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**United States of America
and
Malta**

Agreement between the Government of the United States of America and the Government of the Republic of Malta concerning cooperation to suppress illicit traffic in narcotic drugs and psychotropic substances by sea. Valletta, 16 June 2004

Entry into force: *10 January 2008, in accordance with article 17*

Authentic text: *English*

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**États-Unis d'Amérique
et
Malte**

Accord entre le Gouvernement des États-Unis d'Amérique et le Gouvernement de la République de Malte concernant la coopération en vue de mettre fin au trafic illicite de stupéfiants et de substances psychotropes par mer. La Valette, 16 juin 2004

Entrée en vigueur : *10 janvier 2008, conformément à l'article 17*

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[ENGLISH TEXT – TEXTE ANGLAIS]

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF MALTA
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 Republic of Malta (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 1961 Single Convention on Narcotic Drugs and its 1972 Protocol, in the 1971 Convention on Psychotropic Substances, 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, 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 seaward of any State's territorial sea, including the contiguous zone.

- (c) “contiguous zone” has the same meaning as in Article 33 of the Law of the Sea Convention.
- (d) “law enforcement authorities” means, for the Government of Malta, the Armed Forces of Malta, and for the Government of the United States of America, the United States Coast Guard.
- (e) “law enforcement officials” means, for the Government of Malta, the Armed Forces of Malta, the Malta Police Force and the Department of Customs, and for the Government of the United States of America, uniformed members of the United States Coast Guard who may be accompanied by other authorized personnel.
- (f) “law enforcement vessels” means warships or other ships of the Parties, or of third States as may be agreed by the Parties, aboard which law enforcement officials are embarked, clearly marked and identifiable as being on government non-commercial service and authorized to that effect, including any boat or aircraft embarked on such ships.
- (g) “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 waters of the other Party.

Article 5

Operations in International Waters

1. Authority to Board Suspect Vessels. Whenever the law enforcement officials of one Party (“the requesting Party”) encounter a suspect vessel claiming the nationality of the other Party (“the requested Party”) located in international waters, 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:

(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 in narcotic drugs and psychotropic substances 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 6 of this Agreement.

2. **Content of Requests.** Each request should contain the name of the suspect vessel, the basis for the suspicion (including all facts and other information on which the suspicion is based), the geographic position of the vessel, the registration 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. Responding to Requests

(a) If the nationality is verified, the requested Party may:

(i) decide to conduct the boarding and search with its own law enforcement officials;

(ii) authorize the boarding and search by the law enforcement 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 requests made for the verification of nationality within four (4) hours of the receipt of such requests.

(c) If the nationality is not verified within the four (4) hours, the requested Party may:

(i) nevertheless authorize the boarding and search by the law enforcement officials of the requesting Party; or

(ii) refute the claim of the suspect vessel to its nationality.

(d) If there is no acknowledgement or response to a written request pursuant to paragraph 2 from the requested Party within four (4) hours of its receipt of the request, the

requesting Party will be deemed to have been authorized to board the suspect vessel for the purpose of inspecting the vessel's documents, questioning the persons on board, and searching the vessel to determine if it is engaged in illicit traffic.

4. **Right of Visit.** Notwithstanding the foregoing paragraphs of this Article, this Agreement authorizes the law enforcement officials of one Party ("the first Party") to board suspect vessels located in international waters claiming nationality in the other Party but that are not flying the flag of the other Party, are 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, then the foregoing paragraphs of this Article apply.

5. **Use of Force.** The authorization to board, search and detain includes the authority to use such force as may be necessary in accordance with Article 10 of this Agreement.

6. **Shipboarding Otherwise in accordance with International Law.** Except as expressly provided herein, this Agreement does not apply to or limit boardings of vessels, conducted by either Party in accordance with international law 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 action.

Article 6

Jurisdiction over Detained Vessels

1. **Limitations.** Neither Party shall undertake the exercise of jurisdiction and performance of functions in the territory of the other Party.

2. **Waiver of Right.** In all cases arising pursuant to this Agreement concerning vessels having the nationality of a Party in international waters, that Party ("the first Party") shall have the right to exercise jurisdiction over a detained vessel, cargo and/or persons on board (including seizure, forfeiture, arrest, and prosecution), provided, however, the first Party 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.

3. **Contiguous Zone.** In cases arising in the contiguous zone of a Party, not involving suspect vessels fleeing from the waters of that Party or suspect vessels having 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.

4. **Requests to Waive Jurisdiction.** If the evidence so warrants, the other Party may request that the first Party waive jurisdiction.

5. **Instructions as to the exercise of jurisdiction pursuant to this Agreement shall be given without delay.**