

‘Realities of operating in the Arctic : Finance, Legal and Insurance issues and International Regulation – the Polar Code developments’

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Slide 1 –Introduction

I sincerely thank James Gray and the British Parliamentary team for inviting me to present to you today.

I would like to congratulate President Grimsson, not just for gathering such an array of expertise, but also for his clearly infectious spirit of endeavour.

Speaking of *Endeavour*, I am not the first Irishman to be part of a British expedition. Many of my compatriots took part in the great British Polar Expeditions, and of course, my compatriot, the incredible St Brendan the Navigator visited Iceland on the way to Newfoundland in the 6C. The Irish and Icelandic people are inseparably bound by history so to be here in this wonderful country with this incredible team of British experts, is truly an honour indeed.

Slide 2 – Kiruna mine Northern Sweden

In this slide you see US Secretary of State, John Kerry, and Sweden's last Foreign Minister, Carl Bildt at the LKAB Kiruna mine at the 2013 Arctic Council Summit.

Nothing could demonstrate more the importance of Arctic industry to the Arctic countries.

Slide 3

Leona Aglukkaq, Canadian Minister for the Arctic Council, signs the Kiruna declaration

Much of the work in the UK that I will talk about is centred around assisting in the responsible sustainable development of the Arctic, a theme promoted so well at this Conference by President Grimsson and so many others.

At Kiruna the Arctic Countries agreed on the 'Vision for the Arctic' in the Kiruna Declaration which focuses on the indigenous people's rights as an overriding principle for the sustainable development of the Arctic, and best practice in operations, much of which is reflected in the British approach and what Britain can bring to the table, which we have also heard about today from my colleague in this delegation, Duncan Depledge

Slide 4 – Photo Gallagher - Legal Issues – Advantage of Resolution in the UK

Turning to operations themselves 40% of governing law in all global corporate arbitrations is English law because of its neutrality and also the experience of courts dealing with matters swiftly and fairly. What is very important for international trade is certainty. You can, through the New York Convention,

enforce Arbitration awards in almost any industry significant country in the world.

Contract drafting advice is also very important. In projects involving several different parties which is normal in mining, exploration, and production projects it is very important to have the correct contract in place so that if disputes arise there are agreed methods for consolidating arbitration proceedings.

Much of that service will take place in the UK, where the disputes will be dealt with when they arise.

And of course any Arctic projects are capital intensive. The UK is a leading global financial services centre.

Slide 5 – Mining in Finland

When it comes to operations themselves they are subject to local law. Each country has their own different requirements. Much work needs to be done in conjunction with local lawyers to ensure the contractual matrix is in place that is fit for purpose.

Slide 6 – Mining in Sweden

It is very important to understand the cultural climate in any particular region and county. Local lawyers work very closely with the London legal, financial, and insurance industry because of their great experience.

Slide 7 – Lloyd's of London

Lloyd's is the flag bearer of the UK's Insurance industry.

The London insurance market is extremely important for Arctic operations and many of the policies are subject to English law and jurisdiction.

Slide 8 – List of Insurance in London Market

Much of the Operational Risk will be insured in London

Slide 9 – Lloyd's Arctic Report

Marine and Energy insurance is also critical to the Arctic. 60% of world energy risk is underwritten in the UK Market. The Arctic is an ocean, an unpredictable ocean with a lot of ice. Lloyd's published an Arctic report in 2012 which I worked on.

You will see here in this slide the main points in the Executive Summary. I have highlighted in blue the issues of significance.

In short, companies operating in the Arctic will require robust risk management frameworks and processes that adopt best practice and contain worst case scenarios, crisis response plans and full-scale exercises. There are many practical steps businesses can take to manage risks effectively, including investing in Arctic-specific technologies and implementing best-in-class operational and safety standards. This was ably highlighted by Dr Dougal Goodman of the Foundation for Science and Technology in his opening remarks to this session.

This approach also very importantly involves engaging correctly with the indigenous communities and prioritising their interests. To answer the gentlemen's question from a few moments ago regarding the approach of British industry to those issues I draw the Conferences attention to what my delegation colleague, Dr Michael Macrander of Shell said yesterday when he explained the very detailed work Shell carried out in their engagement with the indigenous community in Alaska. I am aware that a very detailed agreement – a legally binding one was entered into by Shell in order to give priority to the indigenous community's concerns and aspirations.

Slide 10 – Lloyd’s Wreck Removal Report

This is Lloyd’s Wreck Removal report which I also worked on as legal advisor. It focused on prevention as well as the removal of wreck.

Slide 11 – Global Location of Equipment

One of the big problems that it highlights is that in the Arctic equipment is very scarce. Remoteness is a huge problem, something that we have heard a lot about at this Conference.

Slide 12 – Cruise ship off Greenland

This is an example of what London insurers do not want to see – a non ice classed ship with 2500 people on board in grave peril – but not realising so.

Slide 13 – Insurers attitude to insuring above 70 North

Which causes problems for insurers who are very reluctant to insure above 70N.

Slide 14 – IMO Photo

Benchmarking standards are important for insurers. The Lloyd’s Arctic report highlighted the failure of adequate cross-jurisdictional standards. This is the International Maritime Organisation which is based in London that formulates marine regulation under the United Nations.

Slide 15 – IMO Delimitation, according to IMO Guidelines for Ships Operating in Polar Waters

The IMO has been developing a mandatory Code of Practice for Marine activity. This slide shows the IMO Delimitation Guidelines.

Slide 16 – Polar Water Operations Manual

Under the Polar code ships will need a Polar Ship Certificate and a Polar Waters Operations Manual the combination of which will include key operational capabilities and limitations, such as Polar Ship Category and ice class, acceptable range of operating drafts, temperature capability, safe ice-going capability, and ice transit capability.

Voyage planning is very important, and such plans need to be developed with an understanding of the ship's capabilities and limitations. Ships and mariners need to be adequately prepared for worst case scenarios that go beyond what is to be normally expected in normal circumstances as envisaged.

It is therefore left very much up to the Owner, subject to satisfying the Flag State, that the content of the Polar Waters Operation Manual of the appropriate.

Slide 17 – IAACS Polar Class Rules

These are the International Association of Classification Societies' Polar Class Rules.

One of the main issues of concern is that there is currently no ice regime system applied to the whole Arctic or Antarctic, the absence of which will make it very difficult to complete the Polar Waters Operating Manual – which will be requested by insurers. That is because if you cannot determine what ice conditions are at play in the Arctic you cannot determine what other requirements are going to be necessary. Everything flows from the encountered ice regime to determine the worst case

scenario that needs to be planned for in the conditions that, as the Polar Code says, ‘may be encountered’.

So the London insurance industry considered the Polar Code to be inadequate and not fit for purpose which I was responsible for highlighting at the IMO in February in conjunction with Transport Canada who recognised the importance insurers in London play in Arctic marine operations and whether they can go ahead or not.

Slide 18 – Ice Coverage around Greenland

One of the main concerns is areas of new temptation where opportunities are opening up.

This ice data shows the difficulties involved around Greenland. The dark blue is ice free. In February during a heavy ice period there is almost no ice free coastline.

So what is important to note is the difficulties faced because of the short window of opportunity to get in and out with certain ice class vessels, and how careful operators have to be.

When you look at Northern Greenland, even getting in and out is questionable as it can be seen that there is no ice free period at all.

Slide 19 – Map of location Citronen project Northern Sweden

As can be seen from this slide the CITRONEN mining project is a specific example of some of the issues I have been referring to. Northern Greenland has some of the most difficult ice conditions in the world.

Very few ships have been into the area – and not one to the Cintronen fjord where the deposit is.

When you come outside the fjord you end up in an area that has serious ice conditions. The Swedish ice breaker ODEN and SOVIETSKIY SOUYOUZ (Russian NIB) had to turn back from some areas on N Greenland as they could not get through.

Slide 20– Learning from the lessons of history – Helping the IMO - 6 Disasters –

**Betelgeuse, Bantry Bay, Ireland, January 1979,
Alexander Kielland, Norway, March 1980,
Titanic, Newfoundland, April 1912,
Piper Alpha, United Kingdom, North Sea, July 1988,
Deepwater Horizon, Gulf of Mexico, April 2010,
Costa Concordia, Italy, January 2012**

So inadequate international regulation and a sub-standard Polar Code is not what is required.

And as I pointed out at the IMO in February each of these disasters resulted in new regulation but also, in many instances, in a rush to implement previously suggested regulation where industry had failed to adopt simple non-obligatory standards that had previously been suggested.

Slide 21 – South Korean Ferry Tragedy – Text Messages from Students

And then, if the point was not well made in historical examples, we had the horrific disaster that has taken place in South Korea where industry fell so terribly below standards of best practice. It also demonstrated that evacuation of people from rapidly sinking ships is a huge problem that needs to be reviewed urgently at the IMO.

Slide 22 – Swedish Government Seminar

So what did we do in Britain about all of this to help the IMO and industry demonstrating the importance of Britain to Arctic operations?

In conjunction with the Swedish Ministry of Foreign Affairs, with the support of the Nordic Council, we organised this Seminar about Best Practice in the Arctic bringing together ice experts, scientist, insurers, Governments through Arctic Council Ambassadors and the Secretary General of the IMO importantly bringing them all together in London where we could have maximum impact in the decision making process, as referred to earlier by my delegation colleague Guy Yeomans in his opening remarks.

Slide 23 - Workshop Bridging the Arctic marine risk gap – The need for a cross Arctic Ice Regime – linking ice conditions to ice class requirements.

And on the following day a workshop took place at Lloyd's, focusing on the creation of an Arctic-wide ice regime where industry recommendations supporting best practice were prepared and were sent to the Arctic Council, recommendations that go beyond regulatory compliance in a parallel approach. Importantly also the International Association of Classification Societies were present through Lloyd's Register who have played a leading role in these issues and we will hear more shortly from our delegation colleague, Lloyd's Register's Marine Director, Tom Boardley.

I would encourage you to look at those recommendations on the Swedish Polar Research Secretariat Website.

Slide 24 – Progress

Resulting in a proposed change in the Polar Code to include an ice regime risk indexing system called POLARIS. We have the critical final Marine Safety Committee meeting in London in two weeks that will be instrumental in determining whether we

have achieved the change which frankly is fundamental to the future of the Arctic.

Slide 25 – Happy Insurer

That will help to create happy insurers who will insure Arctic operations that are based on a sustainable approach to Arctic development in line with the principles set down in the United Kingdom's 'Adapting to change' policy document that was referred to today by my delegation colleague, Duncan Depledge, and explained yesterday by Minister Philip Hammond and others.

The UK insurance, legal and financial sectors are therefore key players in the future of the Arctic.

Thank you very much.

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