

Terrorism Definiens in Terrorism Insurance

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Abstract

The terrorism insurance market is a constantly growing industry as a result of the rise in terrorism and associated violence around the world. This trend has captured the attention of the Indian insurance sector as well. More and more people, companies, and organizations are getting insurance to protect themselves in case a terrorist attack occurs in the future. However, what exactly is terrorism insurance? Is it given under the Unlawful Activities (Prevention) Amendment Act, 2008 or any other related and applicable national or state legislation formulated? Terrorism insurance offers coverage for damages resulting from the aforementioned terrorist acts or guarantees to hold the insurer harmless in the event of such losses. The Indian Market Terrorism Risk Insurance Pool, which is managed by the Insurance Regulatory and Development Authority, is now used by general insurers to offer property insurance. As foreign re-insurers withdrew their terrorist coverage following the 9/11 attacks in the United States of America, general insurers took the initiative to create the pool in April 2002. The cost of terrorism insurance, according to insurers, has decreased recently because there haven't been any significant losses in the pool. The pool's capacity has increased to 4,500 crore. But, the recent terrorist attacks in Paris and London as well as the ongoing enemy infiltration over our borders have stoked panic, leading to a rise in terrorism insurance in India. Despite the pool taking advantage of this fear, there is no legal framework in place to control it. While the United States and other nations have laws covering similar matters, this research study examines whether India also needs such legislation

INTRODUCTION

Today's unpredictable times necessitate taking all hazards into consideration. Taking insurance coverage against terrorist attacks is not commonly understood in this regard. Even though everyone understands what terrorism is, there isn't an universally accepted definition for it, which may sound strange. Many governments and legal systems employ various definitions. The use of violence or the threat of violence in the pursuit of political, religious, ideological, or social goals may be found in all descriptions of terrorism.

Due to concerns about potential abuse, anti-terrorism legislation has historically been the topic of intense political controversy. India has seen its fair share of these disputes. The TADA, also known as the Terrorist and Disruptive Activities (Prevention) Act of 1987, was probably the most notorious anti-terrorism law. It was implemented in 1985 against the backdrop of the Punjab insurgency and repealed in 1995.

The next effective measure to combat terrorism was the Prevention of Terrorism Act of 2002 (POTA), however it was abolished in 2004. Some of POTA's provisions were included in the Illegal Activities (Prevention) Act 1967 after it was repealed, and in 2008, this act was revised. The Illegal Activities (Prevention) Amendment Act of 2008, also known as UAPA, has a much wider reach and incorporates acts of terrorism. It is currently in effect with sporadic addition of amendments.¹

The terrorism insurance business is a constantly growing industry as a result of the rise in terrorism and associated bloodshed around the world. This trend has captured the attention of the Indian insurance sector as well. More and more people, companies, and organizations are getting insurance to protect themselves in case a terrorist attack occurs in the future. But what does terrorism insurance actually comprise?

An act of terrorism is defined as an act or series of acts, including but not limited to the use of force or violence and/or the threat thereof, by any person or group of persons, whether acting alone or on behalf of or in connection with any organization or government, or unlawful associations,² or any other pertinent and appropriate federal or state law enacted to combat illegal and terroristic activities currently occurring in the state, regardless of whether they are driven by political, religious, ideological, or other similar goals. These goals may also include the need to influence any governments and/or instill fear in the general public or any specific group of the general public. Terrorism insurance protects against financial losses caused by the aforementioned terrorist acts, or it guarantees to hold the insurer harmless in the event of such losses.

EVOLUTION OF TERRORISM INSURANCE IN INDIA

India learned about the reality of terrorism in the wake of the Mumbai Attacks in November. Despite the fact

1 Vinay Kumar C, "Insurance Against Terrorism", *The Economic Times*, January 23, 2020, available at <https://economictimes.indiatimes.com/blogs/et-commentary/insurance-against-terrorism/>.

2 KSS Policy Wording, 28042020.cdr, available at: <https://policyholder.gov.in/>

that the 9/11 attacks in the United States served as a warning to everyone in the globe, many people did not believe that India would experience something akin. The catastrophe caused the entire country to stagnate, but one industry unexpectedly saw a boom in demand for a type of insurance coverage that the Indian Insurance System had never before heard of: terrorism insurance. Today, there is a low frequency, high severity risk of terrorism. The insurance sector has already benefited from the dread even before the assaults, Despite the fact that the Mumbai Attacks of 26/11 expanded India's market. In response to the 9/11 attacks, the Indian Terrorism Pool was established in 2001 and provided some sizable payouts for the first time during the November Attacks. Yet as of now, only major blue-chip corporations and their subsidiaries have chosen to purchase terrorism insurance. The programme covers a minuscule number of houses and micro businesses.

The Indian Market Terrorism Risk Insurance Pool, which is run by the Insurance Regulatory and Development Authority, is now used by general insurers to offer property insurance. As foreign re-insurers withdrew their terrorist coverage following the 9/11 attacks in USA, general insurers took the initiative to create the pool in April 2002. The cost of terrorism insurance, according to insurers, has decreased recently because there haven't been any significant losses in the pool. The pool's capacity has increased to 4,500 crore.³

However, the latest terrorist atrocities in Paris and London as well as the ongoing enemy permeation over our borders have stoked panic, leading to a rise in terrorism insurance in India. Despite the pool taking advantage of this fear, there is no legal framework in place to control it. While the United States and other nations have laws covering similar matters, this research study examines whether India also needs such legislation.

By examining pertinent international laws, reports, and government initiatives, In order to compare this Act's advantages and disadvantages to the Terrorist Risk Insurance Act of the United States of America,

3 Susanna Mercy Jacob, "Terrorism Insurance in India: Need for Legislation Governing the Indian Market Terrorism Risk Insurance Pool", *South Asian Law Journal Review*, Vol. 5, 2019, available at <https://thelawbrigade.com/wp-content/uploads/2019/06/Susanna-Mercy-Jacob.pdf>.

the author will conduct a doctrinal analysis. The study will end with recommendations regarding the viability of the terrorism insurance act as a remedy for India's poorly regulated terrorism insurance industry.

Terrorism in the United States: According to National Consortium for the Study of Terrorism and Responses to Terrorism (START), there were 1,922 successful acts of terrorism on U.S. soil between 1970 and 2016. Most occurred during the 1970s during a period of widespread politically-motivated violence, particularly bombings.

The bloodiest and most expensive terrorist act in American history was carried out on September 11, 2001, when hijacked commercial aircraft were flown into the Pentagon and the World Trade Center buildings. In 2021 dollars, insurance claims related to the 9/11 attacks, including those for commercial liability and group life insurance, reached nearly \$50 billion. Reinsurers, businesses that offer insurance to insurers, were responsible for covering almost two thirds of these losses. Business interruption losses made up 33% of total costs, while property losses, which included damage to the WTC buildings, made up 30%. One of the single largest insured loss catastrophes in history was 9/11.⁴

Who could ever forget the sight of planes crashing into the US World Trade Center or the Mumbai Taj Mahal Palace hotel attack. While these terrible incidents continue to haunt people, the economic harm they produced is arguably less well understood and underappreciated. Notwithstanding the fact that the WTC was never constructed, Taj Hotel had provided coverage for terrorism-related property damage and business interruption. The renovation itself took roughly one and a half years to complete at an estimated cost of Rs. 300 crores, and it took more than three years to finish the claim.⁵

The Indian Market Terrorism Risk Insurance Pool (IMTRIP)⁶ was established in 2002 as a result of the

9/11 terrorist attacks and the consequent removal of terrorism coverage by international reinsurers by Indian non-life insurers. The whole terrorism risk on all property insurance policies written by all companies must be reinsured by pool members. Members of IMTRIP, which divides shares and premiums depending on capacity, include all non-life insurance providers in India. As the state is not directly involved, premiums are necessary for funding.⁷

What is Terrorism?

There is not a single, widely agreed-upon definition of "terrorism" as of yet. It includes any acts that are dangerous to human life in violation of the law and are intended to intimidate or coerce a population, influence governmental policy, or affect the conduct of a government.⁸ Similarly, as premeditated, politically motivated violence perpetrated against noncombatant targets by sub-national groups or clandestine agents.⁹

The original Terrorism Risk Insurance Act of 2002 (TRIA) defines a certified act of terrorism for the purposes of that Act to be a violent act or an act that is dangerous to (I) human life; (II) property; or (III) infrastructure; (iii) to have resulted in damage within the United States, or outside of the United States in the case of, (I) an air carrier or vessel described in paragraph (5)(B); or (II) the premises of a United States mission; and (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.¹⁰

The Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA) adopted the 2007 program reauthorization definition, which struck "acting on behalf of any foreign person or foreign interest" in order to include domestic terrorism under certified actions of terrorism.¹¹

7 The Terrorism Pool Index: Review of terrorism insurance programs in selected countries 2018/2019, available at <https://iftrip.org/wp-content/uploads/2020/01/Terrorism-Pool-Index-Nov-1.pdf>.

8 U.S. law 18 U.S. Code § 2331

9 U.S. Code § 2656f,

10 Terrorism Risk Insurance Act of 2002 (TRIA)

11 Terrorism Risk Insurance Program Reauthorization

4 Background on Terrorism Risk & Insurance, Insurance Information Institute, November 4, 2021, available at <https://www.iii.org/article/background-on-terrorism-risk-and-insurance>

5 Vinay Kumar C, "Insurance Against Terrorism", *The Economic Times*, January 23, 2020, available at, <https://economictimes.indiatimes.com/blogs/et-commentary/insurance-against-terrorism/>.

6 The Indian Market Terrorism Risk Insurance Pool (IMTRIP), 2002

The TRIPRA definition of acts of terrorism excludes acts of war. Both personal and commercial insurance policies exclude coverage for losses or damages caused by or arising out of war or “warlike actions,” including insurrections and rebellions. War is usually considered an uninsurable catastrophic risk and is not covered by terrorism insurance. The only line of insurance that covers injury or death from an act of war is workers compensation.

PRECEDENTIAL STUDY

Narsingh Ispat Ltd. v. Oriental Insurance Company Limited & Ors.¹²

Facts of the case

The appellant purchased a Standard Fire and Special Perils Insurance from the respondent-insurance company for the period from June 28, 2009, to June 27, 2010, the policy applied to the engineering workshop and plant in the Jharkhand district of Saraikela’s Village Khunti. Under various sections, a total of Rs. 26,00,00,000 was promised. The premium was paid in the amount of Rs. 2,20,462. The appellant claims that the policy covered losses to the appellant’s property brought on by fire, lightning, explosion, riots, strike, etc.

On the basis of the aforementioned policy and the incident that occurred on March 23, 2010, the appellant filed a claim. According to the claim made by the appellant, on March 22, 2010, after midnight, between 50 and 60 antisocial individuals carrying weapons and ammunition broke into the appellant’s factory premises. In the appellant’s argument, the mob demanded money and employment for locals. According to the appellant’s case, its factory, machinery, and other equipment sustained significant damage. The objective of the occurrence, according to the appellant, was to terrify the management of the appellant and the factory workers into paying a ransom to the criminals.

On the basis of the policy, the appellant filed a standard claim with the respondent company. A surveyor hired by the respondent insurance company reportedly conducted the survey and

Act, of 2015

12 2022 SCC OnLine SC 535.

estimated the loss at Rs. 89,43,422/-, according to the appellant’s contention. Nonetheless, the appellant asserted that the respondent insurance company was obligated to give a Rs. 1.5 crore interim payment.

The respondent insurance company rejected the appellant’s claim in a letter dated December 23, 2010, by citing the policy’s Exclusion Clause addressing loss or damage brought on by terrorist attacks. As a result, the appellant complained to the Commission in the aforementioned complaint about a deficiency in the service provided by the respondent-insurance firm. A request for monetary relief in the amount of Rs. 1,51,35,780 was made in the complaint for the appellant’s loss.

Decision of the NCDRC

The Commission determined that the respondent firm was right in rejecting the appellant’s claim based on the “Terrorism Damage Exclusion Warranty” clause (hereinafter referred as “the Exclusion Clause”) contained in the insurance policy. It was decided that a terrorist act was what caused the damage to the appellant’s plant and equipment.

Issues before the Supreme Court

- Whether the Insurance Company was justified in repudiating the claim of the appellant based on the Terrorism Damage Exclusion Warranty Clause of the Insurance Contract?
- Whether insurers can rely on statutory interpretation of “acts of terrorism” to repudiate insurance claims where the policy itself defines the term?

Terrorism Damage Exclusion Warranty Clause

“Terrorism Damage Exclusion Warranty : Notwithstanding any provision to the contrary within this insurance it is agreed that this insurance excludes loss, damage cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purposes of this endorsement, an act of terrorism is defined as any act, including but not limited to the use of force or violence and/or the threat of such use, committed by any person

or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), for political, religious, ideological, or similar purposes, including the intention to influence any government and/or to put the public, or any segment of the public, in fear.”¹³

Contentions of the Appellant

The learned counsel appearing for the appellant submitted that the police had registered a First Information Report against unidentified persons. The police submitted a closure report after concluding their investigation, noting that they were unable to locate the accused.

Although the respondent insurance company cited the Investigation Report in the letter of repudiation, it was argued that neither a copy of the same was provided to the appellant nor a copy of thereof was presented to the Commission. A copy of the Investigation Report, which states that it was not clearly shown that Maoist activists or any other such activists were responsible for the attack, was submitted on record by the respondent after this Court gave a particular directive.

It was argued that it is clear that it was not a case of a terrorist act within the meaning of the Exclusion Clause upon a joint reading of the First Information Report, closure Report filed by the police, and Investigation Report submitted by the Investigator appointed by the respondent-insurance company. Reliance was placed on the definition of “terrorism” as it appears in several statutes, including the Illegal Activities (Prevention) Act of 1967 and the National Investigative Agency Act of 2006. The learned counsel submitted that the burden was on the insurance company to prove that the Exclusion Clause was attracted in the facts of the case. Relying on the decision of this court in the case of *National Insurance Co. Ltd. v. Ishar Das Madan Lal*,¹⁴ he submitted that the insurance contract must be interpreted in favour of the appellant-insurer if there is any doubt as to whether the Exclusion Clause was attracted.

¹³ Commercial General Liability Policy Extension & Clauses, available at <https://www.universalsompo.com/assets/file/others/commercial-general-liability-policy/commercial-general-liability-policy-clauses.pdf>

¹⁴ *National Insurance Co. Ltd. v. Ishar Das Madan Lal*, (2007) 4 SCC 105.

Contentions of the Respondent

The learned senior counsel appearing for the respondent insurance company contended that the fact that 120 people entered the appellant’s factory grounds armed and carried out widespread destruction proves that it was a terrorist attack intended to scare the appellant’s employees and management.

It was submitted that the police have applied Sections 147, 148, 149, 323, 307, 379, 427, 435 and 447 of the Indian Penal Code read with Section 17 of the Criminal Law (Amendment) Act, 1908. It was a case of unlawful association as defined in Section 15 of the Amendment Act of 1908 and that under Section 17 thereof; the unlawful association is made an offence. It was argued that the mere application of the Amendment Act of 1908’s provisions proves that the loss suffered by the applicant was the result of a terrorist attack.

Furthermore, it was stated that the appellant had the onus of proving that liability results from the aforementioned policy. According to the argument, the appellant did not meet his or her obligation to do so, hence the Commission’s conclusion does not require interference.

Decision and Reasoning of the Supreme Court

The court noted that the preliminary survey report, investigation report, and final survey report are the foundation for the respondent’s repudiation of the policy. The question of whether a terrorist act occurred cannot be answered by the survey reports. The survey reports don’t include any factual information on the events that resulted in the loss. In the letter of repudiation, the Investigative Report was cited as evidence. A copy of the aforementioned Report contains a conclusion reached by the investigator chosen by the respondent that there is insufficient evidence to indicate that the individuals involved in the incident belonged to Maoist or other radical organizations. The Exclusion Clause’s definition of terrorism is not mentioned in the FIR or Closing Report. According to the Final Report (Closure Report), the police had filed a First Information Report against 105 criminals who were untraceable.

In the case of *Ishar Das Madan Lal*, this Court held thus: “However, there may be an express clause excluding the applicability of insurance cover. Wherever such an exclusionary clause is contained in a policy, it would be for the insurer to show that the case falls within the purview thereof. In a case of ambiguity, it is trite, the contract of insurance shall be construed in favour of the insured.”

The burden of bringing the case inside the parameters of the Exclusion Clause has not been met by the respondent. The terms of the policy, being a signed contract, will control the rights and obligations of the parties when the policy itself identifies the acts of terrorism in the Exclusion Clause. Furthermore, since the Exclusion Clause contains a comprehensive definition of acts of terrorism, the parties cannot rely on the meanings of “terrorism” under various penal legislations.

Thus, the Commission committed an error by applying the Exclusion Clause. Moreover, the policy specifically covers the damage to the insured's property caused by violent means under Clause 5 of the insurance contract as: *Riot strike and malicious damage: Loss of, or evident physical damage or destruction to the covered property caused by external violent means*, the liability resulting from damage to the insured's property caused by rioting or the use of force is expressly covered by the policy. Thus, the rejection of the policy cannot be upheld. Different limits are specified in the insurance policy for the acts covered by it. Because there was no rationale for using the Exclusion Clause, the contested judgement and decision must be reversed, and by returning the appellant's case, the Commission must be required to hear it again. The appeal was therefore granted.

Indian Insurance Sector and Terrorism Insurance

The Indian Market Terrorism Risk Insurance Pool (IMTRIP), an initiative by all Indian non-life insurance companies in April 2002 to create domestic capacity for providing terrorism insurance cover after the withdrawal of terrorism reinsurance capacity from the domestic companies treaties in the wake of 9/11, regulates terrorism insurance in India. On the combined underwriting capacity of the members and General Insurance Corporation of India, the Pool

enables members/non-life insurance companies to offer insurance coverage against Terrorist risk in India.¹⁵

The Pool is applicable to all terrorism risk insurances that are insured with property insurances in any of the protected classes. Each member takes part in any terrorism risk insurance that falls under the purview of the Pool to the extent of their participation and liability. The responsibility is concurrent with and concurrently terminates with the responsibility under the initial terrorist risk insurance policy. A terrorism insurance coverage only covers terrorism as a danger.¹⁶

The Characteristics of the Indian Insurance Pool are composed in such a manner that beside (General Insurance - Reinsurance) Regulations, 2000 the Export Credit Guarantee Corporation of India Limited (ECGC), and the Agriculture Insurance Corporation of India Limited, almost all general insurers take part in the Terrorism Pool except for specialized health insurance providers showing that there is no involvement from the government in the direct sense; it is an elective pool. Premium rates for terrorism cover were revised upwards in April 2009 after enormous losses from the Mumbai terrorist attack event of 26th November 2008.

The Present Challenges Faced by the Terrorism Insurance Sector in India

One of the challenges the Indian Terrorism Insurance Sector faces is determining the scope of the damage caused by terrorism and the complexities of the idea of terrorism itself. Terrorism is one of the risks with low frequency and high severity. Terrorist attacks are not unplanned; rather, they are designed to cause the most harm and shock. It is a huge task to analyse and identify a terrorist act. Terrorist risk differs greatly from other risks that are typically insured from an insurance standpoint since it is difficult to estimate both the maximum cost of these incidents as well as the quantity of events (frequency) that are

¹⁵ Insuring Terrorism Risk In India, B N Narasimhan, Organisation For Economic Cooperation & Development 2nd , International Meeting On Terrorism Risk Insurance Paris, France (5th December, 2012).

¹⁶ National Terrorism Risk Insurance Programmes of OECD Countries with Government Participation, OECD, available at <https://www.oecd.org/daf/fin/insurance/Terrorism-Risk-Insurance-Country-Comparison.pdf>.

most likely to result in claims. In addition, nobody can be assured of the worst-case scenario. There isn't much data available to estimate future losses, either in terms of frequency or degree of loss, because there haven't been many terrorist attacks.

The tragic events of September 11, 2001 in the USA demonstrated the degree of risk that insurance companies would be exposed to in the event of another terrorist attack. At that time, because to the continuous uncertainty surrounding the frequency and scale of impending attacks, insurers and reinsurers all over the world reacted swiftly and included terrorist exclusion provisions in their policies. Before 9/11, insurance companies did not separate potential damages from terrorist actions from the regular property coverage because they thought the risk was so minimal. In actuality, in addition to riot, strike, and malicious damage coverage, the fire policy in India also included a terrorism cover.

Another challenge the sector is now dealing with is a lack of understanding of the problem. The 26/11 Mumbai attacks were the first time we faced the full power of terrorism, even though internal conflict and war are not new notions to Indian society. Nonetheless, the pool had been prepared to handle the severity of the damage because it had been informed of the tragedy's approaching arrival. Only the major market players could take use of the pool's existence, though. The market for terrorism insurance is currently unknown to smaller parties.

The biggest barrier to the business of terrorism insurance in India is the lack of a particular legal regime to govern it.¹⁷

Terrorism Risk Insurance Act: Need of the Hour?

The Terrorism Risk Insurance Act is a federal bill that seeks to provide a federal framework for insurance claims for terrorism insurance in the United States. According to the official announcement, the Act establishes a transparent mechanism of shared public and private compensation for insured damages brought on by acts of terrorism. Originally set to terminate on December 31, 2005, it was

¹⁷ Susanna Mercy Jacob, *Terrorism Insurance in India: Need for Legislation Governing the Indian Market Terrorism Risk Insurance Pool*, *South Asian Law Journal Review*, Vol. 5, 2019, available at <https://thelawbrigade.com/wp-content/uploads/2019/06/Susanna-Mercy-Jacob.pdf>.

postponed by the Obama Administration to 2007, 2014, and now 2020.¹⁸

A robust regulation to govern the terrorism insurance industry was required as a result of the financial strain the 9/11 attacks placed on reinsurers, who further dispersed the risk assumed by primary insurers. Due to their inability to model or value terrorism risks, reinsurers mostly withdrew from the market for terrorism insurance. The lack of reinsurance then pushed primary insurers to exclude terrorism. As per the majority of state insurance authorities, terrorism exclusions may be utilised by main insurers.¹⁹ These reinsurance payments followed expenses brought on by a spate of severe natural catastrophes during the previous 10 years, as well as portfolio losses as a result of collapses in the stock market. Most reinsurers chose to drastically reduce or stop covering this risk due to the enormous harm it caused to their capital bases. As a result, U.S. insurers were left in the immediate aftermath of September 11, 2001, with high levels of terrorism risk from their current portfolio and few options for obtaining reinsurance to minimize the effects of a future attack. The handful that did offer insurance to their clients imposed excessively exorbitant prices.²⁰ As a result, there was a necessity for federal action. The Federal Government of the United States of America decided to work together to get insurance for the people and would share or proportionately cover the risk. The purpose of the Act was to encourage insurers to offer terrorism insurance at rates that risky enterprises would find desirable and decide to pay.

India doesn't, however, have a proper legal system in place for it. The terrorism insurance sector is governed by other forms of insurance policies, such as travel insurance, fire insurance, life insurance, etc. If not, it is safeguarded by the Indian Market Terrorism Risk Insurance Pool, which is regulated by the IRDA. Is the Indian terrorism insurance industry's current

¹⁸ Terrorism Risk Insurance Program, U.S. Treasury Department Website, available at: <https://www.usa.gov/federal-agencies/u-s-department-of-the-treasury>

¹⁹ The Specter of Terrorism, Roger Douglas Law, Liberty, and the Pursuit of Terrorism, *University of Michigan Press* (2014), pp 12-33.

²⁰ Kunreuther, Howard & Erwann Michel-Kerjan, "Challenges For Terrorism Risk Insurance in the United States," *Journal of Economic Perspectives*, 2004, Vol. 18, 201-214.

structure sufficient, or does it call for a similar action plan? In compliance with Pool rules and conditions, insurance companies in India only provide terrorism coverage from the Terrorism Pool up to Rs. 750 crores at any one site. If a client needs coverage for terrorism risks more than Rs. 750 crores, companies like New India can make arrangements and issue a Stand Alone Terrorism Coverage policy. A legislative process is necessary at this time. If the government could take on the risk or share it with these insurers, the market could be regulated much more successfully.

In a similar spirit, the terrorism pool only covers indirect costs and property damage brought on by terrorist attacks. The Pool Agreement defines a terrorist act as any act in which an individual or individuals, acting alone or on behalf of a group, utilises force or violence for a purpose that is political, religious, intellectual, or otherwise similar. Nevertheless, the policy does not cover any loss or damage resulting from actions taken to prevent, impede, or suppress a terrorism act. Terrorism insurance coverage such as personal accident, life, health, public liability, etc. are not covered by the terrorism pool. Any claims made under these insurance policies would have a direct impact, which means they would be charged to the companies that provided coverage, who might refuse to pay if they think the claim is the result of terrorism.

The regulation would be significantly more effective and efficient, much like how the Financial Services Regulatory and Development Authority would profit from a better operating environment.

Analysis of terrorism risk insurance problems and selection of solutions

Re-understanding of terrorism risk insurance

It can be understood from the terrorism risk insurance systems in other western countries that the terrorist risk insurance of most countries is based on the 9\11 terrorist attack in 2001 year and later all had some form of government intervention. In fact, long before the 9\11 incident, there have been too many terrorist attacks incidents, but the losses caused by them are relatively small, and they have basically not attracted the attention of commercial insurance companies.

It is clear that the commercial insurance market can fully cope with the risk of small-scale terrorist attacks. In fact, even after the 9\11 incident, the insurance industry in the United States did not completely exclude the losses caused by terrorist attacks from the scope of coverage, but limited them. In the event of a small amount of property damage caused by a terrorist attack, insurance protection can still be obtained. The reason why insurance becomes an issue is mainly for large-scale terrorist attack risk insurance.

After the 9\11 incident, international reinsurance companies have announced their withdrawal from the terrorist risk insurance market. Therefore internationally, not only the United States, but also the terrorism risk insurance market in other countries in the world is also deeply affected in absence of reinsurance coverage. Under such circumstances, commercial insurance companies in many countries also announced their refusal to cover terrorist risks.

How to view this phenomenon, in the academic point of view?

Not one. Although in the eyes of most people, this means that the commercial insurance market is incapable of dealing with terrorist risks, which is a manifestation of market failure. But, yes, there is also a point of view that such an 'insurance crisis' is only temporary, not permanent, and such incidents have also occurred in history.

There have been, for example, a 'liability insurance crisis' in the US in the 1980s, when many companies were unable to buy liability insurance for a time or unable to afford the surge in premiums, but later the insurance market gradually recovered, and liability insurance was still left in the commercial insurance market. In fact, it does not become government insurance or government-sponsored insurance.²¹

From this point of view, the reason for the terrorism after 9/11 is the shortage of insurance due to the huge amount of losses caused by the 9\11 incident, and many insurance companies have paid huge compensation. Having consumed a large amount of the company's assets, its financial structure and the

²¹ Anne Gron & Alan O. Sykes *Terrorism and Insurance Markets: A Role for the Government as Insurer?* 36 *Ind. L.Rev.* 447 (2003).

requirements of the insurance law on the solvency of insurance companies made it unable to continue to underwrite terrorism insurance.

In addition, after the 9\11 incident, the insurance company updated the risk assessment model for terrorism insurance, according to the new assessment model type, insurance companies need to withdraw a larger proportion of liability reserves when underwriting terrorist risks, which further strengthens the financial structure of insurance companies.

However, this shortage should be temporary and self-correcting by the market, so there is no need for government intervention.²²

However, the facts have proved that the latter view is too optimistic. For example, the United States enacted the Terrorism Risk Insurance Act after the 9\11 incident, a Proposal, hoping to solve the shortage of terrorism risk insurance and high premiums in the commercial insurance market through short-term government intervention. U.S. government originally hoped to withdraw from the commercial insurance market after it returned to normal. However, it is still difficult for the government to withdraw from the terrorist risk insurance mechanism, out as premiums for terrorism risk dipped slightly after the bill was passed, but then went up again shortly after. It is still difficult to obtain terror risk insurance for landmark buildings in some big cities, and their insurance premiums are still high. A study shows that if the government intervention is involved, from the risk of terrorism 70% to 80% of commercial insurance companies will withdraw from this market again.²³

If we admit that it is indeed difficult to solve the problem of terrorism risk insurance only relying on the strength of the commercial insurance market itself, then “Why this is the case, how it differs from other risks, and whether insurable needs to be explored”.

Answer to this question, it will affect the issues we need to discuss next, that is, whether the government intervention is needed? And how the government should intervene?

22 Manns, Jeffrey. “Insuring against Terror?” *The Yale Law Journal*, vol. 112, no. 8, 2003, pp. 2509–51. *JSTOR*, <https://doi.org/10.2307/3657481>. Accessed 28 June 2023.

23 Baird Webel, Terrorism Risk Insurance: Overview and Issue Analysis for the 116th Congress, December 27, 2019 Specialist in Financial Economics, Congressional Research Service *available at*: <https://crsreports.congress.gov/R45707>

If we admit that it is indeed difficult to solve the problem of terrorism risk insurance only relying on the strength of the commercial insurance market itself, then from the perspective of insurance, the insurer underwrites risks, but not all risks are insurable. Insurable risk needs the following conditions:

First, insurable risks need to be assessable. Insurance is based on the existence of risk. Risk, which means uncertainty for a single risk unit the occurrence of losses and the amount of losses are uncertain. From the point of view, it needs to be relatively certain, that is, the probability of loss and the amount of loss can be pre-evaluated, because if this cannot be assessed, the insurer cannot determine the premium rate, nor can it determine how much liability reserves should be drawn for the risk it insures.

Second, there must be a large number of homogeneous and independent risk units. Insurance, which means the transfer of risk from the insured to the insurer, but insurance is not a panacea. The reason why the insurer is willing to underwrite is that it can better achieve risk dispersion, but, however, only when it can concentrate enough homogeneous and independent risks, can the “good” risks and “bad” risks be in a balanced state. Only in this way can the law of large numbers be used to truly realize the dispersion of risks. For insurable risks, the occurrence of losses is often random, and at each time, usually only a small part of the risk is lost, so the insurer can achieve risk dispersion.

Third, it must be commercially feasible for insurers to cover such risks. Insurance companies, as profit-making commercial establishments, it is in its nature to pursue profit. A business is only engaged in, if it is profitable. In reality, for certain insurance businesses, sometimes although the insurer can accurately assess the risk level of the insured, the amount of insurance premium calculated from this may be very high.

As for the inability to attract enough policyholders to make the insurer unprofitable, under such conditions, underwriting, although technically feasible, but it is not practically feasible commercially.

If we examine the risk of large-scale terrorist attacks with reference to the above criteria, we can find that, at least at the current stage, there is no purity.

Purely Commercial Insurability:

First of all, for most countries and regions, the number of large-scale terrorist attacks is still very small. When assessing the risk of terrorist attacks, there is not enough relevant data, and it is impossible to use the law of large numbers to predict future expected losses. It is impossible to predict the frequency of terrorist attacks, the amount of losses, or even nothing in the worst case. Surely in fact, predicting losses from terrorist attacks is more difficult than predicting natural disasters such as earthquakes, because for the latter, insurance companies still have some data to rely on. Also, unlike natural disasters, terrorist attacks do not occur randomly but are carefully planned; it is deliberate and therefore more unpredictable. If the insurer cannot predict the frequency of losses and the amount of losses, it is impossible to determine that there is no way to adjust the capital requirements and solvency requirements of insurance companies.²⁴

Secondly, the losses caused by terrorist attacks are often very concentrated, making it difficult for insurers to disperse risks. Terrorists in order to achieve their goal, often like to choose economically developed or politically influential cities or iconic buildings and groups of people for raids. Therefore, those who are willing to insure are often those with a very high risk level who are most likely to file a claim. Therefore, in the case of voluntary insurance, it is easy to induce adverse selection, which also makes it difficult for the insurer to disperse the risks underwritten.

Third, the losses caused by large-scale terrorist attacks are often huge, and insurance companies are often very cautious in underwriting it in reality. The outstanding problem of terrorist risk insurance is that it is difficult to obtain insurance for skyscrapers or landmark buildings in some big cities, even in the United States after the Terrorism Risk Insurance Act, this problem has not completely disappeared, because the risk of terrorist attacks on these buildings is often relatively high, the insurance company is unwilling to cover, or the insurance premium is very high, which also reflects the lack of terrorist risk insurance for the insurer profitability.

24 Boardman, Michelle E., "Known Unknowns: The Illusion of Terrorism Insurance", *Georgetown Law Journal*, Vol. 93, Issue 3 (March 2005), pp. 783-844;

Debates and choices about government involvement in terrorism risk insurance

Having established that the purely commercial insurance market itself is incapable of addressing the risk of large-scale terrorist attacks, the next question to answer is,

What should be done?

In theory, asserting that commercial markets fail does not necessarily mean that government intervention is necessary or justified because Government intervention is not omnipotent, and government intervention also has cost issues. Therefore, in theoretical circles the question of whether the government should intervene in terrorism insurance.

There are many controversies about terrorism risk insurance.

The point of view supporting government intervention in the terror risk insurance market is that, in addition to the reason for the failure of the insurance market, another rationale for government intervention is

The reason is that it is an efficient institutional arrangement for the government to undertake or intervene in terrorism risk insurance. Because the occurrence of terrorist attacks is often related to the political, domestic and foreign policies of the government are closely related, and the government should be at least partially responsible for the generation of the risk of terrorist attacks; in addition, the government spends significant human and material resources are in collecting information related to terrorist attacks, but such information may not be suitable for private insurance companies for reasons of national security.

However, the government can use it in government insurance programs to more accurately estimate the risk of terrorist attacks, so in the prevention or mitigation the Governments are in a better position than private insurers to reduce terrorist attacks.²⁵

Scholars who oppose government involvement in terror risk insurance argue that despite the

25 Jeffrey Manns, *Insuring Against Terror?* 112 *Yale Law journal*, 2509 (2003)

government's strong intelligence in gathering capabilities, past experience shows that the government is far inferior to commercial insurance companies in terms of risk pricing and insurance business.²⁶

Some scholars further pointed out that, substituting government insurance for private commercial insurance will create many problems that will interfere with the normal market signaling mechanism, such as the government's determination of setting insurance rates, political pressure to set premiums lower that may create an incentive for people to take risky behavior.

In consequence, may cause greater loss and increase the burden on all taxpayers. Sometimes people cannot buy a certain kind of insurance in the insurance market. Insurance, is not necessarily a problem to be corrected, but may be a warning of a risk, for example, some buildings are not insurable and may it is because it is adjacent to the nuclear power plant or exceeds the height of the engineering design.²⁷

In my opinion, the cost of government involvement in terrorism risk insurance is closely related to the way it is involved, so it cannot be generalized. In fact, if the government does not intervene in terrorist risk insurance in advance, then when a large-scale terrorist attack occurs, the private insurance industry alone will scope and solvency, it will be difficult to fully absorb large-scale losses. In this case, for any government, in consideration of political responsibility, some kind of post-event relief measures will be taken. Therefore, as far as the government is concerned, compensation for terrorist attack losses is not considered as it is unrealistic, and some kind of intervention must be adopted. From a macro perspective, the government faces two choices: one way is that, instead of making a plan or establishing a routine system, temporary and case-specific relief measures are taken afterwards;

Another way is that to establish a clear and predictable compensation system first, and make preparations and arrangements in advance. The former method is somewhat speculative, it is

26 *Supra.* 21.

27 Robert H. Jerry. II. Insurance, Terrorism and 9 /11: Reflections on Three Threshold Questions, 9 Conn. Ins. L. J. 95 (2002) ☐

also flexible and maneuverable, which seems to save resources and management costs, but its disadvantages are also obvious, that is, the public is not clear and lacks expectations in advance about whether they can get relief and how much compensation they will get. In this case, once When a terrorist attack occurs, the people are easy to fall into fear and anxiety, which is exactly in line with the expectations of terrorists. In addition, in the absence of regulatory guidance, for the disputes that are likely to arise as to what standards should be used for compensation, which will affect the efficiency of implementing compensation. Under the latter approach, although the government needs to provide the operation of the conventional compensation mechanism pays for management costs, but the public can have trust and clear expectations for loss compensation, even if it is true and if you encounter a terrorist attack, you will not fall into panic because of it, and the distribution of compensation can be determined according to the predetermined standards and procedures. Based on the balance of pros and cons, the author agrees to establish a prior compensation mechanism for terrorist attack losses.

For a country's government, it is the most cost-effective way to compensate for the losses caused by terrorist attacks by using the existing insurance system. There are also many ways for the government to intervene in terrorism risk insurance, such as providing premium subsidies, providing guarantees, providing loans, and taking responsibility for reinsurance. The model of insurance a government adopts depends not only on the relationship between various domestic interest groups, the political consultation and game in the country are also related to the understanding of terrorism risk insurance.

If we believe that terrorism risk is insurable from the actuarial technical point of view, it is only because the risk level is too high that the premiums are set at such a high level that it is not commercially viable, then the most immediate solution would be for the government to provide insurance premium subsidies, thereby lowering the level of premiums, which can not only attract policyholders to insure, but also enable insurers to obtain certain profits.²⁸

28 Biener, C., Eling, M. Insurability in Microinsur-

However, at present, most views still believe that the biggest problem of terrorism risk insurance lies in the concentration of losses and the huge amount of losses, which may put insurance companies into a position of insolvency, as some reinsurers claimed after the 9/11 incident, it is impossible to use limited capital to underwrite unlimited risks. The government plays the role of reinsurer or the ultimate responsible person, guarantor & borrower; both can play a role in diversifying the underwriting risk of the insurer, and can provide liquidity support for the insurance company.

Especially in reinsurance in the case of companies withdrawing one after another, the government acting as a reinsurer can play a role in stabilizing the insurance market. Government insurance, on the other hand, is a more extreme way of state intervention is that the government agency directly assumes the compensation responsibility for the victims, thus replacing the commercial insurance market field. In the world, only a few regions such as Israel and Northern Ireland in the United Kingdom have adopted this policy. The common characteristics of these countries and regions are frequent terrorist attacks, limited land area and population, but a well-developed social security mechanism. In fact, no matter what kind of policy regardless of the way the government intervenes, there will be state financial subsidies for terrorism risk insurance, but the degree of subsidy is different. In reality, the real properties with a higher risk of terrorist attacks are often concentrated in those iconic buildings in metropolises; while the vast rural areas suffer the risk of terrorist attacks is relatively

ance Markets: An Analysis of Problems and Potential Solutions. *Geneva Pap Risk Insur Issues Pract* 37, 77–107 (2012). <https://doi.org/10.1057/gpp.2011.29>

low. Therefore, the terrorist risk insurance system supported by state finances will involve the issue of wealth transfer, and it's a basic question that needs to be resolved is: who should bear the risk of terrorist attacks, all taxpayers, or the owners of high-risk properties?

CONCLUSION

The terrorism insurance market is expanding rapidly for both insurers and re-insurers. The risk of terrorism has, however, diminished recently as a result of technological developments, improved management, and counterterrorism efforts. But as always, using caution is a preferable course of action. Yet, it is vital to broaden the scope of insurance coverage to include general public in addition to governmental entities and property. In spite of the fact that the majority of terrorist strikes in India target the general community and damage public property, only the wealthy and elite insure their homes against terrorism. It is, however, debatable whether thorough legislation can provide this assurance. Given the failure of so many other pieces of legislation meant to help the general public, it seems unlikely that India's Terrorism Insurance Act will be effective. According to this study's findings, the focus should be on giving the IRDA more authority and more support so that they can fulfill their role as the Pool's supervisor rather than passing legislation to govern the terrorism insurance business. his departure from the initial premise has led the author to the conclusion that the Indian terrorism sector most urgently need improved implementation and regulation of the current pool of resources as well as additional assistance from the Central Government.

