



STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

REPORT ON THE UNITED NATIONS CONVENTION ON THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR (THE MONTREAL CONVENTION).



PARLIAMENT OF THE REPUBLIC OF FIJI
Parliamentary Paper No. 21 of 2015

March 2015

TABLE OF CONTENTS

- TABLE OF CONTENTS 1**
- Chair’s foreword..... 3**
- LIST OF RECOMMENDATIONS 5**
- LIST OF ACRONYMS 7**
- 1.0 CHAPTER 1: INTRODUCTION 8**
- 1.1 Background 8
- 1.2 The Standing Committee on Foreign Affairs and Defence 9
- 1.3 Committee Members..... 10
- 2.0 CHAPTER 2: CONVENTION ON THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR (THE MONTREAL CONVENTION) 11**
- 2.1 Introduction 11
- 2.2 Written and oral submissions received 11
- 3.0 CHAPTER 3: COMMITTEE DELIBERATIONS ON THE MONTREAL CONVENTION — KEY ISSUES 16**
- 3.1 Response to Call for Written or Oral Submissions..... 16
- 3.2 Fiji Airline Pilots Association 16
- 3.2 Consideration of the Montreal Protocol 2014 16
- 3.3 Provisions for Persons with Disabilities 17
- 3.4 Gender Analysis 17
- 3.5 Consideration of Convention Article by Article 17
- 3.6 Conclusion..... 20
- REFERENCES: (MONTREAL CONVENTION) 21**
- APPENDIX 1 : MONTREAL CONVENTION 24**
- APPENDIX 2: LIST OF SUBMISSIONS 44**

CHAIR'S FOREWORD

I am pleased to present the second report of the Fiji Parliament's Standing Committee on Foreign Affairs and Defence, which reviewed the Convention on the Unification of Certain Rules for International Carriage by Air (the Montreal Convention).

This report examines the case for ratification of the Montreal Convention and unanimously recommends that the Government of the Republic of Fiji ratify this treaty at its earliest opportunity. The report is divided into three chapters:

- **Chapter 1** covers the role and responsibilities of the Committee and the inquiry process in undertaking a review of the Montreal Convention.
- **Chapter 2** focuses on the Montreal Convention and examines the submissions received and the information provided at public hearings held by the Committee, including a summary of questions and answers from the public hearings.
- **Chapter 3** details the Committee's deliberations and analysis of the evidence received, followed by recommendations to Government.

The bipartisan standing committee meticulously reviewed all 57 Articles that comprise the 1999 Convention. The Convention applies to 'all international carriage of persons, baggage or cargo performed by aircraft for reward'. In recommending the ratification of the Montreal Convention, the Committee believes there are significant benefits for Fiji through modernising, harmonising and equitably compensating Fijians travelling internationally by air.

The Committee has just tabled its first report recommending the Government ratify the United Nations Convention Against Torture (UNCAT). This second report also recommends ratification of another important international treaty, which demonstrates Fiji's commitment to be an active regional member of the international community. This report makes 3 recommendations to the Fiji Government:

- full ratification of the Montreal Convention to streamline and enhance efficiency in international air transport carriage operations while providing for equitable compensation;
- working with airlines to develop a joint communications strategy to highlight benefits to Fijians following ratification; and
- making it easier for people and families to lodge applications to seek fair compensation and redress from airlines following air accidents.

The Committee called for submissions on the Montreal Convention in early February 2015 and held public hearings to hear from stakeholders during the week beginning 23 February.

There was unanimous support for ratification from all groups the Committee received submissions or heard from at public hearings: the Fiji Solicitor General, Fiji Air, Civil Aviation Department, IATA, Fiji National Council for Disabled Persons, cargo and postal company DHL, Mr Joeli Koroikata and Mr George Faktaufon.

I would like to express my sincere thanks to all those people and groups who made submissions and appeared before the Committee. I would also like to sincerely thank my Committee colleagues for again demonstrating their professionalism and commitment during public hearings and report deliberations: Hon. Ratu Isoa Delamisi Tikoca MP (Deputy Chair), Hon. Roko Tupou Draunidalo MP, Hon. Semi Koroilavesau MP, Hon. Dr. Neil Sharma MP.

I commend this report to the Parliament.

**HON. NETANI RIKA MP
CHAIRMAN**

LIST OF RECOMMENDATIONS

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.

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.

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

LIST OF ACRONYMS

ASPA	Association of South Pacific Airlines
IATA	International Air Transport Association
HRI	Human Rights Instruments
ICAO	International Civil Aviation Organisation
FNCDP	Fiji National Council for Disabled Persons
MC99	Montreal Convention 1999
MP	Member of Parliament
MP14	Montreal Protocol 2014
NDC	New Distribution Capability
NGO	Non-Government Organisation
SCFAD	Standing Committee on Foreign Affairs and Defence
SDR	Special Drawing Rights
TYO	Tokyo Convention
UPR	Universal Periodic Review

1.0 CHAPTER 1: INTRODUCTION

1.1 Background

This is the second report of the Fiji Parliament's Standing Committee on Foreign Affairs and Defence (SCFAD). Using the legislative powers provided to the Committee, this report examines the Government's proposal to ratify the Convention on the Unification of Certain Rules for International Carriage by Air (the Montreal Convention).

The Montreal Convention (MC99) replaces the Warsaw Convention, which 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. The Montreal Convention combines the provisions of the Warsaw Convention and the additional protocols in order to more effectively protect the interests of consumers/passengers.

The Montreal Convention governs airline liability in the international carriage of passengers, cargo and baggage. It introduces a modern compensatory regime for passengers who suffer death or injury in the course of an accident during international air carriage. Under the Warsaw-Hague 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. Under MC99, the arbitrary limits were abolished and a two tier passenger liability regime was introduced. Passengers are entitled to claim damages up to approximately USD 172,000 for death or injury on a strict liability basis. This means that claimants do not have to prove that the carrier was negligent or at fault and need only establish the quantum of their loss¹.

Universal ratification of the Montreal Convention would provide many benefits to the Fiji economy:

- It introduces a modern compensatory regime for passengers who suffer death or injury in the course of an accident during international air carriage;
- Passengers would enjoy better protection irrespective of the route or ticket type;
- Airlines would enjoy certainty about the rules governing their liability across their international route networks; and
- Shippers would be able to use electronic documents of carriage in air cargo, enabling removal of paper.²

¹ *Written submission by International Air Transport Association (IATA).*

² *Submission by Mr Joeli Koroikata.*

1.2 The Standing Committee on Foreign Affairs and Defence

The Committee is a standing committee of the Fijian Parliament and was established under Section 109 (2)(e) of the Standing Orders (SO) of the Parliament of the Republic of Fiji. The Committee comprises five Honourable Members, drawn from both the Government and the Opposition parties.

The Committee is mandated to examine matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organisations. Section 110(1)(e) of the SO mandates the Committee to review international treaties and conventions ratified by the Government and to monitor their implementation.

On 10 February 2015 the Minister of Foreign Affairs moved a motion in the Fiji Parliament:

'That the Standing Committee on Foreign Affairs and Defence review the following treaties –

- 1. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);*
- 2. Convention for the Unification of Certain Rules for International Carriage by Air, 1999 (Montreal Convention³).*

The SO require the Committee to review and report back to the Parliament within 30 days on the two treaties. On 21st February 2015 the Committee advertised the inquiry and called for submissions by 27th February 2015. In particular, interested individuals and groups were asked to answer the following four points:

- 1. Should Fiji ratify the treaty or not?**
- 2. Why should Fiji ratify / not ratify this treaty?**
- 3. What would be the implications of ratification on you or your organisation?**
- 4. Any other relevant points related to the treaty and the ratification process.**

The Committee also wrote to government agencies and Non-Government Organisations (NGOs), seeking submissions and to appear before the Committee at a public hearing. The Committee then met between 23rd to 27th February to hold public hearings and consider submissions received.

The Committee then undertook deliberations on 2nd March and prepared its report, with recommendations, to the Parliament for the next session on 16th March 2015.

³ Daily Hansard, 10th February 2015, page 736.

1.3 Committee Members

The members of the Standing Committee on Foreign Affairs and Defence are:

- Hon. Netani Rika MP (Chairman)
- Hon. Ratu Isoa Tikoca MP (Deputy Chairman)
- Hon. Roko Tupou Draunidalo MP (Member)
- Hon. Semi Koroilavesau MP (Member)
- Hon. Dr Neil Sharma MP (Member)

2.0 CHAPTER 2: CONVENTION ON THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR (THE MONTREAL CONVENTION)

2.1 Introduction

The Committee received six high quality submissions and heard evidence from 3 of the groups at public hearings held at Parliament Buildings, during the week beginning 23rd February 2015.

The Committee invited submissions from various organisations and groups but the response rate received was very low.

Issues raised in the submissions and at the public hearings are noted below.

2.2 Written and oral submissions received

SUBMISSION BY	Should Fiji ratify the treaty or not?	Why should Fiji ratify / not ratify this treaty?	What would be the implications of ratification on you or your organisation?	Any other relevant points related to the treaty and the ratification process?
1. The Solicitor-General, CEO CAAF and Fiji Airways	It is very important that Fiji should immediately ratify this Convention.	<ul style="list-style-type: none"> ❖ Ratification will enable Fiji to be part of a modernised set of rules for compensation arising out of international aviation disasters ❖ Ratification would ensure that we have harmony in the rules with respect to international air carriage. 	<ul style="list-style-type: none"> ❖ Indirectly, ratification may motivate the airlines to improve their safety standards in order to prevent accidents and incidents from happening. ❖ The Convention, will achieve modernisation, which is very important for a growing airline like Fiji Airways. It also achieves modernisation in a number of areas; it protects passengers by introducing the two tier liability and it provides the airlines with a guideline on how to mitigate claims as well. 	<ul style="list-style-type: none"> ❖ For Fiji Airways, the Convention will mean a ten-fold increase in insurance premiums. However, in terms of the objective of the Convention itself, it will bring out amendments to liability that needs to be paid to families or as compensation. ❖ In terms of the loss of baggage, Fiji Airways has implemented various policies in terms of compensation. ❖ However, we do feel that it is necessary that if this is ratified, the airline should be consulted fully before implementation takes place.
2. Mr Mark Komene, DHL	Supports Fiji ratifying the Montreal Convention.	<ul style="list-style-type: none"> ❖ Reduce Costs/improve sustainability – eliminate paperwork. ❖ Reduce customer wait time, ability to pre-clear freight from imaged ppwk, days earlier than freight 	<ul style="list-style-type: none"> ❖ Allow the use of eAWBs and electronic documentation (eliminating paperwork), promoting faster and more efficient trade. ❖ Standardises liability for 	<ul style="list-style-type: none"> ❖ Improved quality by unifying and standardizing global trading processes. ❖ Increase Fiji's Connectivity – opportunity for Fiji's business community to join the

SUBMISSION BY	Should Fiji ratify the treaty or not?	Why should Fiji ratify / not ratify this treaty?	What would be the implications of ratification on you or your organisation?	Any other relevant points related to the treaty and the ratification process?
		<p>arrival.</p> <ul style="list-style-type: none"> ❖ Allow seamless trade facilitation with Fiji's major trading partners, noting AU, NZ, US, SG, CN are all signatories to MC. 	<p>damaged/lost/destroyed cargo. Under the Montreal Convention, the air carrier liability for loss and damage of transported goods or delay is limited to 19 SDR's (FJD 54.81) per kg or actual value, unless a higher value is declared. MC provides for inflation based increases every 5 years.</p> <ul style="list-style-type: none"> ❖ Removes complexity in claims handling where several liability regimes can exist, depending on the status or origin and destination countries. 	<p>global rise of online trading. Online Trading is fastest growing sector in the airfreight industry</p> <ul style="list-style-type: none"> ❖ Imaged ppwk offers improved visibility, security and integrity. Ability to thoroughly scrutinize of cargo prior to arrival, prioritizing goods for inspection, while releasing goods. ❖ DHL would encourage all origins and destinations to ratify MC to take full advantage of modernized processes.
<p>3).Dr Sitiveni Yanuyanutawa, Fiji National Council for Disabled Persons (FNCDP)</p>	<p>Fully supports Ratification.</p>	<ul style="list-style-type: none"> ❖ Ratification would have positive impacts on the lives of persons with disabilities who chose to travel by air. ❖ Articles 17 & 21 are especially relevant to disabled people. ❖ Fiji has been late in making accessibility adjustments for people who are disabled and a lot of disabled people experience discomfort and embarrassment as a result. 	<ul style="list-style-type: none"> ❖ FNCDP told the Committee that, when disabled people travelled on some flights there was no provision made for them and sometimes their mobile equipment became damaged or they lost their baggage. For some disabled people, this lack of provision led to a feeling of vulnerability that they could be further injured or their lives could be lost. Through ratification disabled people will be able to claim for damages and receive compensation in the event that their mobile units (crutches, walking aids, etc) are damaged, there is loss of baggage, death or injury. ❖ For many disabled people, they are more disadvantaged when something happens to their mobility equipment than when an able bodied passenger loses their luggage. 	<ul style="list-style-type: none"> ❖ Ratification will break down the barriers and reduce levels of anxiety for persons with disabilities.
<p>4). Mr Joeli Koroikata</p>	<p>Strongly supports ratification of the treaty.</p>	<ul style="list-style-type: none"> ❖ Fiji is a member of the International Civil Aviation Organisation (ICAO) after it ratified the Convention 	<ul style="list-style-type: none"> ❖ Personally the ratification implies that future travel in Fiji airlines (both local and 	<ul style="list-style-type: none"> ❖ As usual prior to the ratification of International Conventions and Treaties, in this case national laws

SUBMISSION BY	Should Fiji ratify the treaty or not?	Why should Fiji ratify / not ratify this treaty?	What would be the implications of ratification on you or your organisation?	Any other relevant points related to the treaty and the ratification process?
		<p>on International Civil Aviation (or Chicago Convention) on 5th March 1973.</p> <ul style="list-style-type: none"> ❖ There is a risk of foreign airlines pulling out of Fiji if it does not comply with international standards required or ratify important conventions and treaties critical for safe and secure operation of aviation. ❖ The ratification of the Convention will allow harmonization of liability coverage to be based on internationally recognized Special Drawing Rights (SDR) as defined by the International Monetary Fund (IMF). 	<p>international) will be well protected and provided for in terms of liability coverage on carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.</p> <ul style="list-style-type: none"> ❖ The liability of carriers will be determined by a more uniformed SDR as defined by the IMF. 	<p>will be implicated and must be amended to incorporate changes required. With regards to Chapter III of the Convention the CEO must be amended to include the liability coverage based on calculations using SDR.</p>
5) Mr George Faktaufon	Supports ratification of the Convention.	<ul style="list-style-type: none"> ❖ Benefits passengers in terms of fair rules for compensation. ❖ Ends arbitrary limits which used to be as low as USD12,000 and USD 24000 under Warsaw/Hague regimes. ❖ Loss to baggage and delay simplified. ❖ Customer friendly and allows immediate assistance payments. ❖ Unbreakable limit for cargo ❖ MC99 permits substitution of air waybills by other means, preserving a record of carriage. 	<ul style="list-style-type: none"> ❖ Universal ratification of MC99 ensures that its citizens are covered by a fair and modern liability regime wherever they are flying in the world. ❖ MC99 gives States the opportunity to support economic competitiveness by enabling the use of electronic documents in the air cargo supply chain. ❖ This means faster, more secure shipments for exporters and businesses based in the country. 	<ul style="list-style-type: none"> ❖ An area of concern was the reported cases of unruly passenger incidents which include violence against crew and other passengers, harassment and failure to follow safety instructions. ❖ After a survey of 53 IATA member airlines, 60% cited lack of jurisdiction as a reason that prosecutions against unruly passengers are not pursued. ❖ A new protocol amending the Tokyo Convention was adopted on 4th April 2014 titled the Montreal Protocol 2014 (MP14). ❖ The Protocol clarifies behaviours which should be considered as an offence. ❖ The Protocol recognizes the express right of airlines to seek compensation from unruly passengers at their discretion.

SUBMISSION BY	Should Fiji ratify the treaty or not?	Why should Fiji ratify / not ratify this treaty?	What would be the implications of ratification on you or your organisation?	Any other relevant points related to the treaty and the ratification process?
6). IATA (Written)	IATA is supporting ICAO's call for all remaining States to urgently ratify MC99 so that there is a single, global liability regime.	<ul style="list-style-type: none"> ❖ Fijian carriers will enjoy unbreakable limits for cargo. It will also result in lower insurance burdens, simplified claims handling and less litigation for Fijian cargo. ❖ MC99 permits substitution of airway bills by other means preserving a record of carriage. This will result in lower costs and higher quality for Fijian cargo. ❖ Fijian passengers will be subject to sensible and fair rules for death and injury under MC99. ❖ Fijians will benefit from a single liability regime that applies to the majority of its international flights. This brings it in line with global best practice and reduces complexity of airline claims handling and litigation. ❖ Provides increased protection for consumers. ❖ Clarifies rules on the respective liability of the contractual carrier and the actual carrier (important for code-share flights, etc). 	<ul style="list-style-type: none"> ❖ Universal ratification will mean that Fijian consumers and shippers who are victims of an aviation accident or delay or loss will be compensated fairly irrespective of where they fly in the world. ❖ Use of electronic air waybills and other documents will help reduce costs, improve quality and reduce shipment times – this is good for Fijian business and exports. ❖ Fiji will apply international best practice regarding airline liability as per ICAO guidance. 	<ul style="list-style-type: none"> ❖ MC99 benefits all stakeholders. ❖ ICAO itself urges all remaining States to ratify MC99. ❖ Fiji is one of the 88 States that have yet to ratify MC99 ❖ Fijian carriers cannot utilize electronic air waybills on flights to and from Fiji until MC99 is ratified. ❖ MC99 offers a host of benefits for airlines, passengers and shippers in Fiji.
7). Fiji National Council for Disabled Persons (FNCDP)	Fully supports Ratification.	<ul style="list-style-type: none"> ❖ Ratification would have positive impacts on the lives of persons with disabilities who chose to travel by air. ❖ Articles 17 & 21 are especially relevant to disabled people. ❖ Fiji has been late in making accessibility adjustments for people who are disabled and a lot of disabled people experience discomfort and embarrassment as a result. 	<ul style="list-style-type: none"> ❖ FNCDP told the Committee that, when disabled people travelled on some flights there was no provision made for them and sometimes their mobile equipment became damaged or they lost their baggage. For some disabled people, this lack of provision led to a feeling of vulnerability that they could be further injured or their lives could be lost. Through ratification disabled people will be able to claim for damages and receive 	<ul style="list-style-type: none"> ❖ Ratification will break down the barriers and reduce levels of anxiety for persons with disabilities.

SUBMISSION BY	Should Fiji ratify the treaty or not?	Why should Fiji ratify / not ratify this treaty?	What would be the implications of ratification on you or your organisation?	Any other relevant points related to the treaty and the ratification process?
			<p>compensation in the event that their mobile units (crutches, walking aids, etc) are damaged, there is loss of baggage, death or injury.</p> <ul style="list-style-type: none"> ❖ For many disabled people, they are more disadvantaged when something happens to their mobility equipment than when an able bodied passenger loses their luggage. 	

3.0 CHAPTER 3: COMMITTEE DELIBERATIONS ON THE MONTREAL CONVENTION — KEY ISSUES

3.1 Response to Call for Written or Oral Submissions

The Committee noted the poor response to its call for written or oral submissions on the Montreal Convention. Despite the Convention being more concerned about the welfare of the passengers, rather than the aircraft carrier, individuals and organisations were not eager to comment. The Committee had also invited key stakeholders to comment on the Convention but the response was very poor.

3.2 Fiji Airline Pilots Association

Concerns were also raised by Committee members at the inability and/or reluctance of the Fiji Airline Pilots Association (FAPA) and other key stakeholders to appear before the Committee. Attempts had been made to seek the views of FAPA, key stakeholders and individuals who were part of the aviation industry, but it was an exercise in futility. The members of the committee discussed various possible reasons for their non-appearance, including the existence of the Essential National Industries (Employment) Decree 2011, (Decree No. 35 of 2011)⁴.

3.2 Consideration of the Montreal Protocol 2014

During its deliberations, the Committee was also requested to consider another protocol which was also as important as the Montreal Convention, that is, the Montreal Protocol. This convention came into force in 2014 and dealt with unruly passengers. Unruly passengers have become a huge problem for airlines as, on some occasions, it resulted in diversion of flights, occasional delays and also injury to crew on board aircrafts. The Committee heard that a diplomatic meeting of all ICAO states was held in Montreal to discuss the issue which resulted in the amendment of the Tokyo Convention and the formation of the Montreal Protocol 2014 (MP14).

The MP14 extends the legal jurisdiction of the Tokyo Convention and has a clear definition of offences that constitute unruly behaviour. It defines the airline's right of recourse in the event that the passenger involved takes the airline to court for whatever actions they take on board the aircraft. MP14 also extends the mandatory jurisdiction of offences to the destination country of the flight, in addition to the country of aircraft registration.

The Committee was informed that the cost of uncertain landings to disembark or to leave unruly passengers, is usually borne by the airlines themselves. The MP14 recognises the express right of airlines to seek compensation for unruly passengers at their discretion, and it is also a strong deterrent for potential unruly passengers on board.

⁴ Copy of Decree attached as part of Appendix 3

3.3 Provisions for Persons with Disabilities

The Committee also heard from the Fiji National Council for Disabled Persons (FNCDP), who believed that ratification was long overdue. They told the Committee at a public hearing that Fiji would benefit from ratification as it would reduce barriers for persons with disabilities and ensure greater accessibility when travelling by air.

3.4 Gender Analysis

Under SO 110(2), where a committee conducts an activity listed in clause (1), the committee shall ensure full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally. The Committee considered a range of issues including whether ratification would have equitable benefits for women and men, and whether they had the same opportunities to provide comments during the consultation process.

The Committee is satisfied that the matters considered in this report, namely the ratification of the Montreal Convention, impacts on men and women equally and as such, ratification of the Convention will assist in upholding the rights of all Fijians.

3.5 Consideration of Convention Article by Article

The Committee has considered the following Articles in its deliberations:

Article 17

‘Accident’ for the purposes of Article 17.1 of the Montreal Convention 1999, *Anne Ford v Malaysian Airlines Systems Berhad*.

United Kingdom

October 8 2013

Kennedys successfully defends claim by passenger against Malaysian Airlines for bodily injury as a result of an alleged ‘accident’ which occurred on board an aircraft. The Court of appeal (Civil Division) confirms that a passenger consenting to an injection from a Doctor on board an international flight does not constitute an ‘accident’ for the purposes of Article 17.1 of **(the “Montreal Convention 1999”)**, even if it subsequently transpires that the injection was the incorrect treatment for the passenger’s condition. As a result the claim was successfully defended in it’s entirety and costs awarded against the claimant.

Article 19

Article 19 provides that a carrier is liable for damage caused by delay in the carriage of baggage, except to the extent that it proves that it took all reasonable measures to

prevent damage or that it was impossible to take such measures. MC 99 gives no clear definition of what meant by “delay.” Many therefore felt that there is a need for a clarification of this term, and prior to the adoption of MC99; a proposal was put forward on the definition of delay.

Article 21

The litigation strategy of the parties has in large part been driven by Article 21 of the Convention, which contains a limitation on damages. Article 21 currently limits recovery to 113, 100 “Special Drawing Rights.” SDR is a way to track currency developed by the International Monetary Fund, which calculates the value of SDR almost daily based on the values of a basket of major currencies at market exchange rates. Its value in U.S. dollars can be found on the IMF’s website. SDR limitation is not absolute. Instead, it is a limit up to which an air carrier can be held strictly liable. Carriers can avoid damages beyond the SDR limit by proving that the injury was not due to their negligence or other wrongful act or omission.

Article 22

The principle that competing interests should be balanced is interpreted differently by the MC 99 but remains a fundamental feature of both Conventions and is manifested by liability thresholds which favour the carrier and evidential rules which prejudice it. This approach improves the prospect of successful claims by injured parties who would otherwise find it hard if not impossible to prove their cases. It follows that where the injured party does not need to rely upon favourable evidential rules to prove its case against the carrier there is no longer any necessity to even the scales by restricting the carrier’s liability. Whereas Article 22 MC restricts the carrier’s liability based on presumed fault for damage for damage caused by delays under paragraph 1 or in relation to baggage under paragraph 2, it imposes unlimited liability on the carrier if the injured party does not need to rely on the presumption of fault because it can prove gross fault under paragraph 5.

Article 22 MC balances competing interests where damage is caused by delay or in relation to baggage by restricting the carrier’s liability where fault is presumed on its part. However, if the injured party can prove gross fault on the part of the carrier it no longer needs to rely upon advantageous evidential rules and so the carrier should be liable without limit. The carrier is presumed to be at fault for damage under Article 17, 18, and 19 MC, but Article 22 paragraph 5 MC permits the injured party to sue for an unlimited sum if it can prove gross fault on the part of the carrier for damage caused by delay or in relation to baggage as opposed to cargo.

Article 24

Provision for review of carriers' liability limits every 5 years to take account of inflation. If the accumulated inflation over the review period exceeding 10% the limits of liability will be revised and the revision takes effect six months later (Article 24).

Article 26

Article 26 states that any provision tending to relieve a carrier of liability or to fix a lower limit than that which is laid down in the MC is null and void. Nothing in the MC permits blanket exclusions or otherwise allows carriers to disclaim liability for any class or category of item, such as jewellery, electronics, or high value items.

Article 28

Provisions that States may require their own carriers to make advance payments following aircraft accidents to assist victims or their relatives meet their immediate economic needs. These payments do not constitute recognition of liability.

Article 29

Provision that punitive, exemplary or other non-compensatory damages may not be recovered in any claim arising from international carriage by air.

The interpretation of a key MC provision such as Article 29 is therefore, with respect, likely to be an issue of laws for various member countries.

CASE COMMENT: Stott v Thomas Cook

Facts

During a journey from Zante, Greece to Midland Airport in the autumn of 2009, the claimant Mr. Stott, paralyzed and permanently dependant on the wheel chair, suffered from a breach of his rights under the EU Disability Regulation (EC) No. 1107/2006. The trial judge assessed compensation at 2, 500 pounds but saw himself unable to make such an award due to the exclusive application of the MC 99.

Article 33

The additional of a 'fifth jurisdiction' in which a damage claim can be heard. An action for damages for the death or injury of a passenger may be brought in the State where the passenger resided at the time of the accident, if it is a country to or from which the carrier operates and where it has premises.

Article 50

Provisions that States must ensure their air carriers maintain adequate insurance to cover their liability under the Convention under this Article.

3.6 Conclusion

The Foreign Affairs and Defense Standing Committee was mandated to examine matters relating to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military as well as the relations with multilateral organizations.

Section 110(1) of the SO authorises the Committee to review international treaties and conventions ratified by Government and to monitor their implementation.

The Committee has fulfilled its mandate approved by Parliament to review the Convention on the Unification of Certain Rules for International Carriage by Air: The Montreal Convention.

The Committee remained bipartisan with interactive contributions from members of Government and Opposition and ably supported by the parliamentary secretariat, resulting in a consensus report.

This report provides evidence for the ratification of the "Montreal Convention" based on public submissions. The positive response from the industry stakeholders were received in both oral and written format.

The Committee puts forward 5 recommendations as a result of the submissions made. The terms of reference focused on the ratification process of the Montreal Convention.

Being the second report of this Committee, the members remain gratified that democracy is in motion within this bipartisan Parliamentary Committee. This report recommends the ratification of the Montreal Convention unequivocally following public /stakeholder consultations.

REFERENCES: (MONTREAL CONVENTION)

REFERENCES: (MONTREAL CONVENTION)

HIGH COURT OF FIJI (AT SUVA): Saumi V Air Pacific Limited (2001) FJ 140; Hbc 01 46j. 2000s (7 November 2001)

HIGH COURT OF FIJI (AT SUVA): Huong Lee V Air Fiji Ltd (2003) FJHC 28; Hbc 0320d, 2001s (14 November 2003)

COMPENSATION TO RELATIVES ACT. LAW OF FIJI CHAPTER 29. AN ACT RELATING TO THE PAYMENT OF COMPENSATION TO THE FAMILIES OF PERSON KILLED BY ACCIDENT. Ordinance Nos. 17 of 1920, 7 of 1935, 16 of 1956, 37 of 1966, Act No. 28 of 1971.

EXTRAORDINARY – GOVERNMENT OF FIJI GAZETTE Vol. 14, TUESDAY, 15TH JANUARY 2013 No. 6. CIVIL AVIATION (AMENDMENT) DECREE 2013 (DECREE NO.2 OF 2013).

Kelliher, M. 2014: “**PLANE CRASH VICTIM COMPENSATION UNDER MONTREAL CONVENTION.**” Consumer Eagle News.

Banino, B.J. 2009: “**RECENT DEVELOPMENTS IN AIR CARRIER LIABILITY UNDER THE MONTREAL CONVENTION.**” The Brief.

Boucher, R. 2003: “**RATIFICATION OF THE 1999 MONTREAL CONVENTION.**” U.S. Department of State Website at <http://www.state.gov> maintained by the Bureau of Public Affairs.

Convention for the Unification of certain Rules for International Carriage by Air – Montreal, 28 May 1999 copy @ lexmercatoria.org

Kuehne, T.G. 2004: “**Montreal Convention replaces Warsaw Convention.**” FIATA Congress 2004/AFI.

INTERNATIONAL COURT OF JUSTICE: Press Release (1998). “**Questions of interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie** (Libyan Arab Jamahiriya v. United States of America). Court website (www.icj-cij.org).

Giemulla, E. 2010: “**Article 22 – Limits of Liability in Relation to Delay, Baggage and Cargo.**” Montreal Convention – Suppl. 7 (October 2010).

Balls, S and Zacharopoulou, S. 2013: “**Accident for the purposes of Article 17.1 of the Montreal Convention, Anne Ford v Malaysian Airline Systems Berhad.**” Association of Corporate Counsel (Acc). Kennedys Law LLP, LEXOLOGY.

UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION OFFICE OF THE SECRETARY WASHINGTON. D.C. 2011: “**Caribbean Airlines Limited Violations of Articles 17 and 19 of the Montreal**

Convention and 49 U.S.C. 41712.” Issued by the Department of Transportation on the Twenty-Eighth day of October, 2011. Docket OST 2011-0003.

Ortego, J.J and Mealiffe, T.M. 2015: **The Montreal Convention: “Assessing flight crew response to medical emergencies.”** WJ 22 Jan 2015 Westlaw Journals Commentary.

Supreme Court upholds exclusive of Montreal Convention 1999 in claim for damages brought pursuant to EC Regulationb1107/2006 in **Stott v Thomas Cook Tour Operators Limited. 2006. DLA PIPER.**

West – Knights QC sitting in Oxford County Court. MEANING OF ACCIDENT IS A SLIPPERY ISSUE: “BARCLAY V. BRITISH AIRWAYS” (2008 1 CLC 253) the Court considered the meaning of “ACCIDENT” in the context of the Montreal Convention 1999. EDWARDS WILDMAN (<http://www.Edwardswildman.com/insights/publicationdetail.aspx?>

Appendices

APPENDIX 1 : MONTREAL CONVENTION

Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention)

Official Journal L 194 , 18/07/2001 P. 0039 - 0049

Convention for the Unification of Certain Rules for International Carriage by Air

THE STATES PARTIES TO THIS CONVENTION,

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests,

HAVE AGREED AS FOLLOWS:

CHAPTER I

General provisions

Article 1

Scope of application

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
2. For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if

there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2

Carriage performed by State and carriage of postal items

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

CHAPTER II

Documentation and duties of the Parties relating to the carriage of passengers, baggage and cargo

Article 3

Passengers and baggage

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4

Cargo

1. In respect of the carriage of cargo, an air waybill shall be delivered.

2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5

Contents of air waybill or cargo receipt

The air waybill or the cargo receipt shall include:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and

(c) an indication of the weight of the consignment.

Article 6

Document relating to the nature of the cargo

The consignor may be required, if necessary, to meet the formalities of customs, police and similar public authorities to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7

Description of air waybill

1. The air waybill shall be made out by the consignor in three original parts.

2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier.

The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.

3. The signature of the carrier and that of the consignor may be printed or stamped.

4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 8

Documentation for multiple packages

When there is more than one package:

(a) the carrier of cargo has the right to require the consignor to make out separate air waybills;

(b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 9

Non-compliance with documentary requirements

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10

Responsibility for particulars of documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.

3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 11

Evidentiary value of documentation

1. The air waybill or the cargo receipt is prima facie evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12

Right of disposition of cargo

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 13

Delivery of the cargo

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14

Enforcement of the rights of consignor and consignee

The consignor and the consignee can respectively enforce all the rights given to them by Articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interests of another, provided that it carries out the obligations imposed by the contract of carriage.

Article 15

Relations of consignor and consignee or mutual relations of third parties

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties, whose rights are derived either from the consignor or from the consignee.
2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

Article 16

Formalities of customs, police or other public authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.
2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

Liability of the carrier and extent of compensation for damage

Article 17

Death and injury of passengers — damage to baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.
2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.
3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of 21 days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 18

Damage to cargo

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

(a) inherent defect, quality or vice of that cargo;

(b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;

(c) an act of war or an armed conflict;

(d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19

Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20

Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or

contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

Article 21

Compensation in case of death or injury of passengers

1. For damages arising under paragraph 1 of Article 17 not exceeding 100000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.
2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100000 Special Drawing Rights if the carrier proves that:
 - (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
 - (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22

Limits of liability in relation to delay, baggage and cargo

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4150 Special Drawing Rights.
2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.
3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.
4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means

referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23

Conversion of monetary units

1. The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1500000 monetary units per passenger in judicial proceedings in their territories; 62500 monetary units per passenger with respect to paragraph 1 of Article 22; 15000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogram with respect to paragraph 3 of Article 22. This monetary unit corresponds to 65,5 milligrams of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. State Parties shall communicate to the depositary the manner of

calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24

Review of limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25

Stipulation on limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26

Invalidity of contractual provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not

involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 27

Freedom to contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 28

Advance payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29

Basis of claims

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30

Servants, agents — aggregation of claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.
2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.
3. Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 31

Timely notice of complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and 14 days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within 21 days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or dispatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32

Death of person liable

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate.

Article 33

Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. For the purposes of paragraph 2,

(a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seised of the case.

Article 34

Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 35

Limitation of actions

1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating that period shall be determined by the law of the court seised of the case.

Article 36

Successive carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37

Right of recourse against third parties

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

CHAPTER IV

Combined carriage

Article 38

Combined carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.
2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

CHAPTER V

Carriage by air performed by a person other than the contracting carrier

Article 39

Contracting carrier actual carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 40

Respective liability of contracting and actual carriers

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41

Mutual liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.
2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42

Addressee of complaints and instructions

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

Article 43

Servants and agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 44

Aggregation of damages

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

Article 45

Addressee of claims

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article 46

Additional jurisdiction

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

Article 47

Invalidity of contractual provisions

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

Article 48

Mutual relations of contracting and actual carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

CHAPTER VI

Other provisions

Article 49

Mandatory application

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 50

Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 51

Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 52

Definition of days

The expression "days" when used in this Convention means calendar days, not working days.

CHAPTER VII

Final clauses

Article 53

Signature, ratification and entry into force

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.

2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect 60 days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

8. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) any denunciation under Article 54.

Article 54

Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect 180 days following the date on which notification is received by the Depositary.

Article 55

Relationship with other Warsaw Convention Instruments

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to

(a) the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 (hereinafter called the "Warsaw Convention");

(b) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting

Carrier, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);

(d) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955 signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(e) Additional Protocol Nos 1 to 3 and Montreal Protocol No 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in subparagraphs (a) to (e) above.

Article 56

States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration:

(a) references in Article 23 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and

(b) the reference in Article 28 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

Article 57

Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

(a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

(b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

APPENDIX 2: LIST OF SUBMISSIONS

The Committee received submissions or heard from the following organisations and individuals, during public hearings held at the Parliament Committee Room East Wing from 23 to 27 February 2015:

1. Solicitor General accompanied by CEO, Civil Aviation and representatives of Fiji Airways
2. Civil Aviation Department
3. International Air Transport Association (IATA)
4. Fiji National Council for Disabled Persons
5. DHL
6. Mr Joeli Koroikata
7. Mr George Faktaufon

**APPENDIX 3: COPIES OF WRITTEN SUBMISSIONS
RECEIVED**