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**IUMI presentation – 29 January 2025**  
**Institute war and strikes risks – cargo**

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# Today's agenda

- Overview of a typical cargo policy written on Institute clauses and the scope of cover provided
- Analysis of the Institute war and strikes risks and their meaning

“State-based armed conflict is the top current risk in 2025”

“We seem to be living in one of the most divided times since the Cold War”

World Economic Forum, Global Risk Prediction Survey  
(cf. [https://reports.weforum.org/docs/WEF\\_Global\\_Risks\\_Report\\_2025.pdf](https://reports.weforum.org/docs/WEF_Global_Risks_Report_2025.pdf))

# Structure of a typical cargo Policy

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Institute Cargo Clauses (A) 1/1/09	Cl. 382
Institute War Clauses (Cargo) 1/1/09	Cl. 385
Institute Strikes Clauses (Cargo) 1/1/09	Cl. 386

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Covering transits “worldwide to worldwide” subject to RUB exclusion	
Termination of Transit Clause (Terrorism) 2009	JC56
Cancellation clause – war on 7 days notice, strikes on 7 days but 48 hours for US risks	
War and Strikes Notice of Cancellation Administration Clause	JC2024-025
Five Powers Clause	JC2023-024

# War and strikes – the risks

## War risks

- 1.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
- 1.2 capture seizure arrest restraint or detainment, **arising from risks covered under 1.1 above**, and the consequences thereof or any attempt thereat
- 1.3 derelict mines torpedoes bombs or other derelict weapons of war.

## Strikes risks

- 1.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- 1.2 any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted
- 1.3 any person acting from a political, ideological or religious motive.

# Cargo - an all-inclusive package?

## There are key limitations

- War on land risks are not covered (cf. the Waterborne Agreement 1/1/82 - now reflected in Clause 5, the Duration clause, in the Institute War Clauses (Cargo))
- This is by contrast to the “warehouse to warehouse” cover generally provided under ICC(A)
- So it may be crucial to determine whether a loss onland is by insurrection (a war risk and therefore not covered) or by riot/civil commotion (strikes risks and therefore covered)

# Cargo - an all-inclusive package?

## Key limitations - continued

- the write back of capture and seizure in the War Clauses is only a partial write back (of which more to follow)
- the terrorism cover provided by the Strikes Clauses is limited to max 60 days post discharge under JC56 : JC56 was introduced after the World Trade Center attacks in September 2001 with a view to reducing cargo underwriters' exposure to the risk of terrorism affecting goods in store
- The ICC(A) Clause 7.1 exclusion of loss etc "**caused by** strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions" is written back in the Institute Strikes Clauses, Clause 1.1.
- The ICC(A) Clause 7.2 exclusion of loss etc "**resulting from** strikes, lock-outs, labour disturbances, riots or civil commotions" is not written back in the Institute Strikes Clauses e.g. port shutdown due to strike

# War

- *“The word “war” in the charterparty was not to be given a technical meaning based on principles of international law but its **ordinary common-sense meaning**” (Kawasaki Kisen v Bantham (1939)*
- *“The term “war” connotes a level of armed conflict between nations sufficient to be described in ordinary language as a state of war” (Arnould, 20<sup>th</sup> edition, para 24-13)*

## Key factors

- Is there an armed conflict between opposing sides?
- What are the objectives of the parties and how are those objectives pursued?
- The scale of the conflict and the effect on public order
- If the conflict is sporadic or indiscriminate or without purpose, this would tend to indicate no war



# War - definitions



“..several incidents are taking place ..every month, with soldiers from the two nuclear-armed countries sometimes engaging in violent hand-to-hand combat, often using clubs and other homemade melee weapons”..

# War

## If P&C v Silversea Cruises (2004)

- A claim arising out of the 11 September 2001 World Trade Center attacks
- Silversea, a cruise line, had BI cover for “acts of war, armed conflict..”
- *“An armed conflict has an air of continuity about it .. What are essentially random attacks do not carry ..the sense of present and persistent fighting between military groups which is the hallmark of armed conflict”*
- *“action by terrorists or terrorist activities seems more appropriately to encapsulate what occurred”*
- Cf. **Pan American v Aetna** (1974) – Pan Am aircraft hijacked by Palestinian terrorists
- War[etc] does *“not describe a hijacking committed by two men far from the site of any larger scale violence..”*

# War risks - civil war

“A civil war is a war with the special characteristic of being civil i.e. internal rather than external”

## Spinney’s (1948) v Royal Insurance (1980)

- Arising out of civil unrest in Lebanon in 1976
- The judge (Mustill J) identified three key issues
  - are there opposing sides? A side must be identifiable by a common objective, leadership and administration
  - are sides competing to gain control of the State? If so, this is a pointer towards a civil war
  - The scale of the conflict and its impact on daily life
- Held that there was **no civil war on the facts** – there was “virtual anarchy” but there were no clear sides or concerted political ends

# War risks - revolution and rebellion

Let's talk regime change - "heads you win, tails you lose"

## Revolution

- The American Revolution / French Revolution / Russian Revolution / Chinese Revolution
- The forcible overthrow of an established ruler or Government
- There is overlap with rebellion or insurrection
- Revolutions are successful...

## Rebellion

- Jacobite Rebellion (Bonnie Prince Charlie)
- Easter Uprising, Dublin 1916

# War risks - insurrection

## National Oil Co of Zimbabwe v Sturge (1991)

- Renamo members blew up a pipeline + tank farm in Mozambique (1982-1983)
- Renamo intended to overthrow the Frelimo Government
- Held – the insurrection exclusion applied
- The fact Renamo had foreign support did not prevent there being an insurrection
- *“Rebellion and insurrection have somewhat similar meanings ..each means an organized and violent internal uprising in a country with, as a main purpose, the object of trying to overthrow or supplant the government of that country **though** “insurrection” denotes a lesser degree of organisation and size than “rebellion” (per Saville J)*

## Grell –Tarel v Caribbean Home (2002)

- civil unrest in Trinidad coupled with widespread looting
- the insured’s business premises were looted
- held - a loss by insurrection, an excluded peril in that case, and the looting was sufficiently connected with the insurrection so not recoverable

# War risks - any hostile act by or against a belligerent power

## Key ingredients

- “hostile”
  - no requirement that the hostility be directed towards cargo
  - cargo is often collateral damage
- “belligerent”
  - “engaged in a war **or conflict**”
- “power”
  - is this limited to Governments (legally recognised or otherwise)?
  - or extends to organised groups of rebels (e.g. the Vietcong)?
  - what of the Houthis?
- Cf. “warlike operations”

# War risks – capture and seizure

## Capture

*“..every act of seizing or taking by **an enemy or a belligerent.**”* (cf. Cory v Burr 1883)

*“ships and cargoes were and still are properly treated as objects of war to be taken in prize or by way of reprisal - this was the meaning of the word capture in marine policies”*

(cf. Anderson v Martin (1907) as approved in Kuwait Airways v Kuwait Insurance (1999))

## Seizure

*“seems to be a larger term than “capture” ..and may reasonably be interpreted to embrace every act of taking forcible possession, either by a lawful authority or by overpowering force..”*

- Cory v Burr (1883) as approved in Kuwait Airways v Kuwait Insurance (1999)
  
- **Hamilton Corporate v Afghan Global** (2025) – claim under a political violence policy
  - cargo in a warehouse seized by the Taliban - seizure was a policy exclusion
  - the insured’s argument that a seizure had to be by a “government authority” failed

# War risks - capture and seizure

- The Clause 6.2 ICC(A) exclusion is an exclusion of loss damage or expense caused by capture, seizure arrest restraint or detainment (piracy excepted)
- The Clause 1.2 Institute War writeback is of capture, seizure etc “*arising from risks covered under 1.1 above*” - in other words, **there is only a writeback of war and warlike capture and seizure**
- What of **non-war like seizures** e.g. for breaches of Customs / health regulations (meat/agri products) / illegal importation?



# War risks - capture and seizure



# Piracy / piratical seizure – a non-war and strikes risks

- Clause 6.2 ICC(A) is an exclusion of loss damage or expense caused by capture, seizure etc (**piracy excepted**)
- Thus, piracy remains an All Risks peril under the ICC(A) clauses (in contrast to H&M where piracy is typically transferred to hull war by the 2005 JHC wordings)
- Clause 2 of ICC(A) covers GA incurred to avoid or in connection with the avoidance of loss “**from any cause except those excluded..**”
- So in a Somali pirate type seizure case, cargo interests are potentially liable for GA contributions in respect of ransom payments to secure the vessel and cargo’s release

# Piracy – not a war or strikes risk

## Those involved must be acting for personal gain

- Somali pirates demanding ransoms
- Press reports suggest the Houthis have asked for money to prevent vessels being attacked..
  
- **Republic of Bolivia v Indemnity Mutual (1909)**
- Seizure of Bolivian goods in Brazil was for political ends - so no loss by piracy

## Force or threat of force needed

- **“Andreas Lemos” (1982)**
- *“theft without force or a threat of force is not piracy under a policy of marine insurance”* i.e. clandestine theft

# War risks - arrest restraint detainment

## ➤ Section 60(2)(i) Marine Insurance Act 1906

*“There is a [CTL] where the assured is deprived of the possession of his ship or goods by a peril insured against and (a) **it is unlikely that he can recover the ship or goods [within a reasonable time].**”*

- “unlikelihood of recovery” is the key test
- *Masefield v Amlin (2010)* – it was always likely owners would get the vessel and cargo back – *“it was apparent that the vessel, cargo and crew were likely to be released in short order”*
- By contrast, see *Clothing Management v Beazley (2012)*

## ➤ Additional clauses are standard in H&M insurance

- IWSC 1/10/83 Clause 3 – loss of free use and disposal for continuous period of 12 months which in practice is often shortened to 6 months
- LPO 444 Blocking and Trapping clause

# Strikes risks – riots

- **Section 1 Public Order Act 1986**

*“..12 or more persons who are together use or threaten unlawful violence for a common purpose and their conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety..”*

- This statutory definition is applied when interpreting insurance policies

# Strikes risks - civil commotion

## Key ingredients

- There must be more than “the work of a mindless mob”
- A degree of turbulence/tumult is required
- But an **intent to overthrow a Government is not required** – by contrast to rebellion or insurrection
- **Levy v Assicurazioni Generali (1940)**

# Strikes risks - terrorism

- *“1.2 any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted”*
- Adopted from the Reinsurance (Acts of Terrorism) Act 1993 following an IRA bomb in London
- Force or violence is required
- That is aimed at overthrowing or influencing a government
- Designation as a terrorist organisation does not appear required (e.g. the Houthis are a designated terrorist group by the US but not by the UK or EU (which have imposed different measures))

# Strikes risks - “any person acting from a political, ideological or religious motive”

- This provides cover for the action of a “lone wolf”
  - the environmental activist            oil cargoes
  - the animal rights activist            livestock carriers
  
- The wording appears “*clearly wide enough to embrace non-violent actions by organisations or individuals which are not directed towards influencing any government policy and are neither, therefore, in a narrow sense politically motivated nor amounting to terrorist activities*” (Arnould, Law of Marine Insurance and Average, 20<sup>th</sup> edition para 24-37)



# Key issues

- The limited war and terrorism onland cover provided
- The dividing line between insurrection (war) and civil commotion (strikes)
- The dividing line between warlike seizures (covered) and non-warlike seizures (not covered)
- The focus is on the factual situation at the time of the loss, not how matters subsequently developed - *“it is all too easy to be misled by later events into misinterpreting earlier ones...”* (per Saville J in National Oil v Sturge)



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**Thank you for listening**

**Q&A**



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## Institute war and strikes risks - cargo

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