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International Perspective on The Importance of Aircraft Hull Insurance

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ABSTRACT

Aircraft insurance plays a central role in the sustainability of international civil aviation, providing financial security for operators, creditors, and passengers alike. While liability insurance is extensively regulated through international instruments such as the Warsaw Convention 1929, the Montreal Convention 1999, the Rome Convention 1952, and regional regulations like EU Regulation 785/2004, hull insurance or the coverage protecting the aircraft itself as an asset remains entirely within the realm of private contractual practice. This article critically examines the legal framework of aviation insurance, distinguishing the treatment of liability insurance from hull insurance, and highlights the absence of binding international standards on the latter. It argues that this regulatory void produces legal uncertainty, unequal protection across jurisdictions, and systemic risks to the global aviation and financial sectors. By employing a comparative legal analysis, the article proposes the development of a new international framework under the auspices of ICAO and UNIDROIT, which should establish minimum standards for hull insurance, include coverage for extraordinary risks, and create a dedicated mechanism for cross-border dispute resolution. Integrating such provisions into the Cape Town Convention regime would ensure greater legal certainty, harmonization, and protection for all stakeholders in international aviation.

Keywords: aircraft, aviation, hull, insurance.

I. INTRODUCTION

International civil aviation, apart from being a complex sector of international law, constitutes a mode of transportation with exceptionally high risks. These risks arise from a wide range of factors, varying from operational aspects such as natural and man-made disasters[1], to external influences including fuel price fluctuations[2], financial stability[3], and investment risks[4]. The vulnerability of the aviation industry to economic instability[5] underscores the central importance of insurance as an indispensable instrument within civil aviation activities.

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[1] C. Hofer, 'On Airline Pricing Behavior during Financial Turnarounds', in *Advances in Airline Economics*, vol. 3 (2012), https://doi.org/10.1108/S2212-1609(2011)0000003008; G. Tamasi and M. Demichela, 'Risk Assessment Techniques for Civil Aviation Security', *Reliability Engineering and System Safety* 96, no. 8 (2011): 892–99, https://doi.org/10.1016/j.ress.2011.03.009.

[2] A. Erdoğdu, 'Optimization with Metaheuristic Algorithms in Financial Risk Management of Airline Companies', in *Airline Finance in the Global World* (2025); G.F. Loudon, 'Financial Risk Exposures in the Airline Industry: Evidence from Australia and New Zealand', *Australian Journal of Management* 29, no. 2 (2004): 295–316, https://doi.org/10.1177/031289620402900208.

[3] A. Borodin et al., 'Bankruptcy Predictions for Air Carriers: Global Market', *HSE Economic Journal* 23, no. 3 (2019): 418–43, https://doi.org/10.17323/1813-8691-2019-23-3-418-443; E. Markovskaya et al., 'Risk Modeling in the Aviation Industry as a Factor of Sustainable Development', 381 (2023), https://doi.org/10.1051/e3sconf/202338102008.

[4] D. Bezzubov et al., 'INVESTMENT SECURITY OF AVIATION ENTERPRISES IN THE CURRENT CONDITIONS OF THE DEVELOPMENT OF THE WORLD ECONOMY', *Relacoes Internacionais No Mundo Atual* 1, no. 39 (2023), https://doi.org/10.21902/Revrima.v6i39.6083.

[5] J. Flottau and R. Wall, 'Euro Debt Crisis Could Cost Global Airlines More than $8 Billion', *Aviation Week and Space Technology (New York)* 173, no. 44 (2011): 27; B. Bjelicic, 'Financing Airlines in the Wake of the Financial Markets Crisis', *Journal of Air Transport Management* 21 (2012): 10–16, https://doi.org/10.1016/j.jairtraman.2011.12.012.

The development of air transport has consequently generated a distinct demand for specialized insurance. Aircraft insurance does not only protect the physical hull of the aircraft, but also covers legal liabilities towards passengers, crew, cargo, as well as third parties affected by accidents (for instance, populations on the ground). Unlike insurance for land vehicles such as automobiles or motorcycles, or maritime insurance for seagoing vessels, aircraft insurance is subject to a more complex legal and regulatory framework. This is attributable to the sui generis legal nature of aircraft: although classified as movable property, aircraft must be registered and assigned nationality by a State, and their operation is subject to the international air law regime.

International conventions such as the 1929 Warsaw Convention and the 1999 Montreal Convention have established a relatively coherent legal regime concerning airline liability insurance. Similarly, the 1952 Rome Convention and ICAO Annexes provide guidance on third-party liability and operators' financial obligations. In addition, the 2001 Cape Town Convention and its Aircraft Protocol do not regulate insurance in detail, but instead focus on international financing and security interests over mobile equipment (particularly aircraft), railway rolling stock, and satellites, thereby creating a uniform international legal regime.

Within the context of aircraft financing, aviation insurance is generally required in order to safeguard against risks of physical loss or damage as well as third-party liability. The European Union, through Regulation (EC) No. 785/2004, prescribes explicit numerical minimum standards, including mandatory third-party liability coverage amounting to hundreds of millions of SDRs, thereby ensuring legal certainty for both passengers and the public. By contrast, Indonesia and most ASEAN States continue to apply the principle of "adequate insurance" without clear minimum thresholds, a practice that may result in under-insurance and legal uncertainty for third parties.

Several prior studies have examined the legal aspects of aviation from the perspective of financing and airline liability. Sinatrya[6] analyzed issues concerning aircraft financing and nationality, based on the case study of *Blue Sky v. Mahan Air*, which highlighted not only the importance of financing (both direct and through leasing) but also the necessity of determining aircraft nationality through registration in a State. This aligns with Brighton[7], who discussed the relatively younger development of the aviation insurance industry compared to maritime insurance. In addition to emphasizing the role of Lloyd's of London as the global market hub and the principle of *uberrima fides* in insurance contracts, Brighton also addressed its connection to the predominance of operating lease models in aircraft financing. A more specific study was conducted by Arboleda[8] through the litigation analysis of *AerCap v. AIG Europe S.A. and Lloyd's Insurance Company S.A.*, which demonstrated the complexities of claims involving hull all risks and hull war insurers following the seizure of aircraft after the Russian invasion of Ukraine.

Nevertheless, there is no deeper examination of the international legal context concerning normative standards of aircraft hull insurance. The aforementioned studies have predominantly focused on liability insurance and the legal framework of aircraft financing, while the protection of the economic value of aircraft as assets through the instrument of hull insurance has not yet received primary scholarly attention. Beyond generating technical challenges within contractual arrangements, this absence also contributes to legal uncertainty in cross-border disputes. This study seeks to fill that gap by examining

[6] Sinatrya Primandhana, 'Permasalahan Mengenai Pembiayaan Dan Nasionalitas Pesawat Udara: Studi Kasus Blue Sky v Mahan Air', *Dharmasisya* 1, no. 3 (2021): 1437–50.
[7] G. Brighton, 'Insurance Considerations', in *Aircraft Financing, Fifth Edition* (2022), https://doi.org/10.5040/9781526519757.chapter-016.
[8] J.I.G. Arboleda, 'Notes on the AerCap v. AIG Europe S.A. and Lloyds Insurance Company S.A. Litigation on Hull Aviation Insurance and Russian Risks', *Air and Space Law* 48, no. 3 (2023): 339–52, https://doi.org/10.54648/aila2023044.

the legal framework on international aviation insurance, aircraft hull insurance in the Aviation Industry, and the International Regulatory Void, Consequences, and Alternative Solutions.

II. RESEARCH METHOD

This research employs comparative method of legal research which fall under the broad category of doctrinal research. This study concentrates on doctrines which are syntheses of rules, principles, norms, or interpretative guidelines and values, and proceeds with both locating the sources of law and interpreting or analysing the text.[9] Normatively, this research includes the study of legal principles, legal systematic structure, and the degree of legal synchronization.[10]

Building on this normative foundation, the comparative method enables us to draw inferences about similarities and differences amidst the laws and legal systems of various jurisdictions under comparison and develop a substantive theory. In the context of aviation insurance, such a combination is crucial: while liability insurance is already embedded in international treaties, hull insurance remains regulated only by private contracts. The comparative method therefore allows this study to contrast the quantitative regulatory model of the European Union with the qualitative approaches in Indonesia and ASEAN, thereby clarifying the normative gap and paving the way for harmonization at the international level.

III. DISCUSSION AND RESULTS

3.1 Legal Status of Aircraft and Its Regulation of Insurance

Both individuals and legal entities, as well as institutions, recognize aircraft as movable property; nevertheless, the regulatory framework applicable to movable property cannot be applied in its entirety to aircraft. Unlike ordinary movable objects, aircraft are assigned nationality through their national and registration marks,[11] which obliges States to establish a public recordation system as a legal consequence of such nationality[12]. The International Civil Aviation Organization (ICAO) and its member States acknowledge this *sui generis* legal status of aircraft as movable property endowed with unique characteristics,[13] particularly in relation to nationality. Moreover, under international private law as embodied in the 1948 Geneva Convention,[14] an aircraft is deemed to acquire nationality upon its construction and may be subject to a mortgage, despite its classification as movable property.

Land vehicles, ships, and aircraft are all treated as mobile equipment, however, their legal status is not identical. The *sui generis* character of aircraft law places them within a distinct legal framework and regime compared to other vehicles such as automobiles or ships. In the context of insurance, the contract is essentially a private agreement between the insurer and the insured, yet the nature of the object and the risks involved result in a different structure and regulatory regime. Land vehicles such as automobiles are categorized as movable property under civil law by virtue of their transferable nature.[15] Their insurance policies are governed entirely by domestic law, typically structured as short-term contracts that rarely contain cross-border clauses. On the other hand, ships are subject to the law of the flag State and to international maritime conventions binding on that State. Marine insurance

[9] B. C. Nirmal and Rajnish Kumar Singh, *Contemporary Issues in International Law: Environment, International Trade, Information Technology and Legal Education* (Springer, 2018); P. Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press, 2019), 28.
[10] Soerjono Soekanto, *Pengantar penelitian hukum* (Penerbit Universitas Indonesia (UI-Press), 1986), 51; Soerjono Soekano and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Rajawali, 1986), 15.
[11] H.K. Martono and Agus Pramono, *Hukum Udara Perdata* (RajaGrafindo Persada, 2016), 265.
[12] *Ibid.*
[13] Article 17, Chicago Convention 1944
[14] Article 1, Convention on the International Recognition of Rights in Aircraft 1948
[15] Article 510 Kitab Undang-Undang Hukum Perdata

generally includes multiple schemes such as hull and machinery insurance, cargo insurance, as well as protection and indemnity (P&I) cover.[16] This complexity arises because maritime risks are inherently transnational, even though dispute resolution remains subject to the law of the flag State.

Aircraft occupy a distinct position because they are regarded as *sui generis* legal objects, whereby each aircraft must possess nationality through registration. This legal status signifies that an aircraft is not merely movable property but an object inherently tied to the international air law regime. Consequently, aircraft insurance policies are governed not only by national legislation but also by treaty obligations. From the perspective of risk, aircraft are exposed to far greater potential losses than automobiles or ships, since the parties involved may include not only the owner, operator, and passengers, but also third parties on the ground. For this reason, aviation insurance is structured in a multi-layered fashion, typically encompassing hull insurance, passenger liability, third-party liability, crew insurance, war risk coverage, and loss of use. This comprehensive structure is shaped by international norms, most notably the Montreal Convention 1999, which establishes carrier liability for passenger and cargo losses[17] and obliges States to ensure that carriers maintain adequate insurance coverage.[18] Thus, from the outset, aircraft insurance functions not merely as a financial instrument, but as a mechanism for fulfilling international legal obligations.

National practice further illustrates the divergence between aviation insurance and other forms of insurance. Disputes arising from automobile insurance claims are almost invariably domestic, whereas marine insurance disputes may proceed before maritime arbitration fora. By contrast, under the Montreal Convention 1999, passengers in aviation cases are granted forum choices, including the domicile of the carrier and the State of destination.[19] Moreover, aviation insurance contracts frequently designate English or New York law, reflecting the globalized nature of the aviation insurance market. This underscores the fact that aircraft insurance operates within the domain of private contract law but with layered international dimensions, setting it apart from other insurance regimes.

3.2 Legal Framework on International Aviation Insurance

The Warsaw Convention of 1929 marked the first milestone in establishing an international liability regime for airlines in relation to passengers, baggage, and cargo. It introduced the principle of strict liability, subject to a maximum compensation limit. Although the convention did not explicitly require airlines to obtain insurance, the imposition of liability ceilings effectively compelled carriers to secure liability insurance as a practical means of meeting compensation obligations.

This framework was later modernized by the Montreal Convention of 1999, which adjusted compensation thresholds and introduced a two-tier system of liability. Under this regime, carriers are strictly liable for proven damages up to a specified amount, while for losses exceeding that threshold they remain liable unless they can prove that all necessary measures to prevent the damage were taken. Although the Montreal Convention does not impose an explicit insurance mandate, the structure of unlimited liability in certain cases creates strong regulatory pressure for carriers to maintain adequate liability insurance.

While the Warsaw and Montreal Conventions primarily focus on the protection of passengers and cargo, the Rome Convention of 1952 was introduced to address liability toward third parties on the ground. It established the principle of absolute liability for aircraft operators, reflecting the need to

[16] Rinitami Njatrijani, 'Klaim Marine Hull and Machinery Dalam Praktek Pertanggungan', *Diponegoro Private Law Review* 3, no. 1 (2018): 327.
[17] Article 17-21, Montreal Convention 1999
[18] Article 50, Montreal Convention 1999
[19] Article 33, Montreal Convention 1999

safeguard civilians who might be victims of aircraft accidents occurring on the surface. As a result, States party to the convention generally impose a requirement for third-party liability insurance to ensure carriers can meet their compensation obligations. Despite its limited ratification, the Rome Convention provides a notable example of international regulation more directly linked to third-party insurance protection.

The formation of the International Civil Aviation Organization (ICAO) and the adoption of the Chicago Convention further shaped the international framework. Although the main text of the Chicago Convention does not regulate insurance in detail, its Annexes impose obligations on States to ensure that operators have sufficient financial capacity to meet liabilities arising from aviation operations, as well as to secure safety and risk-mitigation measures. In practice, these requirements are closely connected to the use of insurance as a financial guarantee, even though no global minimum standards have been codified.

Beyond liability regimes, the Cape Town Convention of 2001 and its Aircraft Protocol have had a significant impact on the financing and leasing of aircraft. Although the convention does not directly regulate insurance, it establishes an international system of security interests that effectively requires financial institutions, banks, and lessors to demand both hull insurance and liability insurance as additional protection to preserve asset value. Thus, while not legally mandated by public international law, insurance obligations have become deeply embedded in contractual practice under Cape Town's influence.

At the regional level, the European Union has gone further by adopting Regulation 785/2004, which sets binding minimum insurance requirements for all carriers operating within EU airspace, whether domestic or foreign. The regulation mandates insurance coverage for passengers, baggage, cargo, and third parties, with amounts determined by the aircraft's maximum take-off weight and seating capacity. This progressive regulatory model offers both legal certainty and broad public protection. Yet, like earlier international instruments, it remains confined to liability insurance and does not extend to hull insurance.

Taken together, these developments demonstrate that the international legal framework on aviation insurance is still predominantly focused on liability insurance as a direct consequence of established liability regimes. By contrast, hull insurance remains outside the scope of international regulation, relying instead on private contractual mechanisms and industry practice.

3.3 Aircraft Hull Insurance in the Aviation Industry

Aircraft hull insurance is a form of coverage that protects against physical damage to or loss of the aircraft, including the airframe, engines, and standard equipment attached to the aircraft. Its primary function is to safeguard the economic value of the aircraft as a capital asset. Given that the value of a single aircraft can reach hundreds of millions of dollars, hull insurance is effectively the principal instrument for operators and creditors to secure their investments. Unlike liability insurance, which is frequently addressed in international conventions and public regulations, hull insurance is entirely private in nature. It arises from commercial contracts among operators, lessors, creditors, and insurers. In international financing practice, banks or lessors almost invariably require hull insurance as a condition to ensure that the value of the aircraft remains protected in the event of damage or total loss.

International legal frameworks such as the Cape Town Convention of 2001 do not explicitly regulate aircraft insurance, but they indirectly shape industry practice. The convention requires creditors to ensure that hull insurance is included as part of leasing or financing agreements, thereby embedding insurance into the contractual architecture of aviation finance. Consequently, hull insurance does not

belong to the realm of public international law but is instead sustained by market dynamics and contractual necessity.

To date, there is no international legal instrument that establishes minimum standards for hull insurance. The amount of coverage, the scope of risks included, and the mechanisms for cross-border claim settlement are left entirely to contractual arrangements and global insurance market practices. As a result, standards may vary significantly across jurisdictions. The absence of international uniformity gives rise to several critical consequences:

a. Legal uncertainty in cross-border claims, particularly when operators, lessors, creditors, and insurers are based in different jurisdictions.
b. Unequal protection between carriers: operators in developed countries with stricter regulatory regimes generally enjoy better protection than those in developing countries.
c. Systemic risk in the global aviation and financial sectors: a major accident involving aircraft with limited insurance coverage or exclusions for extraordinary risks could trigger cascading financial losses, affecting not only airlines but also lessors, lenders, and the international reinsurance market.

3.4 International Regulatory Void, Consequences, and Alternative Solutions

Aircraft hull insurance plays a vital role in the aviation industry as it safeguards the economic value of aircraft as principal assets. Paradoxically, however, no international legal instrument expressly requires or regulates minimum standards for hull insurance. Unlike liability insurance, which has firm grounding in instruments such as the Warsaw Convention, the Montreal Convention, the Rome Convention, and EU Regulation 785/2004, hull insurance remains entirely within the private contractual domain. Neither the Chicago Convention of 1944 nor the Cape Town Convention of 2001 addresses this matter explicitly, leaving ICAO member States with no legal obligation to compel carriers or operators to obtain hull insurance.

The absence of binding standards on coverage amounts, scope of risks, and mechanisms for cross-border claims settlement leaves these matters to the discretion of private contracts and global insurance practices. This creates significant disparities across jurisdictions. In cases of cross-border disputes, issues of jurisdiction and choice of law become highly problematic. For instance, if an aircraft covered by hull insurance crashes in one country, is owned by a lessor in another, and insured through a company based in the London market, the resolution of claims may involve legal uncertainty, complex litigation, or costly arbitration proceedings.

This regulatory gap has tangible consequences for global aviation. First, it creates legal uncertainty for lessors, creditors, and operators: in the absence of international rules, no forum or applicable law is guaranteed for cross-border claims, and minimum obligations for claim payments remain undefined. This exposes leasing companies financing aircraft across jurisdictions to heightened risks. Second, it fosters inequities among States. Operators in countries with strict regulation are compelled to maintain adequate hull insurance, while those in jurisdictions with weaker regulation may operate without sufficient asset protection. This disparity undermines creditor confidence and exposes international lessors and third parties to uneven protection. Third, it poses systemic risks to the aviation and insurance industries. A major accident involving an aircraft with inadequate coverage or exclusions for extraordinary risks such as terrorism or war could generate cascading financial losses, impacting airlines, lessors, lenders, and even the global reinsurance market, potentially triggering a market shock with wider implications for aviation and financial stability.

Bridging the international legal void in hull insurance requires a coordinated reform agenda. Three key steps can be proposed. First, the International Civil Aviation Organization (ICAO) and the

International Institute for the Unification of Private Law (UNIDROIT) should collaborate to develop either a Model Law or an additional Protocol specifically addressing hull insurance. The adoption of such an instrument would enhance legal certainty, reinforce asset protection, and promote the harmonization of global standards. Second, the framework should set out minimum international requirements, including mandatory coverage calculated on the basis of the aircraft's market value, the inclusion of extraordinary risks such as war and terrorism, and clear procedures for cross-border dispute settlement. The establishment of a specialized international arbitration forum dedicated to aviation insurance disputes would further ensure efficiency and predictability. Third, given that the Cape Town Convention already functions as the cornerstone of international aircraft financing and leasing, it would be both practical and strategic to incorporate mandatory hull insurance obligations into its structure. In doing so, creditors, lessors, and operators would benefit from a more comprehensive and secure protection regime, firmly grounded in international law.

IV. CONCLUSION

Aviation insurance is indispensable for the stability of international civil aviation. While liability insurance has been extensively regulated through global and regional instruments, hull insurance remains outside the scope of public international law and is left entirely to contractual practice. This regulatory void generates legal uncertainty, uneven protection across jurisdictions, and systemic risks for the aviation and financial sectors. To ensure comprehensive and harmonized protection, an international framework establishing minimum standards for hull insurance is urgently needed.

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Law and Regulations

Chicago Convention 1944

Cape Town Convention 2001

Montreal Convention 1999

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