

Nordic Plan 2019 – State interventions

Borderline between war and marine perils

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Introduction – the 2019 revision of the Nordic Plan

- › The Nordic Marine Insurance Plan provides cover for all traditional marine insurances other than P&I
- › The Nordic Plan and its Commentary, are subject to regular revision in 3-year cycles
- › An agreed document; result of negotiations in the Revision Committee between the organisations of the Nordic shipowners and insurers
- › The two most important amendments resulting from the 2019 revision:
 - › A much needed default jurisdiction solution for insurances with non-Nordic claims leaders
 - › Clarifications in relation to Cl. 2-8 and 2-9 which deal with the division between marine and war perils. More exactly: Clarifications re cover of losses caused by **interventions by State power**

Introduction – marine and war perils cover – the basics

- › The Nordic Plan provides an all-risk insurance cover against marine perils which means that the scope of the marine risks cover is defined by the various exceptions
- › The named war perils (Cl. 2-9) constitute exceptions from the marine risks cover
- › This system provides a seamless cover against marine and war perils

Intervention by State power – legal status before 2019

The previous regulation re intervention by State power was unclear about i.a.:

- › The extent of the exclusion for State intervention from the marine risks cover;
 - › conflict between Cl. 2-8 (b)'s text and certain remarks in the Commentary
- › The extent of the war risks cover for "*capture at sea*" and "*confiscation*" by foreign State power in Cl. 2-9 sub-cl. 1 (b) was not sufficiently clear;
 - › was "*overriding political motive*" a necessary condition?



Intervention by State power – factual perspective

- › Increasing tendency that vessels are detained for long periods in certain jurisdictions
- › – often with unclear legal basis
 - › Nigeria,
Venezuela,
Mexico,
Indonesia,
Algeria,
Oman,
Iran etc.



The 2019-solutions/compromise – broad overview

- › Clarification of the extent of the marine risks cover for interventions by own State power
- › New definition of war risks cover in Cl. 2-9 sub-cl. 1 (b) – new express inclusion of "*overriding national political motive*" as general condition for cover of interventions by foreign State power
- › Total loss under war risks cover:
Detention time to trigger total loss reduced from 12 to 6 months
- › Total loss under marine risks cover: The condition is still that the vessel is "*lost without ... prospect of it being recovered*"
- › Politically motivated "*expropriation*" by foreign State power is covered by the war insurance

Marine risks insurance also covers State intervention – the "*all risks*" starting point:

- › The "*all risks*" starting point means: State interventions that are not excluded in Cl. 2-8 are covered by the marine risks insurance
- › Practical examples of covered marine risks : Confiscation or damage caused by actual or suspected breach of customs-, pollution-, safety- or navigation-regulations (unless the assured ought to have known about the illegal use of the vessel Cl. 3-16)
- › The question is therefore: Which State interventions are excluded from the marine risks cover – in addition to the named war risks interventions?



New definition of exceptions from marine risks cover for intervention by own State power, Cl. 2-8 b and c

New definitions in Cl. 2-8 b and c; – an insurance against marine perils does not cover:

- › Cl. 2-8 (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**"
- › Cl. 2-8 (c): "**requisition** by State power"

New definition of war risks cover for intervention by foreign State power, Cl. 2-9 sub-cl. 1 (b)

New definition - an insurance against war perils covers:

- > Cl. 2-9 sub-cl. 1 (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***."

But not:

- > Cl. 2-9 sub-cl. 1 (c): "***requisition*** by State power"

What does "*overriding national political objective*" mean?

Explanations of "*overriding national political objectives*" in the new 2019-
Commentary:

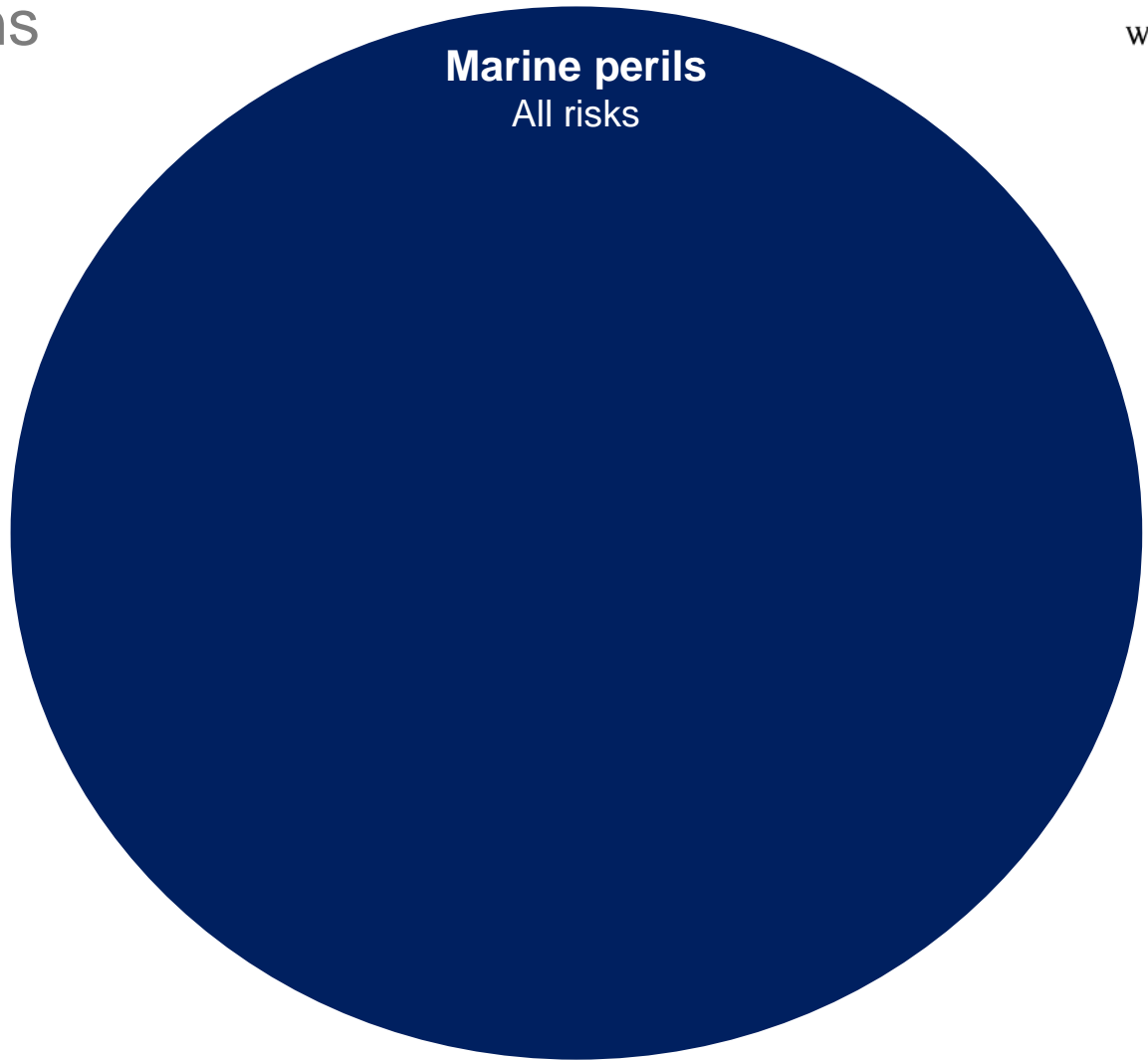
- › "*... interventions that are typical for war or times of international crisis, and often can be explained by foreign policy considerations.*"
- › "*The justification for the intervention may be a warranted or unwarranted suspicion that the vessel has breached rules for the protection of the security of the State.*"
- › "*Overriding national political objectives will typically be outlined by the president, the parliament, the government at large, or a particular ministry.*"
- › "*... 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.*"

State interventions

Overview of cover

Marine perils

All risks



State interventions

Overview of cover

War perils

Interventions
(capture at sea + confiscation +
expropriation + similar)
by **FOREIGN STATE**
+
overriding national or supranational
POLITICAL objective

Cl. 2-9 (1)(b)

Marine perils

All risks

Carve-outs for
political risks

Not covered
Interventions
(capture at sea +
confiscation +
expropriation + similar)
by **OWN STATE**
+
overriding national
POLITICAL objective

Cl. 2-8 (b)

State interventions

Overview of cover

Marine perils
All risks

Carve-outs for
political risks

War perils

Interventions
(capture at sea + confiscation +
expropriation + similar)
by **FOREIGN STATE**
+
overriding national or supranational
POLITICAL objective

Cl. 2-9 (1)(b)

Marine perils

Interventions
by **ANY STATE**
+
NO overriding national or supranational
POLITICAL objective

(typically police and customs enforcement
- lawful or unlawful)

Cl. 2-9 (1) (b)

Not covered
Interventions
(capture at sea +
confiscation +
expropriation + similar)
by **OWN STATE**
+
overriding national
POLITICAL objective

Cl. 2-8 (b)

State interventions

Overview of cover

Marine perils All risks

War perils

Interventions
(capture at sea + confiscation +
expropriation + similar)
by **FOREIGN STATE**
+
overriding national or supranational
POLITICAL objective

Cl. 2-9 (1)(b)

Not covered
Requisitions
by **any state**
Cl. 2-9 (2) (c)

Marine perils

Interventions
by **ANY STATE**

+
NO overriding national or supranational
POLITICAL objective

(typically police and customs enforcement
- lawful or unlawful)

Cl. 2-9 (1) (b)

Not covered
Requisitions
by **any state**
Cl. 2-8 (c)

Not covered
Interventions
(capture at sea +
confiscation +
expropriation + similar)
by **OWN STATE**
+
overriding national
POLITICAL objective

Cl. 2-8 (b)

Typically by own
state against
compensation

State interventions

Overview of cover

War perils

Interventions
(capture at sea + confiscation +
expropriation + similar)
by **FOREIGN STATE**
+
overriding national or supranational
POLITICAL objective

Cl. 2-9 (1)(b)

Not covered
Use of vessel for
illegal purposes,
except owner in
good faith
Cl. 3-16

Not covered
Requisitions
by **any state**
Cl. 2-9 (2) (c)

Marine perils

All risks

Marine perils

Interventions
by **ANY STATE**
+
NO overriding national or supranational
POLITICAL objective

(typically police and customs enforcement
- lawful or unlawful)

Cl. 2-9 (1) (b)

Not covered
Use of vessel for
illegal purposes,
except owner in
good faith
Cl. 3-16

Not covered
Requisitions
by **any state**
Cl. 2-8 (c)

Not covered
Interventions
(capture at sea +
confiscation +
expropriation + similar)
by **OWN STATE**
+
overriding national
POLITICAL objective

Cl. 2-8 (b)

State interventions

Overview of cover

War perils

Interventions
(capture at sea + confiscation +
expropriation + similar)
by **FOREIGN STATE**

+
overriding national or supranational
POLITICAL objective

Not covered
Insolvency +
ordinary
enforcement of
debt or security
Cl. 2-9 (2) (d)

Cl. 2-9 (1)(b)

Not covered
Requisitions
by **any state**
Cl. 2-9 (2) (c)

Not covered
Use of vessel for
illegal purposes,
except owner in
good faith
Cl. 3-16

Marine perils

All risks

Marine perils

Interventions
by **ANY STATE**

+
NO overriding national or supranational
POLITICAL objective

(typically police and customs enforcement
- lawful or unlawful)

Cl. 2-9 (1) (b)

Not covered
Insolvency +
ordinary
enforcement of
debt or security
Cl. 2-8 (d)

Not covered
Use of vessel for
illegal purposes,
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good faith
Cl. 3-16

Not covered
Requisitions
by **any state**
Cl. 2-8 (c)

Not covered
Interventions
(capture at sea +
confiscation +
expropriation + similar)
by **OWN STATE**
+
overriding national
POLITICAL objective

Cl. 2-8 (b)

State interventions

Overview of cover

Marine perils

All risks

War perils

Interventions

(capture at sea + confiscation +
expropriation + similar)

by **FOREIGN STATE**

+

overriding national or supranational
POLITICAL objective

Not covered

Insolvency +
ordinary
enforcement of
debt or security
Cl. 2-9 (2) (d)

Cl. 2-9 (1)(b)

Not covered
Requisitions
by **any state**
Cl. 2-9 (2) (c)

Not covered
Use of vessel for
illegal purposes,
except owner in
good faith
Cl. 3-16

War perils

Measures
by **any state**

+

to avert or limit
damage caused by
war perils
Cl. 2-9 (1) (e)

Marine perils

Interventions

by **ANY STATE**

+

NO overriding national or supranational
POLITICAL objective

(typically police and customs enforcement
- lawful or unlawful)

Cl. 2-9 (1) (b)

Not covered
Insolvency +
ordinary
enforcement of
debt or security
Cl. 2-8 (d)

Not covered
Use of vessel for
illegal purposes,
except owner in
good faith
Cl. 3-16

Not covered
Requisitions
by **any state**
Cl. 2-8 (c)

Not covered
Interventions
(capture at sea +
confiscation +
expropriation + similar)
by **OWN STATE**
+
overriding national
POLITICAL objective

Cl. 2-8 (b)

State interventions

Overview of cover

Marine perils

All risks

War perils

Interventions
(capture at sea + confiscation + expropriation + similar)
by **FOREIGN STATE**

overriding national or supranational **POLITICAL** objective

Cl. 2-8 (a)

Not covered
Insolvency + ordinary enforcement of debt or security
Cl. 2-9 (2) (d)

Not covered
Use of vessel for **illegal purposes**, except owner in good faith
Cl. 3-16

War perils

Measures by **any state** +
to **avert or limit damage** caused by war perils
Cl. 2-9 (1) (e)

Often key issue:
Is reason for intervention
overriding national political objective?
Revised
Commentary
→ case law

Peace perils

Interventions by **OWN STATE**
national or supranational **POLITICAL** objective
for **internationally police and customs enforcement** - lawful or unlawful

Cl. 2-9 (1) (b)

Not covered
Insolvency + ordinary enforcement of debt or security
Cl. 2-8 (d)

Not covered
Use of vessel for **illegal purposes**, except owner in good faith
Cl. 3-16

Not covered
Requisitions by any state
Cl. 2-8 (c)

Not covered
Interventions (capture at sea + confiscation + expropriation + similar) by **OWN STATE** +
overriding national **POLITICAL** objective
Cl. 2-8 (b)



Tripoli, Libya



"Germa Lionel" 1984

- Lamp started blinking due to electrical failure. Libyan troops boarded, suspecting communication with groups opposed to Gaddafi. Unfounded
- Tense between Britain and Libya
- Detained 2 months – searched vessel and cargo and interrogated crew violently – one crew member died
- Arbitrator:
 - "*Similar intervention*"?
 - **Owners lost possession of vessel to a certain degree**
 - **Harsness far beyond enforcement of customs and police legislation**
 - ≡ War peril

State interventions

Overview of cover

Marine perils

All risks

War perils

Interventions
(capture at sea + confiscation +
expropriation + similar)
by **FOREIGN STATE**

+
overriding national or supranational
POLITICAL objective

"Germa Lionel"

Not covered
Insolvency +
ordinary
enforcement of
debt or security
Cl. 2-9 (2) (d)

Cl. 2-9 (1)(b)

Not covered
Requisitions
by **any state**
Cl. 2-9 (2) (c)

Not covered
Use of vessel for
illegal purposes,
except owner in
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Cl. 3-16

War perils

Measures
by **any state**
+
to **avert or limit**
damage caused by
war perils
Cl. 2-9 (1) (e)

Marine perils

Interventions
by **ANY STATE**

+
NO overriding national or supranational
POLITICAL objective

(typically police and customs enforcement
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Cl. 2-9 (1) (b)

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overriding national
POLITICAL objective
Cl. 2-8 (b)



Lagos, Nigeria



"Chemical Rubi" 1984

ND-1988-275

- Leading case
- Detained 6 months on unfounded suspicion of attempt to import contaminated soybean oil
- Arbitrator:
 - "Similar intervention"?
 - Intervention must be "**motivated by overriding political goals, typical for war and crises**, in contrast to interventions related to regulation and control of normal trade and shipping"
 - **Excessive delay not sufficient – even if abuse of authority**, when no overriding political goal
 - Here: Enforcement of Nigerian customs legislation + no overriding political goal
 - = Not war peril

State interventions

Overview of cover

Marine perils

All risks

"Chemical Rubi"

Not covered
Interventions
(capture at sea +
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Not covered
Requisitions
by **any state**
Cl. 2-8 (c)

Tunis, Tunisia



"Wildrake" 1986

- Salvaging metals from wreck north of Tunis
- Taken by Tunisian cannon boat to navy base on basis of "*suspicious activities*"
- Tense between USA and Tunisia
- Vessel searched + detained 14 days + metals confiscated. Later customs fines issued
- Average adjuster:
 - "*Capture at sea*"?
 - **Clearly exceeded measures necessary to enforce police and customs legislation and motivated primarily by political objectives related to war and crises** (allegations of smuggling made at late stage)
 - = War peril

State interventions

Overview of cover

"Wildrake"

Marine perils

All risks

"Chemical Rubi"

War perils

Interventions
(capture at sea + confiscation +
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War perils

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POLITICAL objective
Cl. 2-8 (b)



Lagos, Nigeria



"Sira" 2015

ND-2016-251

- Detained 1.5 months by NIMASA (Nigerian Marine Administration and Safety Agency)
- Pirate attack + shot fired from vessel + armed guards and British "security advisor" onboard
- Arbitrator:
 - "Similar intervention"?
 - Detained because prohibited with *foreign* security advisor
 - = Enforcement of police and customs legislation
 - Detainment abuse of power, but **not documented that overriding political goal had played a significant role in the detention**
 - = Not war peril

State interventions

Overview of cover

"Wildrake"

War perils

Interventions
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Cl. 2-9 (1) (e)

"Germa Lionel"

Marine perils

All risks

"Chemical Rubi"

"Sira"

Marine perils

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overriding national
POLITICAL objective
Cl. 2-8 (b)

Lagos, Nigeria



"Team Tango" 2016

- Detained 2 years and 5 months
- Arrived with cargo of fertilizer containing urea
- Urea used by Boko Haram to create bombs – hostile to regime
- CTL claim
- Arbitrators:
 - "Similar intervention"?
 - **Import rules had overriding political objectives typical for war and crises**
 - **Direct cause of detention was breach of import rules** restricting import of urea
 - **Detention too remote from overriding political objectives**
 - = Not war peril



State interventions

Overview of cover

"Wildrake"

War perils

Interventions
(capture at sea + confiscation +
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War perils

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Cl. 2-9 (1) (e)

"Germa Lionel"

Marine perils

All risks

"Chemical Rubi"

"Sira"

Marine perils

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Cl. 3-16

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Requisitions
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Cl. 2-8 (c)

"Team Tango"

Not covered
Interventions
(capture at sea +
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expropriation + similar)
by **OWN STATE**
+
overriding national
POLITICAL objective

Cl. 2-8 (b)

Lake Maracaibo, Venezuela



"B Atlantic" 2007

[2018] UKSC 26

- Discovery of bags w/cocaine affixed to hull
- Detained by authorities 9 months
- Institute War Risk Clauses Hulls 1/10/83, amended
- CTL claim
- UK Supreme Court:
 - Loss not due to any person acting "*maliciously*" (war peril), because smugglers not intending to cause vessel's detention or cause it any loss or damage
 - Loss due to detention (war peril), but detention arose by reason of infringement of customs regulations (exclusion)
 - = Not war peril
- Under Nordic Plan?



State interventions

Overview of cover

"Wildrake"

War perils

Interventions
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Use of vessel for
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good faith
Cl. 3-16

Cl. 2-9 (1)(b)

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Requisitions
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War perils

Measures
by **any state**
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damage caused by
war perils
Cl. 2-9 (1) (e)

"Germa Lionel"

Marine perils

All risks

"Chemical Rubi"

"Sira"

Marine perils

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Use of vessel for
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good faith
Cl. 3-16

Not covered
Requisitions
by **any state**
Cl. 2-8 (c)

"Team Tango"

"B Atlantic"

- Position under Nordic Plan:
- Enforcement of customs regulations + no political motive
- Use of vessel for illegal purposes, but owners in good faith
- = Marine peril

Not covered
Interventions
(capture at sea +
confiscation +
expropriation + similar)
by **OWN STATE**
+
overriding national
POLITICAL objective

Cl. 2-8 (b)



AFP OR LICENSORS



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Hormuz, Iran

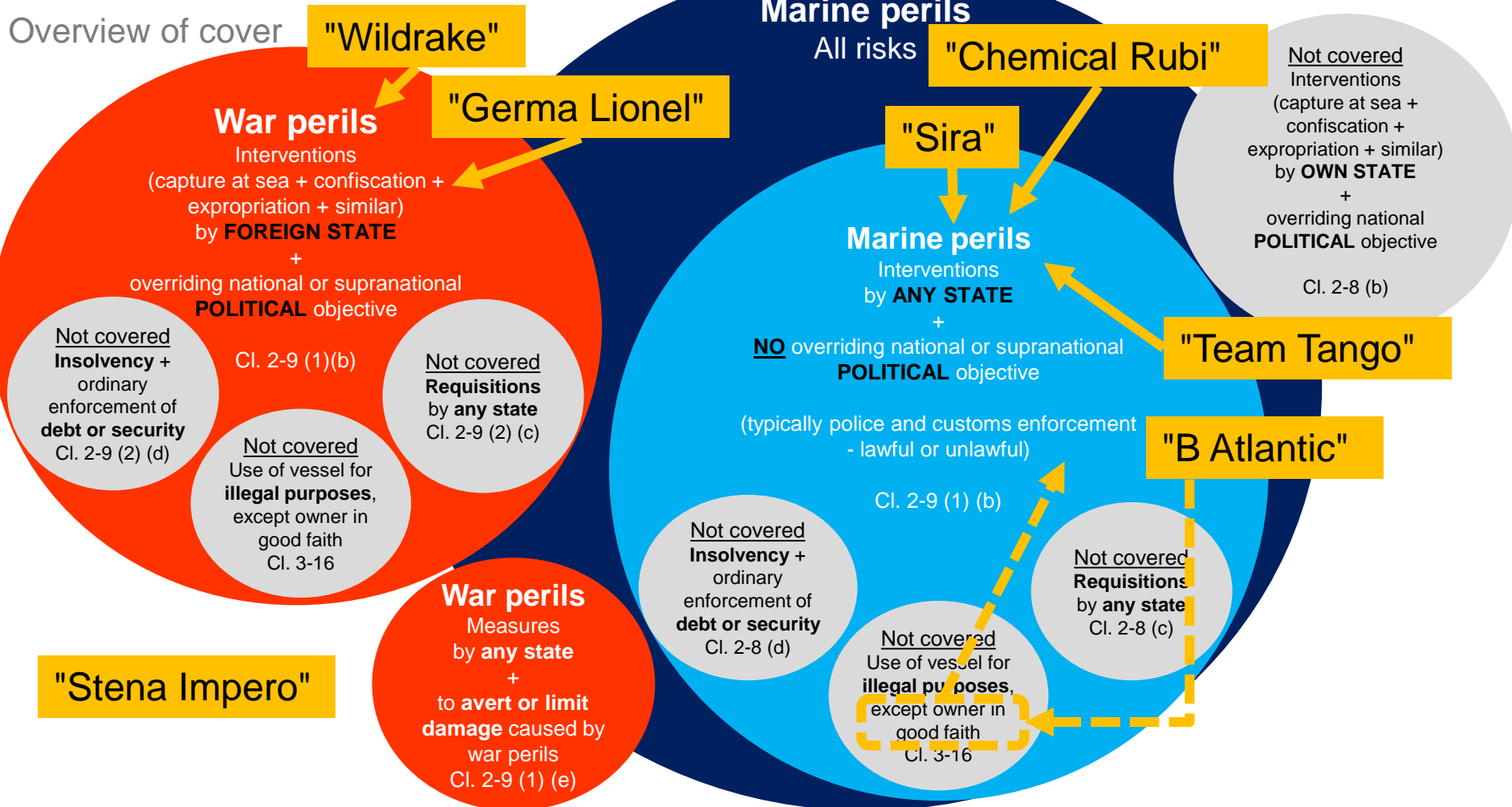


"Stena Impero" 2019

- Passing through Hormuz 19 July 2019
- Captured by Iran's Islamic Revolution Guard Corp
- Taken to Iran + detained > 2 months
- Cause?
 - Iran:
 - "Violations" committed by vessel
 - Stena Bulk:
 - No breach of maritime rules or regulations
 - UK/US and the West:
 - UK flag
 - Retaliation for "Adrian Darya-1" (ex. "Grace 1"), arrested at Gibraltar 2 weeks earlier

State interventions

Overview of cover



Thank you for your attention!



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