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ACTION EB-01

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| INFO | LOG-00 | ACDA-17 | AMAD-01 | ARA-01 | COME-00 | DEAE-00 | OASY-00 |
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R 072204Z FEB 94
 FM AMEMBASSY BOGOTA
 TO SECSTATE WASHDC 6297
 INFO AMCONSUL MONTREAL
 USCINCSO QUARRY HEIGHTS PM
 AMEMBASSY CARACAS
 AMEMBASSY LIMA
 AMEMBASSY QUITO
 AMEMBASSY LA PAZ
 AMEMBASSY GUATEMALA
 AMEMBASSY PANAMA
 DIRONDCP WASHDC
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STATE FOR INM, ARA, L/LEI, ARA/AND, DS/DSS/ITA, DS/I/CT
 MONTREAL FOR ICAO
 DEA FOR OF, OFL, DO, AO, AX, OK, NK
 CUSTOMS FOR OIC

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TAGS: EAIR, SNAR, CO
SUBJECT: REVISED COLOMBIAN INTERCEPTION PROCEDURES

REFS: A) 93 STATE 016612 (NOTAL), B) BOGOTA 1206,
C) 93 BOGOTA 19102, D) 90 STATE 222589

1. SUMMARY. L/LEI ASSISTANT LEGAL ADVISER AND EMBASSY POLOFF VISITED MINISTRY OF DEFENSE (MOD) DEPUTY LEGAL ADVISER ON JANUARY 25, TO LEARN MORE ABOUT THE GOC'S POSSIBLE NEW AIR INTERDICTION POLICY (REF A,B,C). MOD REP CONFIRMED THAT GOC NATIONAL SECURITY COUNCIL WAS IN THE FINAL STAGES OF APPROVING THE USE OF WEAPONS AGAINST CIVIL AIRCRAFT FLYING IN CERTAIN PROHIBITED AREAS, WHEN SUCH AIRCRAFT ARE SUSPECTED OF CARRYING ILLEGAL DRUGS AND FAIL TO OBEY ORDERS TO LAND. SHE STATED THAT NO DOCUMENT OR JUSTIFICATION HAD BEEN FILED IN MONTREAL WITH ICAO, BUT THAT THE GOC WOULD AT SOME POINT FILE A NOTICE TO AIRMEN (NOTAM) WITH ICAO TO WARN PILOTS OF THE NEW POLICY. END SUMMARY.

2. AS REQUESTED REF A, EMBASSY ARRANGED A MEETING FOR L/LEI ASSISTANT LEGAL ADVISER ROBERT HARRIS (WHO WAS IN [REDACTED]
[REDACTED])

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BOGOTA ON OTHER BUSINESS) WITH MOD DEPUTY LEGAL ADVISER PATRICIA BULLA TO LEARN MORE ABOUT THE GOC'S NEW AIR INTERDICTION POLICY. POLOFF ARCHER ALSO ATTENDED.

3. BULLA EXPLAINED THAT THE GOC WAS INDEED IN THE FINAL STAGES OF MODIFYING ITS AIR INTERDICTION POLICY. WITHIN THE NEXT FEW DAYS, SHE EXPLAINED, THE GOC NATIONAL SECURITY COUNCIL WOULD ISSUE A DECISION ("ACTA") TO AUTHORIZE THE USE OF WARNING SHOTS AND, IF NECESSARY, THE SHOOTDOWN OF AIRCRAFT WHICH ARE SUSPECTED OF CARRYING DRUGS AND WHICH FAILED TO OBEY ORDERS TO LAND FROM GOC STATE AIRCRAFT. THE GOC WOULD APPLY THE POLICY IN TWO GEOGRAPHIC ZONES IT WOULD DECLARE "RESTRICTED AREAS" (ONE IN AIRSPACE ENTERING COLOMBIA FROM THE FROM THE CARRIBEAN AND THE OTHER FROM ECUADOR.) ACCORDING TO BULLA, THE GOC WAS NOT PROMULGATING NEW RULES BUT SIMPLY IMPLEMENTING PROCEDURES THAT THE GOC SUSPENDED IN 1990. (FYI: AS A RESULT OF A 1990 U.S. DEMARCHE (REF D), THE GOC SUSPENDED ITS IMPLEMENTATION OF RULES THAT WOULD AUTHORIZE THE SHOOTDOWN OF SUSPECT AIRCRAFT.) IN THE

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CASE OF INTERCEPTION, IN THE FIRST INSTANCE, THE GOC WOULD FOLLOW ICAO PROCEDURES FOR ATTEMPTING TO COMMUNICATE WITH A SUSPECT AIRCRAFT. IF SUCH EFFORTS FAILED, THE GOC MIGHT FIRE WARNING SHOTS. IF THESE WERE UNSUCCESSFUL IN COMPELLING COMPLIANCE, THE GOC INTERCEPTORS COULD BE AUTHORIZED TO SHOOTDOWN THE AIRCRAFT. BULLO PROVIDED A COPY OF THE RELEVANT PART OF THE REGULATIONS, WHICH IS BEING TRANSLATED BY THE OFFICE OF LANGUAGE SERVICES.

4. AFTER NOTING THE GENERAL AVIATION LAW RELATED TO

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THIS ISSUE (I.E., CHICAGO CONVENTION ARTICLES 3(D), 3 BIS., AND CUSTOMARY INTERNATIONAL LAW, HARRIS ASKED WHETHER THE GOC MAY HAVE FILED A SUBMISSION TO THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO) TO EXPLAIN OR OTHERWISE JUSTIFY THE NEW COLOMBIAN POLICY. BULLA SAID THAT NO SUCH PAPER HAS BEEN OR WOULD BE

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FM AMEMBASSY BOGOTA
TO SECSTATE WASHDC 6298
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CIA WASHDC
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DEA EPIC EL PASO TX
DIRFBI WASHDC//CID UNIT 6//

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STATE FOR INM, ARA, L/LEI, ARA/AND, DS/DSS/ITA, DS/I/CT
MONTREAL FOR ICAO
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FILED. AFTER THE POLICY IS ADOPTED, HOWEVER, THE GOC
WOULD FILE A NOTAM, TO WARN AIRMEN OF A POTENTIAL
HAZARD. IT WAS UNCLEAR TO U.S. PARTICIPANTS HOW
SPECIFIC THE NOTAM WOULD BE (I.E., WHETHER IT WOULD
SPECIFICALLY SAY THAT AIRCRAFT THAT FAILED TO OBEY
ORDERS WOULD BE SHOT DOWN.)

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5. BULLA SAID THAT SHOOTDOWN WAS APPROPRIATE AND COULD BE JUSTIFIED LEGALLY. INDEED, SHE SAID THAT THE GOC FOREIGN, DEFENSE AND JUSTICE MINISTRIES HAD LOOKED AT THE ISSUE AND EACH HAD SEPARATELY CONCLUDED THAT THE POLICY COULD BE SO JUSTIFIED. WHILE NOT PROFFERING A NEW INTERPRETATION OF CHICAGO CONVENTION ARTICLE 3(D) OR CUSTOMARY INTERNATIONAL LAW, BULLA NOTED THAT A COUNTRY'S SOVEREIGNTY TO ENFORCE ITS LAWS IN ITS TERRITORY INCLUDES THE RIGHT TO SHOOT DOWN A SUSPECT AIRCRAFT THAT REFUSED TO OBEY OR RESPOND TO INTERNATIONALLY RECOGNIZED SIGNALS TO LAND. IN LIGHT OF THE PROCEDURES TO ENSURE THAT TARGETED AIRCRAFT WERE

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ACTUALLY INVOLVED IN DRUG TRAFFICKING AND THAT THE USE OF WEAPONS WOULD ONLY BE USED AS A LAST RESORT, THE GOC HAD CONCLUDED THAT THE POLICY WAS A REASONABLE ONE TO RESPOND TO A VIOLATION OF COLOMBIAN SOVEREIGNTY.

6. ALTHOUGH AWARE THAT THE AUGUST 4, 1993 MOU CONCERNING GOC AIR FORCE PERSONNEL ON BOARD USG AWACS PROVIDES THAT "IN USING THE INFORMATION PROVIDED BY THE WACS AND ARL AIRCRAFT (THE PARTIES) WILL ADHERE TO THE INTERNATIONAL CIVIL AVIATION CONVENTION CONCLUDED DECEMBER 7, 1944 (THE CHICAGO CONVENTION), INCLUDING ARTICLE 3 BIS. . . ." BULLA ASSERTED THAT THIS WOULD NOT RESTRICT THE USE OF WEAPONS AS CONTEMPLATED IN THE NEW GOC POLICY. ACCORDING TO BULLA, THAT RESTRICTION ON USE OF WEAPONS WOULD ONLY APPLY TO COMMERCIAL AIRLINERS AND OTHER AIRCRAFT THAT HAVE FILED FLIGHT PLANS WITH THE GOVERNMENT AND OTHERWISE COMPLIED WITH INTERNATIONAL LAW.

7. BULLA EXPLAINED THAT ALTHOUGH THE PLAIN WORDS OF ARTICLE 3 BIS APPLY TO "CIVIL AIRCRAFT" WHICH INCLUDES ALL INTERNATIONAL AIRCRAFT THAT ARE NOT STATE AIRCRAFT, IT DID NOT APPLY TO THOSE SUSPECT NARCOTRAFFICKING AIRCRAFT THAT VIOLATED INTERNATIONAL LAW AND THE SOVEREIGNTY OF A COUNTRY BY NOT FILING A FLIGHT PLAN, IGNORING DIRECTIONS FROM AIR TRAFFIC CONTROLLERS AND DISOBEYING INTERNATIONALLY RECOGNIZED SIGNALS TO LAND.

8. HARRIS CONCLUDED THE MEETING BY THANKING BULLA FOR HER ASSISTANCE, EXPLAINING THAT HE WAS MEETING HER SOLELY IN AN INFORMATION GATHERING CAPACITY.

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9. FOLLOWING HARRIS' DEPARTURE, AMBASSADOR BUSBY RAISED THE ISSUE WITH MOD PARDO. PARDO ALSO SAID THE GOC WAS IN THE FINAL STAGES OF IMPLEMENTING ITS POLICY. HE SAID HE THOUGHT IT WOULD BE VERY HELPFUL IN THE CONSTANT

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BATTLE AGAINST THE TRAFFICKERS AND ADDED IT HAD BEEN
THOUGHT THROUGH VERY CAREFULLY. HE PROMISED TO SEND THE
AMBASSADOR A FULL PACKAGE OF DOCUMENTS ON THE
PROCEDURE. BUSBY

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