

THE WHITE HOUSE  
WASHINGTON

December 8, 1994

Presidential Determination  
No. 95-9

MEMORANDUM FOR THE SECRETARY OF STATE  
THE SECRETARY OF DEFENSE

SUBJECT: Resumption of U.S. Drug Interdiction Assistance  
to the Government of Peru

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, I hereby determine with respect to Peru that: (a) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (b) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the Federal Register.

William S. Clinton

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Memorandum of Justification for  
Presidential Determination Regarding the  
Resumption of U.S. Aerial Tracking Information Sharing  
and Other Assistance to the Government of Peru

Section 1012 of the National Defense Authorization Act for Fiscal Year 1995 provides that "[n]otwithstanding any other provision of law, it shall not be unlawful for authorized employees or agents of a foreign country . . . to interdict or attempt to interdict an aircraft in that country's territory or airspace if-

- (1) that aircraft is reasonably suspected to be primarily engaged in illicit drug trafficking; and
- (2) the President . . . has determined with respect to that country that-

(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."

Narcotics production and trafficking pose a grave threat to Peru's national security. Sixty percent of the world's coca leaf supply is grown east of the Andes in Peru. The resulting drug trade, generating billions of dollars of illicit profits annually, has undermined the Government of Peru's efforts to put the legitimate Peruvian economy on a stable footing due to the effects of narcodollars on the black market economy. Trafficking has also impeded concerted efforts to bring legitimate political and agricultural development to rural areas, and weakened military and law enforcement institutions by narcotics corruption. Above all, Peruvian narcotics trafficking organizations have provided substantial funding to Peruvian terrorist organizations, specifically the Shining Path and MRTA, fueling a vicious guerrilla war which has resulted in two thirds of the country being placed under martial law, and left thousands dead since 1980.

Illegal flights by general aviation aircraft are the lifeline of the traffickers' operations. They move narcotics and related contraband, such as chemicals, currency, and weapons into and through Peru and they ferry logistical supplies to production sites and staging areas. In the face of this threat, the Government of Peru lacks the resources to control all of its airspace and to respond when trafficker aircraft land at remote locations outside the effective control of the government. Accordingly, drug smuggling aircraft flagrantly defy Peru's sovereignty, penetrating its borders at will and flying freely throughout the country.



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In response to this clear threat to national security, the Government of Peru authorized its Air Force to use force, if necessary, to control narcotics smuggling aircraft over its territory. Initiated in early 1991, the policy has deterred narcotics smuggling flights.

On May 1, 1994, the U.S. Department of Defense ceased providing real-time intelligence to the Government of Peru. Based on an interagency legal review, the Department of Justice subsequently advised that U.S. domestic criminal law could be interpreted to preclude sharing of intelligence with countries that used this information to shoot down civil aviation aircraft. The lack of intelligence has severely hindered Peru's efforts to stop the drug production and trafficking that threaten its national security. Section 1012 of U.S. Public Law 103-337 (the 1995 National Defense Authorization Act) was enacted specifically to address legal concerns relating to the sharing of intelligence.

Peruvian decree law no. 25426, dated April 9, 1992, contemplates the use of arms against narcotics trafficking civil aircraft under very restricted conditions and only in a specially declared Air Defense Identification Zone (ADIZ) comprising Peruvian territory east of the crest of the Andes mountain chain.

The GOP has established rigorous procedures to ensure adequate protection against the loss of innocent life. The procedures for identifying and communicating with intercepted aircraft are based on ICAO guidelines, and are contained in classified GOP plans and orders, as well as in Civil Aviation law 24882. The procedures are summarized below:

It is the national policy of Peru that narco-trafficking aircraft are by their nature "hostile" to Peruvian national security; the use of weapons against such aircraft in flight by the Peruvian Air Force may be authorized under very strict conditions after all attempts to identify innocent aircraft and to persuade the suspect aircraft to land at a controlled airfield have been exhausted. The U.S. Government knows of no instance in which Peruvian Air Force aircraft have deviated from the procedures described below. The GOP has placed additional conditions and controls on the use of such force -- specifically prohibiting attacks on commercial passenger aircraft.

Peru's air interdiction procedures are in four phases:

Detection: U.S. and/or Peruvian Air Force (PAF) detection and monitoring systems find and track any aircraft passing through the specially designated ADIZ airspace during hours of daylight. (All general aviation traffic not operating on a regular schedule along established routes is prohibited in the ADIZ during hours of darkness.)

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• **Identification:** The PAF will attempt to identify an aircraft as a legitimate flight. This will include determining whether the aircraft is on a previously filed flight plan and by attempting to establish radio communication with the aircraft. When control centers (ground and/or air radars) detect an overflight of any aircraft, they will attempt to identify it through correlation of flight plans and by electronic means--through use of IFF or radio communications.

• **Intercept:** If the PAF determines that an aircraft flying in the ADIZ is not on a previously approved flight plan, and if it is not possible to establish communication and confirm the aircraft's identification as an innocent aircraft, the Commanding General of the Peruvian Air Force Sixth Territorial Air Region (VI RAT) may direct the launch of interceptor aircraft to visually identify the aircraft, verify its registry, attempt to establish radio contact, and, if necessary, cause the aircraft to proceed to a safe and adequate air strip where the PAF will require the aircraft to land -- using intercept procedures consistent with International Civil Aviation Organization guidelines.

If radio communication is established during the intercept, but the PAF is not satisfied that the aircraft is on a legitimate mission, the PAF may direct the aircraft to land at a safe and adequate air strip. If radio contact is not possible, the PAF pilot must use a series of internationally recognized procedures to make visual contact with the suspect aircraft and to direct the aircraft to follow the intercepting aircraft to a secure airfield for inspection.

• **Use of Weapons:** If the aircraft continues to ignore the internationally recognized instructions to land, the PAF pilot -- only after gaining permission of the Commanding General of the VI RAT or in his absence the Chief of Staff -- may fire warning shots in accordance with specified PAF procedures. If these are ignored, and only after again obtaining the approval of the Commanding General of the VI RAT or in his absence the Chief of Staff, the PAF pilot may use weapons against the trafficking aircraft with the goal of disabling it. Finally, if such fire does not cause the intercepted pilot to obey PAF instructions, the VI RAT commander may order the trafficker aircraft shot down.

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The final decision to use force against civil aircraft in flight -- once all other steps have been exhausted -- requires authorization from the VI RAT Commander -- or in his absence his Chief of Staff -- who will verify that all appropriate procedures have been fulfilled.

Peruvian air interdiction procedures also protect against innocent loss of life on the ground. The decision to fire at an aircraft requires approval of the Commander of the Peruvian Air Force Sixth Territorial Air Region -- or his Chief of Staff. These procedures do not contemplate the use of weapons against an aircraft flying over a populated area. The ADIZ in Peru covers areas which are very sparsely populated.

With respect to interceptors firing against trafficking aircraft on the ground, the procedures are similar to those for an aircraft in flight. When a pilot encounters a suspect aircraft on the ground, he must attempt to establish radio communication with the aircraft and employ visual signals which are also observable by any other persons on the ground in the vicinity. Only in response to armed attack or in the event that the aircraft attempts to take off after communication, identification, and warning procedures have been completed may the VI RAT commander authorize use of weapons to disable the aircraft if there is no risk to innocent bystanders.

The Peruvian procedures are designed to identify for interception aircraft that are likely to be engaged in drug trafficking and, for aircraft so intercepted, to provide proper notice that they are required to land. These procedures minimize the risk of misidentification. Any decision to fire on civil aircraft, and the procedures and events leading to it, will subsequently be reviewed by the GOP pursuant to legal provisions and sanctions available to it against any GOP official who deviates from established procedures.

The USG and GOP jointly operate all radar facilities and the Sixth Territorial Air Region command center in Peru. Peruvian personnel accompany most USG airborne tracking platforms overflying Peru. 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.

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