Marine insurance for intervention by State power – The Nordic perspective

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1 Introduction and overview

The topic of this article is marine insurance cover for intervention by a State power in a Nordic perspective. As a starting point, marine insurance includes insurance both for vessels and for cargo under transport. However, this article only concerns insurance for vessels. Since intervention by State power mainly concerns hull insurance and loss of hire insurance, the article will also be limited to these two branches of vessel insurance.

Interventions by State power refer to measures taken by a state against the vessel. The most serious measure is when the State power takes over ownership of the vessel by means of expropriation or requisition. Less serious measures have a more temporary character; i.e. capture at sea, seizure, arrest, restraint or detainment. As a vessel is always flagged in a certain State, a distinction must also be made between "own" state power and "foreign" state power. In general terms, interventions by own state power have traditionally not been insurable in the marine insurance market, whereas certain interventions by a foreign state power have been covered as a war risk.

The traditional distinction between intervention by own State as a non-insurable risk and more war-related interventions by a foreign State power, has however been challenged in recent years. We have seen several cases where vessels are captured at sea and/or detained in port, with the action being officially justified through breach of trade- or customs regulations, but where the vessel has then not been released even if there apparently has been no breach or the investigations take an abnormally long time. From a Nordic perspective, the intervention in such cases has the character of corruption, abuse of power or even extortion. The question has thus arisen as to whether such cases are covered under the existent regime, and if not; whether they should be covered. This issue was discussed under the revision of the Nordic Marine Insurance Plan 2013 Version 2016, and a new regulation has been agreed upon for Version 2019 of the Nordic Plan. The amendment cannot, however, be

properly understood without a presentation of the current regulation. The current Nordic regulation and the agreed revision is therefore the main topic of this article. However, taking a broader perspective, it is also interesting to compare this regulation to the UK regulation of cover for state intervention. The Nordic Plan is widely used internationally, and it is therefore appropriate to see how this regulation departs from the UK regulation, which is often seen as the natural alternative.

In what follows, the UK regulation is presented in chapter 4 and the Nordic regulation in chapter 5. Prior to considering these, Chapter 2 provides an overview of the legal sources and Chapter 3 presents the two systems, as a necessary background for the more detailed discussion in Chapters 4 and 5.

2 Overview of the legal sources

2.1 The Nordic sources

Each of the Nordic countries has its own legislation on insurance contracts.[1] However, none of the Nordic insurance contracts acts contain any regulation of the scope of cover for marine insurance. They will therefore not be addressed further in this article.

Until 2013, each of the Nordic countries also had its own marine insurance conditions. However, in 2013 a common Nordic Marine Insurance Plan (the NP) was introduced, based on the Norwegian Marine Insurance Plan 1996 Version 2010 (the NMIP 2010). According to the Nordic Association of Marine Insurers (Cefor), the NP 2013 received «massive support» upon its introduction in 2013. Today it constitutes the most commonly used insurance conditions for the Cefor ocean fleet,

[1] For Norway; the Insurance Contracts Act (ICA) of 16 June 1989 (no 69). For Denmark; The Insurance Contract Act 2015 (Lovbekendtgørelse 2015-11-09 nr. 1237). For Sweden: Försäkringsavtalslag (2005: 104). For Finland: Insurance Contracts Act 28 June 1994.

with a share of 35 %. Other Nordic insurance conditions are used for a further 9.2 % of the fleet.[2] It is therefore fair to say that the regulation in the NP constitutes the "Nordic perspective" of the issues addressed in this article.

As the NP is based on the NMIP 2010, it is appropriate to outline the historical development of the Norwegian Marine Insurance Plan, in order to establish the characteristic features of the current Nordic Plan.

The first Norwegian Marine Insurance Plan was published in 1871, and was later followed by several Plans,[3] the most recent being the 1996 Plan. The 1996 Plan was published in several versions, up until 2010.[4] In 2010, Cefor, who is responsible for the maintenance and publishing of standard marine insurance conditions in the Nordic market, decided that instead of operating with one set of standard conditions in each of the Nordic countries, the maintenance effort should be concentrated on one common set of conditions. As the basis for a set of unified Nordic conditions, Cefor chose the Norwegian Marine Insurance Plan 1996 Version 2010. An agreement was entered into between Cefor and the Norwegian, Danish, Swedish and Finnish Ship-owner Associations on 3 November 2010 to construct the Nordic Marine Insurance Plan of 2013, which then came into force in January 2013. It was amended in 2016 and again in 2019.[5]

Several characteristic features of the Plan are important when considering its legal status. First, the Plan is an agreed document constructed by a committee consisting of participants from all interested parties, i.e. the ship-owners, the insurers, and the average adjusters. Up until 2003, Det Norske Veritas (DNV), acting as a neutral party, hosted the amendments and was also responsible for the publishing and distribution of the Plan. From 2003 onwards, Cefor has taken over this task.[6]

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2 Trine-Lise Wilhelmsen and Hans Jacob Bull, Handbook on hull insurance, 2nd edition, Oslo 2017 (Wilhelmsen/Bull) p. 23.

3 The Plans of 1881, 1894, 1907, 1930 and 1964.

4 Version 1997, Version 1999, Version 2000, Version 2002, version 2003, Version 2007 and Version 2010.

5 Wilhelmsen/Bull p. 26.

6 Wilhelmsen/Bull p. 26.

Secondly, widespread participation in the construction of the Plan has secured its neutrality and balance. This stands in contrast to many other standard conditions in the marine insurance market constructed by the insurers with no participation from the assureds.[7]

A third characteristic feature of the Plan is that it contains a fully comprehensive regulation of all aspects of marine insurance. Both the structure of the Plan and the construction of the individual clauses are more similar to legislation than to ordinary standard contracts.[8]

Fourth, the Plan is supplemented by extensive and published commentaries (the Commentary). Until 2007 the Commentary was published in hard copy and on the web site. From 2007 onward the Commentary has only been published on Cefor's web site.[9] The reference to the 2016 Commentary and 2019 Commentary in this article are to the pdf download placed on this web site for these versions of the Plan.

The characteristic features of the Plan also have bearing on the interpretation of the clauses. As the Plan is an agreed document, one cannot rely on the ordinary Nordic rule that a standard agreement shall be interpreted against the party drafting the clause. The similarity to legislation rather than to contract law implies that it would be more correct to interpret the Plan according to legislative principles rather than those applicable to contracts.[10] This is supported by the following remark in the Commentary:[11]

> "The Plan does not contain any explicit reference to the Commentary and its significance as a basis for resolving disputes. … Nevertheless the Commentary shall still carry more weight as a legal source than is normally the case with the Traveau Preparatoire of statutes. The Commentary as a whole has been thoroughly discussed and approved by the Nordic Revision Committee, and it must

[7] Wilhelmsen/Bull p. 26.

[8] Wilhelmsen/Bull p. 26.

[9] http://www.nordicplan.org/Commentary/

[10] Wilhelmsen/Bull p. 27.

[11] Commentary 2016 p. 25 to Cl. 1-4.

> therefore be regarded as an integral component of the standard contract which the Plan constitutes."

This attitude in the Commentary that the Commentary is a relevant factor for the interpretation of the Plan has been accepted by the Supreme Court[12] and in arbitration cases.[13] The weight of the Commentary will, however, depend on the relationship between the Plan text and that of the Commentary. If the wording does not directly solve the disputed issue, the Commentary is given much weight.[14] In arbitration practice, the court has also accepted that the interpretation of the Plan has been amended through the Commentary when the Plan text could be interpreted in different ways and therefore did not hinder the amendment.[15] On the other hand, if there is obvious conflict between the Plan text and the Commentary, the text shall prevail as the primary legal source over the Commentary.[16]

2.2 The UK regulation

In international hull insurance, the English conditions have traditionally dominated. These conditions are also used in the Nordic market.

In the UK, marine insurance is regulated by the UK Marine Insurance Act of 1906 (the "MIA 1906").[17] In addition, the Insurance Act 2015 regulates some issues which are also relevant for marine insurance. However, similarly to the Nordic Insurance Contract Act, these pieces of legislation are not relevant for the questions addressed in this article. However, the MIA 1906 contains a schedule with "Rules For Construction Of Policy", which were adopted for the SG Form of Policy traditionally incorporated in the MIA. Even if this policy form is no longer used,

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12 ND 1998.216 NSC *Ocean Blessing,* ND 1969.126 NSC *Grethe Solheim,* ND 1956.937 NSC *Pan,* ND 1956.920 NSC *Bandeirante.*

13 ND 2000.442 NA *Sitakathrine.*

14 ND 1998.216 NSC *Ocean Blessing.*

15 ND 2000.442 NA *Sitakathrine.*

16 Cf. the Commentary 2016 p. 25 to Cl. 1-4.

17 https://www.jus.uio.no/lm/england.marine.insurance.act.1906/doc.html#377

the construction rules are still applied whenever the clauses used today contain the same wording as those of the SG Form of Policy. In relation to the issues discussed here, Rule no. 10 is relevant.

The English market is divided between Lloyd's and the corporates which effect insurance on identical conditions. Marine risk insurance for ocean-going ships is regulated by several sets of clauses.[18] A common feature for these clauses is that they are based on the named perils principle, whereby the perils insured against are specifically listed. None of the clauses used contain cover for intervention by State power, which means that this peril is not covered under an insurance against marine perils. However, some coverage for this peril is provided by the Institute War and Strike Clauses (Hulls-Time) 1/10/83 as amended 1/11/95 (IWSCH) (Cl. 281).[19] IWSCH are therefore the relevant set of clauses for this article.

3 The distinction between marine risk and war risk insurance

3.1 The Nordic system

The historical starting point was that marine insurance against marine perils covered all perils to which the insured interest was exposed.[20] Except for P&I insurance, however, marine insurance with this wide scope of cover was not, in practices, used. Instead, the scope of cover was divided between insurance against marine perils and insurance against war perils. In formal terms, this distinction was made in two steps. The insurance against marine perils was based on the all risks principle, which stated that the insurance covered all perils to which the interest was

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[18] Institute Times Clauses (Hulls) of 1983 and 1995, International Hull Clauses of 2002 and 2003.

[19] https://www.garex.fr/documents/IWSC_HULL_CL281_1995.pdf

[20] NMIP 1930 § 4 subparagraph 1, see also Nordic ICA 1930 § 60.

exposed, unless the peril was especially excluded. Perils covered under the war risk insurance were then excluded from the marine risk cover.[21] Interventions by a war-faring State were regulated as a war risk and were thus excluded from the marine risk cover.[22] The war risk insurance did not cover interventions from not war-faring countries, and neither were such interventions excluded from the marine insurance cover in NMIP 1930. Such exclusion was, however, inserted in NMIP 1964 for Norwegian or allied State power, in order to avoid these interventions being covered through the all risks principle,[23] and this was extended in the 1996 revision of the NMIP to apply to all State interventions. The central concept is thus that the cover for marine risks is based on the all risks principle, with exclusions for war risks and for interventions from state power that are not covered under the war risk insurance. The relevant provisions in the NP 2013 Version 2016 read as follows:

> **Clause 2-8. Perils covered by an insurance against marine perils**
> An insurance against marine perils covers all perils to which the interest may be exposed, with the exception of:
> (a) the perils covered by an insurance against war perils in accordance with Cl. 2-9,
> (b) intervention by a State power. A State power is understood to mean individuals or organisations exercising public or supranational authority. Measures taken by a State power for the purpose of averting or limiting damage shall not be regarded as an intervention, provided that the risk of such damage is caused by a peril covered by the insurance against marine perils,
>
> …….
>
> **Clause 2-9. Perils covered by an insurance against war perils**
> An insurance against war perils covers:

21 Commentary 1964 p. 11.

22 NMIP 1930 § 42 no. 2

23 NMIP 1964 15 (b), Commentary NMIP 1964 p. 15.

> (a) war or war-like conditions, including civil war or the use of arms or other implements of war in the course of military exercises in peacetime or in guarding against infringements of neutrality,
>
> (b) capture at sea, confiscation and other similar interventions by a foreign State power. Foreign State power is understood to mean any State power other than the State power in the ship's State of registration or in the State where the major ownership interests are located, as well as organisations and individuals who unlawfully purport to exercise public or supranational authority. Requisition for ownership or use by a State power shall not be regarded as an intervention,
>
> …
>
> (e) measures taken by a State power to avert or limit damage, provided that the risk of such damage is caused by a peril referred to in sub-clause 1 (a)–(d).

It follows from this regulation that some interventions are covered as war risk perils and are thus excluded from the insurance against marine perils through Cl. 2-8 (a), some interventions are excluded from coverage altogether according to Cl. 2-8 (b), and that those interventions (if any) that are not directly regulated by either Cl. 2-8 or Cl. 2-9 are covered under the all risks principle in Cl. 2-8. The distinction between cover and no cover is obviously very important. However, the distinction between marine risk and war risk cover is also important because the war risk cover is extended in several different directions. An insurance against marine perils covers damage according to the NP ch. 12, total loss according to NP ch. 11, and loss of hire according to NP ch. 16. The characteristic features of these rules are that total loss requires the vessel to be in fact lost to the assured,[24] and that cover for loss of hire is triggered by damage to the vessel.[25]

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24 NP Cl. 11-1.

25 NP Cl. 16-1 sub-clause 1. Sub-clause 2 provides cover for a limited number of other circumstances but they are less relevant here.

In addition to this "normal" cover for marine perils, the war risk insurance provides cover for total loss if "the assured has been deprived of the vessel by an intervention by a foreign State power, for which the insurer is liable under Cl. 2-9," and the ship is not "released within twelve months from the day the intervention took place."[26] In such cases it is "irrelevant for the assured's claim that the vessel is released at a later time".[27] Further, if "the vessel is prevented from leaving a port or a similar limited area due to blocking, the assured may claim for a total loss, if the relevant obstruction has not ceased within twelve months after the day it occurred".[28] This means that if an intervention by a foreign State, that is covered by Cl. 2-9 sub-clause 1 letter b, results either in the assured being deprived of the vessel or in the vessel being prevented from leaving a port for a period of 12 months, the assured may require compensation for total loss.

There is also extra cover for loss of hire under the war risk insurance. First, the insurer "is liable for loss due to the vessel being wholly or partly deprived of income because it is prevented from leaving a port or a similar limited area", regardless of any damage to the vessel.[29] Second, the insurer is also liable for loss of time if the vessel is brought into a port by a foreign State power for the purpose of visitation and search of cargo, etc. together with capture and temporary detention.[30]

Under the 2019 revision of the NP, several amendments were made, both for the marine risk cover and to the war risk cover. The new provisions in the 2019 Version where new text is marked, read as follows:

Clause 2-8

An insurance against marine perils covers all perils to which the interest may be exposed, with the exception of:

(a) perils covered by an insurance against war perils in accordance with Cl. 2-9,

26 NP Cl. 15-11 sub-clause 1.
27 NP Cl. 15-11 sub-clause 4.
28 NP Cl. 15-12 sub-clause 2.
29 NP Cl. 15-16 sub-clause 2.
30 NP Cl. 15-17 sub-clause 1.

(b) **capture at sea, confiscation, expropriation and other similar interventions by own State power provided any such intervention is made for the furtherance of an overriding national political objective. Own State power is understood to mean the State power in the vessel's State of registration or in the State where the major ownership interests are located. Own State power does not include individuals or organisations exercising supranational authority,**

(c) **requisition by State power,**

(d) insolvency **or lack of liquidity of the assured or the operation of ordinary legal process to enforce payment of any fine, penalty, debt or right to security unrelated to a claim or liability covered by the insurance,**

Clause 2-9. Perils covered by an insurance against war perils

An insurance against war perils covers:

…

(b) **capture at sea, confiscation, expropriation and other similar interventions by a foreign State power, provided any such intervention is made for the furtherance of an overriding national or supranational political objective. Foreign State power is understood to mean any State power other than own State power as defined in Cl. 2-8 (b), second sentence, as well as organisations and individuals exercising supranational authority or who unlawfully purport to exercise public or supranational authority,**

…

The insurance does not cover:

(a) **insolvency or lack of liquidity of the assured or the operation of ordinary legal process to enforce payment of any fine, penalty, debt or right to security unrelated to a claim or liability covered by the insurance,**

,

….

(c) **requisition by State power.**

The result of the amendment is that the war risk cover for interventions by a foreign state power is somewhat narrowed, whereas the marine risk cover for state interventions is made significantly broader, cf. further details on this in 5.3 below. It should be noted, however, that the distinction between marine and war risk cover is maintained with regard to the losses covered.

3.2 The UK system

As the ITCH/IHC are based on the named perils principle and do not mention intervention by State power, the implication should be that such interventions are not covered by the insurance against marine perils. Even so, the clauses contain the following paramount war exclusion:[31]

> In no case shall this insurance cover loss damage liability or expense caused by
>
> ….
>
> 24.2 capture seizure arrest restraint detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat

The IWSCH 1995 however, cover the following perils:

> 1.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat
>
> …
>
> 1.6 confiscation or expropriation

[31] ITCH 1983/1995 clause 24, cf. IHC 2001/2003 clause 29.2.

but with the following exclusions:

5.1.2 requisition or pre-emption

5.1.3 capture seizure arrest restraint detainment confiscation or expropriation by or under the order of the government or any public or local authority of the country in which the Vessel is owned or registered

5.1.4 arrest restraint detainment confiscation or expropriation under quarantine regulations or by reason of infringement of any customs or trading regulations

5.1.5 the operation of ordinary judicial process, failure to provide security or to pay any fine or penalty or any financial cause

The UK regulation is thus simpler than the Nordic regulation, since interventions are either covered by the war risk clauses or else not covered at all. There is no question of there being different levels of cover. This makes it appropriate for this article to start by providing an outline of the UK regulation as background for the presentation of the regulation in NP, with a focus both on differences between the UK and the Nordic system and on what is changed in NP 2013 Version 2019.

4 The UK war risk insurance

4.1 The covered perils

The perils that are covered in IWSCH Cl. 1.2 and 1.6 are "capture", "seizure", "arrest" "restraint", "detainment", "confiscation" and "expro-

priation". The terms are not mutually exclusive, and they overlap to a certain extent.[32]

The cover applies to the actions that are described, regardless of any war or war-like situation, who is performing the actions and the legal basis for the actions. The cover thus also applies in times of peace,[33] and there is no explicit requirement for State involvement or legal justification for the intervention. However, this may follow from other legal sources, as discussed further below. It should also be noted that where such interventions are made by the country in which the vessel is owned or registered, they are excluded in IWSCH Cl. 5.1.3, cf. 4.2 below.

"Capture" is a taking by the enemy as prize, in time of war, or by way of reprisals, with intent to deprive the owner of all dominion or right of property over the thing taken.[34] "Capture" seems to presume a belligerent act.[35] Capture is deemed lawful when made by a declared and lawfully commissioned enemy, and according to the laws of war, but is unlawful when it is made otherwise. Both lawful and unlawful capture are covered.[36] Capture is prima facie a case of total loss, which gives the assured an immediate right to notice of abandonment.[37] However, the loss cannot as a rule be said to be irretrievable at the moment of capture, so as to entitle the assured to treat it as an actual total loss, since there is no immediate loss of title. The loss of title occurs when there is an official sentence of condemnation pronounced by a prize court of the government of the captor.[38] The concept of "capture" thus seems to imply a State intervention or intervention by persons purporting to act on behalf of a State.

32 Arnould, Law of Marine Insurance and Average, p. 1225 and 1229, Hudson, Madge, Sturges, Marine Insurance Clauses, p. 342 and p. 360.

33 Hudson et al p. 359, Keith Michel, War, terror and carriage by sea, p. 204–205.

34 Arnould p. 1223.

35 Arnould p. 1223, Hudson et al p. 342.

36 Arnould p. 1223 note 165.

37 Arnould p. 1225.

38 Arnould p. 1225–1226.

"Seizure" is a broader concept than capture and includes other forms of taking, such as taking by revenue or sanitary officers of a foreign State.[39] It includes seizure by a State due to smuggling by the ship's master.[40] Nor is "seizure" confined to acts of state. It includes seizure by pirates, passengers or by natives whose object is to plunder the vessel.[41] It embraces every act of taking forcible possession, either by lawful authority or by overpowering force.[42] The seizure need not be belligerent.[43] However, it does not include misappropriation by those already in possession of the ship.[44] This means that "seizure" may be a state intervention, but the concept is broader and includes taking the vessel by forcible means from other groups.

The perils "arrests, restraints, and detainments" are also listed, without reference to involvement of a State. In the previous SG form of policy the wording was instead "arrests, restraints, and detainments of all kings, princes and people of what nation, condition or quality soever". According to rule 10 of the "Rules of Construction of Policy" in Sch. 1 to the Marine Insurance Act 1906, these words are declared to refer to "political or executive acts", and do not include a loss caused by riot or by ordinary judicial process.[45] The reference to "kings, princes and people" no longer appears in the current perils clauses. But although the new policy forms are not a policy of like form, such as would make mandatory the Rules for Construction scheduled to the 1906 Act, it is nonetheless clear that the meaning of these perils has not been altered and that the principles laid down by rule 10 continue to apply. The word "people" did not mean mobs or multitudes of men, but instead referred to the ruling power of the country.[46] These interventions are thus more narrowly interpreted than the interpretation of "seizure". However, in the current clauses,

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39 Arnould p. 1223.

40 Michel pp. 203–204.

41 Arnould p. 1223, Hudson et al p. 342, Michel p. 204.

42 Arnould p. 1224, Hudson et al p. 342, Michel p. 205.

43 Michel p. 205–207.

44 Arnould p. 1224.

45 Arnould p. 1226, Hudson et al p.342.

46 Arnould p. 1226–1227.

there is also a general exclusion for "the operation of ordinary judicial process" in Cl. 5.1.5.

There is no clear distinction between the terms "arrest", "detainment" and "restraint", nor is there a clear distinction between arrest and capture, because there may be an arrest when the authorities intend to permanently confiscate the insured property.[47]

The expression "restraint of princes" refers to an act either actually or purportedly carried out on behalf of the ruling power in its capacity as such.[48] The ruling power refers to both the government and also to the authority that is authorised to use forcible means that have the same consequences, for instance the army.[49] "Forcible means" refers to either physical enforcement or else the authority to punish resistance of those restrained.[50] It includes actions or orders that interfere with the voyage of the ship, even if there is no specific act of force, seizure or hostility displayed towards the insured ship, provided the state has the power to use force.[51] However, the actual use of forcible means is not required here; a direct order from the State by general law or otherwise by decree, which it has power to enforce, is sufficient. Thus, restraint arising under a sanitary law may be "restraint",[52] but restraint under "quarantine regulation" is excluded by 5.1.4, cf. below.

A declaration of war constitutes "a political or executive act",[53] and prohibitions on sailing in war times by the States involved in war will normally constitute "restraint". This is also true if the State imposing the order is the ship's State of registration,[54] but this situation is expressly excluded in 5.1.3, see below under 4.2. It may also be that a detention of the vessel by directions imposed for the safety of shipping in times of war, may not constitute a "restraint" if the directions are made primarily for

47 Arnold p. 1229.
48 Arnould p. 1227.
49 Arnould p. 1232.
50 Arnould p. 1231–1234, p. 1237.
51 Michel p. 218, Arnould p. 1232–1233, p 1236.
52 Arnould p. 1233.
53 Michel p. 225.
54 Arnould p. 1233–1234, 1237.

commercial purposes and are more in the nature of encouraging, rather than preventing navigation.[55] Furthermore, it is argued that in order to constitute an operation of these perils, the detention or interference with the vessel must be fortuitous from the perspective of the assured, in the sense that it is not simply the ordinary consequence of voluntary conduct of the assured arising out of ordinary incidents of trading. A detention of the vessel merely because of failure to pay port dues is outside the cover.[56]

The words "ordinary judicial process" in rule 10 relate to the administration of justice in civil proceedings.[57] This does not include the detention of a vessel by judicial process for the purpose of enforcing the public or criminal law of the country. Thus the fact that a judicial process is in operation does not deprive the restraint of its character of being a political or executive act. The cover includes a situation where a vessel is seized for a smuggling offence and in subsequent legal proceedings an order for her confiscation was issued, under which the vessel continued to be detained.[58] Furthermore, only "ordinary" judicial process is outside the scope of the cover. If an order for restraint is issued by a court not acting "bona fide" as an independent judicial body and the situation is effectively an attempt at extortion, there is no "ordinary judicial" process.[59]

It appears from this that the concept of restraint includes a situation where the assured is deprived by a superior authority of possession of his property or where, although he retains possession the property is forcibly detained, for instance by an embargo.[60] There is no requirement that the restraint be obtained through forcible means.[61] Direct intervention by the authorities with regard to the conduct of the voyage, based either on general law or by decree or otherwise, is sufficient.[62]

55 Arnould p. 1227.
56 Arnould p. 1227.
57 Arnould p. 1228.
58 Arnould p. 1228.
59 Arnould p. 1228.
60 Arnould p. 1231.
61 Hudson et al p.342–343, Arnould p. 1232–1233.
62 Arnould p. 1232–1233.

Confiscation and expropriation refer to acts done by governmental authorities or by persons professing to represent those in power.[63] There is no judicial determination on these concepts in relation this particular clause.[64] Such acts will normally also be included in the term "restraint". Both expressions are probably confined to circumstances where the appropriation of the vessel to public use is intended either to be permanent or to be reversible only on payment of some fine, penalty or other exaction.[65] It is argued that these expressions are confined to circumstances where no compensation is paid,[66] and that the clause is designed to "deal with the regrettable propensity of certain states to seize ships and other insured objects, often under the flimsiest of pretexts and sometimes by the most dubious means".[67]

4.2 The exclusions

Cl. 5.1.2 excludes "requisition or pre-emption". "Requisition" refers to a formal act, rather than to the temporary occupation of a vessel and must usually import the compulsory taking-over of a vessel on the part of a government acting in a formal manner, which may involve either a transfer of property or title or hiring of the vessel to the government.[68] As a general but not invariable rule, compensation must be paid for the time that it is used and for any damage it may suffer.[69] It is suggested that requisition is normally made by the vessel's flag State, as a State normally does not have authority to requisite a foreign vessel, but this is not clear.[70] However, requisition implies that at the end of the service required of the vessel it must be handed back to the owners with compensation for

[63] Arnould p. 1229.
[64] Michael D. Miller, Marine War Risks, 3 ed. 2005, p. 224.
[65] Arnould p. 1229.
[66] Arnould p. 1229.
[67] Miller p. 225.
[68] Arnould p. 1247–1248, see also Hudson et. Al p. 364–365, Miller p. 225.
[69] Miller p. 225.
[70] Miller p. 230–231.

any damage suffered during the period of requisition.[71] "Pre-emption" is taken from the US and refers to the practice of paying a government subsidy in return for agreement to allow the vessel to be taken over in the event of national emergencies.[72]

Cl. 5.1.3 excludes "capture seizure arrest restraint detainment confiscation or expropriation by or under the order of the government or any public or local authority of the country in which the Vessel is owned or registered". It was a supposed rule of English law that a marine insurance policy subject to that law would not cover the risk of British capture, on the grounds of public policy. However, once the House of Lords had decided that such cover was afforded if recovery could not be denied due to illegality or war-related public policy,[73] a specific exclusion was included to secure this result. It appears that instead of applying the supplementary rule 10 of construction, it is expressly stated that the intervention must be by "the order of the government or any public or local authority ".

Cl. 5.1.4 excludes "arrest restraint detainment confiscation or expropriation under quarantine regulations or by reason of infringement of any customs or trading regulations". This exclusion applies to both own and foreign state but is limited to interventions based on certain regulations. The link between the regulation and the interventions is worded differently, cf. "under" as opposed to "by reason of infringement". A loss by detention under quarantine regulations would therefore be denied, even if no infringement of the regulation has actually taken place.[74] In relation to customs or trading regulations there is a requirement for a breach to have occurred, but it is an open question as to whether a potential infringement is sufficient for this.[75]

The term "customs regulation" refers to laws in force in the country concerned, whatever their form, which deal with smuggling or other

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71 Miller p. 231–232.

72 Arnould p. 1248.

73 British and Foreign Marine Insrance Co v. Sanday, (1916) 21 Com Cas 154, cf. Hudson et al p. 365 and Arnould p. 1194.

74 Arnould p. 1251.

75 Arnould p. 1251, Hudson et al. p. 365.

offences in the field of customs.[76] It includes smuggling of narcotics, even if beyond the scope of UK customs legislation.[77] Where a court purported to condemn a vessel on account of smuggling activities by the crew, the assured would have the burden of displacing the prima facie application of the exception by establishing a break in the chain of causation, which he could only do by showing either that the court which ordered the confiscation of the vessel for smuggling had knowingly acted outside its jurisdiction, or else that the court had acted in response to some political intervention unconnected by the offence.[78] It does not matter whether or not the owner is acting in good faith.[79]

The concept of "trading" refers to regulations forbidding, controlling or otherwise regulating the sale or importation of goods into a country and the carriage of goods for that purpose, but does not include regulations prohibiting or controlling fishing for the purposes of conservation.[80]

Cl. 5.1.5 excludes the "operation of ordinary judicial process, failure to provide security or to pay any fine or penalty or any financial cause". As already mentioned, it was the established interpretation of the perils of arrest, detainment and restraint that they did not apply to these measures if they were part of an ordinary judicial process. The exclusion thus confirms the previous interpretation, but according to the wording it also applies to seizure. As also mentioned, the words "ordinary judicial process" relate to the administration of justice in civil proceedings and do not include judicial process for the purpose of enforcing the public or criminal law of a country. This is also true if the enforcing public or criminal laws take place within the ordinary judicial system.[81] As a result, for intervention based on public or criminal law, one must therefore rely either on the exclusion for interventions by own State, on the exclusion for quarantine regulation or else on breach of custom- and trade regulation.

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[76] Panamanian Oriental SS Corp v Wright (The Anita), Arnould p. 1249.

[77] Sunport Shipping Ltd V Tryg-Baltica International (The Kleouvoulos of Rhodes) (2003), 1 Lloyd's Rep 138 (CA), Hudson et al. p. 365–366, Arnould p. 1249.

[78] Panamanian Oriental SS Corp v Wright (The Anita), Arnould p.1249.

[79] Hudson et al. p. 366, Arnould p. 1250.

[80] Arnould p. 1250.

[81] Arnould p. 1252.

By contrast, the expression "failure to provide security or to pay any fine or penalty" extends to the areas of public and criminal law. There is no reference to the owner being liable for the failure and it appears that this is irrelevant.[82] The exclusion applies both to situations where an initial seizure or detention results from a failure to provide security, and also to situations where such failure takes place after the vessel's seizure.[83] There is however, a requirement that the providing of security be reasonable, compared to the value of the ship.[84]

The expression "any financial cause" is interpreted widely and there is no requirement that the owner be responsible for the financial cause or that there must be a financial default on the part of the owners.[85]

5 The Nordic regulation

5.1 The regulation before Version 2019

5.1.1 War risk cover for state interventions

5.1.1.1 Some starting points

NP 2013 Version 2016 Cl. 2-9 sub-clause 1 (b) covers "capture at sea, confiscation and other similar interventions by a foreign State power". Contrary to NP Cl. 2-9 sub-clause 1 (a), there is no requirement for the intervention to take place under "war or war-like conditions", and it follows from the Commentary that the provision deals both with measures that are related to a war in progress or an impending war, as well as with measures that have no direct connection to war or war-like conditions.[86] The cover is, however, limited to "foreign State power". There

[82] Arnould p. 1252.
[83] Arnould p. 1253.
[84] Arnould p. 1253.
[85] Arnould p. 1254, Hudson et.al. p. 366.
[86] Commentary 2016 p. 48.

is no cover for interventions taken by own State power. This is similar to the cover in IWSCH Cl. 1.2 and 1.6 cf. 5.1.4.

The provision was first inserted in NMIP 1964 and the main content is the same.[87] The reasons for including such interventions under the war risk insurance, even when there is no war, are discussed in the 1964 Commentary. It is pointed out in that Commentary that these perils, contrary to the ordinary war risk, do not constitute a "catastrophic" risk and that, from a technical insurance point of view, they could be included in the insurance against marine perils.[88] Not all assureds wish to contract war risk insurance, and it was not reasonable to deny them cover for interventions in peace time.[89] On the other hand, war risk insurance was also needed in peace time to secure a state of readiness, and it would also be very difficult to draw the borderline between acts of war and war-motivated interventions from the authorities, and acts of violence and interventions of a "civil" nature. In cases of revolutions and local conflicts, it may be difficult to establish whether the situation may be characterized as "war". The conclusion was therefore that it was most appropriate to place the described interventions by foreign State power under the war risk insurance.[90]

The concept "foreign State power" is closely linked to the concept of "a State power", as defined in Cl. 2-8 letter (b) second sentence: "A State power is understood to mean individuals or organizations exercising public or supranational authority". The definition covers States recognized under international law and their local entities (provinces, communes, etc.), as well as supranational organizations such as the UN, the EU and NATO, to the extent that such organizations exercise the same type of power as can a State.[91]

According to the definition of "foreign State power" in Cl. 2-9 sub-clause 1 letter (b) second sentence, the concept "is understood to

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87 NMIP 1964 § 16 sub-clause 1 (b), NMIP 1996 § 2-9 subparagraph 1 (b).
88 Commentary 1964 p. 18.
89 Commentary 1964 p. 18–19.
90 Commentary 1964 p. 19.
91 Commentary 1964 p. 20, Commentary 2016 p 50, Wilhelmsen/Bull p. 93.

mean any State power other than the State power in the ship's State of registration or in the State where the major ownership interests are located, as well as organizations and individuals who unlawfully purport to exercise public or supranational authority".

On the one hand, the concept is thus structured so that it covers all States, subject to two exceptions: State powers both in the ship's State of registration and also in the State where the major ownership interests in the ship are located, are excluded. In the event of so-called double registration in both the owner State and the bareboat-charterer State, both States must be regarded as "the State of registration" for the purpose of this provision. As regards the term "major ownership interests", the vital question will normally be to ask in which country the largest proportion of the ownership interests are located, but other elements may nonetheless lead to the conclusion that another country should be chosen, e.g. the country where the controlling interests in the ship are located.[92]

On the other hand, the concept also covers all persons and organizations which unlawfully pass themselves off as being authorized to exercise public or supranational authority. In the case of interventions by groups of rebels and usurpers, it may at times be unclear as to whether the situation is covered by the wording or whether it is a case of pure piracy. However, in practice this will not normally create difficulties, since Cl. 2-9 sub-clause 1 letter (d) also refers to piracy as being within the war-risk insurer's scope of cover.[93]

The IWSCH do not make a similar distinction between "State power", "foreign State power" and "own State power". The starting point for the cover is the interventions, regardless of who makes them, but with interventions from "the country in which the Vessel is owned or registered" being excluded in cl. 5.1.3. The main result appears however to be the same, i.e. that war insurance only covers interventions by a foreign State.

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92 Commentary 2016 p 50, Wilhelmsen/Bull p. 93.

93 Commentary 1964 p. 20, Commentary 2016 p. 51, Wilhelmsen/Bull p. 93.

5.1.1.2 The interventions "capture at sea" and confiscation

The term "capture at sea" means that the ship is intercepted, seized or arrested by a foreign State power at sea. The definition in the Commentary is that "the insured ship is stopped at sea by a battleship or some other representative of the relevant State power using power or threatening to do so, and taken into port for further control".[94] Such capture is most practical as a wartime measure, but capture in times of peace is also covered. Furthermore, neither the wording nor the Commentary expressly require there to be a political motive behind the arrest. The same is true for the previous NMIP of 1996 § 2-9 first sub paragraph letter (b) and 1964 § 16 first sub paragraph letter (b), as well as the 1964 Commentary. On the contrary, the Commentary to Cl. 15-17 regulating the war risk cover in connection with a call at a visitation port states that:[95]

> "Calls at a port for visitation (sub-clause 1 (a)) are usually only relevant in wartime or war-like conditions, cf. Cl. 2-9, sub-clause 1 (a), but are also possible in other circumstances, for example, when a State power intervenes, cf. Cl. 2-9, sub-clause 1 (b) in connection with sanctions against a given country.
>
> Capture and temporary detention (sub-clause 1 (b)) are also most relevant in wartime or war-like conditions, but may happen in peacetime as well, for example, in connection with customs inspection, embargo, etc. The detention must be by a foreign State power; thus, the provision does not apply if the ship is detained by reason of a strike, etc.: see the arbitration award in GERMA LIONEL ..."

Even though this comment clearly implies that capture in connection with customs inspection and embargo is covered by war risk insurance, it is somewhat confusing. The reference to the *Germa Lionel* case is somewhat misleading, as the issues in this case are better classified as an aggressive intervention by State power than a mere detention for customs purposes.[96]

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[94] Commentary 2016 p. 48.

[95] Commentary 2016 p. 340.

[96] Haakon Stang Lund, Handbook on loss of hire insurance, 2. Ed. p 145.

Further, it is clear that detention in port by a foreign State power for customs inspection is not covered by the war risk insurance, cf. below.

The Norwegian concept "oppbringelse" ("capture at sea") from the 1964 NMIP § 16 (b) is discussed in further detail by Sjur Brækhus and Alex Rein,[97] who claims on the one hand that the motive for the measure is irrelevant, and that arrest due to an alleged or real breach of customs or fishery legislation qualifies as "capture at sea".[98] On the other hand, the authors also refer to the *Wildrake* case, where the concept of capture is interpreted narrowly, to apply only if there is a political motive:[99]

> The diving ship *Wildrake* was working on taking up metals from a wreck of war 17.8 nautical miles outside Tunis, on the Tunisian Continental Shelf but outside the territorial waters, when it was approached by a Tunisian cannon boat and ordered to sail to the naval port in Bizerte. Here, the ship was given a customs fine and the metals were confiscated. The ship stayed in Bizerte for about 14 days. The *average adjuster* that decided the case stated that there was a «capture at sea», but raised the question whether the capture was an intervention to enforce police and customs legislation, in which case it would fall outside the war risk cover. However, based on a concrete and individual assessment of the political situation in Tunis at the time, the average adjuster concluded that the capture could not be seen as an intervention to enforce police and customs regulation, and thus constituted a war peril.

Brækhus has also, as an arbitrator, stated that "a common characteristic feature" for the measures listed in the NMIP 1964 § 16 first sub paragraph letter (b), hereunder "capture at sea", is "that the measures concern interventions for the furtherance of overriding political objectives, typical for war and times of crisis, and contrary to interventions by a State power tied to regulation and control of normal commerce and shipping".[100]

[97] Håndbok i kaskoforsikring, Oslo 1993. Sjur Brækhus was chairman of the committee that drafted the 1964 NMIP.

[98] Brækhus/Rein p. 69–70.

[99] Brækhus/Rein p. 75.

[100] ND 1988.275 NA *Chemical Ruby* p. 283, cf. Wilhelmsen/Bull p. 95.

The concept of "capture" was discussed in an arbitration award from 27 October 2016 concerning the vessel *Sira*, with Hans Jacob Bull as the arbitrator. *Sira* was detained in port by a Nigerian court, and the main question in this case was whether this detainment constituted a war peril as a "similar intervention" according to Cl. 2-9 sub-clause 1 letter (b), cf. further below. However, the award also contains a discussion of the concepts "capture at sea" and "confiscation" in the same provision. The arbitrator acknowledged that the wording of the clause and the Commentary do not make any express requirement concerning motive. However, as the Commentary in regard to "similar interventions" refers to i.a. the *Wildrake* case and ND 1988.275 NA *Chemical Ruby*, cf. further below, as well as to Brækhus/Rein pp. 73–76 concerning this concept, but not to Brækhus/Rein p. 70 concerning "capture", the interpretation in these two cases must be decisive for the understanding of the word capture in Cl. 2-9 letter (b).

This remark in the *Sira* case was not needed in order to decide the dispute in the case, and the relevance of the remark with regard to the interpretation is therefore limited. The remark is also contrary to the arguments for the regulation given in the Commentary 1964, where it is stated as a purpose that the only uncovered perils should be intervention by own State power and insolvency.[101] As Cl. 2-8 letter (b) excludes interventions by State power, the result of a narrow interpretation of "capture at sea" in Cl. 2-9 sub-clause 1 (b) would be that several instances of capture by a foreign State power would not be covered. This issue remains unsolved.

The expression "capture at sea" presumes that the arrest or seizure is enforced by the authorities through the use of physical power or the threat of use of such power. Brækhus/Rein argues that even a "voluntary" call at a port may be deemed as a capture if the alternative was an enforced measure by the authorities, but this argument has not been tested in court.[102]

101 Commentary 1964 p. 16.

102 Brækhus/Rein p. 69, Wilhelmsen/Bull p. 96.

The term “confiscation” is from the latin *confiscare* “to consign to the *fiscus*, i.e. transfer to the treasury” and is a legal form of seizure by a government or other public authority. The word is also used, popularly, for any seizure of property as punishment or in enforcement of the law.[103] According to the Commentary, it means the appropriation of a ship by a State power without compensation.[104] It includes “condemnation in prize”, where a warring power will invoke international or domestic condemnation in prize rules,[105] but there is no mention of war or political motive in relation to the term “confiscation”. Brækhus/Rein argues that the provision also applies to confiscation as a criminal law sanction against the ship, if the ship has been involved in a breach of customs legislation or fishery legislation.[106] However, this is contrary to Brækhus’ statement in the *Chemical Ruby* case, that a characteristic feature of all the measures listed in NMIP 1964 § 16 first sub-paragraph letter b, hereunder “confiscation”, is that there is a political motive. If the interpretation in the *Sira* case is applied, a political motive will also be required for “confiscation”.[107]

The Nordic terms “capture at sea” and “confiscation” are difficult to compare to the IWSCH regulation. It appears that the term “capture at sea” is different from the IWSCH term “capture” and is instead more comparable to “seizure” or “restraint” at sea. The IWSCH term “capture” is closely linked to condemnation by a prize court. NP Cl. 2-9 sub-clause 1 letter b previously included “condemnation in prize” as a separate peril, but this was deleted in the 2016 version because the term now sounds archaic, and must be regarded as being covered by the term “confiscation””.[108] It is unclear if the IWSCH term “confiscation” includes condemnation in prize. Common for both the UK and Nordic term “confiscation” is that the State takes over the ship without compen-

103 https://en.wikipedia.org/wiki/Confiscation
104 Commentary 2016 p. 48, see also Brækhus/Rein p. 71.
105 Commentary 2016 p. 48.
106 Brækhus/Rein p. 71.
107 Wilhelmsen/Bull p. 96.
108 Commentary 2016 p. 48.

sation. The Nordic cover for "capture at sea" seems to be similar to the cover for "restraint", in that there is no requirement for the use of force if the State had the option to use force. However, the IWSCH exclude restraint and confiscation, both under quarantine regulations, by reason of infringement of customs and trading regulations, as well as where arising from the operation of ordinary judicial process or failure to pay fines or penalties, whereas it is unclear to what extent the Nordic concepts "capture at sea" and "confiscation" are similarly limited.

5.1.1.3 Other similar interventions

The term "other similar interventions" indicates that the enumeration in letter (b) is not exhaustive, and that other types of interventions by a foreign State power may also be included. However, the condition is that the intervention be "similar" to capture at sea and confiscation. Typical for capture at sea and confiscation is the situation where the owner is deprived of the ownership or the right to use his vessel.[109] It would seem that the expression includes expropriation which is covered by the IWSCH Cl. 1.6, as well as requisition, but requisition is specially excluded, see below in 5.1.1.4.

There is no reference in the wording to the motive for the intervention, but it follows from the Commentary that:[110]

> "the wording is aimed at excluding from the war-risk cover the types of interventions that are made as part of the enforcement of customs and police legislation. The war-risk insurance therefore does not cover losses arising from the ship being detained by the authorities because there may be doubt as to whether the ship is compliant with the rules regarding technical and operational safety, or because the crew is suspected of smuggling. Obviously, losses arising from the ship being detained or seized as part of debt-recovery proceedings against the owners are not covered, either; this follows from the fact that «insolvency» has been excluded in sub-clause 2 (a)."

[109] Wilhelmsen/Bull p. 96.

[110] Commentary 2016 p. 49.

The difficult borderline problems, between "similar interventions" that are covered by the war risk insurance and measures taken by the police authorities, are demonstrated by three arbitration awards.[111] These decisions show that cover under the war-risk insurance is contingent on the shipowner being divested of the right of disposal of the ship, the authorities clearly exceeding the measures necessary in order to enforce police and customs legislation, and the intervention being motivated by primarily political objectives. The *Wildrake* case is referenced above. This case concerns capture at sea followed by detainment in port. The *Germa Lionel* award and ND 1988.275 NA *Chemical Ruby* both concern detainment in port without a previous capture:

> *Germa Lionel* was on a voyage from London to discharge her cargo first in Tripoli, thereafter in Benghazi in Libya. During the approach to the port of Tripoli the vessel had problems with the electric wiring which caused a lamp to blink. The Libyan authorities suspected that the vessel was communicating with groups in Libya which were opposed to the President, Colonel Ghaddafi. When the vessel had berthed, Libyan troops boarded the vessel. The crew was interrogated. One of the crew members died of mistreatment. The authorities checked the cargo and the vessel, but it appeared that the suspicions were without any foundation. The vessel's agents in the port incurred some costs, and the question was if these costs were covered by the war risk insurance. The main issue for the arbitrator was whether the Libyan authorities' action could be seen as a reasonable action as part of enforcing Libyan laws. The interrogation of the crew and the harshness shown were found to be of a nature which constituted a war peril under the Plan.
>
> In the *Chemical Ruby* case the vessel was detained for about 6 months by Nigerian authorities based on an unfounded suspicion that the vessel tried to ship contaminated soya oil into the country. The starting point was that it was an enforcement of Nigerian legislation, and thus not a war risk. Even if it took about 6 months for

[111] The *Germa Lionel* award 11 June 1985 (unpublished), ND 1988.275 NA *Chemical Ruby*, and a case that was settled (the *Wildrake* case), see Brækhus/Rein pp. 73–76 and Wilhelmsen/Bull pp. 94–97.

> the vessel to be released, this was not so extraordinary as to constitute a war risk. The detainment was not made to achieve some political gain or motivated by purposes which would be typical for war and war-like conditions as opposed to a State's right to enforce compliance with national laws.

The decisions in these two cases, as well as in the *Wildrake* case and the Commentary, are further analyzed in the *Sira* arbitration award from 2016:[112]

> *Sira* arrived at Lagos, Nigeria, 1 February 2015 for discharge of palm oil, and was the same day boarded by a security team engaged by the ship-owner, consisting of an unarmed British security advisor and four armed men from the Nigerian Navy. Permission had been obtained in advance from the immigration authorities for the advisor to visit *Sira* for inspections. Between 2 and 14 February, *Sira* and its documents were inspected several times by the Nigerian Maritime Administration and Safety Agency (NIMASA), whose task it is to secure safety at sea. On 5 February there were two attempts to board *Sira*, presumably by Nigerian pirates, which were stopped by the security guards on board. On 14 February the cargo was discharged and *Sira* was ready to sail. However, the captain was told by NIMASA that *Sira* could not sail before this had been clarified with the Commanding Officer. On 13 March NIMASA formally arrested the ship because it had a foreign security advisor on board, which was claimed to be «illegal and unacceptable as it is not supported under our constitution». *Sira* was released on 31 March after having signed a letter of indemnity holding NIMASA free from the losses caused by the detainment. The owner argued that the detainment of *Sira* constituted a war peril according to NP Cl. 2-9 letter (b), whereas the insurer argued that the detainment was outside the scope of this provision.

The arbitrator made the following summary of the legal sources as defined above:

112 Wilhelmsen/Bull pp. 98–99.

> "For the intervention to be covered under the war risk insurance, the intervention must be made for the furtherance of overriding political goals. Such interventions are interventions typical for war and times of crises, and can often be explained by foreign policy considerations. The reason for the intervention may be a warranted or not warranted suspicion that the ship has breached rules to protect the security of the State involved. It is not decisive that the general political situation in the State involved has been contributory to the intervention.
>
> A State intervention which is tied to regulation or control of normal commerce and shipping is not covered by war risk insurance. Relevant interventions will first and foremost be tied to breach of or suspicion of breach of customs, currency, or police legislation. It is normally not decisive if such intervention due to its duration represents misuse of power. However, this can be different if the misuse of power takes the form of a regular police act or similar act, but in reality is part of an action motivated primarily by overriding political objectives."

The arbitrator found, based on these guidelines, that the detention of *Sira* did not constitute "other similar interventions" in regard to NP Cl. 2-9 sub-clause 1 letter (b). Even if a detention of 1 ½ months did constitute an "intervention", it was not documented as to whether the action was motivated primarily by political objectives. This latter expression represented a somewhat imprecise translation of the Norwegian text «til fremme av et overordnet politisk mål», meaning that the intervention should be connected with the State's actual policy in general and in relation to that particular area. It is typically the task of the central authorities to outline such overriding political goals, such as the president, the parliament, the government at large, or a particular ministry. Authorities at a lower level will not have the power or authority to make this type of political assessment, since their mandate will be limited to exercising given authority in a specific and limited area. NIMASA was seen as an organ at a lower level in the State hierarchy, and this organ did not make decisions at a superior level, but instead exercised its agency within a legal framework and in conformity with political guidelines provided by others.

The arbitrator also held that since one of NIMASAS' tasks was to fight piracy, the regulation of how piracy should be avoided and the role that foreign security guards should have in this respect, must be seen as ordinary police legislation. Even if it constituted a misuse of power to detain *Sira* without issuing an immediate written decision, it was not documented as to whether an overriding political goal had played a significant role in the detainment.

This means that the expression "similar interventions" only includes interventions made by the State if the intervention is made for the furtherance of overriding political goals. In addition, the intervention must normally be typical for times of war and crises and must represent a sanction against breach of security rules and/or be explained by foreign policy considerations. It is not sufficient for the intervention to be explained by the general political situation in the State. A State intervention which is tied to the regulation or control of normal commerce and shipping is not covered by the war risk insurance. This is true even if the intervention constitutes a misuse of power, unless the misuse of power is in reality motivated by overriding political objectives.

The requirement for there to be an overriding political goal seems to be similar to the interpretation of restraint, detainment and arrest according to rule 10, in the sense that the intervention must be a political or executive act and not "the operation of ordinary judicial process". However, the requirement of a political goal goes further, because "judicial process" only applies to private law and "ordinary" rules out extortion and corruption. But many of the relevant public law issues will be ruled out in the exclusions in Cl. 5.1.5 and 5.1.6.

5.1.1.5 Requisition

According to NP Cl. 2-9 sub-clause 1 letter (b) third sentence, requisition for ownership or use by a State power "shall not be regarded as an intervention". The term "requisition" covers an enforced acquisition of the ship by a State power.[113] The provision means that this is outside the scope of the term "intervention" and thus outside the cover in Cl. 2-9

[113] Commentary 2016 p. 48.

sub-clause 1 (b). The difference between "requisition" and "confiscation" is that – in principle – compensation is payable for the loss caused under a requisition, which means that requisition is in actual fact the same as expropriation.[114] There is no express reference to motive, but the Commentary 2016 implies that the requirement for political motive also applies here:[115]

> "Requisition as an intervention typically occurs in times of war or in times of war-like conditions, or during a political crisis. A general criterion for defining requisition as a war peril is therefore that the intervention is politically motivated. If the State expropriates the ship for other reasons, for instance, pursuant to quarantine provisions to prevent the spread of a virus, this does not constitute "requisition" in accordance with this provision".

It is somewhat surprising that the Commentary refers to "requisition" as a war peril, since requisition is excluded from Cl. 2-9 sub-clause 1 (b). The explanation is probably that the previous Commentary referred to insurance cover for requisition provided by the Norwegian War Risk Association in ch. 15 section 9, where requisition for ownership and use was covered by § 15-24 (a) and 15-27 (a). Section 9 was deleted in 2013 when the NP was launched as a Nordic Plan, and the reference in the Commentary was deleted in the 2016 Version of the NP without making any adjustments in the surrounding text. The point to be made here is that requisition by a foreign State, being inherently politically motivated, constitutes an intervention that is a war risk peril, but that this peril is excluded from cover in Cl. 2-9 sub-clause 1 (b). It is however confusing to impose such an exclusion by stating that requisition "shall not be regarded as an intervention".

It appears from the Commentary that "requisition" is the same as politically motivated expropriation, i.e. that expropriation is a broader concept than requisition. As "expropriation" is not mentioned in Cl. 2-9 sub-clause 1 (b), cover for expropriation that is not requisition must be

[114] Commentary 2016 p. 48.
[115] Commentary 2016 p. 49.

decided by the expression “other similar interventions”. Such interventions are only covered if they are politically motivated, which means that expropriation without this motive is not covered by the war risk insurance. This is a narrower interpretation that that of the UK conditions, where “expropriation” is covered unless it constitutes “requisition” (Cl. 5.1.3) or is based on “quarantine regulations” or “infringement of any customs or trading regulations” (Cl. 5.1.5). It would appear that the UK conditions cover expropriation which is based on other types of rules, or which constitute misuse of power or corruption – but presumably subject to the condition that no compensation is paid, cf. 4.1 above.

5.1.2 Marine risk cover for state interventions

The starting point in NP Cl. 2-8 is that the insurer is liable for all perils, unless the peril is expressly excluded. According to (a), perils covered by the war risk insurance are excluded, meaning that capture, confiscation and other similar interventions by a foreign State power, as outlined in 5.1.1, are all excluded. In addition, (b) excludes “intervention by State power”.

The concept of “intervention” is not defined in the text. The Commentary refers to Cl. 2-9 sub-clause 1 (b) and states that “this provision provides the necessary background for understanding the term”.[116] It is clear from the presentation of Cl. 2-9 sub-clause 1 (b) above that capture at sea and confiscation are interventions, and also that the concept includes detainment and arrest. It presumably includes “expropriation”, where it is not “requisition”. On the contrary, requisition for ownership or use is according to Cl. 2-9 sub-clause 1 (b) not “an intervention”. From the wording, this would mean that requisition is outside the scope of the term “intervention” and thus not excluded in Cl. 2-8 (b). The result would then be that requisition, be it from own or foreign State power, is covered by the all risks principle. The Commentary, however, implies that this was not the intention:[117]

[116] Commentary 2016 p. 40.
[117] Commentary 2016 p. 40.

> "*Sub-clause (b)* excludes from the marine perils "intervention by a State power". It follows from Cl. 2-9, sub-clause 1 (b), that an insurance against war perils covers certain types of intervention by a foreign State power, such as capture at sea, confiscation etc. On the other hand, an ordinary war-risk insurance does not cover interventions in the form of requisition for ownership or use by a State power, cf. Cl. 2-9, sub-clause 1 (b), last sentence. In that sense, it already follows from the exception in Cl. 2-8 (a) that this type of intervention will not be covered by an insurance against marine perils."

The expression "this type of intervention" in the last sentence appears to refer to "requisition". If this is the case, the Commentary is stating that requisition is not covered by an insurance against marine perils. The reason is however, confusing. Since requisition is not an "intervention", it is outside the scope of Cl. 2-9 (b) and not covered by the war risk insurance, and is thus not excluded by Cl. 2-8 (a).

Viewed within the historical context, it must be clear however that requisition is an intervention, according to Cl. 2-8 (b).[118] Under NMIP 1964 § 16 (b), "requisition for title or use" was covered as a war risk peril. Coverage for requisition was discussed under the amendment of the NP in 1996, where it was noted that requisition is in actual fact the same as expropriation. If the ship is registered in the Nordic countries or in an allied State, or the main ownership is within such States, the Norwegian or allied authorities may pay compensation. On the other hand, it cannot automatically be expected that other States of register or ownership will be willing to pay compensation if they take over ships that are registered or owned in their own country. There is, therefore, a financial need for coverage in this situation. However, neither the marine insurers nor the ordinary war insurance market were willing to accept this risk in 1996.[119] The conclusion must therefore be that the concept of "intervention" in Cl. 2-8 (b) includes requisition, even if the wording is very confusing.

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118 See also Wilhelmsen/Bull p. 108.

119 Wilhelmsen/Bull p. 107–108.

Cl. 2-8 (b) makes a general exclusion for "interventions by State power". There is no reference to the cause of the intervention, and from the wording this should be irrelevant. Despite this, it is stated in the Commentary that "Interventions made as part of the enforcement of customs and police legislation will thus, as a main rule, be covered by the insurance against marine perils to the extent the losses are recoverable in the first place".[120]

The Commentary refers to "interventions" and thus appears to include all types of interventions, including capture, confiscation, requisition/expropriation and detainment. The condition is that the intervention is made as part of enforcement of customs and police legislation. This would include both situations where there is a misuse of power by the State if the intervention is formally based on customs or police legislation, as well as situations where the reason for the intervention is that the assured has committed a criminal act. However, the insurer's liability would be limited here by the provision in Cl. 3-16 on illegal undertakings.

The Commentary does not make a distinction between own and foreign State power. The implication of the remark in the Commentary would therefore be that the marine insurer is liable for any intervention by own or foreign State power for the enforcement of customs and police legislation, except for those interventions by a foreign State power that are covered by Cl. 2-9 (b). The exclusion in Cl. 2-8 (b) would then be limited to the said interventions with a political motive, which would correspond to the regulation in Cl. 2-9 (b) for foreign state power.

The development of the regulation indicates, however, that this interpretation is not correct. NMIP 1964 § 15 (b) excluded "measures taken by Norwegian or allied State authorities". The above referenced remark in the Commentary was placed in the 1964 Commentary within the discussion of war risk cover for capture at sea and similar interventions in § 16 (b), with the effect that such interventions for the purpose of enforcing police regulation by a foreign State should be covered by the all risks principle in § 15. The exclusion in § 15 (b) was amended in 1996 to a general exclusion

[120] Commentary 2016 p. 40 in relation to Cl. 2-8 (b) and p. 49 in relation to Cl. 2-9 sub-clause 1 (b).

for intervention by State power, and the remark from the Commentary to § 16 (b) was included, both in the Commentary to Cl. 2-9 sub-clause 1 (b), where it refers to interventions by foreign States only, and also in the Commentary to Cl. 2-8 (b) where it (by a mistake?) refers to all types of State intervention. Seen in this historical context, the correct interpretation seems to be that the remark only refers to interventions from a foreign State power that are not covered by Cl. 2-9 (b). Presumably, it would then cover any intervention, including expropriation, but would not cover requisition by a foreign power that is not politically motivated. However, as the relationship between the wording and the commentary here is rather confusing, the result is far from certain.

The exclusion in NP for interventions by own State power conforms to the exclusion in IWSCH Cl. 5.1.3. Cover for interventions by foreign State power for the purpose of enforcing police and customs regulation means however, that the exclusions in IWSCH Cl. 5.1.4 and 5.1.5 will not apply.

5.2 The 2019 revision

5.2.1 Background, main results and overview

It follows from the presentation in 5.1 that the regulation of state intervention in NP Version 2016 is very confusing and raises a lot of difficult issues of interpretation. Some of these issues, but not all, were clarified in the *Sira* case. In addition to this, it is clear that the interpretation of the provisions has gained importance over recent years, as there have been several situations where ships have been detained in foreign ports and kept there for a long period without a clear legal basis. Examples are the detainments of the vessels *B Atlantic* in Venezuela, *Sira* in Nigeria, and *Poavosa Ace* in Algeria. Such cases often include some fraudulent or criminal behaviour by a third party, for instance by the charterer or the receiver of the goods. The Standing Revision Committee therefore agreed on two points. First, they agreed that it was necessary to adjust the regulation in line with the result of the *Sira* case and further clarify the cover both under the marine risk insurance and under the war risk

insurance. Secondly, they also agreed that it should be discussed as to whether a more appropriate cover could be established to cope with the situation where ships are detained in foreign ports without any clear justification. The main results of the discussions were as follows:

1) Requisition by State is not covered by any insurance,
2) the marine risk insurance excludes certain qualified interventions by own State power, provided these have been made for the furtherance of overriding national political goals,
3) the war risk insurance does cover such interventions by foreign State power or a supranational power,
4) the marine risk insurance covers interventions by own and foreign State power and supranational powers that are not either excluded in Cl. 2-8 (b), (c) or (d) or covered by Cl. 2-9 (b).

The structure of the new regulation is the same as before, in that Cl. 2-8 covers all risks that are not excluded, while war risks and certain interventions are expressly excluded. However, the exclusion in Cl. 2-8 (b) is narrowed significantly compared to the 2016 wording, the cover in Cl. 2-9 sub-clause 1 (b) is narrowed somewhat, with requisition in both provisions being singled out in separate exclusions to avoid uncertainty, cf. Cl. 2-8 (c) and Cl. 2-9 sub-clause 2 (c), and a new provision has been added that excludes the operation of ordinary legal process to enforce payment of any fine, penalty, debt or right to security unrelated to a claim or liability covered by the insurance is inserted in Cl. 2-8 letter (d) and Cl. 2-9 sub-clause 2 letter (a). In the following sections, the regulation in Cl. 2-9 sub-clause 1 (b) and sub-clause 2 (c) will be outlined first, followed by the exclusion in 2-8 (b) and (c), and finally the common exclusion in Cl. 2-8 letter (d) and Cl. 2-9 sub-clause 2 letter (a).

5.2.2 The new Cl. 2-9 sub-clause 1 (b) and sub-clause 2 (c)

Version 2019 Cl. 2-9 sub-clause 1 (b) states that the war risk insurance cover

> (b) **capture at sea, confiscation, expropriation and other similar interventions by a foreign State power, provided any such intervention is made for the furtherance of an overriding national or supranational political objective. Foreign State power is understood to mean any State power other than own State power as defined in Cl. 2-8 (b), second sentence, as well as organisations and individuals exercising supranational authority or who unlawfully purport to exercise public or supranational authority,**

The interventions "capture at sea", "confiscation" and "other similar interventions" are the same as under the 2016 Version, but the intervention "expropriation" is new. The definition in the Commentary provided for the term "capture at sea" is mainly as before, but the Commentary clarifies several issues discussed in *Brækhus/Rein* by stating that:[121]

> "It is not capture "at sea" if the ship is arrested and detained in port without a foregoing capture. On the other hand, when the ship is captured at sea, it will normally be escorted by power into port for further control. As long as the detainment in port is due to the same cause as the capture, the stay in port must be regarded as part of the capture. If the ship sails into port without any threats from the foreign State, this is outside the concept of "capture at sea". This is true even if the State could have forced the ship to enter the port."

This change means that "capture at sea" is more narrowly than the UK concept of "restraint", which includes situations where no force is used, provided such force could be used.

In addition to the intervention "confiscation", which is the same as in the previous NP, the regulation now also includes "expropriation", which according to the Commentary means that "the State takes over the vessel for a purpose deemed to be in the public interest". Expropriation was not among the interventions listed in the previous NP, and it was not clear whether this should be treated as being similar to requisition or instead constituted "other similar interventions". However, the Plan Committee found that expropriation is more similar to confiscation than it is to

[121] Commentary 2019 pp. 56–57 to Cl. 2-9 sub-clause 1 (b).

requisition. Both expropriation and confiscation mean a permanent loss of ownership, whereas requisition is typically for a limited period in time and can also be limited to use. It was therefore agreed that expropriation by a foreign State should be covered on a similar basis to confiscation. However, whereas confiscation does not generate compensation, when the vessel is expropriated, the assured may be compensated for his loss. It follows from general insurance principles and is also stated in the Commentary that any "such compensation must be deducted from the liability of the insurer".[122]

The term "other similar interventions" is also the same as before, but the criteria from the *Sira* case is inserted, stating:[123]

> "the intervention must have similar consequences for the assured as "capture at sea" and "confiscation". Typical for these interventions is that the ship-owner is being divested of the right of disposal of the ship. This is therefore a necessary condition for an intervention to be covered under this group. An intervention that satisfies this criteria can of course take place while the vessel is in port."

The most significant amendment is the introduction of the condition that "any such intervention is made for the furtherance of an overriding national or supranational political objective". A similar requirement followed from the 2016 Commentary with regard to "other similar interventions", but it has not been clear whether this was also the case for capture at sea and confiscation. It follows from the 2019 Commentary that the purpose is to delimit the cover in relation to both ordinary administrative procedures and the misuse of power or corruption by the administration:[124]

> "It is therefore clear that interventions in accordance with applicable law for the purpose of enforcing customs-, police-, safety- or navigation-regulations or any private law rights against the insured

[122] Commentary 2019 p. 57 to Cl. 2-9 sub-clause 1 (b)

[123] Commentary 2019 p. 57 to Cl. 2-9 sub-clause 1 (b).

[124] Commentary 2019 pp. 57–58 to Cl. 2-9 sub-clause 1 (b).

> vessel are outside the scope of the war insurance cover. If the ship is arrested/captured at sea by the Coast Guard or representations of the police or customs authorities to hinder or investigate illegal fishery, import or export or breach of trade regulations, this will not be covered. The same is true if the ship is arrested or detained in port because of doubt as to whether the ship is compliant with the rules regarding technical and operational safety, or because the crew is suspected of smuggling. Obviously, losses arising from the ship being detained or seized as part of debt-recovery proceedings against the owners are not covered, either; this follows in any event from the exclusion in sub-clause 2 (a).
>
> It does not matter whether such police or customs intervention is caused by illegal acts performed by a third party, for instance the charterer or the master or crew. Further, it is not decisive whether the State intervention is based on the legislation of the country or may be seen as abuse of power or corruption, if the intervention does not have an overriding national or supranational political objective. However, if an overriding national or supranational political objective is detected, it does not matter if the State power formally justifies the interventions with for instance police or customs regulations, or if the intervention has the character of abuse of power or corruption."

The expression "overriding national … political objective" is based on the four arbitration cases relating to the war risk cover for interventions by foreign State power under the 1964-Plan and the 2013 Plan Version 2016, as discussed under 5.1.1 above,[125] but the word "national" is added to emphasize that a public State is involved.[126] The expression is explained above under 5.1.1, in the discussion of the *Sira* case. It follows from this that abuse of power is neither a necessary nor a sufficient condition for war risk cover. If an overriding national political goal is detected, there is no need to establish misuse of power. On the other hand, misuse of power need not be explained by such overriding political motives. Misuse

[125] Unpublished award of 11 June 1985 relating to the *Germa Lionel*, ND 1988.275 NV *Chemical Ruby*, The *Wildrake* case, which was settled, and the unpublished award "MT *Sira*" of 27 October 2016, cf. above.

[126] Commentary 2019 p. 58 to Cl. 2-9 sub-clause 1 (b).

of power may be a reflection of a dysfunctional State and may indicate another motive, but misuse of power is not in itself a necessary condition for cover.[127]

The term "supranational" is added in order to emphasize that the concept of "foreign State power" includes both public and supranational power. This is an extension of the previous rule, which only applied to foreign State power. Supranational cover was included in the exclusion in Cl. 2-8 b for interventions by State power in general. The content of the terms "foreign State power" and supranational power is not amended.

The last sentence in (b), which sought to exclude requisition, has now been moved to a separate exclusion for requisition by State power in sub-clause 2 (c). The exclusion is absolute and applies to requisition by any State power, regardless of whether it is for owner-ship or other use. Even if it is argued in that UK that a State only has authority to requisite vessels under its own flag, requisition by a foreign State is also excluded. There is no court decision providing a definition of the concept of requisition, and the concept is not clear in either Nordic or in English marine insurance. However, according to the Commentary, the typical characteristics are that the State will "requisite" the vessel for ownership or use according to legislation and in national interest and that the relevant legislation provides a formal procedure to be followed. Requisition is typically limited in time and the intention is that the vessel shall be redelivered to the owner after a certain period. The rule is also that the State should compensate for the use of the vessel and pay for any damages during the period of use, but this is not a requirement in order for the exclusion to apply.[128]

5.2.3 The new regulation in Cl. 2-8 (b) and (c)

Cl. 2-8 (b) is amended, from the previous general exclusion for intervention by state power, including supranational power, to instead being an exclusion for "capture at sea, confiscation, expropriation and other

[127] Commentary 2019 p. 58 to Cl. 2-9 sub-clause 1 (b).

[128] Commentary 2019 pp. 45–46 to Cl. 2-8 (c).

similar interventions by own State power". The interventions are the same as those defined in Cl. 2-9 sub-clause 1 (b) and are meant to be identical. The clauses are also identical in terms of both having the requirement for an overriding political goal, which is to be distinguished from ordinary administrative proceedings and misuse of power, corruption or extortion by the authorities. Apart from the exclusion in Cl. 2-8 (d) for "operation of ordinary legal process to enforce payment of any fine, penalty, debt or right to security unrelated to a claim or liability", the all risks principle will provide cover for losses caused by administrative proceedings or the misuse of power, corruption or extortion by the authorities.

The result is that interventions such as capture at sea, arrest or detainment in port or the like – due for instance to suspicion or investigation of breach of regulations concerning fishery, customs, pollution, safety or navigation, will all be covered. However, if the breach means that the ship is being used for "illegal purposes" and the assured knew or should have known about this, the loss will be excluded according to Cl. 3-16. If the assured was acting in good faith and the breach is the result of a fraudulent or criminal act or omission from a third party, for instance by the master or crew, the charterer or the receiver of the goods, cover remains in place. This widening of the cover compared to the previous wording of Cl. 2-8 (b) is a response to situations where vessels are captured and/or detained in foreign ports for a longer period of time due to some criminal behaviour by, for instance, a third party, the charterer or the master and crew. The amendment is also intended to bring the exclusion into alignment with the terms of Cl. 3-16 on illegal undertakings.[129]

It is also clear that interventions due to abuse of power or corruption are outside the scope of the exclusion in (b) and are thus covered by the all risks principle. In some countries, cases which commence as a regular administrative, police or judicial process can easily degenerate into excessive delays or attempts at extortion. If the intervention in such cases turns out to be for the purpose of an overriding national political objective, the intervention will be covered by the war risk insurer, ac-

[129] Commentary 2019 p. 43 to Cl. 2-8 (b).

cording to Cl. 2-9 sub-clause 1 (b). However, there may be cases where no such national political motive can be detected, but the interventions are nonetheless clearly outside the scope of normal due process.[130] Such cases will then be covered by Cl. 2-8, according to the all-risks principle.

The new provision in Cl. 2-8 (b) only regulates the peril that is insured. There are no changes to the regulation of losses that are covered by the marine insurer. The traditional difference between losses covered under a marine policy and those covered under a war policy, as outlined in ch. 3 above, is therefore upheld. The standard cover provided by the Plan is not intended to provide the kind of "political risk" cover that would more fully protect owners of vessels trading to countries that have a more or less dysfunctional political system. Insurance against political risk is available in the market and it would not be appropriate to spread this risk over all assureds that do not trade in these areas.[131]

Cl. 2-8 (c) excludes "requisition by State power". In the previous NP, this exclusion followed from the broad exclusion for "intervention by State power" in (b). With the narrower provision in the new letter (b), it is necessary to provide a separate clause for requisition in order to emphasize that requisition by State power is excluded, regardless of the motive for the requisition. If the ship is registered in one of the Nordic countries, it must be expected that the State will pay compensation if they take over the ship for ownership or use, regardless of the motive for the requisition, and it is not appropriate to cover this under the insurance. Requisition of the ship for instance to use it as a hospital ship will according to this exclusion not be covered.[132]

5.2.4 The exclusions in Cl. 2-8 (d) and Cl. 2-9 sub-clause 2 (a)

Since Cl. 2-8 (b) is now limited to interventions for the furtherance of overriding national political goals, any other intervention would, as

[130] For example the *Chemical Ruby* and *Sira* arbitration cases referred in Wilhelmsen/Bull, Handbook on hull insurance, 2017, pp. 94–99, where there were excessive delays but no clear overriding political objective

[131] Commentary 2019 p. 44 to Cl. 2-8 (b).

[132] Commentary 2019 p. 46 to Cl. 2-8 (c).

a starting point, be covered by the all risks principle. As this is a very wide scope of cover, it was necessary to restrict it somewhat, which is done through an exclusion for "the operation of ordinary legal process to enforce payment of any fine, penalty, debt or right to security unrelated to any claim or liability covered by the insurance" in Cl. 2-8 (d). A similar exclusion is found in Cl. 2-9 in sub-clause 2 (a). Since war risk insurance is based on specifically named perils, this exclusion is of less importance, but will be relevant in cases which have a combination of excluded and covered perils. It should be noted that the exclusion only applies to legal proceedings to enforce a debt or obtain security for a debt. It does not apply to e.g. proceedings relating to public law matters, such as the enforcement of customs or trading regulations. Such cases are governed by the rules in Cl. 3-16.[133] Furthermore, the provision has a rather limited application, as it is unlikely that the operation of ordinary legal processes will be the direct cause of physical damage to a vessel or lead to the owner being deprived of the vessel without any prospect of recovery. However, the possibility cannot be entirely discounted, and the aim is also to avoid insurance cover if damage triggers a delay or legal costs for enforcing the payment of debts or other legal rights against the assured or the vessel.[134]

6 Summary and some conclusions

The new regulation of intervention of State power in the NP 2013 Version 2019 is aimed at clarifying the cover for such interventions and extending the cover for non-politically motivated measures taken by any State. The presentation indicates that State interventions may be classified into 5 different groups:

[133] Commentary 2019 p. 49 to Cl. 2-8 (d).
[134] Commentary 2019 p. 48 to Cl. 2-8 (d).

1) The catastrophe and political oriented risk inherent in measures taken by a State for the furtherance of an overriding national or supranational goal. Such a risk is most naturally placed under war risk insurance if the measure is taken by a foreign State or supranational power, cf. Cl. 2-9 sub-clause 1 (b), but is outside the scope of normal insurance if the measure is taken by own State, cf. Cl. 2-8 (b).
2) Requisition, which would typically be performed by own State against compensation, and is therefore also outside the normal insurable risk, Cl. 2-8 (c) and 2-9 sub-clause 2 (c).
3) State interventions in relation to illegal entities where the insurer is not liable according to Cl. 3-36 will not be covered.
4) State intervention performed in the operation of ordinary legal process in order to enforce payment of any fine, penalty, debt or right to security unrelated to any claim or liability covered by the insurance", which is excluded in Cl. 2-8 (d) and Cl. 2-9 sub-clause 2 (a).
5) All other State interventions by own or foreign States, which are covered by the all risks principle in Cl. 2-8. This group consists of non-political interventions based on any legislation not excluded above and any interventions that, from a Nordic perspective, have the character of misuse of power, corruption and extortion. This cover is the main amendment in the new version and represent a clear extension compared to the previous wording.

Compared to the UK war risk conditions, the war risk cover under 1. above is somewhat narrower, since there is no explicit reference to motive, but some of the same limitations are obtained through rule 10 requiring a "political or executive act", as well as not covering loss caused "by ordinary judicial process", as well as the exclusions in IWSCH Cl. 5.14 and 5.1.5. The exclusions in 2-4 correspond to similar exclusions in IWSCH Cl. 5.1.2, 5.1.4 and 5.1.5. The main difference therefore is that of group 5, where the NP cover now offered for marine risks goes much further than the UK conditions.

The process has demonstrated the advantages of operating with a Standard Revision Committee and undertaking continuous renewal procedures to amend the Plan, in order to adjust to the political development and the changing financial needs of the assureds.