

No. 51491

**United States of America
and
Guatemala**

Exchange of notes constituting an Agreement between the Government of the United States of America and the Government of Guatemala regarding the Cooperating Nation Information Exchange System. Guatemala City, 30 November 2004

Entry into force: *30 November 2004 by the exchange of the said notes, in accordance with their provisions*

Authentic texts: *English and Spanish*

Registration with the Secretariat of the United Nations: *United States of America, 25 November 2013*

**États-Unis d'Amérique
et
Guatemala**

Échange de notes constituant un accord entre le Gouvernement des États-Unis d'Amérique et le Gouvernement du Guatemala relatif au Système d'échange d'informations entre nations coopérantes. Guatemala, 30 novembre 2004

Entrée en vigueur : *30 novembre 2004 par l'échange desdites notes, conformément à leurs dispositions*

Textes authentiques : *anglais et espagnol*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *États-Unis d'Amérique, 25 novembre 2013*

[ENGLISH TEXT – TEXTE ANGLAIS]

I

No. 331

The Embassy of the United States of America presents its compliments to the Foreign Ministry of Guatemala, and refers to the ongoing counter-drug cooperation between the Government of the United States of America and the Government of Guatemala. 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 Guatemala 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 Guatemala'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 Guatemala 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 Guatemalan 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 Guatemalan airspace, escorting it out of restricted, prohibited, or dangerous airspace, or instructing it to land.

II. Interception of Aircraft

The Government of Guatemala 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 Guatemala shall ensure that all Guatemalan 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 Guatemala, 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 Guatemala shall promulgate, throughout its civil aviation community via Notices to Airmen ("NOTAMs"), notice of Guatemala's policies on interception. These NOTAMs will inform pilots that the Government of Guatemala 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 Air Force of Guatemala 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 Guatemala is intercepted because Guatemala believes that the aircraft is primarily engaged in illicit drug trafficking, the Government of Guatemala 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?