



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

March 29, 2002

**SUBJ: Update on Status of Shootdown Preliminary Inquiry**

**I. Current Conclusions:**

**II. Background:**

The procedures detailed in Presidential Determination 95-9 (PD 95-9), promulgated pursuant to the requirements of 22 U.S.C. 2291-4, were developed on the basis of negotiations between the U.S. and Peru, and was signed only after the Peruvian government confirmed that it would operate the Air Bridge Denial Program (ABDP) in accordance with the required safety procedures.

In relevant part, PD 95-9 stated that:

[t]he [Government of Peru] 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 procedures, and are contained in classified GOP plans and orders, as well as in the civil aviation law 24882. The procedures are summarized below:

..... the use of weapons against [narco-trafficking] 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 suspected aircraft to land at a controlled airfield have been exhausted.

PD 95-9 then went on to describe Peru's air interdiction procedures in detail, including the requirement for visual communication procedures:

[i]f 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

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instructions to land, the PAF pilot -- only after gaining the 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.

The remaining procedures for the actual shoot down of aircraft followed on in the same paragraph. PD 95-9 then went on to discuss the obligations of both the GOP and USG personnel involved in the program. Regarding the GOP, PD 95-9 stated that:

[a]ny 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 against any GOP official who deviates from established procedures.

As to the obligations on USG personnel, PD 95-9 stated that:

[a]s 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 any 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 innocent life.**

### **III. Significant information gathered to date:**

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portions  
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I have not received any feedback from the NSC or DoD requests that we made in January. I have re-contacted those agencies to remind them of our request.

We have recently made additional requests to DOS and Customs and will make a request to DEA as well.

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