

No. 51713*

**United States of America
and
Peru**

Exchange of notes constituting an agreement between the Government of the United States of America and the Government of the Republic of Peru regarding the Cooperating Nation Information Exchange System (with annex). Lima, 16 August 2005

Entry into force: *6 October 2005 by notification, in accordance with the provisions of the said notes*

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**États-Unis d'Amérique
et
Pérou**

Échange de notes constituant un accord entre le Gouvernement des États-Unis d'Amérique et le Gouvernement de la République du Pérou relatif au Système d'échange d'informations entre nations coopérantes (avec annexe). Lima, 16 août 2005

Entrée en vigueur : *6 octobre 2005 par notification, conformément aux dispositions desdites notes*

Textes authentiques : *anglais et espagnol*

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[ENGLISH TEXT – TEXTE ANGLAIS]

I

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.