



The American Club

P&I CONSIDERATIONS ON SALVAGE SCOPIC

Dorothea Ioannou



Salvage and SCOPIC: What is it?



What is SCOPIC?

**SPECIAL COMPENSATION
PROTECTION & INDEMNITY CLAUSE**



History

- Traditionally Salvage not a concern of P&I
- LOF – No Cure, No Pay
- Hull UWs concern
- Problem – salvage of the vessel may be futile but what about environmental threat?
- Problem – LOF awards based on percentage of salvaged value and this may not be sufficient
- Solution – SCOPIC clause agreed by the Industry and added as an option to LOF contracts in lieu of previous attempted solution of Article 14



SCOPIC FORMAT

SCOPIC Clauses

- Appendix A: Agreed Tariffs
- Appendix B: Mechanism of SCOPIC Committee and Specialty Casualty Representative (SCR)
- Appendix C: Role of the SCR



SCOPIC Codes and Forms

- Code of Practice between the ISU and IG of P&I Clubs
- Code of Practice between the IG of P&I Clubs and the London Property Underwriters' Guidelines for Special Casualty Representatives (“SCRs”)
- Salvage Guarantee Form ISU 5 (LoU instead of Bank Guarantee)



Incorporation of SCOPIC into LOF

LOF 2000

LLOYD'S



LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

Is the SCOPIC clause incorporated into this agreement?

YES/NO

(referred to in this agreement as "the Contractors")	(referred to in this agreement as "the property")
3. Agreed place of safety:	4. Agreed currency of any arbitral award and security (if other than United States dollars)
5. Date of this agreement:	6. Place of agreement:
7. Is the Scopie Clause incorporated into this agreement? State alternative : Yes/No	
8. Person signing for and on behalf of the Contractors	9. Captain or other person signing for and on behalf of the property



SCOPIC Clause 1

- SCOPIC Clause is supplementary to the LOF
- SCOPIC replaces Article 14 subject to withdrawal under clause 4
- The time limits, right of liens etc will be treated as if SCOPIC was salvage

SCOPIC – Clause 2

Option to invoke by written notice to the owners of the vessel the SCOPIC clause at any time regardless of the circumstances and, in particular, regardless of whether or not there is a “threat of damage to the environment”.

The assessment of SCOPIC remuneration shall commence from the time the written notice is given.

Services rendered before the written notice shall not be remunerated under this SCOPIC clause at all but in accordance with Convention Article 13 as incorporated into the Main Agreement (“Article 13”).



SCOPIC – Clause 3

The owners of the vessel have 2 working days after receiving written notice from the contractor invoking the SCOPIC clause, to provide a bank guarantee or P&I Club letter providing security for SCOPIC remuneration in the sum of US\$3 million, inclusive of interest and costs.



SCOPIC – Clause 4

If the owners of the vessel do not provide the Security within the said 2 working days, the Contractor is entitled to withdraw from all the provisions of the SCOPIC clause and revert to his rights under the Main Agreement.



SCOPIC Clause 5

SCOPIC provides for specifically agreed rates/tariffs. In addition to the rates and any out of pocket expenses, SCOPIC sets a standard uplift of 25% of those rates except that if the out of pocket expenses exceed the applicable tariff rates then there is an entitlement as follows:

- (a) The actual cost of such men, tugs, other craft and equipment plus 10% of the cost, or
- (b) The tariff rate for such men, tugs, other craft and equipment plus 25% of the tariff rate whichever is the greater.”



SCOPIC clause 6

- Even when SCOPIC invoked the salvage services under the Main Agreement continue to be assessed in accordance with the standard of Article 13.
- SCOPIC remuneration is only payable only to the extent that it exceeds the total Article 13 Award (or, if none, any potential Article 13 Award) payable by all salvaged interests (including cargo, bunkers, lubricating oil and stores) before currency adjustment and before interest and costs even if the Article 13 Award or any part of it is not recovered.

RENA: SCOPIC invoked



SCOPIC clause 6 – how it works

An example...

If SCOPIC tariff amounts to US\$ 1,500,000 and the Article 13 salvage award assessed at US\$ 1,000,000, then SCOPIC actual amount due is:

US\$ 500,000

(the amount SCOPIC exceeds the salvage award under Article 13)



SCOPIC clause 7: Penalty

If the Article 13 Award or settlement under the Main Agreement is greater than the assessed SCOPIC remuneration (in which case SCOPIC not payable) then, even if SCOPIC has not been invoked on the first day of services, the Article 13 Award or settlement is discounted by 25% of the difference between the said Article 13 Award or settlement and the amount of SCOPIC remuneration that would have been assessed had the SCOPIC remuneration provisions been invoked on the first day of the services.

SCOPIC clause 7: Penalty

An example...

If SCOPIC tariff amounts to US\$ 1,000,000 and the Article 13 salvage award assessed at US\$ 1,400,000, then SCOPIC actual amount due is:

US\$ 0

AND the salvage award under Article 13 is reduced to US\$ 1,300,000



SCOPIC clause 9 – Salvor can terminate

- “The Contractor shall be entitled to terminate the services under the SCOPIC clause and the Main Agreement by written notice to owners of the vessel with a copy to the SCR (if any) and any Special Representative appointed if the total cost of his services to date and the services that will be needed to fulfill his obligations hereunder to the property (calculated by means of the tariff rate but before the bonus conferred by sub-clause 5(iii) hereof) will exceed the sum of:
 - (a) The value of the property capable of being salvaged; and
 - (b) All sums to which he will be entitled as SCOPIC remuneration.”



SCOPIC clause 9 (ii) – The owner can terminate

The owners of the vessel may at any time terminate the obligation to pay SCOPIC remuneration after the SCOPIC clause has been invoked by giving at least 5 clear days' notice of such termination.

In the event of such termination the assessment of SCOPIC remuneration shall take into account all monies due under the tariff rates set out in Appendix A including time for demobilization.

BUT...



SCOPIC clause 9 (iii)

Can you really terminate?

The termination provisions contained in sub-clause 9(i) and 9(ii) only apply if:

The Contractor is not restrained from demobilizing his equipment by Government, Local or Port Authorities or any other officially recognized body having jurisdiction over the area where the services are being rendered.



SCOPIC

- The duties and liabilities of the salvors under SCOPIC remain the same as under the underlying LOF (**clause 10**)
- The salvor may be deprived of some of his SCOPIC expenses if he has been negligent or dishonest (**clause 11**)
- Once SCOPIC has been invoked the owners may appoint an SCR (Special Casualty Representative) to attend the salvage operation (**clause 12**)

SCOPIC

- After SCOPIC has been invoked the hull & machinery insurer and one owner or underwriter of all or part of any cargo on board may each appoint one Special Representative. (**clause 13**)
- SCOPIC remuneration shall include prevention of pollution as well as the removal of pollution in the immediate vicinity if it is necessary for the execution of the salvage (**clause 14**)
- SCOPIC will not be General Average and is not claimable under the vessel's hull & machinery policy (**clause 15**)
- All disputes shall be referred to arbitration as provided in the underlying LOF (**clause 16**)

SCOPIC: Code of Practice – ISU and IG

- The P&I Club should immediately advise the salvor whether the member is covered for SCOPIC
- Whilst SCOPIC security is expected, it is not automatic
- The Clubs can be expected to refuse to give SCOPIC security for non payment of calls, breach of warranties etc.
- The Clubs will not refuse to give security simply because the contractor cannot obtain security in any other way

SCOPIC

- If security is required by a port authority for potential P&I liabilities to permit the vessel to enter a port of refuge or place of safety, the Clubs would be willing to consider provision of such security
- The contractors will accept a P&I letter of undertaking under the ISU 5 wording rather than at Lloyd's
- The Club will advise the contractor within 2 working days whether or not they will provide security – this replicates clause 3(i)
- The Code of Practice has no actual legal effect... it is a “gentleman's agreement”



SCOPIC: P&I Club Concerns

- The biggest difficulty Clubs face in connection with SCOPIC security request is the timing usually of such a request is very early after a casualty so not much information has been collected
- Premature point for the Club to have evaluated and determined if there have been any breaches of warranties or other conditions and terms of the applicable cover
- Conflicts may arise between the parties regarding redelivery and conclusion of SCOPIC



SCOPIC – The SCR

Duties

- The SCR does not take over any responsibility for the salvage operation
- He has a duty to use best endeavours to *"assist"*.
- He must *"report, observe and consult with the Salvage Master"*
- If he disagrees with anything he must issue a dissenting report
- Once the services are over he must issue a Final Report



SCOPIC

Powers

- The SCR has no power to direct the Salvage Master or to employ more or less resources
- The SCR cannot bind the property owners to any course of action
- He may contact any interest directly but must copy in other salvaged interests
- No decision or view point is binding

