No. 165

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Relations of the Republic of Panama, and refers to the ongoing counter-drug cooperation between the Government of the United States of America and the Government of the Republic of Panama. Specifically, via the Government of the United States of America's Department of Defense Cooperating Nation Information Exchange System (hereinafter "CNIES"), the Government of the United States of America provides the Government of the Republic of Panama with real-time radar track data. To ensure that such data and other interception-related assistance is employed consistent with relevant U.S. criminal law, the Embassy proposes to formalize a mutual understanding of the nature and import of this data and the conditions governing the use of that data and other interception-related assistance. The text of this mutual understanding follows:

> "The Government of the United States of America is willing to provide assistance in locating, identifying, tracking, and intercepting civil aircraft in the Republic of Panama's airspace in order to facilitate the interruption of illicit drug trafficking routes and the arrest of illicit drug traffickers.
>
> In consideration of the ongoing, mutually beneficial relationship between our two Governments in the field of law enforcement efforts to combat illicit drug trafficking, the Embassy of the United States of America proposes on behalf of the Government of the United States of America as follows:

I. Definitions

The term "U.S. Government assistance" as used in this Note shall include, but not be limited to: funding; intelligence; information; radar data (including data derived from the Cooperating Nation Information Exchange System (or "CNIES"); logistical support; command, control, and communications support; equipment; maintenance; and training provided by the Government of the United States of America.

The term "CNIES data" means data displaying the position of air and surface tracks of interest ("TOIs") based on geographic filters. The CNIES data includes both automatically displayed Relocatable Over the Horizon Radar track information that has not been reviewed to ascertain the legal or illegal nature of the flight and TOIs that have been located and identified by other air surveillance systems or tracking aircraft as suspected narco-trafficking aircraft.

Consistent with Article 2 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal, September 23, 1971, to which both the Government of the United States of America and the Government of the Republic of Panama are parties, the terms "in flight" and "in service" are used in this Note as follows:

(1) An aircraft is considered to be "in flight" at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over responsibility for the aircraft and for persons and property on board.

(2) An aircraft is considered to be "in service" from the beginning of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (1) above.

The term "interception" means the act by a Government of the Republic of Panama aircraft of approaching and remaining near an aircraft, with the goal of identifying that aircraft, and, if necessary, directing it back to its planned route, directing it beyond the borders of the Republic of Panama airspace, escorting it out of restricted, prohibited, or dangerous airspace, or instructing it to land.

II. Interception of Aircraft

The Government of the Republic of Panama shall, when intercepting civil aircraft in flight, consistently and strictly adhere to the safety procedures in Annex 2 to the

Convention on International Civil Aviation, done at Chicago on December 7, 1944 (the "Chicago Convention") and amendments thereto. Further, the Government of the Republic of Panama shall ensure that all Government of the Republic of Panama personnel (whether in the air, in a command and control center, or elsewhere) involved in the interception of civil aircraft are familiar with such procedures. The Government of the Republic of Panama, when intercepting civil aircraft in flight, shall adhere to any relevant International Civil Aviation Organization ("ICAO") provisions on interception, including those contained in the Manual Concerning Interception of Civil Aircraft.

The Government of the Republic of Panama shall promulgate, throughout its civil aviation community via Notices to Airmen ("NOTAMs"), notice of the Government of the Republic of Panama's policies on interception. These NOTAMs will inform pilots that the Government of the Republic of Panama will not damage, destroy, or disable any civil aircraft other than in self-defense, and they shall include adequate notice of the procedures that the National Air Service of the Government of the Republic of Panama will use to order intercepted aircraft to land so that aviators are aware of the procedures and can conduct themselves accordingly.

To the extent that a civil aircraft being intercepted by the Government of the Republic of Panama is intercepted because the Government of the Republic of Panama believes that the aircraft is primarily engaged in illicit drug trafficking, the Government of the Republic of Panama shall use the sorting criteria set forth below to determine the nature of the suspect aircraft.

The following factors should be considered in determining whether an aircraft is reasonably suspected of being primarily engaged in illicit drug trafficking:

- Did the aircraft fail to file a required flight plan?
- Is it inexplicably flying outside the route designated in its approved flight plan?
- Is it not using the appropriate transponder code?
- Is it flying at an inexplicably low altitude?
- Is it flying at night with its lights out?
- Does the aircraft have false (or no) tail numbers?
- Are the windows blacked out?
- Does the physical description of the aircraft match the description of an aircraft previously used in illicit drug trafficking?
- Is there intelligence information indicating that the aircraft is primarily engaged in illicit drug trafficking?
- Is the aircraft flying without permission in an Air Defense Identification Zone (if any)?
- Is the aircraft parked at night at a non-monitored air field without permission?
- Have all attempts to identify the aircraft failed?
- Has the aircraft inexplicably failed to respond to all attempts to communicate?

- Has the aircraft ignored the Government of the Republic of Panama National Air Service's orders?
- Have any objects been jettisoned from the aircraft?
- Is there any other information suggesting that the aircraft is reasonably suspected to be primarily engaged in illicit drug trafficking?
- Is there any information suggesting that the aircraft is not reasonably suspected to be primarily engaged in illicit drug trafficking?

III. Non-Use of Weapons Against Civil Aircraft

If U.S. Government assistance is used in any way to locate, identify, track, or intercept a civil aircraft, the Government of the Republic of Panama shall:

(a) not damage, destroy, or disable any civil aircraft in service, and

(b) not threaten to damage, destroy, or disable any civil aircraft in service.

(i) This does not preclude the firing of warning shots as a signaling measure, using ammunition containing tracer rounds, in order to be sure that the pilot is aware that he or she has been intercepted.

(ii) Warning shots may be fired only from a position slightly ahead of abeam and parallel to the course of the intercepted aircraft to ensure that the intercepted aircraft is not in the line of fire. The aircraft firing the warning shots shall take all reasonable cautionary measures to avoid shooting the intercepted aircraft, any other aircraft in the vicinity, or persons or property on the ground.

None of the commitments undertaken by the Government of the Republic of Panama in agreeing to these conditions are intended to preclude or limit The Government of the Republic of Panama's ability to use weapons in the context of an act of self-defense.

IV. Sharing of Information

The Government of the Republic of Panama shall not permit third parties access, without the specific written consent of the Embassy of the United States of America, to any information, data, or analysis that could be used for aerial interceptions that has been developed using U.S. Government assistance.

V. Non-Compliance with Conditions

In the event that the Government of the Republic of Panama fails to comply with any of the conditions contained herein, the Government of the United States of America will,

in its discretion, suspend or terminate any and all U.S. Government assistance to the Government of the Republic of Panama related to the interception of civil aircraft.

If the foregoing is acceptable to the Government of the Republic of Panama, the Embassy of the United States of America has the honor to propose that this Note and your Note in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of your reply."

The Embassy of the United States of America takes this opportunity to renew to the Ministry of Foreign Relations of the Republic of Panama the assurances of its highest consideration.

Embassy of the United States of America,

Panama, February 2, 2005.

U.S. Department of State
Office of Language Services
Translating Division

LS No. 03-2005-0263
Spanish
ALK/

Translation

Republic of Panama

Ministry of Foreign Relations
Office of the Minister

D.M. Communication No. DT/036 Panama City, February 10, 2005

The Ministry of Foreign Relations of Panama presents its compliments to the Embassy of the United States of America and has the honor to acknowledge receipt of its note No. 165 of February 2, 2005, which states the following:

[See Text of U.S. Note].

In this regard, the Ministry of Foreign Affairs has the honor to inform the Embassy of the United States of America that the foregoing proposal is acceptable to the Government of the Republic of Panama and that the Embassy's note, together with this reply, shall constitute an agreement between our two governments, which shall enter into force on the date of this reply.

The Ministry of Foreign Affairs of avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Panama City, February 10, 2005

[Initialed]

[Stamp of the Ministry of Foreign Affairs, Treaty Department]