AVIATION Legal Framework and Insurance Coverage

LA REUNION AERIENNE
Christophe Graber, CEO

IFTRIP
International Forum for Terrorism Risk (Re)Insurance Pools

Paris conference
June 28, 2017
Introduction

AIRCRAFT is considered as a weapon by the terrorists ...

* September 11, 2001, but also AF flight Alger – Paris, December 1994
* see Modes of attack modelled in the RMS Terrorism Risk Model
French legal framework

- Under a law passed in 1986, terrorism must be covered under property damage insurance policies (article L126-2 of the « Code des assurances »)

- However, no duty to insure terrorism for majors risks such as aviation risks (the hull aircraft) except for hull aircraft value of less than 1 million of EUROs combined with a non-profit activity (article R126-2 of the « code des assurances »)

- Bodily injuries are covered by the Fund specifically created for the compensation of the victims
European Union legal framework

- Regulation (EC) N°785/2004 of 21 April 2004 on insurance requirements for air carriers and aircraft operators

- The EC regulation states **minimum insurance requirements** for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties, **including for war risks and allied perils** (acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion)

- This Regulation shall apply to all air carriers and to all aircraft operators flying within, into, out of, or over the territory of a Member State to which the Treaty applies.

- For liability in respect of passengers, the minimum insurance cover shall be 250 000 SDRs per passenger (roughly **340 000 USD**). However, in respect of non-commercial operations by aircraft with a MTOW (maximum take off weight) of 2 700 kg or less, Member States may set a lower level of minimum insurance cover, provided that such cover is at least 100 000 SDRs per passenger (140 000 USD).

- In respect of liability for third parties, the minimum insurance cover per accident, for each and every aircraft, shall depend from the MTOW of the aircraft (from 750 000 SDRs for MTOW of less than 500 kg to 700 000 000 SDRs for jumbo jet aircraft, i.e. from roughly **1 M USD to 1 billion USD**)

- Aggregate basis insurance authorized for war risks/terrorism (as standard market practice)
After 9/11 events, US congress passed the Terrorism Risk Insurance Act (TRIA)

The Act provides a temporary program (extended to 2020...) that, in the event of major terrorism attack, allows the insurance industry and federal government to share losses according to a specific formula.

TRIA enabled a market for terrorism to develop because the federal backstop effectively limit insurers’ losses, greatly simplifying the underwriting process.

TRIA was extended for another 7 years to 2014 in 2007 and renewed again for 6 years in 2015.

The new law is known as the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2015 and raises the threshold for the program to go into effect from 100 M USD to 200 M USD.
Post 9/11 events, ICAO (international civil aviation organisation) asked special working group to modernise pre-existing international legal conventions such as the Rome Convention of 1952 in respect of damage caused by foreign aircraft to third parties.

It was clear that industry should not be liable for terrorism losses that exceed insurance limits or that are uninsurable irrespective of fault.


If the international initiative has to be welcomed, the Convention is not yet in force and it might take years to obtain a sufficient number of ratifications, as some countries are not willing to ratify (USA, France etc.)
International Legal Framework

- The concept of the modernized Rome Convention thought to provide a durable system for victims compensation with a strict liability of the operator, but limited or capped, based on the weight of the aircraft, ranging from 750,000 Special Drawing Rights (SDRs) for the smallest aircraft to 700,000,000 SDRs for the largest aircraft (from roughly 1 M USD to 1 BN USD).

- With the creation of a special fund (the “International Fund”) similar to the FIPOL fund with the principal purposes of paying additional compensation above and beyond the level of the cap, up to 3 billions USD. If insurance is unavailable, or is only available at a cost incompatible with the continued operation of air transport, the International Fund may pay the damages for which the operators are liable.
Currently all aviation risks insurance policies are subject to War, Hijacking and Other Perils Exclusion Clause AVN48B or equivalent clauses, including exclusion of terrorism and malicious acts.

All paragraphs other than b) (Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter) of AVN48B are normally written back into policy coverage by the Extended Coverage Endorsement (Aviation Liabilities) AVN52E/AVN52G or by LSW555D for the Hull through a separate War policy.

Paragraph b) is an absolute exclusion that cannot be written back, originated in cold war times before nuclear terrorism was contemplated.

Nuclear perils represent unquantifiable and potentially ruinous accumulation of losses and are therefore deemed uninsurable by aviation insurers.
HULL WAR RISKS COVERAGE

- HULL WAR RISKS COVERAGE covers the damage to the hull aircraft if the damage is due to an act of war or terrorism, usually written back by hull war insurers under « Convention Annexe A1 » for the hull war french market and LSW555D clause for international market which specifically excludes NBCR risks, but with partial write-back for BCR risks (for example in case of hi-jacking, radioactive contamination on board the aircraft etc.)

- Nuclear risks / « dirty bombs » always excluded

- To be noted : the AVS 103 is a standard market clause which can be used when the cause of accident is unknown, temporarily sharing losses 50/50 between hull all risks insurers and hull war risks insurers
LIABILITY WAR RISKS COVERAGE

- LIABILITY WAR RISKS COVERAGE covers passenger, luggage, cargo and third parties liability claims resulting from an act of war or terrorism.
- Written back by AVN52E clause with a sub-limit which might be up to 500 M USD in respect of third parties claims (any one occurrence and in the annual aggregate).
- Passenger, Luggage and cargo liabilities under AVN52E remained on an each occurrence, each aircraft basis and for the full Combined Single Limit (the original limit of the insured policy which might be up to 2 BN USD) as these risks remain quantifiable (the number of passengers is known which is not the case for third parties damage on the ground such as 9/11).
- XS WAR RISKS COVERAGE for third parties claims is covered by XS war risks specific market up to 2 BN USD (any one occurrence and in the aggregate).
INSURANCE COVERAGE

AIRLINES

- All war risks coverage can be cancelled on either 48 hours or 7 days notice by Underwriters depending on the circumstances
- Automatic termination without notice can also occur (outbreak of war between UK, US, France, Russia, China)

AIRPORTS, MANUFACTURERS, SERVICE PROVIDERS

- WAR RISKS LIABILITY COVERAGE AS PER AVN52 G
- Sub-limit which might be up to 250 M USD
- With XS up to 1,5 BN USD under specific XS War Risks market
Example of Scenarios on ROISSY CHARLES DE GAULLE AIRPORT:

- Gareat study for Property Exposure ➔ economical loss of more than 10 Bn € in case of conventional terror attack (PD + BI), a large part being taken over by Gareat (large risks) and small and medium risks ie involvement of the CCR (French State) in excess of approx. 2,5 Bn €

- No Public coverage for Aircrafts! The accumulation can be huge ... average aircraft value 100 M $ ; 10 Aircrafts = 1 Bn $ ; 20 Aircrafts = 2 Bn $

- Passengers and victims are protected through the french fund ‘FGTI’

➔ There is surely a way to optimize the coverage
➔ In any case, the insurance community will ask for an involvement of the State and/or international organization (UNO, EU...)

12