



No. 969

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Relations of the Republic of Peru, and has the honor to refer to the ongoing counter-drug cooperation between the Government of the United States of America and the Government of Peru. 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 is willing to provide the Government of Peru with real-time radar track data. To ensure that such data and other interception-related assistance are 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 Peruvian airspace in order to facilitate the elimination of drug trafficking routes and the arrest of drug traffickers.

In consideration of the 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 Peru 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 Government of Peru 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 Peruvian airspace, escorting it out of restricted, prohibited, or dangerous airspace, or instructing it to land.

## II. Interception of Aircraft

When intercepting civil aircraft in flight, the Government of Peru shall, 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 the provisions of the International Civil Aviation Organization ("ICAO") Manual Concerning Interception of Civil Aircraft.

Further, the Government of Peru shall ensure that all Government of Peru personnel (whether in the air, in a command and control center, or elsewhere) involved in the interception of civil aircraft are familiar with the procedures contained in the above-referenced documents.

(a) The Government of Peru shall disseminate, throughout its civil aviation community via Notices to Airmen ("NOTAMs"), notice of the Government of Peru's policies and procedures on (1) the interception of civil aircraft, and (2) the giving of instructions for a civil aircraft to land. The NOTAMs shall explain that the purpose of the interception of a civil aircraft is to identify the aircraft, direct it back to its planned route, direct it beyond

the borders of Peruvian airspace, escort it out of restricted, prohibited, or dangerous airspace, or instruct it to land. The NOTAMS shall further explain that ammunition containing tracer rounds may be fired only as a signaling measure to attract the attention of an intercepted pilot in order to ensure that the pilot is aware that he or she has been intercepted. The NOTAMS shall further state that in the event that ammunition containing tracer rounds is fired (1) it will be fired only from a position slightly ahead of abeam and parallel to the course of the intercepted aircraft to ensure that the intercepted aircraft is not in the line of fire, and; (2) the aircraft firing the ammunition containing tracer rounds will take all reasonable precautionary measures to avoid endangering the lives of persons on board or the safety of the intercepted aircraft, any other aircraft in the vicinity, or persons or property on the ground.

(b) To the extent that a civil aircraft being intercepted by the Government of Peru is intercepted because the Government of Peru believes that the aircraft is primarily engaged in illicit drug trafficking, the Government of Peru shall consider the sorting criteria set forth in the annex to this diplomatic note in determining the nature of the suspect aircraft.

(c) Consistent with the domestic laws of the United States and Peru, if U.S. Government assistance is used in any way to locate, identify, track, or intercept a civil aircraft, the Government of Peru shall abstain from:

- (1) damaging, destroying, or disabling any civil aircraft in service, and
- (2) threatening to damage, destroy, or disable any civil aircraft in service.

(A) This does not preclude the firing of ammunition containing tracer rounds as a signaling measure to attract the attention of an intercepted pilot in order to be sure that the pilot is aware that he or she has been intercepted.

(B) Ammunition containing tracer rounds may be fired only from a position slightly ahead of abeam and parallel to the course of the intercepted aircraft to ensure that the intercepted aircraft is not in the line of fire. The aircraft firing the ammunition containing tracer rounds shall take all reasonable cautionary measures to avoid endangering the lives of persons on board or the safety of the intercepted aircraft, any other aircraft in the vicinity, or persons or property on the ground.

None of the commitments undertaken by the Government of Peru in agreeing to these conditions are intended to preclude or limit the Government of Peru's ability to use weapons in the context of an act of self-defense.

### III. Sharing of Information

The Government of Peru shall not permit third parties access, without the specific written consent of the Embassy of the United States of America, to any information, data, or analysis that could be used for aerial interceptions that has been developed using U.S. Government assistance.

### IV. Non-Compliance with Conditions

In the event of a failure to comply with any of the conditions contained herein, the Government of the United States of America may, at its discretion, suspend or terminate any and all U.S. Government assistance to the Government of Peru related to the interception of civil aircraft. Notice of any suspension or termination of such assistance shall be provided in a timely fashion through the diplomatic channel.

### V. Termination

This agreement will remain in force until one of the parties notifies the other of its intention to terminate the agreement. Termination will be effective six months from the date of such notification.

If the foregoing is acceptable to the Government of Peru, the Embassy of the United States of America has the honor to propose that this Note and its annex and your Note in reply shall constitute an agreement between our two Governments. This agreement will enter into force upon a further exchange of notes confirming that each party has complied with its respective internal procedures."

The Embassy of the United States avails itself of this opportunity to reiterate to the Ministry of Foreign Relations of the Republic of Peru assurances of its highest consideration.

Enclosure: Annex



Embassy of the United States of America,  
Lima, August 16, 2005.

ANNEX

In determining whether an aircraft is reasonably suspected of being primarily engaged in illicit drug trafficking, the Government of Peru should consider whether:

- The aircraft failed to file a required flight plan;
- The aircraft is inexplicably flying outside the route designated in its approved flight plan;
- The aircraft is not using the appropriate transponder code;
- The aircraft is flying at an inexplicably low altitude;
- The aircraft is flying at night with its lights out;
- The aircraft has false (or no) tail numbers;
- The aircraft's windows are blacked out;
- The physical description of the aircraft matches the description of an aircraft previously used in illicit drug trafficking;
- There is intelligence information indicating that the aircraft is primarily engaged in illicit drug trafficking;
- The aircraft is flying without permission in an Air Defense Identification Zone (if any);
- The aircraft is parked at night at a non-monitored air field without permission;
- All attempts to identify the aircraft have failed;

-- The aircraft inexplicably failed to respond to all attempts to communicate;

-- The aircraft ignored orders of the Peruvian air force;

-- Objects have been jettisoned from the aircraft;

-- There is other information suggesting that the aircraft is reasonably suspected to be primarily engaged in illicit drug trafficking;

-- There is any information suggesting that the aircraft is not reasonably suspected to be primarily engaged in illicit drug trafficking.



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Translation

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Note RE (GAB) No. 6-3/10

The Ministry of Foreign Relations presents its compliments to the Embassy of the United States of America and has the honor to refer to its note No. 969 of August 16, 2005, in which the Government of the United States of America expresses its willingness to provide the Government of Peru with real-time radar track data through the *Government of United States of America's Department of Defense Cooperating Nation Information Exchange System (CNIES)*. To that end, the Embassy proposes a mutual understanding, the text of which is transcribed below:

[See U.S. Text.]

In that regard, the Ministry of Foreign Relations has the honor to inform the Embassy of the United States of America that, after carrying out pertinent internal consultations, it concurs in the foregoing assistance agreement, which shall enter into force as stipulated in Chapter V thereof.

[Complimentary close]

Lima, August 16, 2005

[Initialed]

[Ministry stamp]

Embassy of the United States of America,  
Lima.