Contents

1 Introduction ........................................... 1
   1.1 Conventional Insurance and Aviation Risks ............ 1
   1.2 The Insurance Aftermath of the Events of September 11, 2001 .. 4
   1.3 The Nature of the Beast ............................ 8
   1.4 Alternative Solutions for Insuring Aviation War and Terrorism
       Risks on a Sustainable Basis ........................... 9
   1.5 Object, Approach and Structure of This Book ............... 11

References ............................................ 14

2 The Insurance of Aviation Risks by the Conventional Insurance
   Markets ............................................. 17
   2.1 Introduction ....................................... 17
   2.2 Conventional Insurance: A Means of Spreading Risks ......... 20
      2.2.1 The Premium ................................ 23
      2.2.2 The Obligation of the Insurer .................... 24
      2.2.3 Payment of Money or Corresponding Benefit ........... 24
      2.2.4 The Special Uncertain Event ........................ 25
      2.2.5 Loss and Indemnity ............................. 26
      2.2.6 Transfer of Risk ................................ 27
      2.2.7 The Subject-Matter of the Contract of Insurance ....... 27
   2.3 Legal Concepts and Principles Applicable to Insurance ....... 28
      2.3.1 The Utmost Good Faith: Uberrima Fides ............. 29
      2.3.2 Insurable Interest ............................... 30
      2.3.3 Indemnity ....................................... 33
      2.3.4 Subrogation ..................................... 36
      2.3.5 Contribution .................................... 38
   2.4 The Underwriting Practices of the Global Aviation Insurance
       Market ............................................ 39
      2.4.1 The Structure of the Global Aviation Risk Pool and the Law
            of Large Numbers .................................. 41
      2.4.2 Direct Insurance: Placing the Risk ................... 43
4 Catastrophic Risks and Reflexes: Some Theoretical Perspectives on the Use of Insurance as a Risk Management Tool for Large Catastrophic Risks .................................................. 115
4.1 Introduction ........................................................................ 115
4.2 Market Failure Theory and Its Applicability to the Aviation War Risk Insurance Industry ................................................ 117
  4.2.1 Markets in Resource Allocation Theory ............................ 118
  4.2.2 Early Market Failure Theories .......................................... 120
  4.2.3 The New Market Failure Arguments ............................... 121
  4.2.4 How Market Failure Theories Explain the Behavior of Insurance Markets for Catastrophic Risks ......................... 129
  4.2.5 Criticisms of the New Market Failure Arguments ............. 134
4.3 Behavioural Explanations of the Post-Event Reactions of Extreme Event Insurance Markets ........................................... 137
  4.3.1 Ambiguity Aversion and Fairness ..................................... 138
  4.3.2 Irrational Abhorrence ....................................................... 140
4.4 The Systemic Nature of Aviation War and Terrorism Risks and Its Impact on Their Insurability ................................................. 143
4.5 Conclusion ........................................................................ 151
References ........................................................................... 153

5 Enhancing the Insurance of Aviation War and Terrorism Risks Through the Use of Alternative Risk Transfer and Risk Financing Mechanisms ............................................... 157
5.1 Introduction ........................................................................ 157
5.2 Funding of Aviation War and Terrorism Risks Through Industry Captives, Risk Retention Groups (RRGs) and Other Mutualization Schemes ........................................... 158
  5.2.1 Equitime ....................................................................... 160
  5.2.2 Eurotime and New Eurotime .......................................... 161
  5.2.3 Globaltime .................................................................... 163
  5.2.4 The Viability of the Risk Retention Concept in Relation to Aviation War and Terrorism Risks ......................... 167
5.3 Capital Market Solutions for Funding and/or Transferring Aviation War and Terrorism Risks Beyond the Insurance System .......................................................... 169
  5.3.1 Capital Market Alternative Risk Financing Instruments .............. 170
  5.3.2 Capital Market Alternative Risk Transfer Instruments .............. 175
  5.3.3 The Viability of Capital Market ART Solutions Following the Global Credit Crisis of 2007–2009 ......................... 190
5.4 Conclusion ........................................................................ 200
References ........................................................................... 200
6 The Insurability of Aviation War and Terrorism Risks Under ICAO’s Unlawful Interference Convention of 2009

6.1 Introduction ....................................... 203
6.2 The General Risks Convention of 2009 ................... 205
6.3 The Insurability of Aviation War and Terrorism Risks Under the Regime of Third-Party Liability and Compensation Established by the Unlawful Interference Compensation Convention of 2009 ........................................ 207
6.3.1 The First Tier of Compensation: Liability of the Operator ........................................ 209
6.3.2 The Second Tier of Compensation: The International Civil Aviation Compensation Fund .................... 217
6.3.3 The Third Tier of Compensation: Unlimited Liability of the Operator Based on Proof of Fault ........... 223
6.4 Alternative Proposals for an International Liability Regime for Third-Party Damages Caused by Acts of Unlawful Interference Involving Aircraft ..................... 228
6.5 Conclusion ........................................ 231
References ............................................ 232

7 Governmental Involvement in the Insurance of Aviation War and Terrorism Risks

7.1 Introduction ....................................... 235
7.2 Governmental Involvement in the Provision of Domestic Insurance Coverage for Large Catastrophic Risks in Property and Casualty Lines of Insurance .................... 236
7.3 International Cooperation Between States in the Provision of Insurance Coverage for Large Catastrophic Risks . ........................................ 240
7.4 Existing Types of, and Modalities for, Governmental Involvement in the Provision of Insurance Coverage (or Other Support) for Aviation War and Terrorism Risks ........... 245
7.4.1 The U.S. Federal Government’s Aviation War Risk Insurance Program .................................. 247
7.4.2 The Federal Government of Canada’s Aviation War Risk Indemnity Program .......................... 253
7.4.3 The Legality of European Governmental Schemes Providing Insurance Coverage/Guarantees to Air Transport Operators for Aviation War and Terrorism Risks Under EU State Aid Regulations .......... 256
7.5 Rationale for Governmental Involvement in the Provision of Insurance Coverage for Aviation War and Terrorism Risks . ........................................ 261
7.6 Limits and Drawbacks of Governmental Involvement in the Provision of Insurance Coverage for Aviation War and Terrorism Risks . ........................................ 263
7.7 Conclusion ........................................ 265
References ............................................ 266
8 Findings and Conclusions: Towards Sustainable Insurance of Aviation War and Terrorism Risks ............................... 271

8.1 Can the Conventional Insurance Industry Be Expected to Provide Sustainable and Adequate Insurance Coverage to the Global Air Transport Industry for Aviation War and Terrorism Risks? .................................. 271

8.2 Is It Possible to Enhance the Capacity of the Conventional Insurance Industry to Cover Aviation War and Terrorism Risks Through the Use of Alternative Risk Financing and Alternative Risk Transfer Mechanisms? .................................. 273

8.3 Does the Unlawful Interference Compensation Convention of 2009 Provide a Viable, Sustainable and Insurable Solution? . . . 275

8.4 Do States and Their Governments Have a Role to Play in the Insurance of Aviation War and Terrorism Risks? .......... 276

References ........................................................................... 277

Appendix A Specimen FAA War Risk Insurance Policy .............. 279

Appendix B The Goverment of Canada’s Undertaking with Respect to War Risk Insurance ................................. 307

Appendix C Measures Planned or Taken by EU Member States to Assist Air Transport Operators Cover the Additional Costs of Insurance in the Immediate Aftermath of September 11, 2001 .................. 313

References ................................................................. 317

Index ........................................................................... 319
Insuring the Air Transport Industry Against Aviation War and Terrorism Risks and Allied Perils
Issues and Options in a Post-September 11, 2001 Environment
Nyampong, Y.O.M.
2013, XX, 324 p., Hardcover
ISBN: 978-3-642-32432-1