



# General Average Acts: Might Piracy Change the Game?

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# Background

- A general average act is a very old legal principle
  - Survives from the legal codes of the Island of Rhodes, circa 800 B.C.
- Most maritime nations have adopted the idea of general average

# Key Points Regarding General Average

- What defines a general average act?
- What law applies, and how are such losses adjusted and/or adjudicated

# General Average Acts

- All who set out upon the sea in a ship are seen as being in an adventure together
  - Ship owner
  - Master
  - Crew
  - Owners of cargo

# All Have a Stake in the Adventure

- The adventure is viewed as a *joint risk* of the parties involved
- Example of a general average act:
  - Part of the cargo is jettisoned
  - By order of the ship's Master
  - In order to save the ship, remaining cargo, and all who are in her

# Making Those Who Suffered Loss Whole

- A sacrifice on the part of the few whose property was sacrificed is made up by those who were not called upon to make the sacrifice themselves.

# Broad Requirements for General Average Acts

- A number of requirements exist if a loss is to be viewed as a general average act
  - The peril must be real
    - Immediacy
  - The sacrifice must be voluntary
    - Usually made by the ship's Master or Owner
    - Involuntary losses don't count
      - Port authorities order scuttling of a ship to stop a fire from spreading

# Broad Requirements for General Average Acts

- The action taken must be successful
  - If cargo is jettisoned, or some part of the ship sacrificed and the ship is not saved, a general average claim could not be upheld



# General Average Claims

- Most general average claims are not adjusted under the maritime law of any particular country
- Most claims are adjusted via the insertion, usually by reference, of the York-Antwerp Rules into contracts of carriage

# The York-Antwerp Rules

- Have evolved over the years since 1860
- Nearly all contracts of carriage incorporate these rules
- The impact is a uniform set of rules for the definition and adjustment of general average claims

# Piracy

- Acts of piracy have long been viewed as general average acts
  - Ransom paid is covered as a general average contribution
  - Courts have also held that any cargo given as a ransom would be considered as a general average act

# 175 Acts of Piracy in 2008 Alone

- There has been a decided increase in acts of piracy
  - Primarily since the collapse of the Somali government in 1991
  - Payment estimates of up to \$200 million in 2008
  - Most acts of piracy occur in the Gulf of Aden

# Emerging Questions

- Is the very notion of General Average Acts outdated? Wide availability of marine insurance to cover such risks may largely obviate the need.
- Would many of the current acts of violence at sea be better viewed as acts of war, rather than piracy?

# Piracy

- The usual definition of piracy requires:
  - No state sponsorship
  - No political or national ends
- Recent acts of violence at sea are confusing traditional lines between piracy and acts of war or terrorism
- Is terrorism an act of war?

# Traditional View: Piracy

- Purely acts of piracy
  - No government sponsorship
  - No political goals
- Does a Somali government even exist?

# Beyond Piracy

- Acts of war, or at least terrorism
  - Today it is difficult to separate acts of terrorism from acts of war
  - Lines of sponsorship by traditional states are blurring



# Acts are Self Defense

- Protection of Somali marine resources
  - Fishing is an important economic activity
- Illegal dumping
  - Up to and including nuclear waste
  - Increased since demise of Somali government in 1991

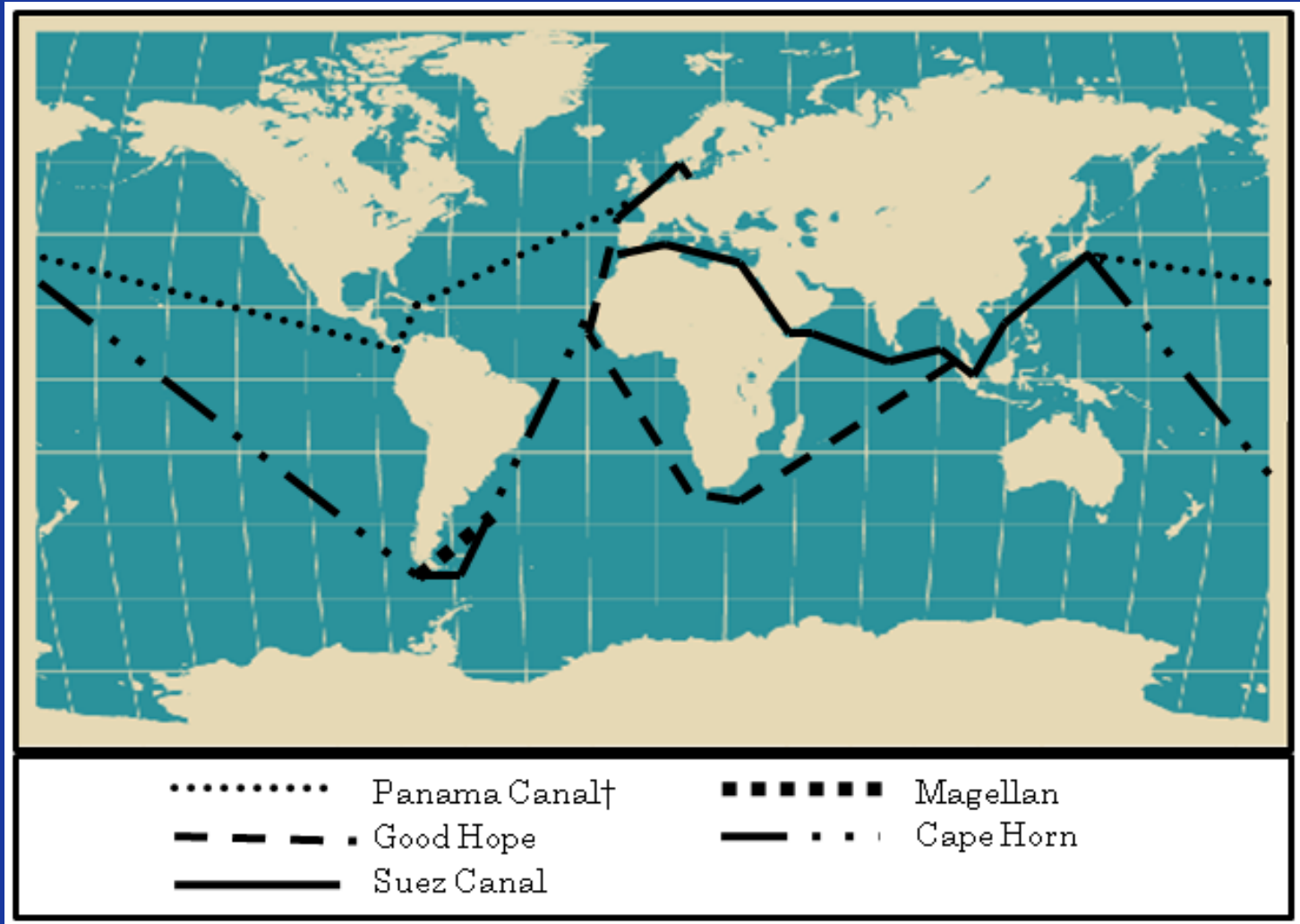
# Nature of the Acts is Key

- Whether these acts are acts of piracy is being seriously questioned
  - If they are not, then the payment of ransom would probably not be adjusted as a General Average Act under the York Antwerp Rules

# Implications

- Three likely outcomes: All bring higher shipping costs
  - Routing away from Suez
  - Underwriting Re-Evaluation or Exclusion
  - Legal Actions based on General Average

# Routing Away from Suez



# Cost Consequences of Other Routes

		Yokohama, Japan to Bremen, Germany			
Route	Average Speed (Knots)	Days at Sea	Distance (Nautical Miles)	Central Value (Median) Daily Operating Cost USD‡	Central Value (Median) Voyage Operating Cost USD‡
Suez Canal	10	47.6	11,420	\$7,050	\$335,580
Panama Canal†	10	53.2	12,767	\$7,050	\$375,060
Good Hope	10	61.4	14,735	\$7,050	\$432,870
Magellan	10	70.5	16,915	\$7,050	\$497,025
Cape Horn	10	70.8	16,980	\$7,050	\$499,140

† Widening of the Panama Canal is expected to be completed in 2014 to handle most existing ships. (Wharton 2010)

‡ 2007 Operating costs, (HSH Norbank, 2008)

# Underwriting Re-Evaluation or Exclusion

- Underwriters may exclude such risks from coverage.
- Would necessitate coverage under other provisions at higher cost
- Shippers may suffer increased risk without coverage with potential costs

# Insurance Provisions

- If the York-Antwerp Rules lose hold, it may be that individual insurers set the rules
  - Shippers would have to carefully consider the nature of coverage and weigh any additional risks which they might face

# Legal Actions Based on General Average

- Changes to the concept of General Average
  - Could result in legal actions under the laws of the many countries where General Average is a recognized legal concept
    - Outside of York Antwerp
    - Would be likely litigated in countries in which cargos are landed
    - Messy and costly undertaking
  - Similar litigation is likely if current acts of violence are deemed not to be piracy
    - If not piracy, what?



# Is Ransom a General Average Act?

- A potentially more ominous risk is if ransom were to be viewed as an act of war.
  - There is some basis for thinking that ransom may not be legal under international law.
  - So far, acts of piracy have not been viewed as acts of war
    - However, motives are involved in the decision
    - The situation could easily change

# If Piracy Becomes Viewed as an Act of War

- Ransom paid to pirates who are committing an act of war would not be covered!
- Acts of war can be an insurable risk
  - But, for how long?
  - And, at what price?
  - What might the coverage conditions and limits be?

# Conclusion

- Shippers must be aware of the implications
  - Potentially less insurance cover
  - Potentially more expensive cover
  - Potentially uninsurable acts
  - It is even possible that the law of general average may come back into direct play
    - Causing shippers to chip in for losses which are either not insurable or partially insurable

# The End

