



Bill summary

Civil Aviation (Montreal Convention, 1999) Bill – Bill No. 1 of 2016

Introduction

The Convention

The Montreal Convention 1999¹ (“MC99”) establishes a **modern compensatory regime for passengers who suffer death or injury caused by an accident during international carriage by air**. It also provides a simplified liability regime for baggage and air cargo by facilitating the use of electronic documents of carriage in place of paper.

The Convention was designed to replace the Warsaw Convention system that had developed haphazardly since 1929 with a single, modern and universal liability regime. It had been criticised for focusing on the interests of the carrier airway companies and for not protecting the rights of airline passengers due to the low level compensation to be paid to the victims of accidents.

Under the Warsaw regime, a carrier is only strictly liable up to a limit of approximately USD\$24,000 for death or injury, although various inter-carrier agreements may modify this.

The Montreal Convention liability limits are expressed in **Special Drawing Rights (SDR)**. The value of the SDR is determined by the value of a basket of currencies important to the world’s trading and financial systems. Under MC99 carrier liability is limited to:

- SDR 113,100 (equivalent to US\$170,000) for death or injury of passengers. To defend claims in excess of that amount, the carrier must show that the damage was not due to the negligence/wrongful act of the carrier or solely due to the negligence/wrongful act of another person.
- SDR 19 per kilogram for destruction, loss or damage of cargo.

The consensus of the Fiji Parliament’s Standing Committee on Foreign Affairs and Defence, the Fiji Government, and other organisations such as the Fiji National Council for Disabled Persons (FNCDP) is that **the Convention provides better protection for air passengers**.

¹ Full text of MC99: <http://www.state.gov/e/eb/rls/othr/ata/114157.htm>



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According to the International Aviation Organisation (ICAO) **there are 119 parties to the Convention**. This is equivalent to almost 60% of all International Civil Aviation Organization (ICAO) States.

Discussion of the Convention in Parliament

On 18 March 2015, Parliament noted the benefits of the Montreal Convention 1999 and **unanimously approved Fiji's accession**.²

Following Parliament's approval, the Ministry of Foreign Affairs deposited the Instrument of Accession to the International Aviation Organisation (ICAO) on 10 November 2015.

The Convention came into force for Fiji on 9 January 2016. Now Fiji is party to the Convention, this needs to be reflected in the law to give full effect to the provisions of the Convention in Fiji.

Previous to this, in March 2015 the Standing Committee on Foreign Affairs and Defence published their report³ on the Montreal Convention, and in May 2015 the Fiji Government responded.⁴

The Committee made five recommendations– these and the Government's response are outlined below:

RECOMMENDATION 1: That the Fiji Government ratifies the Convention on the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) to streamline and enhance efficiency in international air transport carriage operations while providing for equitable compensation.

RECOMMENDATION 2: That the Fiji Government works with airlines to develop a joint communications strategy to highlight benefits to Fijians following ratification.

RECOMMENDATION 3: That the Fiji Government makes it easier for people and families to lodge applications to seek fair compensation and redress from airlines following air accidents.

Government's response: Recommendations 1 – 3 (inclusive) is supported and endorsed by the Fijian Government. The Fijian Government will work closely with airlines involved in the international carriage of passengers and inform the public of their rights under the Montreal Convention.

² Fiji Parliament Hansard, 18 March 2015: <http://www.parliament.gov.fj/getattachment/5c75a534-9bf7-4064-8261-93239a15196d/Wednesday-18-03-2015.aspx>

³ Standing Committee on Foreign Affairs and Defence report on the Montreal Convention: <http://www.parliament.gov.fj/getattachment/Parliament-Business/Select-Committees/Standing-Committee-on-Foreign-Affairs-and-Defence/Standing-Committee-on-Foreign-Affairs-and-Defence/Montreal-Final.pdf.aspx>

⁴ Government response to the report: <http://www.parliament.gov.fj/getattachment/Parliament-Business/Select-Committees/Standing-Committee-on-Foreign-Affairs-and-Defence/Standing-Committee-on-Foreign-Affairs-and-Defence/Government-Response-to-the-Standing-Committee-Report-on-the-Convention-on-the-Unification-of-Certain-Rules-for-International-Carriage-by-Air.pdf.aspx>



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RECOMMENDATION 4: That the Fiji Government considers the implications of the Essential National Industries (Employment) Decree 2011 in regard to safe operations of airlines and the efforts by the Civil Aviation Authority of Fiji to improve their standards in line with international practice, especially in regards to the technical aspects of operations.

Government's response: Recommendation 4 is supported and endorsed by the Fijian Government. Moreover, the Fijian Government has invited and has received submissions from Fiji Airways and the Fiji Airways Flight Attendants Bargaining Unit with regards to their views on the Essential National Industries (Employment) Decree 2011. These submissions are currently being considered in light of the view of labour laws in Fiji.

RECOMMENDATION 5: That the Fiji Government ratifies the Montreal Protocol 2014 which will safeguard the operation of aircrafts from unruly passengers.

Government's response: Recommendation 5 is noted. By way of a background, the Montreal Protocol 2014 ('Protocol') is an amendment to the Convention on Offences and Certain Other Acts Committed On Board Aircraft ('Tokyo Convention'), which governs offences and other acts that occur on board aircraft in flight. The Protocol makes important changes to the Tokyo Convention to serve as an effective deterrent to unruly behavior.

The Protocol was adopted on 4 April 2014 at the International Air Law Conference held under the auspices of the International Civil Aviation Organization in Montreal and is open for the (Sic) signature by states who participated. Although the Fijian Government had signed the protocol during its participation at the International Air Conference, there are no immediate plans at this stage for the ratification of the Protocol as it has yet to come into force.

The Protocol requires twenty-two instruments of ratification, acceptance, approval or accessions with the depositary to come into force and currently there are 28 signatories to the Protocol with 1 ratification and 0 accessions.

The Fijian Government is currently closely monitoring the decision of other states in this matter and will need to thoroughly evaluate the implications of such ratification, before any decision on the same is made.

Objectives, scope and intent of the Bill

The purpose of the Bill is to enshrine the Montreal Convention in Fiji law.

Summary of provisions

Clause 1 of the Bill provides the short title ('Civil Aviation (Montreal Convention, 1999) Act 2016') and the commencement, which is "the Act shall be deemed to have come into force on 9 January 2016".

Clause 2 provides the interpretation section for terms used in the Bill.

Clause 3 provides that the Act shall bind the Government.



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Clause 4 makes provision for the Convention to have the force of law in Fiji in relation to carriage by air which the provisions of the Convention apply to, irrespective of the nationality of the aircraft.

Clause 5 defines 'State Party' in relation to the Convention and its application to such State parties or declared territorial units.

Clause 6 provides the revised limits of liability under Article 24 of the Convention.

Clause 7 provides that any further revision to the limits of liability shall be specified by the Minister by order published in the Gazette.

Clause 8 provides the Minister with the power to make such regulations as necessary to give effect to the Convention.

The **Schedule** provides the text of the Convention.

International variations on the Convention

There are some variations in the instruments of ratifications of the Convention by state parties. These primarily relate to **the exclusion of military and governmental aircraft** from the Convention, which has been asserted by many parties. Some examples of the declarations and exclusions are below.

At the time of ratification, **Canada** made the following declaration:

"Canada declares, in accordance with Article 57 of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999 and signed by Canada on 1 October 2001, that **the Convention does not apply** to the carriage of persons, cargo and baggage for its **military authorities on aircraft registered in or leased by Canada**, the whole capacity of which has been reserved by or on **behalf of such authorities** [Article 57(b)]."

The instrument of ratification of the **United States** contains the following declaration:

"Pursuant to Article 57 of the Convention, the United States of America declares that the Convention shall **not apply to international carriage by air performed and operated directly by the United States of America for non-commercial purposes** in respect to the functions and duties of the United States of America as a sovereign State."

By a note dated 24 October 2003 **Japan** informed ICAO "that, in accordance with Article 57(a) of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999, the Government of Japan declares that this Convention **shall not apply to international carriage** by air performed and operated directly by the Government of Japan **for non-commercial purposes in respect to its functions and duties as a sovereign State.**"



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The instrument of ratification by **Denmark** contains a declaration that until later decision, the Convention will not be applied to the Faroe Islands.

The instrument of ratification by **Germany** was accompanied by the following declaration:

“In accordance with Article 57 of the Convention of for the Unification of Certain Rules for International Carriage by Air of 28 May 1999, the Federal Republic of Germany declares that the Convention **shall not apply to international carriage by air performed and operated directly by the Federal Republic of Germany for non-commercial purposes in respect to its functions and duties as a sovereign State** or to the carriage of persons, cargo and baggage for the military authorities of the Federal Republic of Germany on aircraft registered in or leased by the Federal Republic of Germany, the whole capacity of which has been reserved by or on behalf of such authorities.”

The instrument of accession by **Singapore** contains the following declaration in accordance with Article 57:

“the Convention **shall not apply to: a) international carriage by air performed and operated directly by the Republic of Singapore for non-commercial purposes** in respect to its functions and duties as a sovereign State; and b) the carriage of persons, cargo and baggage for **its military authorities on aircraft registered in or leased by the Republic of Singapore**, the whole capacity of which has been reserved by or on behalf of such authorities.”

Further information

- The full text of the Convention can be seen here:
<http://www.state.gov/e/eb/rls/othr/ata/114157.htm>
- Information on the exceptions asserted by various countries, the signatures and ratifications of the Convention are available in this ICAO document:
http://www.icao.int/secretariat/legal/List%20of%20Parties/MtI99_EN.pdf
- Fiji Parliament Hansard debate on Montreal Convention, 18 March 2015:
<http://www.parliament.gov.fj/getattachment/5c75a534-9bf7-4064-8261-93239a15196d/Wednesday-18-03-2015.aspx>
- Standing Committee on Foreign Affairs and Defence report on the Montreal Convention:
<http://www.parliament.gov.fj/getattachment/Parliament-Business/Select-Committees/Standing-Committee-on-Foreign-Affairs-and-Defence/Standing-Committee-on-Foreign-Affairs-and-Defence/Montreal-Final.pdf.aspx>
- Government response to the report:
<http://www.parliament.gov.fj/getattachment/Parliament-Business/Select-Committees/Standing-Committee-on-Foreign-Affairs-and-Defence/Standing-Committee-on-Foreign-Affairs-and-Defence/Government-Response-to-the-Standing-Committee-Report-on-the-Convention-on-the-Unification-of-Certain-Rules-for-International-Carriage-by-Air.pdf.aspx>