

THE AIRCRAFT (TOKYO, HAGUE AND MONTREAL CONVENTIONS) BILL 1990

(NAME OF BILL)

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(Date passed 7.5.90 Act No. 2/90)

TO

Attorney General's Chambers 19/6/90
(for checking before Assent)

TO

Governor-General
(for Assent) Buppig 20/6/90

TO

Clerk to National Parliament
(for distribution)

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**THE AIRCRAFT (TOKYO,
HAGUE AND MONTREAL
CONVENTIONS) ACT 1990**

(NO. 2 OF 1990)

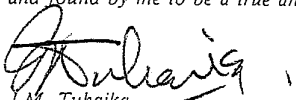


THE AIRCRAFT (TOKYO, HAGUE AND MONTREAL CONVENTIONS) ACT 1990

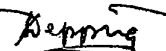
(NO. 2 OF 1990)

Passed by the National Parliament this seventh day of May 1990.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.


J.M. Tuhaika
Clerk to the National Parliament

Assented to in Her Majesty's name and on Her Majesty's behalf this twentieth day of June 1990.


G.G.D. Lepping
Governor-General

Date of commencement: see section 1.

AN ACT to make provision for giving effect to the Tokyo, Hague and Montreal Conventions on matters relating to crime affecting security of and in aircraft, and for purposes connected therewith.

ENACTED by the National Parliament of Solomon Islands.

THE AIRCRAFT (TOKYO, HAGUE AND MONTREAL
CONVENTIONS) ACT 1990

ARRANGEMENT OF SECTIONS

Section:

1. Short title and commencement.
2. Interpretation.

PART II

3. Interpretation of Part II.
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5. Extension of Solomon Islands local criminal jurisdiction.
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8. Jurisdiction of Convention countries for extradition purposes.
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10. Hijacking.
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18. Extradition for offences under this Part.
19. Fiat of Director of Public Prosecutions required for prosecution of certain offences.
20. Power exercisable on suspicion of intended offence.
21. Regulations.
22. Amendment of Schedule to Extradition Act, No. 24 of 1978.

1. This Act may be cited as the Aircraft (Tokyo, Hague and Montreal Conventions) Act, 1990 and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

Short title
and commence-
ment.

2. (1) In this Act, unless the context otherwise requires -
“aircraft” means any aircraft; (whether or not a Solomon Islands-controlled aircraft) other than -

Interpre-
tation.

(a) a military aircraft; or

(b) an aircraft which, not being military aircraft, is exclusively employed in the service of the Government;

“commander”, in relation to an aircraft, means the member of the crew designated as the commander of that aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“military aircraft” includes an aircraft of the naval, airforce, or customs of any country;

“Minister” means the Minister for the time being charged with responsibility for the administration of civil aviation;

“operator” in relation to any aircraft at any time, means the person who at that time has the management of that aircraft;

“pilot in command”, in relation to any aircraft at any time, means the person who at that time being is lawfully in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

“Solomon Islands-controlled aircraft” means an aircraft -

(a) which is for the time being registered in Solomon Islands;

or

(b) which is for the time being registered in some other country but either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it for the time being satisfies the following requirements -

- (i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Solomon Islands; and
- (ii) that he resides or has his principal place of business in Solomon Islands; or
- (c) which although for the time being registered in a country other than Solomon Islands, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the requirements set out in paragraph (b) hereof;

“the Hague Convention” means the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on the 16th day of December, 1970;

“the Montreal Convention” means the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on the 23rd day of September, 1971;

“the Tokyo Convention” means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on the 14th day of September, 1963.

PART II

Provisions giving Effect to the Tokyo Convention

Interpre-
tation of
Part II.

3. (1) In this Part -
- “Convention country” means a country in which the Tokyo Convention is for the time being in force, and the Minister may, by order, certify that any country specified in the order is for the time being a Convention country, and any such order for the time being in force shall be conclusive evidence that the country in question is for the time being a Convention country;
- “immigration officer” has the meaning assigned to it in the Immigration Act;

Act No. 27
of 1978.

(2) For the purposes of this Part, the period during which an aircraft is in flight shall be deemed to include -

- (a) any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends; and
- (b) for the purposes of section 6 -
 - (i) any period from the moment when all external doors of the aircraft are closed following embarkation for a flight until the moment when any such doors were opened for disembarkation after that flight; and
 - (ii) if the aircraft makes a forced landing, any period thereafter until the time when a competent authority takes over responsibility for the aircraft and for the persons and property on board the aircraft; and
- (c) any period when the aircraft, although on the surface of the sea or land, is not within the territorial limits of any country.

(3) In this Part, any reference to a country or the territorial limits thereof includes a reference to the territorial waters, if any, of that country.

4. (1) Subject to subsection (2), any act taking place on board a Solomon Islands-controlled aircraft while in flight elsewhere than in or over Solomon Islands and which, if taking place in Solomon Islands, would constitute an offence under the law in force in Solomon Islands shall constitute that offence.

Application
of criminal
law to
offences
on aircraft.

(2) Subsection (1) shall not apply to any act which is, by or under the law in force in Solomon Islands, expressly or impliedly authorised when taking place outside Solomon Islands.

5. For the purpose of conferring jurisdiction, any offence under the law in force in Solomon Islands, being an offence committed on board an aircraft in flight, shall be deemed to have been committed in Solomon Islands.

Extension
of Solomon
Islands
local
criminal
jurisdiction.

6. (1) If the commander of an aircraft in flight has reasonable grounds to believe in respect of any person on board the aircraft that the person in question has committed or is about to commit any criminal offence or has done or is about to do on the aircraft any act which jeopardises or may jeopardise -

Powers of
aircraft
commander.

- (a) the safety of the aircraft or of persons or property on board the aircraft; or

(b) good order and discipline on board the aircraft, then, subject to section 7, the commander may take with respect to that person such reasonable measures, including restraint of his person, as may be necessary -

- (i) to protect the safety of the aircraft or of persons or property on board the aircraft; or
- (ii) to maintain good order and discipline on board the aircraft; or
- (iii) to enable the commander to disembark or deliver that person in accordance with section 7.

(2) Where the commander of an aircraft is entitled under subsection (1) to restrain any person -

- (a) any member of the crew of the aircraft may -
 - (i) at the request or with the authority of the commander, render assistance in effecting the restraint;
 - (ii) without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in subsection (1) which he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft; and
- (b) any member of the crew shall, if the commander so requires, render such assistance as the commander may direct.

(3) Any member of the crew of an aircraft who wilfully and without reasonable cause fails to assist the commander of the aircraft in restraining any person when so required under paragraph (b) of subsection (2) shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred dollars.

Provisions
ancillary to
powers under
section 6.

7. (1) Where a person is under restraint on an aircraft pursuant to section 6, the commander of the aircraft shall as soon as practicable, and if possible before landing in any country, notify the authorities in that country of the fact that a person on board is under restraint and of the reasons for such restraint.

(2) Any restraint imposed on any person on board an aircraft under the powers conferred by section 6 shall not be continued after the time when the aircraft first thereafter ceases to be in flight other than -

- (a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the

person under restraint in accordance with subsection (3);
or

- (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.
- (3) The commander of an aircraft if in the case of any person on board the aircraft he has reasonable grounds -
 - (a) to believe as mentioned in subsection (1) of section 6; and
 - (b) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft,

may disembark that person in any country in which that aircraft may be and, if convenient, deliver him to a police officer or immigration officer.

- (4) The commander of an aircraft -
 - (a) if he disembarks any person in pursuance of subsection (3), in the case of a Solomon Islands-controlled aircraft, in any country or, in the case of any other aircraft, in Solomon Islands shall report the fact of, and the reasons for, that disembarkation to the authorities in the country of disembarkation and shall also request the authorities to notify a diplomatic or consular representative of the country of nationality of that person; or
 - (b) if he delivers any person in pursuance of subsection (3), shall at the time of delivery furnish to the appropriate officer such evidence and information relating to the need to take measures against that person pursuant to section 6, as at the time of furnishing are lawfully in his possession.

(5) Any commander of an aircraft who wilfully and without reasonable cause fails to comply with the requirement of subsection (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars.

8. For the purposes of the application of the Extradition Act to crimes committed on board an aircraft in flight, any aircraft registered in a Convention country may, at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that country whether or not it is for the time being also within the jurisdiction of any other country.

Jurisdiction
of Convention
countries for
extradition
purposes.
Act No. 24
1987.

Exemption
from
liability
for acts
against
offenders
under this
Part.

9. The commander of an aircraft, any other member of the crew any passenger, any owner or operator of an aircraft or any person on whose behalf a flight is made who takes action against any person in pursuance of this Part shall be exempt from liability for any measures taken against the offender in accordance with this Part.

PART III

Provisions carrying out the Hague Convention

Hijacking.

10. (1) Any person who, being on board an aircraft in flight, unlawfully, by use of force or threats of any kind, seizes the aircraft or exercises control over it shall be guilty of the felony of hijacking and, on conviction be liable to be imprisoned for life.

(2) Subject to subsection (3), in relation to any charge of hijacking or of an attempt to commit hijacking or of being an accomplice to either such hijacking or attempt, the High Court of Solomon Islands shall have jurisdiction to hear and determine the matter whatever the nationality of the accused, whatever the State in which the aircraft is registered and regardless of whether the aircraft is in Solomon Islands or elsewhere.

(3) Where, in relation to any charge of hijacking, the accused is not a citizen of Solomon Islands and the offence is not alleged to have been committed in Solomon Islands, then, if -

- (a) the aircraft is a military aircraft of another country; or
- (b) both the place of take-off and the place of landing of the aircraft are on the territory of a country other than Solomon Islands in which the aircraft is registered,

the High Court of Solomon Islands shall have jurisdiction to hear and determine the matter, so, however, that the court may, if it thinks fit, exercise that jurisdiction only in so far as the High Court thinks necessary to permit the person charged to be transferred for trial to another country claiming jurisdiction in the matter.

(4) For the purposes of this section, the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such doors are opened for disembarkation, and, in the case of a forced landing, any period until the competent authorities take over responsibility for the aircraft and for persons and property on board.

(5) For the purposes of this section, the territorial waters of any State shall be treated as part of its territory.

11. Without prejudice to the provisions of section 4, any act of violence against the passengers or crew of any aircraft in flight done by any person in connection with the offence of hijacking committed or attempted by him on board such aircraft shall be deemed to have been committed in Solomon Islands and shall constitute an offence punishable under the law in force in Solomon Islands applicable thereto, wherever the act of violence was committed, whatever the State of registration of the aircraft and whatever the nationality or citizenship of the offender.

Violence
against
passengers
or crew.

12. (1) There shall be deemed to be included in the list of extradition crimes described in the Schedule to the Extradition Act offences under this Part and attempts to commit such offence.

Extradition.

(2) Where no extradition treaty is in force between Solomon Islands and a State which is a party to the Hague Convention, the Minister may make an Order applying the Extradition Act as if the Convention were an extradition treaty between Solomon Islands and that State, but where the Extradition Act is so applied, it shall have effect as if only extradition crimes within the meaning of that Act were offences under this Act and attempts to commit such offences.

(3) For the purposes of the Extradition Act, any act, wherever committed, which -

(a) is an offence under this Act or an attempt to commit such an offence, or an attempt but for subsection (3) of section 10; and

(b) is an offence against the law of any State in the case of which the Extradition Act has been applied by Order, shall be deemed to be an offence within the jurisdiction of that State.

PART IV

Implementation of the Montreal Convention

13. (1) In this Part -
“act of violence” means -

- (a) any act done in Solomon Islands -
- (i) which constitutes the offence of murder, attempted murder, manslaughter, culpable homicide, grievous harm, wounding, or causing hurt by weapons; or assault; or
 - (ii) whereby an explosion of a nature likely to endanger life, or to cause serious injury to

Interpre-
tation of
Part IV.

property, is maliciously caused by means of any explosive substance, whether or not any injury to person or property is actually caused; or

- (b) any act done outside Solomon Islands which, if done in Solomon Islands, would constitute an offence as mentioned in paragraph (a);

“article” includes any substance, whether in solid or liquid form or in the form of a gas or vapour;

“explosive substance” includes any material or apparatus for making any explosive substance, any apparatus, machine, implement or materials used, or intended to be used, or adapted for causing or aiding in causing, any explosion in or with any explosive substance, and any part of any such apparatus, machine or implement;

“property” includes any land, buildings or works, any aircraft or vehicle and any baggage, cargo or other article of any description;

“unlawfully” -

- (a) in relation to the commission of an act in Solomon Islands, means so as (apart from the provisions of this Part) to constitute an offence under the law of Solomon Islands;

- (b) in relation to the commission of an act outside Solomon Islands, means so that the commission of the act would (apart from the provisions of this Part) have been an offence under the law of Solomon Islands if it had been committed in Solomon Islands.

(2) For the purposes of this Part -

- (a) the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and, in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over responsibility for the aircraft and for persons and property on board;

- (b) an aircraft shall be taken to be in service during the whole of the period from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after the aircraft lands upon completion of that flight, and also

at any time (not falling within that period) while the aircraft is in flight;

- (c) the territorial waters of Solomon Islands shall be treated as part of its territory.

14. (1) It shall be an offence for any person unlawfully and intentionally -

- (a) to destroy an aircraft in service; or
- (b) to damage an aircraft in service in such a manner as to render it incapable of flight or to be likely to endanger its safety in flight; or
- (c) to commit on board an aircraft in flight any act of violence which is likely to endanger the safety of the aircraft.

Destroying,
damaging
or
endangering
safety of
aircraft.

(2) It shall also be an offence for any person unlawfully and intentionally to place, or cause to be placed, on an aircraft in service any device or substance which is likely to destroy the aircraft, or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight, but nothing in this subsection shall be construed as limiting the circumstances in which the commission of any act -

- (a) may constitute an offence under subsection (1); or
- (b) may constitute attempting or conspiring to commit, or aiding, abetting, counselling or procuring, the commission of such an offence.

(3) Subsections (1) and (2) apply whether any such act as is therein mentioned is committed in Solomon Islands or elsewhere, whatever the nationality of the person committing the act and whatever the State in which the aircraft is registered.

15. (1) It shall, subject to subsections (5) and (6), be an offence for any person unlawfully and intentionally to destroy or damage any property to which this subsection applies, or to interfere with the operation of any such property, where the destruction, damage or interference is likely to endanger the safety of an aircraft in flight.

Other Acts
endangering
or likely to
endanger
aircraft.

(2) Subsection (1) applies to any property used for the provision of air navigation facilities, including any land, building or ship so used, whether or not it is on board an aircraft.

(3) It shall also, subject to subsections (4) and (5), be an offence for any person intentionally to communicate any information which is false, misleading or deceptive in any material particular, where the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of an aircraft in flight.

(4) It shall be a defence for a person charged with an offence under subsection (3) to prove that, when he communicated the information -

- (a) he believed, and had reasonable grounds for believing, the information to be true; or
- (b) he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated, in good faith in the performance of those duties, the information in question.

(5) Subsections (1) and (3) do not apply to the commission of any act unless either the act is committed in Solomon Islands or, where it is committed outside Solomon Islands -

- (a) the person committing it is a citizen of Solomon Islands; or
- (b) the commission of the act endangers or is likely to endanger the safety in flight of a civil aircraft registered in Solomon Islands or chartered by demise to a lessee whose principal place of business, or (if he has not place of business) whose permanent residence is in Solomon Islands; or
- (c) the act is committed on board a civil aircraft which is so registered or so chartered; or
- (d) the act is committed on board a civil aircraft which lands in Solomon Islands with the person who committed the act still on board.

(6) Subsection (1) also does not apply to any act committed -

- (a) outside Solomon Islands; and
- (b) in relation to property which is situated outside Solomon Islands and is not used for the provision of air navigation facilities in connection with international air navigation,

unless the person committing the act is a citizen of Solomon Islands.

(7) In this section "civil aircraft" means any aircraft, other than a military aircraft.

16. It shall be an offence for any person in Solomon Islands to induce or assist the commission outside Solomon Islands of any act which -

- (a) would be an offence under section 14; or
- (b) would, but for subsection (5) or (6) of section 15, be an offence under section 15.

Inducing
or assisting
commission
of acts
excepted
from sections
14 and 15
of the Act.

17. Any person who commits an offence under this Part shall be liable, on conviction on indictment, to imprisonment for life.

Penalties
and
jurisdiction.

18. (1) The list of extradition crimes in the Schedule to the Extradition Act shall be deemed to include offences under this Part and attempts to commit such offences.

Extradition
for offences
under this
Part.

(2) Where no extradition treaty is in force between Solomon Islands and a State which is a party to the Montreal Convention, the Minister may, make an Order providing for the Extradition Act to apply as if the Convention were an extradition treaty between Solomon Islands and that State.

(3) Where the Extradition Act applies in the case of a State by virtue of an Order made under subsection (2), no application for extradition by that State shall relate to any extradition crimes with the meaning of the Extradition Act other than offences under this Part or attempts to commit such offences.

PART V

General

19. (1) No proceedings -

(a) pursuant to Part II for an offence under the law in force in Solomon Islands committed on board an aircraft while in flight elsewhere than in or over Solomon Islands (other than an offence against the Civil Aviation Act, or any orders or regulations made thereunder); or

(b) for any offence under Part III or IV,

shall be instituted except by or with the consent of the Director of Public Prosecutions.

(2) Nothing in subsection (1) shall prevent the arrest, or the issue of a warrant for the arrest, of any person in respect of any offence under this Act, or the remanding in custody or on bail of any person charged with any such offence.

Fiat of
Director of
Public
Prosecutions
required for
prosecution
of certain
offences.

20. Where a police officer has reasonable cause to suspect that a person about to embark on an aircraft in Solomon Islands or its territorial waters, or a person on board such an aircraft, intends to commit an offence under Part III or IV in relation to the aircraft, the police officer may prohibit him from travelling on board the aircraft; and for the purpose of enforcing such prohibition may -

(a) prevent him from embarking on the aircraft or, as the case may be, remove him from the aircraft;

Power
exercisable
on
suspicion
of intended
offence.

- (b) arrest him without warrant and detain him for so long as may be necessary for that purpose.

Regulations.

21. The Minister may make regulations for the purpose of giving effect to this Act and, without prejudice to the generality of the foregoing, may provide for -

- (a) the procedure in assisting an offender to communicate with a representative of the State of which he is a national;
- (b) the restoration and preservation of control of an aircraft to the commander of the aircraft;
- (c) the return of an aircraft and its cargo, after such aircraft and cargo have been unlawfully seized, to any person lawfully entitled to possession;
- (d) assisting passengers and crew to continue their journey after the unlawful seizure of an aircraft; and
- (e) the holding of any investigation into unlawful or dangerous acts on board an aircraft.

Amendment
Schedule
to
Extradition
Act.

No. 24
of 1987.

22. The Schedule to the Extradition Act is hereby amended by deleting item 29 and substituting therefor the following new item -

“29 Any offence or attempt to commit an offence under the Aircraft (Tokyo, Hague and Montreal Conventions) Act 1990.”

Repeal.

23. The Tokyo Convention Act 1967 (Overseas Territories) Order 1968, The Hijacking Act 1971 (Overseas Territories) Order 1971 and The Protection of Aircraft Act 1973 (Overseas Territories) Order 1973 are hereby repealed.

