

MAIN THEME 2

SUNDAY, OCTOBER 29 ■ 9.00 AM - 12.30 PM ■ HARBOUR AB

Legal Remedies for Victims of Terrorism

In recent decades, the world has witnessed numerous high-profile acts of terrorism, ranging from the events of September 11, 2001 in the United States to the recent spate of attacks across Europe and the Middle East claimed by the so-called Islamic State. Aside from their political and social impact, these attacks have caused devastating injuries to individual victims, physical, emotional and financial. Most agree that innocent victims of terrorist violence deserve compensation for their injuries. But seeking compensation from the perpetrators themselves is almost always futile, as they are often killed themselves in the attacks, cannot be located, and/or lack meaningful assets against which a judgment could be enforced.

Under those circumstances, who should compensate victims of terrorism and by what process? Should governments create public compensation funds for attacks against their citizens or on their territory? Should victims be allowed to sue foreign governments that routinely sponsor or harbor terrorists or that otherwise are found to have facilitated terrorist acts? Should non-state actors such as financial institutions, public and private facilities, and even social media companies be held liable for facilitating or failing to prevent terrorist attacks? How does insurance figure in the equation?

This panel brings together practicing attorneys and academics to explore the diverse ways in which legal systems around the world have addressed these issues. The panelists will consider topics such as the choice between public and private remedies for victims of terrorism, political and diplomatic implications, practical and legal challenges, and emerging issues in the field.

Coordinator:

Jerome ROTH

(Munger, Tolles & Olson) San Francisco, CA, United States

9.00 am - 9.15 am > Introduction

We will begin with a discussion of the nature and extent of terrorist violence in recent decades, and will examine the types of damages that terrorist acts cause: physical injury and death; damage to property such as buildings, facilities, aircraft, and vehicles; financial losses such as lost profits and investments; and heart-breaking emotional trauma to victims, families, and witnesses.

We will then provide an overview of the central questions that have arisen in legal systems around the world as governments, courts, non-governmental actors, and individuals have struggled to identify existing means and develop new mechanisms for providing compensation to terrorism victims. Legal remedies have been evolving rapidly in the past decade, and the approaches taken by different jurisdictions align in some respects and diverge in others. We will introduce the key features of these approaches and set the stage for our panelists to share their expertise and experience with those varying approaches.

Speaker: Jerome ROTH (Munger, Tolles & Olson) San Francisco, CA, United States

9.15 am - 10.30 am > Panel 1: Remedies against States

The first panel will address remedies against states – the state where the attack occurred or of which the victims are citizens as well as states accused of sponsoring, harboring, or facilitating perpetrators of terrorism.

As to the former, several countries have established public schemes to compensate victims of terrorist attacks that target their citizens or occur on their territory. We will discuss the legal and political considerations underlying the establishment of these schemes in different jurisdictions. We will compare how different states have addressed issues of funding, governance, and process, and will assess the attributes and deficiencies of these efforts.

As to the latter, some states, including Canada and the United States, allow victims to bring civil claims against states that are officially found to sponsor terrorism and other states found to facilitate terrorist acts. The decision to abrogate the sovereign immunity of such state actors has important political implications, including diplomatic and comity concerns, and pose special challenges to practitioners. We will discuss these considerations, as well as challenges facing plaintiffs in such actions, including difficult issues of proof and barriers to the enforcement of judgments.

11.00 am - 12.15 pm > Panel 2: Remedies against Non-State Actors

The second panel will address remedies against non-state actors. These remedies often take the form of tort claims against actors alleged to have facilitated terrorism, either knowingly or negligently. For example, plaintiffs in the United States have brought claims against financial institutions for holding accounts or processing transactions on behalf of terrorist groups, against hotels for failing to provide adequate security, and against social media companies for providing a platform for terrorist recruitment and coordination. Similarly, in the United Kingdom, victims have attempted to obtain compensation from purported charities that funnel money to terrorist groups. We will discuss differences in the standards for tort liability in different jurisdictions and issues facing plaintiffs in such actions.

Finally, victims of terrorism have brought claims under property, liability, health, and life insurance policies, raising questions about the ability of private underwriters and reinsurers to indemnify risks as unpredictable and potentially enormous as terrorist attacks. In some cases, national governments have intervened in private insurance markets or provided a backstop against catastrophic losses. We will discuss issues facing insurers and insureds arising from terrorism risks.

12.15 pm - 12.30 pm > Conclusion

We will conclude with a discussion of lessons learned from the experience of different states as well as anticipated future developments in this area of the law.

Speakers:

Dominique ATTIAS, Vice-President of the Paris Bar Association, Paris, France

Martina BARCAROLI DES VARANNES (Macchi di Cellere Gangemi) Rome, Italy and Paris, France

Sean P. CARTER (Cozen O'Connor) Philadelphia, PA, United States

Jimmy GURULÉ (Law School Professor - University of Notre Dame) Notre Dame, IN, United States

John B. LASKIN (Torys LLP) Toronto, ON, Canada

Clive WALKER (Law School Professor - University of Leeds) Leeds, United Kingdom

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Context : *UIA Congress, Toronto, Sunday October 29th 2017*

Theme 2 Conference : *Legal Remedies for Victims of Terrorism, First Panel on
Actions against States*

Title of presentation : *A public compensation scheme for victims of terrorism
in Italy*

« Hit one in order to educate one hundred » (*Colpirne uno per educarne cento*), is the propaganda message of the Brigate Rosse in the 1980s)

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B. Eligible victims

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a) The one-off special indemnity PLUS the life-check

b) Other economic benefits

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V. Procedure for applying for benefits

VI. Conclusion

Martina Barcaroli des Varannes

Paris, October 29th 2017