

NARCOTIC DRUGS

Maritime Cooperation

**Agreement between the
UNITED STATES OF AMERICA
and THE BAHAMAS**

Signed at Nassau June 29, 2004



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.”

THE BAHAMAS

Narcotic Drugs: Maritime Cooperation

*Agreement signed at Nassau June 29, 2004;
Entered into force June 29, 2004.*

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS
CONCERNING COOPERATION IN MARITIME LAW ENFORCEMENT**

The Government of the United States of America and the Government of the Commonwealth of The Bahamas (hereinafter, "the Parties");

BEARING IN MIND the complex nature of the problems of illicit trafficking in narcotics and psychotropic substances by sea and air, and the unsafe transport and smuggling of migrants;

RECALLING the International Convention for the Safety of Life at Sea, 1974, with annex (hereinafter, "the SOLAS Convention") and 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 trafficking in narcotics and psychotropic substances, which is recognized in the 1961 Single Convention on Narcotic Drugs and its 1972 Protocol, in the 1971 Convention on Psychotropic Substances, in the 1982 Law of the Sea Convention, 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 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 contained 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;

RECALLING ALSO the Treaty between the Parties on Mutual Assistance in Criminal Matters, signed at Nassau June 12 and August 18, 1987, as corrected and entered into force July 18, 1990;

RECALLING FURTHER the longstanding cooperation between the Parties in law enforcement, defence and search and rescue matters evidenced by the:

-- Understanding between the Governor of The Bahamas and the United States Coast Guard effected by exchange of letters dated December 4 and 11, 1964 (hereinafter, "the Grey Agreement");

-- Agreement between the United States and the United Kingdom for the establishment of an Atlantic Undersea Test and Evaluation Center in the Bahamas Islands, with agreed minutes, signed at Washington October 11, 1963, and the Agreement regarding arrangements for continued United Kingdom access to and use of the Atlantic Undersea Test and Evaluation Centre (AUTEK) facility in The Bahamas, pursuant to an exchange of notes at Washington April 5, 1984;

-- Agreement on the Continuance of United States Military Rights and Maritime Practices in the Bahamas effected by exchange of notes dated July 10 and 20, 1973 (hereinafter, "the 1973 Notes");

-- Understanding concerning military operating rights and maritime practices effected by exchange of notes dated April 5, 1984 (hereinafter, "the 1984 Carryover Agreement");

-- Understanding concerning drug interdiction and other operations effected by exchange of notes dated May 22 and 28, 1992 (hereinafter, "the 1992 Notes");

-- Agreement concerning a Cooperative Shiprider and Overflight Drug Interdiction Program for Joint Operations effected by exchange of notes dated May 1 and 6, 1996 (hereinafter, "the 1996 Shiprider Agreement"); and

-- Memorandum of Understanding between the United States, The Bahamas and the United Kingdom, including Turks and Caicos Island, Concerning Cooperation in the Fight against Illicit Trafficking of Narcotic Drugs through the use of Equipment and Personnel Based at Great Inagua and Such Other Bases as may be Established in the Turks and Caicos Islands signed in Washington July 12, 1990 (hereinafter, "the 1990 TRIPART MOU on OPBAT");

DESIRING to promote greater and resolute cooperation between them to combat illicit traffic in narcotic drugs and psychotropic substances by sea and air, and the unsafe transport and smuggling of migrants, and to facilitate the repatriation of migrants, while not affecting those agreements listed herein regulating military operating rights; and

BASED ON the principles of international law, respect for the sovereign equality of States and in full respect of the principle of the right of freedom of navigation consistent with the 1982 Law of the Sea Convention;

Have agreed as follows:

Article 1 Purpose and Scope

The Parties shall continue to cooperate to the fullest extent possible in combating illicit trafficking in narcotic drugs and psychotropic substances by sea and air, and the unsafe transport and smuggling of migrants, consistent with international law and available law

enforcement resources and priorities related thereto. This shall include the sharing of information between the Parties concerning specific instances of illicit trafficking by sea and air, the unsafe transport of migrants, and the smuggling of migrants.

Article 2 Definitions

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

1. "Illicit traffic" has the same meaning as in Article 1(m) of the 1988 Convention and includes illicit traffic by air.
2. "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.
3. "Unsafe transport of migrants" means, with regard to transport by sea, the carriage of migrants on board a vessel that is:
 - a. obviously 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.
4. "Migrant smugglers" means persons engaged in smuggling of migrants.
5. "Smuggling of migrants" 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.

6. "Illegal entry" means crossing borders without complying with the necessary requirements for legal entry into the territory of a Party.

7. "Territory, waters and airspace of the Parties" means:

a. For the Government of the Commonwealth of The Bahamas: The land territory, archipelagic waters as may be declared by the Government of the Commonwealth of The Bahamas in accordance with international law, and the territorial sea of The Bahamas, and the airspace over such territory and waters.

b. For the Government of the United States: The land territory and territorial sea of the United States of America, including the Commonwealth of Puerto Rico, the United States Virgin Islands, and other territories and possessions in the Caribbean Sea over which the United States exercises sovereignty, and the airspace over such United States territory and waters.

8. "Contiguous zone" has the same meaning as in Article 33 of the 1982 Law of the Sea Convention.

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

10. "International airspace" means the airspace situated over international waters.

11. "Bahamian aviation authority" means the Department of Civil Aviation.

12. "Law enforcement authorities" means:

a. For the Government of the Commonwealth of The Bahamas, the Royal Bahamas Defence Force, the Royal Bahamas Police Force, the Ministry of Foreign Affairs, and the Office of the Attorney General; and

b. For the Government of the United States of America, the Department of Justice and the Department of Homeland Security.

13. "Law enforcement officials" means:

a. For the Government of the Commonwealth of The Bahamas, uniformed or otherwise clearly identifiable members of the Royal Bahamas Defence Force, the Royal Bahamas Police Force, and The Bahamas Customs Service; and

b. For the Government of the United States of America, uniformed or otherwise clearly identifiable members of the United States Coast Guard, Drug Enforcement Administration, and officers of the Customs, and in addition for the purpose of Article 14, uniformed or otherwise clearly identifiable members of the Directorate of Border and Transportation Security and the Department of Justice.

14. "Law enforcement vessels" means vessels, clearly marked and identifiable as being on government non-commercial service and authorized to that effect, including any boat or aircraft embarked on such vessels, of the United States Coast Guard, the Directorate of Border and Transportation Security, the Royal Bahamas Defence Force, the Royal Bahamas Police Force, the Bahamas Customs Service, and other vessels of the Parties as may be agreed upon, on which law enforcement officials of either or both Parties are embarked.

15. "Law enforcement aircraft" means aircraft of the Parties, 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.

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

17. "Shiprider Program Coordinator" means, for the Government of the Commonwealth of The Bahamas, the Commander, Royal Bahamas Defence Force and the Commissioner, Royal Bahamas Police Force, and for the Government of the United States of America, the Commander, Seventh Coast Guard District.

18. "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 illicit traffic, the unsafe transport of migrants, or the smuggling of migrants.

19. "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 traffic, the unsafe transport of migrants, or the smuggling of migrants.

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.

Article 3 General Principles

1. Operations to suppress illicit traffic, and to prevent and combat the unsafe transport of migrants and the smuggling of migrants, in the territory, waters, and airspace of a Party are the responsibility of, and subject to the authority of, that Party.

2. Except as authorized pursuant to Articles 6 and 7, 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 waters or airspace of the other Party.

Article 4 Cases of Suspect Vessels and Aircraft

Operations to suppress illicit traffic, and to prevent and combat the unsafe transport of migrants and the smuggling of migrants, pursuant to this Agreement shall be carried out only against suspect vessels and aircraft, including vessels without nationality and vessels assimilated to vessels without nationality.

Article 5 Shiprider Program

1. The Bahamas Shiprider Coordinator shall, in appropriate circumstances, designate shipriders who, on behalf of the Government of the Commonwealth of The Bahamas, and in accordance with Bahamian law, shall be empowered to

grant the U.S. law enforcement vessels and aircraft on which they are embarked, authority to:

- a. enter Bahamian territory, waters, and airspace to assist law enforcement officials of The Bahamas to board and search suspect vessels, and if evidence is found of violations of Bahamian law, to assist the shiprider in carrying out the disposition instructions of Bahamian law enforcement authorities in respect of the vessel, cargo, and persons on board.
 - b. assist the shiprider in boarding and searching suspect Bahamian flagged vessels located seaward of any nation's territorial sea and within 200 nautical miles from the baselines from which the territorial sea of The Bahamas is measured, and if evidence of violations of Bahamian law is found, to assist the shiprider in carrying out the disposition instructions of Bahamian law enforcement authorities in respect of the vessel, cargo, and persons on board. In cases arising under this subparagraph in which a suspect vessel claiming nationality in the Bahamas is not flying the flag of The Bahamas, not displaying any marks of its registration or nationality, and claiming to have no documentation on board the vessel, United States law enforcement officials may proceed in accordance with Article 9 unless and until the Government of The Bahamas confirms the suspect vessel's right to Bahamian nationality, in which case the Bahamian shiprider shall thereafter have the right to exercise primary jurisdiction over the boarding.
2. Law enforcement officials of the United States may assist Bahamian shipriders conducting operations pursuant to this Article if expressly requested to do so by the shiprider, and only within the limits of such request and in the manner requested. Such request may only be made, agreed to, and acted upon in accordance with the laws and policies of both Parties.

Article 6

Operations in the Territory, Waters, and Airspace of The Bahamas

1. The Government of the United States of America shall not conduct maritime law enforcement operations in Bahamian territory, waters, or airspace without the permission of the Government of the Commonwealth of The Bahamas, granted by this Agreement or by other agreements or arrangements.

2. This Agreement constitutes permission by the Government of the Commonwealth of The Bahamas for U.S. law enforcement officials to carry out the following operations without an embarked Bahamian shiprider. Such operations may be conducted in Bahamian waters and airspace seaward of three nautical miles from the low-water line along the Bahamian coast, or in the case of islands having fringing reefs, seaward from the seaward low-water line of the reefs.

- a. U.S. law enforcement vessels and aircraft continue law enforcement patrols to carry out the purpose and scope of this Agreement and to exercise jurisdiction over non-Bahamian flag vessels as provided for in subparagraph 2(b) of this Article.
- b. Where law enforcement patrols are conducted pursuant to this Article, U.S. law enforcement officials may stop, board, search, and detain non-Bahamian flag vessels, but if any violations cognizable under this agreement are discovered shall request and await expeditious disposition instructions from the Government of the Commonwealth of The Bahamas, except in cases of vessels claiming nationality in the United States. In any case (except those involving U.S. nationals, including non-Bahamian U.S. Resident Aliens and Parolees), nationals of The Bahamas or of third States, and vessels registered in The Bahamas or in third States, are not to be removed from the waters of The Bahamas without the express authorization of the Government of The Bahamas.
- c. When operating pursuant to this Article, U.S. law enforcement officials may stop, board, and search suspect vessels making no claim of nationality, not displaying any marks of registration or nationality, and claiming to have no documentation on board the vessel, in accordance with the provisions of subparagraph 2(b) of this Article.

- d. Boardings of suspect vessels encountered by U.S. law enforcement vessels pursuant to operations under this Article and claiming nationality in The Bahamas shall be conducted in accordance with the process described in Article 8 of this Agreement and shall be subject to the conditions described in subparagraph 2(b) of this Article.
3. This Agreement also constitutes permission by the Government of the Commonwealth of The Bahamas for U.S. Coast Guard vessels and aircraft to enter, overfly, and land, as appropriate, in Bahamian territory, waters, and airspace to investigate the presence of persons on Bahamian territory that is normally uninhabited or of persons seeking to attract attention on territory that is normally uninhabited or of persons seeking to attract attention on territory that, although not entirely uninhabited, does not usually contain such persons.
 - a. Before entering without a Bahamian shiprider landward of the waters described in paragraph 2 of this Article to investigate the presence of persons described in paragraph 3 of this Article, U.S. Coast Guard vessels and aircraft shall notify Bahamian law enforcement authorities regarding their intention to enter and investigate in accordance with paragraph 4 of this Article.
 - b. If U.S. Coast Guard vessels or aircraft enter Bahamian territory and find that the persons there are mariners in distress, U.S. Coast Guard officials may take action to ensure the safety of such persons and their property including removing them to a safe location within The Bahamas or otherwise as may be agreed between Bahamian and U.S. law enforcement authorities.
 - c. If U.S. Coast Guard officials find that the persons there are not mariners in distress, but suspect they may pose an imminent threat to Bahamian sovereignty, U.S. Coast Guard officials may take any necessary action to preserve Bahamian sovereignty, and shall inform Bahamian law enforcement authorities. Such persons are not to be removed from Bahamian territory without express authorization from the Government of the Commonwealth of The Bahamas.

- d. In all cases pursuant to this paragraph, U.S. Coast Guard officials shall notify Bahamian law enforcement authorities of their actions and findings as soon as practicable in accordance with paragraph 4 of this Article.
4. The United States shall provide prior notice to Bahamian law enforcement authorities of action to be taken under paragraph 3 of this Article, unless not operationally feasible to do so. In any case, notice of the action shall be provided to Bahamian law enforcement authorities without delay. If the Government of the Commonwealth of the Bahamas has reason for not wishing United States law enforcement officials to enter landward of the waters described in paragraph 2 of this Article, it will so inform the United State law enforcement authority, which shall respect its wishes.
5. Except as otherwise provided in this Agreement, U.S. law enforcement vessels and aircraft shall not enter Bahamian waters and airspace landward of the area where patrol operations are authorized pursuant to paragraph 2 of this Article to pursue or investigate suspect vessels or aircraft without the express authorization of Bahamian law enforcement authorities, which may be sought by the United States law enforcement authorities on a case-by-case basis.
6. Pursuant to Article 51 of the 1982 Law of the Sea Convention, the Parties agree that the terms of this Agreement under which law enforcement officials of the Government of the United States are permitted to operate within waters under the sovereignty of the Government of the Commonwealth of The Bahamas shall continue to apply in the event the Government of the Commonwealth of The Bahamas draws and deposits straight archipelagic baselines in accordance with Articles 47 and 49 of the 1982 Law of the Sea Convention.

Article 7 Overflight Operations and Procedures

1. The Government of the Commonwealth of The Bahamas shall permit U.S. law enforcement aircraft to overfly its

territory and waters to carry out the purposes of this Agreement.

2. The U.S. Government shall, in the interest of flight safety, observe the following procedures for facilitating overflight in Bahamian airspace by U.S. law enforcement aircraft:

a. In the event of planned bilateral or multilateral law enforcement operations, the U.S. Government shall provide reasonable notice, communications channels, and a flight plan to the appropriate Bahamian aviation authority of planned flights by its aircraft over Bahamian territory or waters.

b. In the event of unplanned operations, which may include the pursuit of suspect aircraft into Bahamian airspace pursuant to this Agreement, the law enforcement and appropriate aviation authorities of the Parties shall exchange information concerning the appropriate 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 in accordance with this Agreement shall comply with such air navigation and flight safety rules as may be required by Bahamian aviation authorities, and with any written operating procedures developed for flight operations within its airspace under this Agreement.

Article 8 Verification of Nationality

1. Whenever the law enforcement officials of one Party ("the requesting Party") encounter seaward of any State's territorial sea and within 200 nautical miles from the baselines from which the territorial sea of The Bahamas is measured a suspect vessel claiming nationality in the other Party ("the requested Party"), the requesting Party may request that the law enforcement authority of the requested Party:

a. confirm the claim of nationality of the requested Party; and

b. if such claim is confirmed, the requested Party 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 traffic, the unsafe transport of migrants, or the smuggling of migrants 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 10 of this Agreement.

2. A request pursuant to paragraph 1 of this Article should contain 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 port of origin and destination, and any other identifying information. If a request is conveyed orally, the requesting Party shall confirm the request in writing as soon as possible.

3. A requested Party shall make best efforts to respond to requests pursuant to this Article as expeditiously as possible, and in any case shall confirm or refute the claim of nationality within four (4) hours of the initial request.

Article 9

Other Operations in International Waters

1. This Agreement authorizes the law enforcement officials of one Party ("the first Party") to board suspect vessels located seaward of either Party's territorial sea 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 provisions of Article 8 apply. If no documentation or other physical evidence of nationality is available, the boarding Party may assimilate the vessel to

a ship without nationality in accordance with international law.

2. Except as expressly provided herein, this Agreement does not apply to or limit boardings of any vessel, conducted by either Party in accordance with international law, seaward of any State's territorial sea, 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 to take law enforcement action.

Article 10 Jurisdiction over Detained Vessels

1. In all cases arising in the waters, airspace, or territory of a Party, or seaward of any Party's territorial sea in respect of a vessel having the nationality of a Party, or in international airspace in respect of an aircraft registered under its laws, that Party has jurisdiction over a detained aircraft, vessel, cargo, and persons on board, including seizure, forfeiture, arrest, and prosecution, provided, however, that the United States shall have jurisdiction over any vessel claiming nationality in the United States and boarded by U.S. law enforcement officials in the waters described in paragraph 2 of Article 6, subject to the limitations expressed in subparagraph 2(b) of Article 6. Subject to its Constitution and its laws, the Party with primary jurisdiction may consent to the exercise of jurisdiction by the other Party in accordance with international law and in conformity with any condition set by the Party-consenting to the exercise of jurisdiction.

2. In cases arising in the contiguous zone claimed by a Party, where applicable, not involving suspect vessels fleeing from the waters 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 which conducts the boarding and search shall have the right to exercise jurisdiction.

3. Instructions as to the exercise of jurisdiction pursuant to paragraph 1 of this Article shall be given without delay.

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

5. Each Party agrees to permit the return of seaworthy vessels subject to its jurisdiction and, in accordance with paragraphs 4 and 5 of Article 11 of this Agreement, prevent any such vessel from again engaging in illicit traffic, the unsafe transport of migrants, or the smuggling of migrants.

6. Consistent with subparagraphs (d) and (e) of paragraph 2 of Article 15 of this Agreement, and in accordance with their respective Constitutions and laws, either Party may destroy any vessel subject to its jurisdiction that it deems to be unseaworthy and/or a hazard to navigation.

7. Each Party shall ensure compliance with its notification obligations under the Vienna Convention on Consular Relations.

Article 11
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 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 Commonwealth of The Bahamas agrees, upon prior notification, to facilitate and accept without undue or unreasonable delay the return pursuant to this Agreement

and Article 18 of the Palermo Protocol of migrants, having Bahamian 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 The Bahamas or operated by Bahamian 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.

Article 12 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 or aircraft 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 traffic, the unsafe transport of migrants, or the smuggling of migrants was found.

Article 13 Specialized Assistance

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

Article 14

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 and other logistics and purposes related to this Agreement;

b. entry 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 reporting or notifying obligations 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 accordance with international norms 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 law enforcement officials of the other Party, including additional law enforcement officials.

2. The Government of the Commonwealth of The Bahamas 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 Bahamian nationals, from suspect vessels escorted by U.S. law enforcement officials through and exiting out of Bahamian territory; and

b. U.S. law enforcement aircraft and other aircraft under contract or in the service of the United States to disembark, embark and depart out of Bahamian territory with persons, including migrants, other than Bahamian nationals, from suspect vessels.

3. The movement of U.S. law enforcement vessels and aircraft in Bahamian waters and airspace, and the use by them of Bahamian ports, harbours and airfields shall not be subject to any Bahamian taxes, fees or other charges, provided that reasonable amounts shall be paid for services and materials requested and received in connection with the use of Bahamian ports, harbours and airfields.

Article 15 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 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. Law enforcement officials from law enforcement vessels or aircraft shall carry out boardings and searches pursuant to this Agreement.

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, or to prejudice the commercial and legal interests of the flag State or any other interested State. Such officials shall also bear in mind the need to observe norms of courtesy, respect and consideration for the persons on board the suspect vessel.

e. When taking action with regard to a vessel found to be engaging in illicit traffic, the unsafe transport of migrants, or the smuggling of migrants, the Party concerned shall also ensure the safety and the humanitarian handling of the persons on board and that any actions taken with regard to the vessel are, within available means, environmentally sound.

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.

Article 16 Use of Force

1. Force may only be used if no other feasible means of resolving the situation can be applied.
2. Any force used shall be proportional to the objective for which it is employed.
3. All use of force pursuant to this Agreement shall in all cases be the minimum reasonably necessary under the circumstances.
4. A warning shall be issued prior to any use of force except when force is being used in self-defence.
5. In the event that the use of force is authorized and necessary in the waters of a Party, law enforcement officials shall respect the laws of that Party.
6. In the event that the use of force is authorized and necessary during a boarding and search seaward of the territorial sea of any Party, the law enforcement officials shall comply with their domestic laws and procedures and the directions of the flag State.

7. When stopping a suspect vessel pursuant to this Agreement that fails to comply with an appropriate order to stop, the law enforcement vessel or aircraft shall first give an auditory or visual signal to stop, using internationally recognized signals. Where this does not succeed, a variety of actions may be taken, including the firing of shots across the bow of the suspect vessel. It is only after these appropriate actions fail that the pursuing law enforcement vessel or aircraft may use disabling fire. When employing disabling fire, the law enforcement vessel or aircraft shall issue an appropriate warning to the suspect vessel and all reasonable efforts shall be made to ensure that life is not endangered.

8. The discharge of firearms against or on a suspect vessel shall be reported as soon as practicable to the flag State Party.

9. Parties shall not use force against civil aircraft in flight.

10. The use of force in reprisal or as punishment is prohibited.

11. Nothing in this Agreement shall impair the exercise of the inherent right of self-defence by law enforcement or other officials of any Party.

Article 17

Exchange of Laws and Policies of Each Party

1. 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 and the determination of the status of migrants.

2. Each Party shall ensure that all of its officials operating pursuant to this Agreement are informed concerning the applicable laws and policies of both Parties.

Article 18

Points of Contact

1. Each Party shall identify to the other Party, and keep current, the points of contact for shiprider coordination under Article 5, disposition and jurisdiction instructions under Articles 6 and 10, notification and exchange of information concerning overflight under Article 7, requests for verification, boarding, and search under Article 8, migrant processing procedures under Article 11, notification of results under Article 12, requests for specialized assistance under Article 13 and requests for international maritime interdiction support under Article 14 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.

Article 19 Disposition of Seized Property

1. Assets seized, confiscated, or forfeited in consequence of any law enforcement operation undertaken in the waters or airspace 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 United States and boarded by United States law enforcement officials pursuant to paragraph 2 of Article 6 shall be disposed of in accordance with the laws of the United States.

2. Where the flag State Party consents to the exercise of jurisdiction by the other Party pursuant to Article 10(1), 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 favour 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.

Article 20

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 law of that Party, and in a manner consistent with international law, and if merited, resolved in favour 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 and in accordance with the principles of international law.

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.

Article 21

Rights and Privileges

Nothing in this Agreement shall be construed as creating any private right of action for any individual or entity, or is intended to alter the rights and privileges due any individual in any legal proceeding.

Article 22
Preservation of Legal Positions

Nothing in this Agreement shall:

a. restrict the ability of either Party to take whatever steps it deems appropriate with regard to individuals whom its authorities determine may qualify for refugee status or otherwise merit international protection;

b. affect the obligations of the Parties under the Palermo Protocol;

c. modify, replace or affect provisions not pertaining to maritime law enforcement in the 1973 Notes and the 1984 Carryover Agreement;

d. supersede any bilateral or multilateral agreement or other cooperative mechanism concluded by the Parties, unless otherwise provided for herein;

e. prejudice in any manner the positions of either Party regarding the international law of the sea; nor affect claims to maritime boundaries of either Party or any third State; nor constitute a precedent from which any rights can be derived; or

f. preclude either Party from otherwise expressly authorizing other operations consistent with the purpose and scope of this Agreement.

Article 23
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.

Article 24
Entry into Force and Duration

1. This Agreement shall enter into force upon signature.
2. Upon entry into force of this Agreement, this Agreement supersedes and replaces the 1992 Understanding and the 1996

Shiprider Agreement, and the provisions pertaining to maritime law enforcement in the Grey Agreement, the 1973 notes, and the 1984 Carryover Agreement.

3. This Agreement may be terminated at any time by either Party upon written notification to the other Party through the diplomatic channel. Such termination shall take effect six months from the date of notification, except that the operations authorized pursuant to paragraph 2(a) of Article 6 may be terminated by the Government of the Commonwealth of The Bahamas on ninety days notice to the United States.

4. The terms of 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 that it was in force.


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

DONE AT Nassau

the 29th day of June 2004, in duplicate each text being equally authentic.



**FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA**



**FOR THE GOVERNMENT OF
THE COMMONWEALTH OF THE
BAHAMAS**