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"Marine Salvage - Towards a Lloyds Open Form new perspective"

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ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ

INTRODUCTION

The dominant legal framework defining marine salvage issues is the Lloyds Open Form, commonly referred to as LOF. In this dissertation, a detailed outline of the LOF throughout all its revisions is given. Current developments in maritime industry, geopolitics and international regulation of the field, are discussed. In this context, the basic aim of our study is to highlight what we understand as "a new perspective LOF faces".

Has the historical cause of the broader LOF conceptualization changed? Have there been any LOF providences outdated or obsolete? What are the current circumstances describing a possible rear orientation of the Form? A broader discussion on the viability and effectiveness of the LOF procedures incorporates proposals towards a new revision.

Maritime law concerning marine salvage has been facing a current outburst of contractual peculiarities. This, in conjunction with emerging groundbreaking commercial practices, poses an academic and tactical need for this dissertation.

Throughout this dissertation, the basic methodology followed, was oriented towards (i) a historical – institutional retrospective of the LOF and (ii) in a clause – by – clause critical assessment of its 2000 edition.

The birth of the LOF contract rests in the need for a universally accepted sum of rules for the resolution of salvage disputes. LOF constitutes a fair and simple dual-purpose agreement, under which experienced arbitrators would assess the services rendered by the parties involved, and in a fair and inexpensive way decide the salvage award which a salvor is entitled.

In its early years, salvage law, has been fragmented, encompassing a wide range of provisions under which salvage disputes could be resolved. A retro - gradation of the legislative changes, as well as a sedulous research of the reasoning of these changes will also be described.

Maritime industry and public policy dimensions of the LOF contract are stressed thereof. Most radical amongst all alterations of the LOF contract were given berth due to environmental awareness issues.

Encouraging the salvors undertaking high risk salvage work, was a basic aim of LOF 80 edition. This in particular involved mitigation or prevention of pollution specifically oil, derived by laden or partly laden tankers. As the legal framework had

not adequately supported this encouragement need for a more comprehensive legislative tool emerged.

In such a way, International Salvage Convention was introduced. Its two key Articles encompassing the essence of salvage remuneration are hereof extensively analyzed through a practical approach:

- issues concerning juridical interpretations of several Articles,
- conflicts arisen amongst user's interests
- changing public policies are discussed.

Increasing environmental consciousness, along with needs for facing unprecedented commercial conflicts has led to LOF 2000 revision. Issues posed by the current revision at force, along with political, economic and environmentally sensitive public considerations are all deployed in a comprehensive scheme.

WHAT IS SALVAGE

Salvage is not only an ancient right but one peculiar to maritime law. Salvage arises when "a person, acting as a volunteer (that is without pre-existing contractual or other legal duty so to act) preserves or contributes to preserving at sea any vessel, cargo, freight or other recognized subject of salvage from danger,"[1] as put by Geoffrey Brice, Q.C. Another definition of salvage is given by Kennedy as "a service which confers a benefit by saving or helping to save a recognized subject of salvage when in danger from which it cannot be extricated unaided, if and so far as the rendering of such a service is voluntary in the sense of being attributable neither to a pre-existing obligation nor solely for the interests of the salvor."[2]

THE BIRTH OF THE LOF CONTRACT

Although salvage operations have been performed for thousands of years, there has only been a hundred years since the introduction of a contractual form which in conjunction with a specific legal regime could resolve various disputes, commonly arisen between ship owners, salvors and underwriters. Lloyds Standard Open Form of Salvage Agreement was introduced in 1890 by the then Secretary of Lloyds, Sir Henry Hozier. Hozier traveled to the Dardanelles/Black Sea region (an area where lots of casualties had occurred due to the large amount of vessels which were passing through and the navigational difficulties they encountered) and met a local salvor / tug owner named Vincent Grech. Until that time any salvage services rendered, were remunerated on an agreed lump sum basis amount and many times this figure was inappropriate and unjust. The two men reached an agreement by which, if salvage services should be rendered to a ship in distress, they would be co-acted under a "no cure - no pay" principle.

Practically this meant that if a salvor was successful in salving a vessel and/or the cargo onboard, then he should be entitled of an award, through a submission in arbitration. In the latter, the arbitrator fairly and justly would decide if the initial lump sum amount agreed was unjust or not and adjust it, upwards or downwards. If unsuccessful, he should not be entitled of any award whatsoever. However, through

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[1] Brice G. (1993). *Maritime Law of Salvage*, (Sweet & Maxwell)
[2] Kennedy & Rose. (2002). *Law of Salvage*, (Sweet & Maxwell)

the years and after lot of revisions, there has been an evolution to the procedure (LOF 80 / "safety net" – LOF 90 / Article 14 - special compensation) of the LOF system by which if a certain clause (LOF 2000 / SCOPIC clause) is incorporated in the contract and being invoked by the salvor reasonably, then the latter is entitled the recovery of his expenses plus a 25% (in cases) increment [3]. SCOPIC offered an incentive to salvors to be prompt and effective in a high risk / low value – pollution threat situations. The above matter, though, will be analyzed in the following chapters.

Over the next few years, salvors were persuaded to adopt Lloyd's system. The agreement became over the years, the world's leading salvage contract and the reason is that it has a number of key characteristics as stated below:

- It is easily understood and known to be fair to salvors, seafarers, owners and underwriters alike.
- It imposes on the salvor an obligation to use his "best endeavours" to salve the ship and cargo as well as to prevent or minimize damage to the environment.
- It is backed up by an administration system and rules of conduct under which the assessment of the salvage award and all disputes can safely be left to be resolved after the completion of the salvage services.
- It avoids the arrest and detention of vessels and cargo by requiring security to be given promptly at the conclusion of the services.
- It can be agreed without negotiation, thereby enabling salvage work to commence immediately.[4]

The contract, which is the most widely used salvage agreement worldwide, has been amended and revised eleven times till today, all of these revisions being made to cater for the changing needs of the maritime community. LOF constitutes a fair and simple dual-purpose agreement, under which the arbitrators would assess the services rendered by the parties involved, and in a fair and inexpensive way decide the salvage award which a salvor is entitled. The contract, as being governed by the English law has undergone these revisions through precedent cases and that is one of the main reasons why it changes through the years. The most known versions of Lloyds Open Form are the LOF 80, the LOF 90 and the LOF 2000 which is presently being used and will be examined in the following chapters of this dissertation whether it needs

[3] Source: www.lof-at-isu.com
[4] Clarke K. (2008). *A global Contract for a Global Industry*, Newspaper Lloydslist (02/04/08)

revision or not. However, the versions stated above have a symbiotic relationship between them as the newer is inspired by the previous one and thus to understand the latest version (LOF 2000) it is necessary to know about the others.[5]

[5] Gaskell N. (1991) , *"The LOF 90"*, Lloyds Maritime and Commercial Law Quarterly, pp. 104-23

HISTORICAL DATA

Before construing the three basic revisions of the Lloyd's Open Form of Salvage Agreement, it would be needful to depict in brief the historical background in which changes have been carried into effect in the salvage industry and led to the 1989 Salvage Convention, whose articles have been incorporated in the LOFs from that date since. From the birth of the contract (1908), problems and disputes were commonly resolved but that fact did not constitute a panacea, particularly due to the lack of uniformity between the laws of salvage of different jurisdictions. This lack of a unified legal system reflecting salvage law principles was attempted to be tackled by the Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea in 1910 (The Brussels Convention).

The 1910 Brussels Convention by the auspices of the International Maritime Committee (CMI) had received a wide measure of international acceptance. However, as the years passed, it became apparent that it cannot cope with the changing needs of the maritime community, especially in the latter part of the century. The reason for that was linked with the traditional "no cure – no pay" principle and the increasing concern and public awareness for the pollution of the environment. Salvage law through the "no cure – no pay" principle has always provided an incentive to salvors to preserve the cargo as well as the vessel. What about the prevention or minimization of the environmental pollution?

Salvage operations became through the years, extremely difficult and expensive to mount, not only because of the size and sophistication of vessels in distress, but also because of the cost of building and operating a large salvage tug necessary to salve them, as well as the financial back up of the operation itself. There have been cases in which a salvor had spent large sums of money to salve a ship and national authorities refuse to allow its entrance into port or even worse have the ship destroyed under these authorities intervention powers ("Torrey Canyon").[6] At that time, salvors were complaining that the awards were not encouraging enough and there was a lack in the procedures of LOF system to remunerate salvors should they prevent or minimize damage to the environment. How could a salvor render salvage services to a severely damaged vessel which threatened by pollution the marine

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[6] Gaskell N. (1991), *"The 1989 Salvage Convention and the Lloyds Open Form of Salvage Agreement"*, 16 Tulane Maritime Law Journal, pp. 1-103

environment and being under the principle of "no cure – no pay" economically unattractive?

In 1978, the International Maritime Committee together with the Legal Committee of Lloyd's joined forces which resulted to the creation of an international sub – committee.[7] The sub – committees' aim was to provide salvors with the proper incentive through an "enhanced" award in order to instigate them to undertake low value - high risk cases but with the possibility of marine pollution. This was achieved with the introduction of LOF 80 which will be analyzed further. The need for that revision became imminent after the environmental disasters of the "Torrey Canyon", which was bombed by the government in an attempt to set fire to her cargo of crude oil (1978), the "Amoco Cadiz" which run aground and split in two (1979) and the "Atlantic Empress" which collided with the "Aegean Captain" (1979), casualties which demonstrated to the whole world the vital role that the salvage industry can play in the protection of the environment with a prompt and effective intervention by a salvor. (See Figure 1). The novel features of benefit to the salvors by the LOF 80 were achieved by a compromise between certain insurance interests that would have to bear the financial consequences of salvage operations.

[7] Wooder J. (1990), *"The New Salvage Convention: A ship owner's perspective"*, 16 Tulane Maritime Law Journal, 1-103

Position	Shipname	Year	Location	Spill Size
				(tonnes)
1	Atlantic Empress	1979	Off Tobago, West Indies	287,000
2	ABT Summer	1991	700 nautical miles off Angola	260,000
3	Castillo de Bellver	1983	Off Saldanha Bay, South Africa	252,000
4	Amoco Cadiz	1978	Off Brittany, France	223,000
5	Haven	1991	Genoa, Italy	144,000
6	Odyssey	1988	700 nautical miles off Nova Scotia, Canada	132,000
7	Torrey Canyon	1967	Scilly Isles, UK	119,000
8	Sea Star	1972	Gulf of Oman	115,000
9	Irenes Serenade	1980	Navarino Bay, Greece	100,000
10	Urquiola	1976	La Coruna, Spain	100,000
11	Hawaiian Patriot	1977	300 nautical miles off Honolulu	95,000
12	Independenta	1979	Bosphorus, Turkey	95,000
13	Jakob Maersk	1975	Oporto, Portugal	88,000
14	Braer	1993	Shetland Islands, UK	85,000
15	Khark 5	1989	120 nautical miles off Atlantic coast of Morocco	80,000
16	Aegean Sea	1992	La Coruna, Spain	74,000
17	Sea Empress	1996	Milford Haven, UK	72,000
18	Katina P	1992	Off Maputo, Mozambique	72,000
19	Nova	1985	Off Kharg Island, Gulf of Iran	70,000
20	Prestige	2002	Off Galicia, Spain	63,000
35	Exxon Valdez	1989	Prince William Sound, Alaska, USA	37,000

Figure 1 (Source: www.itopf.com)

LOF 80

The most significant change introduced by the LOF 80 consisted the encouragement to salvors to undertake high risk salvage work involving oil tankers which might be salvable or not. Practically, this constituted an exemption to the "no cure – no pay" principle, being that there was a mechanism created, by which a salvor could recover his expenses plus an increment of 15% of such expenses (safety net). [8] The elucidatory provision was clause 1(a):

"The services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay" except that where the property being salved is a laden tanker or partly laden with a cargo of oil and without negligence on the part of the Contractor and/or his Servants and/or his Agents (1) the services are not successful or (2) are only partially successful or (3) the contractor is prevented from completing the services the Contractor shall nevertheless be awarded solely against the Owners of such tanker his reasonably incurred expenses and an increment not exceeding 15% of such expenses but only if and to the extent that such expenses together with the increment are greater than any amount otherwise recoverable under this Agreement. Within the meaning of the said exemption to the principle of "no cure – no pay"expenses shall in addition to actual out of pockets expenses include a fair rate for all tugs craft personnel and other equipment used by the Contractor in the services and oil shall mean crude oil fuel oil heavy diesel oil and lubricating oil [9]

According to the above, the services including any services designed to prevent the escape of oil from the vessel, were agreed to be rendered and accepted as salvage services, so as to be subject to the particular rules governing the law of salvage and the assessment of salvage awards. It was not, therefore open to the owners of salved property to argue that the services were not in the nature of salvage. In addition, clause 1(a) of LOF 80 was only to apply in specific and limited circumstances such as: (i) the property being salved had to be a tanker laden or partly laden with a cargo of potentially pollutant oil, (ii) the contractor, his servants and agents had to be free of negligence and (iii) the services had to be unsuccessful, only partially unsuccessful or frustrated by interference[10] (government intervention).[11]

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[8] Source: www.dft.gov.uk
[9] LOF 80. Clause 1(a)
[10] Darling & Smith (1991), *LOF 90 and the New Salvage Convention*, London (LLP)

Only on those circumstances the contractor was entitled to claim his reasonable incurred expenses and such increment of not more than 15 % of such expenses, as the arbitrator thought fair. Any safety net award was to be made against the owners of the tanker alone thus the rule that all salved interests should contribute to the award has been waived as well as the sacrosanct "no cure – no nay principle by the provisions of the "safety net".

However, clause 1(a) from the LOF 80 was not the only change in the contract from the previous one. Except from the (i) "safety net" provision which was analyzed above, there was (ii) the allowance of making interim awards with the mechanism of payment on account in suitable cases, there were (iii) the provisions of clause 18, allowing arbitrators to make adjustments to the amount of awards so as to avoid injustice resulting from currency fluctuation between the date when the services are completed and the date when the award is actually made and finally there was (iv) clause 21, allowing contractors to limit their liability. By the LOF 80 revision of the agreement two challenges were laid down for those who are responsible for the development of salvage law. The first was how to continue to encourage contractors to maintain salvage posture in increasingly difficult economic times and secondly was how to ensure that prompt and adequate salvage response should be available to deal incidents like the "Torrey Canyon", the "Amoco Cadiz" and the "Exxon Valdez" where the protection of the environment is at stake. LOF 80 did not succeeded in the demands of salvors to increase salvage awards but indirectly, measures were taken to improve the financial position of the contractors as well as the imposition of the duty to attempt prevention or minimization of pollution through the "safety net".[12]

In 1981 the Montreal Conference (the 1981 CMI Draft Convention) drafted a document which was approved and went beyond the LOF 80. LOF 80 being addressed only to laden or partly laden tankers and reward services which prevented damage to the environment by substances other than oil was about to be altered. It is of great significance that the Draft Convention also led to the "Montreal Compromise", a compromise between those arguing for salvors and those who were likely to meet any increases in payments to them. Under the latter, the salvors agreed to give up some of their most radical proposals, one of them being the "liability

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[11] As in the case of "The Torrey Canyon", (1969) Lloyds Rep 591

[12] Source: www.dft.gov.uk

salvage". In exchange, representatives from insurers, ship owners and cargo owners agreed to certain provisions which would increase their present liabilities.[13]

During the period of 1978 to 1989 and after the introduction of the LOF 80 with its "safety net" provision and the increasing public awareness over the marine environment, salvage industry was starting to decline. Although weakened by years of financial crisis, major salvage contractors have managed to preserve their global response capability. Preserving that capability though, was not as romantic as it was the previous years, when salvage companies were constituted by family businesses. Not to mention the financial back up the salvage companies needed to have in order to deal and finance difficult salvage operations, as a result from the developments in the shipping industry (size of ships, sophistication of equipment etc.). In the above period (1978 – 1989) International Salvage Union members carried out 1,874 salvage operations on "no cure – no pay" terms (excluding Gulf War cases). Some 80 per cent of these cases were performed under Lloyds Open Form. Total salved value (ship and cargo) in respect of theses cases amounted to 6.2 billion pounds. The gross remuneration, including all operating costs and out of pocket expenses generated from these salvage operations was 326 million pounds or just 5.26 per cent of the property values salved.[14]

It is evident therefore, putting under perspective these numbers that salvors needed changes to be undertaken on the LOF system in order to back up and support their salvage capacity and capability which forced the salvage industry, as stated above, to shrink. A lucid example is the fact that from 1975 till the 1989 Salvage Convention, a fleet of approximately 150 dedicated salvage tugs that have been operated had declined with a geometrical progression to 65. Thus, the pressure from salvors for further changes to be incorporated in a legislative rather than contractual document, ultimately led matters after the Montreal Conference, to the Diplomatic Conference in 1989 with a total of 66 states being represented, two – intergovernmental organizations and 19 non – governmental international organizations. After the two week drafting process and a lot of moments of drama and debate, as it happens to every Diplomatic Conference when all seems to hang in the balance, the 1989 Salvage Convention emerged.

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[13] Gaskell N. (1991), *The 1989 Salvage Convention and the Lloyds Open Form of Salvage Agreement*, 16 Tulane Maritime Law Journal, pp. 1-103

[14] ISU Bulletin 9 (1990), *Salvage in Crisis: Towards a New Understanding*, London (ISU)

THE 1989 INTERNATIONAL SALVAGE CONVENTION

The 1989 Salvage Convention was the first response of the international maritime community in the field of salvage law to the changes in the maritime community and that is demonstrated and stated in its preamble:

- *Recognizing the desirability of determining by agreement uniform international rules regarding salvage operations.*
- *Noting that substantial developments, in particular the increased concern of the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910*
- *Conscious of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment*
- *Convinced of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger*[15]

This Convention made a fundamental change to salvage law, one which, to a degree had been pre – run by LOF 80. It made three significant changes:

- It provided that salvors whilst rendering salvage services and ship owners once receiving them, should exercise due care to prevent or minimize damage to the environment. (Article 8)
- It added to the nine traditional criteria that had to be weighed in the balance when assessing the salvage rewards an additional one, being "the skill and efforts of the salvor in preventing or minimizing damage to the environment. (Article 13)
- It provided that whenever there was a threat of damage to the environment, a salvor should be entitled, as a minimum, to his expenses and if he was

[15] International Maritime Organization (1989). *International Conference on Salvage – Final Act of the Conference and Convention on Salvage*, London (IMO)

successful in preventing damage to the environment, to an uplift of up to 100% of those expenses. (Article 14) [16]

The final act of the Conference and Convention on Salvage is constituted by 34 Articles, being divided by 5 Chapters and 3 Attachments. The Chapters are constituted by (i) general provisions, (ii) performance of salvage operations, (iii) rights of salvors, (iv) claims and actions and (v) the final clauses. The purpose and aim of this dissertation, though, is not to analyze the Convention's Articles[17], however in order to assess the revisions of LOF till today, Article 13 (Criteria for fixing the reward) and Article 14 (Special compensation), in which the essence of salvage remuneration lies, will be briefly introduced. Other changes in relation with the Convention and how the latter came into contractual effect will be discussed in a following chapter (LOF 90 – LOF 95).

[16] Bishop A, *From a seminar: Salvage Awards for Environmental Protection*
[17] See Appendix

Article 13

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

- *(a) the salved value of the vessel and other property*
- *(b) the skill and efforts of the salvors in preventing or minimising damage to the environment*
- *(c) the measure of success obtained by the salvor*
- *(d) the nature and degree of the danger*
- *(e) the skill and efforts of the salvors in salving the vessel, other property and life*
- *(f) the time used and expenses and losses incurred by the salvors*
- *(g) the risk of liability and other risks run by the salvors or their equipment*
- *(h) the promptness of the services rendered*
- *(i) the availability and use of vessels or other equipment intended for salvage use*
- *(j) the state of readiness and efficiency of the salvor's equipment and the value thereof* [18]

These ten criteria as set above are to be taken into consideration in the fixing of the reward. The overriding requirement is that "the reward shall be fixed with a view to encourage salvage operations". The only criterion which is entirely new in the list is 13 (b), being *"the skill and efforts of the salvors in preventing or minimizing damage to the environment"*. However, it is inconceivable that even before the New Convention, a judge or arbitrator would not have given credit to this factor. This is confirmed by the fact that preventing the escape of oil and the consequences of such an escape was expressly stated to be part of the services according clause 1(a) of LOF 80. In continuation of 13 (1), 13 (2) provides for payment of the reward in proportion to salved values by their respective owners. [19] As can be seen from the above 10 criteria the assessment of a salvage award is not pure and plain mathematics but an informed judgment by the arbitrator, made after weighing in the balance these criteria.

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[18] See Article 13 in Appendix

[19] Darling & Smith (1991), *LOF 90 and the New Salvage Convention*, London (LLP)

However, each case is different and has to be assessed by its own merits. The Salvage Arbitrators with their vast experience are in the position to evaluate the service and decide the amount of award a salvor is entitled. However, arbitrators are human and it is perfectly understandable for some to be more generous than others in a different type of case being a "rescue tow" – "straightforward towage", typically small case, in contrast of a complex salvage operation or a sub contracted case. [20] In recent years, the average award in relation to the salved value is between the range of 4,9% - 18.8%, being 11,40%. (See Figure 2)

Values ($1,000,000)

Year	Ship	Cargo	Other	Total	% Awards to Values
1990	$284.2	$268.6	$6.9	$559.7	4.9
1991	$277.3	$323.5	$12.5	$613.3	5.5
1992	$389.4	$436.2	$17.8	$843.4	6.4
1993	$150.4	$169.3	$4.0	$323.7	8.9
1994	$119.2	$178.2	$6.7	$304.1	13.0
1995	$193.3	$244.0	$5.6	$442.9	8.3
1996	$182.9	$111.0	$4.2	$295.1	12.5
1997	$169.1	$326.4	$13.0	$508.5	4.8
1998	$101.0	$61.0	$3.8	$165.8	12.5
1999	$53.3	$79.9	$5.8	$139.0	18.8
2000	$61.0	$194.4	$7.5	$262.5	10.7
2001	$50.9	$107.6	$2.5	$161.0	16.7
2002	$81.5	$173.3	$6.6	$264.4	14.2
2003	$72.8	$94.0	$2.3	$169.1	14.7
2004	$47.1	$93.9	$3.9	$144.9	9.9
2005	$64.5	$119.8	$1.3	$181.6	7.8
2006	$53.7	$31.6	$0.5	$85.8	13.6
2007	$172.6	$210.6	$9.5	$392.7	14.8
2008	$203.8	$92.0	$3.6	$299.4	7.1

Figure 2 (Source: www.lloyds.com)

[20] Constantinides X.P., (2004), *"The Art of Persuasion"*, London (The ABR Company Ltd.)

These statistics, though, have a significant risk of being misinterpreted. In cases where the salved value is very low and the salvor's expense high, a high percentage of the value can be awarded, taken of course into account all Article 13 criteria. In contrast, where a value is very high and the service very short, the award can be of very low. This is not a dogma, though, as no – one should apply the average salvage award to an individual case.[21]

[21] Bishop A. *From the seminar: The English Salvage Law – Lloyds Open Form*, London

Article 14

Article 14 deviates from the sacrosanct principle of the "no cure – no pay" of marine salvage and goes beyond LOF 80 and its "safety net" provisions:

1. *If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under Article 13 at least equivalent to the special compensation assessable in accordance with this Article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.*
2. *If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30 per cent of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in Article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100 per cent of the expenses incurred by the salvor.*
3. *Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in Article 13, paragraph 1(h), (i) and (j).*
4. *The total special compensation under this Article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under Article 13.*
5. *If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this Article.*
6. *Nothing in this Article shall affect any right of recourse on the part of the owner of the vessel.*[22]

[22] See Appendix, Article 14

Article 14 was designed to provide the professional salvor with an encouragement to respond and render salvage services to casualties, which were threatening to the environment and had little or not at all prospect of entitle them to an Article 13 award. However, for a professional salvor to be entitled an Article 14 special compensation there has to be two conditions fulfilled. The first is that the vessel must, by herself or her cargo, threaten damage to the environment. The first point is that this provision relates to vessels only. The second point, being the most important, relates to the definition of the damage to the environment.[23] The second condition is that the salvor must have failed to earn a reward under Article 13 that is at least equivalent to the special compensation available. This requirement could potentially lead to some procedural difficulties and waste of time and money when put into practice simply because the arbitrator would have to assess at an initial stage an Article 13 if applicable and then the amount of special compensation. If the latter is greater than the former, then, an award of special compensation is payable.[24] This amount *"may be increased up to maximum of 30% of the expenses incurred by the salvor"*, but this is not the actual limit of the special compensation. The latter may be increased up to maximum 100% where the arbitrator *"deems fair and just to do so"*. Practically, the provisions of Article 14 were only payable when the value salved was marginal or even insignificant. Payment was decided to be payable exclusively from the ship owner, who was not entitled to a general average contribution from the cargo owner. This provision, which ultimately led to the second attachment of the Act and the amendment of the York – Antwerp rules regarding general average, was in fact, as stated earlier, long ago discussed and agreed between the different insurance interests, being property underwriters and P & I underwriters in the Montreal Conference (the "Montreal Compromise").

These major changes in international law were embraced by all sides of the maritime industry and despite the fact that the Convention did not come into force until 1995 its provisions were immediately adopted and incorporated by the updated Lloyds Open Form, LOF 90. However, the lawyers after dealing with few cases found out that in practice the drafting of the Convention was not ideal as was initially thought and thus disputes started to arise. Pollution which threatened damage to the environment was restricted to *"coastal waters of waters adjacent thereto"* but what

[23] See Appendix, Article 1(d)
[24] Darling & Smith. (1991). *LOF 90 and the New Salvage Convention*, London (LLP)

were coastal waters – 6 miles, 12 miles, economic zone, and continental shelf? How far was adjacent? What was a threat – did it have to be actual or reasonably envisaged? How did one determine the percentage of uplift and what degree of proof was needed to show that pollution would have occurred but for the services? The most challenging question though was: The expenses included a "fair rate" for equipment - What is "fair rate" and if it includes an element of profit? Since this question initiated a series of hearings in 5 tribunals until it reached the House of Lords [25], it is worth analyzing it further.

[25] See the *"Nagasaki Spirit"* case

The “Nagasaki Spirit” Case

On the evening of 19th September 1992, the crude oil tanker “Nagasaki Spirit” collided with the container ship “Ocean Blessing” in the northern part of the Malacca Straits. About 12,000 tonnes of “Nagasaki Spirit’s” cargo were released into the sea and caught fire as well as both ships. Only two members of “Nagasaki Spirit” survived in contrast to all the crew of “Ocean Blessing” who lost their lives. At about 09:00 hours on 20th September 1992 “Semco Salvage & Marine Pte Ltd” (“the contractors”) agreed to salve “Nagasaki Spirit” on the terms of LOF 90. Later that day they agreed to salve the “Ocean Blessing” also on the terms of LOF 1990.

The contractors mobilised a number of tugs and personnel who proceeded to the casualty, fought the fire on “Nagasaki Spirit” and succeeded in extinguishing it on 26th September. After that the Malaysian police expressed concern that the casualty might cause pollution and they ordered the contractors to tow the “Nagasaki Spirit” further out to sea. At about 12:10 hours on 27th September the contractors commenced to tow the “Nagasaki Spirit” away from the Malaysian coast and finally on 3rd October the “Nagasaki Spirit” was anchored in a position off Belawan in Indonesia. It remained at that anchorage until 24 October. Five days passed for the necessary permissions for ship to ship transfer of remaining bunkers to be granted, and the operation to commence. On 12th December, after the casualty was made gas free, redelivery to her owners took place in Singapore.

The contractors’ claim against the owners of the cargo on board the Nagasaki Spirit was settled early in the hearing of the arbitration before the Lloyd’s salvage arbitrator. The arbitrator’s award was made against the shipowners and bunker owners only. He held that the total salved value was S$15,552,947. He would have made an award of S$9,500,000 had the shipowners, bunker owners and cargo owners all been before him. He made an award against the ship owners and bunker owners of S$6,913.117 together with interest in respect of the salvage services, in accordance with the general principle that sum represented the proportion of the sum of S$9,500,000 which the salved value of the ship and bunkers bore to the total salved value. The arbitrator assessed the special compensation under Article 14.3 in the sum of S$7,658,117. (In assessing that figure he took the view that the “fair rate” in Article 14.3 included an element of profit). He held that a fair increment under Article 14.3 was 65% of that sum. In consequence, he held that the total special compensation was

S$12,635,893. From that total he deducted his notional award of S$9,500,000 pursuant to Article 14.4. In consequence, he awarded against the shipowners the sum of S$3,135,893 together with interest in respect of special compensation.

The appeal arbitrator set aside the award. He would have made an award of S$10,750,000 had the ship - owners, bunker owners and cargo owners all been before him. He in fact made an award against the ship - owners and bunker owners of S$7,822,737 together with interest in respect of the salvage services. He assessed the special compensation under Article 14.3 in the sum of S$5,216,404.20. He held that a fair increment under Article 14.2 was 65% of that sum, although he would have held that 65% was too much if he had upheld the arbitrator's approach to "fair rate". In consequence, the total special compensation was S$8,607,066.90. Accordingly, pursuant to Article 14.4 no special compensation was payable because that figure was less than the award for the salvage services.

Both the contractors and the ship owners appealed to the High Court. One of the issues was the meaning of "fair rate" in Article 14.3 of the Convention. The contractors submitted that the ordinary and natural meaning of "fair rate" was a rate of remuneration that was fair in all the circumstances of the case. It was not narrowly confined to expenses but included an element of profit.

The owners contended that if the words were construed in their context it could be seen that the Convention drew a distinction between remuneration or reward on the one hand and compensation or expenses on the other. Moreover, the ordinary and natural meaning of "remuneration" and "reward" was to include an element of profit whereas the ordinary and natural meaning of "compensation" and "expenses" was to reimburse for loss or expense but not to include any profit.

Held, that the appeal arbitrator had accepted the owners' argument, and he was right to do so. In ordinary language the concept of remuneration or reward on the one hand was different from that of compensation or expense on the other. To be remunerated or rewarded was to receive some profit from the service concerned whereas to be compensated was to receive recompense for expenditure. The notion of compensation or expense did not seem naturally to encompass the idea of remuneration, reward or profit.

The contractors had submitted that fair rate had to include some element of profit because otherwise the essential element of incentive or encouragement would be missing. The Court accepted that one of the purposes of the introduction of Article

14 was to encourage salvors to respond to situations in which the environment was threatened by the consequences of a casualty which might threaten disaster on a catastrophic scale. However, it did not follow from the fact that the Convention recognized the need for incentive that the contractors' and not the owners' construction of Article 14 had to be right. The Convention provided for that incentive or encouragement in two ways.

The first was by Article 13.1(b), and the second was by the special compensation provisions of Article 14. Moreover, a consideration of LOF 80, out of which the Convention provisions grew, supported the owners' approach and not that of the contractors. Accordingly, no element of profit was to be included in the "fair rate" determined under Article 14.3.

Another issue on appeal was the period in respect of which a salvor was entitled to special compensation under Article 14.3. The contractors said that the answer was the whole period of the salvage services whereas the shipowners said that it was only the period during which a threat to the environment existed. Both the arbitrator and the appeal arbitrator accepted the contractors' construction of the Convention on that point. The ship owners said that they were wrong to do so.

Held, that the construction of the contractors would be accepted. Article 14 was intended to deal primarily with the case where a ship sustained a casualty such that both she or her cargo needed salvage assistance and there was a threat of damage to the environment. In such a case Article 14.1 provided that the salvor was to be entitled to his expenses. Article 14.3 defined the expenses to which he was to be entitled. Those were the expenses to be incurred "by the salvor in the salvage operation" including a fair rate for equipment and personnel actually and reasonably used "in the salvage operation". There was nothing in the wording of Article 14.3 or indeed of Article 14.1 or Article 14.2 which suggested that those expenses were to be limited to any particular part of the salvage operation, let alone that part of the salvage operation during which there remained a threat to the environment.

A third issue on the appeal was the assessment of the fair rate. The parties had agreed figures for the costs of operating particular tugs and other craft on the basis of daily costs averaged over a full year including overheads at 50% utilisation. The appeal arbitrator said that the agreed figures included indirect costs and ordinary crew costs but that they did not include the cost of bunkers or the cost of overtime in respect of this particular service. The figures also paid no regard to the fact that the

contractors would have to pay 10% of any award to an Indonesian company. However, the appeal arbitrator had then said that the figures did not reflect all the criteria referred to in Article 13.1(h), (i) and (j) of the Convention, and he arrived at much higher daily rates for each tug when he then multiplied by the appropriate number of days for each tug.

The owners submitted that the appeal arbitrator's approach in arriving at his own daily rates was wrong on the ground that they were arbitrary and not based upon evidence. They had been plucked out of the air. The contractors did not disagree with that submission. The owners' submission would be accepted. The figures should not have been plucked out of the air. There was no proper basis upon which an arbitrator or appeal arbitrator could do so. Accordingly, the figures arrived at by the appeal arbitrator upon which his figure for expenses (and therefore for special compensation) was based were incorrectly arrived at as a matter of law. As far as the assessment of salvage remuneration was concerned, the appeal arbitrator had increased the amount of salvage remuneration fixed by the arbitrator from S$9,500,000 to S$10,750,000. He did so notwithstanding the fact that he held that the arbitrator had made no error of fact or law. Under those circumstances, the owners submitted that as an appeal tribunal the appeal arbitrator should not have interfered with the award of the arbitrator unless it was manifestly too much or too little. The contractors did not challenge that proposition, which was in any event supported by authority.

The appeal arbitrator had considered that there were special circumstances in the case which justified his interference with the arbitrator's award. However, an important element in persuading the appeal arbitrator to interfere with the award was a comparison between the arbitrator's award of salvage and his own assessment of special compensation. However, the expenses on which the appeal arbitrator had calculated the special compensation had been plucked out of the air when they ought not to have been.

In the circumstances, the appeal arbitrator's award would be set aside and the award remitted to the appeal arbitrator for reconsideration in the light of the conclusions reached by the Court. It appeared likely that the result would be that the arbitrator's figure would be restored. [26]

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[26] *Semco Salvage & Marine Pte Ltd. v Lancer Navigation Co Ltd.* The "Nagasaki Spirit" – House of Lords, (1997), London (Lloyds Maritime Newsletter)

LOF 90 – 95

After the finalization of the Salvage Convention in 1989 it was needed for fifteen States to ratify it in order to bring it into force. Like many Conventions, it would have passed several years before governments give it the force of international law.

However, Lloyds of London have been quick on remark, recognizing that it was in the interests of all maritime community, for immediate action to be taken. Lloyds has taken the lead, amending the world's most popular contract, LOF. As has been already stated above, insurance interests, shipping interests and salvors have taken part to the discussions for the new revision of the LOF to be published, which did not only incorporated the essential elements of the Convention, but in the light of many experience gained in the last 10 years it made many amendments to the previous imperfect edition. With those considerations in mind the Chairman of Lloyds set up a new widely – based working party, comprising representatives of those who are interested in salvage, those who underwrite salvage and those who are practitioners of this field. [27]

It should be said, though, that whilst a substantial part of the Convention has been incorporated it could not have been incorporated as a whole. In particular, Article 13 (criteria for fixing the award) and Article 14 (special compensation) were incorporated but other important provisions such as Article 6 (2) [28] did not. That meant that the provisions of the New Convention in this respect (special compensation) would apply to all salvage operations carried out under LOF 90, irrespective of any delays in the enactment of the Convention. Overall, an attempt has been made to achieve a clearer layout of the existing clauses, the removal of surplusage from the wording and thereby a clearer and simpler contract.

Clause 1(a) places a new duty on the Contractor: *"While performing the salvage services to prevent or minimise damage to the environment"*. The duty is reflected in an additional element to be taken into account when assessing the contractor's salvage award and will be relevant in assessing any "special compensation" due under Convention's Article 14.

[27] Darling & Smith (1991), *LOF 90 and the New Salvage Convention*, London (LLP)
[28] See Appendix

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ

Clause 2 specifically incorporates those parts of the Convention which it is possible to adopt and subsequently enforce in a contract, namely the "definitions" in Article 1, "the duties of the Salvor and of the Owner and Master" under Article 8, "the criteria of fixing their reward" under Article 13 and the "special compensation" under Article 14.

Clause 3 is very similar to Clause 2 of the old form (LOF 80). There was a move to change the wording, to make it clear that the owner should be responsible for the provision of any guarantees required by the port authority or any other governmental body before the ship was allowed into the defined place of safety, but it was recognised that the circumstances in which such guarantees are required vary from case to case. As a result, it was thought best to retain the simple obligation on the owner to co – operate, so leaving each case to be determined by its own merits.

Clause 4 has been substantially amended, to provide security for the special compensation provisions of the Convention and to give greater flexibility for the provision of guarantees by persons, firms or corporations resident outside the United Kingdom, a feature which has caused some irritation to major insurance companies in the past. For reasons of difficulty and the cost of enforcement of guarantees abroad, Lloyds, in previous contracts, only accepted security given by persons, firms and corporations resident in the UK. Clause 4(c) makes it clear that it is now possible for such parties resident outside to UK to provide security to Lloyds if that person, firm or corporation is acceptable to the contractor. This gave rise to additional pressure on contractors, who would no longer be able to hide behind the old provision that security had to be satisfactory to Lloyds. However, the new clause did reflect the international nature of the contract. The previous edition contained a provision for the contractor to recover the cost of enforcing, or protecting by insurance, his lien on the salved property, but it was questionable as to whether he was entitled to recover the cost of demanding and obtaining security. This gave rise to difficulty in cases involving container ships, which frequently involved thousands of different cargo owners.

It has been argued that if, because of the circumstances of the case, a salvor is in a position under a salvage contract to always be able to recover something (even if only his expenses), he is not running the same risk as he would under a traditional "no cure – no pay" contract and, as a result, his reward should be less that it would otherwise be. The argument would be particularly relevant in all cases where there

was a threat of damage to the environment, taking into account the provisions of Article 14. Such an argument, if successful, would be contrary to the intention of the Convention – to encourage the salvor to protect the environment. To make it absolutely clear that this should not be the case, Clause 7 provides: *"Such remuneration shall not be diminished by reason of exemption to principle of "no cure – no pay" under Convention – Article 14"*.[29]

Clause 9 sets out the powers of the arbitrator more clearly than was the case in the previous edition. It will be noted that 9 (a) (ii) specifically provides an arbitrator shall have the power: *"to conduct the arbitration in such manner and in all respects as he may think fit subject to such procedural rule as the Council may approve"* . The rules were specifically designed to speed the arbitration process, by applying a discipline to the parties and ensuring the arbitrator has a "hands on" approach from the beginning of the case. In addition, rules would place the arbitrator in the position to ensure the economical and expeditious conclusion of the case, in a way best suited to the particular circumstances. In a very minor or small cases – which would not justify the time and expense of the normal full arbitration process – arbitrators will have the power to order a shortened form of arbitration, tailor made to suit the particular circumstances of the case [(Rule 2 (b) (ii)]. This would well involve some arbitrations being held on documents alone with written as opposed to oral, submissions.

The practice of arbitrators before LOF 90 was to grant in most cases an interest – free period of six months on any award. This has not only discouraged parties from making an early resolution of the dispute, but to a large extent severely penalized contractors. Clause 10 (i) specifically provides that interest at rates per annum to be fixed by the arbitrator shall be payable on any sum awarded as from the date of the termination of the services unless the arbitrator, in his absolute discretion, decides otherwise. This new provision should encourage salved property to seek an early resolution of the dispute and be fairer to the contractor. It will also give the arbitrators teeth, to enable them to penalize either party – salved property or contractor – if satisfied they are not acting reasonably, either by an increased rate of interest or delaying the time from which interest shall run. Both sides of the industry

[29] Bishop A (1990), *Lloyds Open Form: a new edition*, ISU Bulletin 9, London, (ISU)

also hope arbitrators will use these powers to ensure the speedy and economic dispatch of arbitrations.

The provisions to appeal (Clause 11), the conduct of the appeal (Clause 12), the provisions as to payment (Clause 13) and the general provisions (Clauses 14, 15, 16 and 17) are much the same as in LOF 80, although the wording has been refined and the clauses re – jigged, to make a clearer and more understandable document.

Clause 18 has been inserted at the specific request of the P & I Clubs who feared, but for its inclusion, some salvors might take advantage of the provisions of Convention – Article 14 by continuing with a salvage operation, for all practical purposes, was unsalvable – in order to earn their expenses, plus a possible increment, under the special compensation provisions. The salvage industry did not think this was either likely or possible in view of other provisions of LOF 90 but, for the sake of clarity, had no objection to its inclusion in the contract.[30]

In summary, the main changes from LOF 80, born from the 1989 International Salvage Convention are:

- Improvement of layout and exclusion of excess verbiage in order to present a clear modern contract, which can be readily understood by all who use it, even though they will necessarily sometimes have a poor understanding of the English language.
- The introduction in express terms of obligations to protect the environment so far as possible during the performance of salvage services.
- General measures, such as the possibility of interest being awarded from the date of termination, to minimize the financial problems of the contractor without simply increasing the size of awards in general.
- The incorporation of procedural rules to speed up the arbitral process.
- The enlargement of the "safety net" to cover a far wider range of pollutants than heavy fuel oil and with room for more generous treatment of salvors driven back to claiming special compensation. [31]

While LOF 90 does not include all the provisions of the New Convention, it includes the majority of those that are relevant to a privately made salvage contract.

[30] Bishop A. (1990). *Lloyds Open Form: a new edition*, ISU Bulletin 9, London, (ISU)
[31] Darling & Smith (1991), *LOF 90 and the New Salvage Convention*, London (LLP)

With the tenth revision and subsequently with LOF 95, Salvage Convention and its provisions were given the force of law in the UK.

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΑ

LOF 2000

Traditionally courts all over the world have required the successful salvage services before a salvor can claim salvage. The "no cure – no pay" principle underpinned the entire international law of salvage and was enshrined both in the Brussels Convention (1910) and commercially, from its inception in the Standard Open Form. However, as the time has changed, new developments became necessary. The "Amoco Cadiz" incident (1978) and the collision between the "Aegean Captain" and "Atlantic Emperor" (1979) prompted calls for change to the traditional approach of salvage. The advent of the 1989 Convention and, later, the Special Compensation P & I Club clause signaled a significant change in the way in which salvors today are rewarded for their services.[32]

The new millennium marked the salvage industry with two major events, a revised Lloyds Form and the early use of the new SCOPIC clause. LOF 2000 which is much simpler than the previous versions, adopting a box form layout has been a radical departure from LOF 95. LOF 2000 comes to grip with the problem of complexity. The six closely typed pages of LOF 95 have been reduced to a single sheet, printed on both sides, fact that makes it much briefer and more straightforward that its predecessor. The key elements of the contract are set out in just 12 clearly worded clauses. The remaining provisions that were contained in the old version of the contract were mainly administrative. They have been taken out and incorporated into a new document entitled "Lloyds Standard Salvage Arbitration Clauses" (LSSAB). This has had the advantage of considerably shortening the contract itself and makes it easier in the future to alter and amend the administrative provisions as and when required without the need to change the contract itself.

Beyond the streamlined format LOF 2000 introduces several changes to LOF 95. An example is that for the fist time the ship owner is explicitly required to provide the salvor with all information necessary to perform salvage. In addition, the salvor is granted a reciprocal right to that already enjoyed from by the ship owner. He, also, can now terminate the contract, when there is no longer any reasonable prospect of a useful result providing a better balance for termination.

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[32] Permohamed F. (2007), *"Certificate in Salvage Response & Crisis Management – Module 2*, London (Lloyds Maritime Academy)

Another clause deals with the often contentious issue of redelivery. Under LOF 2000, a salvor may redeliver when he is not required by the authorities to remain on scene and the continued provision of skilled salvage services is no longer required. This is a first attempt to define when a vessel is in a safe condition for redelivery and should deter any unfair attempts to prolong the services unnecessarily, so as to place a greater share of the costs with the salvors. [33]

As stated above, SCOPIC clause which is incorporated in the LOF 2000, constitutes a major event in the world of marine salvage and subsequently constitutes the third departure from the traditional "no cure – no pay" basis of LOF. All three, (the LOF 80 "safety net", Article 14 "special compensation" and finally SCOPIC) have at their core a response to concerns about damage to the marine environment and an associated recognition that response to pollution threats should not rely solely on the salvor's willingness to take the "all or nothing" no cure no pay risk. [34]

In order to avoid any uncertainties and costs with determining Article 14 fair rates, a tariff – based system was first proposed in a concept entitled "Salvage 2000" from which the current SCOPIC evolved.

SCOPIC was introduced in August 1999 as a comprehensive solution. It amounts to a joint industry response to an important public interest need. It provides a viable basis for salvage intervention in high risk / low value situations. Practically, this means that the new clause allows salvors to respond to all pollution threats, without fear of financial loss.

SCOPIC was embraced by all interests in the maritime community primarily because it provided financial transparency. This system is based on pre – agreed, profitable rates for vessels, equipment and personnel and "fair rate" is no longer an issue. In addition, the Article 14 triggers have been dispended with: the salvor is free to invoke SCOPIC at any time. He may be penalized, however, if he does so in circumstances which do not warrant SCOPIC's guarantee of minimum remuneration. Since the assessment of SCOPIC remuneration to be paid by the P & I Club only commences from the time the written notice is given, in order the mechanism of "taxi meter" to start running, and the security provisions do not come into operation until that time, the salvor might be tempted to invoke SCOPIC in every case right form the

[33] Bishop A. (2009). *LOF and SCOPIC: recent developments*, ISU Bulletin 19, London (ISU)
[34] King N. (1998), *Special Report on Towage & Salvage: SCOPIC awaits tariffs solution*, London, Newspaper Lloydslist (29/10/98)

outset. As an incentive to choose appropriate cases only, however, clause 7 of SCOPIC provides that in the event that the standard award under Article 13 exceeds the assessment of SCOPIC remuneration, the Article 13 award shall be discounted by 25% of the difference between Article 13 and SCOPIC remuneration. For the purposes of calculating the precise discount (penalty), SCOPIC remuneration is calculated as if SCOPIC had been invoked on "day one" of the services. This discount accrues in most cases to the benefit of Hull and Machinery and Cargo underwriters. [35] This is the price the salvor pays for the security of minimum remuneration, should SCOPIC be invoked unnecessarily.

SCOPIC also encourages early settlement, as the system is transparent and the costs of the operation can be calculated with ease. The SCR (at first "Shipowners Casualty Representative" and after the revision of SCOPIC "Special Casualty Representative") is another SCOPIC innovation. The aim was to improve liaison between salvors and ship – owners or P & I Clubs, yet preserve Salvage Master's overall command of the operation. [36]

SCOPIC as already stated is designed for use in the small percentage of operations which, for reasons of high risk or low property value, lack a reasonable commercial basis under conventional salvage arrangements. It has nine features:

- SCOPIC can be incorporated into a Lloyds Open Form if the parties so desire. It is not intended to be compulsory.
- SCOPIC has been accepted by members of the International Group of P & I Clubs, who have agreed a Code of Conduct giving Club backing to it's provisions.
- SCOPIC does not change the main principles of Special Compensation, but replaces Article 14 and introduces a new method of assessment.
- As soon as SCOPIC is invoked, the owner must provide, within two working days, a guarantee of $3,000,000.
- SCOPIC remuneration is assessed in accordance with tariff rates, which have been already agreed upon.

[35] Permohamed F. (2007), Certificate *in Salvage Response & Crisis Management – Module 2*, London (Lloyds Maritime Academy)
[36] Bishop A. (2009), *LOF and SCOPIC: recent developments*, ISU Bulletin 19, London (ISU)

- If the salvor invokes SCOPIC and the Article 13 award exceeds the SCOPIC assessment, the Article 13 award shall be discounted by 25% of the difference between Article 13 and SCOPIC assessment.
- As soon as SCOPIC is invoked, the Club can appoint an SCR (Special Casualty Representative), to monitor the salvage services and be kept fully advised throughout the operation.
- Once SCOPIC has been invoked, (i) the whole LOF contract can be terminated by the contractor, if the overall cost to him less any SCOPIC remuneration is greater than the value of the property salved and (ii) the SCOPIC provision (but not the LOF contract) can be cancelled by the Club, after giving five days notice to the contractor.

Since its introduction, SCOPIC has become an important part of the salvage landscape. It has become the preferred choice for many salvors in dealing with casualties where the prospects of a substantial traditional salvage award may seem slim. (See Figure 3) Likewise, it has become a versatile tool for clubs dealing with the immediate response to a potential wreck removal job or pollution avoidance situation. In the true spirit of the traditional LOF system, it allows the parties involved to get on with the immediate practical problem of dealing with the casualty against a more certain contractual framework.

Year	LOFs with SCOPIC incorporated	LOFs with SCOPIC invoked
2008	27	16
2007	35	23
2006	20	13
2005	44	19
2004	30	13
2003	33	28
2002	30	17
2001	35	26
2000	32	19

Source: www.lloydsagency.com

LOF - TOWARDS A NEW REVISION

As it has already been stated in the previous chapters, Lloyds Open Form of Salvage Agreement is the most popular salvage agreement in the world. Much/A lot has changed in shipping – and in the world in general – over the past 100 years. Yet the LOF contract has kept pace with those changes. The need for amendments to LOF stems from two sources.

The first and most obvious, is the constant process of assessment of the operation of the LOF. This is necessary in the commercial sense that if LOF is to retain its place as the world leader of salvage contracts, it must be constantly sensitive to criticism from those who use it. It is no use having a Form whose drafters consider legally perfect, but which nobody wishes to use. So amendments are and have continuously been made to the Form in response to shortcomings that become apparent from its operation.

The second, but obviously related, source of need for change is the changing nature of the maritime community. Salvage law, as part of the shipping law, is a unique concept based largely on public policy. As the world, and along with it the maritime community develops, if it is to continue to fulfil a public policy role, must the law of salvage develop, and LOF in particular. LOF must be updated to take into account not only the experience of its operation but also the changes in the maritime community. [37]

The current contract, LOF 2000, is the eleventh to be adopted. Repeated revisions have ensured that this vital contract remains fresh and fit for purpose. The fact that LOF remains fresh, fit and relevant after a century of use is testament to the skilful way in which this contract has been revised and updated over the years. Changing needs have been taken into account. There are many benefits associated with LOF, including the fact that no prior discussion of terms and conditions is necessary. Commercial issues are dealt with after services are completed. By that stage the value of recovered property is known, together with the time expended on the salvage and out-of-pockets incurred by the salvor. LOF was designed from the outset to avoid commercial haggling. It is a unique emergency response contract

[37] Darling & Smith (1991), *LOF 90 and the New Salvage Convention*, London (LLP)

concentrating on a single goal: a successful outcome that avoids loss and pollution. With LOF, it is agreed that there is nothing, at the contractual level, to delay the mobilisation of the salvor, his personnel and equipment. Freedom from delay can make the difference between success or failure and, possibly, can avert a pollution catastrophe. LOF 2000 is a streamlined document. It is simple, straightforward and easy to understand. There are just seven boxes to be completed by the parties. Once LOF is agreed, the salvor can intervene and use his "best endeavours" to prevent pollution and recover property.

LOF is a remarkably efficient contract. Nevertheless, there is still scope for improvement. In order to propose possible actions to be taken though, we have to comprehend the changes that the maritime industry has undergone.

Firstly, there are the physical changes. The size of ships has increased tremendously. This in turn leads to a need for larger, more sophisticated tugs if salvors are going to have the capacity to deal with casualties. In addition, there has been, until recently, a dramatic increase in the number of vessels on the seas and in the number of voyages undertaken.

Secondly, modern ships very often carry cargoes which are dangerous or potentially of a pollutant nature. In the previous years the risk of pollution from a vessel arose almost entirely from the bunker fuel that she was carrying for her own use. This in turn expanded to include other oil, carried as cargo. Everyone is very conscious of the consequence of the escape of heavy oil from vessels. One needs only to look back to casualties such as the Exxon Valdez to see both the extent of pollution that can be caused from a tanker and the publicity that will be afforded to a tanker casualty. Salvage law, through the principle of "no cure – no pay", which has extensively been analyzed in the previous chapter, has always provided the salvor to preserve the cargo as well as the vessel. However, the need to prevent the escape of pollutant cargoes into the marine environment may now be a stronger public policy requirement than the economic desirability of preventing the physical loss of the cargo. Moreover, for this reason, preservation of the vessel may even have to take a second place to the containment of the cargo. This containment may not, in some cases, even involve the preservation of the cargo. Thus, meeting the new public policy requirement of preserving the environment may be directly contrary to the course that is in salvors' best financial interest to preserve as much property as possible. An example of this is the destruction of the "Torrey Canyon" in an attempt to prevent or

minimize oil spillage on to the south coast of United Kingdom. Further examples can be found in respect of the “Christos Bittas” and the “Atlantic Empress”, both taken out to sea and sunk as a result of governmental intervention. This is not a course likely to appeal to a salvor whose right to a reward as well as the recovery of his expenses already paid out, is dependent upon the preservation of property.

In terms of politics, the carriage of the kind of cargoes mentioned above has heightened the awareness of the governments of countries with exposed shores to the dangers of pollution. This is due, in part, to increased media coverage and corresponding public consciousness of what is at stake. There is also a well – organized environmental lobby exercising great pressure on these governments. That has resulted in more and more governmental intervention (“Torrey Canyon”, “Atlantic Empress”), as stated earlier. The fact that governments can intervene in a marine crisis, makes the salvor’s task more difficult or even impossible and financially extremely risky as we have already mentioned, not only due to the fact that he might (in cases) not be reimbursed for his services, but also due to the threat of prosecution and penalization. While salvors have some protection under the Civil Liability Convention against claims for pollution damage arising from salvage operations, responder immunity has not been included in the bunker convention, leaving the door open for direct action against salvors. [38] Thus, it is observed, that the threat of prosecution may, in some circumstances, provide a powerful disincentive to salvors taking the obvious and sensible course of action in discharge of their duty to seek to minimize damage to the environment. [39] In the meantime, the financial danger has increased to the owners of the vessels (and their insurers) that carry such cargoes too. They are often made liable for the consequences of pollutant cargo escaping from their vessels. They may have to pay for damage done by the escaped cargo and will almost certainly have to pay the cost for clean – up and / or preventing damage to the environment and the property of littoral interests. Some governments have responded to this by giving a near monopoly to their own national salvage organizations in the hope of having sufficient means at immediate readiness to deal with pollutant casualties likely to provoke public concern. Unfortunately, such organizations do not

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[38] Spears S. (2004), *Salvors warned on liability for spillage*, London, Newspaper Lloydslist (13/12/04)
[39] Lord Donaldson (1999), *Pollution Defence, Command and Control and Responder Immunity*, ISU Bulletin 18, London (ISU)

always prove equal to the demands of present day salvage problems and in the long run, cannot be financed adequately from the governments in order to achieve the level of readiness it is needed. Ship – owning interests, their P & I Clubs and hull underwriters have been forced into responding with the introduction of agreements concerning liability for pollution, to ensure that there are adequate financial resources behind those who are or may be liable for huge pollution bills ("TOVALOP", "CRISTAL" agreements).

A further result of increasing consciousness of the risks of pollution has been the unwillingness of port authorities to allow potentially pollutant casualties into their ports. In some cases, salvors have spent a large amount of money in saving a ship only to have on their hands an "international lepper" which national authorities refuse to provide a safe haven (place of refuge). [40] This is understandable, but not in the interest of the maritime community as a whole. Casualties must be taken somewhere after the salvage operation and frequently pose more a greater threat to the environment as a whole if not allowed into a place of safety for redelivery to their owners, as well as being a continuing economic burden on the salvor when the operation should really be over. This reluctance to allow entry to a place of safety compounds an already existing problem that ship – owners are sometimes reluctant to accept re – delivery of a badly damaged vessel. In this respect, problems with re – delivery are not only potentially harmful to the environment, but as stated previously, will also cause economic difficulties to the salvor as he might find himself financing services which normally will be for the ship – owners account, since the services do not end until re – delivery. A plethora of international maritime bodies has come into being and new parties have entered the field of shipping and insurance. Through these bodies, as well as the established routes such as the International Maritime Organization (I.M.O), the salvage and shipping industries have been under increasing pressure to ensure that everyone concerned is conscious of the environmental issues and that legal regimes such as the governing salvage are geared towards the protection of the environment.

In economic terms, it is trite to say, that nowadays we live, until the recent credit crunch, the age of inflation. It is therefore, evident that this is another change which affects salvage industry. The building of new salvage tugs and the purchase of

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[40] Gaskell N. (1991), *The 1989 Salvage Convention and the Lloyds Open Form of Salvage Agreement*, 16 Tulane Maritime Law Journal, pp. 1-103

the necessary modern salvage equipment costs more than it did when the last generations of tugs were built. Moreover, the cost of fuel for steaming has soared and wages rise dramatically. The most significant consequence is that the cost of keeping a tug on station waiting for the opportunity to perform salvage services has become almost prohibitive. At the same time, the cost of maintaining large stocks of salvage equipment, which out of necessity now has to be more sophisticated, has become equally great.

Professional salvors are, by their nature of their business, obliged to tie up large sums of money in capital equipment with no certainty as to the amount of use it will be put to and therefore the amount of revenue, if any, it will regularly generate. Those problems increase with the amount of money involved. Moreover, salvors spend most of the times, large amounts of money for the operation itself. Therefore a salvor must have a pool of money ready to cover all necessary expenditure, no matter the sum of the latter. Banks and other financial institutions will hesitate or even refuse to finance a salvage operation with the prospect of getting paid under a salvage award which can be of substantial period of time to be assessed. In addition, at a time of recession in the shipping market and financial difficulties and uncertainties worldwide, the willingness of banks to risk their money by financing investments relating to capital equipment is reduced. At the same time, though, as a matter of public policy, it remains increasingly desirable that competent salvage services should remain readily available and that the necessary level of investment in salvage should remain high.

Currency fluctuation is another aspect of modern economic life that can adversely affect salvors claiming in a failing currency while they wait for their reward to be assessed. In addition, salvor's financial status can be affected tremendously, given the fact that they might spend a substantial amount of money for the completion of the operation whist they are waiting one or even more years the assessment of the award. This economic problem becomes imminent when a salvor is very active, with a lot of operations running. However, these problems are solved by the clauses 8.1 (initial interest), 8.3 (late payment / delay interest) and 9 (currency correction) of the LSSAB (Lloyds Standard Salvage and Arbitration) Clauses

Another development is that modern navigational equipment has led to a reduction in the number of casualties but the result of that, generally speaking, is that the opportunities for salvors are fewer. This compounds a risk to salvors of having

capital tied up waiting casualties to occur. Yet, when they come, the necessary services are far more demanding than they were. Of course salved values have increased correspondingly and that must help the salvo's financial position, as reward, as has already been stated, is in part related to the salved values. In a worldwide shipping recession, however, ships tend to be less valuable than they would be at a time of flourishing international trade, and this will in part off – set increased cargo values. [41]

Another change is the gigantism of ships and especially container – vessels and due to that fact, another problem has emerged. The problem has been the difficulty and expense of collecting security from thousands of different cargo interests. As container ships grow, so does the problem. As cargo is often carried under a large number of bills of lading and is often underwritten by a number of different national underwriters, a great deal of time and expense often has to be incurred before the salvors are able to obtain security for the cargo they have saved. Also, the problem can be of another nature. Many cargo interests in containership cases are unrepresented. In one case cited there were 2,300 parcels of cargo unrepresented of a total of 4,500. This gives rise to many practical problems that cause delays and considerable expense. At present each unrepresented cargo interest has to be written too by the salvors, to give notice of the arbitration, invite them to attend, submit values etc. [42]

To summarise, the world, and to that extent maritime community more specifically has changed through the years and inevitably problems have arisen to the salvage industry. The most significant changes and therefore problems, which are in need of solution and further debate in order to give the salvors incentives and ease the salvage procedures, are:

- Environmental consciousness

Physical changes (gigantism of vessels, sophistication of equipment)

- Places of refuge
- Responder immunity
- Container ship salvage security

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[41] Darling & Smith (1991), *LOF 90 and the New Salvage Convention*, London (LLP)
[42] Bishop. A. (2009), *Report to the ISU Executive and LOF Sub Committee - Container Ship Salvage Security*, London (ISU)

- Unrepresented cargo in containership salvage cases
- Economic factors (building new salvage tugs, invest heavily in equipment, maintaining idly salvage tugs on station, have a large capital in order to finance future salvage operations)

Perhaps the most important question facing salvors and the owners of maritime property as a result of all these changes is that of "salvage posture" or simpler, "salvage capacity". It has been of paramount importance, as a matter of public policy to the owners of maritime property and underwriters alike, to encourage salvage posture. [43] This means to encourage salvors to maintain and employ the means of dealing with shipping casualties, which happen sporadically from time to time and all over the world, and to remain willing and able to assist those casualties promptly and efficiently when and where occur. [44]

[43] See *"The Glengyle*, [1898] A.C 519

[44] Darling & Smith (1991), *LOF 90 and the New Salvage Convention*, London (LLP)

STEPS TO BE TAKEN– AMENDMENTS TO THE LOF 2000

ENVIRONMENTAL AWARDS

The environment was not of great concern until the late sixties when oil transportation began to boom and the public became environmentally sensitive to the damage that could be caused by a huge oil spill. Driven by casualties such as the "Torrey Canyon" and "Amoco Cadiz", it began to be appreciated that salvors had a large part to play in the prevention of oil spills and needed to be encouraged to go to the assistance of those ships that threatened it. Even when oil was spilt much often remained in the casualty. Oil once spilt would be far more expensive to clean up than salve. To keep the oil in the ship should therefore to be the first priority. Salvors were ideally placed to do this and should be encouraged to become involved.

At that particular time encouragement was very much needed. The Intervention Convention of 1969 had caused greater governmental interference in casualties resulting in some ships being refused refuge and being sent to sea to be scuttled which defeated the prime objective of a salvor, to save property, and prevented him from earning a salvage award. In addition, large environmental casualties, even when permitted, often resulted in greater work and risk and a lower value which restricted the amount that could be recovered. This, together with an increase in expense - which was not recoverable in the event of failure – made many salvors think twice before entering into what might well prove to be a commercially unacceptable contract. [45]

It was the time that the concept of "liability salvage" emerged, under which the salvor, in addition to being paid by the property interests in the traditional way for saving property, would also be paid for the benefit he had conferred on the ship - owner by preventing what would otherwise be a liability. However, this proposal / concept was considered to be extremely radical from the liability insurers and therefore after lot of "off the record" debate, it was discarded ("Montreal Compromise") in favour of two remedies: (i) the "safety net", which was analyzed in the previous chapter and (ii) the enhancement of the traditional salvage award under Article 13 (b). However whilst this new element can enhance an award, it is subject to

[45] From the speech of A. Bishop. *Environmental Awards – Investing in spill prevention* (2007), ISU

the same cap that has prevailed for centuries – the value of the property salved. It has therefore not made a major impact on the amount of remuneration received by salvors.

Change is necessary because (a) much has changed since the Salvage Convention was first drafted in 1980 and (b) whilst salvors currently do much to protect the environment they could do more and confer even greater benefit to the environment if they were rewarded for so doing.

A lot has changed since 1979 when consideration was first given to ways of encouraging the salvage industry to go to the assistance of ships which threatened damage to the environment. The remedies provided in the Salvage Convention may have been sufficient when first proposed nearly 30 years ago but environmental issues have since increased in importance, year by year, making further change necessary.

- Twenty five years ago the main concern was cargo oil. It is now recognised that other pollutants can be equally, if not more, damaging. Regulation and legislation has expanded to deal with other pollutants. There are few ships that do not now carry a pollutant in one form or another and there is hardly a casualty in which environmental considerations are not relevant. The environment in effect, dictates how a salvage operation is to be carried out and is always the very first consideration of any salvor.
- The increasing concern of the public and government as to the environment and the fear of it being damaged have also made a material difference to the risks and liabilities of the salvor. These are increasing as each year goes by. In their anxiety to curb pollution of the sea, not only are potential civil liabilities being increased but potential criminal liability is fast becoming the norm.
- Whilst salvors have always been civilly liable in negligence, they have, until recently, had a degree of protection from 3rd party claims under International Conventions which in essence have channelled all claims through the ship owner. However, the Bunker Convention of 2001 (which is not yet in force) deliberately removed this protection opening up the salvor to potential 3rd party claims. Although there may be a good defence to such claims, a scattergun approach to litigation, which usually occurs in substantial cases, could result in the salvor and his personnel being tied into expensive time consuming litigation subject to the vagaries of a variety of jurisdictions.

- Aside from civil liability the salvor is increasingly being exposed to potential criminal liability. The UK Water Resources Act 1991 imposes strict criminal liability on any one whose act or omission was the cause of the pollution. It does not have to be the sole cause or even the main cause. Any contributing cause is sufficient. So if a transfer pipeline in a STS salvage operation were to break, with resultant pollution, though stress of weather and through no fault on the part of the salvor, he could be criminally liable under the Act. [46] The salvage industry cannot accept the risk of such huge penalties. No salvor will gamble with his future by accepting exposure to unlimited fines.

The Water Resources Act is only one of many developing statutes imposing potential criminal liability on seafarers, including a salvor. Although one recommendation has been made which calls on the government to amend the 1991 Act to ensure that prosecution policy does not conflict with the public interest, the Act has not been amended yet. In addition, there was a further recommendation for "the government, after the examination of the Regulation 11 of MARPOL, to see whether the exceptions that provide a defence to the owner and the master are also available to others who may be involved in a decision to discharge a pollutant in order to minimize damage e.g the salvor or the harbour master. Clearly they too should have the same defence. [47]

- Aside from new legislation there seems to be an increasing tendency towards unjustified political detentions of seafarers including, in the case of the Tasman Spirit, the salvage master and a vessel chartered by the salvors for the salvage operation.
- Finally, there has been a great change in the number of salvage operations that are carried out each year. Whilst this is good news for the shipping industry as a whole it is not good news for the salvor whose bread and butter is salvage work. In 1990 there were 178 LOF salvage case s. In 2006 there were 85. Cases tend to be bigger and more complex than 30 years ago but nevertheless there is a significant decline in the overall workload. The industry has adjusted to the change. There are now very few station tugs, most salvors having contracted to central pools of equipment ready for air transportation and to relying on being able to hire in tugs and other equipment as and when

[46] See the *"Sea Empress"* grounding
[47] See *"The Donaldson report"*

required. Today there are fewer international contractors and many of the local contractors of the eighties have either disappeared or reduced the amount of salvage work that they used to do, so as to concentrate on other sources of income.

The shipping industry is working hard to continue the downward trend in casualties but most would agree human error is likely to ensure that casualties continue to occur in the future and that they are likely to be bigger and more potentially damaging. Ships are continuing to grow. Container ships and passenger ships are catching up with the VLCC's. When a major casualty occurs today considerable resources are needed. Most beyond the capabilities of the smaller local salvor working on his own. It is now common to tap into the resources of one of the big international contractors but they are also shrinking in number. There are now probably only four truly international contractors that operate on a world wide basis. If not encouraged with appropriate rewards for what they actually do, they may join many of the local contractors and turn their commercial attentions elsewhere (towages, offshore services).

As mentioned earlier, there is very little financial reward or encouragement, in terms of profit, to a salvor to protect the environment. There is nothing to encourage him to materially invest in research, training, men and equipment to the future benefit of the environment. Yet the avoidance of damage to the environment is now the most important aspect of any salvage case. To remove the oil or pollutant from the ship or transfer it to a safer place, is the first concern of the salvor, and there are few cases where there is not a 'threat of damage to the environment'.

Despite the lack of a proper reward for the benefits conferred by protecting the environment the salvage industry currently does much to benefit it. The Prestige lost some 70,000 tons of oil, the Erika lost a similar amount, and the Exxon Valdez lost some 40,000 tons. A total of 180,000 tons which resulted in claims of about 5 billion dollars. In contrast, during 2006 alone, ISU members salvaged 566,000 tons of pollutants. In the last 13 years it has salvaged over 13 million tons which might otherwise have polluted the sea. What would have happened had it not been salvaged. The salvage industry has done well to cope with the changing situation as is illustrated by the oil pollution survey mentioned above. But it has not been encouraged to do so by financial incentive. If it were to be so encouraged, the industry could do even more to prevent damage to the environment, thereby reducing damage and claims.

Something that would be of benefit to all. A change in the law to permit claims for environmental salvage would provide that encouragement.

It should be noted that under the Article 8 of the Convention a salvor only has a duty to prevent damage to the environment whilst salving ship and cargo. Thus, if ship and cargo are valueless, there is no incentive to continue work to prevent damage to the environment. As salvors are usually the first on the scene of any casualty, this does not seem sensible.

The large international salvors currently invest heavily in new equipment, training, recruitment and research but with greater financial incentives even more could be done than is currently economically justified. Salvors need to be able to cope with the ever increasing size of ship and their varied cargoes. Ways need to be found to off load oil away from the coast in open water and foul weather, to improve the removal of oils from sunken vessels, to off load containers and arrange for their storage or transportation in remote areas of the world. That investment is far more likely to be done if there are adequate financial incentives to justify it.[48]

Moreover, if the shipping industry and its insurers accept the globally – recognized principle that “the polluter pays” for clean up and compensation, why should they not also accept the case for investing in pollution prevention services, especially as these costs are much less than the clean up after a spill, as demonstrated earlier?

Environmental Salvage Awards as a solution to reward pollution prevention is based on generating costs savings for ship – owners and their insurers.[49] As salvor’s pollution prevention services benefit the marine environment, coastal communities, governments and certain interests, a system of environmental awards would enhance this benefit by reinforcing salvage cover. More investment in salvage, through environmental awards would therefore:

- Enhance protection against catastrophic spills
- Reduce the scale of financial, economic and environmental losses
- Address high – profile political and public interest concerns
- Contribute to the long – term viability of the salvage industry

[48] From the speech of A. *Bishop Environmental Awards – Investing in spill prevention* (2007), ISU

[49] Witte A. (2007), *Witte presses case for pollution prevention*, London, Newspaper Lloydslist (11/12/07)

- Help ensure the continued availability of marine emergency services
- Lead to cleaner oceans and cleaner beaches
- Improving LOF's efficiency[50]

[50] Witte A. (2008), *The preferred solution in serious emergencies*, London (Lloydslist (02/04/08)

CONTAINER SHIP SALVAGE SECURITY / UNREPRESENTED CARGO

The only suggestion that has been put forward to date to ameliorate the problem of collecting security from thousands of different cargo interests is to exempt cargo of low value from liability to pay salvage. It is said that if all cargo with a CIF value of less than $5,000 were exempt it would substantially reduce the work and cost involved in collecting security from them without making any material difference to the overall salvage award because of the remaining high value.

It is clear, though, that if this solution was to be adopted it could be achieved by the introduction of some suitably worded 'containership clause' in the LOF. However, this solution is not recommended for it would give rise to other problems which the savings do not justify:

- Considerable work would still have to be done to work out what was the exempt cargo,
- There would be arguments with cargo whose value was on the cusp.
- The $5,000 exempt point would have to be kept under regular review.
- An insurer of many parcels of exempt cargo would have the advantage over an insurer of large parcels.
- It would effect the current practice of some containership owners who provide security on behalf of cargo
- It would be an injustice to the cargo still liable.

An alternative solution would be to provide in the LOF contract that in container ship cases the ship owner is required to provide security on behalf of all cargo. This is already the practice under the laws of some countries (France, Belgium, Holland) and a solution recognised in Article of the Salvage Convention. It would be an onerous additional responsibility to be placed on the ship - owner but was justified by the practical benefits to everyone, including the ship - owner, and consistent with the stated objective of LOF. The ship - owner would ultimately be protected by including this liability in his claim for General Average.[51]

Many cargo interests in containership cases are un - represented. This gives rise to many practical problems that cause delays and considerable expense. At present each unrepresented cargo interest has to be written too by the salvors, to give

[51] Bishop A. (2009), "Report to the ISU Executive and LOF Sub Committees", London (ISU)

notice of the arbitration, invite them to attend, submit values etc. A practical way to solve this problem would be to provide in the LOF contract that if cargo had not appointed someone to represent them, Lloyds were empowered to do so, on their behalf.

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΑ

PLACES OF REFUGE

Images of oiled seabirds with a stricken tanker in the background are, thankfully, rarer than the news media might have the general public believe. Yet when there is an incident, coastal States need to be prepared. The issue of "places of refuge" is one aspect of contingency planning in the consideration of which the rights and interests of coastal States as well as the need to render assistance to vessels that are damaged or disabled or otherwise in distress at sea ought to be taken into account.

The notion of providing refuge for ships in distress was raised at IMO during the late 1980s, when the Legal Committee was considering the draft provisions of the International Convention on Salvage (eventually adopted in 1989). At the time, it was suggested that there should be an obligation on States to admit vessels in distress into their ports. Although this was endorsed by some delegations, others expressed doubt on the desirability of including such a "public law" rule in a private law convention. It was also pointed out that the interests of coastal States would need to be duly taken into account in any such provision. Doubt was also expressed whether such a provision would in fact affect the decisions of the authorities of coastal States in specific cases.[52]

As a result, Article 11 of the Salvage Convention , as eventually adopted, reads: *"A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provisions of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general."* [53]

In the majority of cases of refusal to grant refuge, though, the governments took their decisions without physically inspecting the casualty. The case of the “Castor”, which was towed around the Mediterranean Sea for over a month before a place could be found where a successful lightering operation could be carried out, is a prime example of the automatic and understandable inclination to the refusal.

When a big casualty occurs, the event often has significant political implications as the tension surrounding the issue of places of refuge exists between

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[52] Source: www.imo.org
[53] See Appendix

neighbouring Coastal States and at a national level, between central and local government. These political sensitivities must be recognized and accommodated. For example, in considering the concerns of people living in areas designated as places of refuge, it will be important to explain that whatever guidelines should be adopted, offer a process for the accurate assessment of risk.[54]

The problems of places of refuge are not new. The issues surrounding the so called "Lepers of the Sea" come to the fore from time to time, usually in relation to a high profile casualty such as the relatively recent, "Erica" and "Castor". The availability of a place of refuge can be a major factor in determining the success or failure of a salvage. A refusal to grant shelter can place lives and environment into greater risk.

A solution to this significant problem might be the adaptation of the principle that casualty inspection can take place before any decision is taken on a request for shelter. Moreover, States after consultation with the salvage industry, could set up a panel of experts to advise on the risks posed by any casualty requiring a place of refuge. In addition, consideration could be given to the evaluation of consequences should a place of safety be refused. Finally, financial security for entry into a place of safety can be obtained from the State from P & I Clubs as it is evident that this security will definitely not exceed any claim Clubs will pay should pollution occurs in a far more broader sense.[55]

[54] O'Neil W. (2002), *Places of refuge: The IMO perspective*, London (ISU Bulletin 21)
[55] (2002) *Developing solutions to the places of refuge problem*, London (ISU Bulletin 21)

RESPONDER IMMUNITY

The traditional role of the professional salvor has in many cases become secondary to his role in serving as the first line of defence in preventing or minimizing environmental damage. The unique skills and abilities of professional salvors are needed more than ever before to save casualties and to prevent environmental damage. However, those who proceed to valiantly perform salvage and pollution response may be threatened with potential civil and criminal liabilities for environmental damage which is arguably caused or worsened in some way by their efforts. Even the threat of such liabilities can damage their personal and professional reputations and wreak financial havoc on their companies.

Unfortunately, once a pollution situation or even the threat of one develops, it may worsen. This may happen no matter how carefully the salvor selects his response equipment and personnel, and directs the casualty response. By its very nature a marine casualty is constantly subject to the vagaries of nature and the unknown. No matter how well the response may be planned, quick instinctive reaction is often required to effectively combat the ever - changing conditions. In these circumstances, the salvor is not often blessed with unlimited time to weigh and analyze all options and their possible consequences, but may nonetheless be held to the same standard of care as those who are afforded such luxury.

This reality has forced salvors worldwide to demand some form of immunity for those who respond to marine casualties that result in or threaten environmental damage. Some progress has been made, but much still needs to be done in order to enable professional Salvors to perform their jobs to the best of their abilities without the threat of civil and criminal sanctions. Indeed, the salvor's job is already made more difficult by the threat of such sanctions being imposed on their client vessel owner or the master and crew of the casualty, causing the stakeholders to be less forthcoming with information the salvor needs.

Ship - owners and salvors, in the throes of a vessel crisis, may be faced with two equally unpalatable and conflicting choices. If jettisoning a small portion of the oil cargo would prevent an even greater environmental disaster, should they take such action knowing it could result in civil and criminal penalties for a purposeful discharge? Or, should they refuse to jettison, and attempt to prevent the imminent disaster solely by other means, while knowing full well that such other means are not

likely to succeed? In the latter case, will the owner or salvor again be subject to large penalties for creating a "purposeful discharge" by not acting reasonably to have prevented the spill worsening? There is no easy answer.

All who play a role in casualty response deserve responder immunity, and must be given it if they are to continue protecting the waterways of the world and addressing environmental concerns. Salvors and others have done well to survive an era of practically no such immunity, and have now achieved some limited immunity. At the same time, however, the sorts of liabilities imposed for environmental pollution have increased, and modern criminal sanctions deny relief to the salvor by any means but legislation. Therefore, while heightened concern for the environment increases the need for the services of all types of responders, the encouragement essential to the provision of those services has lagged behind the more aggressive increases in the types and extent of penalties being imposed in environmental damage cases.[56]

Solutions to the issue of “responder immunity”, therefore, are purely legislative and salvors are waiting to see the outcome of the recent debates. Legislative solutions are out of the scope of this dissertation, however, the only non legislative solution that salvors are currently using is engaging in contracts incorporating “hold harmless” clauses.

[56] Source: www.hklaw.com

ENHANCED ARTICLE 13 AWARDS

As already stated, economic changes play a significant role in the salvage landscape. Heavy investment in building salvage tugs, acquiring ad hoc equipment as well as maintaining salvage tugs idle on station for a long time are few of the factors that could discourage a professional salvor from financing salvage posture.

LOF system and therefore, can ease the financial burden which a salvor underlies by the assessment of more generous awards by the arbitrators. More generous awards will enable salvors to meet the effects of inflation and other economic factors, as previously described, adverse to the maintenance of salvage posture. Moreover, the professional salvor, nowadays, has to contend with competition from cheap Eastern European, offshore, government – subsided and port tugs. It was the withdrawal of station tugs, which were too expensive, that led governments to sponsor Emergency Towing Vessels.

Professional salvor welcomes higher LOF awards because it is evident, that there is a decline in LOF's. How can he maintain his salvage capacity without encouragement? The aforementioned decline is due to two reasons.

Firstly, there has been a decline in casualties, which is good for the maritime industry in general, but leaves the salvor without work (without LOF's). The latter has as a result for the professional salvor to seek other means to finance his already purchased assets, like towages, anchor handling operations. This could, in some cases, prove to be tragic, like when all tugs are engaged somewhere else and therefore cannot always be useful in the event of a casualty. Readiness of dedicated salvage tugs will vanquish!

Secondly, underwriters have adopted an aggressive stance in respect of LOF and often pressure ship – owners not to sign. The owner usually is the one who knows more accurately the condition of the casualty and whether assistance is necessary. However, owners are somehow terrified with taking any action without obtaining permission or approval by their underwriters. This is a result of over – conservative advice from their average adjusters, who wish to avoid problems when they prepare their final claim or their lawyers, who are not usually prepared to offer an immediate practical advice.

Underwriter's stance derives from their misconception that LOF is expensive. There is no doubt that LOF is a perfectly reasonable contract, as have been proven

throughout this dissertation so far. It has flexibility and has been tested and relied upon many years. For the underwriters to discredit it, instead of protecting it is beyond comprehension. "Generous" awards are not a good argument. The number of LOF cases, as stated earlier, is decreasing every year. The fewer the LOF's, the higher the awards. If there were double the number of LOF's, the awards would not be as high.[57] Salvage awards are assessed by arbitrators, who have vast experience over admiralty law and in particular salvage law.

Recent rulings, though, seem to have shaken the underwriter's faith, if any ever existed to the system, to the extent that the arbitrators are acting pro salvor. "Voutakos" case concerned the so called "disparity principle" and the extent to which commercial rates should be taken into account by arbitrators in the assessment of salvage awards, particularly in cases involving straightforward towage.

The Appeal Arbitrator (John Reeder Q.C) took the opportunity of the appeal, against the initial award, to conduct a review on recent Lloyds Form awards in towage cases and in particular, the effect of the "disparity principle". This was an approach that the Appeal Arbitrator identified that as having been applied over a number of years in salvage cases whre dangers were held to consist of immobilization only, with no great emergency, and were only towage assistance was required. In such cases the principle was said to have the effect that any sum awarded should not be wholly out of line with commercial towage rates. Having reviewed the authorities, the Appeal Arbitrator held that the disparity principle was "seriously flawed" and that its effect had been to result in stagnation in the level of awards in towage cases. He concluded that a general increase was required in order to comply with the 1989 Salvage Convention and the policy issues underlying it. The result was that the Appeal Arbitrator allowed salvor's appeal and increased the award for the services by $950,000 from the initial award. The case went to the High Court and the decision was that *"the decision seems to be entirely consistent with the proposition that commercial rates, whilst not remotely determinative of the appropriate level of remuneration, are relevant and "useful". They certainly provide a useful cross check by way of providing a floor to salvor's legitimate claim"*. The judge emphasised this point in summarising his views on this important head of appeal as follows: *"In short, commercial rates are admissible and relevant but their significance will depend on*

[57] Constantinides X.P (2008), Speech on Seminar to Inces

the facts of each case. In the simplest of towage cases they may be particularly influential and provide, subject to values, a floor to any award that could begin to be regarded as encouraging….But it cannot be that the actual cost and the rates of hire involved (and the contribution made thereby to success) are to be treated as wholly irrelevant”. Based on these the court remitted the award to Appeal Arbitrator for further consideration.[58]

Another case, which heads for High Court test is the "Ocean Crown". The main reason given for the submission is purely the issue of quantum, meaning the high size of the salvage award, which the Appeal Arbitrator increased by $6,250,000 from the initial award. Although, the services were "entirely successful", benefiting the ship and cargo owners, underwriters and their lawyers wish to test the ruling in the High Court.[59] But what would have happened if this casualty was the cause of pollution in an environmentally sensitive area like in this case? How much more would the pollution claims be? Definitely much more than the arbitrator had already awarded.

Can it be coincidental that Lloyds Agency is planning to shake up the arbitration regime, under the pressure of insurance interests, underpinning its 100 years old contract, LOF, after these two recent rulings? Impartial and expert arbitration has been the essence of LOF's reputation over the decades as the pre – eminent tool for engaging help in maritime emergencies. By and large that is what LOF has delivered, latterly through a minimalist panel of four experienced Queen's Counsels comprising three first instance arbitrators and one appeal arbitrator. The changes, which already have been circulated, included a number of measures deemed relatively uncontroversial. There was an intention to enlarge the panel to six including the appeal arbitrator, in tandem with once again allowing arbitrators in principle to be engaged as counsels in other LOF cases as was approximately ten years ago.

In general, the moves have been presented by Lloyds as it plans to improve LOF's image and polish up its credentials in line with market expectations and modern standards of transparency. The package was overshadowed, though, by the unprecedented decision to disband the present team of arbitrators prior to appointment of a new, reconstituted panel on October 1st this year. Although Lloyds has underlined

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[58] Source: www.clydeco.com

[59] Lowry N. (2009). *Ocean Crown salvage award heads for court test* , London, Newspaper Lloydslist (10/07/09)

that arbitrators are at liberty to reapply, it is clearly a move to oust one or more of the current line – up. The motivation for the changes can be traced in the constant complaints of the hull underwriters about high salvage awards.

Into this contentious picture, Lloyds has now despatched its invitations to barristers to apply for the vacant arbitrator spots, together with the code of conduct as part of the overhaul. However, the truth is that the most suitable for this position would be the already existed arbitrators mainly due to their wide experience. Therefore, a practitioner of admiralty law in general should not by any means find himself in such a position. What could be ideally be done would be to add to the existing panel the counsels that already have some expertise in such cases acquiring a dual role. In addition, unease over this has been compounded by an additional term, giving the Controller of Agencies the right to unilaterally terminate an arbitrator's appointment on three months notice. Not long ago, it would have been unthinkable, if such a power had existed, that it would ever be exercised for reasons other than the grossest misconduct, but in the current atmosphere the spectre of sacking arbitrators because they are not liked by one type of LOF user is inconceivable.

The greatest source of disquiet, though, has been the change that is envisaged to the traditional rotational system for matching arbitrators with cases. Instead, the Controller, in future, will have the right to decide which arbitrator will hear which specific case. This is likely to bring the system in dispute, simply because it enables the Controller to do just what the present system is designed to prevent, namely to choose which arbitrator is to deal with which specific case and in the process to lay herself open to the charge that she is acting at the behest of the insurer concerned in the case. No doubt the cause of these changes, as already stated, is the level of awards. However, in that context, awards are required to be assessed in accordance with the terms of Article 13 of 1989 Salvage Convention, not on some other basis which might appeal to the payer or the payee. The result is that the final amount may well not fit with what a party wishes to pay or conversely, may wish to receive.

Lloyds have been the custodian or trustee of this system for a century without anyone really noticing that this is Lloyds, an insurance house that is holding the reins without anyone asking the question of whether that is appropriate for a system that is meant to be fair on all sides. If these changes materialize, there is a real danger that

what has been a very good contract for all concerned is being sullied and its frequent users will lose their faith on it. [60]

If that happens, LOF system will slowly die, as salvors will engage in private submissions or even agree a customized LOF such as an agreed lump - sum award based on the percentage of the values at stake. Without the current arbitrators with their vast experience in salvage cases, who will assess fairly the awards?

[60] Lowry N. (2009), *Storm brewing over Lloyds Open Form arbitration*, London. Newspaper Lloydslist (10/07/09)

CONCLUSIONS

LOF is the most widely known, respected and enduring contractual document, among others, dealing with the resolution of various salvage disputes from the late nineteenth century till today. With its promptness and practicality, being its key characteristics, have eventually established it in the maritime industry.

LOF has undergone to a number of revisions in an effort to cater for changes in the shipping, economic and geopolitical reality as well as adjust to the developments in the environmental law regime and public awareness. The secret of its endurance through the years is dual. Its simplicity and the experience of those in charge of fixing the salvage award, lie behind it.

Despite the number of revisions it has gone through in an effort to become more useful and effective it is still questioned whether it has succeeded in this or not. Practical difficulties, inadequate legal framework and increasing public consciousness over the protection of the environment lead LOF and its users towards the need for a new revision.

Environmental salvage awards seem to be the most valuable solution as they have proved to be strong incentives to salvors in preventing the pollution of the environment since the current framework does not prove to be just and fair compared to the public interest. Institutional solutions are given to tackle practical problems of the LOF procedures. However, there is a need for revision of the International Salvage Convention as a large part of it, is outdated.

The most significant measure, though, for the contract to adapt to the latest market needs and trends is the preservation of reasonable, just awards proportionate to the services rendered. This way the salvage industry will be sustained and at the same time balance between the parties involved will be maintained.

The storm brewing over Lloyds Open Form arbitration could lead to the loss of faith towards a system which supported public interest and commercial benefit. If the measures do have that effect to LOF's users, then the question on whether the contract is viable would be rhetorical.

APPENDIX

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΑ

The International Convention on Salvage

THE STATES PARTIES TO THE PRESENT CONVENTION

RECOGNIZING the desirability of determining by agreement uniform international rules regarding salvage operations,

NOTING that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,

CONSCIOUS of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,

CONVINCED of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger,

HAVE AGREED as follows:

Chapter I - General provisions

Article 1 - Definitions

For the purpose of this Convention:

(a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.

(b) Vessel means any ship or craft, or any structure capable of navigation.

(c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.

(d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent

thereto, caused by pollution, contamination, fire, explosion or similar major incidents.

(e) Payment means any reward, remuneration or compensation due under this Convention.

(f) Organization means the International Maritime Organization.

(g) Secretary-General means the Secretary-General of the Organization.

Article 2 - Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

Article 3 - Platforms and drilling units

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

Article 4 - State-owned vessels

1. Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.

2. Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

Article 5 - Salvage operations controlled by public authorities

1. This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.

2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

3. The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

Article 6 - Salvage contracts

1. This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.

2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

3. Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment.

Article 7 - Annulment and modification of contracts

or any terms thereof may be annulled or modified if:

(a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or

(b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

Chapter II - Performance of salvage operations

Article 8 - Duties of the salvor and of the owner and master

1. The salvor shall owe a duty to the owner of the vessel or other property in danger:

(a) to carry out the salvage operations with due care;

(b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;

(c) whenever circumstances reasonably require, to seek assistance from other salvors; and

(d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:

(a) to co-operate fully with him during the course of the salvage operations;

(b) in so doing, to exercise due care to prevent or minimize damage to the environment; and

(c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

Article 9 - Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

Article 10 - Duty to render assistance

1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.

2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.

3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

Article 11 - Co-operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

Chapter III - Rights of salvors

Article 12 - Conditions for reward

1. Salvage operations which have had a useful result give right to a reward.

2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.

3. This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner.

Article 13 - Criteria for fixing the reward

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

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

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

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

(d) the nature and degree of the danger;

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

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

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

(h) the promptness of the services rendered;

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

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

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salved values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.

3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salved value of the vessel and other property.

Article 14 - Special compensation

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a

fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1 (h), (i) and (j).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.

5. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

Article 15 - Apportionment between salvors

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.

2. The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

Article 16 - Salvage of persons

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.

2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

Article 17 - Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Article 18 - The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

Article 19 - Prohibition of salvage operations

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention

Chapter IV - Claims and actions

Article 20 - Maritime lien

1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.

2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

Article 21 - Duty to provide security

1. Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.

2. Without prejudice to paragraph 1, the owner of the salved vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.

3. The salved vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the

completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

Article 22 - Interim payment

1. The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.

2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

Article 23 - Limitation of actions

1. Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.

2. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.

3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

Article 24 - Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

Article 25 - State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings in rem against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognized principles of international law.

Article 26 - Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

Article 27 - Publication of arbitral awards

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

Chapter V - Final clauses

Article 28 - Signature, ratification, acceptance approval and accession

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 29 - Entry into force

1. This Convention shall enter into force one year after the date on which 15 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.

Article 30 - Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply the provisions of this Convention:

(a) when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;

(b) when the salvage operations take place in inland waters and no vessel is involved;

(c) when all interested parties are nationals of that State;

(d) when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.

2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

Article 31 - Denunciation

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

Article 32 - Revision and amendment

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of eight States Parties, or one fourth of the States Parties, whichever is the higher figure.

3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

Article 33 - Depositary

1. This convention shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of the entry into force of this Convention;

(iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;

(iv) any amendment adopted in conformity with article 32;

(v) the receipt of any reservation, declaration or notification made under this Convention;

(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 34 - Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE AT LONDON this twenty-eighth day of April one thousand nine hundred and eighty-nine.

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