



U.S. Department of Justice

Criminal Division
Terrorism and Violent Crime Section

Washington, D.C. 20530

March 8, 2002

MEMORANDUM

TO: Mike Chertoff
FROM: Jim Reynolds
SUBJECT: Shootdown

At a meeting on March 4 concerning the shootdown investigation, you raised an issue concerning the application of the shootdown immunity statute, 22 U.S.C. § 2291-4. That statute provides, under certain circumstances, immunity from criminal prosecution under 18 U.S.C. § 32 for damaging or destroying a civil aircraft while such aircraft is in flight.

(S) [REDACTED] (S)

Pursuant to § 2291-4(a), the immunity provision relating to the interdiction of aircraft reasonably suspected of being primarily engaged in illicit drug trafficking can be implemented if the President, before the interdiction occurs, has determined with respect to the particular foreign country that,

15

(A) interdiction is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and

(B) the country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force directed against the aircraft.

The statute goes on to state in § 2291-4(b) that "it shall not be unlawful for authorized employees or agents of the United States (including members of the Armed Forces of the United States) to provide **assistance for the interdiction actions of foreign countries authorized under subsection (a) of this section**" (emphasis added).

Authority for U.S. government personnel to assist Peru in drug interdiction activities is contained in Presidential Determination No. 95-9, December 8, 1994, which was based on a "Memorandum of Justification." The portion of the Presidential Determination reflecting a determination that Peru has appropriate procedures in place to protect against innocent loss of life is clearly based on the content of the Memorandum of Justification which sets forth the four phases of Peru's air interdiction procedures. Attachment 3 at pp. 2-4. Additionally, the Memorandum of Justification concludes with the following statement:

As part of their standard operating instructions, all official USG personnel in jointly manned facilities and platforms will regularly monitor compliance with agreed procedures and immediately report irregularities through their chain of command. Should there be evidence suggesting that procedures are not being followed, the USG will reevaluate whether Peru has appropriate procedures to protect against the loss of innocent life.

(b)(5)

Attachments

cc: Mary Lee Warren