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Proliferation Security Initiative Ship Boarding Agreement with Croatia

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Agreement between the Government of the United States of America and the Government of the Republic of Croatia concerning cooperation to suppress the proliferation of weapons of mass destruction, their delivery systems, and related materials

Signed June 1, 2005; entered into force March 5, 2007.

The Government of the United States of America and the Government of the Republic of Croatia (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 Nonproliferation of Nuclear Weapons, done at Washington, London and Moscow 1 July 1968; and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow 10 April 1972;

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

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

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

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

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

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

Aware of the Ecological and Fisheries Protection Zone established by the Republic of Croatia in the waters of the Adriatic Sea beyond its territorial sea;

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

Have agreed as follows:

Article 1

Definitions

In this Agreement, unless the context otherwise requires:

1. "Proliferation by sea" means the transportation by ship of WMD, their delivery systems, and related materials to or from States or non-state actors of proliferation concern.
2. "Weapons of mass destruction" (WMD) means nuclear, chemical, biological and radiological weapons.
3. "Related materials" means materials, equipment and technology, of whatever nature or type, that are related to and destined for use in the development, production, utilization or delivery of WMD.
4. "States or non-state actors of proliferation concern" means those States or entities that should be subject to interdiction activities because they are or are believed to be engaged in: (1) efforts to develop or acquire WMD or their delivery systems; or (2) trafficking (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.
5. "Security Force Officials" means:
 - b. for the Republic of Croatia, uniformed or otherwise clearly identifiable members of the Croatian Navy, duly authorized by the Government of the Republic of Croatia and notified to the Competent Authority of the United States of America; and
 - a. for the United States of America, uniformed or otherwise clearly identifiable members of the United States Coast Guard and the United States Navy, who may be accompanied by clearly identifiable law enforcement officials of the Department of Homeland Security and/or the

Department of Justice, and/or other clearly identifiable officials duly authorized by the Government of the United States of America and notified to the Competent Authority of Republic of Croatia.

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

7. "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.

8. "Competent Authority" means for the United States of America, the Commandant of the United States Coast Guard (including any official designated by the Commandant to perform such functions), and for the Republic of Croatia, the Commandant of the Croatian Navy (including any official designated by the Commandant 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 transportation by ship 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 freedom of navigation and 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 to the fullest extent possible, subject to the availability of resources and in compliance with their respective laws.

Article 3

Scope of Agreement

1. Except as otherwise provided in this Agreement, operations to suppress proliferation by sea pursuant to this Agreement shall be carried out beyond any State's territorial sea only against suspect vessels claiming nationality in one of the Parties, suspect vessels without nationality, and suspect vessels assimilated to vessels without nationality.

2. Except as otherwise agreed between the Competent Authorities on a case-by-case basis, this Agreement does not apply to passenger vessels, including roll-on/roll-off (ro-ro) passenger vessels, of a Party engaged in international voyages between ports in the Adriatic Sea, and other Croatian flag vessels navigating in the Ecological and Fisheries Protection Zone in the Adriatic Sea.

Article 4

Operations Beyond the Territorial Sea

1. A Party that has reasonable grounds to suspect that a vessel claiming its nationality, located beyond any State's territorial sea, is engaged in proliferation by sea may request assistance of the other Party in

suppressing the vessel's use for that purpose. The Party so requested shall render such assistance within the means available to it.

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

- a. confirm the claim of nationality of the requested Party; and
- b. if such claim is confirmed:
 - i. authorize the boarding and search of the suspect vessel, cargo and the persons found on board by Security Force Officials of the requesting Party; and
 - ii. if evidence of proliferation 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.

3. Contents of Requests. Each request should be in writing and contain sufficiently reliable information forming the basis for the suspicion, the geographic position of the vessel, the name and physical description of the suspect vessel, and, if available, the registration number/call sign, the IMO number, home port, the port of origin and destination, and any other identifying information. Nevertheless, in urgent circumstances, a request may be made orally, but shall be confirmed in writing forthwith. The time limits established in paragraph 4 of this Article shall commence on receipt of a written request by the Competent Authority of the requested Party. The requested Party shall immediately acknowledge in writing to the Competent Authority of the requesting Party its receipt of all written requests.

4. Responding to Requests.

- a. If the nationality is verified and the requested Party is satisfied with the basis for suspicion that the vessel is a suspect vessel, and that the information provided by the requesting Party is sufficiently reliable, the requested Party may:
 - i. decide to conduct the boarding and search with its own Security Force Officials;
 - ii. authorize the boarding and search by the Security Force Officials of the requesting Party;
 - iii. decide to conduct the boarding and search together with the requesting Party; or
 - iv. deny permission to board and search.
- b. The requested Party shall answer through its Competent Authority requests made for the verification of nationality and authorization to board and search within four (4) hours of the receipt of such written requests.
- c. Either Party, consistent with the other provisions of this Agreement, may subject its authorization under this paragraph to conditions, including obtaining additional information from the requesting Party, and conditions relating to responsibility for and the extent of measures to be taken. Information to be

provided in response to such a request shall be exchanged in a timely manner between the Competent Authorities.

d. Except as otherwise permitted by international law, the requesting Party shall not board the vessel without the express written authorization of the Competent Authority of the requested Party.

e. Written communications between the Competent Authorities may be made by facsimile or e-mail.

5. In deciding where to conduct the boarding, the Parties shall take into account the dangers and difficulties in boarding the ship and searching its cargo at sea and the safeguards set out in Article 8 of this Agreement, and give consideration to whether the boarding should more appropriately be undertaken in the next port of call or elsewhere.

6. 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 located, the other Party will not object to the first Party assimilating the vessel to a ship without nationality in accordance with international law.

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

8. Indicia of Authority. Security Force vessels of a Party operating with the authorization of the other Party pursuant to this Article shall, during such operations, also fly, in the case of the United States of America, the flag of the Republic of Croatia, and in the case of the Republic of Croatia, the United States Coast Guard ensign.

9. Authority to Detain Suspect Vessels. If evidence of proliferation by sea is found, the Security Force Officials of the first Party may detain the vessel, cargo, and persons on board pending expeditious disposition instructions from the other Party.

10. Shipboarding Otherwise in Accordance with International Law. This Agreement does not limit the right of either Party to conduct boardings of vessels or other activities consistent with international law whether based, *inter alia*, on the right of visit, the rendering of assistance to persons, vessels, and property in distress or peril, the consent of the vessel master, or an authorization from the coastal State.

11. 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.

Article 5

Jurisdiction over Detained Vessels

1. Jurisdiction of the Parties. In all cases covered by Article 4 concerning the vessels of a Party located beyond any State's territorial sea, that Party shall have the right to exercise jurisdiction over a detained vessel, cargo and/or persons on board (including seizure, forfeiture, arrest, and prosecution). The Party with

the right to exercise jurisdiction may, subject to its Constitution and laws, waive its right to exercise jurisdiction and authorize the enforcement of the other Party's law against the vessel, cargo and/or persons on board.

2. Jurisdiction in the contiguous zone of a Party. In cases arising in the contiguous zone claimed by a Party, 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. Disposition Instructions. Instructions as to the exercise of jurisdiction pursuant to paragraphs 1 and 2 of this Article shall be given without delay through the Competent Authorities.

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 endeavor to exchange operational information on the detection and location of suspect vessels and shall maintain communication with each other as necessary to carry out the purpose of this Agreement.

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

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

Article 7

Conduct of Security Force Officials

1. Compliance with Law and Practices. Each Party shall ensure that its Security Force Officials, when conducting boardings and searches pursuant to this Agreement, act in accordance with its applicable national laws and policies and with international law and accepted international practices.

2. Boarding and Search Teams

a. Security Force Officials from Security Force vessels shall carry out boardings and searches pursuant to this Agreement, and may be assisted by crew members from such vessels, including the vessels of third States as arranged between the Parties.

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

c. The boarding and search teams may carry arms.

Article 8

Safeguards

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

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

- b. take due account of the security of the vessel and its cargo;
 - c. not prejudice the commercial or legal interests of the Flag State;
 - d. ensure within available means, that any measure taken with regard to the vessel is environmentally sound under the circumstances;
 - e. ensure that persons on board are afforded the protections, rights and guarantees provided by international law and the boarding State's law and regulations;
 - f. ensure that the master of the vessel is, or has been, afforded at any time the opportunity to contact the vessel's Flag State, and, subject to preserving the safety and security of operations, is, or has been, afforded the opportunity to contact the vessel's owner or manager.
2. Reasonable efforts shall be taken to avoid a vessel being unduly detained or delayed.

Article 9

Use of Force

1. Rules. 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 officials and persons on board, or where the officials are obstructed in the execution of the authorized actions. Any use of force pursuant to this Agreement shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.
2. Self-defense. Nothing in this Agreement shall impair the exercise of the inherent right of self-defense by Security Force or other officials of either Party.

Article 10

Exchange and Knowledge of Laws and Policies of Other Party

1. Exchange of Information. To facilitate implementation of this Agreement, each Party shall ensure that 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 laws and policies applicable to implementation of this Agreement.

Article 11

Points of Contact

1. Identification. Each Party shall inform the other Party, and keep current, the points of contact for communication, decision and instructions under Articles 4 and 5, and notifications under Articles 6 and 16 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 in consequence of operations undertaken on board vessels subject to the jurisdiction of Republic of Croatia pursuant to this Agreement, shall be disposed of in accordance with the laws of Republic of Croatia.
2. Assets seized in consequence of operations undertaken on board vessels subject to the jurisdiction of the United States of America pursuant to this Agreement shall be disposed of in accordance with the laws of the United States of America.
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.

Article 13

Claims

1. Injury or Loss of Life. Any claim for injury to or loss of life of a Security Force Official of a Party while carrying out operations arising from this Agreement shall normally be resolved in accordance with the laws of that Party.
2. Other Claims. Any other claim submitted for damage, harm, injury, death or loss, asserted to have resulted from an operation carried out by a Party under this Agreement may be submitted to the boarding Party or the flag State Party, and the claim shall be processed in accordance with the domestic law of the Party in which the claim is submitted and in a manner consistent with international law.
3. Consultation. If any damage, harm, injury, death or loss is suffered as a result of any action asserted to have been taken by the Security Force Officials of one Party in contravention of this Agreement, including action taken on unfounded suspicions, or if any improper, disproportionate or unreasonable action is asserted to have been taken by a Party, the Parties shall, without prejudice to any other legal recourse which may be available, consult at the request of either Party with a view to resolving the matter and deciding any questions relating to compensation or payment.

Article 14

Disputes and Consultations

1. Disputes. Disputes arising from the interpretation or implementation of this Agreement shall be settled by mutual agreement of the Parties.
2. Evaluation of Implementation. The Parties agree to consult as necessary to evaluate the implementation of this Agreement and to consider enhancing its effectiveness. The evaluation shall be carried out at least once a year.
3. Resolving Difficulties. In case a difficulty arises concerning the operation of this Agreement, either Party may request, through the Competent Authorities, consultations with the other Party to resolve the matter.

Article 15

Effect on Rights, Privileges and Legal Positions

Nothing in this Agreement:

- a. is intended to alter the rights and privileges due any individual in any administrative or judicial proceeding;
- b. shall prejudice the position of either Party with regard to international law of the sea, or affect the territorial or maritime boundaries or claims of either Party, as between them or with third States;
- c. shall prejudice the position of either Party with regard to the Ecological and Fisheries Protection Zone of the Republic of Croatia in the Adriatic Sea.

Article 16

Cooperation and Assistance

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

Article 17

Entry into Force and Duration

1. Entry into Force. This Agreement shall enter into force on the date of receipt of the last written notification through diplomatic channels by which the Parties inform each other that the necessary internal procedures of each Party for its entry into force have been completed.

2. Termination. This Agreement may be terminated by either Party by written notification of such termination to the other Party through diplomatic channels. Such termination shall take effect six months from the date of receipt of such notification.

3. Continuation of Actions Taken. This Agreement shall continue to apply after termination with respect to any administrative or judicial proceedings regarding actions that occurred while it was in force.

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

DONE at Washington, this first day of June 2005, in duplicate in the English and Croatian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

/s/ Stephen G. Rademaker
[Stephen G. Rademaker
Assistant Secretary of State
for Arms Control]

FOR THE GOVERNMENT OF THE REPUBLIC OF
CROATIA:

/s/ Tomislav Vidosevic
[Tomislav Vidosevic
Assistant Minister
Multilateral Affairs
and International Organizations Ministry of Foreign
Affairs]

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