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The SCOPIC Clause in Marine Insurance

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Index

Abstract

La presente tesi esamina la Special Compensation P&I Clause (SCOPIC), clausola introdotta nel contratto di soccorso marittimo per garantire una remunerazione adeguata ai soccorritori impegnati in operazioni caratterizzate da rilevanti rischi ambientali. L'interesse per il tema nasce dall'importanza assunta dalla SCOPIC nell'evoluzione della disciplina in materia di soccorso marittimo e del mercato delle assicurazioni marittime. La ricerca si sviluppa attraverso un'analisi dei profili normativi e contrattuali della clausola, approfondendone la struttura, il contenuto, il sistema tariffario e i meccanismi di controllo introdotti per la gestione delle operazioni di soccorso. L'indagine è completata dall'esame della principale giurisprudenza inglese e francese, con particolare riferimento ai casi Athéna, The Renos e The Sea Angel. L'elaborato evidenzia come la SCOPIC abbia contribuito a superare le criticità del precedente sistema di special compensation, garantendo maggiore certezza nella remunerazione dei soccorritori e ridefinendo i rapporti tra Hull & Machinery insurers e P&I Clubs. L'analisi giurisprudenziale dimostra inoltre che la clausola ha assunto un ruolo centrale nell'allocazione dei rischi e dei costi delle operazioni di soccorso, producendo effetti che si estendono oltre il tradizionale ambito della disciplina sul soccorso marittimo.

This thesis examines the Special Compensation P&I Clause (SCOPIC), a contractual mechanism introduced in maritime salvage to ensure adequate remuneration for salvors involved in operations characterised by significant environmental risks. The choice of the topic is motivated by the growing importance of SCOPIC within the development of both salvage law and the international maritime insurance market.

The research combines an analysis of the legal and contractual framework governing the clause with an examination of its operational structure, content, tariff system and supervisory mechanisms. The study is complemented by an assessment of leading English and French case law, with particular reference to The Athéna, The Renos, and The Sea Angel decisions. The findings demonstrate that SCOPIC has successfully addressed many of the shortcomings of the previous special compensation regime by providing greater certainty in salvors' remuneration and redefining the relationship between Hull & Machinery insurers and P&I Clubs. The case law further shows that the clause has become a key instrument in the allocation of risks and costs arising from modern salvage operations, producing effects that extend beyond the traditional boundaries of maritime salvage law.

Chapter I: The SCOPIC Clause

1.1 The 1989 Salvage Convention and the Lloyd's Open Form (LOF): Key Principles and Genesis of the SCOPIC Clause

1.1.1 The Origins of Salvage Law

Historically, the maritime environment has been defined by inherent and unpredictable perils, necessitating a specialized legal framework to incentivize mutual assistance at sea. In this context, "salvage" is a multi-faceted term used interchangeably to indicate the service rendered, the remuneration due to the salvor, the cause of action, or the body of law governing the matter[1].

From a strictly legal perspective, as defined by Brice[2], salvage is a right in law which arises when a person, acting as a volunteer (without any pre-existing contractual or other legal duty), preserves or contributes to preserving at sea any vessel, cargo, freight, or other recognized subject of salvage from danger. This principle transforms a moral obligation of assistance into a legally enforceable right to an equitable reward.

The origins of the law of salvage are of great antiquity and are to be found in ancient legal systems; there was a public policy to encourage and reward assistance to endangered property. There is evidence that almost three

[1] A. Mandaraka-Sheppard, *Modern Maritime Law: Vol.2: Managing Risks and Liabilities*, Third edition, Maritime and Transport Law Library (Informa law from Routledge, 2024), p. 481.

[2] G. Brice, *Maritime Law of Salvage 3. Ed. London: Sweet and Maxwell, 1999*, p. 1.

thousand years ago under the Rhodian Maritime Code[3] which was applied in ancient Greece and the Mediterranean, volunteer salvors were held entitled to be rewarded for their services. There are also other obsolete codes such as the Law of Oleron A.D. 960[4] or Marine Ordinance of Trani[5] 1063 and other national laws that provide traces of salvage regulations.

1.1.2 The 1910 Brussels Convention: The First Uniform Regime

While rooted in ancient tradition, salvage remained governed by fragmented local customs for centuries, hindering the development of a unified international legal order. In fact, until 1910 there was no salvage law applied uniformly and internationally.

The first attempt at unification of the law of salvage took place during a meeting of the Comité Maritime International (CMI)[6] in 1905, which led five years later to the creation of the Brussels Convention on Salvage 1910.

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[3] "The Rhodian Sea Laws may have originated from 900 B.C. but more likely appeared in the form recognized today during the period from 500 B.C to 300 B.C." See G. Brice, *Maritime Law of Salvage,* III, cit., p. 6.

[4] "The Laws of Oleron, also known as the judgments of the Sea, are a set of medieval rules created from the maritime consuetude and customs, which contributed considerably to the development of maritime customary law". See for more information D. Pyć, *The Laws of Oleron as the Rules Governing Maritime Labour*. Gdańskie Studia Prawnicze, No. 3(43), 2019, p. 1.

[5] The Ordinamenta et Consuetudo maris edita per consules civitatis Trani, also known as the "Maritime Statutes", are a body of maritime law, promulgated in 1063 in the city of Trani, Italy. They are considered the oldest maritime code in the Mediterranean in the Middle Ages.

[6] "The Comité Maritime International (CMI) is the oldest organization in the world exclusively concerned with the unification of maritime law and related commercial practices. Established in Antwerp in 1897 as a not-for-profit international organization, its primary object is to contribute to the unification of maritime law in all its aspects through the promotion of national maritime law associations and cooperation with other international bodies. Before the establishment of the IMO Legal Committee, the CMI was the primary architect of the draft conventions adopted at the "Brussels Diplomatic Conferences on Maritime Law" between 1905 and 1979. Today, it maintains observer status with, and continues to play a pivotal role in drafting and revising fundamental treaties, including the 1989 Salvage Convention and the 2008 Rotterdam Rules". See for more information N. H. Frawley, *The CMI and its Relationship with IMO, the IOPC Funds and other UN Organizations,* 2011, p. 1.

In many aspects, this convention reflected existing English and American law of salvage; it was also for these reasons that the United Kingdom did not enact the convention in its entirety but only integrated parts of it into the Maritime Conventions Act (MCA) 1911[7], while in the United States the Convention was considered self-executing and therefore having the force of law, incorporated through the Salvage Act in 1912[8].

The Brussels Convention 1910 incorporates through Article 2 the principle of "No Cure – No Pay", according to which the salvor will receive compensation for their activity only if the salvage operation is successful, no remuneration is due if there is no beneficial result[9]. Furthermore, it stipulates the conditions for remuneration through Article 8[10] as follows:

The remuneration is fixed by the court according to the circumstances of each case, on the basis of the following considerations: (a) firstly, the measure of success obtained, the efforts and deserts of the salvors, the danger run by the salved vessel, by her passengers, crew and cargo, by the salvors, and by the salving vessel; the time expended, the expenses incurred and losses suffered, and the risks of liability and other risks run by the salvors, and also the value of the property exposed to such risks, due regard being had to the special appropriation (if any) of the salvors' vessel for salvage purposes; (b) secondly, the value of the property salved.

The convention remained silent regarding any danger run by the owners of any other property as a factor to be taken into account. Furthermore, no

[7] The Maritime Conventions Act (MCA) 1911 was designed to align British merchant shipping laws with the 1910 Brussels Conventions on Collisions and Salvage, ensuring a uniform approach to international maritime disputes, in particular parts dealing respectively with collisions between vessels and with salvage.

[8] "The U.S. Salvage Act of 1912 (37 Stat. 1658) was enacted to implement the 1910 Brussels Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea, which was ratified by the US in 1912 and entered into force in 1913". See for more information Parks, L. Alex. *"The 1910 Brussels Convention, the United States Salvage Act of 1912, and arbitration of salvage cases in the United States*." Tulane Law Review [New Orleans], vol. 57, no. 5, June 1983, pp. 1457–90.

[9] See Article 2 Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea 1910

[10] See Article 8 Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea 1910

mention is made of the risks of liability and other risks to which the owners of the salved property might be subject, and the convention does not refer to the manner in which the salvage remuneration shall be borne by the different salved interests. Therefore, there are no clear indications based on Article 8 and Article 2 on how an equitable remuneration should be assessed and borne and neither a definition of the word “salvage”. Rights are also lacking regarding remuneration in the event of measures taken by the salvor to prevent or minimize oil pollution damage or claims against the shipowner in respect thereof[11].

1.1.3 The Genesis of the Lloyd’s Open Form (LOF)

While the entitlement to a salvage reward and its precise assessment may be governed by a private contract, the inherent pressure of a maritime emergency renders traditional financial negotiations practically impossible, the Salvage industry sought a practical contractual instrument: the “Lloyd's Standard Form of Salvage Agreement-No Cure-No Pay” (LOF). By means of this contract, the final reward is deferred and left to be decided by an arbitrator appointed by Lloyd’s[12], thus avoiding pre-contractual negotiations and delays that could compromise salvage operations. Consequently, the most important principle underpinning the LOF concerns the standardized methods for definitively fixing the salvage remuneration and securing financial guarantees[13].

[11] G. Brice, *Maritime Law of Salvage,* III, cit., p. 406.

[12] “Lloyd’s is a leading global marine insurance market where the broker may place risks by negotiating the insurance and reinsurance contract terms with several different underwriters. In the context of maritime salvage acts as a neutral administrative authority through its Salvage Arbitration Branch in London, its primary function is to publish and manage the Lloyd's Open Form (LOF) salvage agreement”. See for more information Lloyd's, Web resource available at: https://www.lloyds.com/market-resources/salvage-arbitration-branch., (accessed 26 March 2026).

[13] G. Camarda, *Il soccorso in mare: profili contrattuali ed extracontrattuali*, Trattato di diritto civile e commerciale 54 (Giuffrè, 2006), p. 201.

This Form, published in London by the Committee of Lloyd's, dates back to the nineteenth century, when a contract was devised for a salvage contractor operating in the Dardanelles[14].

To ensure immediate adoption during high-stress emergencies, the modern LOF features a highly streamlined structure[15]. The Main Agreement consists of a concise, single-sheet, double-sided document. Its front page utilizes a simple "box" layout, requiring the parties to fill in only the most critical operational details, such as the identities of the contractors, the property to be salved and the agreed currency. To keep this primary document as brief as possible, all complex procedural, legal, and administrative rules governing the subsequent arbitration are separated from the main contract and incorporated by reference through a consolidated document known as the Lloyd's Salvage Arbitration Clauses (LSAC)[16].

During the years, it was revised periodically, following the experience of salvage contractors, shipowners, and Hull and Machinery (H&M) insurance[17] operators, also considering the fact that in the last 40 years, marine pollution from ship incidents has made the availability of salvage operations crucial, not only for the saving of the property itself but also in terms of protecting the marine environment.

It is also important to note that there is no general duty, of states or individuals, to assist property at risk at sea, although where there is a risk of pollution there is a duty imposed on States under international law to protect the marine environment, and the solution of a contractual salvage encourages the undertaking of salvage actions for endangered vessels[18].

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[14] A.R. Miller, *Lloyd's Standard Form of Salvage Agreement - LOF 1980: A Commentary*, 12, no. 2 (1981), p. 244.

[15] I. Djadjev, *'The Scopic Clause as a Major Development in Salvage Law'*, SSRN Electronic Journal, ahead of print, 2015, p. 3.

[16] See Lloyd's Salvage Arbitration Clauses 2024

[17] "Hull and Machinery insurance (H&M) is cover for the ship itself and parts thereof. The division into "hull" and "machinery" derives from the transition from sail to steamships in the nineteenth century". See Y. Baatz, *Maritime Law,* V edition, Informa Law from Routledge. (2021).

[18] Y. Baatz, *Maritime Law*, V, cit., p. 254.

1.1.4 The 1989 Salvage Convention: Articles 13 and 14

The limitation of the Brussels International Convention 1910 became evident when faced with modern environmental threats, the condition for obtaining a reward according to which property must be salved to obtain a reward, offered no incentive for salvors to assist tankers whose situation appeared unrecoverable. The oil pollution incidents of the tanker Torrey Canyon off the Scilly Isles in 1967, and the tanker Amoco Cadiz off the coast of Brittany in March 1978, which both caused serious pollution, increased the pressure for the creation of a regulation with a more marine environmental attention.

The CMI initiative in preparing a Draft Convention on Salvage, during which numerous papers were presented by the interested parties[19], saw developments finalized in Montreal in May 1981, having been previously introduced in the LOF 1980. In the new version of the LOF coming into effect on 23rd June 1980, a groundbreaking "safety net" provision was introduced, stipulating with Clause 1(a), that if a salvor intervened on a laden or partly laden oil tanker but was unsuccessful, they were guaranteed to recover their reasonably incurred expenses plus an increment of up to 15 per cent, provided there was no negligence. This marked the first formal departure from the absolute "no cure - no pay" rule to promote environmental protection[20].

The United Nations Agency Intergovernmental Maritime Consultative Organization (IMCO) (later becoming the International Maritime

[19] See for more information Comité Maritime International, *The travaux préparatoires of the Convention on Salvage, 1989*

[20] See Clause 1(a) Lloyd's Standard Form of Salvage Agreement - LOF 1980

Organization (IMO)[21]) understood the need to update the 1910 Brussels Convention for legislative unification at a global level; after various meetings of the IMO Legal Committee from 1984 to 1989 in London, culminating in the diplomatic conference of April 1989, the London Salvage Convention 1989 was stipulated. It was inspired by the aforementioned LOF 1980 Clause 1(a). In a significant departure from previous regimes, the 1989 Convention formalized the preservation of the marine environment through two distinct compensatory mechanisms.

Primarily, Article 13 establishes the criteria for assessing the award while reflecting the traditional Common Law position. In particular Article 13(1) provides: *"The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below":*

(a) the salved value of the vessel and other property;

(b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;

(c) the measure of success obtained by the salvor;

(d) the nature and degree of the danger;

(e) the skill and efforts of the salvors in salving the vessel, other property and life;

(f) the time used and expenses and losses incurred by the salvors;

(g) the risk of liability and other risks run by the salvors or their equipment;

(h) the promptness of the services rendered;

(i) the availability and use of vessels or other equipment intended for salvage operations;

[21] "The International Maritime Organization (IMO) is an autonomous agency of the United Nations charged with developing the principles and techniques of international maritime navigation, promoting the planning and development of international maritime transport by making it safer and more orderly. The purpose of this organization, to which almost all States belong, is to promote the dissemination of information, strengthen cooperation between States and formulate regulations on any matter relating to navigation, all with the aim of improving the safety of ships, navigation and human life at sea". See for more information about IMO, Y. Baatz, *Maritime Law*, V, cit., pp. 359-369.

(j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

From an environmental perspective, although Article 13 maintained the "no cure - no pay" framework, into the London Salvage Convention 1989 added a new criterion for assessing the traditional salvage reward through letter b: *"the skill and efforts of the salvors in preventing or minimizing damage to the environment"* (Article 13.1(b)). However, any reward under Article 13 remained capped by the total salved value of the property and was paid pro-rata by ship and cargo property underwriters[22].

Second, the Convention introduced a statutory safety net via Article 14, termed "Special Compensation"[23]. By means of this article, if a salvor carried out operations on a vessel that threatened damage to the environment but failed to earn an Article 13 award sufficient to cover their costs, they became entitled to special compensation paid exclusively by the shipowner, and ultimately their Protection & Indemnity (P&I) Club[24]. This compensation equaled the salvor's out-of-pocket expenses plus a "fair rate"[25] for the equipment and personnel used[26]. Furthermore, if the salvor successfully prevented or minimized environmental damage, an uplift of up to 30 per cent (and exceptionally up to 100 per cent) could be awarded.

Although the London Salvage Convention 1989 did formally enter into force until 14 July 1996, its principles had already become an industry standard years earlier. This rapid adoption was made possible by the Lloyd's Open Form (LOF) 1990, which allowed contractual parties to incorporate the

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[22] I. Djadjev, *'The Scopic Clause as a Major Development in Salvage Law'*, cit., p. 2.

[23] See Art.14 "Special compensation" International Convention on Salvage, 1989

[24] Protection and Indemnity (P&I) Clubs are mutual, not-for-profit insurance associations owned by shipowners to cover third-party liabilities risks not covered by standard hull and machinery (H&M) insurance, such as environmental pollution, crew injuries, cargo damage, and wreck removal. For an in-depth discussion of P&I Clubs, see below Chapter II 2.1.

[25] See Art.14(3) International Convention on Salvage, 1989

[26] G. Beale, *Environmental Salvage and the 1989 Salvage Convention: Proposed Amendments to the Convention and Difficulties in Quantifying an Environmental Salvage Award*, Environmental Law Review Vol. 16, No. 4, 2014, 248–61, p. 251.

Convention's provisions into their salvage agreements by reference. The London Salvage Convention has been ratified by 81 countries[27], but its provisions are usually adopted also when vessels which don't have the flag of a ratifying state are involved in salvage situations, thanks to the worldwide usage of LOF. In these cases, the provisions of the Convention are adopted contractually by the contractual parties.

1.1.5 The "Nagasaki Spirit" and the introduction of the SCOPIC Clause

Despite the environmental advancements introduced by the 1989 Convention, the practical application of Article 14 revealed significant technical and financial application. In practice, salvors frequently encountered difficulties in obtaining security for special compensation from P&I Clubs and in getting paid.

To claim an Article 14 award a salvor must show that there is a threat of damage to the environment which is defined as a "*threat of substantial physical damage to human health or marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or other similar incident"*. This was an issue, to recognize whether or not there is a threat of damage to the environment, and the geographical restriction precluded Article 14 award to be awarded outside territorial and coastal waters. Another problem that emerged in *The Nagasaki Spirit*[28] was the assessment of special compensation through the condition described as "fair rate", in Article 14. The case involved a collision between *The Nagasaki Spirit*, laden with crude oil and the container ship, *The Ocean*

[27] Information regarding the ratification status and the countries party to the Convention is readily available for consultation via IMO website: 'Status of Conventions',https://www.imo.org/en/about/conventions/pages/statusofconventions.aspx.

[28] *The Nagasaki Spirit* [1997] 1 Lloyds Rep 323 (HL).

Blessing in the northern part of the Malacca Straits. Following the collision, about 12,000 tonnes of crude oil escaped from *The Nagasaki Spirit* into the sea, and a fire occurred. The next day, professional salvors agreed to salve *The Nagasaki Spirit* and her cargo under LOF 1990, which contained Articles 13 and 14 of the 1989 Convention. They provided craft, personnel, equipment and consumables and with the help of number of tugs, the fire on *The Nagasaki Spirit* was extinguished. The award was made based on Article 13, and the initial arbitrator, in fixing special compensation, stressed the need for encouragement. In order to arrive at a fair rate, he took into account some contribution to future investment, so that professional salvors were encouraged to stay in business[29]. While the initial arbitrator decides to include a profit element, the House of Lords[30] ultimately held that a fair rate for tugs and equipment excluded a profit element; thus, the profit was limited only to the eventual uplift of the special compensation.

This outcome proved unsatisfactory for professional salvors because they have to afford high costs to maintain specialized equipment for environmental protection and the sentence failed to give them a financial incentive to remain operative in the salvage sector. Furthermore, considering the size and sophistication of modern ships, casualties present greater risks to the environment than in old times, and the salvors' efforts are not sufficiently rewarded under the present Convention[31]. For them, it was desirable that such remunerations be assessed on a commercial basis and not be simply a reimbursement of expenditure. As a result of the dissatisfaction with Article 14 in the wake of the *Nagasaki Spirit*, and in particular with the interpretation of a "fair market rate", the marine salvage industry, represented by the

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[29] A. Mandaraka-Sheppard, *Modern Maritime Law*, II, cit., p. 551.

[30] At the time of these developments, the House of Lords was the UK's highest appellate court and the final authority on the interpretation of the 1989 Salvage Convention. Its pivotal role in salvage law was defined by its strict judicial interpretation of "Special Compensation" under Article 14.

[31] A. Mandaraka-Sheppard, *Modern Maritime Law*, II, cit., p. 553.

International Salvage Union[32] launched an initiative called "Salvage 2000"[33] to rectify the imperfections of the International Salvage Convention 1989. With the support of P&I Clubs, even if they could not change the law, they could give effect to its conclusion by contract, as previously done with the LOF 1980. They agreed on setting predetermined market rates of remuneration for vessels, personnel and equipment; Salvage 2000 was embraced by the P&I Clubs, and they sponsored the Special Compensation P & I Club Clause (the "SCOPIC" clause) for Lloyd's Open Form.

SCOPIC came into use as an optional addendum to Lloyd's Open Form 2000; the parties were free to choose whatever terms they wished to incorporate into the LOF. The SCOPIC option can be exercised whether or not there is a threat of damage to the environment and also without any geographical restriction and is exercised simply by the contractor sending a written notice to the shipowner at any stage during a salvage operation. Once the SCOPIC clause is incorporated, the salvor cannot claim any Article 14 award. SCOPIC was the result of lengthy negotiations and required "give and take" on the part of all interested parties; it represents a balance of everyone's interest[34].

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[32]International Salvage Union (ISU) has a membership of some 55 marine salvage companies from more than 30 countries. Membership of the ISU is for companies with a track record as a main contractor in salvage operations. See for more information 'The International Salvage Union (ISU)', website available at: https://www.marine-salvage.com/, (accessed 30 March 2026).

[33]"Salvage 2000 was a discussion document developed in the mid-1990s as a precursor to the SCOPIC Clause. It aimed to resolve the legal and financial complexities of Article 14 of the 1989 Salvage Convention by proposing a system based on pre-determined, generous tariffs. While initially viewed with skepticism by property underwriters, its flexible framework (funded primarily by P&I Clubs) laid the groundwork for the modern SCOPIC regime and its integration into the Lloyd's Open Form". See for more information Graham, Daniel. "Lloyd's Open Form and the Special Compensation P&I Clause (SCOPIC)", 2002, web resource available at: https://comitemaritime.org/wp-content/uploads/2018/05/Graham-Daines-Scopic-Paper.pdf. (accessed 30 March 2026).

[34] A. Mandaraka-Sheppard, *Modern Maritime Law*, II, cit., p. 557.

1.2 Structural Analysis of the SCOPIC Clause

The SCOPIC agreement is frequently referred to as a "clause", which is technically a misnomer[35]. In reality, it is a comprehensive legal framework deliberately designed to supplant the ambiguities of Article 14 of the 1989 Salvage Convention[36]. It consists of 16 sub-clauses that establish the basic scheme, and three appendices that define the contractual position between the salvor and the shipowner[37].

Appendix A regulates the tariffs[38], where the items are grouped into three categories concerning human resources (daily rates that vary according to qualifications and duties), marine craft, and portable equipment, which are precisely classified, along with the description of the calculation methods for material costs not included in the list[39]. Appendix B specifies the functions and appointment of the Special Casualty Representative (SCR)[40], and finally, Appendix C regulates the duties of the Special Representative[41]. Also attached is the Code of Practice between the International Group of P&I Clubs[42] and the International Salvage Union (ISU), regarding the provision

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[35] A. Bishop, *The Development of Environmental Salvage and Review of the Salvage Convention 1989.* Web resource available at: https://comitemaritime.org/wp-content/uploads/2018/05/2012-02-09-Development-of-Environmental-Salvage-Archie-Bishop-.pdf (accessed 18 February 2026).

[36] See Chapter I Section 1.1.5

[37] The complete documentation (Appendix A, B, and C; the Code of Practice between International Salvage Union and International Group of P&I Clubs, the Code of Practice between International Group of P&I Clubs and International Union of Marine Insurance, and the Salvage Guarantee ISU5 form) can be found at: https://www.lloyds.com/market-resources/salvage-arbitration-branch/forms-documents

[38] See Chapter I Section 1.3

[39] G. Camarda, *Il soccorso in mare: profili contrattuali ed extracontrattuali,* cit., p. 304.

[40] Special Casualty Representative (SCR) is a salvage specialist acting as an independent adviser to the shipowner, assessing the efficiency and the reasonableness of the salvage operation under SCOPIC regime. See for a detailed explanation Section 1.5.1 below.

[41] There are technical supervisors, appointed one for the hull and one for the cargo interest. See for a detailed explanation Section 1.5.2 below.

[42] The International Group is a not-for-profit association of 12 P&I Clubs providing marine liability cover for 90% of the world's ocean-going tonnage. See 'The International Group of P&I Clubs', accessed 22 March 2026, https://www.igpandi.org/.

of SCOPIC security[43], although the code, according to clause 11[44], has no legal effect. The Code of Practice between the International Group of P&I Clubs and the International Union of Marine Insurance[45] is also attached regarding the payment of fees and expenses of the SCR under the SCOPIC regime, although this Code, by clause 3[46], has no legal effect and is only a code of conduct.

While the appendices and the supplementary documents govern the practical administration of the salvage operation and the insurance expectations, the 16 sub-clauses are the core legal mechanism of SCOPIC Clause. To understand the structure of SCOPIC and its specificities in the activation process, it is necessary to analyze the 16 sub-clauses in detail.

1.2.1 Incorporation and invocation (sub-clauses 1 and 2)

The SCOPIC Clause is a supplementary clause to the Lloyd's Form Salvage Agreement "No Cure – No Pay" ("Main Agreement"). Once incorporated into the LOF and in the event of invocation, the SCOPIC Clause legally replaces Article 14 of the 1989 Salvage Convention in its entirety, meaning the salvor forfeits any right to claim statutory special compensation under the Convention.

It is important to distinguish the incorporation of SCOPIC Clause from its invocation, because even when SCOPIC is incorporated into the contract,

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43 See Chapter II for a detailed explanation about the use of Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs

44 See Clause 11 Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs

45 London Property Underwriters represent the commercial insurance market (H&M) providing coverage for physical loss or damage to the vessel. Under the SCOPIC regime, their liability is strictly limited to the traditional salvage award assessed on the property salved (Article 13).

46 See Clause 3 between the International Group of P&I Clubs and London Property Underwriters

its remuneration effects will not begin until the Clause is specifically invoked in writing by the salvor (sub-clause 2)[47]. Therefore, it is solely the contractor who decides whether or not to invoke the SCOPIC Clause; if they decide to do so, they must provide written notice to the owners of the vessel.

Clause C[48] of the Lloyd's Open Form, expressly dictates that deleting "No" in Box 7 only incorporates the clause as a standby option; it "shall not of itself be construed as a notice invoking the SCOPIC Clause within the meaning of sub-clause 2 thereof".

Remuneration through Article 14 created doubts and questions such as: what constituted a "threat"? Or what were "coastal waters or waters adjacent thereto"? Or again, what was "substantial"? By removing the environmental threshold and the uncertainties associated with Article 14 "Special Compensation", the SCOPIC Clause grants the salvor the unconditional right to invoke its provisions regardless of a pre-existing "threat of damage to the environment"[49].

Consequently, since SCOPIC operates independently of the environmental criteria that are essential for Article 14, its invocation serves as a contractual substitute: once exercised, it precludes any further claims for remuneration under Article 14.3 or the related increments under Article 14.2[50].

1.2.2 Financial Guarantees and Contractor Safeguards (sub-clauses 3–4)

[47] See sub-clause 2 SCOPIC

[48] See Clause C Lloyd's Open Form (LOF)

[49] A. Bishop, *The Development of Environmental Salvage and Review of the Salvage Convention 1989*, cit., p. 12.

[50] J.Q. Reeder, G. Brice, *Maritime Law of Salvage: First Supplement to the Third Ed.* (Sweet & Maxwell, 2001), p. 56.

The financial integrity of the operation is governed by sub-clause 3[51], which requires the shipowner to provide an "Initial Security" of USD 3 million within two working days of invocation. This security is dynamic; it may be increased or reduced during the services as needed or by the arbitrator if there is a dispute[52], ensuring the salvor is constantly protected against credit risk. The detailed mechanics of this security scheme and the associated insurance instruments represent the cornerstone of the salvor's protection and will be analyzed in profound detail in Chapter II Section 2.2.

The enforcement of these obligations is found in sub-clause 4[53]. If the initial security is not provided, 4(i) allows the salvor to withdraw from SCOPIC and revert to their statutory rights under Article 14. Furthermore, 4(ii) grants the salvor the power to terminate all services under both SCOPIC and the LOF if an agreed increased security is not provided, ensuring a safe demobilization.

1.2.3 Remuneration Mechanics and the Discount Penalty (sub-clauses 5–6–7)

According to sub-clause 5[54], remuneration shifts from a "value-based" reward to a "cost-based" system. Compared to what occurs under the traditional Article 13 award system, where a salvor assisting a vessel carrying cargo may obtain a very substantial reward if the operation is successful, because the remuneration is linked to the salved value of the property, conversely, under the SCOPIC regime, the remuneration is calculated on the basis of pre-agreed tariff rates for tugs, personnel, and equipment actually employed during the operation, regardless of the final salved value.

[51] See sub-clause 3 SCOPIC

[52] Y. Baatz, *Maritime Law*, V, cit., p. 267.

[53] See sub-clause 4 SCOPIC

[54] See sub-clause 5 SCOPIC

Therefore, even if the vessel and cargo are ultimately lost, the salvor may still recover the operational costs plus the contractual uplift provided by SCOPIC. This fixed profit uplift of 25% is added to these rates to ensure the salvor receives more than a mere reimbursement of expenses[55]. The specific application of these tariffs and the structure of Appendix A will be examined in Section 1.3.

While sub-clause 6[56] ensures that the traditional Article 13 property award (based on "No Cure - No Pay") remains a separate and primary entitlement, sub-clause 7[57] introduces a vital balancing mechanism known as the "Discount Penalty". This rule is designed to prevent salvors from unnecessary invocation of SCOPIC in cases where the Article 13 reward would have been larger. If the Article 13 award exceeds the total SCOPIC remuneration, the traditional reward is discounted by 25% of the difference between the two figures. For example, if the salvage award was say USD 1.5 million and the assessed SCOPIC remuneration USD 1 million, no SCOPIC remuneration would be due and the salvage award to be paid would be reduced by USD 125,000 (1.5 -1 x 25%). In this example, the salvor would therefore receive USD 1.375 million. For this reduction the SCOPIC remuneration is calculated from the beginning of the salvage irrespective of the day on which the clause was actually invoked. This retrospective extension maximises the SCOPIC remuneration and minimises the difference from a calculated Article 13 award thus making the penalty's application more unlikely[58].

The discount benefits the property underwriters, who are liable to pay the reduced Article 13 award, rather than the P&I Clubs, who are liable to pay

[55] At the time of the SCOPIC creation the average uplift under Article 14.2 in arbitrated cases, was 26%. It was decided that a general and fixed uplift of 25% in all cases would compensate. See A. Bishop*, The Development of Environmental Salvage and Review of the Salvage Convention 1989*,cit., p. 14.

[56] See sub-clause 6 SCOPIC

[57] See sub-clause 7 SCOPIC

[58] Y. Baatz, *Maritime Law*, V, cit., p. 267

the Article 14 or SCOPIC remunerations[59]. This Clause is effectively a penalty (even if not in a technical legal sense), resulting from a wrong SCOPIC invocation by the contractor. Therefore, this significant financial deterrent forces salvors to make a rigorous commercial assessment before triggering the clause, ensuring it is only used when the financial risk dictates a genuine need for a safety net.

1.2.4 Payment Mechanics and the Interim Funding System (sub-clause 8)

Sub-clause 8[60] serves as the financial engine of the agreement, ensuring the contractor's liquidity during and immediately following the operation. The system distinguishes between two primary scenarios to prevent the salvor from facing long delays in recovering operational costs due to arbitration.

In the first instance (8)(ii)(a), states that if no potential Article 13 property award exists (often the case in total losses), the undisputed amount of SCOPIC remuneration is payable within one month of the claim's presentation[61]. Interest accrues from the termination of services at the US prime rate plus 1%.

In the more frequent second scenario (8)(i)(b), where both property and SCOPIC claims coexist[62], the owner is required to pay an interim account of 75% of the amount by which the SCOPIC remuneration exceeds the Article 13 security demanded (not award). For instance, if the salvor claims SCOPIC

[59] A. Bishop, *The Development of Environmental Salvage and Review of the Salvage Convention 1989*, cit., p. 15.

[60] See sub-clause 8 SCOPIC

[61] "It will be seen that this is a major advance on the normal situation regarding salvage remuneration when the salvor has to wait until that remuneration is finally assessed before he is paid unless he can obtain a payment on account either by agreement or order". Q. Reeder, G. Brice, *Maritime Law of Salvage: First Supplement to the Third Ed.*, cit., p. 64.

[62] References is made to Appendix B (5)(c)(iv) which deals with the effect of a dissenting Report by an SCR. See for a detail explanation Section 1.5.1

remuneration of USD 8 million while the Article 13 security is estimated at USD 4 million, the shipowner must provide an interim payment corresponding to 75% of the difference between the two amounts. In this case, the interim payment would therefore amount to USD 3 million. This “75% rule” is a vital compromise: it provides the salvor with immediate working capital while maintaining a 25% buffer to protect the shipowner until the final “No Cure - No Pay” award is subtracted.

To balance this rapid funding, sub-clause 8(ii) mandates a reciprocal indemnity from the contractor. If the interim payments ultimately exceed the final SCOPIC remuneration due (which may occur if the Article 13 award is higher than initially assessed), the salvor must refund the overpayment to the owner. This dual mechanism ensures rapid cash flow for the salvor while protecting the shipowner and P&I Club from final financial imbalances.

1.2.5 Termination Rights (sub-clause 9)

Sub-clause 9[63] governs the right of termination, representing a critical point of balance for both parties. The shipowner is granted the right to terminate their SCOPIC obligations by providing five days’ written notice and paying for five days’ (or as long as needed for demobilisation)[64] worth of salvage remuneration. This may leave the contractor bound to perform the operation under their LOF obligations with potentially limited prospects of a financial reward to reflect those efforts. The remedy to this imbalance in the termination provisions is to give the contractor an opportunity to apply to the salvage arbitrator to bring the main agreement to an end.

[63] See sub-clause 9 SCOPIC

[64] Y. Baatz, *Maritime Law*, V, cit., p. 268.

This is possible through Clause 19 ‘Contractor’s Special Right to Terminate’ of the Lloyd’s Salvage Arbitration Clauses 2020 (LSAC 2020)[65]. LSAC 2020 Clause 19 expressly allows the salvor to apply to the Arbitrator for an order declaring that they are no longer bound by the LOF agreement. This termination is granted without prejudice to the salvor’s right to recover all SCOPIC remuneration accrued up to the date of termination, including necessary demobilization costs, thus providing a definitive and secure exit strategy.

All termination procedures remain subject to and bound by what is highlighted in sub-clause 9(ii), which indicates that the termination is only effective if the salvor is not prevented from demobilizing their equipment by government, local, or port authorities having jurisdiction over the area where the services are being rendered. This exception ensures that the shipowner cannot unilaterally cut off funding if state authorities oblige the salvor to remain on-site to manage an ongoing pollution threat[66].

1.2.6 Operational Duties and Professional Conduct (sub-clauses 10–11)

The introduction of the SCOPIC regime does not alter the fundamental responsibilities of the salvor. Under sub-clause 10[67], the contractor remains bound by the “best endeavours” obligation established in the Main Agreement

[65] “Regulations concerning security and arbitration, introduced with LOF 2020. Clause 19 is designed to deal with the situation where the shipowners pay the security and terminates SCOPIC in accordance with 9(i) but the salvors cannot rely on art 4(ii) to get out of the salvage contract. Clause 19 enables the salvor to apply to the Arbitrator for an order that they are no longer bound by the salvage contract and their rights to recovery under SCOPIC until termination and under art 13 are preserved”. Y. Baatz, *Maritime Law*, V, cit., p. 268 note 166.

[66] It also indicated in Clause 8 of the "Code of Practice between ISU and The International Group", that the International Group of P&I Clubs recommend the owners not to withdraw without reasonable cause.

[67] See sub-clause 10 SCOPIC

(LOF). This ensures that the primary objective remains the dual success of salving the property and minimizing environmental damage.

To ensure professional accountability, sub-clause 11[68] acts as a disciplinary safeguard. It is noteworthy that this provision was not included in the original first version of SCOPIC but was introduced in subsequent revisions to balance the certainty of tariff-based payments with the required quality of service. Structurally, this clause creates a direct link to international uniform law, as it mirrors the principles of Article 18 of the 1989 London Convention[69]. It stipulates that a contractor may be deprived of the whole or part of the SCOPIC remuneration if the operations became more difficult, more prolonged, or if the salved fund was reduced due to the contractor's own fault, neglect, or dishonest conduct. By incorporating this standard, SCOPIC Clause prevents the contract from becoming a financial "safety net" for inefficient salvors.

1.2.6 Technical Supervision and Oversight (sub-clauses 12–13)

Operational transparency is facilitated by the presence of independent observers. Sub-clause 12[70] governs the appointment of the Special Casualty Representative (SCR) from a specialized Lloyd's panel. The SCR's primary role is to monitor the salvage services and provide an independent assessment of the daily reports and costs. While the SCR observes and reports, they have no power to direct the Salvage Master's nautical decisions. The specific duties, the appointment process, and the "Dissenting Report" mechanism of the SCR will be analyzed in profound detail in Section 1.5.1.

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[68] See sub-clause 11 SCOPIC

[69] See Article 18 "The effect of salvor's misconduct" *International Convention on Salvage, 1989*

[70] See sub-clause 12 SCOPIC

Furthermore, sub-clause 13[71] allows for the appointment of Special Representatives by Hull and Machinery underwriters and cargo interests. They are required to be technical men and not practicing lawyers. These technical experts observe and report on the operation's progress, ensuring that the property underwriters (who remain liable for the traditional Article 13 award) are fully informed of the developments on-site. The role of these representatives and their interaction with the SCR will be further examined in Section 1.5.2.

1.2.7 Environmental Scope, Insurance Exclusions and Dispute Resolution (sub-clauses 14–15–16)

The geographical and functional scope of environmental work is defined by sub-clause 14[72]. It clarifies that SCOPIC remuneration covers the prevention and removal of pollution, provided such actions occur in the "immediate vicinity" of the vessel and are necessary for the proper execution of the salvage.

One of the most critical provisions for the insurance market is found in sub-clause 15[73], which explicitly prohibits SCOPIC remuneration from being treated as a General Average expense to the extent it exceeds the Article 13 award. This ensures that environmental protection costs are the sole liability of the shipowner and their P&I Club. They are not permitted by this sub-clause to seek to recover it from hull and machinery underwriters[74]. The complex implications of this exclusion on the various insurance layers and the General Average mechanism will be analyzed in detail in Chapter II Section 2.3.

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[71] See sub-clause 13 SCOPIC

[72] See sub-clause 14 SCOPIC

[73] See sub-clause 15 SCOPIC

[74] Q. Reeder, G. Brice, *Maritime Law of Salvage: First Supplement to the Third Ed.*, cit., p. 69.

The framework concludes with sub-clause 16[75], which mandates that any dispute arising from the SCOPIC clause or the operations thereunder be referred to Arbitration in London . This ensures that complex technical and financial disagreements are settled by specialized maritime arbitrators, who deal with disputes related to the LOF as the SCOPIC is only an addendum to the LOF itself and not an autonomous contract in itself[76].

1.3 Tariff Calculation and Assessment

As analyzed in Section 1.1, one of the improvements introduced by SCOPIC was the overcoming of the "fair rate" concept established by Article 14.3 of the 1989 Salvage Convention, which had created numerous application difficulties and ambiguities regarding its implementation.

In the case of *The Nagasaki Spirit*, the House of Lords restricted this concept to a mere reimbursement of expenses without including any type of profit, although it did take into account the criteria established by Article 13(h), (i), and (j), which encourage professional salvors to invest in equipment and keep it on standby ready for use in case of necessity[77]. This meant that every assessment necessary to determine whether a rate was "fair" also had to account for the salvor's equipment, even if not directly used in that specific salvage operation. In addition to creating numerous disparities, this led to continuous delays, increased expenses, and uncertainty in the provision of the remuneration due, as each individual case concerning the salvor had to be analyzed in the complexity of all its factors to determine whether or not it fell within the "fair rate".

[75] See sub-clause 16 SCOPIC

[76] The mechanism for arbitration is contained in Lloyd's Standard Salvage and Arbitration Clauses (LSSA). See Clause 14 of the LSSA Clauses

[77] A. Bishop, *The Development of Environmental Salvage and Review of the Salvage Convention 1989*, cit., p. 13.

To correct this, sub-clause 5 of the SCOPIC framework was introduced, which dictates that remuneration must be assessed on a strict "time and materials" basis, calculated using a globally applicable system of pre-agreed, profitable tariff rates.

1.3.1 The Structure of Appendix A

According to sub-clause 5(i), the total SCOPIC remuneration is the aggregate of five distinct components: the tariff rates for personnel; the tariff rates for tugs and other craft; the tariff rates for portable salvage equipment; reasonably incurred out-of-pocket expenses and a standard bonus.

These rates are established in Appendix A of the SCOPIC Clause[78]; the initial intention was for the rates to be profitable and encouraging for professional salvors, but it became clear that the rates were more profitable in some parts of the world compared to others. Consideration was given to the possibility of applying different rates based on different geographical areas, but this further complicated a clause that was already complex in its own right. SCOPIC was considered a safety net, and therefore a broad approach was deemed sufficient[79].

The specific financial figures used to calculate the salvor's remuneration are exhaustively detailed in Appendix A of the SCOPIC agreement. The tariff structure is divided into several operational categories such as personnel, tugs and other craft, portable salvage equipment, and lastly, downtime. As far as human resources are concerned, the framework

[78] See Appendix A SCOPIC

[79] A. Bishop, *The Development of Environmental Salvage and Review of the Salvage Convention 1989*, cit., p. 14.

establishes specific daily rates for all personnel reasonably engaged in the contract[80], including any time necessary to proceed and return from the accident. This comprehensive scale covers everyone from the Salvage Master and Naval Architects down to divers, riggers, and even shore-based office administration.

Regarding marine assets, the deployment of salvage tugs and workboats typically constitutes the most significant expense of an operation. SCOPIC manages this through a sliding scale based on the vessel's Brake Horse Power (BHP)[81]. As the power of the tug increases, the rate charged per unit of BHP decreases. Additionally, daily financial premiums are granted for specialized capabilities, such as certified firefighting equipment (Fi-Fi). It is explicitly noted within the clause that fuel and lubricating oils consumed during the service are not included in this base tariff; rather, they are treated as an out-of-pocket expense and reimbursed separately at their replacement cost[82].

A specific category is also provided for portable salvage equipment such as generators, pumps, and compressors, which is similarly charged at agreed daily rates. However, to protect shipowners and liability insurers from runaway costs during prolonged operations, the clause imposes a strict financial cap on these items. The total charge for any single piece of portable equipment cannot exceed a defined multiplier of the manufacturer’s recommended retail price[83].

Furthermore, the framework realistically accommodates the unpredictable nature of salvage operations through its downtime and standby provisions. If a tug or a piece of equipment breaks down without any fault on

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[80] Sub-clause 1(d) specifies that personnel reasonably engaged on the contract are billed at a daily rate, even while eating, sleeping, or resting, provided they are "on site"; travel to reach the location of operations is also considered part of the salvage service. If an operator becomes ill or injured while engaged under the contract, the shipowner (and therefore the P&I Club) must continue to pay their daily rate until they are demobilized; however, the shipowner may contest the charge if the salvor sends personnel who are unfit or unnecessary.

[81] Brake Horse Power (BHP) usually refers to the amount of power delivered at the engine output shaft of a piston engine.

[82] See Appendix A SCOPIC 2(d)

[83] See Appendix A SCOPIC 3(c)

the part of the salvor, or if it is reasonably mobilized to the casualty site but ultimately remains unused, the salvor is not left entirely uncompensated. Instead, such resources are remunerated at a reduced stand-by rate, which equates to 50% of the standard tariff plus the standard uplift[84].

1.3.2 Out of Pocket Expenses

The assessment of SCOPIC remuneration extends beyond the fixed internal tariffs of the salvor to include "out-of-pocket" expenses. According to sub-clause 5(iii), these are defined as variable costs and actual cash outlays incurred for resources or services purchased at the time of need[85]. Eligible expenses include the hire of external personnel, specialized equipment, and consumables such as fuel, lubricating oil, welding bars, and firefighting foam. The rationale behind this eligibility is to ensure that salvors are not discouraged from reasonably hiring third-party tugs and equipment in an emergency, even if they ultimately prove unnecessary, as they are guaranteed to recover the associated hire costs[86]. A practical example would be the emergency hire of an external firefighting tug or a heavy-lift crane from a local contractor during a casualty response. Even if such equipment is not owned by the salvor, the related hire costs may qualify as out-of-pocket expenses recoverable under SCOPIC, provided that the expenses are considered reasonable and necessary for the salvage operation.

Conversely, fixed business costs relating to the salvor's own permanent staff and core fleet are strictly excluded from this category, as they are already included in the Appendix A tariffs.

[84] See Appendix A SCOPIC 4

[85] See sub-clause 5(iii) SCOPIC

[86] Q. Reeder, G. Brice, *Maritime Law of Salvage: First Supplement to the Third Ed.*, cit., p. 61.

The mechanism for assessing these external costs depends significantly on the membership status of the third-party provider. If men, tugs, other craft and equipment are hired from any party who is not an ISU member, the salvor is entitled to the actual cost of hire, provided it is deemed "reasonable", subject to the allowance of the Special Casualty Representative (SCR)[87], the control system by the SCR will be analyzed in Section 1.5.1. While, when out-of-pocket expenses relate to the rental of resources from another ISU member or its affiliates, the amount due is calculated strictly according to the Standard Tariff Rates in Appendix A[88].

To further safeguard against excessive costs and prevent salvor speculation, sub-clause 5(iv) introduces a specific financial control mechanism. This rule is activated specifically when out-of-pocket expenses for non-ISU providers exceed the standard fixed rates set out in Appendix A. When this situation arises, the salvor does not apply the standard bonus but is entitled to receive the higher of two alternative calculation methods: the first is the real cost plus 10%, i.e., the cost incurred plus a reduced margin; the second calculation method is the standard rate plus 25%, i.e. the basic calculation through the rate set forth rates in Appendix A, plus the standard bonus. This mechanism ensures that the salvor does not operate at a loss while simultaneously discouraging artificial cost inflation by reducing the profit margin (from 25% to 10%) on the portion of expenditure that exceeds standard market parameters. Furthermore, fixing a 25% uplift based on the rate regulated on Appendix A reduces disputes regarding special compensation between property underwriters and salvors[89].

1.4. Tariff Updating and Revision

[87] See sub-clause 5(iii)(b) SCOPIC

[88] See sub-clause 5(iii)(a) SCOPIC

[89] P. Wang, *The Appliance of SCOPIC Clause in Salvage Projects: A Salvage Case Study under the SCOPIC Clause*, 2013, p. 49.

To maintain its effectiveness as a commercial safety net, the SCOPIC framework relies fundamentally on the economic viability of the tariff rates delineated in Appendix A. In the early years following the introduction of the clause in 1999, the revision of these tariffs was a somewhat fragmented and contentious process. Tariff increments were negotiated piecemeal, resulting in periodic, flat-percentage increases across the board (such as the amendments introduced in 2007 and 2011, which raised rates for personnel, equipment, and tugs without a formalized metric)[90]. However, this ad-hoc approach proved problematic for the salvage industry. For example, during the period between 1999 and 2011, the agreed rates failed to keep pace with an estimated 35% rate of inflation, thereby eroding the salvors' real-term remuneration and threatening the foundational commercial incentive that SCOPIC was designed to provide[91].

Recognizing the absolute necessity for a more stable and predictable financial mechanism, the International Salvage Union (ISU) and the International Group of P&I Clubs reached an agreement in 2012 to implement a systematic, triennial review of the tariff rates[92]. According to Appendix B[93] the review is entrusted to the SCOPIC committee. This industry-wide governance body reflects a careful balance of all affected maritime interests, comprising three representatives each from the International Group of P&I

[90] See International Salvage Union, *SCOPIC and the SCR | The International Salvage Union - Saving Lives, Ships and Cargo*, 2017, https://www.marine-salvage.com/media-information/conference-papers/scopic-and-the-scr/.

[91] A. Bishop, *The Development of Environmental Salvage and Review of the Salvage Convention 1989*, cit., p. 18.

[92] See International Salvage Union, *SCOPIC and the SCR in the International Context,* 2018, web resource available at: https://www.marine-salvage.com/media-information/conference-papers/scopic-and-the-scr-in-the-international-context/, (accessed 30 March 2026).

[93] See Appendix B 1(b) SCOPIC

Clubs, the International Salvage Union, the International Union of Marine Insurance (IUMI)[94], and the International Chamber of Shipping (ICS)[95].

To depoliticize the revision process and avoid protracted industry negotiations, the stakeholders agreed to link these triennial adjustments directly to inflation indices. Specifically, the rates are benchmarked against the United States Consumer Price Index (CPI)[96], reflecting the fact that SCOPIC remuneration is universally assessed and paid in US dollars. This automatic adjustment mechanism ensures that the financial compensation for personnel, tugs, and portable equipment, safeguards the professional salvors' capacity to finance and maintain costly emergency readiness. To preserve the uniformity and integrity of the framework worldwide, the Code of Practice established between the ISU and the International Group of P&I Clubs explicitly prohibits any independent, bilateral variation of the SCOPIC terms or tariff rates by individual contracting parties. It mandates that all amendments must be exclusively channeled through the SCOPIC Committee's official review and approval process[97].

Operationally, this continuous updating mechanism guarantees commercial certainty during high-stress maritime emergencies. As dictated by sub-clause 5(ii) of the SCOPIC, the specific tariff rates utilized to calculate the final remuneration are strictly those in force at the precise time the salvage services are rendered, applying automatically until they are officially reviewed and amended by the Committee[98]. The latest updating version about

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[94] See supra note 45.

[95] International Chamber of Shipping (ICS) is the global trade association for shipowners and operators, representing the world's national shipowner associations and over 80 % of the world merchant fleet. See for more information: 'International Chamber of Shipping', web reosurce available at: https://www.ics-shipping.org/, (accessed 9 April 2026).

[96] The Consumer Price Index (CPI) measures the change in the price of goods and services from the perspective of the consumer. It is a key way to measure changes in purchasing trends and inflation.

[97] See Code of Practice between the International Salvage Union and the International Group of P&I Clubs point 2.

[98] See sub-clause 5(ii) SCOPIC

the SCOPIC Tariff is valid from 1st January 2026[99]. By continuously adapting to market realities, the maritime industry has successfully ensured that the SCOPIC Clause remains a living, economically robust instrument capable of incentivizing and supporting the ever-evolving demands of modern environmental salvage operations.

1.5 Technical Supervision

1.5.1 Role of the Special Casualty Representative (SCR)

One of the main weaknesses that occurred through previous salvage remuneration regimes was the lack of reliable real-time information during the course of the salvage operation[100], and this was particularly relevant for P&I Clubs, which found themselves responsible for substantial special compensation claims without having an official viewpoint or direct participation in the decisive phases. To resolve these issues, one of the key changes brought about by the introduction of SCOPIC was the acquisition of the right by the shipowners to send an expert to the scene of the casualty, and where practicable to attend on board the ship or the salvage craft in order to

[99] The updated version of Appendix A rates can be found at this link: https://www.lloyds.com/market-resources/salvage-arbitration-branch/forms-documents

[100] A. Bishop, *The Development of Environmental Salvage and Review of the Salvage Convention 1989*, cit., p. 16.

be in a position to report the circumstances and the progress made by the salvor[101].

This figure is recognized as the Special Casualty Representative (SCR), whose functions are described in detail in Appendix B and are further explained in "The Guidelines for SCRs"[102]. Once SCOPIC is invoked, the shipowner has the possibility to appoint an SCR to attend a salvage operation[103]. This expert must be selected from a specialized SCR Panel, which is strictly vetted and administered by the SCOPIC Committee.

Although the SCR is appointed by the shipowner and their fees and expenses are paid by the same, the guidelines contained in Appendix B strictly demand that the SCR must operate with absolute impartiality[104]. The SCR represents and reports to all salved interests (ship and cargo underwriters and P&I clubs) with copies provided to the salvors[105]; furthermore, their primary duty is the same as that of the salvor, namely "to use their best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment"[106].

The presence of a figure of this type necessitates a balance and a clear division of roles during salvage operations to avoid overlapping between the operating parties. It is for this reason that Appendix B expressly stipulates that the Salvage Master remains at all times in overall charge of the operation, makes all final decisions, and remains wholly responsible for the execution of the salvage[107]. The SCR has no authority to direct the salvage operations but remains in an observer and advisory role. To facilitate this, the Salvage

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[101] G. Daines, *Lloyd's Open Form and the Special Compensation P&I Clause (SCOPIC)*, February 2002. Web resource available at: https://comitemaritime.org/wp-content/uploads/2018/05/Graham-Daines-Scopic-Paper.pdf. (accessed 30 March 2026), p. 16.

[102] See Lloyd's, Guidelines on the Role and Responsibilities of the SCR available at: https://www.lloyds.com/market-resources/salvage-arbitration-branch/forms-documents.

[103] See sub-clause 12 SCOPIC

[104] See Appendix B 5(c) SCOPIC

[105] A. Bishop, *The Development of Environmental Salvage and Review of the Salvage Convention 1989*, cit., p. 16.

[106] See Appendix B 2 SCOPIC

[107] See Appendix B 3 SCOPIC

Master is contractually obliged to keep the SCR fully informed of all developments and to actively consult with the SCR during the operation whenever circumstances allow. In turn, the SCR is entitled to offer technical advice to the Salvage Master, functioning essentially as the highly qualified "eyes and ears" of the absent insurers[108].

The core of the SCR's supervisory function revolves around the meticulous daily monitoring of the resources utilized, which directly dictates the tariff-based remuneration assessed under Appendix A. Upon the invocation of SCOPIC, the Salvage Master must produce Daily Salvage Reports detailing the evolving salvage plan, the condition of the casualty, the progress made, and a precise inventory of the personnel, tugs, and equipment engaged that day.

The SCR receives these daily reports, transmits copies to the interested parties and underwriters, and, if satisfied with their accuracy and the reasonableness of the resources deployed, endorses them. However, if the SCR disagrees with the necessity or appropriateness of the deployed resources (for example, if they believe the salvor is utilizing excessive equipment) they are empowered and required to issue a "dissenting report" setting out their contrary views. If an SCR issues a dissenting report, any initial payment due for SCOPIC remuneration will be calculated strictly based upon what the SCR views as the appropriate equipment or procedure, safely deferring the resolution of any disputed costs to a subsequent arbitration. This power of control is used to determine whether it was reasonable to incur that extra cost, guaranteeing insurers the certainty of a transparent cost.

Finally, as soon as reasonably possible after the services terminate, the SCR must issue an SCR's Final Salvage Report. This comprehensive document establishes the definitive facts of the casualty, catalogs the resources employed, and provides a provisional calculation of the SCOPIC remuneration to which the contractor may be entitled, thereby forming the

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[108] See Brookes Bell, *"Special Casualty Representatives (SCR)",* Web resource available at: https://www.brookesbell.com/marine-services/salvage-and-wreck/special-casualty-representatives-scrs/, (accessed 10 April 2026)

factual basis for settlement and drastically reducing the scope for post-incident litigation which should include information to assist with the assessment of an award under. The report should contain facts and not opinions as it was felt that with the SCR's reports being circulated to all interested parties it should be based solely upon his own, neutral, observations of the facts[109].

SCRs have played an important role in SCOPIC situations and, with the benefit of the tariff rates, it is now possible for an owner and his insurers to be aware and keep an eye on the minimum cost of any operation on a daily basis. An enormous improvement on the Article 14 Special Compensation regime[110].

1.5.2 Role of the Special Representatives

In addition to the supervision provided by the SCR, the SCOPIC framework explicitly acknowledges the financial exposure of property insurers, who historically suffered from a severe lack of information during salvage emergencies.

Under sub-clause 13 of the SCOPIC, the Hull and Machinery underwriter (or the lead underwriter) and the owners or underwriters of the cargo are each granted the right to appoint their own observer to attend the casualty, designated respectively as the "Special Hull Representative" and the "Special Cargo Representative". These Special Representatives are appointed at the sole expense of their appointors and do not have to be selected from the official SCR panel. However, to ensure that these observers add practical value rather than legal friction to a high-stress emergency response, the clause

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[109] G. Daines, *"Lloyd's Open Form and the Special Compensation P&I Clause (SCOPIC)"*, cit., p.17.

[110] A. Bishop, *The Development of Environmental Salvage and Review of the Salvage Convention 1989*, cit., p. 16.

expressly dictates that they must be "technical men and not practicing lawyers"[111].

The ability to deploy a technical representative to the vessel at an early stage, combined with the automatic receipt of the Salvage Master's daily reports and the SCR's final report, means that property underwriters are kept far better informed than ever before. This early and accurate flow of information fundamentally transforms the commercial dynamics of a casualty, allowing underwriters to accurately estimate their potential liabilities and, in many cases, make earlier offers of settlement, thereby securing substantial savings in prolonged litigation costs[112].

To facilitate this oversight, Appendix C of the SCOPIC clause legally obliges the Salvage Master, the shipowners, and the SCR to cooperate fully with the Special Representatives, granting them full access to the vessel to observe the operations and inspect relevant ship's documents. Where an SCR is appointed, the SCR acts as the primary conduit, keeping the Special Representatives fully informed, consulting with them, and providing them with copies of the daily salvage reports. Importantly, while SCOPIC guarantees access for the SCR and the Special Representatives, it also recognizes the critical need to limit extraneous personnel during hazardous operations. Consequently, the framework expressly empowers the Salvage Master to restrict access to any other third-party surveyors or representatives if they reasonably believe that their presence will substantially impede or endanger the safety and success of the salvage operation[113].

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[111] See sub-clause 13 SCOPIC

[112] B. Browne, *Salvage - LOF and SCOPIC, 1999,* cit., Pp. 113-120.

[113] See appendix C 5 SCOPIC

Chapter II The Role of P&I Clubs and Insurance Aspects

2.1 The Role of P&I Clubs

During the course of the rapid growth of international maritime traffic, traditional insurance companies had not expanded the scope of their hull and machinery insurance policies and, in this way, failed to keep pace with the continuous legislative evolution and the consequential increase in shipowners' liabilities[114].

English shipowners found that a framework for cheap and efficient group protection for this category, existed already in the form of Hull clubs, this form of insurance group was established by English shipowners at the beginning of the eighteenth century, these were non-profit associations that provided their members with insurance coverage for risks inherent to their ships, the so-called hull risks and this system suggested itself to shipowners as the most cost-effective means of protecting themselves against the new threats to their livelihoods[115]. Old Hull clubs were converted into "protecting" or "protection" clubs, and new associations were formed to alleviate the new burdens[116]. The "protection" branch concerns liabilities relating to the operation of the ship. These may include damages and expenses for the death,

[114] G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi* (Jovene editore, 2013), p. 10.

[115]Despite the law known as the Bubble Act of 1720, through which the English Parliament granted only two insurance companies, the Royal Exchange Assurance and the London Assurance, the possibility of conducting insurance activities, Hull clubs were allowed to operate within a system of mutual insurance among their members. Once the duopoly of the Bubble Act was removed in 1824, and with a regime of free competition in insurance matters, Hull clubs gradually lost importance following the better conditions offered by other operating companies. See for more information G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi*, cit., p. 1; S. J. Hazelwood, *P & I Clubs: Law and Practice*, 3. ed, Lloyd's Shipping Law Library (Lloyd's of London Press, 2000), p. 1.

[116] S. J. Hazelwood, *P & I Clubs: Law and Practice*, cit., p. 6.

injury, or illness of passengers, crew members, or third parties; hospital, medical, maintenance, and repatriation expenses for crew members; rights to compensation for life salvage not otherwise recoverable and collision damages not covered by the hull policy[117].

Starting from the mid-1800s, the "protecting clubs" were joined by "indemnity clubs", which introduced another class of risk, known as indemnity. Meanwhile, the "indemnity" branch, concerns liabilities relating to the commercial employment of the ship. These may include compensation for General Average[118] contributions that are unrecoverable because they resulted from a negligent peril; fines or other pecuniary penalties imposed by a public authority for facts connected to the employment of the vessel; and expenses for administrative or judicial proceedings[119].

This branch emerged to satisfy the needs of shipowner-carriers following the rapid development of commercial traffic and the use of more technologically advanced vessels to be protected against cargo interests regarding liability for damage caused to goods carried on board their ships[120]. Following the establishment of the "indemnity class" and its merger with the "protecting class"[121], the protecting clubs took on their current name of Protection & Indemnity Clubs, also known as P&I Clubs[122].

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[117]A. L. d'Ovidio et al., *Manuale di diritto della navigazione*, 16. ed (Giuffrè Francis Lefebvre, 2022), p.717.

[118] "There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure." Marine Insurance Act 1906 s 66(2); see also Section 2.3.2.

[119] A. L. d'Ovidio et al., *Manuale di diritto della navigazione*, cit., p.718.

[120] G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi*, cit., p. 11.

[121] The distinction between the two branches of responsibility, which was not strictly enforced, is no longer observed today. A. L. d'Ovidio et al., *Manuale di diritto della navigazione*, cit., p.717.

[122] D. Casciano, *L'assicurazione P&I* (Giuffrè Editore, 2013), p. 19.

2.1.1 Historical evolution and organization of the P&I Clubs

The progressive expansion of maritime liabilities during the nineteenth and twentieth centuries revealed the structural limits of traditional marine insurance, which was primarily designed to cover damage to the insured vessel and cargo. As shipowners became increasingly exposed to third-party liabilities, pollution claims[123] and wreck removal expenses, the need emerged for a more flexible and collectively organised system of protection. It was within this context that P&I Clubs progressively developed their modern role within the maritime insurance market.

Although the emergence of P&I Clubs was driven by the inadequacy of traditional marine insurance in addressing expanding third-party liabilities, their legal and organisational structure evolved independently from the statutory model contemplated by marine insurance legislation. The Marine Insurance Act 1906[124] captured a historical phase in which mutual protection operated through separate contractual undertakings among members, rather than through the incorporated, member-governed institutions that characterise contemporary P&I Clubs. In that Act, there is the description of the old position that where there was a loss the right of action of the assured was not against all of the members jointly through the association but was against each individual members on the separate contract of insurance entered for him by the manager[125]. This is not the mode in which it is now conducted the P&I Clubs' mutual insurance.

The modern P&I associations are generally registered companies limited by guarantee with no share capital. Their members are not

[123] D. Casciano, *L'assicurazione P&I*, cit., p. 20.

[124] The Marine Insurance Act 1906 (MIA 1906) is a foundational UK statute that codified the laws governing marine insurance. It remains a global standard, laying out the fundamental principles of maritime contracts, insurable interest, policy requirements, and risk distribution. The MIA 1906 was fundamentally updated and overhauled by the UK Insurance Act 2015. While the 1906 Act was not repealed, the 2015 Act stripped away or radically amended its most severe, outdated, and insurer-friendly provisions to match modern commercial realities

[125] See Section 85 Marine Insurance Act 1906

shareholders and subscribe no capital, nor do they participate in any profits[126]. In the relationship between the members of the club their overriding obligation is a mutual responsibility to contribute to the damages suffered by them by virtue of obligations expressed in the Articles of Association and Rules of the club[127], to guarantee payment of each other's claims: "a network of reciprocal guarantees"[128].

The Clubs are now incorporated and registered, and it is on the corporate body and not in the individual members that liability now primarily falls[129], in accordance with the provisions of the Companies Act 2006[130], as well as those set out in the Insurance Companies Act 1982[131], relating to the discipline of the United Kingdom insurance business[132]. One of the features that distinguish P&I clubs from other insurers is that they are controlled or governed by their shipowner members, which ensures a measure of flexibility[133].

Protection and indemnity insurance cover is obtained by entering a vessel, or only a portion of its tonnage, into a P&I Club[134]. The application

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[126] G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi*, cit., p. 200.

[127] The Article of Associations and the Rules of the Club, contains the mutual relationship between the Club and the members D. Casciano, *L'assicurazione P&I*, cit., p. 55-56.

[128] S. J. Hazelwood, *P & I Clubs: Law and Practice*, cit., p. 13.

[129] S. J. Hazelwood, *P & I Clubs: Law and Practice*, cit., p. 14.

[130]The Companies Act 2006 was a legislative intervention to reorganise and regulate English company law, allowing for the division of the types of companies and corporate structure envisaged. The Companies Act 2006 did not modify the mutual nature of P&I Clubs but modernised their corporate governance by regulating companies limited by guarantee, codifying directors' duties and reinforcing the legal separation between the Club and its members. See for more information G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi*, cit., p. 184-196; D. Casciano, *L'assicurazione P&I*, cit., p. 25.

[131] The Insurance Companies Act 1982 consolidated the existing UK insurance legislation and subjected insurers, including mutual insurers, to authorisation, solvency and supervisory requirements. It was subsequently amended to implement European insurance directives and was eventually superseded by the Financial Services and Markets Act 2000, while the prudential framework currently applicable to insurers has been significantly influenced by the Solvency II regime. See for more information N. Fabrio, *Le assicurazioni marittime ed aeronautiche,* Università degli Studi di Udine, 2013, p. 23.

[132] D. Casciano, *L'assicurazione P&I*, cit., p. 25.

[133] Y. Baatz, *Maritime Law*, V, cit., p. 513.

[134] S. J. Hazelwood, *P & I Clubs: Law and Practice*, cit., p. 33.

for entry is submitted to the underwriting department of the P&I Club's managers, usually by the shipowner, by completing a specific entry or application form. Just like in traditional insurance contracts, this form constitutes the contractual proposal of the party intending to join the Club and, at the same time, obtain protection and indemnity insurance cover[135]. The entry may be requested by a broker for and on behalf of multiple entities holding a joint and several interest in the vessel (joint owners)[136]. Applications for the entry of vessels belonging to the same shipowner may be submitted to different P&I Clubs and, if the application for entry concerns only a part of the vessel's tonnage, the prospective member may assume the risk directly for the remaining part or submit an application to a different P&I Club to obtain coverage for the remaining portion of the tonnage as well[137]. Shipowners, operators, and charterers who wish to ensure their third-party liabilities apply to enter their vessels into the Club, thereby becoming "Members" of the association[138]. Instead of paying a conventional commercial premium, members historically contribute to a common risk pool by paying "calls".

The basic principle of this mutuality is that the combined calls paid by the membership in any single policy year must be sufficient to meet all the claims, reinsurance costs, and administrative expenses of the Club for that year, ensuring that risk transfer is provided strictly at cost.

Furthermore, in order to obtain entry into a P&I Club and the resulting insurance cover, the vessel must already be covered by a traditional hull insurance policy[139].

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[135] D. Casciano, *L'assicurazione P&I*, cit., p. 39.

[136] G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi*, cit., p. 15.

[137] D. Casciano, *L'assicurazione P&I*, cit., p. 50.

[138] Wärtsilä. *"Protection and Indemnity Clubs (P&I Clubs)"*. Web resource available at: https://www.wartsila.com/encyclopedia/term/protection-and-indemnity-clubs-(p-i-clubs) (accessed 2 May 2026).

[139] For a detailed explanation of the subdivision between protection and indemnity coverage and hull and machinery coverage, see Section 2.3.

The P&I Clubs indemnify their members for liabilities attributable to them up to the amount covered by the Hull Insurance. In addition, the coverage is conditional on the entered vessel's classification being maintained with a Classification society approved by the managers of the club and upon compliance with statutory obligations including for example, SOLAS (Safety of Life at Sea)[140], the STCW (Standard of Training, Certification and watchkeeping) Convention 1995[141] and the ISPS[142] (International Ship and Port Security) Code[143]. Protection and Indemnity Insurance, offered by P&I Clubs, generally covers risks inherent to the shipowner's liabilities connected to the operation of the vessel entered in the P&I Club. These risks are set out in detail within the rules of each Club; the rules also include conditions, exceptions, limitations, and other provisions, including the bye-laws relevant to the operation of the Club[144].

These Rules constitute the contractual framework governing the relationship between the Club and its members, defining the scope of cover, exclusions, procedural obligations, and the conditions for indemnification. Included among the risks covered, such as loss or damage to cargo, unrecoverable general average contributions, collisions (specifically the 25% of damages payable to the colliding vessel), and damage to fixed and floating objects, there is also the special compensation under the 1989 Salvage Convention[145].

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[140] The International Convention for the Safety of Life at Sea (SOLAS) is an important international treaty concerning the safety of merchant ships. It ensures that ships registered by signatory States comply with minimum safety standards in construction, equipment and operation of ships.

[141] The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), sets international qualification standards for masters, officers, and watch personnel on seagoing merchant and cruise ships.

[142] The International Ship and Port Facility Security Code (ISPS) is a mandatory set of global safety measures developed by the IMO to detect security threats and protect ships and port facilities from terrorist activities or piracy.

[143] Y. Baatz, *Maritime Law*, V, cit., p. 515.

[144] Y. Baatz, *Maritime Law*, V, cit., p. 513.

[145] For a detailed list of the risks covered by the P&I Club see the rulebook of any one of the International Group of P&I Clubs on their websites and see S. J. Hazelwood, *P & I Clubs: Law and Practice*, cit., p. 153.

Because modern environmental liabilities, such as massive oil spills and complex wreck removals, carry the potential for catastrophic claims, a reinsurance system in the field of Protection and Indemnity insurance, known as the Pooling Agreement, was created at the end of the nineteenth century by six British Clubs, the London Group[146].

Through this reinsurance system, P&I Clubs share among themselves the risks exceeding their respective portion of protection and indemnity cover, contributing according to the mutual principle and specific sharing and layering arrangements[147], for the portion of claims exceeding the limit established by each Club[148]. Therefore, should the indemnity due from a P&I Club be excessively high, it does not weigh solely on its own members; rather, the exceeding portion is distributed proportionally among all members of the other P&I Clubs participating in the Pool Agreement, which represents approximately 90% of the global merchant tonnage[149].

In addition to British P&I Clubs, other international P&I Clubs have joined the Pooling agreement, thereby promoting its development and consolidation[150]. Specifically, the agreement includes the major P&I Clubs joined together in a consortium-like organization, the International Group of P&I Clubs[151]. This Group represents the collective views of its 12 member clubs and is responsible for the coordination and administration of the Pool

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[146] G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi*, cit., p. 61.; S. J. Hazelwood, *P & I Clubs: Law and Practice*, cit., p. 385.

[147] See Y. Baatz, *Maritime Law*, V, cit., p. 516, for more information about the share of the claims.

[148] D. Casciano, *L'assicurazione P&I*, cit., p. 171.

[149] S. J. Hazelwood, *P & I Clubs: Law and Practice*, cit., p. 387.

[150] G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi*, cit., p. 62.

[151] See for more information International Group of P&I Clubs. Web resource available at: https://www.igpandi.org/. (accessed 22 March 2026).

agreement, as well as representation, policy updates, and information dissemination[152].

As will be further analyzed in the following sections concerning industry representation, the International Group of P&I Clubs interacts with the International Salvage Union (ISU) and International Union of Marine Insurance (IUMI), through the framework established by the SCOPIC Clause, in the roles described in detail within the Codes of Practice.

2.1.2 P&I and SCOPIC Clause

Since the introduction of the SCOPIC Clause, which, as analyzed in the previous Chapter[153], came into use as an optional addendum to the Lloyd's Open Form 2000, the role of the P&I Clubs and specifically the International Group of P&I Clubs, who were directly involved in the drafting of the Clause, grew significantly regarding their respective insurance coverage obligations.

Before analyzing the technical and operational role of P&I Clubs within the SCOPIC clause, it is worth highlighting that from a strategic and commercial standpoint, the P&I Clubs' willingness to accept the financial burden of SCOPIC remuneration is an exercise in highly pragmatic risk management. Should a professional salvor decline to assist a heavily damaged vessel due to poor financial prospects under the traditional property-based regime, the casualty is highly likely to deteriorate, potentially leading to a sinking and a massive release of pollutants. The financial ramifications of such an event, encompassing statutory clean-up operations, third-party economic losses, and complex wreck removal, would fall directly upon the

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152 "Access to the International Group is granted to P&I Clubs that have been established for at least five years and possess proven financial stability and reliability. Participation in the International Group requires member P&I Clubs to maintain uniformity in the risks covered and the provisions contained within the Club's Rules, as well as in the interpretation of those same Rules.". See D. Casciano, *L'assicurazione P&I*, cit., p. 173.

153 See Chapter I Section 1.1.5 regarding the role of P&I Clubs during the drafting of the SCOPIC Clause.

P&I Club's mutual funds. By providing salvors with the guaranteed, tariff-based remuneration of the SCOPIC framework, the Club effectively incentivizes immediate professional intervention. Ultimately, funding a preventive salvage operation is considerably more cost-effective for the Club than financing the catastrophic aftermath of a major environmental disaster.

Since P&I Clubs are liability insurers and, therefore, not direct signatories to the Lloyd's Open Form (LOF) salvage contract, their involvement, operational cooperation, and regulatory oversight during a casualty are supported by two non-binding Codes of Practice. One applies to the International Salvage Union (ISU) and the International Group of P&I Clubs (IG), while the other applies to the International Group of P&I Clubs (IG), the London Property Underwriters, and the ISU[154]. Together, these Codes set the behavioral standards for all stakeholders, ensuring that the carefully negotiated balance of the SCOPIC clause operates smoothly in practice.

LOF will incorporate the SCOPIC clause in most cases. The SCOPIC clause, as mentioned in the previous Chapter, can be invoked by the salvor to introduce a tariff-based calculation for the craft, personnel and equipment using pre-specified rates together with an uplift fixed at 25%. A salvor will seek to operate this clause when the salved fund is insufficient to allow adequate remuneration under Article 13 and/or if the danger to the property is very high. SCOPIC remuneration is then paid by a shipowner ‘s P&I insurer but only in the amount that it exceeds the Article 13 award[155].

[154] Y. Baatz, *Maritime Law*, V, cit., p. 268.

[155] For the SCOPIC invocation mechanism see Chapter I Section 1.2.1

2.1.3 Code of Practice between the International Group of P&I Clubs and the International Salvage Union

As previously analyzed, to bridge the legal gap arising from the fact that P&I Clubs are liability insurers and are not direct signatories to the LOF contract, the involvement of the liability insurers is governed by the Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG).

The foundation of this institutional cooperation is established in the first two provision of the Code[156], which require both the IG and the ISU to recommend the incorporation of the SCOPIC Clause to their members and strictly prohibit any unilateral variation of the standard terms or tariff rates during an emergency. A central pillar of the Code is the establishment of immediate operational transparency.

Under provision number 5[157], the salvor is bound by a strict duty of early notification; at the beginning of the salvage operations, the owner of the salvage vessel shall communicate as soon as possible to the relevant P&I Club if they consider a claim for special compensation to be likely. In turn, the P&I Club informs the salvor whether the coverage provided to its member, the shipowner of the vessel who necessitates assistance, includes liability for special compensation or SCOPIC remuneration[158].

The provisions of the SCOPIC Clause, as previously analyzed in Section 1.5.1, provide the opportunity for all parties involved in salvage activities, and particularly for the P&I Clubs, to appoint an expert. The SCR is present to oversee the salvage operation; although he is entitled to receive daily reports from the salvor, he can also comment on those reports at the

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[156] See 1 and 2 Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG)

[157] See 5 Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG)

[158] G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi*, cit., p. 138.

time. This feature is particularly attractive to the P&I Clubs, who for a long time have felt that they have not been kept sufficiently advised regarding salvage operations which they might be asked to finance[159]. Furthermore, provision number 4[160], secures the P&I Club's right to operational oversight even in smaller casualties: if the formal appointment of an SCR is not permitted or proportionate, the Club retains the right to appoint its own technical observer to attend the casualty, ensuring the liability underwriter remains fully informed without interfering with the Salvage Master's command.

It is essential to highlight that the Code of Practice also contains critical aspects regarding the financial guarantee and the ultimate allocation of costs. Specifically, provisions 6, 7, and 8 address the Club's expectations regarding the arrangement of the Initial Security and the use of the ISU 5 Guarantee form[161]. Because the strict provision of this security constitutes the ultimate legal prerequisite for the salvor's intervention, these mechanisms will be analyzed comprehensively in Section 2.2 of this Chapter. Similarly, provision 12[162] of the Code dictates the strict exclusion of SCOPIC remuneration from General Average; as this directly governs the relationship with Hull & Machinery policies, it will be thoroughly examined in Section 2.3.

Beyond the initial emergency response, the Code regulates the ongoing operational relationship. Because environmental salvage operations are exceptionally capital-intensive, the P&I Club formally agrees under provision

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[159] S. J. Hazelwood, *P & I Clubs: Law and Practice*, cit., p. 224.

[160] See 4 Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG)

[161] The Initial Security represents the primary financial guarantee provided by the P&I Club to the salvor upon the invocation of the SCOPIC Clause, as stipulated in sub-clause 3. The use of the ISU 5 Guarantee form, is a standard industry practice, recommended by the Code of Practice between the ISU and the International Group of P&I Clubs, to provide an immediate and universally accepted form of security, thereby avoiding the necessity for formal bank guarantees. See 6,7,8 Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG); see Section 2.2.1 for a detailed explanation about the Initial Security and Section 2.2.5 for the ISU 5 Guarantee form.

[162] See 12 Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG)

11[163] to consider any reasonable request from the contractor for "payments on account" in respect of potential SCOPIC liabilities. This ensures the salvor is not financially crippled by mounting out-of-pocket expenses over a prolonged operation. Equally critical is the Club's regulatory role regarding the termination of the salvage contract. Under the SCOPIC agreement, a shipowner possesses the right to unilaterally terminate their obligation to pay the tariff remuneration. To prevent a shipowner from recklessly abandoning a casualty while a severe pollution threat persists, provision 10 of this Code of Practice, imposes a strict duty on the P&I Club to actively advise the shipowner not to exercise their right of withdrawal according to sub-clause 9(ii) of the SCOPIC provision without reasonable cause, making the Club a vital moderating force for environmental protection.

This document, which will have been recommended to the assureds by their insurers, liability or property, has no legal effects because it contains only recommendations regarding the procedure to follow when SCOPIC is applicable[164].

2.1.4 Code of Practice between the International Group of P&I Clubs and the International Union of Marine Insurance

While the ISU/IG Code of Practice governs the salvor-insurer relationship, a second distinct framework regulates the inter-market cooperation between liability and property insurers. A formal Code of Practice between the International Group of P&I Clubs and the International

[163] See 11 Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG)

[164] L. Chen, "Recent Developments in the Law of Salvage of the Marine Environment," International Journal of Marine and Coastal Law 16, no. 4 (December 2001), p. 693.

Union of Marine Insurance (IUMI) has been established to govern future casualty situations that give rise to the need for third-party salvage services[165].

To facilitate a coordinated response from the very outset of a casualty, the Code stipulates specific proactive measures for the property underwriter. They are expected to suggest their assured immediately notify the liability underwriter regarding the severity of the incident, specifically concerning risks to property and potential third-party liabilities[166]. Furthermore, property underwriters should encourage the swift conclusion of contractual arrangements with third-party casualty response providers and establish direct communication channels with the relevant P&I Club[167].

This specialized agreement acknowledges that while the P&I Club acts as the primary financier of the SCOPIC framework, the operational oversight mechanisms embedded within the clause provide immense practical value to all insurance sectors. As noted in industry analyses, through the appointment of the SCR, there is a structured chain of communication ensuring that all parties, the shipowners, the salvors, the property insurers, and the liability insurers are kept fully informed, allowing authorities to receive swifter and better-informed responses when key decisions need to be taken.

To reflect this shared commercial benefit, the document sets out specific procedures to be followed by property and liability underwriters, including the equitable payment of fees and disbursements to the SCR.

Specifically, the Code recognizes that while the primary liability for paying the SCR rests upon the shipowner, these costs are to be reimbursed in equal shares: 50% by Liability Underwriters and 50% by Property Underwriters[168]. However, the property underwriters' 50% contribution is

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[165] Aries Marine Insurance Brokers *'IUMI, IG Clubs Agree on Code of Practice for Casualties That Need Third Party Salvage Services'*, 17 June 2022, https://ariesmarine.eu/iumi-ig-clubs-agree-on-code-of-practice-for-casualties-that-need-third-party-salvage-services/.

[166] See 1(a) Code of Practice between the International Group of P&I Clubs and the International Union of Marine Insurance

[167] See 1(c) Code of Practice between the International Group of P&I Clubs and the International Union of Marine Insurance

[168] See 2(a) Code of Practice between the International Group of P&I Clubs and the International Union of Marine Insurance.

strictly calculated in proportion to the salved value of the insured subject matter[169]. To protect the property market, the Code introduces a specific mathematical cap: if 50% of the SCR's fees exceeds the salved value of the ship and cargo less the Article 13 award, the Liability Underwriters (P&I) agree to absorb and reimburse that excess proportion to the owners of the vessel[170]. In practice, if the P&I Club pays the SCR fees upfront on behalf of the owner to maintain cash flow, the property underwriters are obligated to reimburse their agreed proportion directly to the liability underwriter within 28 days of a payment request[171].

Through this framework, the P&I Clubs have successfully orchestrated a collaborative environment, preventing the fragmentation of casualty management and ensuring that the heavy costs of technical supervision are equitably shared across the entire marine insurance spectrum. Finally, it is explicitly stated that this Code of Practice is not legally binding upon the parties involved; rather, it is an understanding which Liability and Property Underwriters simply recommend to their Members, and it is not intended to have any legal effect[172]. Its use is recommended to have a unique modality of communication and cooperation within the SCOPIC framework.

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[169] See 2(b)(i) Code of Practice between the International Group of P&I Clubs and the International Union of Marine Insurance.

[170] See 2(b)(ii) Code of Practice between the International Group of P&I Clubs and the International Union of Marine Insurance.

[171] See 2(c) Code of Practice between the International Group of P&I Clubs and the International Union of Marine Insurance

[172] See 3 Code of Practice between the International Group of P&I Clubs and the International Union of Marine Insurance.

2.2 Financial and Insurance Security Scheme

To fully comprehend the financial architecture of the SCOPIC Clause, it is first necessary to understand the general concept and fundamental function of "security" within traditional maritime salvage. Under general maritime law, a professional salvor who successfully rescues property at sea does not merely acquire a contractual right to be paid; they are automatically granted a maritime lien over the salved property, namely the vessel, the cargo, and the freight at risk. This privileged proprietary claim provides the salvage contractor with the powerful legal remedy of arresting and detaining the physical assets upon their arrival at a port of refuge to satisfy the salvage award.

To prevent the severe commercial paralysis that would result from a prolonged arrest, which would leave the vessel idle and delay the delivery of the cargo to its consignees, the owners of the salved property are required to provide a financial guarantee, universally referred to as "salvage security". This security, which typically takes the form of a bank guarantee, a surety bond, or an insurer's Letter of Undertaking[173], acts as a financial substitute for the physical property. Once the security is lodged, the salvor relinquishes their right to arrest the physical assets, allowing the vessel to resume trading while the final salvage remuneration is negotiated or determined by an arbitrator. The critical commercial importance of this mechanism is formally codified in Article 21 of the 1989 Salvage Convention. This international provision dictates that any person liable for a salvage payment must provide satisfactory security upon the salvor's request, including interest and costs. Furthermore, to protect the salvor's leverage, Article 21(3) strictly prohibits the removal of the salved vessel and other property from the port of refuge

[173] Letter of Undertaking (LoU) is a model letter for use in third party arrangements where ship managers maintain and operate the vessel but have no financial involvement or interest in its ownership. See for more information 'Letter of Undertaking', web resource available at: https://www.skuld.com/topics/legal/pi-and-defence/letter-of-undertaking/. (accessed 9 May 2026); Section 2.2.4 below.

without the salvor's explicit consent until such satisfactory security is firmly in place[174].

2.2.1 The Absolute Obligation of the Initial Security

The lack of an automatic proprietary security mechanism proved commercially disastrous for the salvage industry. Even if a salvage contractor successfully overcame the immense legal obstacles required to prove that a threat to the environment existed and that damage was averted, they frequently found themselves unable to make any actual recovery because they held no security. The shipowner, who is solely responsible for the payment, might be in a parlous financial state following the casualty. Furthermore, the shipowner's liability underwriters, the P&I Clubs, often refused to voluntarily post security on behalf of their entered member. The P&I insurers could legally withhold security if they were in a dispute with their insured, if the shipowner was in breach of the warranties upon which the vessel was entered, or by relying upon the strict "pay to be paid" clauses inherent in mutual insurance cover. Consequently, salvors were frequently exposed to the significant financial exposure of deploying millions of dollars in highly specialized anti-pollution equipment with no guarantee that they would ever be reimbursed. The architects of the SCOPIC Clause recognized that unless a rigorous, mandatory, and immediate security mechanism was established, the entire tariff-based remuneration system would be illusory.

To eradicate the commercial uncertainty on the part of salvors, the SCOPIC agreement entirely bypasses the ambiguities of the general law by establishing a strict contractual prerequisite for the continuation of environmental services. This mechanism is codified in sub-clause 3[175] of the

[174] A. Mandaraka-Sheppard, *Modern Maritime Law*, II, cit., p. 545.

[175] See sub-clause 3 SCOPIC

SCOPIC agreement and in the aforementioned Code of Practice which governs the provision of the “Initial Security”. The operational trigger for this requirement is the contractor’s unilateral written notice invoking the SCOPIC clause. When the salvor notifies the P&I Club of the SCOPIC activation, it becomes the P&I Club’s responsibility, on behalf of the shipowner, to provide the salvor with a specific guarantee for the SCOPIC remuneration. This is known as the “Initial Security” or “security for SCOPIC remuneration” which is distinct and in addition to any security provided by the owners of the salvaged property or their insurers[176].

The P&I would ordinarily provide such security because they are the ones who will benefit from the avoidance of any pollution and third-party claims[177].

The sub-clause provides that this Initial Security must be provided in the fixed sum of USD 3 million, a figure negotiated by the industry as a robust baseline capable of covering the intense capital expenditure required during the mobilization and initial execution phases of a major environmental disaster.

Importantly, the clause explicitly states that this USD 3 million figure is inclusive of both interest and legal costs, ensuring that the salvor’s entire financial exposure is encapsulated within the guarantee. Furthermore, the timeframe permitted for the provision of this security is exceptionally rigid. Sub-clause 3(i)[178] dictates that the shipowner must provide the guarantee within two working days. To eliminate any international jurisdictional confusion regarding what constitutes a business day during a global maritime casualty, the clause strictly defines this period by excluding Saturdays, Sundays, and holidays that are usually observed at Lloyd's of London.

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[176] G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi*, cit., p. 138.

[177] Q. Reeder, G. Brice, *Maritime Law of Salvage: First Supplement to the Third Ed.*, cit., p. 57.

[178] See sub-clause 3(i) SCOPIC

2.2.2 The Salvor's Procedural Safeguard: The Right of Withdrawal

The imposition of a strict two-day deadline for the provision of a USD 3 million guarantee would be legally void without a corresponding enforcement mechanism. Therefore, the SCOPIC framework arms the salvor with a powerful procedural remedy, codified in sub-clause 4[179] of the agreement. Conceptually, the "right of withdrawal" is a unilateral contractual safety valve; it represents the exclusive option granted to the salvor to sever the supplementary SCOPIC agreement from the underlying Lloyd's Open Form (LOF) when the shipowner breaches their fundamental obligation to post collateral.

This clause constitutes a vital protection for contractors who, for whatever reason, do not receive the Initial Security within the stipulated timeframe. If the owners of the vessel fail to provide the Initial Security within the strict two working days, the salvor is granted the unilateral option to withdraw from the SCOPIC agreement entirely. To exercise this right, the salvor must give formal written notice to the owners of the vessel. The legal effect of this withdrawal is profound: upon giving notice, the salvor is entitled to withdraw from all provisions of the SCOPIC Clause and revert immediately to their traditional rights under the Main Agreement, meaning that Article 14 of the 1989 Salvage Convention shall apply exactly as if the SCOPIC clause had never existed[180]. This right of withdrawal serves as the ultimate commercial deterrent, is act as a protection to the salvor to ensure they are not trapped in a highly expensive environmental remediation operation without a firm financial guarantee, knowing that if security is not

[179] See sub-clause 4 SCOPIC

[180] Q. Reeder, G. Brice, *Maritime Law of Salvage: First Supplement to the Third Ed.*, cit., p. 59.

provided, they could pull out of the whole LOF contract on the grounds of the owner's breach[181].

However, the drafters of the SCOPIC Clause also recognized the need to prevent opportunistic or bad-faith withdrawals that could jeopardize an ongoing rescue operation, establishing the strict rule that "the salvor's right of withdrawal from the SCOPIC provisions for failure to provide SCOPIC security within 2 working days does not apply if SCOPIC security is provided before notice of such withdrawal is given"[182]. Therefore, sub-clause 4 contains a critical provision that limits the contractor's right to terminate. The right of withdrawal may only be exercised if, at the exact time of giving the written notice of withdrawal, the owners of the vessel have still not provided the Initial Security, or an alternative form of security mutually agreed upon as sufficient[183]. In practice, this means that if a shipowner is late in providing the security, for example, delivering the guarantee on the third or fourth day, but manages to lodge the guarantee before the salvor formally issues the notice of withdrawal, the salvor's right to withdraw is permanently extinguished, and the SCOPIC framework remains intact.

2.2.3 The Dynamic Recalibration of the Security Sum

While the fixed sum of USD 3 million provides vital initial stability, the drafters of the SCOPIC clause were acutely aware that environmental salvage operations vary enormously in their duration, complexity, and ultimate financial cost. A minor grounding may require only a few days of tug assistance, resulting in a final SCOPIC remuneration significantly lower than the Initial Security. Conversely, a catastrophic structural failure

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[181] A. Bishop, *The Development of Environmental Salvage and Review of the Salvage Convention 1989*, cit., p. 13.

[182] See sub-clause 4(ii) SCOPIC

[183] See sub-clause 4(i) SCOPIC

involving a laden oil tanker could require months of specialized diving, lightering, and wreck removal operations, generating tariff costs that rapidly outpace the initial guarantee. To accommodate these extreme variations, sub-clause 3 incorporates highly specific sub-clauses that allow for the dynamic recalibration of the security sum as the true operational costs crystallize.

In this legal context, "dynamic recalibration" refers to the contractual flexibility that permits the Initial Security to be continuously adjusted; either upwards or downwards, to accurately reflect the ongoing financial reality of the salvage service. Rather than being locked into a rigid USD 3 million guarantee, both the shipowner and the salvor possess the mutual right to realign the security amount with the actual, evolving trajectory of the tariff-based expenses as the operation progresses.

Sub-clause 3(ii)[184] establishes a mechanism in favor of the vessel owner. If, at any time after the Initial Security has been provided, the vessel owner reasonably assesses that the final SCOPIC remuneration will ultimately be less than the USD 3 million security already in place, the owner is legally entitled to require the contractor to reduce the security to a "reasonable sum". This protects the shipowner and their liability insurers from paying unnecessary guarantee fees or tying up excess capital. Crucially, the clause dictates that once a reasonable sum has been agreed upon, the salvor is strictly obligated to facilitate the reduction of the security[185].

Conversely, sub-clause 3(iii)[186] provides a mirror image of this right in favor of the salvage contractor. If the salvage operation becomes protracted and the contractor reasonably assesses that the accumulating SCOPIC remuneration, together with interest and costs, will exceed the security currently in place, the salvor is entitled to seek an "Increased Security". The contractor possesses the right to require the owners of the vessel to increase the security to a new, higher reasonable sum, and the owners are bound to

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[184] See sub-clause 3(ii) SCOPIC

[185] Q. Reeder, G. Brice, *Maritime Law of Salvage: First Supplement to the Third Ed.*, cit., p. 58.

[186] See sub-clause 3(iii) SCOPIC

comply once that sum is agreed. Because the determination of what constitutes a "reasonable sum" is inherently subjective and prone to intense commercial friction during a live casualty, the SCOPIC framework provides a swift dispute resolution mechanism. Sub-clause 3(iv)[187] dictates that in the absence of an agreement between the parties concerning the amount of any reduction or increase in the security, the dispute shall be immediately resolved by the Arbitrator appointed under the Main Agreement. Furthermore, this sub-clause grants the Arbitrator the authority to resolve any disputes concerning the identity of the proposed Guarantor or the specific form the security is to take, ensuring that the financial stability of the operation is not derailed by administrative stalemates.

2.2.4 The Institutional Guarantor and the Code of Practice

Under the strict wording of sub-clause 3(i), the Initial Security may be provided by means of a bank guarantee[188]. However, acquiring a USD 3 million bank guarantee within 48 hours is virtually impossible for most shipowners during a developing crisis. Therefore, the clause explicitly permits the security to be provided in the form of a P&I Club letter, universally known in the maritime industry as a Letter of Undertaking.

The Club Letter of Undertaking (LoU) is a powerful legal tool and the preferred method of providing security in maritime casualties. Legally, it operates as a private security contract, a direct undertaking issued by the P&I Club to pay the salvor the sum ultimately adjudged by an arbitrator or agreed upon in a settlement. Its primary advantages are alacrity and commercial efficiency: a LoU can typically be issued in a matter of hours rather than days,

[187] See sub-clause 3(iv) SCOPIC

[188] See sub-clause 3(i) SCOPIC

and it is provided without the payment of additional commissions by the assured, which prevents the shipowner's operational funds from being tied up. While exact wordings may vary, standard Letters of Undertaking share key structural features, including the identification of the entered vessel and the claimant, a description of the incident giving rise to the claim, the maximum sum guaranteed, which must include interest and costs, the applicable law and jurisdiction, and a strict reservation of all rights and defenses. By providing this robust security, the P&I Club effectively shields the shipowner from the threat of the salvor arresting or detaining the vessel in an inconvenient jurisdiction[189].

In the SCOPIC invocation cases, the provision of this Club Letter is regulated by the Code of Practice agreed between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG)[190]. It is vital to note that the SCOPIC Clause itself does not, and cannot, legally bind the P&I Club to provide the security, as the Club is not a party to the salvage contract[191]. The liability to provide the security rests solely upon the shipowner. Recognizing this vulnerability, the Code of Practice establishes the institutional expectations regarding the guarantee. Within the Code, the P&I Clubs confirm that while they generally expect to provide security in the form of a Club Letter for SCOPIC remuneration, this provision is explicitly "not automatic"[192]. If a shipowner is found to be in severe breach of the Club's mutual rules, for instance, due to the late payment of premium calls, the breach of flag state or classification society warranties, or the violation of international sanctions the shipowner forfeits their right to coverage, and the

[189] For more information see 'Letter of Undertaking', web resource available at: https://www.skuld.com/topics/legal/pi-and-defence/letter-of-undertaking/. (accessed 9 May 2026).

[190] See 8 Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG)

[191] See sub-clause 4 SCOPIC

[192] See 6 Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG)

P&I Club is legally entitled to withhold the security[193]. In such unfortunate circumstances, a salvor who cannot obtain alternative security will be forced to exercise their right of withdrawal under sub-clause 4 and abandon the SCOPIC framework. However, to preserve the rapid-response ethos of the environmental salvage regime, the P&I Clubs formally agree under the Code of Practice that they will not refuse to give security solely because the salvor cannot obtain such security elsewhere[194]. To align with the strict two-day deadline imposed by the SCOPIC contract, the Clubs also commit to advising the salvor as quickly as possible and, in any event within the two working days, whether or not they will issue the guarantee, allowing the salvor to make an informed commercial decision regarding their continued intervention.

2.2.5 The Strict Legal Mechanics of the ISU 5 Guarantee Form

When a P&I Club does agree to provide the security, it is imperative that the document itself is universally accepted to prevent dangerous delays caused by lawyers haggling over the precise wording of the undertaking[195]. To eliminate this friction, the ISU and the International Group of P&I Clubs collaborated to draft and approve a highly standardized security document known as the Salvage Guarantee Form ISU 5[196]. Under the established Code of Practice, all members of the ISU agree to accept this specific P&I Club letter of undertaking as fully satisfactory security, explicitly waiving their right to demand that traditional financial security be lodged at Lloyd's in London.

[193] G. Marchiafava, *La Natura Giuridica Dei Protecting and Indemnity Clubs Inglesi*, cit., p. 138.

[194] See 6 Code of Practice between the International Salvage Union (ISU) and the International Group of P&I Clubs (IG)

[195] A. Bishop, '*Environmental Salvage: Time for a Change?*' in Soyer B. and Tettenborn A.(eds), *Pollution at Sea: Law and Liability*, Informa Law from Routledge, 2012, p. 176.

[196] See Salvage Guarantee Form ISU 5

The ISU 5 Guarantee Form possesses several stringent legal characteristics designed to protect the integrity of the salvage operation. First and foremost, the security must be addressed directly to the specific salvage contractors named in the Lloyd's Open Form (LOF). Furthermore, it requires the precise identification of the vessel and the full name of the Registered Owners or Bareboat Charterers, ensuring that the Guarantor Club accurately ties its financial exposure to its specifically entered member[197].

Perhaps the most critical legal element of the modern ISU 5 form is its strict prohibition against undisclosed contractual modifications. The financial risk assumed by the P&I Club when issuing an ISU 5 guarantee is calculated based on the standard, unamended terms of the LOF and the SCOPIC Clause. However, shipowners and salvors occasionally attempt to negotiate private “side-agreements” or “side-letters”, such as capping the total costs, altering the tariff rates, or modifying the termination rights. To protect the liability underwriter from hidden exposures, the guidance notes to the ISU 5 form contain a strict voiding provision.

The rules mandate that in the event the terms of the LOF have been amended by any side-agreement or side-letter in a manner that has the potential to change the amounts payable by one or more interested parties, this amendment must be fully disclosed to the P&I Club before the security is issued[198]. If the security has already been issued, the disclosure must occur before the new side-agreement is entered into. This absolute transparency allows the P&I Club to evaluate the new risk profile and advise whether they are willing to provide the SCOPIC security or confirm its continued validity. The penalty for violating this requirement is absolute: failure to make full disclosure to the P&I Club of any side-agreement that potentially changes the amounts payable will result in the ISU 5 security becoming instantly and automatically void[199].

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[197] See Clause 1 Salvage Guarantee Form ISU 5

[198] George Dunker, *Bridge Look-Out*, Edition 2019/01. Web resource available at: https://georg-duncker.com/wp-content/uploads/2023/04/Bridge-look-out-edition-2019-01-.pdf. (accessed 12 May 2026).

[199] See clause 6 Salvage Guarantee Form ISU 5

2.3 The SCOPIC Clause within the Hull & Machinery (H&M) Insurance

2.3.1 The Distinction of Insurable Interests: Property vs. Liability Underwriters

To fully comprehend the financial and operational dynamics of modern maritime salvage, it is essential to delineate the profound structural and conceptual divide between Hull and Machinery (H&M) insurance and Protection and Indemnity (P&I) cover. These two branches of marine insurance operate on fundamentally different principles and safeguard entirely distinct insurable interests of the shipowner. H&M insurance is a traditional, commercial property insurance placed in the open market. Its primary function is the direct protection of the shipowner's physical asset, the vessel and its machinery, against maritime perils such as collisions, groundings, and fires.

This insurance cover damage or loss to ships, machinery and equipment from sea hazards (perils of the sea) and cruise risk (navigational perils). This is the main insurance in ship insurance because it deals directly with the physicality of a ship which is the most vital part[200].

While the fundamental purpose of P&I insurance is to pool members' resources to indemnify shipowners against third-party liabilities and open-ended risks that are specifically excluded from standard H&M policies, such as environmental pollution, wreck removal operations, and claims for personal injury or loss of life[201].

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[200] B. Hartanto, *Responsibility of the Marine Hull and Machinery Company of Insured Claims*. IJLLE (International Journal of Law and Legal Ethics), Vol. 1, No. 2, 2020, p. 87.

[201] S. J. Hazelwood, *P & I Clubs: Law and Practice*, cit., p. 153.

Consequently, during a severe maritime casualty, the two insurance sectors approach the crisis with inherently divergent priorities. The property underwriter's instinct and ultimate objective is to ensure the preservation of the highest possible value in the physical property, thereby minimizing their repair payouts and avoiding a total loss. The traditional "no cure - no pay" salvage regime, which rewards the salvor strictly based on the salved value of the ship and cargo, is perfectly aligned with this property-centric interest.

In contrast, the P&I Club's primary concern during a casualty is not the salvage of the physical hull, but the aggressive mitigation of third-party liabilities, particularly the astronomical costs associated with environmental pollution. This structural dichotomy creates a substantial commercial conflict of interests during salvage operation.

During the historical development of environmental salvage frameworks, property underwriters were initially highly suspicious of the P&I Clubs' growing involvement and their demand for operational control. The H&M market harbored legitimate concerns that, in certain critical situations, a P&I Club considerations could influence operational decisions in a manner potentially detrimental to the preservation of the vessel. For example, a P&I Club could be reluctant to directly participate, in a case where a vessel is severely damaged to prevent a wider ecological disaster, in order to radically reduce their own potential pollution and wreck removal liabilities. The same salvage operation may produce entirely different economic outcomes for the two insurance sectors, while highly beneficial to the liability insurer, would be wholly detrimental to the property underwriters, who would subsequently be forced to pay out for a total loss. This inherent tension between the preservation of physical assets and the mitigation of intangible liabilities underscores the delicate commercial backdrop of modern salvage, demonstrating exactly why the SCOPIC framework required such rigid firewalls to balance these competing insurable interests without allowing one market to unfairly subsidize the other.

During a salvage operation, when the vessel is actively stranded or sinking, this structural dichotomy translates into two entirely different methods of managing financial exposure and cash flow. From the perspective of the H&M underwriter, traditional salvage under Article 13 of the 1989 Convention operates on a retroactive "wait and see" basis. The property underwriter does not fund the salvage operation in real-time; their financial obligation crystallizes only after the property is successfully brought to safety, at which point the award is assessed retroactively against the ultimate salved value of the ship and cargo at the termination of the salvage services[202]. Conversely, the invocation of the SCOPIC clause immediately triggers a live, real-time financial mechanism funded by the liability insurers. To prevent the salvors from abandoning a dangerous operation, the P&I Club is contractually required to provide the Initial Security of USD 3 million, typically issued rapidly via a standardized Salvage Guarantee Form ISU 5, within just two working days of the SCOPIC invocation, as previously analyzed[203]. Furthermore, because SCOPIC incorporates payment on a daily rate basis for personnel, tugs, and portable salvage equipment, the P&I Club is able to calculate and monitor the minimum cost of the emergency operation on an ongoing basis, representing a radical shift from the traditional retroactive assessment.

To actively oversee this live financial exposure, the P&I Club relies on the appointment of a Special Casualty Representative (SCR)[204] to attend the salvage operation. It is at this precise juncture of live casualty management that the separate financial tracks of H&M and P&I briefly intersect through a specific market agreement. Under the Code of Practice between the International Group of P&I Clubs and International Union of Marine Insurance, it is agreed that while the primary liability for paying the SCR rests upon the shipowner, the actual fees and disbursements of the SCR during the live operation are shared: 50% is paid by the Liability Underwriters (P&I)

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[202] G. Beale, *Environmental Salvage and the 1989 Salvage Convention: Proposed Amendments to the Convention and Difficulties in Quantifying an Environmental Salvage Award*, Environmental Law Review Vol. 16, No. 4, 2014, 248–61, p. 254.

[203] See Section 2.2.1 The Absolute Obligation of the Initial Security

[204] See Section 1.5.1 Role of the Special Casualty Representative (SCR)

and 50% by the Property Underwriters (H&M) in proportion to the salved value[205]. In practice, to maintain swift cash flow during the emergency, the P&I Club frequently pays the SCR's fees on behalf of the owner, and the property underwriters are subsequently obligated to reimburse their 50% proportion directly to the liability underwriter within 28 days of a payment request[206]. This unique mechanism ensures that both insurance markets financially cooperate in monitoring the live casualty, even while their ultimate exposures based on property value rather than environmental liability, remain strictly separated by the SCOPIC framework. To further balance this operational control, the SCOPIC framework ensures that property underwriters are not entirely excluded from the physical monitoring of the live casualty. Under sub-clause 13 of the SCOPIC agreement, once the clause has been invoked, the Hull and Machinery underwriter and the cargo interests are each granted the explicit right to appoint one Special Representative (the Special Hull Representative and the Special Cargo Representative, respectively) to attend the casualty, observe, and report on the salvage operations[207]. These representatives act as direct observer for the property market and must be technical experts rather than practising lawyers. However, unlike the SCR whose fees are shared, these Special Representatives are appointed at the sole expense of their respective appointors[208]. In commercial practice, because the SCR is duty-bound to objectively represent all salved interests and distribute the Daily Salvage Reports to all parties, property underwriters seldom exercise this right to send their own Special Representatives. They generally rely on the SCR's objectivity and their own standard appointed surveyors to save costs, unless the severity of the casualty dictates otherwise.

[205] See 2(a) Code of Practice between the International Group of P&I Clubs and International Union of Marine Insurance

[206] See 2(c) Code of Practice between the International Group of P&I Clubs and International Union of Marine Insurance and see also Section 2.1.4

[207] See sub-clause 13 SCOPIC

[208] See Section 1.5.2 Role of the Special Representatives

Before SCOPIC, in salvage cases, H&M Underwriters were the only "pilot on board" and managed all the salvage aspects from the beginning up to the remuneration process. Now, this salvage management has been transferred to the P&I Insurer and to some extent H&M underwriters have lost control on the handling of salvage cases. They, therefore, may have to rely on P&I Insurers on certain aspects whereas their interests may differ[209].

2.3.2 General Average Mechanics and the Impact of Rule VI of the York-Antwerp Rules

To fully comprehend the financial exposure of Hull and Machinery (H&M) underwriters during a maritime casualty, one must examine the intrinsic relationship between traditional salvage, the SCOPIC clause, and the mechanics of General Average (GA)[210].

General Average[211] is the sharing of the financial consequences of an unexpected casualty between the commercial parties which have a financial interest in seeing the "adventure" completed[212]. The concept of GA is very ancient, having its roots in Rhodian law and having been adopted into the

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[209] See N. Cuthbert, *DUBLIN IMCC 2005 SALVAGE – SCOPIC CLAUSE HULL & MACHINERY UNDERWRITERS' PERSPECTIVE*. Web resource available at: https://www.slideserve.com/cuthbert-nikolas/dublin-imcc-2005-salvage-scopic-clause-hull-machinery-underwriters-perspective. (accessed 3 June 2026) slide 9.

[210] For a detailed analysis of the subject, see textbooks: G. Hudson, M. Harvey, *The York-Antwerp Rules*, 3rd edn, 2010; F.D. Rose, *General Average Law and Practice*, 2nd edn, 2005.

[211] "There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving form peril the property involved in the common maritime adventure" YORK-ANTWERP RULES 2016 Rule A.1

[212] Y. Baatz, *Maritime Law*, V, cit., p. 269.

"Digest of Justinian"[213], and it is said that its origins date back at least 1000 BC[214].

It has, however, been subject of the development over time and still applies to modern seaborne trade[215]. Insurance policies on hull, cargo and freight all provide that the insurers will pay the contribution in GA due from the assured[216] , and the GA is therefore closely related to marine insurance[217].

The ancient law of GA was incorporated into several national legal systems but during this process, it received several differing interpretations from port to port[218]. Owing to an enthusiasm for internationalisation in the nineteenth century, efforts were made to impose on its interpretation some measure of uniformity[219]. This resulted in what have become known as York-Antwerp Rules (YAR)[220].

The YAR have no statutory or legislative force, but are generally incorporated into contracts of carriage, so are contractually binding on the parties[221].

Analyzing the salvage sector, under traditional maritime law, when a vessel is rescued by a salvor under a "no cure - no pay" contract such as the LOF, the resulting Article 13 salvage remuneration represents an extraordinary expenditure incurred for the common safety of the maritime

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213 The Digest of Justinian (or *Pandectae*) is a vast 6th-century compendium of Roman legal writings. Commissioned by Byzantine Emperor Justinian I between 530 and 533 AD, it organized centuries of expert juristic commentary into 50 books, serving as the foundational text for Western jurisprudence

214 A. Mandaraka-Sheppard, *Modern Maritime Law*, II, cit., p. 653.

215 Y. Baatz, *Maritime Law*, V, cit., p. 269.

216 See Institute Time Clauses Hulls 1/10/83, cl. 11; ITC (H) 1/11/95, cl. 10; International Hull Clauses 1/11/03 cl.8; Institute Cargo Clauses A, B and C (2009) cl.2.

217 See Marine Insurance Act (MIA) 1906

218 Y. Baatz, *Maritime Law*, V, cit., p. 271.

219 A. Mandaraka-Sheppard, *Modern Maritime Law*, II, cit., p. 656.

220 The York-Antwerp Rules (YAR) are a core set of maritime regulations that govern how losses from sacrificed cargo are handled during emergencies at sea. Rooted in the 1890 codification of the ancient general average principle, they guide cost allocation in modern contracts, bills of lading, and marine insurance when shipmasters must act quickly to protect a vessel and its crew.

221 Y. Baatz, *Maritime Law*, V, cit., p. 273.

adventure. Consequently, this salvage award is apportioned among the saved property interests through the mechanism of General Average.
Through this apportionment, the H&M underwriter is obligated to indemnify the shipowner for the vessel's pro-rata share of the salvage award, calculated strictly upon the salved value of the hull[222]. For decades, this mechanism perfectly aligned the salvor's remuneration with the H&M insurer's interest in preserving the physical property.

The advent of environmental salvage, however, introduced a profound commercial threat to the property insurance market. When the 1989 Salvage Convention mandated that a salvor's traditional Article 13 award could be enhanced to reflect their skill and efforts in preventing environmental damage, H&M underwriters faced the unprecedented risk of inadvertently financing the shipowner's pollution liabilities through the backdoor of General Average apportionments. To address this cross-contamination of insurance risks, the maritime industry negotiated critical modifications during the drafting of the new edition of the York-Antwerp Rules in 1994. The 1994 iteration of Rule VI established a delicate compromise: it confirmed that the enhanced Article 13 property salvage award would continue to be allowed in General Average, meaning H&M and cargo insurers would bear its cost, but it erected a significant limitation against any further environmental liabilities. The Rules strictly dictated that any special compensation payable to a salvor for preventing environmental damage (such as Article 14) must fall exclusively on the shipowner and their P&I Club and cannot under any circumstances be included in General Average[223].

The development of the SCOPIC Clause in 1999 had the practical effect of reinforcing this vital separation between H&M and P&I exposures[224]. Because the SCOPIC remuneration operates as a lucrative, tariff-based safety net funded by the liability insurers, H&M underwriters were extremely

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[222] Gard. *"Risks Covered - Rule 42: Salvage"*. Web resource available at: https://gard.no/rules-statutes-and-guidances/document/risks-covered-rule-42-salvage/. (accessed 9 May 2026).

[223] See Rule VI (b) Salvage Remuneration, York-Antwerp Rules 1994

[224] See P. Zampella, *"Soccorso e Clausola SCOPIC: La Ripartizione Degli Oneri Assicurativi Tra Assicuratori Corpi e P. & I. Clubs"*, cit., p. 588.

vigilant to ensure these environmental costs could never be shifted onto the property market through an administrative loophole. This protection is definitively codified in sub-clause 15 of the SCOPIC agreement[225] . Sub-clause 15 mandates that SCOPIC remuneration, to the extent that it exceeds the traditional Article 13 property award, shall not be a General Average expense. It explicitly forbids the shipowner or the salvor from making any claim for SCOPIC excess costs under the vessel's Hull and Machinery policy or against the cargo interests. This creates an impenetrable contractual firewall, guaranteeing that while H&M underwriters remain liable for the traditional salvage of the physical ship via General Average, they are absolutely insulated from the substantial tariff costs associated with the P&I Club's environmental salvage operations.

Despite this robust contractual architecture, the relationship between salvage and General Average remained a highly contentious battleground for H&M insurers. Driven by a desire to eliminate the immense administrative costs and delays associated with adjusting complex salvage apportionments, property underwriters aggressively lobbied for radical changes during the 2004 revision of the York-Antwerp Rules. The H&M market briefly succeeded in amending Rule VI to dictate that all salvage payments “shall lie where they fall” and be entirely excluded from General Average[226], an approach that would have forced shipowners to bear their own salvage liabilities directly without complex redistribution[227].

The sub-clause 15 provision are also, perfectly mirrored by the introduction of Rule VI (c) in the YAR 2004, that states that any special compensation

[225] See sub-clause 15 SCOPIC

[226] See Rule VI (a) Salvage Remuneration, York-Antwerp Rules 2004

[227] See for a detailed explanation about the YAR development and reviews: X. Wu and X. Lu, *Can employment salvage payments be entitled to a maritime lien and allowed in the general average?* Marine Policy 167, 2024.

under Article 14 or any similar provisions, which explicitly encompasses SCOPIC remuneration, is strictly excluded from General Average[228].
However, this radical departure met significant opposition from shipowner stakeholders, represented by the International Chamber of Shipping (ICS), and ultimately proved unworkable in global practice[229]. The ensuing commercial stalemate was eventually resolved by the 2016 York-Antwerp Rules, which restored the core principle that traditional property salvage (Article 13) remains a General Average expense[230]. However, according to the 2016 Rules, for parties that face only separate contractual or legal liabilities, inclusion of the employment salvage payments in General Average is contingent upon meeting one of the specific conditions listed in paragraph (b) of Numbered Rule VI[231]. Within this restored framework, the international maritime community sought to definitively resolve the environmental question by formalizing what had been established in the previous decades. Consequently, Rule VI(d)[232] of the 2016 York-Antwerp Rules explicitly confirmed the absolute and peremptory exclusion of any SCOPIC remuneration from General Average, as previously introduced by the 2004 YAR.

Ultimately, the turbulent evolution of Rule VI underscores the constant vigilance required by H&M underwriters to manage their financial exposure to salvage costs, validating the absolute necessity of the SCOPIC agreement's strict demarcation between property recovery and environmental liability.

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[228] See Rule VI (c) Salvage Remuneration, York-Antwerp Rules 2004 "Special compensation payable to a salvor by the shipowner under Article 14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance (such as SCOPIC) shall not be allowed in general average and shall not be considered a salvage payment as referred to in paragraph (a) of this Rule."

[229] X. Wu and X. Lu, *Can employment salvage payments be entitled to a maritime lien and allowed in the general average?* cit., p. 11.

[230] See Rule VI (a) Salvage Remuneration, York-Antwerp Rules 2016

[231] X. Wu and X. Lu, *Can employment salvage payments be entitled to a maritime lien and allowed in the general average?* Marine Policy 167, 2024, p. 12.

[232] See Rule VI (d) Salvage Remuneration, York-Antwerp Rules 2016

2.3.3 Constructive Total Loss Assessments and the Exclusion of SCOPIC

The absolute demarcation between property preservation (an H&M risk) and environmental liability (a P&I risk) becomes fiercely contested when assessing whether a severely damaged vessel should be entirely written off.

Constructive Total Loss (CTL) is a legal device for determining the measure of indemnity[233]. It is an intermediate form of loss between partial and actual total loss. More specifically, a CTL is a partial loss which is financially equivalent to a total loss, and may be treated as either at the election of the assured. If the requirements for a CTL are met, the assured may claim for a total loss of the vessel although the vessel, for instance, was not destroyed[234].

Under Section 60(2)(ii) of the English Marine Insurance Act 1906[235], a Constructive Total Loss (CTL) occurs where the vessel is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.

For H&M underwriters, the CTL assessment represents a moment of maximum financial exposure, as reaching this mathematical threshold forces the property market to pay out the full insured value of the hull to the shipowner. The calculation of these prospective repair costs intrinsically involves estimating the expenses of future salvage operations to which the ship would be liable if recovered.

While it is settled maritime law that traditional Article 13 property salvage awards count towards these recovery costs, shipowners historically attempted to include SCOPIC remuneration in the CTL calculation, arguing

[233] Sveriges Angfartygs Assurans Forening (The Swedish Club) v Connect Shipping Inc., The Renos [2019] UKSC 29 [11]

[234] Ö. Gürses, Marine Insurance Law, Third edition, Routledge, 2023, p. 300.

[235] See section 60(2)(ii) Marine Insurance Act (MIA) 1906

that the whole amount due to salvors had to be paid for the owners to recover the vessel. This strategy represented a direct commercial threat to H&M underwriters: if successful, shipowners could use the high tariff-based costs of environmental protection (funded by the P&I Club) to artificially inflate their repair bills, pushing the vessel over the CTL threshold and forcing the H&M market to pay for a total loss.

Because the fundamental purpose of SCOPIC is unconnected with the damage to the hull or its hypothetical reinstatement, it cannot be included in the assessment of whether a vessel is a constructive total loss.

This rigid exclusion of SCOPIC costs from the CTL assessment perfectly reinforces the fundamental boundary between the two insurance markets. Once a vessel crosses the true CTL threshold, without the inclusion of SCOPIC charges, the H&M underwriter, as an insurer of the hull's value, no longer has an interest in salving the vessel and typically abandons the wreck. At this precise juncture, the salvage operation frequently transforms into a wreck removal operation, marking the definitive exit of the H&M underwriter and the complete transfer of responsibility to the P&I Club, which covers wreck removal to protect coastal states from maritime hazards, and this operations form a major portion of the International Group of P&I claims, as coastal states become more aggressive in protecting their seas[236].

This highly contentious practice was definitively shut down by the United Kingdom Supreme Court in the important judgment of *Sveriges Angfartygs Assurans Forening v Connect Shipping (The Renos)*[237], the broader legal implications of which will be thoroughly analysed in Chapter 3, section 3.2. For the purposes of H&M exposure, it suffices to note that the Supreme Court protected the property insurance market by ruling that the "costs" referred to in the Marine Insurance Act 1906 include only charges whose objective purpose is to enable the vessel to be physically repaired;

[236] Gard, *"Salvage and Wreck Removal from a P&I Club Perspective",* 2026. Web resource available at: https://gard.no/en/insights/salvage-and-wreck-removal-from-a-p-and-i-club-perspective/, (accessed 3 March 2026).; Antonis Vakondios, *The "RENOS" – Constructive Total Loss Revisited*.

[237] See *The Renos* [2019] 2 Lloyd's Rep. 78; [2019] UKSC 29; Chapter III Section 3.1.

conversely, the objective purpose of SCOPIC is entirely different, as it aims to avoid potential P&I liability for environmental pollution, as in the case of a General Average[238].

[238] S. Abreo, 'Supreme Court Considers Determination of "Constructive Total Loss"', Watson Farley & Williams, 16 July 2019, web resource available at: https://www.wfw.com/articles/supreme-court-considers-determination-of-constructive-total-loss/.

Chapter III: Case Law on SCOPIC Clause

3.1. The SCOPIC Clause within the French Case Law [Liability and the Exclusion of SCOPIC from H&M Insurance: The Athena]

3.1.1 Introduction and Factual Background of the Casualty

The strict commercial firewall erected between Hull and Machinery (H&M) underwriters and Protection and Indemnity (P&I) Clubs regarding environmental salvage has been examined and generally upheld across major maritime jurisdictions. While the English courts are traditionally viewed as the primary forum for salvage disputes, an example of international judicial consistency regarding the SCOPIC Clause is found in French jurisprudence. Specifically, the landmark judgment delivered by the *Cour de cassation* (the French Supreme Court) on 14 June 2016 concerning the sinking of the vessel *Athéna*[239].

The factual background of the dispute highlights the highly complex operational dynamics of a modern maritime casualty, where the physical peril to the property is inextricably linked to an environmental threat.

On 26 June 2007, the *Athéna*, an offshore supply vessel owned by the French company Bourbon Offshore Surf (hereafter "Bourbon"), suffered a catastrophic casualty. The vessel capsized and subsequently sank, coming to rest on the seabed in the bay of Pointe Noire, situated in the Republic of the Congo.

The situation presented an immediate dual crisis. On one hand, there was the loss of the physical asset (the hull and its machinery), which required

[239]Cour de Cassation, Civile, Chambre Commerciale, 14 Juin 2016, 14-28.966, FR:CCASS:2016:CO00572.

urgent recovery efforts; on the other hand, the sunken vessel, loaded with bunkers and operational fluids, posed the imminent threat of an ecological accident in the coastal waters of the Congo. In order to mitigate these risks, the shipowner, Bourbon, rapidly engaged the services of the professional Dutch salvors Smit Salvage BV (hereafter "SMIT"). The salvage operation was contracted under the industry-standard Lloyd's Open Form (LOF), which incorporated the SCOPIC Clause.

Given the uncertainty surrounding the recovery of the vessel, SMIT promptly invoked the SCOPIC Clause in order to secure remuneration under the tariff system. Because the *Athéna* was already completely submerged at a depth of twelve metres, the prospect of achieving a successful refloating and returning the vessel to a place of safety was inherently uncertain. Under the traditional "no cure - no pay" regime governed by Article 13 of the 1989 Salvage Convention, if SMIT failed to recover the vessel, their salved value would be zero, leaving them entirely unremunerated for their massive deployment of equipment and personnel. To insulate themselves from this financial exposure, SMIT immediately invoked the SCOPIC Clause. By doing so, the salvors ensured that, regardless of whether the physical ship was ultimately saved, they would be guaranteed a remuneration based on the pre-agreed tariff rates for their time, equipment, and efforts in preventing the environmental disaster.

Following the formal invocation of the SCOPIC Clause, on 3 July 2007, the salvors obtained the mandatory Initial Security. This USD 3,000,000 guarantee was provided by the shipowner's liability insurer, The Shipowners Mutual Protection and Indemnity Association (hereafter the "P&I Club"), which covered the vessel's third-party liabilities, pollution damage, and wreck removal risks[240].

The invocation of SCOPIC also triggered the appointment of a Special Casualty Representative (SCR), whose role, already examined in Section

[240] Comité Maritime International, *'The Shipowners Mutual Protection & Indemnity Association v Allianz Global Corporate & Speciality SE*, web resource available at: https://cmlcmidatabase.org/shipowners-mutual-protection-indemnity-association-v-allianz-global-corporate-speciality-se. (accessed 4 March 2026).

1.5.1[241], was to monitor the salvage operation and report on the reasonableness of the resources deployed. In the Athéna case, the SCR's costs alone amounted to €128,624.92, a figure that would later become a specific point of contention in the ensuing legal proceedings.

Despite the massive deployment of resources, the salvage operations yielded a fundamentally different outcome. The salvors successfully managed the environmental threat, taking the necessary steps to prevent the pollution of the Pointe Noire Bay.

The bunker removal operations, completed on 6 August 2007, illustrate the dual nature of modern salvage: while primarily aimed at preventing pollution, they also contributed to preserving the possibility of recovering the vessel itself. However, despite this initial environmental success, all technical efforts to right the capsized hull and recover the physical vessel proved entirely unsuccessful.

As the SCOPIC remuneration is strictly based on a daily tariff for each type of equipment and personnel deployed, the financial burden increases significantly the longer the operation lasts[242]. Having concluded that the primary environmental threat had been effectively mitigated through the bunker removal operations and that there was no realistic prospect of achieving a successful recovery of the vessel, the shipowner exercised its contractual right to terminate the application of the SCOPIC Clause on 4 September 2007. The following day, SMIT officially ceased their salvage operations, leaving the wreck on the seabed.

[241] See Chapter II Section 1.5.1. Role of the Special Casualty Representative (SCR)

[242] G. Piette, *La portée d'une SCOPIC dans une convention d'assistance maritime Lloyd's Open Form*. La lettre juridique, July 2016. Web resource available at: https://www.lexbase.fr/article-juridique/32901618-jurisprudencelaporteedunescopicdansuneconventiondassistancemaritimeilloydsopenformi, (accessed 6 June 2026).

3.1.2 The Insurance Dispute between the P&I Club and H&M underwriters

Because the vessel could not be saved, the Article 13 property salvage award was effectively zero. Consequently, the entire financial burden of the salvage operation, calculated via the SCOPIC deployed by SMIT, fell straight upon the SCOPIC safety net, funded by The Shipowners Mutual P&I Club. Concurrently, the shipowner served a Notice of Abandonment[243] on its H&M underwriters, led by Allianz Global Corporate & Speciality SE (hereafter "Allianz"). Recognizing that the vessel was beyond economic recovery, the hull insurers paid out the agreed insured value of the *Athéna* for a total loss.

This divergence in outcomes, where the hull was lost but the environment was protected, set the stage for an inter-market insurance dispute. The P&I Club, having indemnified SMIT for the entirety of the SCOPIC remuneration, critically analyzed the SCR's reports. The Club observed that a significant portion of SMIT's costly operations had been inherently directed at trying to refloat and save the physical ship, an interest theoretically covered by the H&M policy.

Acting subrogated to the rights of the shipowner, The Shipowners Mutual P&I Club initiated legal proceedings against Allianz, seeking to recover the portion of the SCOPIC expenses that, in their view, were incurred to preserve the hull rather than to prevent pollution[244]. This legal action would

[243]Notice of Abandoment (NOA) is a specific procedure thanks to which the assured communicates to his insurer that he elects to treat the loss as a total loss. In this respect, the law grants the right to the assured to take a step back, evaluate the financial situation that the casualty has created (i.e. the expenses that he will have to incur as a result of the loss), and then, to choose whether he will exercise his right to pursue a claim for a total loss by abandoning whatever remained of the subject-matter insured to his insurer or to claim for a partial loss only and retain the subject-matter insured. However, service of an NOA is not necessary where at the timing the insured obtains information about the loss, the service of an NOA would provide no benefit to the insurer or in cases where the insurer has waived the NOA or where an insurer has re-insured his risk. See Section 61 and 62 MIA 1906

[244] P. Zampella, *"Soccorso e Clausola SCOPIC: La Ripartizione Degli Oneri Assicurativi Tra Assicuratori Corpi e P. & I. Clubs"*, Diritto Dei Trasporti, 2017, p. 588.

force the French courts to dissect the very nature of the SCOPIC Clause and its relationship with traditional property insurance.

3.1.3 The Core Legal Dispute: The Allocation of SCOPIC Costs

Upon the definitive termination of salvage operations and the owners' formal tendering of a Notice of Abandonment regarding the *Athéna*, the operational exigency concluded, thereby triggering a protracted subrogation dispute and financial apportionment conflict between the respective insurance markets. The P&I Club, having discharged its obligations as the institutional guarantor under the SCOPIC framework, indemnified SMIT Salvage for the entirety of the special remuneration calculated on the basis of the tariff rates. Concurrently, the Hull and Machinery underwriters, compensated the assured for the total loss of the ship.

The substantive legal controversy commenced when the P&I Club, acting subrogated to the rights of the shipowner Bourbon, instituted legal proceedings against the H&M syndicate before the *Tribunal de Commerce de Paris* (the Commercial Court of Paris)[245]. The Club sought equitable contribution and the reimbursement of a significant portion of the SCOPIC expenses it had disbursed to the salvors[246]. The dispute raised the broader issue of whether certain SCOPIC costs could be reallocated from the liability insurance market to the property insurance market.

Relying on the SCR's report, the P&I Club argued that the salvage operation could be divided into two phases. The first phase concerned pollution prevention and bunker removal, while the second consisted

[245] The *Tribunal de Commerce de Paris* (the Commercial Court of Paris) is the first-instance judicial body within the French legal system vested with specialized jurisdiction over commercial, corporate, and maritime disputes. In the context of marine insurance litigation, it serves as the primary court of merit responsible for interpreting the interaction between international maritime clauses and domestic insurance policies

[246] P. Zampella, *"Soccorso e Clausola SCOPIC: La Ripartizione Degli Oneri Assicurativi Tra Assicuratori Corpi e P. & I. Clubs"*, cit., p. 588.

primarily of efforts aimed at preserving and recovering the vessel. According to the Club, the costs attributable to this latter phase constituted sue and labour expenses[247] falling within the scope of the H&M policy. The P&I Club further argued that the preservation of the vessel during this subsequent phase fell within the ambit of the H&M policy's coverage and that this specific portion of the SCOPIC remuneration, exceeding USD 6.3 million, should therefore be borne by Allianz and the H&M syndicate.

The H&M syndicate contested this claim, advancing a strict, textualist construction of the insurance contract. The property underwriters submitted that the hull policy contained an express carve-out regarding environmental liabilities: it explicitly excluded from its coverage the special indemnity payable under Article 14 of the London Convention of 1989, as well as any indemnity paid by virtue of any other provision of similar scope. The H&M underwriters argued that SCOPIC constituted a contractual mechanism functionally equivalent to Article 14 and therefore fell within the policy exclusion. On 8 March 2012, the Tribunal de commerce de Paris rendered its judgment, firmly dismissing the P&I Club's claims in their entirety and rejecting both the pecuniary demands and the motions for further expert assessments. Undeterred by this initial defeat, the P&I Club lodged an appeal on 27 March 2012, elevating the dispute to the appellate jurisdiction of the *Cour d'Appel de Paris* (Court of Appeal of Paris)[248].

[247] "Sue and labour expenses are expenses that an assured may recover from the insurer where they have been incurred to prevent or minimize an insured loss. Whether the assured can claim such expenses and the amount of recovery available will depend on the terms of the insurance contract. Section 78(1) of the MIA 1906 provides that where an insurance contract contains a sue and labour clause, the assured may recover from the insurer any expenses properly incurred pursuant to the clause. Under section 78(1) such a recovery will be in addition to the insured amount; in other words, it will be a supplementary payment. However, the parties may agree otherwise by the insurance contract and the maximum limit provided for the insured risk may also include any payment for the sue and labour expenses." Y. Baatz, *Maritime Law*, V, cit., p. 497.

[248] The *Cour d'Appel de Paris* (Paris Court of Appeal) is the second-instance judicial body within the French legal system responsible for reviewing judgments rendered by lower commercial and civil courts, including the *Tribunal de Commerce de Paris*. It may confirm, amend or set aside the decision of the courts of first instance if a party appeals the decision. The decisions it makes are called stops.

The appellate judgment, delivered on 11 September 2014, affirmed the dismissal of the P&I Club's appeal. In doing so, the Court adopted a distinctive interpretation of the legal nature of the SCOPIC Clause.

The Court of Appeal rejected the chronological distinction proposed by the SCR between pollution-prevention activities and property-preservation efforts. According to the Court, the evidentiary record did not support such a rigid separation, since the measures undertaken by the salvors simultaneously pursued both objectives[249].

The Court further addressed the legal nature of the SCOPIC Clause and its relationship with Article 14 of the 1989 Salvage Convention. In its view, SCOPIC could not simply be assimilated to Article 14, as its contractual scope extended beyond environmental protection and provided remuneration for a broader range of salvage services, including efforts directed towards saving property and other interests protected by the salvage operation. Consequently, the Court considered SCOPIC to be a distinct contractual mechanism whose operation could not be reduced to the traditional framework of special compensation established by the Convention.

Nevertheless, despite adopting this broader interpretation of the Clause, the Court ultimately concluded that the insurance policy excluded compensation payable under Article 14 as well as any provisions of a similar nature. Since the salvage services were regarded as factually indivisible, the Court held that the disputed expenses could not be separated and partially transferred to the H&M market. The entirety of the financial burden therefore remained with the P&I Club, leading to the dismissal of the appeal. This set the stage for the final appellate review by the *Cour de Cassation*, the French

[249] The recovery of the bunkers, the stabilization of the wreck, and the attempts to refloat the vessel formed part of a single and indivisible salvage operation, making any artificial apportionment of costs between H&M and P&I interests legally unsustainable.

Supreme Court[250], which would ultimately be tasked to decide whether the Court of Appeal's interpretation of the SCOPIC Clause was legally sustainable.

3.1.4 The Cour de Cassation Judgment and Concluding Remarks

The *Athéna* judicial process finally reached its definitive conclusion before the *Cour de Cassation* (the French Supreme Court), which delivered its landmark judgment on 14 June 2016. By dismissing the appeal brought by the Shipowners Mutual Protection and Indemnity Association, the Supreme Court confirmed that the SCOPIC remuneration fell within the scope of the exclusion contained in the H&M policy. However, the true legal significance of this judgment lies in the Supreme Court's refusal to adopt the controversial reasoning of the Court of Appel of Paris. Instead, the Supreme Court exercised its appellate prerogative to substitute a pure point of law, anchoring its decision firmly on the strict interpretation of the contractual exclusions within the Hull and Machinery (H&M) policy. The Court observed that the insurance contract underwritten by Bourbon explicitly excluded from its coverage the special indemnity payable under Article 14 of the 1989 London Salvage Convention, as well as any indemnity paid by virtue of "any other provision of similar scope". Departing from the reasoning adopted by the Court of Appeal, which had argued that SCOPIC transcends the Convention because its application is universal and not strictly limited to environmental threats, the Court of Cassation ruled that the SCOPIC Clause inherently possesses a similar scope to Article 14. The Court reasoned that, despite its

[250] The *Cour de Cassation* (French Supreme Court) is the highest court in the French judicial system. The Court of Cassation controls the right application of the law by the inferior courts in civil and criminal matters. It aims at achieving unity in the application of the law. The Court reviews the legality of the contested decision and may annul it, but does not review the facts which form the basis of it.

broader operational triggers, the SCOPIC mechanism structurally mirrors Article 14 by allocating an indemnity that covers the entirety of the expenses engaged as a single, indivisible block, completely regardless of whether a "useful result" is achieved in saving the property.

Consequently, the Court of Cassation held that the entirety of the SCOPIC remuneration fell squarely within the H&M policy's express exclusion, meaning the financial burden had to remain exclusively upon the liability insurer. This strict jurisprudential assimilation of the SCOPIC Clause to Article 14 immediately sparked a profound doctrinal debate within the maritime legal community. Asserting that SCOPIC merely shares a "similar scope" to Article 14 is theoretically debatable; after all, the SCOPIC architecture was deliberately engineered by the industry to be invoked even in the complete absence of a characterized threat of environmental damage, making it a much more comprehensive safety net than the Convention's. Nevertheless, despite questioning the theoretical purity of the Court's legal assimilation, the practical outcome reached by the Court of Cassation appears consistent with the commercial rationale underlying the SCOPIC regime and perfectly respects the commercial spirit of the salvage agreement[251]. Indeed, any attempt to shift costs onto the hull underwriters fundamentally betrays the historical compromise reached by the maritime industry with the SCOPIC Clause creation[252].

The SCOPIC Clause was specifically championed by liability insurers to establish a predictable, tariff-based system that would protect them from substantial environmental liabilities; allowing P&I Clubs to subsequently dissect practically indivisible salvage operations in order to retroactively charge property insurers for the "preservation of the hull" would have weakened the balance achieved by the SCOPIC framework, inevitably reintroducing the very litigation and uncertainty that the SCOPIC safety net

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[251] G. Piette, *La portée d'une SCOPIC dans une convention d'assistance maritime Lloyd's Open Form*, cit.

[252] P. Zampella, *"Soccorso e Clausola SCOPIC: La Ripartizione Degli Oneri Assicurativi Tra Assicuratori Corpi e P. & I. Clubs"*, cit., p. 590.

was invented to eliminate. Ultimately, the *Athéna* judgment confirms the continued separation between property insurance and liability insurance within the SCOPIC framework and provides important guidance regarding the allocation of salvage-related costs between H&M underwriters and P&I Clubs.

3.2 The SCOPIC Clause within the English Case Law: [SCOPIC Expenses and Constructive Total Loss: The Renos]

3.2.1 Introduction and Factual Background of the Casualty

The intersection between the special environmental compensation regime and the traditional, deeply rooted principles of marine property insurance was tested before the English courts in the *Sveriges Angfartygs Assurans Forening v Connect Shipping* case (*The Renos*)[253].

While the French case law had clarified that H&M underwriters were not directly liable for SCOPIC remuneration, the English courts were required to determine whether such costs could nevertheless be taken into account when assessing whether a constituted a Constructive Total Loss (CTL)[254].

On 23 August 2012, the *M.V. Renos* suffered a serious engine room fire, resulting in a total loss of main engine power while the vessel was navigating laden with cargo in the Red Sea[255]. Faced with an immobilised and fully laden vessel drifting in open waters following a serious fire casualty, the

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[253] [2019] UKSC 29

[254] See Chapter II Section 2.1.2 for the Constructive Total Loss (CTL); Ö. Gürses, *Marine Insurance Law*, cit., p. 300.

[255] S. Abreo, '*Supreme Court Considers Determination of "Constructive Total Loss"*', Watson Farley & Williams, 16 July 2019, web resource available at; https://www.wfw.com/articles/supreme-court-considers-determination-of-constructive-total-loss/, (accessed 29 April 2026).

shipowners reacted immediately by engaging professional salvors under a Lloyd's Open Form (LOF) agreement. Given the uncertainty surrounding the eventual salvage award, the salvage operation was conducted incorporating the SCOPIC Clause. Following the successful containment of the immediate peril, the stricken vessel was taken under tow and brought first to Adabiya, where her cargo was safely discharged to mitigate further risks, and subsequently to Suez[256]. At this stage, the formal salvage services under the LOF agreement were officially terminated, although the owners were forced to hire a tug to stand by the vessel for safety purposes and eventual onward towing.

At the time of the casualty, the ship was insured under a Hull and Machinery (H&M) policy for an agreed value of USD 12 million, which was supplemented by a further Increased Value policy of USD 3 million, with the Swedish Club, acting as the lead property underwriter. Following the salvage operation, a dispute subsequently arose between the shipowners and the insurance syndicate regarding the true extent of the physical damage and the estimated cost of reinstatement. Because the assured received highly conflicting information from surveyors regarding the estimated repair costs, obtaining a reliable assessment of the repair costs proved difficult, resulting in several months of uncertainty while the vessel remained at Suez.

After more than five months during which the vessel remained idle and costs continued to accrue, that the owners, having exercised reasonable diligence to ascertain the true condition of the vessel, finally tendered a formal Notice of Abandonment (NOA)[257] on 1 February 2013, whilst the *M.V. Renos* remained idle at Suez. Through this formal instrument, the owners abandoned the vessel to the insurers and claimed the full insured value,

[256] [2019] UKSC 29, at para. 1.

[257] See supra note 234.

asserting that the ship was a Constructive Total Loss under Section 60(2)(ii) of the MIA 1906[258].

These circumstances gave rise to litigation concerning the calculation of a Constructive Total Loss. In particular, the owners argued that the salvage expenses, including the SCOPIC remuneration incurred before the Notice of Abandonment, should be included in the assessment of the costs of recovery for the purposes of the aforementioned section 60(2)(ii) of the MIA 1906.

3.2.2 The Legal Issue: SCOPIC Remuneration and the Calculation of Constructive Total Loss

The expenses incurred before the Notice of Abandonment raised the question whether SCOPIC remuneration could be included in the calculation of a Constructive Total Loss under section 60(2)(ii) of the Marine Insurance Act 1906. Since the salvors had invoked the SCOPIC Clause shortly after the casualty, a substantial portion of the salvage costs consisted of tariff-based remuneration payable independently of the ultimate success of the operation. The inclusion or exclusion of these costs would prove decisive in determining whether the vessel satisfied the CTL threshold.

In order to cross the CTL threshold, the shipowners included the entirety of the SCOPIC remuneration already incurred as a constituent element of the "cost of repairing the damage" under Section 60(2)(ii) of the Marine Insurance Act 1906. They argued that SCOPIC remuneration should rank towards a CTL because it constituted an integral and indivisible part of

[258] See section 60(2)(ii) Marine Insurance Act (MIA) 1906. In particular, there is a constructive total loss: (ii)In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired. In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs' payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired.

the overall sums that inevitably had to be paid to the salvors to effect the recovery of the vessel; without paying the salvors their invoked SCOPIC costs, the vessel could never have been salved and, consequently, could never have been repaired[259].

The Hull and Machinery underwriters opposed this concentration of costs into the property claim, arguing that the economic mechanism of SCOPIC was structurally designed to protect an entirely different risk. The insurers contended that the SCOPIC remuneration was exclusively devised by the maritime industry to protect the shipowner and the P&I Clubs against potential environmental liability, incentivizing salvors to protect the marine environment even when the property could not be saved. Because the objective purpose of the clause is to avert pollution rather than to safeguard the property itself, the H&M underwriters asserted that SCOPIC costs are conceptually distinct and divisible from the true costs of recovery and repair, and therefore cannot logically or legally be ranked as a "cost of repair" under a property policy[260].

Furthermore, to legally fortify their position, the underwriters relied on the strict contractual wording of the clause itself, pointing to sub-clause 15 of the SCOPIC agreement. This specific sub-clause explicitly states that SCOPIC remuneration shall be the liability of the shipowner alone (backed by their P&I cover) and that no claim relating to SCOPIC remuneration shall be made under the vessel's Hull and Machinery policy[261]**.** The insurers argued that SCOPIC remuneration was conceptually distinct from the costs of repairing or recovering the vessel and therefore could not be treated as part of the expenditure relevant to the CTL assessment. Conversely, the shipowners maintained that they were not seeking a direct indemnity from the H&M underwriters for the SCOPIC remuneration but were merely using it as a necessary mathematical element to accurately determine whether the vessel

[259] [2019] UKSC 29, at para. 23.

[260] [2019] UKSC 29, at para. 25.

[261] Sub-clause 15 SCOPIC

had crossed the threshold of a Constructive Total Loss[262]. The disagreement ultimately required the English courts to determine the relationship between SCOPIC remuneration and the statutory test for Constructive Total Loss under the Marine Insurance Act 1906.

3.2.3 The Decisions of the Lower Courts on SCOPIC

The dispute first came before the High Court, where Knowles J was required to determine whether the SCOPIC remuneration incurred during the salvage operation could be taken into account when assessing whether the vessel constituted a Constructive Total Loss under section 60(2)(ii) of the Marine Insurance Act 1906. The Court also held that the Notice of Abandonment had been tendered within a reasonable time. The High Court adopted a practical approach to the statutory provision. In its view, the relevant question was not the precise contractual classification of the SCOPIC remuneration, but whether those expenses formed part of the overall expenditure necessarily incurred in recovering the vessel after the casualty. Since the salvors would not have undertaken and continued the operation without the remuneration guaranteed by the SCOPIC framework, the associated costs were regarded as inseparable from the process of recovering the ship.

Accordingly, the High Court rejected the underwriters' argument that SCOPIC liability could not be taken into account for the purposes of Section 60(2)(ii) of the MIA 1906.

Instead, the judge Knowles J, held that the SCOPIC charges were an inherently "indivisible part" of the overall cost of recovering the vessel[263],

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[262] A. Vakondios,*The "RENOS" – Constructive Total Loss Revisited*.; The Shipowners' Club. *"Constructive Total Loss and SCOPIC"*, Web resource available at: https://www.shipownersclub.com/latest-updates/news/constructive-total-loss-and-scopic/. (accessed 3 March 2026), p. 8.

[263] [2016] EWHC 1580 (Comm), para. 53.

reasoning that the salvage remuneration was an unavoidable expense which the owners necessarily had to incur the in order to retrieve the vessel and place her in a position where repairs could be undertaken. The Hull and Machinery underwriters challenged this interpretation before the Court of Appeal, presided over by Judge Hamblen L.J. However, the appellate court unanimously upheld the judgment of Knowles J and confirmed that the entirety of the SCOPIC costs could be included in the CTL threshold. By affirming that SCOPIC remuneration formed part of the costs relevant to the CTL assessment, the Court of Appeal reinforced the approach adopted at first instance and prompted the underwriters to escalate the matter to the highest judicial authority. The Court of Appeal emphasized that section 60(2)(ii) focuses on the practical cost of recovering the vessel rather than on the internal composition of the salvage remuneration[264]. Accordingly, the fact that the salvors' remuneration consisted partly of a traditional salvage award and partly of SCOPIC payments did not alter its character as expenditure incurred in the recovery operation.

3.2.4 The Supreme Court Final judgment: The Definitive Assessment on SCOPIC Remuneration

In order to definitively resolve the Constructive Total Loss calculation and restore legal certainty to the marine insurance market, the United Kingdom Supreme Court, in a judgment delivered by Lord Sumption was required to address two distinct legal issues, granting permission to appeal

[264] [2018] EWCA Civ 23, para. 90.

specifically on the statutory treatment of pre-NOA costs and the conceptual nature of SCOPIC remuneration[265].

While the first issue concerned the treatment of expenses incurred before the Notice of Abandonment, the principal question for the purposes of this thesis concerns the legal characterization of SCOPIC remuneration. Having established that expenses incurred before the Notice of Abandonment could in principle be taken into account, the main issue before the Supreme Court concerned whether SCOPIC remuneration could legally qualify as a "cost of repair" under section 60(2)(ii) of the Marine Insurance Act 1906. Reversing the decisions of the lower courts, the Supreme Court by the judgment of 12 June 2019, held that SCOPIC costs must be entirely excluded from the CTL calculation.

In reaching this conclusion, the Supreme Court adopted an objective-purpose approach to determine whether SCOPIC cost could be characterized as costs of repair under section 60(2)(ii) MIA 1906. It is a well-settled principle of marine insurance that the cost of repairing damage includes certain preliminary steps, such as traditional salvage charges, temporary repairs, and towage, because their objective purpose is to physically enable the ship to be repaired. However, the Supreme Court held that the objective purpose of SCOPIC charges is fundamentally different: they are not incurred to enable the ship to be repaired but are rather designed to protect an entirely distinct interest of the shipowner, namely the potential liability for environmental pollution[266]. Because the prevention of environmental damage

[265] The Supreme Court also examined whether expenses incurred before the Notice of Abandonment could be included in the CTL calculation under section 60(2)(ii) of the Marine Insurance Act 1906. The Court held that the statutory reference to expenditure which "would" be incurred reflects the hypothetical nature of the assessment rather than the chronology of the expenditure. Consequently, reasonable salvage and safeguarding expenses incurred from the time of the casualty onwards could be taken into account even if they pre-dated the Notice of Abandonment. See for a detailed explanation [2019] UKSC 29; L. Reed et al., *Sveriges Angfartygs Assurans Forening (The Swedish Club) and Others (Appellants) v Connect Shipping Inc and Another (Respondents)*, 2019; A. Vakondios, *The "RENOS" – Constructive Total Loss Revisited.*; The Shipowners' Club, *"Constructive Total Loss and SCOPIC"*, Web resource available at: https://www.shipownersclub.com/latest-updates/news/constructive-total-loss-and-scopic/. (accessed 3 March 2026).

[266] [2019] UKSC 29, at para. 25.

is an interest that is distinct from the subject-matter insured under a hull policy, the Supreme Court ruled that SCOPIC remuneration falls outside the measure of damage to the ship and cannot conceptually rank towards her hypothetical reinstatement. Lord Sumption emphasized that the decisive question was not whether the expenditure was causally connected to the casualty, but whether its objective purpose was directed towards the recovery and repair of the insured property. Traditional salvage expenses satisfy this requirement because they enable the vessel to be recovered and repaired. SCOPIC remuneration, by contrast, serves the distinct purpose of protecting against environmental liabilities and therefore falls outside the scope of property damage assessment[267].

The Supreme Court also rejected the shipowners' argument regarding the "indivisibility" of the salvage contract[268]. The assured had argued that a prudent uninsured owner would be forced to accept SCOPIC terms in order to hire professional salvors, making the tariff costs an unavoidable preliminary expense to save the ship. The Supreme Court dismissed this by emphasizing that the objective purpose of the expenditure is what dictates its legal classification, not the identity of the contractor receiving the funds. In doing so, the Supreme Court expressly departed from the reasoning adopted by both the High Court and the Court of Appeal, which had treated SCOPIC remuneration as an indivisible component of the overall recovery costs. The fact that both categories of expenditure were payable to the same salvor under a single LOF agreement was therefore regarded as legally irrelevant to their classification[269].

Finally, this strict jurisprudential separation between property risks and liability risks was further validated by the intrinsic contractual architecture of the SCOPIC agreement itself. The Supreme Court noted that the classic division of risks is perfectly reflected in sub-clause 15 of the SCOPIC terms,

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[267] [2019] UKSC 29, at para. 27.

[268] [2019] UKSC 29, at para. 26.

[269] [2019] UKSC 29, at para. 25.

which explicitly states that SCOPIC remuneration shall be the liability of the shipowner alone and that no claim relating to it shall be made in General Average or under the vessel's Hull and Machinery policy.

The Supreme Court considered sub-clause 15 to be consistent with the traditional allocation of risks between the H&M and P&I markets. In doing so, it reinforced the distinction between property-insurance risks and liability-insurance risks, confirming that SCOPIC remuneration falls outside the costs relevant to the assessment of a Constructive Total Loss.

3.3 The SCOPIC Clause within the English Case Law [English Perspective on Operational Delays: The Sea Angel]

3.3.1 Introduction and Factual Background of the Casualty

The English courts were presented with a complex intersection of salvage law, time charterparty obligations, and the strict contractual doctrine of frustration[270] in the landmark dispute concerning the *Edwinton Commercial Corporation and Another v Tsavliris Russ (Worldwide Salvage & Towage) Ltd (The Sea Angel)*[271] case.

This case demonstrated how the invocation of the SCOPIC Clause within a salvage operation could significantly influence the allocation of financial risks in ancillary commercial contracts.

[270] "Frustration occurs whenever the law recognises that without fault of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract. Non haec in foedera veni. It was not this that I promised to do." This is one of the classical formulations of frustration from Lord Radcliffe in *Davis Contractors Ltd v Fareham Urban District Council* [1956] AC 696, 729

[271] [2007] EWCA Civ 547

On 27 July 2003, the oil tanker *Tasman Spirit*, laden with approximately 67,000 metric tonnes of light crude oil, grounded near the approaches to the port of Karachi, Pakistan. The vessel subsequently broke into two, causing a catastrophic marine pollution incident and posing an environmental threat to the local coastline. Faced with a major environmental disaster, professional salvors were engaged by the shipowners to salve the vessel and her cargo under a Lloyd's Open Form (LOF) 2000 agreement. Recognising the massive pollution risk and the potential inadequacy of a traditional property-based salvage award, the salvors exercised their contractual right to invoke the SCOPIC Clause.

In order to successfully perform the salvage services, the salvors subcontracted a smaller tanker, the *Sea Angel*, under a time charterparty contract. The charter was agreed for a specified, short duration of 20 days to lighten the casualty by off-loading part of the cargo[272]. Following the successful completion of the cargo transshipment operations in early September 2003, the *Sea Angel* was due to be promptly redelivered to her registered owners. However, the Pakistani port authorities, namely the Karachi Port Trust, refused to issue the necessary "No Demand Certificate"[273], a prerequisite to port clearance[274], effectively trapping the subcontracted vessel within the port limits.

The detention appears to have been motivated by the authorities' desire to secure guarantees for potential pollution-related claims. The coastal authorities detained the salvors'chartered craft as a leverage tactic, demanding that the owners of the *Tasman Spirit* and their P&I Club provide massive financial guarantees to secure claims for environmental pollution damage and clean-up costs. The situation was complicated by the fact that Pakistan was not a signatory to the International Convention Liability for Oil

[272] A. Mandaraka-Sheppard, *Modern Maritime Law*, II, cit., p. 559.

[273] The "No Demand Certificate" (NDC) certified that no outstanding port dues were required and which was a prerequisite to port clearance.

[274] Port clearance refers to the official administrative process that allows a vessel to legally enter, operate within, or depart a port. It ensures that the ship, crew, and cargo comply with all local laws, customs regulations, and International safety standards.

Pollution (CLC)[275] regime, prompting the authorities to seek alternative means of securing pollution-related claims.

Faced with a severe and protracted detention that ultimately lasted for 108 days, the salvors, acting in their capacity as charterers of the *Sea Angel*, ceased the payment of hire to the vessel's owners. They asserted that the time charterparty had been legally frustrated by a supervening, unforeseeable event, namely, the prolonged and politically motivated detention by governmental authorities, which fundamentally altered the commercial nature of their contractual obligations. This assertion laid the foundation for a complex dispute concerning the doctrine of contractual frustration and the allocation of the substantial financial consequences generated by the prolonged detention. The central issue therefore became whether such a delay could genuinely be regarded as an unforeseeable supervening event or whether, in light of the commercial realities of modern salvage operations and the SCOPIC framework, the risk of detention remained contractually allocated to the charterers.

3.3.3 The Judicial Decisions: From the High Court to the Court of Appeal

The legal attempt to utilize the doctrine of frustration as a mechanism to extinguish the mounting hire obligations faced strict judicial scrutiny, first

[275] International Convention Liability for Oil Pollution (CLC), adopted in 1969 following the *Torrey Canyon* disaster (1967), governs the shipowner's liability for pollution damage resulting from spills of persistent oil from tankers. The modern framework operates under a "three-tier system" established by the 1992 and 2003 Protocols: the first tier imposes strict but limited liability on the registered shipowner, backed by mandatory P&I insurance (1992 CLC); the second and third tiers (governed by the 1992 Fund Convention and the 2003 Supplementary Fund Protocol) provide additional compensation via intergovernmental funds (IOPC Funds) financed by oil receivers, raising the aggregate compensation cap to 750 million SDR for participating States. See for more information A. Mandaraka-Sheppard, *Modern Maritime Law*, II, cit., p. 829-864.

before the High Court and subsequently before the Court of Appeal. The central issue was whether the 108-day detention by the Karachi Port Trust constituted a fundamentally unforeseeable event that radically altered the nature of the charterparty. The salvors argued that the prolonged detention by the Karachi Port Trust constituted an extraordinary and unforeseeable supervening event which fundamentally transformed the commercial nature of the charterparty. According to this reasoning, the delay was so extensive and exceptional that it rendered the continued performance of the contract radically different from that originally contemplated by the parties. Conversely, the vessel owners maintained that delays and restrictions imposed by governmental and port authorities are well-known risks in salvage operations and therefore remain within the normal commercial allocation of risk assumed by charterers.

At first instance, the High Court rigorously analysed the contractual matrix and concluded that the detention did not satisfy the strict threshold required for frustration[276]. Although the delay was undoubtedly substantial and commercially onerous, the Court held that it did not fundamentally transform the nature of the contractual obligations assumed by the parties. Consequently, the charterparty remained operative and the obligation to pay hire continued throughout the period of detention.

When the dispute reached the Court of Appeal, the appellate panel, with Lord Justice Rix delivering the leading judgment, fully endorsed the High Court's findings, using the contractual architecture of the SCOPIC agreement as a significant indication that the risk of governmental detention had already been contemplated within the commercial framework of the salvage operation. The Court of Appeal observed that the express contractual allocation of the risk regarding governmental restraints, as strictly codified in the sub-clause 9(iii), discussed above, provided strong evidence that the unreasonable detention of craft by port authorities was a general hazard widely recognised and anticipated by the salvage industry[277]**.** Since the

[276] [2006] EWHC 1713 (Comm), at para. 106(i)

[277] [2007] EWCA Civ 547, at para. 64.

inability to demobilise equipment due to the restrictions imposed by the port authorities was a foreseeable and pre-regulated scenario rather than an unexpected radical shift in circumstances, the doctrine of frustration could not be invoked[278]. Therefore, the courts definitively ruled that the charterparty was not frustrated, confirming that the obligation to pay hire remained fully operative throughout the detention period, notwithstanding the considerable financial burden generated by the delay.

3.3.4 The Definitive Impact of SCOPIC on the "Multi-Factorial Approach"

The adjudication of the *Sea Angel* dispute provided the Court of Appeal with the opportunity to authoritatively refine the English contract law doctrine of frustration by formulating the celebrated "multi-factorial approach". Under this sophisticated legal framework, determining whether a supervening event radically alters the nature of the contractual obligations requires a comprehensive assessment of various elements, including the terms of the contract, its matrix or context, and the parties' knowledge, expectations, and contemplations regarding risk at the time of contracting[279].

Within this multi-factorial assessment, the SCOPIC Clause constituted one of the most significant contractual elements considered by the Court. The Court of Appeal did not merely treat SCOPIC as a tariff mechanism; rather, it treated the clause as an important indicator of how the parties and the salvage industry allocated operational and environmental risks. By actively choosing to incorporate the SCOPIC framework into the salvage operation, the salvors had incorporated the industry-wide recognition of political and environmental detentions into the matrix of the charterparty. Consequently, the appellate court used the SCOPIC terms as an important factor to

[278] [2007] EWCA Civ 547, at para. 119.

[279] [2007] EWCA Civ 547, at para. 111.

demonstrate that the effect of the detention was not a physical impossibility of the maritime adventure, which had already been performed, but purely a question of the financial consequences of the delay, namely who would bear the burden of the accumulating hire[280].

Because the SCOPIC framework structurally anticipated such governmental restraints and provided a contractual mechanism governing the financial consequences of such delays, Lord Justice Rix asserted that the ultimate rationale of the doctrine of frustration, the demand of justice, precluded its application[281]. The Court concluded that declaring the contract frustrated would have unjustly relieved the salvors, and consequently their liability insurers, from a financial hazard they had implicitly assumed when engaging in environmental salvage[282]. Ultimately, the *Sea Angel* judgment not only cemented the legal enforceability of environmental salvage tariffs during political detentions, but it confirmed that specialized salvage provisions may influence the resolution of contractual disputes extending beyond the traditional boundaries of salvage law, demonstrating that specialized salvage provisions may play a significant role in the resolution of complex contractual disputes extending beyond the traditional boundaries of salvage law.

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[280] [2007] EWCA Civ 547, at para. 118.

[281] [2007] EWCA Civ 547, at para. 112.

[282] [2007] EWCA Civ 547, at para. 132.

Conclusion

This thesis has examined the SCOPIC Clause not merely as a contractual provision attached to the Lloyd's Open Form, but as a legal and commercial response to the inadequacies of the traditional salvage remuneration system and, specifically, the practical failure of Article 14 of the 1989 Salvage Convention. The analysis has shown that the emergence of SCOPIC was not the result of a legislative reform imposed from above, but rather the product of cooperation among the principal actors of the maritime industry, who sought a practical solution to problems that the existing legal framework had proved unable to resolve satisfactorily.

The study demonstrates that the significance of SCOPIC extends beyond the objective of guaranteeing a financial safety net to professional salvors. By introducing a predictable and operationally efficient mechanism, the Clause has reshaped the allocation of risks among the parties involved in maritime casualties. In particular, it has clarified the distinction between property interests and liability interests, redefining the relationship between Hull & Machinery insurers and P&I Clubs and establishing a more coherent distribution of the financial consequences arising from modern salvage operations.

The examination of the relevant case law further illustrates that SCOPIC has evolved from a contractual innovation into an established component of contemporary maritime practice. Decisions such as *The Athéna*, *The Renos*, and *The Sea Angel* reveal how the clause has influenced judicial reasoning on issues extending beyond salvage remuneration itself, affecting questions of insurance coverage, constructive total loss, and the management of competing interests during maritime emergencies.

At a broader level, the SCOPIC experience highlights an important characteristic of maritime law: its capacity to adapt through industry-driven solutions when international conventions prove insufficiently flexible to address changing commercial realities. In this respect, SCOPIC represents an example of regulatory pragmatism, demonstrating how contractual mechanisms can complement and, in practice, improve the operation of uniform legal regimes.

Although the maritime industry will inevitably continue to evolve, the experience of SCOPIC demonstrates the value of pragmatic solutions capable of responding to the practical needs of those involved in salvage operations. Its longevity and widespread acceptance reflect the confidence that shipowners, salvors, insurers, and P&I Clubs have placed in a mechanism that has proven capable of balancing efficiency with fairness.

In conclusion, the SCOPIC Clause represents more than a contractual amendment to the Lloyd's Open Form. It illustrates how cooperation among different stakeholders can produce effective responses to complex challenges, ensuring that salvage operations remain economically viable while supporting the broader objectives of maritime safety and environmental protection.

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