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Proliferation Security Initiative Ship Boarding Agreement with the Bahamas

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Agreement Between the Government of the Commonwealth of the Bahamas and the Government of the United States of America Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials By Sea

Signed August 11, 2008; not in force.

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

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

Recalling the 31 January 1992 United Nations Security Council Presidential statement that proliferation of all WMD constitutes a threat to international peace and security, and underlines the need for Member States of the UN to prevent proliferation;

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

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 the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow 1 July 1968; and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow 10 April 1972;

Further recalling the International Ship and Port Facility Security Code, adopted by the International Maritime Organization on 12 December 2002 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 illicit trafficking in WMD, their delivery systems and related materials by States and non-state actors must be stopped;

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

Welcoming the adoption of the 2005 Protocol to the 1988 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 most recently by the Agreement between the Government of the United States of America and the Government of the Commonwealth of The Bahamas Concerning the Cooperation in Maritime Law Enforcement, signed at Nassau, June 29, 2004;

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 proliferation 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 weapons of mass destruction, their delivery systems and related materials.
2. "Weapons of mass destruction" (WMD) means nuclear, chemical, biological and radiological weapons.
3. "Related materials" means materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists of either Party, or as otherwise agreed by the Parties for the purposes of this Agreement, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.
4. "Security Force 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 other clearly identifiable officials duly authorized by the Government of the Commonwealth of the Bahamas and notified to the Competent Authority of the Government of the United States of America; and
 - b. For the Government of the United States of America, uniformed or otherwise clearly identifiable members of the United States Coast Guard, 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 the Government of the Commonwealth of The Bahamas, provided, however, that if United States Coast Guard personnel are not readily

available, the functions of Security Force Officials may, upon advance notice to and approval of the Competent Authority of the Government of the Commonwealth of The Bahamas, be carried out by members of the United States Navy.

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5. "Security Force vessels" means warships and other vessels of the Parties, or of third States as may 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 or aircraft embarked on or supporting such vessels.

6. "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.

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

8. "Competent Authority" means for the Government of the United States, the Commandant of the United States Coast Guard (including any officer designated by the Commandant to perform such functions), and for the Government of the Commonwealth of The Bahamas, the Permanent Secretary of the Ministry of National Security, or any other official designated by the Minister of National Security 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 the illicit transportation by vessels of WMD, their delivery systems, and related materials.

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 in compliance with their Constitutions and applicable national laws, subject to the availability of resources.

Article 3

Cases of Suspect Vessels

Operations to suppress proliferation by sea pursuant to this Agreement shall be carried out only against suspect vessels, including suspect vessels without nationality, and suspect vessels assimilated to vessels without nationality, but not against a ship 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 Vessel. Whenever the Security 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 may request through the Competent Authority of the requested Party that it:

- a. confirm the claim of nationality of the suspect vessel; and
- b. if such claim is confirmed:

- (i) authorize the boarding and search of the suspect vessel, cargo and the persons found on board by Security Force Officials of the requesting Party; and

- (ii) if evidence of proliferation 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.

3. Responding to Requests

a. If the nationality is verified, the requested Party may:

- i. decide to conduct the boarding and search with its own Security Force Officials;
- ii. authorize the boarding and search by the Security Force Officials of the requesting Party;
- iii. decide to conduct the boarding and search together with the requesting Party; or
- iv. deny permission to board and search.

b. 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 2 hours of the initial request.

4. Right of visit. Notwithstanding the foregoing paragraphs of this Article, the Security Force Officials of one Party ("the first Party") are authorized to board suspect vessels claiming nationality in the other Party that are not flying the flag of the other Party, not displaying any marks of its registration or nationality, and claiming to have no documentation on board the vessel, for the purpose of locating and examining the vessel's documentation. If documentation or other physical evidence of nationality is located, the foregoing paragraphs of this Article apply. If no documentation or other physical evidence of nationality is available, the boarding 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. Shipboarding Otherwise in Accordance with International Law. Except as expressly provided herein, this Agreement does not apply to or limit the right of either Party to conduct boardings of vessels or other activities consistent with international law whether based, *inter alia*, on the right of visit, the rendering of assistance to persons, vessels, and property in distress or peril, or an authorization from the flag or coastal State to take law enforcement action.

7. 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 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 having the nationality of a Party, that Party shall have jurisdiction over the detained vessel, cargo and/or persons on board, including seizure, forfeiture, arrest and prosecution, provided, however, that 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. Instructions. Instructions as to the exercise of jurisdiction pursuant to paragraph 1 of this Article shall be given without delay through the Competent Authorities.

3. Consent. 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.

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, where practicable, exchange operational information on the detection and location of suspect vessels and make best efforts to communicate 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 periodic basis and consistent with its Constitution, laws and regulations, make reasonable efforts to 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. Such personnel, when assisting Security Force Officials, shall be subject to the provisions 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. Security Force Officials 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, in accordance with 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 safety and security of the vessel and its cargo;
 - c. take due account not to prejudice the commercial or legal interest of the Flag State;
 - d. ensure within available means, that any measures taken with regard to the vessel is environmentally sound under the circumstances;
 - e. ensure that persons on board are treated in a humanitarian manner, and are afforded the protections, rights and guarantees provided by international law;
 - f. ensure the master of the suspect vessel is, or has been, afforded the opportunity to contact the vessel's 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 onboard, 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-defence by Security Force Officials of either Party.

Article 10**Exchange and Knowledge of Laws and Policies of the Parties**

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 its 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 Article 6 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 sales 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 injury to or loss of life of a Security Force Official of a Party shall normally be remedied in accordance with the laws of that Party.

2. Other Claims. 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 favour of the claimant.

3. Consultation in specified cases. If any injury, loss or death is suffered as a result of any action taken by the Security Force Officials or other authorized 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 question relating to compensation.

4. Without prejudice to paragraphs 1-3 of this Article, the requesting Party shall provide effective recourse in respect of damage, harm or loss attributable to measures taken by it pursuant to this Agreement, when:

- a. the grounds for such measures prove to be unfounded, provided that the vessel has not committed any act justifying the measures taken; or
- b. such measures are unlawful or exceed those reasonably required in light of available information to implement this Agreement.

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 in accordance with the principles of international law.
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 any individual in any administrative or judicial proceedings conducted under the jurisdiction of either Party;
- b. shall prejudice the position of either Party with regard to international law.

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 take action involving suspect vessels or aircraft claiming its nationality, or from providing other forms of cooperation to suppress proliferation.

Article 17**Entry into Force and Duration**

1. 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 entry 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. This Agreement may be terminated at any time 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. This Agreement shall continue to apply after termination with respect to any administrative or judicial proceedings regarding actions that occurred 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 this eleventh day of August 2008, in duplicate, both texts being equally authentic.

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

/s/ Kirsten D. Madison
[Deputy Assistant Secretary of State
Western Hemisphere Affairs]

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

/s/ T. Brent Symonette
[Acting Prime Minister and
Minister of Foreign Affairs]

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