

08PRL07

# IFALPA says Brazilian Polícia Federal recommendation that Legacy crew be prosecuted is fundamentally flawed

Chertsey 10 May: The International Federation of Air Line Pilots' Associations (IFALPA) is outraged to learn that the Brazilian Polícia Federal have recommended prosecution of Joseph Lepore and Jan Paladino, the pilots of the Embraer Legacy that collided with a Gol Airlines 737-800 in September of 2006, under section 261 of the Brazilian Penal Code "for placing a vessel or aircraft in jeopardy".

The Federation believes that this course of action is flawed on a number of levels:

- 1) IFALPA strongly insists that, as laid down in ICAO Annex 13, Attachment E, there can be no criminal liability without intent. Brazilian law should respect this fundamental principle in all cases. As there does not seem to be any factual support for a finding that there was any intent by the Legacy crew to place their aircraft in danger, there should be no basis for prosecution under Brazilian law.
- 2) The decision by the Polícia Federal to exclude the military from their investigation is a staggering oversight. In its own report, the Polícia Federal acknowledges that air traffic controller performance was flawed yet failed to investigate fully the role played by air traffic control, vital to establish the sequence of events that led to the tragedy, claiming the military controllers are outside its jurisdiction.
- 3) Finally, IFALPA believes that in any accident it is vital that an independent technical investigation carried out by experts in air accident investigation must be completed before any criminal or civil action is pursued. To pre-empt the results of a expert technical investigation with a judicial investigation which may not be technically competent is counter productive to improvement of air safety.

IFALPA calls on the Prosecutor's Office of Brazilian Ministry of Justice to take the opportunity comply with the guidance of ICAO Annex 13 concerning post accident prosecution and to correct the premature action of the Polícia Federal by waiting until the findings of the technical investigation are reported by CINTRIA.

## *Notes to Editors*

*The International Federation of Air Line Pilots' Associations represents in excess of 100,000 pilots in more than 95 countries world-wide. The mission of IFALPA is to be the global voice of airline pilots, promoting the highest level of aviation safety and security world-wide and providing services, support and representation to all of its Member Associations. See the Federation website [www.ifalpa.org](http://www.ifalpa.org)*

*For more information contact Gideon Ewers, IFALPA Media Communications Officer +44 1932 579041 or on [gideonewers@ifalpa.org](mailto:gideonewers@ifalpa.org)*