

# DABELSTEIN & PASSEHL

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Date	Hamburg, 08 December 2011
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Dear Kiran,  
Gentlemen,

### **Joint workshop of the International Institute for Strategic Studies and the United Nations Panel of Experts on Iran, Istanbul, 17-18 November 2011**

I refer to our exchanges on the above subject in October and November and inform you that I participated as a representative of the International Union of Marine Insurance in the above mentioned workshop in Istanbul.

As promised hereby I give you a short summary of the workshop.

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The workshop was attended by some fifty delegates, including four members of the UN Panel of Experts. The other participants mainly consisted of diplomats or representatives of public authorities including a US National Security Council member, a Senior Advisor to the Director of the Office of Foreign Assets Control (OFAC) of the US Treasury Department and a representative of the European External Action Service, Sanctions Division, of the European Union. Given the location of the workshop, there was a significant number of Turkish attendants. Many other members came from the region. A total of five representatives from Turkish banks were attending. Apart from them and me the only representative of the industries was Ms Justine Walker, Director Financial Crime of the British Bankers Association.

I delivered a presentation on problems for insurers and shipowners in Session 3 (“Sanctions implementation in key industries – finance and transport”).

I started off by explaining that for the industries United Nations Security Council resolutions generally are not of direct relevance, because the resolutions address member states of the UN but not companies or individuals. What the industries, thus, usually are concerned with, are national or regional enactments like CISADA 2010 or European Union resolutions.

Those enactments affect the shipping and the insurance industry in different ways. The time available for my presentation, about 15 minutes, allowed only addressing examples.

The first aspect I touched was identification of transport of listed goods and material. I explained to the attendants that transport in practice is a multi-layered business, in which many different parties are involved, out of which usually only one has direct contact to the shipper of the goods. For all other participants in the logistic chain it would be more or less difficult to get information of the exact identity of the cargo carried. This would apply in particular for shipowners, who are usually the last in the chain and, if they have chartered their vessel out on time basis, have very limited opportunities of finding out what kind of cargo actually finds its way on their vessels. In this context I referred to the huge numbers of containers loaded and unloaded in a

very short time from container vessels and the practical difficulties respectively impossibilities for a shipowner to check the contents of those containers.

Turning to insurance, obviously art. 26 of Regulation 961/2010 would be of significant relevance. It contains a general prohibition of insurance in respect of Iranian or Iran controlled entities. For export industries this would create the difficult situation that their trades, as long as outside of area of listed goods and material, would be perfectly legitimated, but still could not be insured under their open covers. This might, in practice, make it impossible to conclude CIF-contracts, because the sellers might be on breach of their obligation to provide insurance. Taking out insurance through other, non-European, channels would include the risk of circumventing of the prohibition, which itself is prohibited under Art. 26 of the Regulation. Risks insofar would exist for sellers and their insurance brokers.

I then referred to the aspect that it depends on the applicable law governing the insurance contract, whether breach of sanction laws renders the insurance contract void, or whether the contract remains valid and only unenforceable. For insurers this would make a huge difference, because in the first case no premium would be owed and no reserves would have to be built for losses, whilst in the second case premium would be owed, reserves would have to be built and maintained, but cases could not be settled.

In this context I referred to additional difficulties arising if goods are sold on CIF-terms to non-Iranian buyers, but if those goods further down the chain are finally bought by Iranian interests. Insurance contracts probably would be valid and enforceable as long as no Iranian buyer has purchased them, but might become invalid or unenforceable upon purchase by an Iranian buyer. But it would be completely open what happened if such an Iranian buyer then sells the goods on to non-Iranian entities. This would lead to the question whether the insurance contract then becomes valid and enforceable again, or whether the interim involvement of Iranian interests prevents this.

Turning to hull insurance, I referred to the uncertainties caused by Art. 26 (3) of the Regulation when stating that chartering out of a vessel to Iranian interest does not

prevent provision on insurance or reinsurance to the shipowner, if the Iranian entity is not a listed person. This would leave open the question what happened if the Iranian interest is – or becomes – a listed person. Again the question would arise whether upon such chartering out the insurance contract becomes invalid or unenforceable, leading open whether the termination of such charter would automatically render the contract valid and enforceable again.

I also addressed the well known collision security problem and built the example of a collision between a European flagged ship, insured by European insurers, with an IRISL vessel and a subsequent arrest of the European ship in a country, which has not adopted sanctions against Iran. I expressed the view that the shipowner as well as the insurer would most likely be hindered to put up security either by way of cash or by way of a bank guarantee or an insurer's guarantee, because this would mean making funds or economic resources available to a listed person, which is prohibited by Art. 16 (3) of the Regulation. In the end this could mean that the shipowner cannot protect his assets, so that the ship might be auctioned in the foreign country.

Finally I stated that the insurance problems discussed above are not limited to European direct insurers. Art. 26 does not only address insurance, but also re-insurance. A huge parts of the world's re-insurance is underwritten in Europe, and even those re-insurers, which are resident outside the European Union, retro-cede their business into Europe. As a consequence, indirectly Art. 26 of the Regulation affect the insurance industry worldwide.

There was a lively debate of my contribution both in the session and in the following coffee and lunch breaks. It transpired that for many attendants this was the first time that they heard of the problems caused to the industries. A majority of statements heard was that many of the problems might be overcome by requesting special authorisation, for example for putting up security in the collision case example. But there were also voices saying, that they would be sceptical whether their administrations would approve payment as security in favour of a listed entity.

The members of the panel of experts showed the significant interest in my presentation, and one member expressly suggested that we continue discussions and invited me to visit him during my next stay in New York.

In conclusion, I believe attending was a worthwhile exercise. For me it was surprising to see how little information was with those who implement sanctions, who execute them and who advise the United Nations Security Council about their effects.

Kind regards,

- Dr. Dieter Schwampe -