



PRESIDENT'S DEPARTMENT

# AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

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March 4, 2015

The Honourable Fumio Kishida  
Minister of Foreign Affairs of Japan  
2-2-1 Kasumigaseki, Chiyoda-ku  
Tokyo 100-8919, Japan

Re: Federal Express Flight 80

Dear Minister Kishida:

I am writing on behalf of the 51,000 pilots at 30 airlines in the United States and Canada that we represent. We are pleased that the Japanese Prosecutor has decided not to pursue a prosecution of the two pilots that perished in the Federal Express Flight 80 crash at Narita Airport on March 23, 2009. We firmly believe that there was no basis for a criminal prosecution of these two pilots and the decision not to prosecute was correct.

We understand that had the pilots been prosecuted, the primary source of evidence would have been the accident report that was produced by the Japanese Transportation Safety Board. This report regarding technical causes of the accident could have been used by the court to support a negligence verdict against the pilots.

Japan as a member State of the International Civil Aviation Organization (ICAO) has agreed, unless they file a difference, to abide by the ICAO standards for aviation. ICAO Annex 13 provides the international standards for the investigation of aviation accidents and incidents by member states. Japan ratified this Annex and has not filed a difference.

Annex 13 provides that "the sole objective of the investigation of an accident or incident is to be used in the prevention of future accidents. It is not the purpose of this activity to apportion blame or liability." (Section 3.1)

Annex 13, Section 5.4.1 further provides that the safety investigation shall be separate from any judicial or administrative proceedings to apportion blame or liability. Section 5.12 protects from disclosure among other items, statements given to accident investigators, cockpit voice recordings or transcripts and opinions expressed in the analysis of information gathered in the safety investigation. These documents can only be disclosed if it is determined that disclosure outweighs the adverse impact such action may have on future investigations.

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The intention of Annex 13 is to secure and improve aviation safety throughout the world. It was therefore foreseen by the drafters of Annex 13 that aviation safety could only be enhanced if the accident investigation report was to be used in the prevention of future accidents and not to be used in any form to apportion blame.

It is not the intention to proclaim that pilots are above the law and therefore untouchable. It is however the intention to secure the free-flow of vital information without the flight crew having to be afraid that those statements obtained under the guise of aviation safety being used against them in a court of law. Any form of criminal litigation should be conducted outside the sphere of the accident investigation team and the statements and report of the accident investigation authority should only be used in the context of the intent of Annex 13, being the prevention of aircraft accidents.

A State has a legal and moral obligation to ensure safety in general. Aviation safety is no exception to this obligation and by using the accident investigation report to prosecute flight crew conflicts not only with international standards but will most definitely impact negatively on aviation safety.

All States have a duty to ensure uniformity to aviation standards as published by ICAO in the Annexes. Failure of any State to comply with the standards when they did not file a difference in terms of the Chicago Convention, is in contravention of Article 37 and Article 38 of the Convention and is either paying lip service to the Convention or is in total disregard of ICAO as an institution.

We call on you to ensure that the information obtained by the accident investigating authority be utilized according to the intent and spirit of the Chicago Convention under Annex 13 in all future aviation accidents.

Sincerely,



Captain Timothy G. Canoll, President  
Air Line Pilots Association, International

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