

**THE OFFICIAL GAZETTE
LEGAL SUPPLEMENT — C**

21ST JUNE, 2003

BILL No. 8 of 2003

Saturday 21st June, 2003

**PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.**

The following BILL which will be introduced in the National Assembly is published for general information.

**S.E. Isaacs,
Clerk of the National Assembly.**



GUYANA

BILL No. 8 of 2003

MARITIME DRUG TRAFFICKING (SUPPRESSION) BILL 2003

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**A BILL
Intituled**

AN ACT to provide for co-operation in the suppression of illicit maritime drug trafficking and for connected matters.

A.D. 2003

Enacted by the Parliament of Guyana:-

**PART I
PRELIMINARY**

Short title
and
commencement.

1. This Act may be cited as the Maritime Drug Trafficking (Suppression) Act, 2003, and shall come into operation on such date as the Minister may be order appoint.

Interpretation.

2. In this Act -

"Central Authority" means the Authority established under section 4:

"the Convention" means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988;

"illicit traffic" has the same meaning as in the Convention;

"Guyana airspace" means the airspace over Guyana and Guyana waters;

"Guyana territory and waters" means the territory, territorial sea and internal waters of Guyana and the airspace over such territory and waters referred to in the Constitution of Guyana;

"law enforcement officials" means -

- (a) members of the Police Force or members of the Guyana Defence Force; or

(b) any person designated as such by a treaty State;

"law enforcement vessels" means -

(a) ships clearly marked and identifiable as being on government non-commercial service and authorised and used for law enforcement purposes; and

(b) any boat or aircraft embarked on such ships;

"treaty State" means any foreign State in relation to which an order under section 3(1) is for the time being in force and includes -

(a) a colony, territory, protectorate or other dependency of such State;

(b) a territory for the international relations of which such State is responsible;

"treaty State waters" means waters under the sovereignty of a treaty State.

Application of
the Act
to
treaty
States.

3.(1) Where any maritime drug trafficking treaty has been made with any foreign State, the Minister may, by order declare that the provisions of this Act shall apply in respect of that foreign State, subject to such exceptions, adaptations or modifications, as the Minister, having due regard to the terms of such treaty, may deem expedient to specify in the order for the purposes of implementing those terms.

(2) The Minister may from time to time by order, compile and publish in the Gazette, a list of foreign States with which maritime drug trafficking treaties are in force; and, without prejudice to any other form of proof of the

existence of such treaty, such an order shall, in any proceedings, be conclusive evidence that a maritime drug trafficking treaty is in force between Guyana and each foreign State named in the list.

(3) An order under this section shall be subject to affirmative resolution.

Establishment
of Central
Authority.

4.(1) There is hereby established an Authority to be known as the Central Authority which shall be the Minister responsible for national security or any person designated by him for the purpose of performing such functions or duties of the Central Authority as may be specified in the instrument of designation.

PART II - REQUESTS BY GUYANA

Requests by
Guyana
relating to
waters
seaward of
territorial
sea.

5.(1) Where Guyana law enforcement officials have reasonable grounds for suspecting that a foreign vessel of a treaty State is engaging in illicit traffic seaward of any State's territorial sea, the Central Authority may request that State in which the foreign vessel is registered or claims to be registered to verify the registration of that vessel and, if verified, to authorise the boarding and search of such vessel, its cargo and persons found on board.

(2) A request made under this section shall be conveyed orally and confirmed in writing to the competent authority of the treaty State and shall state the grounds on which it is made.

(3) A vessel shall be deemed to be flying the flag of or registered in a treaty State if it is registered or licensed as a fishing vessel under the laws of that State relating to fishing or the fishing industry.

Contents of
request.

- 6.(1) A request for authorisation to board and search a vessel shall contain -
- (a) the name homeport and registration number of the vessel;
 - (b) the grounds for suspecting that the vessel is engaged in illicit traffic;
 - (c) such other information as may be necessary to identify the vessel.

- (2) Guyana law enforcement officials shall, while carrying out a boarding and search, take into account the need -
- (a) not to endanger the safety of life at sea or the security of the vessel being searched and of its cargo;
 - (b) not to prejudice the commercial and legal interests of the treaty State or any other interested State;
 - (c) to observe norms of courtesy, respect and consideration for the persons on board that vessel.

- (3) Where as a result of any search carried out on a vessel evidence is found of illicit traffic, the Guyana law enforcement officials -

- (a) shall forthwith -
 - (i) inform the treaty State of the results of the search and of the names and nationality, if known, of the persons on board the vessel;
 - (ii) request the treaty State to give directions as to the disposition of the vessel, cargo and persons on board;

- (b) may detain the vessel, cargo and persons on board pending receipt of such directions.

(4) Guyana law enforcement officials shall, when boarding a vessel and carrying out a search thereon, avoid the use of force in any way, including the use of firearms except in the following cases -

- (a) in the exercise of the right of self defence;
- (b) to compel the vessel to stop where the vessel has ignored the standard warnings given by the Guyana law enforcement officials to do so;
- (c) to maintain order on board the vessel while the boarding and search are being carried out or while the vessel is being detained in circumstances where -
 - (i) the crew or persons on board resist or impede the boarding or search or try to destroy evidence of illicit traffic; or
 - (ii) the vessel attempts to flee during the boarding or search or while it is being detained.

(5) Guyana law enforcement officials may carry small arms while conducting a boarding and search of any vessel and shall only discharge them -

- (a) when it is not possible to apply less extreme measures; and
- (b) with the prior authorisation of the treaty State,

except where warning shots are required as a signal for a vessel to stop or in the exercise of the right of self defence.

Request for
for
assistance
to conduct
patrols, etc.
in Guyana
waters.

7.(1) The Central Authority may request assistance from a treaty State for the provision by that State of law enforcement vessels to effectively carry out patrols and conduct surveillance in Guyana waters for the prevention and detection of illicit traffic.

(2) Where a treaty State agrees to provide assistance in response to a request made under subsection (1), the Central Authority shall request the treaty State to provide the following information -

- (a) the name and description of the law enforcement vessel;
- (b) the date when and the period during which it will be made available;
- (c) the name of the Commanding Officer; and
- (d) such other information as the Central Authority considers relevant.

Embarking
on treaty
State's law
enforcement
vessels.

8.(1) The Central Authority may designate law enforcement officials who may, for the conduct of law enforcement operations for the prevention, detention and suppression of illicit traffic by vessels in Guyana waters, embark on law enforcement vessels belonging to a treaty State.

- (2) The law enforcement officials may, while embarked on law enforcement vessels belonging to a treaty State -
- (a) enforce the laws of Guyana in Guyana waters, and seaward therefrom in the exercise of the right of hot pursuit, or otherwise in accordance with international law; and

- (b) authorise the entry of the law enforcement vessels into and their navigation with in Guyana waters.

Law enforce-
ment actions
responsibility
of Guyana
law enforce-
ment officials.

9. Any law enforcement action, including boardings, searches or seizures, detentions and the use of force, whether or not involving weapons, carried out pursuant to section 8, shall be the responsibility of and carried out by Guyana law enforcement officials in accordance with Guyana laws.

Authority
of Guyana
law enforce-
ment officials
on board
treaty State's
vessel.

10. Where Guyana law enforcement officials are embarked on a law enforcement vessel of a treaty State those officials shall carry out law enforcement action as described in section 9 so, however that -

- (a) crew members of the treaty State's law enforcement action if expressly requested to do so by the vessel may assist in any such law enforcement action by Guyana law enforcement official in command but only to the extent and in the manner requested; and
- (b) any such assistance shall be rendered in accordance with the relevant Guyana laws, to the extent that those laws are not inconsistent with the laws of the treaty State.

Permission
to follow
aircraft or
vessel into
treaty
State
waters.

11.(1) Where Guyana law enforcement officials have reasonable grounds to suspect that a foreign aircraft or foreign vessel is engaged in illicit traffic, the Central Authority may request permission of the relevant treaty State for a Guyana law enforcement vessel to follow the

foreign aircraft or foreign vessel into the treaty State waters or to enter those waters or that State's airspace in order to maintain contact with the aircraft or vessel and to investigate, board and search such vessel.

(2) A request made under this section shall be conveyed orally and confirmed in writing to the competent authority of the treaty State and shall state the grounds on which it is made.

(3) The Central Authority in making a request under subsection (1), shall specify the special circumstances which exist and the grounds for the alleged suspicion.

(4) All boardings and searches of foreign vessels suspected of illicit traffic, carried out pursuant to permission granted by a relevant treaty State shall be conducted in accordance with the laws of that State.

(5) Where as a result of boarding and search, evidence is found of illicit traffic on a foreign vessel -

- (a) the relevant treaty State shall be promptly informed of the results of the search;
- (b) that vessel and cargo and persons found on board shall unless the relevant treaty State otherwise directs, be detained and taken to a designated port within the waters of that State,

and thereafter, all law enforcement action shall be under the control and direction of the law enforcement officials, and conducted in accordance with the laws of, the relevant treaty State.

(6) Where special circumstances exist which make it essential for Guyana law enforcement officials to maintain contact with a foreign aircraft or foreign vessel suspected of illicit traffic which is in or is entering the treaty State waters or the treaty State airspace, the Guyana law enforcement vessel may, upon notice to the person designated by the competent authority of the relevant State, enter those waters for the sole purpose of maintaining contact with that aircraft or vessel pending a response to the request for permission under subsection (1).

Permission
to overfly
treaty State
waters.

12.(1) Where Guyana law enforcement officials have reasonable grounds to suspect that a foreign vessel or foreign aircraft is engaged in illicit traffic and that vessel or aircraft is located in or over, or is entering the airspace or waters of a treaty State, those officials shall provide the competent authority of the treaty State with information regarding that aircraft or vessel and may make a request for Guyana aircraft -

- (a) to overfly the territory and waters of that State in pursuit of the foreign aircraft or foreign vessel flying into or located within that State's airspace or waters;
- (b) to manoeuvre to maintain visual and electronic contact with that aircraft or vessel.

(2) Where a request referred to in subsection (1) is granted, the Central Authority shall, before any Guyana aircraft overflies the territory of the relevant treaty State or manoeuvre to maintain contact, give notice of the overflight and manoeuvre to the competent authority and the civil aviation

authority of that State; and the aircraft shall comply with all air navigation and flight safety directions given by that State's civil aviation authority.

(3) Where circumstances exist which make it essential for Guyana law enforcement officials to maintain contact with a foreign aircraft or foreign vessel suspected of illicit traffic which is in or entering the treaty State waters or the treaty State airspace the Guyana law enforcement aircraft may, upon notice to the competent authority of the treaty State and its civil aviation authority, enter and manoeuvre within the treaty State airspace for the sole purpose of maintaining contact with the foreign aircraft or foreign vessel pending a response to the request for permission under subsection (1).

PART III - REQUESTS BY TREATY STATE

Requests by
treaty State
relating to
waters seaward
of territorial
sea.

13.(1) Assistance may be provided by the Central Authority to a treaty State on request, to -

- (a) verify the registration of a vessel which is
 - (i) suspected by that State of being engaged in illicit traffic seaward of any State's territorial sea; and
 - (ii) registered or claims to be registered in Guyana;
 and
- (b) authorize the boarding and search of such vessel, its cargo and persons found on board.

(2) A request made under this section shall be conveyed orally and confirmed in writing to the Central Authority and shall state the grounds on which it is made.

(3) A vessel shall be deemed to be flying the flag of or registered in Guyana if it is registered or licensed as a fishing vessel under the laws of Guyana relating to fishing or the fishing industry.

(4) Where the Central Authority verifies that the vessel is registered in Guyana and is satisfied that there are reasonable grounds to believe that the vessel is engaged in illicit traffic, the Central Authority may authorize the law enforcement officials of the treaty State to board and search that vessel, its cargo and persons found on board.

Contents of
request by
treaty State.

14.(1) A request for authorization to board and search a vessel shall contain -

- (a) the name, homeport and registration number of the vessel;
- (b) the grounds for suspecting that the vessel or aircraft is engaged in illicit traffic;
- (c) such other information as may be necessary to identify the vessel.

(2) Law enforcement officials of the treaty State shall, when boarding and carrying out a search on a Guyana vessel, take into account the need -

- (a) not to endanger the safety of life at sea or the security of the vessel being searched and of its cargo;
- (b) not to prejudice the commercial and legal interests of Guyana or any other interested State.

- (c) to observe norms of courtesy, respect and consideration for the persons on board the vessel.

(3) Where, as a result of any search carried out on a Guyana vessel, evidence is found of illicit traffic, the law enforcement officials of the treaty State -

- (a) shall forthwith -

- (i) inform the Central Authority of the names and nationality, if known, of the persons on board the vessel;
- (ii) request the Central Authority to give directions as to the disposition of the vessel, cargo and persons on board;

- (b) may detain the vessel, cargo and persons on board pending receipt of such directions.

(4) Law enforcement officials of the treaty State shall, when boarding and carrying out a search on a Guyana vessel, avoid the use of force, in any way, including the use of firearms, except in the following cases -

- (a) in the exercise of the right of self-defence;
- (b) to compel the Guyana vessel to stop where the vessel has ignored the standard warnings given by the law enforcement officials of the treaty State to do so;
- (c) to maintain order on board the vessel while the boarding and search are being carried out or the vessel is being detained in circumstances where -

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- (i) the crew or persons on board resist or impede the boarding or search or try to destroy evidence of illicit traffic; or
- (ii) the vessel attempts to flee during the boarding or search or while it is being detained.

(5) Law enforcement officials of the treaty State may carry small arms while conducting a boarding and search of any vessel, and shall only discharge them -

- (a) when it is not possible to apply less extreme measures; and
- (b) with the prior authorization of the Central Authority, except where warning shots are required as a signal for a vessel to stop or in the exercise of the right of self-defence.

Request for assistance to conduct patrols, etc. in treaty State waters.

15.(1) Assistance may be granted by the Central Authority on request to a treaty State for the provision by Guyana of law enforcement vessels to effectively carry out patrol and conduct surveillance in waters of the treaty State for the prevention and detection of illicit traffic.

(2) Where Guyana agrees to provide assistance under subsection (1), the Central Authority shall inform the competent authority of the treaty State of -

- (a) the name and description of the law enforcement vessel;
- (b) the date when and the period during which it will be made available;
- (c) the name of the Commanding Officer; and
- (d) any other relevant information.

Embarking
on Guyana
law enforce-
ment
vessels.

16.(1) Where assistance is granted to a treaty State for the conduct by law enforcement officials of that State of law enforcement operations for the prevention, detection and suppression of illicit traffic by vessels in the treaty State waters, the law enforcement officials designated by the treaty State for that purpose may embark on law enforcement vessels belonging to Guyana

(2) The law enforcement officials of a treaty State may, while embarked on law enforcement vessels belonging to Guyana -

- (a) enforce the laws of the treaty State in the waters of that State, and seaward therefrom in the exercise of the right of hot pursuit, or otherwise, in accordance with international law; and
- (b) authorize the entry of the law enforcement vessels of Guyana into and their navigation within the waters of the treaty State.

(3) Any law enforcement action, including any boarding or search of a vessel or search or seizure of property, detention of person and the use of force, whether or not involving weapons, carried out pursuant to this section, shall be the responsibility of and carried out by law enforcement officials of the treaty State in accordance with the laws of that State.

Authority.
of law
enforcement
officials of
a treaty State
on board
Guyana vessels.

17.(1) Where law enforcement officials of a treaty State are embarked on a Guyana law enforcement vessel -

- (a) those officials shall have authority to carry out any law enforcement action, including the boarding or search of any vessel or the search or seizure of any property, and the detention of a person, by use of force, whether or not involving weapons;**
- (b) crew members of Guyana law enforcement vessel may assist in any such action -**
 - (i) if expressly requested to do so by the treaty State's law enforcement official in command;**
and
 - (ii) only to the extent and in the manner requested;**
and
- (c) such assistance, including the use of force, shall be tendered in accordance with the relevant laws of the treaty State to the extent that those laws are not inconsistent with the laws of Guyana.**

Permission
to follow
aircraft or
vessel into
Guyana waters.

18.(1) Assistance may be provided by the Central Authority to a treaty State on request, to permit a law enforcement vessel of that State -

- (a) to follow a foreign aircraft or vessel into Guyana waters;**
or
- (b) to enter Guyana waters in order to -**
 - (i) maintain contact with that aircraft or vessel; and**
 - (ii) investigate, board and search such vessel.**

(2) A request made under this section shall be conveyed orally and confirmed in writing to the Central Authority and shall state the grounds on which it is made.

(3) A request under subsection (1) shall specify the special circumstances which exist and the grounds for the alleged suspicion.

(4) Where the Central Authority is satisfied that there are reasonable grounds to suspect that the foreign aircraft or foreign vessel is engaged in illicit traffic and that special circumstances so warrant, the Central Authority may approve the request made under subsection (1).

(5) All boardings and searches of foreign vessels suspected of illicit traffic shall be conducted in accordance with the laws of Guyana.

(6) In approving a request under subsection (1) the Central Authority shall require that if, as a result of boarding and search referred to in subsection (1)(b)(ii), evidence of illicit traffic is found on a foreign vessel -

(a) the Central Authority be promptly informed of the results of the search;

(b) the vessel, cargo and persons found on board be detained and taken to a designated port within Guyana waters unless the Central Authority otherwise directs,

and thereafter all enforcement action shall be under the control and direction of Guyana law enforcement officials, and conducted in accordance with the laws of Guyana.

(7) Where special circumstances exist which make it essential for law enforcement officials of a treaty State to maintain contact with a foreign aircraft or foreign vessel suspected of illicit traffic which is in or is entering the

waters or airspace of Guyana, the law enforcement vessel of the treaty State may, upon notice to the person designated by the Central Authority enter Guyana waters for the sole purpose of maintaining contact with that aircraft or vessel pending a response to the request for permission under subsection (1).

Aircraft
support
in Guyana
airspace or
Guyana waters.

19.(1) Assistance may be provided by the Central Authority to a treaty State on request, to permit an aircraft of that State to -

- (a) overfly Guyana and Guyana waters in pursuit of a foreign aircraft or foreign vessel fleeing into or located within Guyana airspace or Guyana waters;
- (b) manoeuvre to maintain visual and electronic contact with that aircraft or vessel.

(2) Where the Central Authority is satisfied that there are reasonable grounds to suspect that a foreign vessel or foreign aircraft is engaged in illicit traffic, it may approve a request made under subsection (1).

(3) Approval of a request under this section shall be subject to the following conditions -

- (a) the competent authority of the treaty State shall be required, before any of that State's aircraft overflies Guyana or manoeuvre to maintain contact, to give notice of the overflight and manoeuvre to the Central Authority and the Civil Aviation Authority; and

- (b) the aircraft shall be required to comply with all air navigation and flight safety directions given by the Civil Aviation Authority.

(4) Where circumstances exist which make it essential for law enforcement officials of a treaty State to maintain contact with a foreign aircraft or foreign vessel suspected of illicit traffic which is in or entering Guyana waters or Guyana airspace, the law enforcement aircraft of that treaty State may, upon notice to the person designated by the Central Authority and to the Civil Aviation Authority, enter and manoeuvre within Guyana airspace for the sole purpose of maintaining contact with the aircraft or vessel pending a response to the request for permission under subsection (1).

PART IV - GENERAL

Waiver of
jurisdiction.

20. (1) Where -

- (a) pursuant to section 5, a foreign vessel of a treaty State is detained seaward of any State's territorial sea by Guyana law enforcement officials; and
- (b) the treaty State waives its right to exercise jurisdiction over that vessel and authorizes Guyana to enforce its laws against that vessel, its cargo and any persons found on board,

any offence that may have been committed, in relation to illicit traffic, shall be liable to be tried by a court in Guyana.

(2) Where pursuant to sections 13 and 14, a Guyana vessel is detained seaward of any State's territorial sea by a treaty State, the Minister may waive Guyana's right to exercise jurisdiction over the vessel and authorize the relevant treaty State to enforce its laws against that vessel, its cargo and persons found on board other than Guyana Nationals.

(3) Nothing in this Act shall be construed as a waiver by Guyana of its right to exercise jurisdiction over any Guyana national or as authorising the relevant treaty State to enforce its laws against any such national.

Extension of
laws of
Guyana to
offences
committed
on vessels
outside
Guyana waters.

21.(1) The laws of Guyana extend to any offence committed outside Guyana waters on a vessel or aircraft registered in Guyana; and for the purposes of the jurisdiction of any court in Guyana, the offence shall be treated as if it were committed in the Magisterial District in which proceedings are brought.

(2) Where the offence of illicit traffic is committed -

- (a) within the territory of Guyana or on board a vessel or aircraft which is registered in Guyana; and
- (b) the alleged offender is -
 - (i) present in Guyana; or
 - (ii) a Guyana national,

that offender shall be liable to be tried by a court in Guyana if that offender is not extradited pursuant to the provisions of the Convention on the ground specified in paragraph (a) or (b) (ii).

Regulations.

22. The Minister may make regulations in respect of all such matters as are required or necessary for carrying out or giving effect to this Act.

EXPLANATORY MEMORANDUM

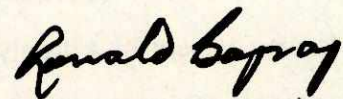
This Bill provides for agreed co-operation between States in the suppression of illicit maritime drug trafficking.

PART I applies the Act to any State with which a drug trafficking treaty has been made.

PART II deals with requests by Guyana relating to waters seaward of the territorial sea where a foreign vessel of a treaty State is engaging in illicit traffic in such waters. It provides for the contents of the request, how the search on board shall be carried out, the disposal of illicit traffic and the arms that may be carried (clause 6). The Central Authority, who is the Minister of Home Affairs, may request for assistance to conduct patrols in Guyana Waters (clause 7), may designate law enforcement officials to embark on a treaty State's law enforcement vessels (clause 8) and request permission of a treaty State for a Guyana law enforcement vessel to follow a foreign aircraft or vessel into the treaty State to search such vessel.

PART III deals with requests by a treaty State for assistance. Assistance may be provided by our Central Authority to a treaty State on request to verify the registration of a vessel suspected of illicit traffic seaward of any State's territorial sea and to authorise boarding and search of such vessel. The contents of the request by the treaty State are provided for. Where a search on a Guyana vessel yields evidence of illicit traffic the treaty State is obliged to inform our Central Authority and request directions as to the disposition of the vessel, cargo and persons. Law enforcement officials of a treaty State, shall except for instance in self defence, avoid the use of force. Assistance may be granted to a treaty State, for assistance, to conduct patrols in treaty State waters. Law enforcement officials of a treaty State may, with the permission of Guyana, embark on law enforcement vessels of Guyana to carry out law enforcement action. Assistance may be given by Guyana to a treaty State to permit a law enforcement vessel of that State to follow a foreign aircraft or vessel into Guyana waters.

PART IV is the general part dealing with waiver of jurisdiction. Where Guyana waives its jurisdiction to try an offence that normally would be tried in Guyana such offence may be tried in the treaty State and vice versa. The laws of Guyana extend to any offence committed outside Guyana waters on a vessel or aircraft registered in Guyana. Such an offence shall be treated as if it were committed in the Magisterial District in which the proceedings are brought.



Minister of Home Affairs