

Institute Time Clauses (Hulls) (ITCH) vs Nordic Plan

This is an overview of the Institute Time Clauses Hulls 1983 (ITCH) compared with the Nordic Marine Insurance Plan of 2013, Version 2019. Whereas the Nordic Plan contains a vast majority of regulation directly in its wording, the ITCH are typically subject to English law and jurisdiction and therefore significant interpretation has to be deducted from background law.

Clause 1: Navigation

- 1.1 The vessel is covered subject to the provisions of this insurance at all times and has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but it is warranted that the vessel shall not be towed, except as is customary or to the first safe port or place when in need of assistance, or undertake towage or salvage services under a contract previously arranged by the Assured and/or Owners and/or Managers and/or Charterers. This Clause 1.1 shall not exclude customary towage in connection with loading and discharging.*
- 1.2 In the event of the vessel being employed in trading operations which entail cargo loading or discharging at sea from or into another vessel (not being a harbour or inshore craft) no claim shall be recoverable under this insurance for loss of or damage to the vessel or liability to any other vessel arising from such loading or discharging operations, including whilst approaching, lying alongside and leaving, unless previous notice that the vessel is to be employed in such operations has been given to the Underwriters and any amended terms of cover and any additional premium required by them have been agreed.*
- 1.3 In the event of the vessel sailing (with or without cargo) with an intention of being (a) broken up, or (b) sold for breaking up, any claim for loss of or damage to the vessel occurring subsequent to such sailing shall be limited to the market value of the vessel as scrap at the time when the loss or damage is sustained, unless previous notice has been given to the Underwriters and any amendments to the terms of cover, insured value and premium required by them have been agreed. Nothing in this Clause 1.3 shall affect claims under Clauses 8 and/or 11.*

Comparison:

Comment to ITCH Sub-clause 1.1 and 1.2

The clause states the main rule namely that the insured vessel is covered at all times when sailing or navigating with or without pilots and assisting and towing vessels or crafts in distress. This would be the starting position under English law in any event. On the other hand the assured is taken have warranted that the vessel shall not be towed, except as is customary, and that the vessel shall not undertake towage or salvage services. This is a clear undertaking by the assured that use of the vessel for towing would amount to a change of the risk that underwriters are accepting.

Sub- clause 1.2 makes it clear that ship to ship operations are also outside the scope of normal operations that underwriters have assumed to be the basis of their agreement.

NMIP Comparison

The Nordic plan does not have a clause that corresponds directly to ITCH Cl.1.1 and 1.2. Although the starting point is that the insurance covers all marine perils to which the interest may be exposed, [Cl. 2-8](#). There will always be certain clear assumptions underlying the insurance agreement e.g. as to how the vessel will be employed, its ownership and class status.

Of importance is also [Chapter 3](#) which, besides stating the general principles, deals explicitly with class status, trading limits, use of the vessel for illegal purposes, requisition, removal of a vessel to a repair yard and change of ownership. It goes without saying that the use of pilots does not amount to a change of risk as defined in [Cl. 3-8](#), sub-clause 1. [Clause 3-12](#), sub-clause 2, states that the insurer cannot claim that measures taken to save human life or to render assistance or salvage a vessel in distress amount to a change of risk and [Cl. 13-1](#) stipulates that the insurance will not cover liability arising while the ship is engaged in towing, or caused by the towage, unless this takes place in connection with a salvage operation referred to in [Cl. 3-12](#), sub-clause 2.

With the exception of loss of main class discussed below under ITCH Cl. 4 the insurer can only cancel the insurance due to a change of risk by giving 14 days notice., c.f. [Cl. 3-10](#). Whether loss caused by a change of risk is covered or not is regulated in [Cl. 3-9](#).

Comment to ITCH Sub-clause 1.3

This sub-clause does not really deal with navigation or employment issues but rather with insurable value. The agreed value stated in the policy is binding on underwriters as per MIA 27.3 but if the vessel is sailing with intention to be scrapped the agreed value is set aside and replaced by the scrap value at the time of the loss unless prior notice has been given and terms have been agreed. The sub-clause does not however affect collision liability, Cl. 8 or general average and salvage claims, Cl. 11.

NMIP Comparison

There is no directly equivalent provision in NMIP.

Clause 2: Continuation

Should the vessel at the expiration of this insurance be at sea or in distress or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

Comparison:

Comments to ITCH

The clause gives the Assured an option to extend the insurance period by giving notice to Insurers in two different situations. Firstly, the insurance can be extended if the vessel is at sea or at a port of call in the course of normal operations. Today with modern communications it is

doubtful whether there is any real need to extend the policy period in such cases. A new policy taking effect from a specified time and date will almost certainly have been agreed.

The second situation is where the vessel has suffered a casualty and is in distress or in a port of refuge. As long as the vessel's situation remains critical or unresolved it makes sense for the policy on risk at the time the critical situation commenced to remain on risk until the vessel is in a safe and stable condition.

NMIP Comparison

NMIP [Cl. 10-10](#), sub-clause 1, provides for automatic extension of the insurance period where the ship has sustained damage for which the insurer is liable and repairs are necessary. The insurance is extended until the ship has dropped anchor or has been moored in the first place where permanent repairs can be effected. If repairs are carried out at that place, the insurance is extended until the repairs are completed.

According to [Cl. 6-4](#) the insurer may require an additional premium in proportion to the extended time.

If a ship is missing or abandoned, defined in [Cl. 11-7](#), the insurance is extended until the ship has dropped anchor or has been moored in the first port. The insurance shall not be extended beyond two years after the expiry of the insurance period under [Cl. 11-8](#).

If it is uncertain whether a claim for total loss will be made, and the ship is subsequently salvaged or reported safe, and additional premium may only be demanded from the time the assured, or someone acting on his behalf, gained control of the ship, under [Cl. 6-4](#), sub-clause 2.

[Clause 10-10](#), sub-clause 2, simply makes it clear that the commencement of the next policy is postponed to correspond with the extension of the current policy.

Clause 3: Breach of warranty

Held covered in case of any breach of warranty as to cargo, trade, locality towage, salvage services or date of sailing, provided notice be given to the Underwriters immediately after receipt of advices and any amended terms of cover and any additional premium required by them be agreed.

Comparison:

Comment to ITCH

This clause was designed to counteract the strict rules in MIA Sections 33 and 34 which state that any warranty must be strictly complied with and that the insurer is discharged from liability from the time of the breach. In the new MIA 2015 the liability of the insurer is not completely discharged rather suspended until the breach of warranty has been remedied. Nor may the insurer avoid liability for losses that occur after the breach of warranty but which are unrelated to the matters dealt with in the warranty.

The ITCH Cl.3 requires that the assured give immediate notice after receipt of advices and in the case of e.g. a breach of trading warranties the assured will be without cover for losses related to the increased risks that are typical for the conditional or excluded area.

NMIP Comparison

There are no directly corresponding clauses in NMIP, however in [Chapter 3](#), several clauses deal with issues relating to change of risk including navigation outside normal trading limits.

An alteration of the risk occurs when there is a change in the circumstances which, according to the contract, are to form the basis of the insurance as defined in [Cl. 3-8](#). The assured shall notify the insurer without delay, cf. [Cl. 3-11](#). The consequences of a change in risk are dealt with in [Cl. 3-9](#) and [Cl. 3-10](#). However, the most practical cases are dealt with specifically in [clauses 3-14 to 3-21](#).

In the case of trading areas [Cl. 3-15](#) states that the person effecting the insurance shall notify the insurer before the ship proceeds beyond the ordinary trading areas as defined in the Appendix to the NMIP.

The vessel is held covered for trade in the conditional trading areas, but if damage occurs while the ship is in a conditional area with the consent of the assured and without notice having been given, the claim shall be settled subject to a deduction of one fourth, maximum USD 200,000. If the insurer has been duly notified of trade within the conditional trading areas, the insurance remains in full force and effect cf. [Cl. 3-15](#), sub-clauses 3 and 4.

If the vessel proceeds into an excluded trading area, the insurance is suspended, unless the insurer has given his consent in advance. The insurance will again come into effect if the vessel leaves the excluded area before the insurance period expires cf. [Cl. 3-15](#), sub-clause 5.

Clause 4: Termination

This Clause 4 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent therewith.

Unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically at the time of

- 4.1. change of the Classification Society of the vessel, or change, suspension, discontinuance, withdrawal or expiry of her Class therein, provided that if the vessel is at sea such automatic termination shall be deferred until arrival at her next port. However where such change, suspension, discontinuance or withdrawal of her Class has resulted from loss or damage covered by Clause 6 of this insurance or which would be covered by an insurance of the vessel subject to current Institute War and Strikes Clauses Hulls-Time such automatic termination shall only operate should the vessel sail from her next port without the prior approval of the Classification Society,*
- 4.2. any change, voluntary or otherwise, in the ownership or flag, transfer to new management, or charter on a bareboat basis, or requisition for title or use of the vessel, provided that, if the vessel*

has cargo on board and has already sailed from her loading port or is at sea in ballast, such automatic termination shall if required be deferred, whilst the vessel continues her planned voyage, until arrival at final port of discharge if with cargo or at port of destination if in ballast. However, in the event of requisition for title or use without the prior execution of a written agreement by the Assured, such automatic termination shall occur fifteen days after such requisition whether the vessel is at sea or in port.

A pro rata daily net return of premium shall be made.

Comparison:

Comments to ITCH

Clause 4 was designed to protect insurers from unintended changes in the course of the insurance period.

Sub-Clause 4.1 deals primarily with situations where the Vessel's class is changed, suspended, discontinued, withdrawn or has expired.

Sub-Clause 4.2 addresses other changes to the operation of the vessel, such as ownership change, management change, charter on a bareboat basis or requisition for title or use.

NMIP Comparison

NMIP deals with termination issues and change of risk primarily in its [Chapter 3](#) which outlines the duties of the person effecting the insurance and of the assured.

The main rule in respect of the loss of main class can be found in [Cl. 3-14](#) which is to be read together with [Cl. 3-8](#) regarding alteration of risk. [Cl. 3-14](#) notes that unless the insurer explicitly consents to a continuation, the insurance contract automatically terminates in the event of loss, suspension or withdrawal of main class.

The ITCH Sub-Cl. 4.1 provides that automatic termination of the cover for a sailing vessel is deferred until the vessel arrives at her next port. In a slightly more restrictive manner the NMIP provides that a vessel at sea will be held covered only until the ship arrives at the nearest safe port in accordance with the insurers' instructions.

Under the NMIP the cover continues normally in the case of change of classification society, State of registration, manager of the ship or company responsible for technical/maritime operations of the ship. However, these changes are considered an alteration of risk, ref. [Cl. 3-8](#), and the insurer may cancel the insurance by giving 14 days' notice, ref. [Cl. 3-10](#).

If, subsequent to the conclusion of the insurance contract, the assured agrees to an alteration of risk the insurer is not automatically free from liability. In order to reject cover, the Insurer must prove that he would not have accepted the risk had he known that the alteration of risk would take place. If it can be proven that the insurer would accept the risk but on different terms, than such terms shall apply, ref. [Cl. 3-9](#).

Clause 5: Assignment

No assignment of or interest in this insurance or in any moneys which may be or become payable thereunder is to be binding on or recognised by the Underwriters unless a dated notice of such assignment or interest signed by the Assured, and by the assignor in the case of subsequent assignment, is endorsed on the Policy and the Policy with such endorsement is produced before payment of any claim or return of premium thereunder.

Comparison:

Comments to ITCH

This clause sets out certain form requirements in order that an assignment of the benefit of the policy or of money due under the policy is binding on underwriters. Although form requirements may vary most legal systems accept as a starting point that the benefit of an insurance policy or money due may be assigned so that the assignee can step into the shoes of the assured and exercise rights against the insurers. Assignment is of greatest practical relevance in relation to mortgagees and there well established routines documenting and protecting the rights of mortgagees by means of formal assignment and Loss Payee clauses.

NMIP Comparison

Rights of third parties against the insurer are regulated in Chapters [7](#) and [8](#) of the NMIP.

[Chapter 7](#) regulates rights of mortgagees. The insurance cover is automatically extended to cover for their interest in [Cl. 7-1](#).

If notice of the mortgage is given to the insurer before payment is effected, the mortgagee also receives the benefit of priority in the payment of compensation cf. [Cl. 7-4](#).

This rules will have effect without the necessity of any formal documentation and function as a form of safety net if there should be some of slip up in the usual documentation routines.

[Chapter 8](#) deals with co-insurance of third parties. The insurance also covers third parties interests if the insurance is explicitly effected for the benefit of a third party, cf [Cl. 8-1](#).

The main difference between ITCH and the Plan is that mortgagees are automatically covered under the Plan, while a signed notice by the assured to underwriters is a perquisite under the ITC.

Clause 6: Perils

6.1 *This insurance covers loss of or damage to the subject-matter insured caused by*

- 6.1.1 *perils of the seas rivers lakes or other navigable waters*
- 6.1.2 *fire, explosion*
- 6.1.3 *violent theft by persons from outside the vessel*
- 6.1.4 *jettison*
- 6.1.5 *piracy*
- 6.1.6 *breakdown of or accident to nuclear installations or reactors*
- 6.1.7 *contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or installation*
- 6.1.8 *earthquake volcanic eruption or lightning.*

6.2 *This insurance covers loss of or damage to the subject-matter insured caused by*

- 6.2.1 *accidents in loading discharging or shifting cargo or fuel*
- 6.2.2 *bursting of boilers breakage of shafts or any latent defect in the machinery or hull*
- 6.2.3 *negligence of Master Officers Crew or Pilots*
- 6.2.4 *negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder*
- 6.2.5 *barratry of Master Officers or Crew,*

provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

6.3 *Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause 6 should they hold shares in the vessel.*

INSTITUTE ADDITIONAL PERILS CLAUSES - HULLS

1. *In consideration of an additional premium this insurance is extended to cover*

- 1.1. *the cost of repairing or replacing*
 - 1.1.1. *any boiler which bursts or shaft which breaks*
 - 1.1.2. *any defective part which has caused loss or damage to the Vessel covered by Clause 6.2.2 of the Institute Time Clauses - Hulls 1/10/83,*

- 1.2. *loss of or damage to the Vessel caused by any accident or by negligence, incompetence or error of judgement of any person whatsoever.*
2. *Except as provided in 1.1.1 and 1.1.2, nothing in these Additional Perils Clauses shall allow any claim for the cost of repairing or replacing any part found to be defective as a result of a fault or error in design or construction and which has not caused loss of or damage to the Vessel.*
3. *The cover provided in Clause 1 is subject to all other terms, conditions and exclusions contained in this insurance and subject to the proviso that the loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers. Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause should they hold shares in the Vessel.*

Comparison:

Comments to ITCH

ITCH covers named perils only as listed in Clause 6 (and 7). Piracy is included as a marine peril under Clause 6 but is normally excluded from the marine policy and included on the war risk policy, see note below to ITCH Cl. 23. Under ITCH the assured has the burden of proving that a loss is caused by an insured peril. Although ITCH is based on a named perils approach there are specific exclusions. War and related perils are excluded by ITCH Cls. 23 – 26 and MIA Section 55 contains exclusions for wear and tear and inherent vice.

ITCH Cl. 6 Covers Loss caused by latent defects that is consequential damage but not the original part itself.

The Additional Perils Clause, as quoted above, covering any accident and negligence of any person etc., is included in most Hull & Machinery policies. To a certain extent this Clause also provides cover for the cost of repairing a latent defect; ITCH + AP Clause cover damage to the defective part when it causes damage to other parts.

NMIP Comparison

Under the Nordic plan marine insured perils are dealt with in [Cl. 2-8](#) and war perils in [Cl. 2-9](#). Piracy is included in [Cl. 2-9](#). The Plan's hull conditions are based on the all risks principle. The excluded perils are stated in [Cl. 2-8](#) and in [Chapter 12](#). This means that it is the insurer who has the burden of proving that a loss is caused by an excluded peril, [Cl. 2-12](#). However, the same Clause states that the assured has the burden of proof that the loss is of a kind covered by the insurance, eg. physical damage in the case of H&M insurance, and the extent of the economic loss that the assured has suffered.

[Clause 12-3](#) contains an exclusion similar to MIA Section 55 excluding liability for wear and tear and similar causes. [Cl. 12-4](#) states that damage caused by error in design or faulty material is covered if the damaged part has been approved by class. Because cover is based on the all risks principle any damage that is not regulated by either [Cl. 12-3](#) or [Cl. 12-4](#) will remain covered.

Clause 7: Pollution hazard

This insurance covers loss of or damage to the vessel caused by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from damage to the vessel for which the Underwriters are liable under this insurance, provided such act of governmental authority has not resulted from want of due diligence by the Assured, the Owners, or Managers of the vessel or any of them to prevent or mitigate such hazard or threat. Master, Officers, Crew or Pilots not to be considered Owners within the meaning of this Clause 7 should they hold shares in the vessel.

Comparison:

Comments to ITCH

The insurance covers damage to the vessel caused by any governmental authority in order to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from damage to the vessel for which the Underwriters are liable.

NMIP Comparison

Under the Nordic Plan [Cl. 2.8](#) measures taken by a State power for the purpose of averting or limiting damage shall not be regarded as an intervention, provided that the risk of such damage is caused by a peril covered by the insurance against marine perils.

The cover under the Nordic Plan is broader than ITCH Cl. 7. Any measure taken by a State, own of foreign, for the purpose of averting or limiting any loss or damage whether pollution or any other kind of loss or damage will not be excluded by [Cl. 2-8](#) (b), but will remain covered under an insurance against marine risks by virtue of the all risks principle.

Clause 8: 3/4ths Collision Liability

8.1. *The Underwriters agree to indemnify the Assured for three-fourths of any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable by way of damages for*

8.1.1. *loss of or damage to any other vessel or property on any other vessel*

8.1.2. *delay to or loss of use of any such other vessel or property thereon*

8.1.3. *general average of, salvage of, or salvage under contract of, any such other vessel or property thereon,*

where such payment by the Assured is in consequence of the vessel hereby insured coming into collision with any other vessel.

8.2 The indemnity provided by this Clause 8 shall be in addition to the indemnity provided by the other terms and conditions of this insurance and shall be subject to the following provisions:

8.1.1. Where the insured vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 8 shall be calculated on the principle of cross-liabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision.

8.1.2. In no case shall the Underwriters' total liability under Clauses 8.1 and 8.2 exceed their proportionate part of three-fourths of the insured value of the vessel hereby insured in respect of any one collision.

8.3. The Underwriters will also pay three-fourths of the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability, with the prior written consent of the Underwriters.

EXCLUSIONS

8.4 Provided always that this Clause 8 shall in no case extend to any sum which the Assured shall pay for or in respect of

8.4.1. removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever

8.4.2. any real or personal property or thing whatsoever except other vessels or property on other vessels

8.4.3. the cargo or other property on, or the engagements of, the insured vessel

8.4.4. loss of life, personal injury or illness

8.4.5. pollution or contamination of any real or personal property or thing whatsoever (except other vessels with which the insured vessel is in collision or property on such other vessels).

Comparison:

Comments to ITCH

Liability arising out of a collision is covered either by H&M or P&I insurers. The P&I rules are designed to cover any liabilities that the H&M insurance does not cover.

ITCH Cl. 8 key points to note are that the clause covers 3/4ths of the most significant liabilities arising from a collision between the insured vessel and any other vessel. That is liability for:

- loss or damage to the other vessel or any property on the other vessel – cargo normally being the most significant;
- liability for delay to or loss of use of the other vessel or property on the other vessel;
and

- general average and salvage in respect of the other vessel or property on the other vessel.

Litigation and legal costs are also recoverable with 3/4ths under ITCH.

NMIP Comparison

NMIP [Cl. 13-1](#), stipulates a 4/4 liability. While ITCH covers only collision to other vessel, NMIP covers both collision and striking to a vessel and any other object. NMIP [Ch. 13](#) covers liability of the assured arising from collision or striking by the ship, its accessories, equipment or cargo, or by a tug used by the ship to any other object. Any exclusions must be named in the contract to be exempted from the cover. Litigation and legal costs in connection with the claim settlement is recoverable in full – 4/4ths – under NMIP. Another significant difference is that NMIP covers both liability arising from tort and contract, while ITCH only covers liability arising from tort.

Comments to ITCH Cl. 8.2

The cover provided by Cl. 8.2 can be claimed in addition to the sum insured for damage or loss of the insured vessel itself.

Further, in the case of a both-to-blame collision the cross-liability rule is applied. The cross-liability rule only applies if neither vessel is able to limit their liability. This is a disadvantage to the assured as recoveries in respect of uninsured losses not separates out in a single liability settlement and therefore cannot be allocated to the assured.

Litigation and legal costs are also recoverable with 3/4ths under ITCH as per Cl. 8.3

NMIP Comparison

Equal to ITCH, collision liability is additional to other indemnities under NMIP. A major difference between NMIP and ITCH is that the cross-liabilities principle in [Cl. 4-14](#) is to be applied in all cases, even when one or both vessels in a both-to-blame collision are able to limit their liability.

Another difference is that litigation and legal costs in connection with the claim settlement are recoverable in full – 4/4ths – under NMIP.

Comments to ITCH Cl. 8.4 (Exclusions)

The P&I insurer covers any named exclusions in Cl.8, including the remaining 1/4ths of the collision liability.

NMIP Comparison

Any exclusions must be named in the contract to be exempted from the cover, see NMIP [Cl. 13-1](#) a-j. These exclusions will be covered by the P&I insurer.

Clause 9: Sistership

Should the vessel hereby insured come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the Assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of Owners not interested in the vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured.

Comparison:

Comments to ITCH

ITCH Cl. 9 relates to vessels under the same ownership. In case of a collision between the insured vessel and another vessel owned by the assured, the insurer have to pay compensation for damage or other losses suffered by the other vessel as though it was owned by a third party. This applies however only to another vessel owned by the assured and not to other property such as a jetty or quay.

The same applies in case of salvage services rendered to the insured vessel by another vessel owned by the assured: the insurer is liable to pay compensation as if the salvage operation had been carried out by a third party.

NMIP Comparison

According to NMIP [Cl. 4-16](#) the insurer is liable for loss sustained by the assured when an object belonging to the assured is damaged in such circumstances that the assured himself would have become liable for the loss if the object had belonged to a third party. [Clause 4-16](#) refers to objects belonging to the assured and would therefore not only include vessels of same ownership, but for example damage to a quay, jetty or wharf, which gives a wider coverage than ITCH.

The case of salvage services rendered to the insured vessel by another vessel owned by the assured is dealt with separately in NMIP [Cl. 10-11](#). Coverage is the same as under ITCH Cl. 9. If the ship is salvaged by another vessel belonging to the assured, the insurer is liable as if the salvage operation had been carried out by a third party.

Clause 10: Notice of Claim and Tenders

10.1. *In the event of accident whereby loss or damage may result in a claim under this insurance, notice shall be given to the Underwriters prior to survey and also, if the vessel is abroad, to the nearest Lloyd's Agent so that a surveyor may be appointed to represent the Underwriters should they so desire.*

10.2. *The Underwriters shall be entitled to decide the port to which the vessel shall proceed for docking or repair (the actual additional expense of the voyage arising from compliance with the Underwriters' requirements being refunded to the Assured) and shall have a right of veto concerning a place of repair or a repairing firm.*

10.3. *The Underwriters may also take tenders or may require further tenders to be taken for the repair of the vessel. Where such a tender has been taken and a tender is accepted with the approval of the Underwriters, an allowance shall be made at the rate of 30% per annum on the insured value for time lost between the despatch of the invitations to tender required by Underwriters and the acceptance of a tender to the extent that such time is lost solely as the result of tenders having been taken and provided that the tender is accepted without delay after receipt of the Underwriters' approval.*

Due credit shall be given against the allowance as above for any amounts recovered in respect of fuel and stores and wages and maintenance of the Master Officers and Crew or any member thereof, including amounts allowed in general average, and for any amounts recovered from third parties in respect of damages for detention and/or loss of profit and/or running expenses, for the period covered by the tender allowance or any part thereof.

Where a part of the cost of the repair of damage other than a fixed deductible is not recoverable from the Underwriters the allowance shall be reduced by a similar proportion.

10.4. *In the event of failure to comply with the conditions of this Clause 10 a deduction of 15% shall be made from the amount of the ascertained claim.*

Comparison:

Comments to ITCH Cl. 10.1

Sub-clause 10.1 appears at first sight to deal with the important issue of the time limit for giving notice of a claim. However, the clause is concerned with ensuring that notice of a claim is given prior to any survey and not with a time limit for notification itself. For this reason a notice shall be given to the insurer and if the vessel is abroad, to the nearest Lloyds Agent so that a surveyor may be appointed to represent the insurer. This means that the assured's obligation is not so much to give notice within a specific time limit but to make sure the notice is given prior to conducting any survey of a damage that is relevant to any claim. Non-compliance with the latter would presumably be considered as a failure to comply with the conditions of Cl. 10 and further the penalty in sub-clause 10.4, a 15% deduction from the ascertained claim, would apply.

Since neither ITCH nor MIA contain rules dealing directly with the time bar in respect of making claims, this will be decided under the ordinary rules of the law of the jurisdiction that applies to the contract. In respect of English law, the time bar for claims under an insurance contract is six years.

NMIP Comparison

NMIP does not contain an exact equivalent to ITCH sub-clause 10.1, addressing the question of notice to insurers in order to enable a survey to be carried out. However, NMIP contains rules addressing the duty to give notice of a casualty generally. [Clause 3-29](#) requires the assured to give notice, not only when a casualty occurs, but also if a casualty threatens to occur. The only sanction to not comply with [Cl. 3-29](#) is stated in [Cl. 3-31](#); if the assured has deliberately or

through gross negligence failed to give notice, then the insurer is not liable for a greater loss than he would have been liable for if notice had been given.

The more detailed rules are [Cl. 5-23](#) Time-limit for notification of a casualty and [Cl. 5-24](#) Limitation. Under [Cl. 5-23](#) notification of a casualty or claim shall be given to the insurers without undue delay:

- within six months from the date when the assured become aware of it and
- within 24 months from the hull damage below the waterline occurred.

Claims become time-barred within three years from the end of the calendar year during which the assured becomes aware of a damage caused by an insured peril, or, in any event, after ten years, as per NMIP [Cl. 5-24](#).

Comments to ITCH Cl. 10.2 and 10.3

Sub-clause 10.2 says that insurers have right to decide to which port the vessel shall proceed to for dry-docking or repair and have veto regarding place of repair or repairing team. If insurers use the said rights, they will compensate the assured for the additional expense of the voyage arising from compliance with their instructions.

Insurers also have the right to take tenders or require further tenders to be taken, as per sub-clause 10.3. In the given case, they will pay an allowance of 30% per annum on the insured value for the time lost. The latter is calculated from the dispatch of the invitation to tender required by insurer until acceptance of a tender. The compensation shall be reduced further for amounts covered in respect of wages and maintenance, fuel and stores, etc.

NMIP Comparison

Contrary to ITCH, NMIP [Cl. 12-12](#) gives the assured the right to choose the repair yard. If the assured does not choose the lowest tender, the insurer's liability will be limited to the lowest tender with an addition of 20 % per annum of the insured value for the time saved by the assured. Further, if the assured has justifiable reason to object to the repairs being carried out at one of the yards that have submitted tenders, he may demand the quote from that yard to be disregarded.

[Clause 12-11](#) covers time lost whilst waiting for tenders. ITCH only covers the time lost if the insurer requires a tender. NMIP, on the other hand, covers time lost irrespective of whether the tender has been requested by the assured or the insurer. Allowance is payable in excess of 10 days at 20 % per annum of the agreed hull value.

Comments to ITCH Cl. 10.4

A fixed penalty for non-compliance with provisions of Cl. 10 amounts to 15 % deduction from the net claim, whether the assured was negligent or not.

NMIP Comparison

Under ITCH the assured might pay the fixed penalty even if there was no negligence from his side. Under NMIP, if the assured intentionally or through gross negligence fails to notify the

insurer of a casualty, he will not recover any additional costs that arose due to this failure (greater loss), as per [Cl. 3-31](#).

Clause 11: General Average and Salvage

- 11.1. *This insurance covers the vessel's proportion of salvage, salvage charges and/or general average, reduced in respect of any under-insurance, but in case of general average sacrifice of the vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.*
- 11.2. *Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules.*
- 11.3. *When the vessel sails in ballast, not under charter, the provisions of the YorkAntwerp Rules, 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.*
- 11.4. *No claim under this Clause 11 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.*

Comparison:

Comments to ITCH

ITCH Cl. 11 must be read in connection with MIA section 66.

ITCH cover the vessel's proportion of expenditure or sacrifice incurred in salvage or general average. However, compensation will be reduced in case of under insurance.

A general average act may damage the vessel and it might take time before the general average adjustment is drawn up and the assured can claim contribution from the other interests. ITCH gives the assured the right to claim the whole loss from the hull insurer without first enforcing the right of contribution from a third party in general average.

NMIP Comparison

In NMIP the relevant provisions on salvage and general average have been incorporated under [clauses 4-7 to 4-12](#). [Clause 4-7](#) states the general criteria for compensation of costs of measures to avert or minimize the loss, including salvage award and general average. The scope of the insurer's liability for salvage and general average contributions appears from [Cl. 4-8 to Cl. 4-11](#).

NMIP [Cl. 4-8](#), sub-clause I provides cover for the vessel's proportion of salvage and general average in full even if the contributory value (marked value) exceeds the agreed value. NMIP will also cover general average contributions apportioned on freight or charter-party hire, provided that the assured is also the owner of this interest.

In NMIP [Cl. 4-10](#) the assured may claim the damage or loss in accordance with the rules relating to particular average if this results in a more favorable outcome for the assured.

Comments to ITCH Cl. 11.2

Under ITCH the contribution will be recoverable based on a lawful average adjustment, normally based on the York-Antwerp Rules.

NMIP Comparison

As under ITCH the contribution will, according to the NMIP [Cl. 4-8](#), sub-clause I, third sentence, be recoverable based on a lawful average adjustment, normally based on the York-Antwerp Rules.

Comments to ITCH Cl. 11.3

When an unchartered vessel sails in ballast, there is no common maritime adventure, and hereof no general average. ITCH will still cover loss in such situation as if there was general average as per the provisions of the York-Antwerp Rules. For example, the assured may be entitled to claim bunkers and wages and maintenance of crew during the prolongation of the voyage or stay at the port of refuge, despite the fact that there is no common adventure. Commission of 2 % on general average disbursements (rule XX) and interest of 7 % on expenditure, sacrifice and allowances in general average (rule XXI) are excluded.

NMIP Comparison

NMIP [Cl. 4-11](#) refers to the York-Antwerp Rules. It is not explicitly stated that the vessel cannot be under charter, however in practice, the vessel would be taken off hire as soon as general average situation arises. Commission and interest as per the York-Antwerp Rules are excluded, still the assured will receive commission and interest as per the NMIP [Cl. 4-3](#) and [Cl. 5-4](#).

Comments to ITCH Cl. 11.4

ITCH states that the assured will be indemnified only if salvage or general average act was for the purpose of avoiding a loss caused by an insured peril.

NMIP Comparison

The fundamental requirement under NMIP [Cl. 4-7](#) is that a casualty must have occurred or threatens to occur.

DEDUCTIBLE

Comments to ITCH Cl. 11 and the application of deductible

General average and salvage claims are subject to deductible, as per ITCH Cl. 12.

NMIP Comparison

The cover for general average and salvage claims under NMIP is recoverable without the application of any deductible, cf. [Cl. 12-18](#), sub-clause 3.

Clause 12: Deductible

- 12.1. No claim arising from a peril insured against shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence (including claims under Clauses 8, 11 and 13) exceeds {Response} in which case this sum shall be deducted. Nevertheless the expense of sighting the bottom after stranding, if reasonably incurred specially for that purpose, shall be paid even if no damage be found. This Clause 12.1 shall not apply to a claim for total or constructive total loss of the vessel or, in the event of such a claim, to any associated claim under Clause 13 arising from the same accident or occurrence.
- 12.2. Claims for damage by heavy weather occurring during a single sea passage between two successive ports shall be treated as being due to one accident. In the case of such heavy weather extending over a period not wholly covered by this insurance the deductible to be applied to the claim recoverable hereunder shall be the proportion of the above deductible that the number of days of such heavy weather falling within the period of this insurance bears to the number of days of heavy weather during the single sea passage. The expression "heavy weather" in this Clause 12.2 shall be deemed to include contact with floating ice.
- 12.3. Excluding any interest comprised therein, recoveries against any claim which is subject to the above deductible shall be credited to the Underwriters in full to the extent of the sum by which the aggregate of the claim unreduced by any recoveries exceeds the above deductible.
- 12.4. Interest comprised in recoveries shall be apportioned between the Assured and the Underwriters, taking into account the sums paid by the Underwriters and the dates when such payments were made, notwithstanding that by the addition of interest the Underwriters may receive a larger sum than they have paid.

Comparison:

Comments to ITCH Cl. 12.1

ITCH sub-clause 12.1, states that deductible applies to all claims, except claims for total loss and associated sue and labour charges. A claim must arise out of a separate accident or occurrence, which means that one deductible, is applicable only if these accidents or occurrences form a connected set of events. If one or more events from which the claim arises are the result of a new cause not connected directly with the previous events, more than one deductible is to be applied. The only claims recoverable without application of deductible are claims for total loss and sue labour charges, only if associated with total loss claims.

The Sighting Bottom Clause in the second sentence of sub-clause 12.1, pronounce that insurers cover the costs of sighting the bottom after a stranding. Insurers will cover the costs even if no

damage is found and without the application of deductible. However, the expense must be reasonably incurred, which is subject to provisions of MIA Section 69.

NMIP Comparison

NMIP [Cl. 12-18](#) incorporates the main deductible provision equivalent to the main rule expressed in ITCH sub-clause 12.1. Other deductions such as ice and machinery damage, which applies if agreed by the parties, are dealt with separately in [Cl. 12-15](#) and [Cl. 12-16](#). Further, [Cl. 12-17](#) lists losses that are not subject to any deductible when applying [Cl. 12-15](#) and [Cl. 12-16](#). [Clause 12-19](#) deals with how the various deductions, if agreed, should be applied if more than one deductible becomes applicable to the same loss.

NMIP calculates the deductible for each individual casualty, whereas under ITCH the deductible unit is “each separate accident or occurrence”. The commentary to [Cl. 12-18](#) contains guidelines for determining the number of casualties. These guidelines would appear to be very similar in effect to the rules in English law for determining what amounts to “a separate accident or occurrence”.

Under ITCH only total loss claims and associated sue and labour charges are recoverable without deductible. The following claims are payable without application of deductible in NMIP:

- Total loss, as per NMIP [Cl. 4-1](#),
- Particular measures to avert and minimise the loss (Sue and Labour charges under ITCH) even if not associated with total loss claims, as per NMIP [Cl. 12-18](#) cf. [Cl. 4-12](#),
- Measures to avert and minimise the loss including General Average and Assumed General Average claims, as per NMIP [Cl. 12-18](#) cf. [clauses 4-7 – 4-11](#),
- Costs in connection with claims settlement including costs of superintendent, as per NMIP [Cl. 12-18](#) cf. [Cl. 4-5](#).

NMIP does not have an equivalent provision to the Sighting Bottom clause. The commentary states that if the classification society demands docking after grounding, the costs of such survey is recoverable without deductible even if no damage is found.

Comments to ITCH Cl. 12.2

According to ITCH sub-clause 12.2, all heavy weather (or ice) occurring during the single passage between two successive ports, shall be treated as due to one accident. A call at any port, even port of refuge, terminates such a passage within the meaning of this clause. If the period of heavy weather extends over more than one policy, the deductible shall be apportioned.

NMIP Comparison

[Clause 12-18](#) sub-clause 2, stipulates that damage caused by heavy weather or navigating in ice which has occurred during the single passage, shall be regarded as a single casualty. Same as under ITCH, a call at any port terminates such a passage within the meaning of the clause. The NMIP differs however from ITCH, as deductible is not apportioned if period of heavy weather extends over more than one policy. NMIP will allocate the deductible to the policy when the peril struck, as per [Cl. 2-11](#).

Comments to ITCH Cl. 12.3

Sub-clause 12.3 supersedes MIA Section 79 (2).

Sub-clause 12.3 stipulates that recovery will be credited to insurers in full until the sum they have paid is fully reimbursed. Only after this point, the assured may participate in recovery. As an example, if the insurers pay claim of USD 300,000, net of USD 150,000 deductible and the recovery amount equals USD 320,000, insurers recover USD 300,000 and the assured USD 20,000. Under NMIP, the recovery is apportioned pro-rata and in the given example, the assured would recover USD 106,666. Apportionment of recoveries stipulated in ITCH Cl. 12.3 is not applicable to recoveries in cross liabilities.

As per sub-clause 12.4, interest comprised in recoveries under ITCH shall be apportioned pro-rata between assured and insurers.

NMIP Comparison

Under ITCH the assured can participate in the recovery only when the insurers are fully reimbursed. In NMIP, the assured can participate in recovery in proportion to the amount of loss he/she has carried. The same rule is applicable to interest comprised in recoveries. A practical example can be found under this Comparison, in commentary to ITCH sub-clause 12.3 above.

Clause 13: Duty of Assured (Sue and Labour)

- 13.1. *In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.*
- 13.2. *Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 13.5) and collision defence or attack costs are not recoverable under this Clause 13.*
- 13.3. *Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.*
- 13.4. *When expenses are incurred pursuant to this Clause 13 the liability under this insurance shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the vessel as stated herein, or to the sound value of the vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where the Underwriters have admitted a claim for total loss and property insured by this insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.*

- 13.5. *When a claim for total loss of the vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the vessel; but if the vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.*
- 13.6. *The sum recoverable under this Clause 13 shall be in addition to the loss otherwise recoverable under this insurance but shall in no circumstances exceed the amount insured under this insurance in respect of the vessel.*

Comparison:

Comments to ITCH

ITCH sub-clause 13.1 repeats MIA Section 78 (4) and imposes a duty on the assured, their servants and agents to prevent or minimise loss that would otherwise fall on the insurer. The duty only arises if there is a danger of loss that would be covered by the insurance.

The clause does not contain any provision on the legal consequences of a breach of the duty by the assured. Hereof, the consequences of non-compliance with the duty are subject to the relevant case law and jurisdiction.

NMIP Comparison

NMIP [Cl. 3-30](#) is the equivalent provision under the Nordic conditions. The assured's duty to prevent or minimise loss applies when a casualty has occurred or threatens to occur. The assured has an obligation to do what may reasonably be expected of him in order to prevent and minimise the loss. If the assured does not comply with the duty under [Cl. 3-30](#) the amount of the claim may be reduced to what it would have been if the duty had been complied with. However, the sanction can only be applied if the assured's violation is deliberate or grossly negligent, see [Cl. 3-31](#).

Comments to ITCH

Insurers will contribute to sue and labour charges, subject to policy deductible, as per ITCH, sub-clause 12.1. The costs must be "properly and reasonably" incurred to be covered by the clause. Further requirements that must be satisfied have been developed in case law and summed up in the Boskalis case (Royal Boskalis Westminster N.V v. Mountain and other (1997) LRLR 523). The danger of loss must be imminent, and the costs must be reasonable in relation to the potential benefit and the measures taken. The costs must be extraordinary in the sense that they are not part of normal operations, but a necessary response to the imminent danger.

The second sentence of the clause illustrates that sue and labour charges are covered only if measures were taken to prevent or minimise loss recoverable under the policy. Costs incurred for the common benefit of the adventure, claims for general average and salvage disbursements are not recoverable; for example, the cost of saving a vessel with cargo from common danger is not recoverable under Cl. 13.

NMIP Comparison

[Clause 4-7](#) in the NMIP states general rules that apply to all measures taken to avert or minimise loss, not only sue and labour but also General Average and Salvage. In all cases a casualty must have occurred or threaten to occur due to an insured peril and the measures taken must be of an extraordinary nature and must be regarded as reasonable. These criteria correspond with those developed in the English case law and it is very likely that the two systems would reach the same conclusion on any particular set of facts.

NMIP [Cl. 4-12](#) deals with the insurer's liability for the costs of measures to avert or minimise loss when the measures taken do not fall within the rules of GA or Salvage, as dealt with in [clauses 4-8 to 4-11](#).

Contrary to ITCH provisions, measures to avert or minimise a loss are, according to NMIP [Cl. 12-18](#), not subject to any deductible.

Under ITCH the assured can recover sue and labour charges only. According to NMIP [Cl. 4-7](#) the assured will be indemnified for all type of loss or expense, as the insurers are liable for damage to or loss of the object insured, or other objects belonging to the assured, for costs incurred and for liability incurred vis-à-vis a third party.

Only measures taken by the assured, their servants or agents to avert or minimise the loss is compensated under ITCH. Under NMIP it is irrelevant whether the measures were implemented by the assured himself, his own people or an outside, third party. The cost of such measures will be covered by the insurers as long as anyone initiating these measures acts with intention of saving the imperilled object.

Comments to ITCH

Sub-clause 13.3 is called the waiver clause and protects the position of both the insurers and the assured, when the assured believes he might have a claim for a constructive total loss and gives notice of abandonment to the insurers, see MIA, Section 62. If the insurers or the assured will take efforts to save the insured object, these efforts will not be regarded as acceptance of a waiver or abandonment by any party.

NMIP Comparison

It has not been found necessary to include an equivalent provision in NMIP as the abandonment mechanism is not used in the Nordic conditions.

Comments to ITCH

Sub-clause 13.4 is a very technical provision which is seldom of any practical importance. It applies firstly to cases of actual under-insurance where the sum insured is less than the value stated in the policy. Secondly, it applies to cases where the sum insured is less than the sound value at the time of the occurrence giving rise to the expenditure. This is not under-insurance in a technical sense as the sum insured and the insured value in the policy are the same and hereof the vessel is insured for the full amount of the value stated in the policy. However, the vessel is under-insured in the sense that the sound value at the time of the incident is greater than the insured value in the policy. There is certain logic in applying the rules for under-insurance also to these cases, but today this rule is often changed by the policy wording.

In the case of under-insurance the recoverable sue and labour amount will be reduced in proportion to the under-insurance.

The second part of this sub-clause deals with the problem of under-insurance in case of total loss. In the event of a claim for total loss where the insured vessel is saved, the apportionments of the recoverable sue and labour expenses will only apply to sue and labour costs in excess of the value of the vessel saved. For example, if the value of the wreck will not cover all sue and labour charges the outstanding balance becomes the subject of under insurance.

The deductible is not applicable to sue and labour charges associated with total loss.

NMIP Comparison

Contrary to ITCH, NMIP does not apply provision of under and over-insurance to general average, salvage or sue and labour in cases where the sound or market value is greater than the insured value. As long as the sum insured is equal to the insured value stated in the policy, the liability of the insurer to compensate costs to avert or minimise loss will be for the full amount of the costs and expenses involved up to the separate limit equal to the sum insured for physical damage. This will also be the case where there has been a total loss.

Comments to ITCH

Sub-clause 13.5 expands the cover under the second part of Cl. 13-4. It deals with the situation where there has been a total loss despite the fact that losses, costs and expenses have been incurred to save the vessel. The losses, costs and expenses might as a starting point qualify as general average, salvage or sue and labour, but since the vessel has nonetheless become a total loss there will be no recovery under either general average or under common law or a LOF salvage and hereof there will be no apportionment between the different interests involved. Under this sub-clause the assured can therefore recover losses, costs and expenses that can reasonably be regarded as having been incurred for the benefit of the vessel, irrespective of the fact that the losses etc were originally incurred for the benefit of the common interest of the vessel and other property. For example, if a vessel carrying cargo grounds and the assured employs tugs in order to re-float the vessel and the vessel sinks during the operations with the cargo still on-board, only the vessel's proportion of tug hire costs are recoverable under this sub-clause. Since the wreck of the vessel may have some value the clause limits the liability of underwriters to the vessel's share of the amount by which the losses and costs exceed the value of what has been recovered.

The recoverable amount will be proportionately reduced in case of under insurance in both senses mentioned above under Cl. 13-4.

NMIP Comparison

NMIP [Chapter 4, Section 2](#) contains rules applying to all measures taken to avert or minimise loss, not only sue and labour but also general average and salvage. The insurer's liability for general average is stated in NMIP [Cl. 4-8](#). When measures have been taken to avert or minimize loss for the benefit of several interests the insurer is liable for general average and salvage charges apportioned on the insured interest. If there is no general average, cost to avert or minimise loss will be recoverable according to [Cl. 4-12](#). Where cost are incurred for several interest [Cl. 4-12](#) will limit cover to the proportion attributed to the interest insured, cf. sub-clause 2. However, there is a difference from ITCH as costs to avert and minimize loss would not be reduced in proportion in the case of under-insurance.

Comments to ITCH

Amounts recoverable under Cl. 13 are in addition to the sum insured for physical loss or damage but limited to the sum insured. In theory the assured can recover the sum insured twice: for total loss and sue and labour charges up to an additional sum insured.

NMIP Comparison

The amount recoverable under NMIP [Cl. 4-7](#) and [Cl. 4-12](#) is also in addition to the insurance cover. The difference between ITCH and NMIP is that under Nordic conditions the insurer's liability is limited to twice the sum insured apportioned among damage and measures to avert or minimise the loss, as per [Cl. 4-18](#). If the sum insured under hull insurance has not been exhausted by compensation paid for hull damage, it is possible to use the excess of sum insured to cover costs of measures to avert or minimise the loss that exceed the separate sum insured for such costs. For example, if the sum insured for a vessel is USD 500,000, PA damage is USD 400,000 and costs of measures to avert or minimise the loss equal to USD 600,000, under NMIP the assured will be reimbursed for USD 1,000,000 (until the aggregate of two sums insured is exhausted). Contrary, ITCH will reimburse the assured for USD 900,000 – USD 400,000 under PA and USD 500,000 for sue and labour charges.

Clause 14: New for Old

Claims payable without deduction new for old.

Comparison:

Comments to ITCH

A contract of marine insurance is a contract of indemnity and as such, insurers will not cover costs of betterment to the vessel, cf. MIA Section 1.

When the vessel is damaged through the operation of insured perils and new parts replace old parts that have either been lost or damaged, there might be an element of betterment.

However, Cl. 14 provides for a practical approach, eliminating any difficulties in calculating an appropriate deduction due to notional improvements and claims are

NMIP Comparison

The same principle applies as under the ITCH, though not specifically stated.

According to [Cl.12-1](#), sub-clause 1, the vessel shall be “restored to the condition it was prior to the occurrence of the damage”.

[Clause 12-1](#), sub-clause 3 specify that if the repairs result in any “special advantages for the assured”, deductions shall be made.

It follows from the commentary that replacing a worn part with a new part does not qualify as a “special advantage” hence insurers are not entitled to make “new for old” deductions in the compensation.

Clause 15: Bottom Treatment

In no case shall a claim be allowed in respect of scraping gritblasting and/or other surface preparation or painting of the Vessel’s bottom except that

15.1. gritblasting and/or other surface preparation of new bottom plates ashore and supplying and applying any “shop” primer thereto

*15.2. gritblasting and/or other surface preparation of:
The butts or area of plating immediately adjacent to any renewed or refitted plating damaged during the course of welding and/or repairs, areas of plating damages during the course of fairing, either in place or ashore*

15.3. supplying and applying the first coat of primer/anti-corrosive to those particular areas mentioned in 15.1 and 15.2 above,

shall be allowed as part of the reasonable cost of repairs in respect of bottom plating damaged by an insured peril.

Comparison:

Comments to ITCH

If the vessel’s bottom has been damaged by an insured peril, the clause lists circumstances under which surface preparation or bottom painting are allowed as reasonable cost of repairs.

The gritblasting and/or other surface preparation and the painting of all other areas of the bottom, is excluded by the clause.

NMIP Comparison

The insurers’ liability for bottom treatment is dealt with in a similar manner by the NMIP, though with no standard wording included.

NMIP [Cl. 12-1](#) will apply, meaning that bottom treatment necessitated by a recoverable damage will be covered to the extent required to restore the vessel to the same condition it was prior to the casualty.

Clause 16: Wages and Maintenance

No claim shall be allowed, other than in general average, for wages and maintenance of the Master, Officers and Crew, or any member thereof, except when incurred solely for the necessary removal of the vessel from one port to another for the repair of damage covered by the Underwriters, or for trial trips for such repairs, and then only for such wages and maintenance as are incurred whilst the vessel is under way.

Comparison:

Comments to ITCH

Wages and maintenance of Master, Officers and Crew are operational costs which are not recoverable as part of the costs of repairs.

For clarification of adjusting practice, it is useful to look at the Rules of Practice for the Association of Average Adjusters, where Cl. DI deals with the expenses of removing a ship for repair. Removal costs incl. wages and maintenance of crew are allowable in full during removal to a repair yard, provided that the removal is an immediate consequence of recoverable damage and the ship is necessarily taken out of service especially to effect damage repairs, notwithstanding that the shipowner may have taken the advantage of effecting certain work for his own account. On the other hand, if damage repairs are deferred to a scheduled docking (meaning that the removal was required both for average and owners repairs), no wages and maintenance are paid by underwriters under this clause.

The allowance will be made only for the period when the vessel is under way, hence any period spent at anchorage will be excluded.

This clause does not preclude a claim for overtime and/or special payments made to the crew for example for their assistance in damage repairs. Such costs are allowable if reasonable.

NMIP Comparison

Wages and maintenance of the crew are allowed during both the removal period and sea trials after the repairs cf. [Cl. 12-13](#).

Unlike the situation on ITCH, the insurers will cover such costs even when removal is required for both average repairs and owners` repairs. The allowance will be subject to apportionment as a common expense, ref [Cl. 12-14](#).

During the repair period wages and maintenance of the crew are usually treated as owners ordinary operating expense and therefore disallowed according to NMIP [Cl. 12-5](#) (a) The clause specifies however that the wages and maintenance of the crew participating in the repairs can be allowed, if agreed by the underwriters.

Overtime and/or special payments for crew participating in damage repairs are allowable.

The cover for wages and maintenance of crew allowed in General Average is equivalent to the ITCH cover.

Clause 17: Agency Commission

In no case shall any sum be allowed under this insurance either by way of remuneration of the Assured for time and trouble taken to obtain and supply information or documents or in respect of the commission or charges of any manager, agent, managing or agency company or the like, appointed by or on behalf of the Assured to perform such services.

Comparison:

More info to come.

Clause 18: Unrepaired Damage

- 18.1. *The measure of indemnity in respect of claims for unrepaired damage shall be the reasonable depreciation in the market value of the vessel at the time this insurance terminates arising from such unrepaired damage, but not exceeding the reasonable cost of repairs.*
- 18.2. *In no case shall the Underwriters be liable for unrepaired damage in the event of a subsequent total loss (whether or not covered under this insurance) sustained during the period covered by this insurance or any extension thereof.*
- 18.3. *The Underwriters shall not be liable in respect of unrepaired damage for more than the insured value at the time this insurance terminates.*

Comparison:

Comments to ITCH

Compensation for unrepaired damage is allowed, but not in the event of a subsequent total loss. The compensation is based on the depreciation in the market value of the vessel, but not exceeding the reasonable cost of repairs. Reasonable cost of repairs is determined at the time when repairs would have been effected, and not at the time of the loss.

Insurers' liability will never exceed the insured value of the vessel at the time when the insurance terminates.

Comments to NMIP

Clause [12-2](#) gives the assured the same right as under ITCH to claim compensation for unrepaired damage, but with a deduction for estimated common expenses and for 50% of estimated dock and quay hire.

As under the ITCH, insurers do not cover pre-existing unrepaired damage in the event of a total loss, or if the vessel qualifies for condemnation under Cl. [11-3](#) before the insurance terminates.

Clause 19: Constructive Total Loss

- 19.1. *In ascertaining whether the vessel is a constructive total loss, the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.*
- 19.2. *No claim for constructive total loss based upon the cost of recovery and/or repair of the vessel shall be recoverable hereunder unless such cost would exceed the insured value. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.*

Comparison:

Comments to ITCH

The clause must be read together with MIA Sections 60-63. Sections 60 and 61 define ctl and its consequences while Sections 62 and 63 deal with notice of abandonment and its effect, that is with the procedure for claiming a ctl. The rules relating to notice of abandonment have a long history in English marine insurance law. They are not dealt with as such in ITCH but apply once the conditions for claiming a ctl as laid down in MIA and ITCH have been satisfied. These conditions can be summarised as follows:

1. The prospective cost of repair and/or recovery must exceed the vessel's insured value rather than the repaired value of the vessel.
2. The situation must be judged as at the time notice of abandonment is given. This could therefore include cases where the vessel is in the grip of a casualty and salvage is doubtful or unlikely so that future salvage costs must be included in the calculation.
3. In assessing the cost of recovery/and or repair, only the costs relating to a single accident or sequence of damages arising from the same accident may be considered.
4. In estimating cost of repairs, the vessel's proportion of expenditure related to future GA
5. No account is to be taken of the damaged or break up value of the wreck.

NMIP Comparison

NMIP [Cl. 11-3](#) regulates the assureds right to claim compensation for a total loss.

The assured may claim for a total loss whenever he believes circumstances justify such a claim. Under the NMIP [Cl.11-5](#) the general rule is that a request for condemnation should be given without undue delay after the vessel has been salvaged, see also [Cl. 11-6](#). This request can be withdrawn as long as the request is not accepted, as also under the English conditions, see MIA Section 62 (6).

Unlike the situation under MIA and ITCH the question of whether the vessel is a CTL (condemnable) is assessed once the vessel is in a position of safety and capable of being

surveyed, that is after any salvage operation has been completed. The costs of salvage are recoverable in addition to the sum insured for loss of or damage to the vessel.

The position of the parties during a salvage operation is regulated by Plan clauses [11-2](#) and [4-21](#).

According to [Cl. 11-3](#), the vessel is a CTL when the following conditions are satisfied:

1. The cost of repairing the casualty damage will exceed 80 % of the insurable value (in comparison to a 100% under the ITCH) or the market value of the vessel after repair whichever is the higher.
2. In contrast to the ITCH, the relevant costs are all those necessary to complete repairs. This includes the costs of repairing all damage reported in the previous three years.

Clause 20: Freight Waiver

In the event of total or constructive total loss no claim to be made by the Underwriters for freight whether notice of abandonment has been given or not.

Comparison:

Comments to ITCH

In English law the insurer has a right to take over the subject matter insured where there has been a valid notice of abandonment. MIA Section 63 (2) provides that “[u]pon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty”. This result was seen as a logical consequence of abandonment although not necessarily of the rules relating to subrogation. The rule would only apply to destination freight earned by the vessel itself as opposed to freight earned after delivery by a substitute means and is therefore now of much less practical importance.

Under ITCH Cl. 20 underwriters give up their rights under MIA Section 63 (2) to any freight being earned when the vessel is a total or constructive total loss, so that it remains the property of the shipowner. This is a sensible practical and commercially fair solution.

NMIP Comparison

In accordance with NMIP [Cl. 5-19](#) the insurer is “subrogated to the assureds rights in the object insured” upon payment of compensation. The commentary specifies that “rights in the object insured” means title to the wreck with all appurtenances that were covered under the insurance at the time the total loss occurred, hence a right of ownership of the object insured. The right to freight arises under a contract entered into before the casualty and freight is payment for the performance of that contract rather than a right founded in the ownership of the vessel.

The clause further specifies that the insurer is subrogated to the Assured`s rights “upon payment of compensation” in contrast to the situation in English law where the insurer acquires a right to take over the subject matter insured where there has been a valid notice of abandonment.

Payment by the insurer will normally take place after any freight has been earned so that there would be no doubt that the Assured is entitled to retain the freight. There is no recorded instance of an insurer claiming freight earned after a total loss.

Clause 21: Disbursement Warranty

- 21.1. *Additional insurances as follows are permitted:*
- 21.1.1. *Disbursements, Managers' Commissions, Profits or Excess or Increased Value of Hull and Machinery. A sum not exceeding 25% of the value stated herein.*
 - 21.1.2. *Freight, Chartered Freight or Anticipated Freight, insured for time. A sum not exceeding 25% of the value as stated herein less any sum insured, however described, under 21.1.1.*
 - 21.1.3. *Freight or Hire, under contracts for voyage. A sum not exceeding the gross freight or hire for the current cargo passage and next succeeding cargo passage (such insurance to include, if required, a preliminary and an intermediate ballast passage) plus the charges of insurance. In the case of a voyage charter where payment is made on a time basis, the sum permitted for insurance shall be calculated on the estimated duration of the voyage, subject to the limitation of two cargo passages as laid down herein. Any sum insured under 21.1.2 to be taken into account and only the excess thereof may be insured, which excess shall be reduced as the freight or hire is advanced or earned by the gross amount so advanced or earned.*
 - 21.1.4. *Anticipated Freight if the vessel sails in ballast and not under Charter. A sum not exceeding the anticipated gross freight on next cargo passage, such sum to be reasonably estimated on the basis of the current rate of freight at time of insurance plus the charges of insurance. Any sum insured under 21.1.2 to be taken into account and only the excess thereof may be insured.*
 - 21.1.5. *Time Charter Hire or Charter Hire for Series of Voyages. A sum not exceeding 50% of the gross hire which is to be earned under the charter in a period not exceeding 18 months. Any sum insured under 21.1.2 to be taken into account and only the excess thereof may be insured, which excess shall be reduced as the hire is advanced or earned under the charter by 50% of the gross amount so advanced or earned but the sum insured need not be reduced while the total of the sums insured under 21.1.2 and 21.1.5 does not exceed 50% of the gross hire still to be earned under the charter. An insurance under this Section may begin on the signing of the charter.*
 - 21.1.6. *Premiums. A sum not exceeding the actual premiums of all interests insured for a period not exceeding 12 months (excluding premiums insured under the foregoing sections but including, if required, the premium or estimated calls on any Club or War etc. Risk insurance) reducing pro rata monthly.*
 - 21.1.7. *Returns of Premium. A sum not exceeding the actual returns which are allowable under any insurance but which would not be recoverable thereunder in the event of a total loss*

of the vessel whether by insured perils or otherwise.

*21.1.8. Insurance irrespective of amount against:
Any risks excluded by Clauses 23, 24, 25 and 26 below.*

21.2. Warranted that no insurance on any interests enumerated in the foregoing 21.1.1 to 21.1.7 in excess of the amounts permitted therein and no other insurance which includes total loss of the vessel P.P.I., F.I.A., or subject to any other like term, is or shall be effected to operate during the currency of this insurance by or for account of the Assured, Owners, Managers or Mortgagees. Provided always that a breach of this warranty shall not afford the Underwriters any defence to a claim by a Mortgagee who has accepted this insurance without knowledge of such breach.

Comparison:

Comments to ITCH

Clause 21.1 - Sub-clauses 21.1.1 – 21.1.7

These sub-clauses impose limits on the amount of additional insurance that the assured may take out. On the one hand it is recognized that the insurable value under a H&M policy which is broadly based on the vessel's market value will not cover all the losses suffered by a ship owner after a total loss, on the other it is important that the total amount payable in the event of a total loss should not be so high that the assureds stands to make a substantial profit.

Sub-clause 21.1.1 deals with additional insurance to cover disbursements, that is already incurred operational costs, expected profit and any capital value that the vessel might have at the time of the casualty over and above the insured value under the H&M insurance. The limit for such additional insurance which is written on a total loss only basis is 25% of the insured value stated in the H&M policy.

Sub-clauses 21.1.2 -21.1.7 deal with insurance that cover specific types of freight or premiums. These rules are now of limited practical relevance since current market practice to take out total loss only(TLO) insurance for a fixed and agreed amount.

Comments to NMIP

NMIP Ch. 14: Separate insurances against total loss

The NMIP takes a more modern approach and contains rules for two types of TLO insurance referred to as Hull Interest and Freight Interest insurance, each limited to an additional 25% of the insured value under the H&M insurance. There are differences between the two types of Interest insurance which relate to the historical background. Hull interest insurance covers not only the value of the vessel up to an additional 25% as agreed in the policy but separately also collision liability in accordance with Cls.13-1 to 13-3 that exceeds the amount recoverable under the H&M policy. Theoretically it is possible for a collision to result in a total loss of the vessel at the same time as the vessel is ultimately held liable for damage to another vessel or a fixed installation for an amount that exceeds the H&M insured value. Potentially therefore the insurer could be liable for the sum insured under a Hull Interest Insurance twice.

Freight Insurance only covers the agreed insured amount once.

Comments to ITCH

Clause 21.1

Sub-clause 21.1.8

This clause states the obvious: the assured is free to take out insurance against war and similar risks without restriction.

This is also obviously the position under the Plan.

Clause 21.2

This clause is also something of an anachronism in that there is no longer any practical or commercial reason to take out insurance on P.P.I. (Policy Proof of Interest) or F.I.A. (Full Interest Admitted) or similar expression which according to MIA Section 4 renders the insurance void and unenforceable. The origins of the use of unenforceable contracts in marine insurance is discussed in Arnould¹ in Chapter 11. Clause 21.2 simply reinforces the point that it is a condition of the contract that the assured will keep the use of TLO insurances in any form within the limits set out in Cl. 21.1

Comments to NMIP

There is no equivalent provision in NMIP as P.P.I. policies are unknown in the Nordic countries.

Clause 22: Returns for Lay-up and Cancellation

22.1. *To return as follows:*

22.1.1. *Pro rata monthly net for each uncommenced month if this insurance be cancelled by agreement.*

22.1.2. *For each period of 30 consecutive days the vessel may be laid up in a port or in a lay-up area provided such port or lay-up area is approved by the Underwriters (with special liberties as hereinafter allowed)*

(a) {Response} per cent net not under repair

(b) {Response} per cent net under repair.

If the vessel is under repair during part only of a period for which a return is claimable, the return shall be calculated pro rata to the number of days under (a) and (b) respectively.

¹ Arnould's Law of Marine Insurance and Average, 16th ed., Sweet & Maxwell Ltd. 2008

22.2. PROVIDED ALWAYS THAT

- 22.2.1. *a total loss of the vessel, whether by insured perils or otherwise, has not occurred during the period covered by this insurance or any extension thereof*
- 22.2.2. *in no case shall a return be allowed when the vessel is lying in exposed or unprotected waters, or in a port or lay-up area not approved by the Underwriters but, provided the Underwriters agree that such non-approved lay-up area is deemed to be within the vicinity of the approved port or lay-up area, days during which the vessel is laid up in such non-approved lay-up area may be added to days in the approved port or lay-up area to calculate a period of 30 consecutive days and a return shall be allowed for the proportion of such period during which the vessel is actually laid up in the approved port or layup area*
- 22.2.3. *loading or discharging operations or the presence of cargo on board shall not debar returns but no return shall be allowed for any period during which the vessel is being used for the storage of cargo or for lightering purposes*
- 22.2.4. *in the event of any amendment of the annual rate, the above rates of return shall be adjusted accordingly*
- 22.2.5. *in the event of any return recoverable under this Clause 22 being based on 30 consecutive days which fall on successive insurances effected for the same Assured, this insurance shall only be liable for an amount calculated at pro rata of the period rates 22.1.2(a) and/or (b) above for the number of days which come within the period of this insurance and to which a return is actually applicable. Such overlapping period shall run, at the option of the Assured, either from the first day on which the vessel is laid up or the first day of a period of 30 consecutive days as provided under 22.1.2(a) or (b), or 22.2.2 above.*

The following clauses shall be paramount and shall override anything contained in this insurance inconsistent therewith.

Comparison:

Comments to ITCH

Clause 22.1

Sub-Clause 22.1.1 Cancellation

The natural main rule stated in 22.1.1 is that a pro rata net return should be made if the policy is cancelled by agreement before expiry. The return is to be made for each un-commenced remaining month. No return is to be made if the policy expires as the result of a total loss irrespective of whether the total loss has been caused by an insured peril or not, see 22.2.1.

Comments to NMIP

NMIP Cl. [6-3](#) and [6-5](#)

NMIP [Cl. 6-5](#) states a similar but broader main rule that no premium is to be paid for any period when the insurance is not in force. This applies both to periods after a cancellation and to

periods during which cover is suspended, e.g. NMIP [Cl. 3-19](#). [Clause 6-3](#) states that the reduction does not apply where cover is terminated because the vessel becomes a total loss as a consequence of a peril insured against. Unlike Cl. 22.1.1 a return of premium shall be made if the vessel becomes a total loss due to a peril that is not covered by the policy. In the case of a combination of insured and uninsured perils, see NMIP [Cl. 2-13](#) the return of premium will be pro rata both to the time remaining and pro rata in relation to the effect of the insured and uninsured perils.

Comments to ITCH

ITCH Cl. 22.1.2 Lay-up

Returns in premium for periods in lay-up are allowed for vessels laid up for more than 30 consecutive days. The clause is structured on the basis that different return rates will apply for vessels laid up not under repair and under repair.

The lay-up location shall be approved by the underwriters.

ITCH Cl. 22.2.2 – 22.2.5 contain detailed rules for calculating premium returns in a number of very specific cases.

Comments to NMIP

NMIP [Cl. 6-6](#) Reduction of premium when the ship is laid up

Negotiations with the underwriter regarding reduction of premium may be demanded by the assured for vessels which have been laid up for an uninterrupted period of at least 30 days.

For vessels laid up the assured shall present a lay-up plan to the insurer for approval as per [Cl. 3-26](#).

No reduction of premium is allowed for vessels:

- With cargo on board
- Insured against Total Loss and/or General Average Cover only as per Cl. [10-5](#) and [10-6](#).

A demand for lay-up returns must be made within 6 months of the expiry of the policy.

There are no provisions regulating the details dealt with in ITCH Cl. 22.2.2 – 22.2.5

Clause 23: War Exclusion

In no case shall this insurance cover loss damage liability or expense caused by

23.1. war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

23.2. *capture seizure arrest restraint or detention (barratry and piracy excepted), and the consequences thereof or any attempt thereat*

23.3. *derelict mines torpedoes bombs or other derelict weapons of war.*

Comparison:

Comments to ITCH

Clause 23 War Exclusion

Clause 23.1 to .3 define war perils that are excluded under this insurance.

Violent theft, barratry and piracy are covered under ITCH Cl. 6 but current practice in most cases is to transfer these perils over to the assured's war policy. This is done by adding an exclusion into the H&M policy, see JH2005/046 and a specific extension to the war policy, see JH2005/002.

Comments to NMIP

NMIP [Ch. 2](#): Perils insured against & [Ch. 15](#): War risk insurance

Unless otherwise agreed NMIP only covers marine perils, cf. NMIP [Cl. 2-10](#). Marine perils are defined in [Cl. 2-8](#) whilst [Cl. 2-9](#) defines war perils. The scope of war risk cover is dealt with in [Chapter 15](#) which provides a package covering not only physical loss or damage but also loss of income, P&I and Crew Liabilities.

The perils named in ITCH Cl. 23.1 and Cl. 23.3 are covered under NMIP [Cl. 2-9](#), sub-clause a. ITCH Cl. 23.2 is covered by NMIP [Cl. 2-9](#), sub-clause b and Piracy is covered by sub-clause d.

Barratry by master or crew is covered as a marine peril by the NMIP as there is no exclusion for it. NMIP [Chapter 3 section 5](#) makes it clear that acts of the vessel's master or crew in their service as seamen can never be regarded as the acts of the assured.

Clause 24: Strikes Exclusion

In no case shall this insurance cover loss damage liability or expense caused by

24.1. *strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions*

24.2. *any terrorist or any person acting from a political motive.*

Comparison:

Comments to ITCH

Clause 24

The perils excluded by clause 24 can be divided into three groups all of which are covered by an insurance governed by Institute War and Strikes Clauses. The three groups of perils are: strikes, locked out workmen or persons taking part in labour disturbances, riots and civil commotions all excluded by CL. 24.1 and thirdly the detonation of an explosive, or any weapon of war by any person acting maliciously or from a political motive. In the last group the requirement that there should be a malicious or political motive means that accidental detonation of an explosive or weapon of war is not excluded. Since ITCH provides cover on a named perils basis this does not mean that such cases are automatically covered. However, if the detonation was caused by a collision or if as is usually the case the Additional Perils clause which covers any accident has been included then there would be cover under a H&M policy.

Comments to NMIP

NMIP [Cl. 2-9](#) sub-clause c

The perils named in ITCH Cl. 24.1 and Cl. 24.2 will be war perils under NMIP [Cl. 2-9](#), sub-clause c and would therefore be excluded from cover under a marine [Cl. 2-8](#) H&M policy.

Clause 25: Malicious Acts Exclusion

In no case shall this insurance cover loss damage liability or expense arising from

25.1. *the detonation of an explosive*

25.2. *any weapon of war*

and caused by any person acting maliciously or from a political motive.

Comparison:

Comments to ITCH

This clause excludes from marine cover, any loss, damage, liability or expense arising from:

- the detonation of an explosive
- any weapon of war

provided the act was done maliciously or from a political motive.

A malicious act was defined by Lord Denning in the case *Nishina Trading Co. Ltd. v Chiyoda Fire and Marine Insurance Co. Ltd. (The Mandarin Star)* where it was stated “maliciously...means spite or ill will, or the like.”

In the *Navigators Insurance Company Ltd and others v Atlasnavios – Navegacao Lda ("B Atlantic")*, [2018] UKSC 26) the Supreme Court held that the act of drug smugglers who had fastened a container full of drugs to the bottom of a vessel was not malicious in the sense that it was intended to cause harm to either the vessel, its owner or crew.

NMIP Comparison

The issue of war and marine peril delimitation is dealt with in [Cl. 2-8](#) and [Cl. 2-9](#) of the NMIP.

"The detonation of an explosive":

The “detonation of an explosive” would be deemed a war peril under both [Cl. 2-9](#) sub-clause a if detonated in a war or war like situation and under [Cl. 2-9](#) sub-clause c if the act was socially, religiously or politically motivated. Falling outside of [Cl. 2-9](#) and therefore covered under [Cl. 2-8](#) would be acts without a social, religious or political motive. For an example the detonation of a bomb by a pyromaniac with the sole motive of witnessing the explosion.

"Any weapon of war":

The use of “any weapon of war” is deemed a war peril under both [Cl. 2-9](#) sub-clause a if used in a war or war like situation and under sub-clause c if the act was socially, religiously or politically motivated. As stated above acts performed by individuals and/or groups without a social, religious or political motive are not within by [Cl. 2-9](#). I.c and therefore remain covered under a [Cl. 2-8](#) marine H&M insurance.

Clause 26: Nuclear Exclusion

In no case shall this insurance cover loss damage liability or expense arising from any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

Comparison:

Comments to ITCH

This clause excludes loss, damage, liability or expense arising from any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

The exclusion is limited to the use of any weapon of war. However, in practice all marine policies today included the so called RACE clause see below.

NMIP Comparison

NMIP [Cl. 2-8](#) and [Cl. 2-9](#) incorporates the co called RACE II clause. The RACE II clause is broader than the ITCH Cl. 26 Nuclear Exclusion Clause in that it excludes nuclear threats from all sources e.g. it is not necessary that the threat comes from a “weapon of war.”