

JOINT RESOLUTION

REGARDING CRIMINALIZATION OF AVIATION ACCIDENTS

Recognizing the importance in civil aviation accident investigations in securing the free flow of information to determine the cause of accidents and incidents and to prevent future accidents and incidents;

Recognizing the actions taken recently by the International Civil Aviation Organization in promoting amendments to Annex 13 – *Aircraft Accident and Incident Investigations* to the Convention on International Civil Aviation, encouraging Contracting States to adopt by November 2006 certain actions to protect the sources of safety information;

Recognizing the importance of preventing the inappropriate use of safety information, including the increasing use of such information in criminal proceedings against operational personnel, managerial officers, and safety regulatory officials;

Recognizing that information given voluntarily by persons interviewed during the course of safety investigations is valuable, and that such information, if used by criminal investigators or prosecutors for the purpose of assessing guilt and punishment, could discourage persons from providing accident information, thereby adversely affecting flight safety;

Recognizing that under certain circumstances, including acts of sabotage and willful or particularly egregious reckless conduct, criminal investigations and prosecutions may be appropriate;

Concerned with the growing trend to criminalize acts and omissions of parties involved in aviation accidents and incidents;

Noting that:

- a. law enforcement authorities in the September 29, 2006 mid-air collision between an Embraer Legacy 600 executive jet and a Gol Linhas Aéreas Inteligentes B-737-800 have opened a criminal investigation and threatened involuntary manslaughter charges and interrogated pilots, while a magistrate revoked the pilots' passports;
- b. the French Supreme Court on September 20, 2006 rejected a request to dismiss charges in the July 2000 Air France Concorde crash where three people, a former French civil aviation authority official, and two former aircraft manufacturing officials, are currently under investigation for criminal charges;
- c. a French court is expected to issue its verdict soon in the 1992 Air-Inter crash in Strasbourg, France, wherein the designer of the Airbus A320, two retired Air-Inter executives, the former Director General of Civil Aviation, the retired civil servant who was national head of certification, and an air traffic controller were investigated and prosecuted 14 years after the crash and face negligent homicide charges;
- d. Swiss prosecutors in August 2006 charged eight Swiss Skyguide air traffic controllers with negligent homicide arising out of the DHL B-757 mid-air collision with a Bashkirian TU-154 on July 1, 2002 over Überlingen in Southern Germany;

e. the Swiss Federal Prosecutor's Office has an ongoing criminal investigation for negligent manslaughter of the former chief executive of Swiss International Airlines, along with the head of Switzerland's Federal Office of Civil Aviation, and the operations chief and chief trainer at Crossair in connection with the November 2001 Crossair plane crash near Zurich, which the Swiss Aircraft Investigation Bureau concluded was the result of pilot error;

f. an Italian court on July 7, 2006 affirmed the convictions for manslaughter of five aviation officials, including an air traffic controller, the former director of Milano Linate airport, and the chief executive and a former director-general of ENAV, the Italian air traffic control agency, arising out of the October 2001 runway accident between an SAS aircraft and Cessna jet in Milan, where authorities found an inoperative ground radar system contributed to the accident;

g. an ongoing Greek quasi-judicial investigation exists of the 2005 Helios B-737-300 crash near Athens, Greece, wherein a draft accident report has been leaked and authorities have indicated it will be used directly in a quasi-judicial investigation to determine criminal liability;

h. U.S. federal and Florida state prosecutors brought criminal charges, including 220 counts of murder and manslaughter, against a maintenance company, several mechanics, and a maintenance manager arising out of the 1996 ValuJet flight 592 crash in the Florida Everglades, with nearly all charges later dismissed, withdrawn, or dismissed on appeal, and all tried individuals acquitted; and

f. Greek prosecutors brought negligent manslaughter, negligent bodily injury, and disrupting the safety of air services charges against the captain and first officer in connection with the 1979 Swissair crash in Athens, with the pilots receiving sentences of four years imprisonment, which was later converted into a fine.

Recognizing that the sole purpose of protecting safety information from inappropriate use is to ensure its continued availability to take proper and timely preventative actions and to improve aviation safety;

Considering that numerous incentives, including disciplinary, civil, and administrative penalties, already exist to prevent and deter accidents without the threat of criminal sanctions;

Being mindful that a predominant risk of criminalization of aviation accidents is the refusal of witnesses to cooperate with investigations, as individuals invoke rights to protect themselves from criminal prosecution, and choose not to freely admit mistakes in the spirit of ICAO Annex 13 for the purpose of preventing recurrence;

Considering that the vast majority of aviation accidents result from inadvertent, and often multiple, human errors;

Being convinced that criminal investigations and prosecutions in the wake of aviation accidents can interfere with the efficient and effective investigation of accidents and prevent the timely and accurate determination of probable cause and issuance of recommendations to prevent recurrence;

BE IT THEREFORE RESOLVED, that the below organizations:

1. Declare that the paramount consideration in an aviation accident investigation should be to determine the probable cause of and contributing factors in the accident, not to punish criminally flight crews, maintenance employees, airline or manufacturer management executives, regulatory officials, or air traffic controllers. By identifying the “what” and the “why” of an accident, aviation safety professionals will be better equipped to address accident prevention for the future. Criminal investigations can and do hinder the critical information gathering portions of an accident investigations, and subsequently interfere with successful prevention of future aviation industry accidents.

2. Declare that, absent acts of sabotage and willful or particularly egregious reckless misconduct (including misuse of alcohol or substance abuse), criminalization of aviation accidents is not an effective deterrent or in the public interest. Professionals in the aviation industry face abundant incentives for the safe operation of flight. The aviation industry every day puts its safety reputation and human lives on the line, and has a remarkable safety record which is due in large measure to the current willingness of operators and manufacturers to cooperate fully and frankly with the investigating authorities. The benefit of gaining accurate information to increase safety standards and reduce recurring accidents greatly outweighs the retributive satisfaction of a criminal prosecution, conviction, and punishment. Increasing safety in the aviation industry is a greater benefit to society than seeking criminal punishment for those “guilty” of human error or tragic mistakes.

3. Urge States to exercise far greater restraint and adopt stricter guidelines before officials initiate criminal investigations or bring criminal prosecutions in the wake of aviation disasters. Without any indicia of proper justification for a criminal investigation or charges, the aviation system and air disaster victims and their loved ones are better served by resort to strong regulatory oversight and rigorous enforcement by national and international aviation authorities, and by pursuit of claims through civil justice systems to obtain compensation.

4. Urge States to safeguard the safety investigation report and probable cause/contributing factor conclusions from premature disclosure, and use directly in civil or criminal proceedings. Although use of official accident reports may save criminal investigators the considerable expense of conducting an entire separate investigation, a considerable and serious risk exists of diverting these reports from their original purpose, as technical causes often cannot be equated to legal causes necessary when establishing either civil or criminal liability. In addition, use of relatively untrained and inexperienced technical “experts” by prosecutorial or judicial authorities, as compared to official accident investigating authorities, can result in flawed technical analyses and a miscarriage of justice, while interfering with the official accident investigation.

5. Urge National aviation and accident investigating authorities to: (i) assert strong control over accident investigations, free from undue interference from law enforcement authorities; (ii) invite international cooperation in the accident investigation under Annex 13; (iii) conduct professional investigations to identify probable cause and contributing factors and develop recommendations in a deliberative manner, avoiding any “rush to judgment;” (iv) ensure the free and voluntary flow of essential safety information; (v) provide victims’ loved ones and their families with full, accurate, and precise information at the earliest possible time; and (vi) address swiftly any acts or omissions in violation of aviation standards.

DATED: October 17, 2006



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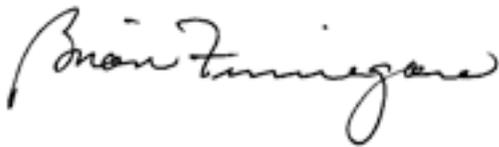
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DATED: November 28, 2006



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DATED: January 12, 2010



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