

**AGREEMENT  
BETWEEN  
THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF  
THE COOK ISLANDS  
CONCERNING  
COOPERATION TO SUPPRESS ILLICIT TRAFFIC IN  
NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES  
BY SEA**

The Government of the United States of America and the Government of the Cook Islands (hereinafter, "the Parties");

**Bearing in mind** the special nature of the problem of illicit maritime drug traffic;

**Having regard to** the urgent need for international cooperation in suppressing illicit maritime drug traffic, which is recognized in the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereafter, "the 1988 Convention"), and in the 1982 United Nations Convention on the Law of the Sea; and

**Recalling** that Article 17 of the 1988 Convention provides, inter alia, that the Parties shall consider entering into bilateral and regional agreements to carry out, or to enhance the effectiveness of, the provisions of Article 17;

**Desiring** to promote greater cooperation between the Parties, and thereby enhance their effectiveness, in combating illicit traffic in narcotic drugs and psychotropic substances by sea;

**Based** on the principles of international law, respect for the sovereign equality of States and in full respect of the freedom of navigation;

Have agreed as follows:

**Article 1**  
**Purpose and Scope**

The Parties shall cooperate in combating illicit traffic by sea in narcotic drugs and psychotropic substances to the fullest extent possible, in conformity with international law, consistent with available law enforcement resources and priorities related thereto.

**Article 2**  
**Definitions**

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

- (a) “illicit traffic” has the same meaning as in Article 1(m) of the 1988 Convention.
- (b) “international waters” means waters, including the contiguous zone, seaward of any State’s territorial sea.
- (c) “contiguous zone” has the same meaning as in Article 33 of the Law of the Sea Convention.
- (d) “suspect vessel” means a vessel, claiming the nationality of one of the Parties, used for commercial or private purposes in respect of which there are reasonable grounds to suspect it is engaged in illicit traffic in narcotic drugs and psychotropic substances.

**Article 3**  
**Suspect Vessels**

Operations to suppress illicit traffic in narcotic drugs and psychotropic substances pursuant to this Agreement shall be carried out only against suspect vessels and vessels without nationality.

**Article 4**  
**Operations in and over National Waters**

This Agreement does not authorize the conduct of operations to suppress illicit traffic in narcotic drugs or psychotropic substances by one Party in and over the territorial sea or internal waters of the other Party.

**Article 5**  
**Operations in International Waters**

1. Whenever U.S. Coast Guard officials encounter a vessel claiming Cook Islands nationality, located seaward of any nation's territorial sea and suspected of illicit traffic, by this Agreement the Government of the Cook Islands authorizes the U.S. Coast Guard to board and search the suspect vessel and the persons found on board by such officials. If evidence of illicit traffic is found, U.S. Coast Guard officials may detain the vessel and persons on board pending expeditious verification of the vessel's Cook Islands nationality, and if nationality is confirmed, disposition instructions from the Government of the Cook Islands.

2. Except as expressly provided herein, this Agreement does not apply to or limit boarding of vessels, conducted by either Party in accordance with international law in international waters, 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 flag State to take law enforcement or other action.

**Article 6**  
**Jurisdiction over Detained Vessels**

1. Except as otherwise provided in this article, in all cases concerning Cook Islands flag vessels arising under this Agreement, the Government of the Cook Islands shall have the primary right to exercise jurisdiction over a detained vessel and/or persons on board (including seizure, forfeiture, arrest, and prosecution), provided, however, that the Government of the Cook Islands may, subject to its Constitution and laws, waive its primary right to exercise jurisdiction and authorize the enforcement of United States law against the

vessel and/or persons on board. Instructions as to the exercise of jurisdiction pursuant to this Agreement shall be given without delay.

2. In cases arising in the contiguous zone of a Party, not involving suspect vessels fleeing from the waters of that Party or suspect vessels flying the flag of or registered in 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.

### **Article 7 Points of Contact**

Each Party shall identify to the other Party, and keep current, the points of contact for communicating with its national authorities competent to receive and act at any time on requests for instructions as to the exercise of jurisdiction under Article 6, and to receive and act on notifications under Article 8, in addition to any other communication necessary for the implementation of this Agreement.

### **Article 8 Notification of Results of Shipboardings and Actions Taken**

1. The U.S. Coast Guard shall promptly, and in any case not later than 24 hours, notify the Cook Islands Police of the results of any boarding and search of a Cook Islands vessel conducted pursuant to this Agreement.
2. Each Party, consistent with its procedures, shall report in a timely manner at least every month to 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 was found.

### **Article 9 Conduct of Boardings and Searches**

1. To facilitate implementation of this Agreement, each Party shall ensure the other Party is fully informed concerning its applicable laws and policies, particularly those pertaining to the use of force. Each Party has the

corresponding responsibility to ensure that all of its officials engaging in law enforcement operations pursuant to this Agreement are knowledgeable concerning the applicable laws and policies of both Parties.

2. Boardings and searches pursuant to this Agreement shall be carried out by uniformed officials from ships (including any boat or aircraft embarked on such ships) or aircraft clearly marked and identified as being on Government service and authorized to that effect. The boarding and search team may carry standard law enforcement arms and equipment.

3. While carrying out boarding and search activities pursuant to this Agreement, the Parties shall take due account of the need not to endanger the safety of life at sea, the safety and 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; shall ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international human rights law; shall ensure, within available means, that any measure taken with regard to the vessel or its cargo is environmentally sound under the circumstances; and take reasonable efforts to avoid the vessel being unduly detained or delayed. Taking into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo, and the U.S. Coast Guard may take appropriate measures, including diverting a suspect vessel to port, if necessary to complete boarding operations safely.

4. 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 authorized actions. Any use of force by a Party pursuant to this Agreement shall be in strict accordance with applicable laws and policies of that Party and shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances. Nothing in this Agreement shall impair the exercise of the inherent right of self-defense by officials of the Parties.

**Article 10**  
**Disposal of Seized Property**

1. Assets seized in consequence of any operation undertaken pursuant to this Agreement shall be disposed of in accordance with the laws of the Party exercising jurisdiction in accordance with Article 6 of this Agreement.
2. The seizing Party may transfer in accordance with its laws forfeited assets or proceeds of their sale to the flag State Party after deducting therefrom all expenses directly and reasonably connected with the seizure and disposal and any share thereof which any Party may in accordance with its legislation be entitled to.

**Article 11**  
**Consultations and Dispute Settlement**

1. In case a question arises in connection with implementation of this Agreement, either Party may request consultations with the other Party to resolve the matter.
2. The Parties undertake to settle by consultation any disputes that arise from the implementation of this Agreement.

**Article 12**  
**Claims**

1. Any claim for damages, injury or loss resulting from an operation carried out under this Agreement shall be examined by the Party whose authorities conducted the operation.
2. If responsibility is established, the claim shall be resolved in favor of the claimant by that Party, in accordance with the domestic law of that Party, and in a manner consistent with international law, including paragraph 3 of Article 110 of the Law of the Sea Convention.
3. Neither Party thereby waives any rights it may have under international law to raise a claim with the other Party through diplomatic channels.

**Article 13**  
**Miscellaneous Provisions**

Nothing in this Agreement:

- (a) precludes the Parties from otherwise agreeing on operations or other forms of cooperation to suppress illicit traffic;
- (b) is intended to alter the rights and privileges due any individual in any legal proceeding;
- (c) shall be construed as creating any private right of action for any individual or entity;
- (d) prejudices in any manner the positions of either Party regarding the international law of the sea.

**Article 14**  
**Entry into Force and Duration**

This Agreement shall enter into force upon signature. 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 90 days from the date of notification.

**Article 15**  
**Continuation of Actions Taken**

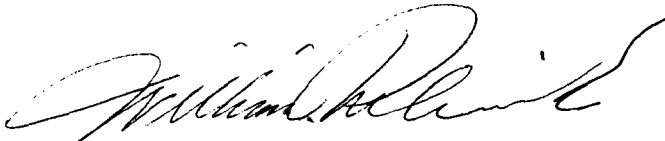
This Agreement shall continue to apply after termination with respect to any administrative or judicial proceedings arising out of actions taken pursuant to this Agreement.

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

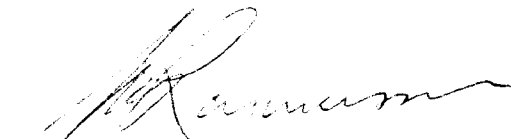
DONE in duplicate at Rarotonga the 5<sup>th</sup> day of November, 2007.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF  
THE COOK ISLANDS:



U.S. Ambassador



Minister of Foreign Affairs