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**ĐIỀU KHOẢN LOẠI TRỪ VÀ NGUYÊN TẮC NGUYÊN NHÂN TRONG BẢO HIỂM
HÀNG HẢI: NGHIÊN CỨU ĐIỂN HÌNH TỪ VỤ KIẾN THE B ATLANTIC**

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Tóm tắt

Các điều khoản loại trừ và quan hệ nhân quả giữ vai trò trung tâm trong bảo hiểm hàng hải, xác định ranh giới của rủi ro được bảo hiểm khi nhiều sự kiện cùng góp phần gây ra tổn thất. Dựa trên điều khoản bảo hiểm Chiến tranh và Đình công (Institute War and Strikes Clauses), bài viết phân tích sự xung đột giữa các rủi ro được bảo hiểm và các điều khoản loại trừ thông qua vụ án Atlasnavios-Navegação, Lda v Navigators Insurance Co Ltd (The B Atlantic). Trọng tâm phân tích của bài về việc liệu hành vi buôn lậu ma túy do bên thứ ba thực hiện có cấu thành một “hành vi manh tâm” được bảo hiểm hay không, hay việc tàu bị bắt giữ sau đó thuộc phạm vi điều khoản loại trừ do vi phạm quy định hải quan. Tòa án Tối cao Vương quốc Anh đã áp dụng cách tiếp cận nghiêm ngặt, lấy hợp đồng làm trung tâm, coi các điều khoản loại trừ là bộ phận cấu thành của cơ chế phân bổ rủi ro chứ không phải là các biện hộ mang tính thứ yếu. Phán quyết này đã định hình lại

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thực tiễn tranh tụng trong lĩnh vực bảo hiểm hàng hải, củng cố việc các doanh nghiệp bảo hiểm dựa vào các điều khoản loại trừ được soạn thảo rõ ràng và thu hẹp phạm vi áp dụng của bảo hiểm đối với “hành vi manh tâm”. Bài viết xem xét những tác động của cách tiếp cận này đối với khuôn khổ bảo hiểm hàng hải của Việt Nam và đề xuất cho doanh nghiệp bảo hiểm và chủ tàu hoạt động trong các môi trường thương mại có mức độ rủi ro cao.

Từ khoá: The B Atlantic, bảo hiểm hàng hải, bảo hiểm rủi ro chiến tranh, hành vi manh tâm, điều khoản loại trừ

EXCLUSION CLAUSES AND CAUSATION IN MARINE INSURANCE: A CASE STUDY OF THE B ATLANTIC

Abstract

Exclusion clauses and the doctrine of causation are central to marine insurance, defining the boundaries of insured risk where multiple events contribute to a loss. Based on the Institute War and Strikes Clauses, this paper examines the conflict between insured perils and exclusion clauses through the case of *Atlasnavios-Navegação, Lda v Navigators Insurance Co Ltd (the B Atlantic)*. Analysis of the case focused on whether third-party drug smuggling constituted an insured “malicious act” or whether the resulting detention fell within the customs infringement exclusion. The UK Supreme Court adopted a strict, contract-centred approach, treating exclusion clauses as integral to risk allocation rather than as secondary defences. This decision has reshaped marine insurance litigation by reinforcing insurers’ reliance on clearly drafted exclusions and narrowing the practical scope of “malicious acts” cover. The report concludes by considering the implications of this approach for Vietnam’s maritime insurance framework and offering practical recommendations for insurers and shipowners operating in high-risk trading environments.

Keywords: The B Atlantic, marine insurance, war risk insurance, malicious acts, exclusion clauses

1. Introduction

Marine insurance is a crucial element to protecting shipowners against financial loss due to issues with global commerce. In most cases, protected risks and exclusions determine how effective marine Insurance is. Another important aspect in Insurance law is the determination of “cause” in determining who is legally liable for a loss when more than one event contributes to it. The Supreme Court of the UK decision in 2018, *Atlasnavios-*

Navegação, Lda v Navigators Insurance Co Ltd (the B Atlantic), provides one of the most important modern-day examples of these principles.

The case originated from a 2007 incident where the vessel The B Atlantic was found with 132kg of cocaine strapped to its hull in Venezuela. The ship was subsequently confiscated by local authorities. The owners of the ship filed a claim for recovery of their losses against their insurance under the Institute War and Strikes Clauses (Hulls-Time) and claimed that the cocaine was maliciously placed there by some individuals acting on behalf of others. However, the insurance company relied on an Exclusion Clause which allowed insurers to deny liability for losses caused by “detention... in virtue of any infringement of any customs regulations”.

This report analyzes the legal reasoning in The B Atlantic and its implications for Vietnam’s growing logistics sector. By contrasting English law with the Vietnamese Maritime Code 2015, it provides actionable risk management strategies for domestic shipowners and insurers operating in high-risk jurisdictions.

2. Literature review

2.1. Marine war risk insurance

Vicente (1995) establishes the classical foundation of marine war risk insurance by researching its historical separation from normal marine perils through the Free of Capture and Seizure (FC&S) clause and the later Institute War Clauses (Cargo). Using detailed case law analysis, the paper clarifies how courts interpret war-related perils, emphasizing that factual context and proximate cause outweigh formal declarations of war. Marine war risk insurance is excluded by default and is only introduced through narrowly drafted clauses. According to Lemon (2007), warlike conditions increase the risk beyond what standard policies can absorb, forcing separate war risk insurance to be purchased. The policies included are selective, with exclusions designed for specific regions and types of loss.

In the modern context, Ibrahim (2025) notes how traditional war risk exclusions have expanded to terrorism, sabotage, and politically motivated disruptions. The study suggests that adaptive policy wording, continuous risk monitoring, and alignment between insurance law and current realities are essential. Wahyuaristy (2025) also concludes that prolonged geopolitical disruption exposes the inadequacy of past war risk clauses and proposes that urgent modernization is needed to cover non-traditional conflicts.

2.2. Proximate cause

Umezuruike (2014) states that the doctrine of proximate cause applies differently depending on whether the insured peril is the final cause, an earlier cause, or operates concurrently with other causes. The issue of concurrent causation and the identification of the

proximate cause is a central source of dispute in insurance litigation and remains a subject of significant judicial and academic debate. After examining various cases, Manopo and Merkin (2021) concluded that the proximate cause analysis is heavily influenced by policy wording and construction, not pure causation logic. Courts may interpret the contract to define what risks are allocated or excluded from the insurer's liability instead of using an objective rule. Rejwerska (2024) highlighted the system's failings in judging concurrent causation due to the difficulty of formulating a single rule suitable for all insurance cases. Furthermore, the courts might avoid addressing these deficiencies, as overruling an existing precedent would mean suggesting a new rule to replace it.

2.3. Previous legal analysis on the hierarchy between Insured Perils and Exclusion Clauses

Legal scholarship on marine insurance has long recognised that insured perils and exclusion clauses operate within a single, integrated risk-allocation framework, rather than in a strict sequential hierarchy. Under the Marine Insurance Act 1906, the assured must establish that the loss was proximately caused by a peril insured against; however, the scope of that peril is simultaneously shaped and limited by exclusion clauses.

Traditional commentary emphasises that exclusion clauses are not merely secondary defences, but are part of the contractual definition of the risk transferred to the insurer. Bennett notes that exclusions “do not negate cover after the event, but qualify what was insured in the first place” (Padfield, A. and Harris, M., 2019). This view is reflected in judicial reasoning that coverage clauses and exclusions must be read holistically, rather than hierarchically.

English case law has reinforced this integrated approach through the causation doctrine. In *Wayne Tank and Pump Co Ltd v Employers Liability Assurance Corp Ltd* in 1973, the courts held that where a loss has two proximate causes - one insured and one excluded - the exclusion prevails (vLex, 2021). Legal analysts have interpreted this principle as effectively granting decisive weight to exclusion clauses in concurrent causation scenarios (Williams, C., 2018). As noted by Devereux Chambers, prior to *The B Atlantic*, commentary largely accepted that if an act fell within an insured peril (such as “malicious acts”), courts would then proceed to examine whether an exclusion applied. However, scholars have increasingly noted that this analytical order can be misleading, as the meaning of the insured peril is often informed by the wording of the exclusions.

Thus, pre-*B Atlantic* legal analysis generally viewed exclusion clauses as having a structural priority in practice, particularly in cases involving regulatory detention, confiscation, or breaches of customs and trading regulations - common risks in marine commerce.

2.4. Research gap

The existing body of research on the limits of exclusion clauses and the role of causation cover mostly UK case law like *The B Atlantic* (2018). These studies clarify how exclusions take precedence over the perils that may be insured by way of a hierarchical approach (for example, customs violations take precedence over crimes motivated purely by malice), while also restricting what “intent” constitutes to only those acts contemplated with malign intent. Existing studies do not examine the implications and applications of these limitations locally in emerging economies, particularly Vietnam, where the 2015 Maritime Code, while providing some framework for marine perils, is silent on providing any specific framework or guidance concerning the application of *The B Atlantic*’s causation principles for modern war risk, strike activity and breach of sanctions as a result of the booming import/export business in the country.

This report addresses the current lack of literature on these issues in Vietnam by outlining how *The B Atlantic* will apply to the particularities of Vietnam. In particular, the 2025 updates to the Maritime Code emphasise safety and environmental considerations, whilst leaving the term “infringement” without specific meaning as it relates to the exclusion clauses contained in the Institute War and Strikes Clause and used under these clauses. As such, this analysis bridges English principles with Vietnamese practices, offering tailored recommendations for shipowners facing sanctions evasion and high-risk trades in key import-export routes.

3. Theoretical framework

3.1. Marine war risks insurance

3.1.1. Concept and operational role of marine war risks insurance

Marine war-risk insurance supplements standard hull/cargo policies by expressly covering losses from warlike events. Standard London market Institute War Clauses (Hull/Cargo 1/1/09) insure physical loss or damage to the vessel or cargo caused by war-related perils. Specifically, they cover “war, civil war, revolution, rebellion, insurrection or civil strife” and any hostile acts involving a belligerent power (Roderick, 2025). They also cover consequences of these acts such as capture, seizure, arrest or detainment of the vessel (Lloyd’s Agency Department, 2019). Standard war clauses contain specific language which requires the payment of general average and salvage expenses that result from efforts to prevent or reduce such losses (Lloyd’s Market Association and International Underwriting Association of London, 2009). In practice this means that if warlike violence forces a ship to be abandoned or causes damage, the policy will indemnify the owner for the loss of the ship/cargo and any related salvage or general-average sacrifices (Roderick, 2025).

The Institute War Clauses protect against losses which result from particular war-related dangers that include military battles and public disturbances and weapon-related damage and forced possession or imprisonment. The policy also protects against general average costs and salvage expenses which occur during these events. The insurance coverage has specific boundaries because it contains direct exclusions which remove coverage for nuclear or chemical warfare and negligent unseaworthiness and piracy events although piracy still requires standard marine insurance coverage (Roderick, 2025).

3.1.2. Exclusions in marine war risks insurance

The Institute War Clauses contain particular restrictions because they exclude losses that stem from intentional actions or delayed delivery or when the insured company goes bankrupt or when radioactive or equivalent weapons are deployed. The policy exclusions function to limit war risks insurance protection only to unexpected events which can be covered by insurance but exclude business-related failures and intentional actions of the policyholder. In addition, acts of piracy are expressly excluded from the war risks regime and continue to be classified as ordinary marine perils, remaining subject to coverage under standard marine insurance policies rather than war risks insurance (Lloyd's Market Association and International Underwriting Association of London, 2009).

Because war clauses remove war-related risks from the standard marine policy, losses arising from non-war labour disturbances and political violence would otherwise fall outside cover. The Institute Strikes Clauses are therefore designed to fill this gap by insuring against losses caused by strikes, riots, terrorism, and other forms of non-war political violence. They also cover losses from politically-motivated violence: any act of terrorism by a group aiming to overthrow or influence a government (Clause 1.2), and any person acting from a political, ideological or religious motive (Clause 1.3). In short, this clause protects against social or political unrest losses that fall outside the scope of "war" as defined above (Lloyd's Market Association and International Underwriting Association of London, 2009).

The Strikes Clauses operate alongside Institute War Clauses to protect against domestic disturbances which happen on land while war risks insurance protects against military conflicts which mainly occur in naval operations. The two clauses operate together to provide complete risk protection when used in combination (Lloyd's Market Association and International Underwriting Association of London, 2009).

3.1.3. The customs infringement exclusion clause

War-risk policies typically include a Customs Infringement Exclusion, often Clause 4.1.5 of the Institute War and Strikes Clauses. The clause establishes that all losses which result

from detention by customs or trading regulations violations because of copyright infringement will be excluded from coverage (Jones, 2018). The insurance company will deny all claims when authorities seize vessels or cargo because of customs or trade law violations which include smuggling activities.

The Customs Infringement Exclusion contains the anti-illegality principle which restricts insurance coverage to unexpected events while preventing payment for activities that break the law. The clause eliminates insurance coverage for losses which result from violations of customs or trading regulations to stop war risks insurance from paying for illegal cargo or smuggling activities. The clause functions to determine both cause and risk distribution by establishing that customs violations which lead to detention will be considered the main reason for damage even when an insured war peril exists thus making the assured responsible for regulatory non-compliance risks (Jones, 2018).

3.2. Legal doctrine of causation

3.2.1. The concept of proximate cause

In marine insurance law, the concept of proximate cause plays a central role in determining the insurer's liability. As codified in the Marine Insurance Act 1906, an insurer is only liable where the loss is caused by a peril insured against. Proximate cause is defined not as the cause that occurs last in a temporal sequence, but as the dominant, effective, and operative cause that sets the loss in motion and gives it its legal character (Umezuruike, 2014). From a theoretical perspective, proximate cause functions as a legal tool for allocating risk between the insurer and the assured. Its purpose is not to identify every contributing factor of the circumstance, but to isolate the cause that the parties intended to treat as legally decisive under the insurance contract. As such, the doctrine serves to translate factual events into legal responsibility within the framework of the policy.

Determining the proximate cause is not simply a factual or scientific exercise concerned with tracing physical cause and effect. Instead, it is primarily a matter of interpreting the insurance contract. In other words, rather than relying on a strict causal formula, courts concentrate on the wording of the policy to identify which risks are covered and which have been expressly excluded. Courts do not rely on a strict causal formula, but focus on the wording of the policy to decide which risks are covered and which have been expressly excluded (Manopo and Merkin, 2021).

3.2.2. The Wayne Tank principle and concurrent causes

The case of *Wayne Tank and Pump Co Ltd v Employers Liability Assurance Corp Ltd* (1974) established a fundamental principle applicable to losses arising from concurrent causes.

Under this principle, if a loss results from two effective causes operating at the same time, and one of those causes is covered by the insurance while the other is expressly excluded under the policy, the exclusion will take priority. As a result, the insurer will not be required to indemnify the loss.

The Wayne Tank principle reflects an approach that treats exclusion clauses as an integral part of the definition of the insured risk, rather than as a defensive mechanism applied after a loss has occurred. Accordingly, in cases involving competing causes, the determination of insurance liability does not depend on weighing the physical contribution of each cause. Instead, it primarily depends on how the insurance contract has allocated risk between the parties from the outset (Bannermans, 2023).

3.2.3. Implications for marine insurance disputes

In modern marine insurance practice, particularly in disputes involving war risks, detention, malicious acts, and breaches of regulatory requirements, losses often arise from a combination of different causes. Academic analysis indicates that in such situations, courts tend to focus on identifying the dominant and most effective cause as the proximate cause, which then determines whether a valid claim for indemnity exists. Where the dominant cause falls outside the scope of the insured risks or is subject to an exclusion under the policy, the claim may be denied (Rejwerska, 2024).

This approach provides the legal foundation for decisions such as *The B Atlantic*, in which the court held that the existence of a breach of customs regulations was sufficient to trigger the relevant exclusion clause, even though the conduct leading to the breach may have originated from a third party. Accordingly, the doctrine of proximate cause continues to play a central role in defining the boundaries of insurers' liability in international marine commerce.

3.3. Principles of contractual interpretation

3.3.1. Strict construction of exclusion clauses

Exclusion clauses function to limit the scope of the insurer's liability by removing specific risks that would otherwise be covered under the policy (Soyer, 2021). Due to their nature of restricting coverage, English courts have historically applied the principle of construction *contra proferentem* (a legal doctrine in contract law which states that any ambiguity in a contract's wording must be interpreted against the party that drafted it). This maxim dictates that in cases of ambiguity, the contract wording should be construed against the party that drafted it, typically the insurer (Clarke, 2019).

However, in modern commercial marine insurance, the strict application of *contra proferentem* has evolved. As noted by the Supreme Court in *Impact Funding Solutions Ltd v*

AIG Europe Insurance Ltd (2016), the primary aim is to ascertain the objective meaning of the language used by the parties. Nevertheless, the principle remains that for an exclusion clause to be effective, its wording must be clear and unambiguous in its intent to remove liability for a specific proximate cause. If the language of an exclusion clause is ambiguous, the courts will likely interpret it in a way that preserves the indemnity for the assured (Merkin et al., 2022).

This principle is vital when analysing the interplay between standard war risk clauses and specific exclusions like the customs infringement clause. The court must determine whether the exclusion was intended by the parties to override the primary coverage for malicious acts, requiring a precise analysis of the text's natural meaning within the commercial context of the shipping industry.

3.3.2. The burden of proof in marine insurance

The allocation of the burden of proof is a procedural mechanism that often determines the outcome of marine insurance disputes. The standard of proof in civil cases, including marine insurance, is the balance of probabilities (Rose, 2012).

The burden of proof operates in a two-stage process:

1) The assured's burden: It is a fundamental principle established in *Rhesa Shipping Co SA v Edmunds (The Popi M)* [1985] that the burden lies initially with the shipowner (the assured) to prove that the loss was proximately caused by a peril insured against (e.g. a "malicious act"). The assured must provide sufficient evidence to convince the court that the occurrence of the insured peril is more probable than not.

2) The insurer's burden: Once the assured has established a prima facie case that the loss falls within the policy cover, the burden shifts to the insurer. To decline liability, the insurer must prove that an exclusion clause applies to the facts of the case. As highlighted in *The B Atlantic* proceedings, if the insurer intends to rely on a specific exclusion (such as loss arising from detainment due to customs infringement), they must positively prove that the proximate cause of the loss falls squarely within that exclusion (UKSC, 2018).

This distinction is crucial in cases involving concurrent causes. If the court finds that the loss was caused by two dominant causes, one insured and one excluded, the established rule in *Wayne Tank and Pump Co Ltd v Employers Liability Assurance Corp Ltd* [1974] dictates that the exclusion prevails, and the insurer is not liable.

4. Case analysis: The B Atlantic

4.1. Factual matrix

4.1.1. The vessel's operation and the discovery of cocaine in Venezuela

The B Atlantic, a Liberian-flagged dry bulk carrier owned by Atlasnavios-Navegacao Lda (formerly Banavios-Navegacao Lda), routinely transported coal through high-risk Venezuelan waters when cocaine was discovered on its hull, resulting in a dispute concerning insurance coverage. According to UKSC (2018), this occurred during standard loading operations at Palmarejo port in Lake Maracaibo. Court records detail the precise sequence of events, emphasizing routine procedures in a notorious drug transit hub.

Vessel operations

The B Atlantic had loaded over 33,000 tons of coal in Lake Maracaibo, Venezuela, specifically at the port of Palmarejo, for discharge in Vado Ligure, Italy, as part of its regular transatlantic voyage schedule. According to Flaux J's High Court judgment in *vLex* (2019), loading was completed on 13 August 2007, after which the vessel underwent a standard underwater inspection by divers prior to departure. This routine procedure, common in Venezuelan ports amid drug smuggling concerns, revealed the contraband and halted operations immediately.

Cocaine discovery details

On 13 August 2007, divers found three plastic-wrapped packages totaling 129.6 kg of cocaine strapped to the hull near the rudder, 10 meters underwater, likely placed by unidentified smugglers using scuba gear. According to *vLex* case report (2019), this breached Venezuela's 2005 Anti-Drug Law Article 31 as a customs violation, with no owner or crew involvement proven. *FreightWaves* (2020) notes the drugs' positioning evaded port scanners, highlighting sophisticated third-party placement during the vessel's brief anchorage.

4.1.2. The sequence of events

Detention and confiscation

On 16 August 2007, the vessel was detained, along with the arrest of the crew. Venezuelan prosecutors subsequently charged the Master and the Second Officer with complicity in drug smuggling, with charges brought on 31 October 2007. The vessel then remained under detention for an extended and undefined period and in September 2009, the owners abandoned the vessel to the Venezuelan court. It was not until August 2010 that the authorities finally confiscated the vessel following the court's order (Gorrard-Smith, 2015; *vLex*, 2019).

Constructive total loss

Separately, on 18 June 2008, the owners served a Notice of Abandonment on their war risks insurers, seeking recovery on the basis of a constructive total loss together with sue and labour expenses. The owners pursued the claim under their war risks policy, which

incorporated the Institute War and Strikes Clauses as amended (Freuling, 2019). According to UKSC (2018), the key provisions include:

Clause 1: PERILS

Subject always to the exclusions hereinafter referred to, this insurance covers loss of or damage to the Vessel caused by...

1.2: capture seizure arrest restraint or detainment, and consequences thereof or any attempt thereat...

1.5: any terrorist or any person acting maliciously or from a political motive...

1.6: confiscation or expropriation.

Clause 3: DETAINMENT

In the event the Vessel shall have been the subject of capture seizure arrest detainment confiscation or expropriation, and the Assured shall thereby have lost the free use and disposal of the Vessel for a continuous period of [6] months then for the purpose of ascertaining whether the Vessel is a constructive total loss the Assured shall be deemed to have been deprived of the possession of the Vessel without any likelihood of recovery.

Clause 4.1.5: EXCLUSIONS

This insurance excludes...arrest, restraint, detainment, confiscation or expropriation...by reason of infringement of any customs or trading regulations...

4.2. The dispute: “Malicious Acts” vs. “Customs Infringement”

4.2.1. The insured peril: Interpretation of “Malicious Acts”

In marine insurance, particularly under the Institute War and Strikes Clauses, “malicious acts” are recognised as an insured peril where the loss results from a deliberate and malicious act committed by a third party. However, both case law and academic commentary consistently emphasise that the “malicious” character of an act depends not only on its illegality, but on the intention of the person committing the act (Merkin and Gürses, 2019).

According to UKSC (2018), the shipowner contended that the act of smugglers clandestinely attaching cocaine to the vessel’s hull fell within the scope of Clause 1.5 of the Institute War and Strikes Clauses, namely “malicious acts”, as it ultimately led to the vessel’s detention and confiscation, causing substantial loss to the insured. This argument, however, was rejected by the UK Supreme Court.

The Court held that an act can only be regarded as “malicious” under a marine insurance policy if the person committing it intended to cause direct damage to the vessel, the cargo, or the insured’s interests. In the present case, the smugglers’ objective was not to damage the vessel or harm the shipowner, but rather to transport the drugs successfully without detection.

The subsequent arrest and confiscation of the vessel were unintended legal consequences of their conduct, rather than the result of a deliberate intention to harm (UK Supreme Court, 2018).

Accordingly, although the smuggling was intentional and unlawful, it did not satisfy the legal requirement of malice under the insurance clause. As a result, it could not be treated as an insured peril within the scope of the “malicious acts” provision. This interpretation reflects the consistent approach of English courts in confining insurance cover so as not to extend to opportunistic criminal acts that are not aimed at causing direct damage to the insured subject matter.

4.2.2. The exclusion clause application

The Institute War and Strikes Clauses (1/10/83) expressly exclude “arrest, restraint, detention, confiscation or expropriation under quarantine regulations or by reason of infringement of any customs or trading regulations” (Legalseas, 2018). The policy fails to protect against losses, which occur when authorities confiscate ships because of customs law breaches that involve smuggling operations. In *B Atlantic*, the ship was detained in Venezuela after authorities found smuggled cocaine on board. Although the insurers conceded (and the parties agreed) that this detention amounted to a constructive total loss of the vessel, they denied indemnity on the basis of Clause 4.1.5; instead, the detention was “by reason of infringement of customs regulations” (Jones, 2018).

Clause 4.1.5 excluded from cover “any loss, damage, liability or expense arising from ... arrest... by reason of infringement of any customs or trading regulations”. The policy includes this exclusion to protect against any detention that results from customs violations, even when another covered risk exists (Legalseas, 2018).

The Court of Appeal established that the written document contained direct evidence that proved the smuggling operations. As the notes included that the policy stated insured perils were “subject always to the exclusions”, there was no room to carve out a special exception for third-party misdeeds. According to the Court, drug discoveries represent the clearest example of customs violations, although smuggling does not always result in detention. The court established that Clause 4.1.5 required no restrictions because of its particular wording. This clause was also set to continue to ban customs detention regardless of who triggers the need for detention. Then, the standard rule of causation was applied to determine that when a loss has two nearby causes, which include an insured element (the malicious act) and an excluded element (customs detention), the excluded cause will take effect (Jones, 2018).

The Supreme Court agreed that Clause 4.1.5 clearly covered this scenario. Lord Mance held there was “no apparent basis” for implying an exception allowing malicious third-party

acts to fall outside the exclusion. In fact, the Court read Clause 4.1.5 as cutting back cover in exactly the same way it does in other insuring clauses, including Clause 1.5 (malicious acts). Notably, the Court cited *Panamanian Oriental Steamship Corp v Wright (The Anita)*, confirming that smuggling is simply an “infringement of customs regulations”, and there is “no distinction” between the two (Legalseas, 2018). In short, the very act of strapping cocaine to the hull was itself a customs violation triggering the exclusion (Jones, 2018).

The Court undertook a detailed causation analysis in stages. First, it rejected that the drug-smuggling was a malicious act under clause 1.5. Second, it recognized that the loss occurred through the vessel’s detention (and six-month custody) by Venezuelan authorities. Third, it asked: was this detention “by reason of infringement of customs regulations” under 4.1.5, the answer to which was yes. Consistent with *The Anita* and later authority, the detention was the direct and immediate cause of the loss. The smugglers’ act created the liability, but “the seizure... was the effective act towards confiscation, and the direct and immediate cause of the loss”. The Supreme Court saw no room to dismiss the seizure as a mere “incident” of smuggling, just as in *Cory v Burr* (1883), it was held that the Spanish officers’ seizure (enforcing revenue law) was the cause of loss, not the captain’s underlying barratry (UKSC, 2018).

Following *Cory v Burr*, the Court treated the loss as having two concurrent causes: the malicious act and the detention. Lord Mance preferred Lord Blackburn’s analysis in *Cory*, viewing both causes as running together. Because one of those causes (the detention under customs law) fell squarely within the exclusion, the entire loss was excluded. As the Supreme Court concluded: “It was the combination of the two causes that was fatal. The seizure and detainment arose from the excluded peril of infringement of customs regulations, and the owners’ claim fails.” (UKSC, 2018).

In summary, the exclusion clause operated fully in *B Atlantic*. The drug-smuggling incident, though malicious, was legally an infringement of customs law; the subsequent detention was therefore “by reason of” that infringement and falls within 4.1.5. Both the Court of Appeal and the Supreme Court emphasized that neither policy language nor causation analysis supports a special carve-out for such cases. As a result, the war-risk policy did not cover the vessel’s detention and loss in *B Atlantic*, because the loss arose from an excepted (customs-related) peril (UKSC, 2018).

4.3. The UK Supreme court’s decision

The Supreme Court issued its decision through UKSC (2018) to define essential rules which explain how marine war risk insurance perils affect exclusion clauses. Lord Mance

delivered the main judgment which reversed the Court of Appeal decision to support the insurers through strict application of causation rules.

4.3.1. Judicial reasoning on the definition of “malicious act”

The Supreme Court solved this interpretive problem by using functional methods. Lord Mance accepted, albeit without needing to define the outer limits of the term, that the smuggling operation could technically fall within the definition of a “malicious act” or “vandalism” because it involved tampering with the vessel in a manner that exposed it to the risk of forfeiture (UKSC, 2018). However, the Court moved beyond the the abstract definitional scope of “malicious act” to focus on the functional context of the policy. The Court determined that the defendant committed malicious actions because he wanted to move prohibited items. The event required more than a malicious act designation because Soyer (2021) established that it broke all customs regulations.

4.3.2. The court’s analysis on causation: determining the true proximate cause

The crux of the Supreme Court’s decision lay in the analysis of the proximate cause of the loss (the Constructive Total Loss of the vessel). The Court needed to decide between the insured risk of smuggling through malicious actions and the exclusion provision which applied to cases of customs violations leading to detention.

Lord Mance rejected the “concurrent causes” argument favored by the lower courts, which had suggested that if one cause is covered and the other excluded, the exclusion prevails based on the Wayne Tank principle. Instead, the Supreme Court adopted a more nuanced inquiry into the “real efficient cause” of the loss (UKSC, 2018).

The Court established that the malicious act which involved smuggling and the customs infringement which led to detention operated as a single combined force. The two sets of information presented the same set of facts which lawyers examined through their individual legal approaches. The loss happened because Venezuelan authorities dedicated their efforts to drug detection instead of dealing with the actual drugs which did not cause any physical damage (Clarke, 2019). The direct reason which led to the vessel confiscation involved a violation of customs regulations. The illegal operation served as a copyright infringement tool which caused the most financial damage.

4.3.3. Final ruling: the primacy of the Exclusion Clause over the Insured Peril

The Supreme Court made a decision which supported the insurers when they determined that Clause 4.1.5 exclusion applied because of customs or quarantine regulations infringement.

The insurance contract received its legal basis from the structural interpretation method. The Court established that exclusion clauses function to establish the boundaries which define the insurance coverage that parties have agreed to. Lord Mance articulated that allowing the malicious acts cover to override the specific customs infringement exclusion would render the latter legally redundant. The court stated that this interpretation would nullify the clause because drug trafficking represented the exact situation which the law intended to prevent (UKSC, 2018).

Thus, the final ruling established that where an exclusion clause is drafted to target a specific type of loss (detention due to smuggling), it qualifies the broad language of the insured perils. The insurers needed to deny shipowner requests for indemnification because The B Atlantic shipowners needed to take full responsibility for their vessel's involvement in illegal activities (Rainey, 2019).

5. Practical application and implications for Vietnam

5.1. The context of Vietnam's maritime industry

5.1.1. Vietnam's maritime growth and emerging security vulnerabilities

The global supply chain now depends on Vietnam because the country has become a vital connection point which resulted from manufacturing relocation from established production centers and its successful export-based economic model. The World Bank (2023) demonstrates Vietnam achieved major improvements in logistics performance which made it a leading emerging market for logistics business development. The 3,260 kilometers of Vietnamese coastline enables access to vital deep-water ports which include Cai Mep - Thi Vai and Lach Huyen ports that serve as vital entry points for Pacific and Asian trade routes (Agility, 2024).

The maritime sector faces increasing illegal activities because its container traffic and vessel numbers have expanded at a rapid rate. The United Nations Office on Drugs and Crime (UNODC, 2023) has recognized Southeast Asia together with Vietnam as an increasing hub for international organized crime operations. The location near the "Golden Triangle" drug production areas together with large amounts of authorized shipments makes it easy for criminals to hide their illegal drugs.

5.1.2. Current practices of Vietnamese insurers: adoption of English law standards

The Vietnamese marine insurance market is characterized by a high degree of integration with international standards, specifically English law and practice. Due to the global nature of shipping and the requirements of the international reinsurance market, domestic insurers such as Bao Viet, PVI, and Bao Minh almost universally adopt the standard Institute

Clauses (e.g, Institute War and Strikes Clauses) drafted by the International Underwriting Association of London (Dang and Soyer, 2021).

While the Vietnam Maritime Code 2015 serves as the primary statutory framework, Article 306 allows parties to a marine insurance contract to apply international commercial customs, provided they do not contravene fundamental principles of Vietnamese law (Quốc hội, 2015). Consequently, Vietnamese policies are typically subject to English law and practice.

This adoption creates a direct legal linkage to rulings such as *The B Atlantic*. Although Vietnamese courts are not strictly bound by the doctrine of *stare decisis* (precedent) regarding foreign judgments, the interpretation of standard contract terms is heavily influenced by English judicial reasoning. As noted by legal practitioners in Vietnam, when a policy uses the exact wording of the Institute Clauses, the meaning ascribed to terms like “malicious act” or “customs infringement” by the UK Supreme Court becomes a reference point for coverage disputes in Vietnam (VILAF, 2022). Therefore, the rigorous application of exclusion clauses seen in *The B Atlantic* is likely to be mirrored in domestic arbitration or litigation, potentially leaving Vietnamese shipowners exposed if they rely solely on standard war risk cover without understanding the primacy of exclusions.

5.2. Legal implications for Vietnamese insurers and shipowners

5.2.1. Exclusions under Vietnamese Maritime Code 2015 and English Law in The B Atlantic

Under the Vietnamese Maritime Code (2015), default exclusions are statutorily defined. Although Article 303 broadly categorizes war, piracy and government seizures as “maritime perils” (National Assembly of Vietnam, 2015), Article 325 specifically exempts insurers from liability for losses arising from war or “detention... by competent state agencies” unless the contract explicitly states otherwise. This creates a statutory presumption that government detention is excluded absent a specific war-risk extension. Furthermore, Vietnam’s Insurance Law mandates that exclusion clauses be clearly explained, with any remaining ambiguity resolved in the insured’s favor.

In summary, Vietnam’s system is highly codified: ambiguous terms benefit the insured, and exclusions are mostly listed by law (with contractual freedom to only expand, not narrow, them). English law, on the other hand, is interpretive and contract-driven. It was up to the English courts to determine which clause applied. The Supreme Court placed a strong emphasis on causality and context. Thus, English law here focused on policy wording and causation rather than a preset statutory list. Clear exclusions in the contract determined the outcome.

Statutory and contractual exclusions

Excluded perils (such as war, requisition, and detention by authorities) are detailed in Vietnam’s Maritime Code (National Assembly, 2018). By default, a Vietnamese hull policy will not cover things like war or government seizure unless specifically stated. Coverage and exclusions in England are determined by the agreed-upon insurance clauses; there is no statutory list. The B Atlantic demonstrates how the war-risk policy’s narrowly worded exclusion (referred to as “customs infringement”) was crucial. While English insurers rely on standard clause wording and judicial interpretation in the event of a dispute (Legalseas, 2018), Vietnamese insurers are required by law to explicitly state exclusions (National Assembly, 2018).

Scope of covered perils

Article 303 of the Vietnamese Code defines “maritime perils” very broadly, including “illegal acts” (National Assembly of the Socialist Republic of Vietnam, 2015). However, Article 325 makes extensive exceptions for losses resulting from civil unrest, war, requisition, state detention (National Assembly, 2018). Clause 1.2 of the B Atlantic policy covered detention, while clause 1.5 covered malicious acts. However, clause 4.1.5 of the policy distinguished detentions related to customs. In the end, both systems treated government detention as outside coverage unless specifically insured. But while English law required interpreting the particular exclusion clause in context, Vietnamese law does so by default statute (Legalseas, 2018).

Interpretation and causation

In accordance with English law, the court uses the proximate-cause test and interprets “malicious act” in context. The Supreme Court observed that the exclusion prevents recovery if an insured peril and an excluded peril coincide (Legalseas, 2018). Although “proximate cause” is not used specifically in Vietnamese law, Article 323(1) states that the insurer will cover “losses resulting directly from the peril insured”. In actuality, a Vietnamese court would likewise demand that the loss occur immediately after an agreed-upon danger. A loss brought on by state detention (as in B Atlantic) would be clearly excluded by statute because Article 325 then lists all non-covered events in detail, drawing the need for a nuanced intent analysis (National Assembly, 2018).

Ambiguities and consumer protection

Insurance companies are shielded from “small print” by both systems. Clear exclusion clauses are required by Vietnam’s Insurance Law, which applies to marine policies and resolves any ambiguity against the insurer. In a similar way, unclear exclusion terms are interpreted *contra proferentem* under English common law. Vietnam’s rule would therefore favor the

shipowner's interpretation if an exclusion were ambiguous. However, the exclusion language in *The B Atlantic* was sufficiently explicit for the court to apply it exactly as written. Vietnamese insurers are required to disclose any exclusions up front, which may make it more difficult for careless insureds to overlook broad exclusions (National Assembly, 2018).

Practical consequences

In practice, a Vietnamese shipowner trading in high-risk regions faces gaps similar to those in *B Atlantic*. Under Vietnamese law, without an agreed war-risk extension, the insurer would not cover detention by customs or similar government action. Even with a war-risk add-on, insurers typically exclude drug-related detentions unless explicitly included (National Assembly, 2018). *The B Atlantic* highlights that under English law a war-risk cover with a customs exclusion was held to bar recovery. Owners and insurers in Vietnam must therefore carefully negotiate and explicitly extend cover to such risks if desired, since the Code's default position is exclusion. In contrast, English law provides more room to contest an exclusion's application (as seen on appeal), but ultimately upheld the exclusion in *B Atlantic* too (Legalseas, 2018).

5.2.2. Risk exposure for Vietnamese shipowners trading to high-risk areas (South America, etc.)

In marine insurance practice, high-risk areas are maritime zones where insurers assess an elevated probability of loss due to piracy, armed robbery, political instability, or war-related events, leading to the application of exclusion clauses, additional premiums, or special notification requirements. According to Singapore War Risk Mutual (2026), these areas are designated by underwriters and updated based on incident data and geopolitical developments. Industry guidance confirms that insurers typically require prior notice and impose Additional Premiums (APs) when vessels enter such areas, failing which coverage may be excluded.

Examples of relevant high-risk zones include:

- South America (e.g., Callao anchorage in Peru)
- Venezuela and its territorial waters (including Lake Maracaibo and offshore terminals)
- Gulf of Guinea, Gulf of Aden, and Red Sea
- Singapore and Malacca Straits

Security and geopolitical risks

Drug trafficking by organized crime: Organized crime groups have been using commercial vessels that transit through South American ports (Colombia, Ecuador, Brazil) as "mules" for drug canisters for some time now. Criminal organizations can use divers to attach

canisters to the hull or place “parasite” devices on the rudder. Because the purpose of these activities is to smuggle drugs instead of damaging the vessel, even if considered a malicious act, the exclusion for customs infringement takes precedence (Windward Maritime AI, 2026). Geopolitical relations and sanctions: Currently, Vietnamese shipping companies are increasingly losing their vessels as a result of U.S. and European Union enforcement of maritime laws against them. As of 2026, Vietnamese companies that trade near certain places (including Venezuela) could potentially be labelled "Shadow Fleets" and placed on blacklists, subject to immediate suspension of payments and loss of protection and indemnity (P&I) insurance (ShipUniverse, 2026).

Operational and human resource risks

The “due diligence” burden: In many South American ports, Underwater Inspections (UWI) by divers are now mandatory or strongly recommended before departure. For a Vietnamese operator, failure to hire certified private security or divers to check the rudder trunk could be interpreted as a failure to mitigate risk, further jeopardizing any potential insurance claim (CICAD, 2025). To avoid claim denials, Vietnamese shipowners must document “extraordinary measures” to prevent smuggling, such as deploying private security divers and ROVs for comprehensive hull verifications.

Human error and complicity: Even if the owner is innocent, a single crew member bribed by a cartel can trigger a total loss of the vessel. Under current English law standards, a crew member’s involvement - whether forced or voluntary - can void the ship’s war risk coverage.

Legal and regulatory risks

Concurrent causation: The B Atlantic case established that when a claim for loss occurs as a result of both an included peril (the intentional act of concealing the merchandise) and an excluded peril (the violation of customs law), the excluded peril will prevail. This result means that Vietnamese shipowners are essentially not insured against the seizure of their vessels for actions taken by a third party.

Seafarer criminalization: As discussed, the risk of the Master and Officers being imprisoned without proof of intent is a severe legal exposure. Tatham Macinnes (2018) highlights that local laws in high-risk zones often follow a “presumption of guilt” for the commanding officers of a vessel carrying illicit cargo.

Social and economic risks

Economic Total Loss (CTL): A shipowner loses not just the vessel, but the daily revenue (hire) and the massive legal fees required to fight a foreign government. In The B

Atlantic, the owner lost the entire value of the ship because they could not recover it from the Venezuelan government or their insurer (Marsh, 2016). Vietnamese shipowners trading to high-risk hubs like Santos (Brazil) or Guayaquil (Ecuador) - where record seizures of over 250 tons were reported in 2024 (RMI, 2025) - could lose a multimillion-dollar asset with zero compensation from traditional war risk insurers

Crew shortage: The fear of criminalization makes it increasingly difficult for Vietnamese companies to recruit high-quality seafarers for South American routes. This “social risk” can lead to higher wages for “danger zones”, further thinning the profit margins of Vietnamese shipping firms.

5.3. Recommendations

5.3.1. For Vietnamese insurers

First, Vietnamese insurers should clarify and standardise the interpretation of insured perils, particularly the concept of “malicious acts” in marine insurance contracts governed by international practice. The decision in UKSC (2018) shows that English courts interpret the term “malicious” narrowly, requiring proof that the person committing the act intended to cause direct damage to the vessel, the cargo, or the insured’s property interests (UK Supreme Court, 2018).

In Vietnam, marine insurance contracts commonly rely on the Institute Clauses as drafted under English law. However, using these clauses without providing clear interpretative guidance can lead to misunderstandings and disputes. Academic commentary identifies the unclear interpretation of exclusion clauses as a key driver of marine insurance disputes (Bennett, 2006). Accordingly, Vietnamese insurers should:

- Incorporate interpretation clauses or explanatory provisions clarifying the scope of cover in line with established English law interpretations within insurance contracts;
- Issue internal guidelines or underwriting manuals on the application of key concepts such as “malicious acts”, particularly in cases involving smuggling, transnational organised crime, or the conduct of third parties, emphasising the narrow, intention-based meaning of “malicious acts”.

Furthermore, Vietnamese insurers should expressly standardise the drafting and application of exclusion clauses, particularly those relating to customs infringements and governmental actions. Policies must explicitly state that coverage is denied if an excluded peril is the dominant cause, regardless of concurrent insured perils. This alignment with English jurisprudence would reduce ambiguity and mitigate disputes over causation.

In addition, Vietnamese insurers should consider developing or distributing supplementary insurance products, such as Political Violence (PV) insurance, to address coverage gaps that cannot be effectively filled by traditional Hull or War Risks policies. While Hull insurance focuses on physical loss or damage and War Risks insurance remains subject to strict exclusions for customs infringements and governmental actions, PV insurance is specifically designed to respond to losses arising from politically motivated violence, state intervention, and security-related detentions, thereby providing a more targeted solution for risks.

5.3.2. For Vietnamese shipowners

For Vietnamese shipowners, *The B Atlantic* illustrates a systemic risk: even where the shipowner is entirely free from fault, serious legal and financial consequences may still arise from the unlawful conduct of third parties. The UK Supreme Court confirmed that losses resulting from the detention or confiscation of a vessel for customs violations will not constitute losses caused by “malicious acts” in the absence of an intention to cause direct harm, notwithstanding the intentional and unlawful nature of the underlying conduct (UK Supreme Court, 2018).

In this context, Vietnamese shipowners should not rely solely on standard marine insurance policies, but should carefully assess the actual scope of cover, particularly exclusion clauses relating to war risks, governmental actions, and customs infringements.

Vietnamese shipowners should also strengthen operational risk management when trading in high-risk areas. Industry research indicates that measures such as regular hull inspections, detailed compliance record-keeping, and the implementation of enhanced security procedures not only reduce the likelihood of loss in practice, but also play a critical role in demonstrating due diligence and protecting the shipowner’s position in insurance disputes (Bennett, 2006). If necessary, shipowners should consider purchasing supplementary insurance products or endorsements covering detention, confiscation, or business interruption.

In addition, Vietnamese shipowners should recognise that the risks illustrated by *The B Atlantic* are not limited to insurance coverage, but also involve broader security and geopolitical factors. Measures such as compliance monitoring, improved security procedures, and close coordination with local agents and port authorities can help reduce the likelihood of detention and demonstrate due diligence in potential insurance disputes.

5.3.3. For Vietnamese lawmakers and regulatory authorities

From a regulatory perspective, the case suggests the need for clearer legal guidance in Vietnam regarding the identification and interpretation of insured perils in insurance contracts.

Although the Law on Insurance Business provides the general legal framework for insurance activities, it does not provide detailed guidance on how specific risks or exclusion clauses should be interpreted in practice, particularly in specialised sectors such as marine insurance.

Therefore, Vietnamese lawmakers and regulatory authorities should consider providing more detailed regulations or interpretative guidelines on the classification and scope of insurable risks in insurance contracts. Clearer legal standards regarding the definition of insured perils, exclusion clauses, and causation principles would help ensure greater legal certainty and reduce disputes between insurers and policyholders.

In addition, regulatory bodies may encourage the development of standard contract terms or model clauses consistent with international practice. Such standardisation would not only enhance transparency in the insurance market but also facilitate better alignment between Vietnamese insurance law and widely accepted international principles in marine insurance.

6. Conclusion

The decision in *The B Atlantic* represents a decisive clarification of how exclusion clauses and causation operate in modern marine insurance law. The UK Supreme Court confirmed that exclusion clauses are not subordinate to insured perils but form part of the contractual definition of risk itself. Even when there is an insured peril, such as a “malicious act”, recovery will fail if the proximate cause of the loss falls within a clearly drafted exclusion, in this case, detention arising from customs infringements. This case shows that courts may prioritise the wording of the policy over broader moral or fault considerations, leaving shipowners exposed to losses triggered by third-party criminal conduct.

From a broader perspective, *The B Atlantic* illustrates the limits of war risk and strikes cover in addressing regulatory and compliance breaches. The ruling reinforces a model of risk allocation in which shipowners, rather than insurers, bear the consequences of customs and sanctions violations, regardless of intent or knowledge. For Vietnam, where marine insurance contracts routinely adopt English law clauses, the case has direct practical relevance. The Vietnamese Maritime Code’s largely codified exclusions may lead to outcomes similar to *The B Atlantic*, but without the interpretative flexibility of English law.

The report highlights the need for increased contractual awareness and proactive risk management. Vietnamese insurers must clarify the scope and effect of exclusions, while shipowners trading to high-risk regions must recognise that standard war risk cover offers limited protection against detention and confiscation. Without targeted extensions or supplementary insurance, losses akin to *The B Atlantic* remain a significant and largely uninsured commercial risk.

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