, other than its nationals, from suspect vessels, and depart its territory with such persons on board.

XI. Technical Law Enforcement Assistance and Cooperation

1. In accordance with the applicable laws of the Parties, 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 specialized assistance, such as in the conduct of the search of suspect vessels, to law enforcement officials of the first Party for the boarding and search of suspect vessels located in the Waters of the first Party's State.

2. The Parties shall mutually consider the placement of liaison personnel and investigators within Embassy or military group personnel to facilitate law enforcement investigations, prosecutions, and information-sharing consistent with this Agreement.

XII. Conduct of Law Enforcement Officials

1. Each Party shall ensure that its law enforcement officials, when conducting boardings and searches pursuant to this Agreement, act in accordance with its applicable national laws and with international law. Such boardings and searches should be conducted in accordance with applicable national policies and accepted international practices.

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

- a. Boardings and searches pursuant to this agreement shall be carried out by law enforcement officials from law enforcement vessels or aircraft.
- b. The boarding and search teams may operate from law enforcement vessels or aircraft of the Parties.
- c. The boarding and search team may carry standard law enforcement arms.
- d. When conducting a boarding and search, law enforcement officials 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, and the importance of not prejudicing the commercial and legal interests of the flag State or any other interested State. Such officials shall also bear in mind the need for courtesy, respect and consideration for the persons on board the suspect vessel.

3. When conducting aviation activities pursuant to this Agreement, the Parties shall not endanger the lives of persons on board and the safety of civil aircraft.

XIII. Third Party Platforms

Vessels and aircraft of States other than the Parties, including warships and vessels clearly marked and identifiable as being on government non-commercial service and authorized to that effect with which either of the Parties have agreements or arrangements for countering illicit transnational maritime activities, are authorized by agreement of the Parties to operate pursuant to this Agreement.

XIV. Use of Force

1. All uses of force by a Party pursuant to this Agreement shall be in strict accordance with applicable laws of that Party and shall in all cases be reasonably necessary under the circumstances, except that neither Party shall use force against civil aircraft in flight.
2. Nothing in this Agreement shall impair the exercise of the inherent right of self-defense by law enforcement or other officials of the Parties.

XV. Exchange of Laws and Policies of Each Party

1. To facilitate implementation of this Agreement, each Party should ensure the other Party is fully informed of its applicable laws and policies, particularly those pertaining to the use of force and the determination of the status of migrants.
2. Each Party should ensure that all officials operating pursuant to this Agreement are informed concerning the applicable laws and policies of both Parties.

XVI. Exchange of Information and Notification on the Results of Enforcement Actions

1. The law enforcement authorities of both Parties shall, where practicable, exchange operational information on the detection and location of suspect vessels and to make best efforts to communicate with each other.
2. A Party conducting a boarding and search pursuant to this Agreement shall promptly notify the law enforcement authority of the other Party of the results thereof.
3. Each Party shall, on a periodic basis and consistent with its constitution, laws, and regulations, make reasonable efforts to inform 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 transnational maritime activities was found.
4. Each Party shall refrain from public disclosure of information received pursuant to this Agreement except as otherwise mutually determined, and subject to any applicable national laws, regulations, and policies.

XVII. Points of Contact

1. Each Party shall identify to the other Party, and keep current, the points of contact for shiprider coordination under Article III, disposition and jurisdiction instructions under Articles VIII and XVIII, requests for verification, boarding, and search under Article VII,

notification of results under Article XVI, and requests for specialized assistance under Article XI of this Agreement.

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

XVIII. Disposition of Seized Property

1. Assets seized, confiscated, or forfeited in consequence of any law enforcement operation undertaken in the territory of a Party pursuant to this Agreement shall be disposed of in accordance with the laws of that Party, except that vessels claiming nationality in the other Party, and boarded by law enforcement officials of that Party, shall be disposed of in accordance with the laws of that Party.

2. Where the flag State Party consents to the exercise of jurisdiction by the other Party pursuant to Article VIII, assets seized, confiscated, or forfeited in consequence of any law enforcement operation shall be disposed of in accordance with the laws of the Party in whose favor jurisdiction is granted.

3. 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.

4. Nothing in this Agreement precludes the Parties from concluding any other agreement on the sharing of assets from combined law enforcement operations.

XIX. Claims, Settlement of Disputes, Consultations, and Review

1. Claims.

a. Any injury to or loss of life of a law enforcement official of a Party shall normally be remedied in accordance with the laws of that Party.

b. Any other claim submitted for damage, injury, death or loss resulting from an operation carried out under this Agreement shall be processed and considered by the Party whose official(s) are asserted by the claimant to be responsible for the acts or omissions out of which the claim arises, in accordance with the domestic laws of that Party, and in a manner consistent with international law, and if merited, resolved in favor of the claimant.

c. If any loss, injury or death is suffered as a result of any action taken by the law enforcement or other 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.

2. Disputes arising from the interpretation or implementation of this Agreement shall be settled by mutual agreement of the Parties.
3. The Parties agree to consult as necessary to evaluate the implementation of this Agreement and to consider enhancing its effectiveness. In case a difficulty arises concerning the operation of this Agreement, either Party may request consultations with the other Party to resolve the matter.

XX. Preservation of Legal Positions

Nothing in this Agreement shall:

1. Supersede any bilateral or multilateral agreement or other cooperative mechanism concluded by the Parties, unless otherwise provided for herein;
2. Prejudice in any manner the positions of either Party regarding the international law of the sea; nor affect claims to maritime entitlements of either Party or any third State; or
3. Preclude either Party from otherwise expressly authorizing other operations consistent with the purpose and scope of this Agreement.

XXI. Amendments

Each Party may, at any time after entry into force, propose an amendment to this Agreement by providing the text of such a proposal to the other Party.

An amendment agreed to by the Parties shall enter into force upon exchange of notes or as otherwise agreed by the Parties.

XXII. Entry Into Force and Duration

1. This Agreement shall enter into force upon signature by both Parties.
2. This Agreement may be terminated at any time by either Party upon written notification to the other Party through diplomatic channels. Such termination shall take effect one year from the date of notification.

3. This Agreement shall continue to apply after termination with respect to any administrative or judicial proceedings arising out of actions taken pursuant to this Agreement during the time it was in force.

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

DONE AT WVA, this 12th day of November of 2018, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE
REPUBLIC OF FIJI:

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:




