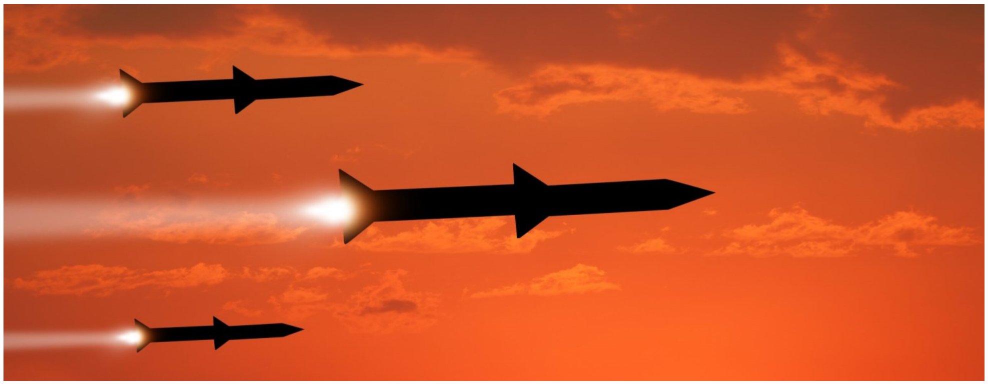

# Cargo Coverage During War: Insured or Not?

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Cargo losses attributable to acts of war are relatively uncommon in the global supply chain. The increasing frequency and scope of hostilities around the world, however, are requiring cargo owners and transportation providers to remain ever vigilant of potential risks and understand the risk mitigation solutions available.

When contemplating insurance solutions, it is important to remember that each policy is unique. Coverage may vary between insurers, and "standard" policy terms may be amended by endorsement. Therefore, it is essential that every policyholder review the specific terms of their policy and address questions or concerns to their insurance broker or insurer.

The comments we present here are specifically applicable to WCA members participating in the cargo insurance  and cargo liability programs provided through World Insurance Services.

**Shipper's Interest Cargo Insurance**

Losses attributable to acts of war are excluded by the standard coverage terms in most shipper's interest cargo insurance policies. This can be observed in the list of general policy exclusions, i.e., *"In no case shall this insurance cover loss, damage or expense caused by war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power."*

The purpose of this exclusion is to provide underwriters with the opportunity to define coverage independently and specifically via endorsement or by incorporating the "*Institute War Clauses*" into the policy insuring conditions. Most cargo policies are endorsed with these clauses.

While the specific terms for losses due to acts of war are extensive, there are a few key elements as outlined below:

1. A formal declaration of war is not required. Underwriters intend to address hostile acts committed by belligerent parties utilizing weapons of war regardless of formal declarations.

2. A common element of all cargo insurance is that losses must be "fortuitous." In other words, they can't be reasonably expected, anticipated or avoided. For this reason, underwriters reserve the right to cancel coverage for war on provision of notice.

3. This type of notice of cancellation typically would be communicated to policy holders after hostilities are observed in a particular region. The duration of this notice period may vary by insurer, but the standard WCA/WIS cargo policy provides seven days. Shipments insured prior to the expiry of this seven-day period will continue to be insured until discharged (or 15 days after arrival at discharge port), even if a loss occurs after the seven-day notification period.

4. General Average (GA) assessments are covered by insurers. If the vessel operator realizes additional expenses to "save the voyage" after an act of war and passes those costs along to cargo interests through GA, insurers will pay those assessments on behalf of the insured.

5. Coverage addresses physical loss or damage only. Other types of loss, such as consequential losses, delay, loss of market, or loss of use are expressly excluded from cover.

6. Losses attributable to nuclear/radioactive weapons are excluded absolutely.

**What About Force Majeure?**

Carriers may choose to declare "Force Majeure" when imminent danger precludes them from completing the contract of carriage as originally intended. This may involve rerouting vessels or temporarily suspending transit, resulting in delays or additional costs. In extreme cases, carriers may discharge cargo at alternative ports of "convenience" and terminate contracts of carriage. In those situations, the cargo owner must take possession of the cargo and make alternative arrangements for transportation to the final destination at their own expense. The cargo owner must also immediately report this situation to their insurer and pay any additional premium, which may be assigned if they wish for coverage to remain in force.

While making alternative arrangements for delivery, the cargo owner should act as a "prudent uninsured," meaning they should assume all additional costs will be for their own account. They should take reasonable steps necessary to complete transit, while not realizing extraordinary or extravagant expenses with the assumption of reimbursement by insurers. Each claim is fact dependent, and while some insurers may consider indemnity under the "sue & labor" or "forwarding charges" policy sections, the final disposition of any claim will not be determined until a full review and adjustment is completed.

**Cargo Liability Insurance. What's Covered?**

International Convention (i.e., Hague-Visby/COGSA and Warsaw Convention/Montreal Protocols) exclude common carriers from liability for cargo loss or damage resulting from acts of war. When acting as a common carrier, it is not anticipated that a NVOCC or Indirect Air Carrier would be held liable for losses attributed to an act of war, and any claims received should be declined on those grounds.

If sued for physical loss or damage to cargo attributable to acts of war while cargo is at sea, the WCA/WIS Freight Liability policy underwriters will pay for the NVOCC's cost of legal defense and any sums for which they may ultimately be held liable, subject to policy terms, conditions and exclusions.

In the event Force Majeure is declared, the NVOCC/IAC should consider making a “back to back” declaration along with the underlying carrier, thus allowing any additional expenses or responsibilities to be passed along to the cargo owner.

Also, it may be prudent for the NVOCC/IAC to collect any additional expenses from the cargo owner prior to cargo release, so they do not retain financial obligations to the underlying carrier that are uncollectable from the cargo owner.

**Freight Forwarder Best Practices**

The most effective risk management tool for cargo owners exposed to losses attributable to acts of war is shipper’s interest cargo insurance.  Since common carriers are excluded from liability, shipper’s interest cargo insurance is the cargo owner’s only source of indemnity.

Transportation intermediaries should educate their clients regarding their transit risks, including losses due to war, and encourage them to purchase coverage on every shipment.

It is recommended that intermediaries and cargo owners review the terms of their policies, including coverage terms, requirements and limitations, so expectations are aligned in the event of a loss.  Any questions or concerns regarding coverage should be addressed with a knowledgeable insurance broker or insurer.

If war risks persist beyond the main carriage (ocean or air), the insured should work with their insurance broker to secure “war on land” coverage under a separate contract of insurance. The final outcome of every claim is fact dependent; however, following these best practices will provide the insured with the greatest opportunity to be indemnified for losses due to war.

*Please note: WIS is not a legal expert and cannot provide legal advice.  Issues of law should be directed to competent legal professionals.*

Questions? Please contact us at **info@worldinsuranceagency.com.**

**Some Tactical Best Practices**

In addition to the Strategic Best Practices outlined above, we also suggest employing the following Tactical Best Practices, so you are readily able to identify common tactics/red flags in your operations:

- Verify documentation, driver identification, and company vehicle at time of pick-up
- Strictly adhere to bill of lading and work order terms
- Enforce use of GPS tracking and enhanced diligence when using public load boards
- Decline loads that necessitate variance from established procedures

Understanding your risks and knowing how to reduce them can help prevent or eliminate the possibility of your company falling victim to fraudulent cargo theft activities.

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