MARINE SALVAGE

FROM RHODIAN LAW TO LLOYD'S OPEN FORM 2000

An analysis of the development of marine salvage law with special focus on the impact of oil pollution and the role of the salvor

by

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PREFACE

The whole of this thesis, unless specifically indicated to the contrary in the text, is my own work and it has not been submitted to this or any other university. This thesis attempts to state the law as of 30 December 2002, unless specifically indicated to the contrary.

AMSHA GENGAN
30 NOVEMBER 2003

ABSTRACT

The origins of marine salvage law may be traced to a code of Rhodian Sea laws promulgated in 500BC. Presently, while salvage law retains the foundations of this early codification, it has undergone a complete metamorphosis in order to adapt to changing circumstances and new challenges of the 20th and 21st century.

Over the past few decades there have been many major oil spills. When they occurred each spill, for different reasons was declared as the most environmentally damaging. In their wake, they leave a trail of death and destruction of the eco-system.

As public concern for and awareness of the marine environment increases, governments and salvors face increased pressure to avert wide-scale pollution. In these instances, the stakes are high and the necessity and effectiveness of professional salvage only too clear. This study investigates the role played by the professional salvor and considers how the developments in the law have impacted upon the salvor's role in salvage operations.

This work has its genesis with this background in mind. It is essentially a study of the changes and developments in the law of Marine Salvage.

The law relating to salvage is dynamic and international in nature.

Dynamic in that it needs to adapt to new economic and environmental factors. This study examines and explains how these economic and environmental factors impacted upon and necessitated changes to the law of salvage. It is

international, in that salvage operations invariably involve parties from different countries. In some instances of large-scale pollution disasters the physical environment affected may encompass different countries/waters.

At times the discussion into the practical aspects of the salvage operations, salvage tugs and the industry as a whole has a tendency to become rather technical. For this I make no apology, for the world of marine salvage has totally fascinated and captured my attention.

In the international context the law relating to Salvage may be found in the International Convention on Salvage 1989. Many countries have ratified the convention and have subsequently enacted their own statutes based on the provisions of the Salvage convention. Other countries like South Africa have chosen not to ratify the convention and have formulated their own Statutes relating to the salvage. [1]

The salvage laws of the United Kingdom are perhaps mostly widely used. Its popularity may be attributed to London being the salvage arbitration capital of the world as well as the influential use of LOF in salvage operations which stipulates English law as the *lex contractus*.

The United Kingdom has ratified the International Salvage Convention and enacted the Merchant Shipping (Salvage and Pollution) Act 1994 which gave effect to the provisions of the convention. The current statute regulating Salvage is the Merchant Shipping Act of 1995.

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1 See Chapter 8 Infra.

The principal focus of this work will be English law, as applied in the United Kingdom as well as South African law. Passing reference is also made to the provisions of American law where relevant.

LAW TO BE APPLIED IN SOUTH AFRICA

South Africa's early salvage jurisprudence has been founded on the Salvage tenets of the English Admiralty Court.[2] It has also been influenced by the Roman – Dutch jurists of the seventeenth century.

Salvage may be regarded as a "maritime claim" as defined by s1 (i)(j) of the Admiralty Jurisdiction Regulation Act[3] :

> 'any claim for or in the nature of salvage, including any claim relating to the sharing or apportionment of salvage and any claim by any person having a right in respect of property salved or which would, but for the negligence or default of the salvor or would – be salvor, have been saved.'

Salvage disputes are therefore to be adjudicated upon by the High Court in the exercise of its Admiralty jurisdiction. In these disputes, the law that is to be applied is determined by s 6 of the Admiralty Jurisdiction Regulation Act. This section states:

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2 As a British Colony South Africa adopted the laws of England.
3 No. 105 of 1983.

6(1) Notwithstanding anything to the contrary in any law or in the common law contained a court in the exercise of its admiralty jurisdiction shall-

(a) with regard to any other matter in respect of which a court of admiralty of the Republic referred to in the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict c27), of the United Kingdom, had jurisdiction immediately before the commencement of this Act, apply the law which the High Court of Justice of the United Kingdom in the exercise of its admiralty jurisdiction would have applied with regard to such a matter at such commencement, in so far as that law can be applied.

Another important provision is sub-section (5) which provides that:

> 'the provisions of sub-section (1) shall not supersede any agreement relating to the system of law to be applied in the event of a dispute.'

It therefore may be stated that, subject to any applicable South African statute and to any agreement to a particular jurisdiction by the parties, English law as at 1 November 1983 would be applicable to salvage disputes heard in South Africa.[4]

In order to ensure that South African Salvage legislation was on par with international developments the South African legislature enacted the Wreck and Salvage Act, No. 94 of 1996. This act essentially achieves a 'balance of the traditional salvage law inherited from England, and the broadly accepted principles of the International Salvage Convention.'[5] It is submitted that this act governs matters relating to salvage in South Africa unless the parties to the dispute agree to be bound by the law of a foreign jurisdiction.

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4 In terms of s6(5) of the Admiralty Jurisdiction Regulation Act No. 105 of 1983.

5 Hare *Shipping Law and Admiralty Jurisdiction in South Africa*, (1999) 278

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Wreck and Salvage Act 104/1996

CONVENTIONS, PROTOCOLS, etc

1. Convention for the Unification of certain Rules of Law relating to Assistance and Salvage at Sea, 1910.
2. International Convention on Salvage, 1989
3. UNCLOS Convention on Law of the Sea, 1982.
4. International Convention for the Prevention of Pollution from Ships (MARPOL 1973/78)
5. International Convention on Civil Liability for Oil Pollution Damage, 1969.
6. International Convention on Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
7. International Convention on Intervention on the High Seas in cases of Oil Pollution Casualties 1969.

TABLE OF BOOKS

1. Abecassis and Jarashow, *Oil Pollution from Ships* (1987)
2. Ashburner, *The Rhodian Sea Law* (1909)
3. Bamford, *The Law of Shipping and Carriage in South Africa* (1974)
4. Bates, *UK Marine Pollution Law* (1988)
5. Bates, *UK Oil Pollution Legislation* (1988)
6. Brice, *Martime Law of Salvage* (2nd Edition) (1993)
7. Cahill, *Strandings and their Causes* (1985)
8. Darling & Smith, *LOF 90 and the New Salvage Convention* (1991)
9. Gaskell, Debattista & Swatton, Chorley & Giles' *Shipping Law* (1987) 8th Edition.
10. Gill, *The Wreck of the Torrey Canyon* (1967)
11. Gilmore & Black, *The Law of Admiralty* (2nd Edition (1975)
12. Hare, *Shipping Law and Admiralty Jurisdiction in South Africa* (1999)
13. Healy, Sharpe, *Admiralty : Cases and Materials* (2nd Edition) (1986)
14. Malynes, *Consuetudo Vel Lex Mercatoria Part 1 & 2* (1685)
15. Mommsen, Krueger, Watson, *The Digest of Justinian* (Vol. 1 (1985)
16. Mostert, *Supership* (1975)
17. Petrow, *The Black Tide in the Wake of the Torrey Canyon* (1968)
18. Sanborn, *Origins of the English Maritime and Commercial Law* (1930)

19. Schoenbaum, *Admiralty and Maritime Law* (1987)
20. Shaw, *Admiralty Jurisdiction and Practice in South Africa* (1989)
21. Singh, *International Maritime Law Conventions* (1984)
22. Soni, *Control of Marine Pollution in International Law* (1985)
23. Steel & Rose, *Kennedy's Law of Salvage* (5th Edition)(1986)
24. Vincenzini, *International Salvage Law* (1992)

TABLE OF ARTICLES

Abecassis 'Some topical Considerations in the event of a casualty to an oil tanker' (1979) *LMCLQ* 449

Abecassis 'Imo & Liability for oil pollution from ships : a retrospective' (1983) *LMCLQ* 45

Allen 'The International Convention on Salvage and LOF 1990' (1991) *JMLC* 119

Becker 'A short cruise on the Good Ships TOVALOP and CRISTAL' (1974 5 NO 4 *JMLC* 610

Benedict 'The Historical Position of the Rhodian Law' (1909) 18 *Yale Law Journal* 223

Bessemer – Clark 'The future of TOVALOP' (1978) *LMCLQ* 572

Bessemer – Clark 'The Role of Lloyds Open Form' (1980) *LMCLQ* 297

Bessemer – Clark 'The U.S. Oil Pollution Act of 1990' (1991) *LMCLQ* 247

Binney 'Protecting the Environment with Salvage Law : Risks, Rewards, and the 1989 Salvage Convention' (1990) 64 *Wash L Rev* 639

Brice 'Salvage : Present and Future' (1984) *LMCLQ* 394

Brice 'The New Salvage Convention : Green Seas and Grey areas (1990) LMCLQ 32

Brice 'Salvage and the Marine Environment' (1995) 70 *Tulane Law Rev* 169

Cohen 'Revisions of TOVALOP and Cristal : Strong Ships for Stormy Seas' (1987) 18 *Tulane Law Rev* 525

Coulthard 'A New Cure for Salvors? – A Comparative Analysis of LOF 1980 and the C.M.I. Draft Salvage Convention' (1983) 14 *JMLC* 50

Darling 'Willing Salvors – A Paramount Need' (1981) 4 *JMLC* 257

Darmody 'The Oil Pollution Acts Criminal Penalties : on a collision course with the Law of the Sea' (1993) 21 B.C. Environmental Affairs Rev 89

Donaldson 'Safer Ships Cleaner Seas – full speed ahead or dead slow?' (1998) *LMCLQ* 170

Dubais 'The Liability of a Sailor Responsible for Oil Pollution Damage' (1977) 2 *JMLC* 375

Fogleman 'English Law – Damage to the Environment' 72 *Tulane Law Rev* 571

Gaskell 'Contractual Remedies and LOF' (1986) *LMCLQ* 306

Gaskell 'LOF 1990' (1991) *LMCLQ* 104

Gaskell 'The 1989 Salvage Convention and Lloyds open form salvage agreement (LOF) 1990 (1996) 16 *Tulane Maritime Law Journal* 1

Goddard 'Salvage Agreements : The Master's authority' (1984) *LMCLQ* 255

Gold 'Marine Salvage : Towards a new Regime' (1989) 20 *JMLC* 487

Griggs 'An examination of Lloyds standard form of Salvage Agreement' (1974) 2 *LMCLQ* 138

Healy 'The C.M.I. and I.M.C.O. Draft Conventions on Civil Liability for Oil Pollution' (1969) 1 *JMLC* 93

Healy 'The International Convention on Civil Liability for Oil Pollution Damage' (1969) 1 *JMLC* 317

Huang 'The Chinese Maritime Law of Salvage' (1995) *LMCLQ* 269

Hudson 'Salvage, General Average and the insurance of average disbursements' (1980) *LMCLQ* 168

Jacobsen, Yellen' Oil Pollution : The 1984 London Protocols and Amoco Cadiz' (1984) 15 *JMLC* 467

Kerr 'The 1989 Salvage Law : Expediency or Equity' (1989) 20 *JMLC* 505

Kerr 'The International Convention on Salvage 1989 – How it came to be' (1990) 39 *JMLC*

Miller 'Lloyds Standard Form of Salvage Agreement – LOF 1980 : A Commentary' (1981) 12 *JMLC* 247

Myburgh 'The 1989 Salvage Convention : Casualty or Cure?' (1996) *New Zealand Law Journal* 267

Neilson 'The 1989 International Convention on Salvage' (1992) 24 *Connecticut Law Review* 1205

O' May 'Lloyds form and the Montreal Convention' (1983) 57 *Tulane Law Review* 1412

Paulsen 'An Historical Overview of the development of Uniformity in International Maritime Law' (1983) 57 *Tulane Law Review* 1069

Randolph 'Negligent Salvage : Reduction of Award, Forfeiture of Award or Damages?' (1976) 7 *JMLC* 419

Rodriguez and Jaffe 'The Oil Pollution Act of 1990' (1990) 15 *Tulane Maritime Law Journal* 1

Shaw 'The 1989 Salvage Convention and English Law' (1990) *JMLC* 202

Sheen 'Conventions on Salvage' (1983) 57 *Tulane Law Review* 1394

Staniland 'Should the 1989 International Convention on Salvage be enacted in S.A.' (1991) 3 *SALJ* 292

Tiberg 'Oil Pollution of the Sea and the Swedish Tsesis decision' (1984) *LMCLQ* 218

Thomas 'Lloyds Standard Form of Salvage Agreement : A descriptive and analytical scrutiny' (1978) 2 *LMCLQ* 276

Thomas 'Salvorial Negligence and its consequences' (1977) 2 *LMCLQ* 167

Waddams 'Dr Lushington's contribution to the law of maritime salvage (1833 – 67) (1989) *LMCLQ* 59

Wagner 'The Oil Pollution Act of 1990 : An Analysis (1990) 21 No 4 *JMLC* 69

Wallace 'Safer ships, cleaner seas : The report of the Donaldson Inquiry into the prevention of pollution from merchant shipping' *LMCLQ* 404

Watkins 'Salvage Convention 1489 – who pays?' (1989) *LMCLQ* 416

White – Harvey 'Black – Tide at the Convergence of Admiralty and Environmental Law' (1991) 1 *Journal of Environmental Law and Practice* 259

Wooder 'The New Salvage Convention : A Shipowner's Perspective' (1990) 21 *JMLC* 81

Lawson 'Salvage in Non-Tidal Waters : The Goring' (1987) *LMCLQ* 262

Case & Comment 'Non – Maritime Admiralty Claims : The Goring ' (1986) *LMCLQ* 276

TABLE OF CASES

24. Cythera, The (1965) 2 Lloyd's Rep. 454
25. Dart, The (1899) 8 Asp. 481
26. David James Fairburn and Others v Vennootschap G Ver Vries ZN and Others (The "Pergo") [1987] 1 Lloyd's Rep. 582
27. Dorothy Foster, The (1805) 6 Ch. Rob. 89
28. Duke of Manchester, The 6 Moore P.C. 98 (1847) 6 Moore PC 98
29. Dwina, The [1892] P.58
30. Edward Hawkins, The (1862) 15 Moore P.C. 486
31. E.U. The (1853) 1 Spinks E. & A 63
32. Fine V Rockwood 895 F. Supp. 306 (S.D. Fla. 1995)
33. Florence, The [1852] Jur. 572
34. Gark vs Straits Towing Ltd and Sayer (1966) 2 Lloyd's Rep. 277
35. Gas Float Whitton, The No. 2 [1896] P.42, [1897] A.C. 337
36. Glaucus, The [1948] 81 L1. L Rep. 262
37. Governor Raffles, The (1815) 2 Dods.14
38. Hand v The Elvira F. Cas [1829] 6015
39. Hassel, The [1959] 2 Llyod's Rep. 82
40. Hendrick v Gordon Gill, 737 F. Supp. 1099 (Alk. 1989)
41. Hobart v Drogan 35 U.S. (ID Pet) (1836) 108
42. Homewood, The [1928] 31 L1 L Rep. 336
43. Industry, The (1835) 3 Hag. Adm. 203
44. Jackson v Costa Lines 490 F. Supp. 393 (1980)
45. Jonge Bastiaan, The (1804) 5 Ch. Rob 322
46. Joseph Harvey, The (1799) 1 Ch. Rob 306

47. J P Donaldson, The (1897) 167 U.S. 599
48. Lady Worsley, The (1885) 2 Spinks E & A 253
49. Le Jonet, The (1827) L.R.3A. & E. 556
50. Leon Blum, The [1915] P.90
51. Lockwoods, The (1845) 9 Jur. 1017
52. Luigi Accame, The [1938] 60 L. Rep. 106
53. Magdalen, The (1861) 31 LJPM & A. 22
54. Margate v M/V Ja Orgeron 1998 WL. 310124 (5th Cir. June 29, 1998)
55. Melanie (Owners), v San Onofre (Owners), The [1925] AC 245 (HL)
56. Melpomene, The (1873) L.R. 4A & E. 129
57. Merannio, The [1927] 28 L1. Rep. 352
58. Minnehaha, The (1861) 15 Moore P.C. 133
59. Mount Cynthos, The [1937] 58 L1. L. Rep 18
60. M Vatan, [1987] 2The 1 Lloyd's Rep. 416
61. National Defender, The (1970) 1. Lloyd's Rep. 40
62. Natterstroom v Ship Hazard, 2 Halls L.J. 359
63. Neptune, The (1842) 1. Hag Adm. 227
64. North Goodwin No. 16, The [1980] 1 Lloyd's Rep. 71
65. Oceanic Grandeur, The [1972] 2 Lloyd's Rep. 396
66. Owners of the Motor Vessel "Tojo Maru" v N V Bereau Wijsmuller (the Tojo Maru) [1972] A C 242
67. Pantanassa, The [1970] 1 Lloyd's Rep. 153
68. Pensacola, The (1864) Br. & Lush. 306

69. Phantom, The (1866) L.R. 1 A & E. 58
70. Pinnas, The (1888) 6. Asp. M.L.C. 313
71. Portreath, The [1923] P. 155
72. Princess Alice, The (1849) 3 W Rob 138
73. Proguess, The (1810) 1 Edw. 210
74. Red Rover, The (1850) 3 W Rob 150
75. Renpor, The (1883) 8. P.D. 115
76. San Demetrio, The [1941] 69 Lloyd's Rep. 5
77. Sappho, The (1871) 17 E.R. 238
78. Sarpen, The (1916) P. 306
79. S.C. Loveland Co. v U.S.A. (1963) A.M.C. 260
80. Sellasia, The 1926 C.P.D. 437
81. Semco Salvage and Marine Pte. Ltd. V Lancer Navigation Co. Ltd ("The Nagasaki Spirit") [1997] 1 Lloyd's Rep. 141.
82. Shape v U.S. 1979 AMC 2282
83. Sims v Jackson, 1 Peters, Adm 157
84. Smaragd, The [1927] 28 L.1.L. Rep. 302
85. South African Railways and Harbours v Johnson Navigation Co. S.A. (The Manchester) 1981 (2) S.A. 798 (C)
86. St Blane, The [1974] 1 Llyod's Rep. 557
87. Swan, The (1839) 1 W. Rob. 68
88. Tarbet, The (1921) P 372
89. Texaco Southampton, The [1983] 1 Llyod's Rep 94
90. Thetis, The (1869) L.R. 2 A & E 365
91. Towle v The Great Eastern (1864) 2 M.L.C. 148

92. Trico Marine Oper. Inc. v Sow Chem Co. 809 F. Supp. 440 (E.D. La 1992)
93. Troilus (Cargo Owners) v Glenogle (Owners, Master and Crew) [1951] AC 820
94. True Blue, The (1843) 2 W Rob 176
95. Trumpeter, The [1947] 80 L1 L. Rep. 263
96. Undaunted, The (1860) Lush. 90
97. Vrede, The (1861) Lush. 322
98. Walton v The Ship Neptune 1 Peters, Adm. 142
99. Warrior, The (1862) Lush. 476
100. Waterloo, The (1820) 2 Dods 433
101. Westar Marine Services v Heerema Marine Con. 621. F. Sup. 1135 (N.D. Cal. 1985)
102. White Star, The (1866) L.R.1. A & E 68

TABLE OF STATUTES

UNITED KINGDOM

Admiralty Court Act 1840

Control of Pollution Act 1990

Dangerous Vessels Act 1985

Marine Insurance Act 1906

Maritime Conventions Act 1911

Merchant Shipping Act 1854

Merchant Shipping (Oil Pollution) Act 1990

Merchant Shipping (Salvage and Pollution) Act 1994

Prevention of Oil Pollution Act 1971

Water Resources Act 1991

Wreck and Salvage Act 1846

UNITED STATES

Act to Prevent Pollution from Ships 1980

Clean Water Act 1990

Comprehensive Environmental Response Compensation and Liability Act 1980 (CERCLA) (Superfund Oil Pollution Act 1990 Act).

Ports and Waterways Safety Act 1972.

Rivers and Harbors Act 1899 (Refuse Act)

Salvage Act 1984

33 United States Code

SOUTH AFRICA

Admiralty Regulation Jurisdiction Act 103 / 1983

Wreck and Salvage Act 104/1996

CONVENTIONS, PROTOCOLS, etc

1. Convention for the Unification of certain Rules of Law relating to Assistance and Salvage at Sea, 1910.
2. International Convention on Salvage, 1989
3. UNCLOS Convention on Law of the Sea, 1982.
4. International Convention for the Prevention of Pollution from Ships (MARPOL 1973/78)
5. International Convention on Civil Liability for Oil Pollution Damage, 1969.
6. International Convention on Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
7. International Convention on Intervention on the High Seas in cases of Oil Pollution Casualties 1969.

MISCELLANEOUS

1. Roger Field, 'The South African Wreck and Salvage Act'- paper delivered at 15th International Tug and Salvage Convention (hereinafter referred to as ITS), November 1998, Cape Town

2. Archie Bishop, 'Special Compensation: main provisions of the SCOPIC Clause'. ISM Bulletin 17 November 1998. Pg. 4

3. International Salvage Union Pollution Prevention Survey – ISU Bulletin November 1998.

4. J T Shirley & H Whyte-Kattas, ' Marine Pollution: The Salvors Saviour or Albatross? - paper delivered at ITS' 1998, November 1998, Cape Town.

5. Cassidy, M, 'The New Laws of Salvage' - unpublished article written by attorney from Haight, Gardner, Holland & Knight - New York Law Office.

6. Shirley & Wyte-Kattas, 'Marine Salvage: From OPA'90 to Salvage Salvage 2000.' Paper delivered by James T Shirley and Richard E Fredericks before the Connecticut Maritime Association and the Maritime Association of the Port of New York And New Jersey. 20 November 1997.

7. Adelbert, 'Marine Oil Pollution Prevention – Born at the Cape of Storms'. – paper delivered at ITS'98, Cape Town.

8. Statement of Judson W Starr – Hearings on Criminal Liability for Oil Pollution before the Subcommittee on Coast Guard and Marine Transportation of the House Committee on Transportation and Infrastructure, 105th Congress, 2nd Session (1998).

9. Statement of Congressman Wayne Gilchrest – Hearings on Criminal Liability for Oil Pollution before the subcommittee on Coast Guard And Marine Transportation of the House Committee on Transportation and Infrastructure, 105th Congress, 2nd Session (1998)

10. Statement of Douglas Eklof, CEO of EKLOF Marine Corporation – Hearings on Criminal Liability for Oil Pollution before the Subcommittee on Coast Guard and Marine Transportation of the House Committee on Transportation and Infrastructure, 105th Congress, 2nd Session (1998).

11. Statement of Dennis L. Byrant, Senior Counsel of Haight, Gardner, Holland and Knight – Hearings on Criminal Liability for Oil Pollution before the Subcommittee on Coast Guard and Marine Transportation of the House Committee on Transportation and Infrastructure, 105th Congress, 2nd Session (1998).

12. 'Ruling on Nagasaki Spirit lets Salvors Know where they stand.' Shipping Times, Strait Talk, Pg. 1 Business Times (Singapore) 12 February 1997.

13. Milwee, 'Living with OPA'90: Salvage Contracting in a Highly Regulated Environment. 'Paper delivered at ITS'94.

14. A Kathirasen, 'Penang Takes the Lead in Oil Spill Task Force'. New Straits Times (Malaysia) 28 October 1997.

15. Seafarer 'Is Compromise on Salvage Issue the Best Way Forward?' – Business Times (Singapore) 17 December 1997.

16. M Wijsmuller and R Harvey 'Practical Aspects of Environmental Issues and today's Pandora's Box'. – paper delivered at ITS'98, November 1998, Cape Town.

17. 'Salvors anger over 'Spill Crime', Llyods List, 16 December 1997.

18. ISU Voices concern over Failure to provide Salvors with 'Responder Immunity' - Lloyd's List 21 July 1998.

19. CF Gonzaga 'The South African Wreck and Salvage Act 94 of 1996 : An Analysis of Current Law and the Salvor's Plight'. Research Project submitted as Maritime Law Elective in terms of LL.B degree

20. C Kaestner 'Legal Encouragement for Salvage' Masters Thesis, Shipping Law Unit, University of Cape Town, 1998.

21. Thompson 'Salvage: Towards a more user friendly Law' Masters Thesis, Shipping Law unit, University of Cape Town, 1998.

22. P, Zandee 'The Salvor's contribution to environmental protection and the recovery of private investment in South Africa's salvage capability.'- paper delivered at 6th National Maritime Conference, March 1999, Durban.

23. Pentow Marine Brochure on 'Caring for the Environment.'

24. 'Salvage: Talks on LOF 1998/Special Compensation enter final phase.'Lloyd's List, 15 April 1998.

25 A Witte, 'Consultation Now Under Way on New LOF Contract.' Shipping World and Shipbuilder.

26. Toyomura & Miller, 'The New Koyo Maru' – paper delivered at the 15th International Tug and Salvage Convention, Cape Town, November 1998.

27. 'Koyo Maru makes debut…the Biggest in a Decade.' September/October 1998, International Tug & Salvage Magazine. 26

28 'Germany's North Sea Solution – 'the Marine Disaster Prevention Ship.' November / December 1998. International Tug & Salvage Magazine 20

29. J, Lynch, 'Oil, Environment and Trade' – research paper.

30. P Dyrynda & R Symberlist, 'Oil Pollution- Sea Empress.' Research paper – School of Biological Sciences – University of Wales.

31. 'In re Oil Tanker Spillage' – correspondence from international Branch of the European Commission.

32. 'Braer Crude Oil Tanker Splits as Weather Hinders Containment.' Oil & Gas Journal, 1993.

33. 'Lucky Braer Escape Leaves no room for complacency.' Llyod's List. 4 January 1994.

34. E Shuker, 'Salvor's Unhappy with Conventions coastal Limitation.' Journal of Commerce, 20 July 1995.

SHIPPING LAW WEBSITES

1. www. intertanko.com
2. www. marine-salvage.com
3. www. uctshiplaw.com
4. www. bimco.dk
5. www. admiraltylaw.com
6. www. fairplay-publications.co.uk
7. www. llyods.com
8. www. imo.org
9. www. hKtug.com
10. www. donjon.com

CHAPTER 1

INTRODUCTION

There have been remarkable changes in the field of maritime transport which have led to large scale environmental catastrophes.

At the end of World War II supertankers were carrying 25 000 tons of oil. By 1960, Carriers, capable of carrying 100,000 tons of oil, were being built. Soon thereafter, Carriers, capable of carrying 500,000 tons of oil, were built.

At the time of these developments, there were no effective measures for protecting the environment from the effects of a major casualty involving the carriage of oil. The first major casualty in this regard was the stranding of the Torrey Canyon in 1967. The Amoco Cadiz disaster followed in 1978. Many more casualties followed throughout the world. The stranding of the Exxon Valdez on the coast of Alaska is perhaps the best known example of marine pollution in the United States of America.

In most instances major casualties and environmental catastrophes "are and can be averted by prompt action taken at sea, not by the governments, but by private corporations. These private actors are the world's professional salvors".[1]

[1] Brice 'Salvage and the Marine Environment' (1995) 70 Tulane Law Review 669

In recent years public and private concern for the environment, and especially the effects of marine pollution, have resulted in the modernization of marine salvage law.

The main objective of this thesis is to examine the impact of marine pollution on the law of salvage and how the resultant changes have affected the salvage industry.

To understand adequately the evolution of marine salvage law, one must first understand its historical origins.

This is examined in Chapter 2. The origins of salvage law are of great antiquity, and even to this day and age this body of law has retained its *sui generis* characteristics. This chapter examines the origins and development of early salvage law. It focuses predominantly on the "oft colourful origins of the law of salvage",[2] from the Rhodian provisions to the Marine Ordinance of Louis XIV. While these venerable laws are now obsolete, it is the opinion of this writer, that they should not be erased from our minds. They illustrate that even from its earliest beginnings the law of salvage had been founded on principles of equity and impartiality. These ancient laws further indicate that the law does not function *in vacuo*, rather it adapts to changing political, economic and environmental conditions.

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[2] Field, "The South African Wreck and Salvage Act" paper delivered at the 15th International Tug and Salvage Convention, Cape Town, November 1998.

Chapter 3 examines the principles of classic salvage law and the necessary pre-requisites for a salvage award. This discussion will include a perusal of selected case law on this issue. The focus in Chapter 4 is two-fold. Firstly, it examines the pressure placed on this ancient law by modern circumstances.

Spawned by the relentless economics of oil, the birth of the gargantuan crude carriers had led to catastrophic disasters on the world's oceans. This discussion includes an examination of selected marine casualties. Secondly, this chapter discusses the responses from the commercial and legal maritime sectors directed at alleviating the crisis in marine salvage law created by these changing circumstances and new pressures.

Chapter 5 analyses and discusses the International Convention on Salvage, 1989 and LOF 1990. It examines those provisions in the convention which represent a modernization to the law of salvage. It then discusses how these provisions have fared in practice. This chapter also considers LOF 1990 which essentially incorporated the main provisions of the convention into practice.

Chapter 6 considers the interdependent relationship between the salvage industry and marine pollution. This chapter examines the important role played by the salvor in marine pollution. It then discusses the impact marine pollution has had on the salvage industry. It highlights the new opportunities that marine pollution has created for the salvage industry.

Chapter 7 examines the negative impact which marine pollution has had on the salvage industry. It discusses the difficulties and additional risks which

now burdens the salvor. It illustrates how in a climate of "if it spills you can go to jail"; the salvor has had to develop new strategies to survive.

Chapter 8 examines the historical development of salvage law in South Africa. It focuses particular attention to the country's innovative Wreck and Salvage Act 94 of 1996. Further it discusses salvage legislation from foreign jurisdictions, commenting on the most advanced features of the respective legal systems. It is not the intention at this juncture to investigate any of these legal systems in any great depth. But a comparative analysis was undertaken, in order to comment on the most successful salvage legislation in an international context.

On a practical level, the chapter discusses the role played by South Africa's professional salvor in marine environmental protection along the South African coast.

Chapter 9 examines foreign national salvage agreements. While it is generally accepted that LOF dominates the salvage industry, other national agreements are frequently used in their jurisdictions. A discussion of their important clauses reveal that principles of the International Convention on Salvage, 1989 and of the various editions of LOF have been adopted by the international salvage and shipping industries.

Chapter 10 discusses SCOPIC, the innovative new procedure that may be used to calculate special compensation. The discussion indicates that changes in the shipping and salvage industries have necessitated the formulation of a new methodology to calculate special compensation.

Further, it reveals that the development of SCOPIC indicates the willingness of members from the salvage, P & I and underwriting communities to ensure the effectiveness of future salvage operations.

Chapter 12 examines the new Lloyd's Open Form launched in September 2000. A discussion of the new edition of LOF reveals that the new form was necessary to incorporate the SCOPIC clause. A shorter, concise and clearly-defined contract was necessary for 21st Century salvage.

The salvage industry has had to confront difficult times in the previous few years which made investment in new salvage tugs almost impossible. In the late nineties, however, a Japanese salvor was prompted to commission a 2,000 million Yen salvage tug. This represented the construction of the first major salvage "tug" in a decade. The courageous act of Nippon Salvage Company Ltd is welcomed as it injects confidence into the future of the salvage industry as a whole.[3]

[3] Personal Communication with Nippon Salvage executives at International Tug & Salvage Convention 1998, held in Cape Town.

CHAPTER 2
HISTORICAL ORIGINS OF SALVAGE

A historical analysis of the origins of maritime law reveal that sea ports with flourishing trade pre-empted the growth of laws required to facilitate trading activities. The main purpose of these laws was to provide uniform regulation of trade to those in the seafaring community.

As cities prospered and amassed power their influence extended across territorial boundaries. This resulted in replication of uniform maritime regulations over a large geographical area. These regulations developed in accordance with the changing political and economic circumstances that arose.

(i) THE RHODIAN LAW

Evidence indicates that there existed a code of sea laws promulgated on the Island of Rhodes in the Eastern Mediterranean from approximately 900 BC. It is, however, argued by some legal scholars as being an unrealistic date and they suggest that a more probable date would be 500 BC.[1]

The Island of Rhodes was a leading commercial and cultural entity in its time and retained its pre-eminence well into the Roman period. The Rhodians were legendary for their naval power and discipline and the island was also a celebrated maritime center. This led to the promulgation

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[1] Gilmore & Black *The Law of Admiralty* 2ed. (1975) 3; Healy & Sharpe *Admiralty: Cases and Materials* 3ed. (1974).

of a code of Sea-Laws that were received at Athens, and on all the islands of the Aegean Sea and the entire Mediterranean Coast. These laws were recognised as a system of uniform rules relating to merchants and their vessels and are now referred to as "The Rhodian Sea Laws".[2]

The Rhodian Sea-Laws are accepted as the oldest codification of marine rules and customs of ancient times. Uncertainty does however surround its origin. This is further compounded by the fact that no primary source of these sea-laws exist; but rather we have only secondary sources as derived from Greek writings and times.[3]

Ashburner, who conducted an extensive study on the Rhodian Sea-Laws, confirms that the code is of Byzantine origin.[4]

It is also influenced by several other sources:

> The Sea-Law was put together from material of very different epochs and character. Some of it was possibly from treatises in the nature of a 'Complete Merchant' guide to a gentleman engaging in business. Other parts may come from enactments of Byzantine Caesars; but the mass of it must be derived from local customs. Some provisions which originally had nothing to do with maritime affairs have been

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2 See Malynes *Consuetudo Vel Lex Mercatoria* (1686); Gilmore & Black *The Law of Admiralty* 2ed. (1975) S 1.2; Healy & Sharpe *Admiralty: Cases and Materials* 3ed. (1974) 75; Sanborn *Origins of the Early English Maritime and Commercial Law* (1930) 89; *Benedict on Admiralty S* 2 (1981). The authoritative English work on the Rhodian Sea-Law is Ashburner *The Rhodian Sea-Law* (1909).

3 Ashburner op cit, supra.

4 Schoenbaum *Admiralty and Maritime Law* (1987) 6.

doctored in order to bring them within the purview of the Sea-Law. There are traces of a South Italian origin for some of the chapter."[5]

Part I of the Rhodian Sea Laws is essentially a prologue consisting of proclamations by various Roman emperors which sought to validate this given body of laws.

Part II consists of nineteen chapters that can be regarded as a set of rules which lend guidance to and regulate the passengers' stay on board the vessel. These rules relate to the space allotted to each passenger, the limitation on the number of servants that a merchant can bring, the amount of water usage and specific acts or behaviour that are probited. The latter chapters in Part II govern the limitation of a captain's liability for the valuables of a passenger where these have been deposited with the captain. Further, reference is made to the method to be adopted when valuing a ship for general average purposes. The last two chapters in this part concern maritime loans as well as loans in general.

Part III is comprised of forty-seven chapters. A diverse range of topics are considered, such as responsibility for thefts of cargo, liability for seamens' personal injuries, responsibility for injury to the ship or cargo, the consequences of abandonment of the vessel by the captain and crew, and the chartering of vessels by merchants and the limitation of conditions under which the owners of freight are entitled to demand contribution. The latter chapters in Part III consider the liability for collision, salvage services and reward.

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5 Ashburner, op cit cxiii.

The chapters alluding to salvage, as set forth in the Rhodian Sea Laws, are indicative of a highly developed and equitable system of legal rules. The following are excerpts from the Rhodian Sea Laws which rewarded the efforts of salvors of distressed or wrecked ships:

Article XLV: 'If in the open sea a ship is overset or destroyed, let him who brings anything from it safe on to land receive instead of reward the fifth part of that which he saves.'

Article XLVI: 'A boat breaks the ropes and gets off from its ship and is lost with all hands. If those on board are lost or die, let the captain pay their annual wages for the full year to their heirs. He who saves the boat with its rudders will give them all back as he in truth finds them and receive the fifth part of what he saves.'

In terms of Rhodian law the award to salvors was determined in accordance with the merits of each case, thereby ensuring that the award was proportionate to the danger encountered in the salvage operation. The pertinent provision reflecting this percentage method of determining the salvage award is as follows:

Article XLVII: 'If gold or silver or anything else is raised from the sea from a depth of eight fathoms, let the salvor receive one-third. If it is raised from a depth of fifteen fathoms, let the salvor receive one-half by reason of the danger of the sea. Where things are case from sea to land and found there or carried to within one cubit of the land, let the salvor receive one-tenth part of what is salved.'

The Rhodian law also imposed harsh sanctions on looters of goods from the shipwrecked vessels as well as on those persons victimizing shipwrecked seamen or passengers. In this regard the following articles stated:

Article XLVIII: 'Whoever takes anything from a wreck by violence shall restore fourfold.'

Article L: 'Whoever violently takes away any of the miserable remains of shipwrecks or takes any advantage of that grievous misfortune, shall restore fourfold to the owners.'

Article LI: 'If any man more grievously oppresses shipwrecked persons, and forcibly carries off any shipwrecked goods, after restitution; If he is a freeman, he shall be condemned to three years banishment; If a man of law degree, he shall be employed in the public works during that time. And if a slave, he shall be put to the most severe and hardest labour.'

(ii) ROMAN LAW

The predominant sentiment among the majority of legal scholars is that the Romans never formulated their own system of maritime law and were content to accept the law of the Rhodians as their own.[6]

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[6] *Kent's Commentaries* 13ed (1884) Vol. 3, 6.

Evidence in support of the above proposition is derived from the Digests of Justinian.[7]

In assessing the Rhodian influence on Roman maritime law, one needs to be mindful of the criticism leveled by some legal scholars, especially R.D. Benedict. He acknowledges the Rhodian law on jettison as contained in the Digest, but states in no uncertain terms that outside this principle of jettison, Rhodian law cannot be regarded as the foundation of Roman maritime jurisprudence.[8]

Like the Rhodian law, Roman law also provided for the volunteer salvors to be rewarded. Some schools of legal thought maintain that the remedy of salvage (as we know it today) was derived from the Roman law principle of *negotiorum gestio*. The view is, however, plagued with uncertainty.[9]

The expansion of the Roman Empire saw the establishment of many ports along various trading routes. Each port had formulated its own set of rules in accordance with 'local custom, the nature of trade, the volume of traffic and the distance from Rome'. This divergence was so great that 'by 1920 Marseilles, Genoa, Peloponnesus, Venice, Constantine and Arragon had local variations based upon Rhodian Sea Laws'.[10]

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7 Digests of Justinian:
(a) Petition of Eudaumon of Nicomedia to the Emperor Antoninus: "Antonius, King and Lord, we were shipwrecked in Icaria and robbed by the people of the Cyclades." Antoninus replied to Eudamon:"I am master of the world, but the law of the sea must be judged by the sea law of the Rhodians where our own does not conflict with it." Digest 14.2.9.
(b) "The Rodian law provides that if cargo has been jettisoned in order to lighten a ship, the sacrifice for the common good must be made good by common distribution." Digest 14.2.1.

8 For a detained discussion on Rhodian law and its influence (or lack thereof) on Roman law, see: Benedict "The Historical Position of the Rhodian law" (1909) 18 *Yale Law Journal* 223-240; See also: Gilmore & Black *The Law of Admiralty* 2ed (1975) 3.

9 Brice *Maritime Law of Salvage* 2ed (1993) para 1-11.

10 Malynes, op cit, 3; Paulsen "An Historical Overview of the Development of Uniformity in International Maritime Law"(1983) 57 *Tulane Law Review* 1069.

(iii) LAWS OF OLERON

The laws of Oleron[11] is a code that takes its name from the small island of Oleron situated off the French coast where it was promulgated[12] by Queen Eleanor, wife of Henry II, King of England and mother to Richard I, and called Roolés d'Oleron.

This system of rules developed as a result of the flourishing wine trade between Aquitaine, England and Flanders. There exists much speculation as to the exact date of promulgation of the Rolls but the latter half of the thirteenth century is accepted as the given date of promulgation.[13]

The Rolls of Oleron were subsequently introduced into England by King Richard I (the Lion-hearted). These laws were highly respected both in England and France. They gained in supremacy and importance as the Rhodian laws became antiquated, and were prominent[14] in the development of modern maritime law.

Further, they have served as authority on admiralty matters in several cases in the United States.[15]

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11 The text of the Rolls of Oleron can be found in Malynes *Consuetudo Vel Lex Mercatoria* Part 2 (1686), which is a translation of the French book *Les Us and Contumes de la Mer.*

12 Malynes op cit 3; Gilmore & Black, op cit, 7.

13 The oldest existing manuscript dates from the early 14th Century, but most scholars accept an earlier date in the second half of the 13th Century. Krieger, who conducted the most detailed research into the origins of the Rolls concludes that it dates from the last half of the 13th Century. Schoenbaum op cit 8.

14 Ibid at 9.

15 *Walton v The Ship Neptune* 2 *Peters, Adm.* 142; *Natterstrom v Ship Hazard,* in the District Court of Massachusetts, 2 *Halls L.J.* 359; *Sims v Jackson* 1 *Peters, Adm.* 157; *Kent's Commentaries,* supra, 13.

The laws of Oleron made several references to salvage: Article III allows for a reward to seamen who saved some of the cargo or parts of the shipwrecked vessel. It states as follows:

> 'If any vessel, through misfortune, happens to be case away, in whatsoever place it be, the mariners shall be obliged to use their best endeavours for saving as much of the ship and lading as possible they can; and if they preserve part thereof, the master shall allow them a reasonable consideration to carry them home to their own country. And in case they same enough to enable the master to do this, he may lawfully pledge to some honest persons such part thereof as may be sufficient for that occasion. But if they have not endeavoured to save as aforesaid, then the master shall not be bound to provide for them in any thing, but ought to keep them in safe custody, until he knows the pleasure of the owners, in which he may act as becomes a prudent master, for if he does otherwise, he shall be obliged to make satisfaction.'

Article IV reads:

> 'If a vessel departing with her lading from Bordeaux, or any other place, happens in the course of her voyage, to be rendered unfit to proceed therein, and the mariners save as much of the lading as possible they can; if the merchants require their goods of the master, he may deliver them if he pleases, they paying the freight in proportion to the part of the voyage that is performed, and the costs of the salvage. But if the master can readily repair his vessel, he may do it; or if he pleases he may freight another ship to perform the voyage. And if he has promised the people who helped him to save the ship the third, or the half part of the goods saved for the danger

they ran, the judicatures of the country should consider the pains and trouble they have been at, without any regard to the promises made them by the parties concerned in the time of their distress.

'Further reference to salve is made in the following articles:

Article XXV:

'If a ship or other vessel arriving at any place, and making in towards a port or harbour, set out her flag, or give any other sign to have a pilot come aboard, or a boat to tow her into harbour, the wind or tide being contrary, and a contract be made for piloting the said vessel into the said harbour accordingly; but by reason of an unreasonable and accursed custom, in some placed, that the third or fourth part of the ship that are lost, shall accrue to the lord of the place where such sad casualties happen, as also the like proportion to the salvors, and only the remainder to the master, merchant and mariners; the persons contracting for the pilotage of the said vessel, to ingratiate themselves with their lords, and to gain to themselves a part of the ship and lading, do like faithless and treacherous villains, sometimes even willingly, and out of design to ruin ship and goods, guide and bring her upon the rocks, and then feigning to aid, help and assist, the now distressed marines, are the first in dismembering and pulling the ship to pieces; purloining and carrying away the lading thereof contrary to all reason and good conscience; and afterwards that they may be the more welcome to their lord, do with all speed post to his house with the sad narrative of this unhappy disaster; whereupon the said lord, with his retinue appearing at the places, takes his share; the salvors theirs; and what remains the merchants and mariners may

have. But seeing this is contrary to the law of God, our edict and determination is, that notwithstanding any law or custom to the contrary, it is said and ordained, the said lord of that place, salvors, and all other that take away any of the said goods, shall be accursed and excommunicated, and punished as robbers and thieves, as formerly hath been declared. But all false and treacherous pilots shall be condemned to suffer a most vigorous and unmerciful death; and high gibbets shall be erected for them in the same place, or as high as conveniently may be, where they so guided and brought any ship or vessel, to ruin as aforesaid, and thereon these accursed pilots are with ignoring and much shame to end their days; which said gibbets are to abide and remain to succeeding ages on that place, as a visible caution to other ships that shall sail thereby.'

Article XXIX:

'If any ship or other vessel sailing to and fro, and coasting the seas, as well in the way of merchandizing, as upon the fishing account, happen by some misfortune through the violence of the weather to strike herself against the works, whereby she becomes so bruised and broken, that there she perishes, upon what coasts, country, or dominion soever; and the master, mariners, merchants, or any one of these escape and come safe to land; in this case the lord of that place or country, where such misfortune shall happen, ought not to let, hinder, or oppose such as have so escaped, or such to whom the said ship or vessel, and the lading belong, in using their utmost endeavours for the preservation of as much thereof as may possibly be saved. But on the contrary, the lord of that place or country, by his own interest, and by those under his power and jurisdiction, ought to

be aiding and assisting to the said distressed merchants or mariners, in saving their shipwrecked goods, and that without the least embezzlement, or taking any part thereof from the right owners; but, however, there may be a remuneration or consideration for salvage to such as take pains therein, according to right reason, a good conscience, and as justice shall appoint, notwithstanding what promises may in that case have been made to the salvors by such distressed merchants and mariners, as is declared in the fourth article of these laws; and in case any shall act contrary hereunto, or take any part of the said goods from the said poor, distressed, ruined, undone shipwrecked persons, against their wills, and without their consent, they shall be declared to be excommunicated by the church, and ought to receive the punishment of thieves; except speedy restitution be made by them; nor is there any custom or statute whatsoever, that can protect them against the aforesaid penalties as is said in the twenty-sixth article of these laws.'

Article XXX:

'If a ship or other vessel entering into harbour, happens by misfortune to be broken and perish, and the master, mariners and merchants, which were on board her, be all drowned; and if the goods thereof be driver ashore, or remains floating on the sea, without being sought after by those to whom they belong, they being ignorant of this said disaster, and knowing nothing thereof; in this lamentable case, the lord of that place or country ought to send persons to save the said goods, which he ought to secure and to put into safe custody; and give the relations of the deceased persons who were drowned, notice of it, and to satisfy for the salvage thereof, not

out of his own purse, but of the goods saved, according to the hazards run, and the pains taken therein; and what remains must be kept in safe custody for one year or more; and if in that time they to whom the said goods appertain, do not appear and claim the same, and the said year be fully expired, he may publicly sell and dispose thereof to such as will give most; and with the monies proceeding of the sale thereof, he ought to give among the poor, and for portions to poor maids, and other charitable uses, according to reason and good conscience. But if he assumes the said goods either in whole or in part unto himself, he shall incur the curse and malediction of our mother the holy church, with the aforesaid pains and penalties, without ever obtaining remission, unless he makes satisfaction.'

Article XXXI:

'If a ship or other vessel happens to be lost by striking on some shore, and the mariners thinking to save their lives, reach the shore, in hope of help, and instead thereof, it happens, as it often does, that in many places they meet with people more barbarous, cruel and inhuman than mad dogs, who to gain their monies apparel, and other goods, do sometimes murder and destroy these poor distnessed seamen; in this case, the lord of that country ought to execute justice on such wretches, to punish them corporally as pecuniarily, to plunge them in the sea till they be half dead, and then to have them drawn forth out of the sea, and stoned to death.'

ARTICLE XXXIV:

'If a man happens to find any thing in the sea, or in the sand on the shore, in floods or in rivers, if it be precious stones, fishes, or any treasure of the sea, which never belonged to any man in point of property, it belongs to the first finder.'

ARTICLE XXXV:

'If any searches the coasts to fish or find gold or silver, and he finds it he ought to restore it all without any diminution.'

ARTICLE XXXVI:

'If any going along the seashore to fish, or otherwise, happens to find gold or silver, he shall be bound to make restitution thereof,, deducting for his own pains; or if he be poor he may keep it to himself; that is, if he knows not whom to restore it; yet he shall give notice of the place where he found it, to the neighbourhood and parts adjacent and advise with his superiors, who ought to weigh and take into consideration the poverty of the finder, and then to give him such advice as is consonant to good conscience.'

(iv) CONSOLATO DEL MARE

This code has been described as the earliest maritime code of Europe. A detailed analysis of its provisions is not necessary as it is identical in nature to the laws of Oleron.

(v) THE LAWS OF WISBY

The sea-laws of Wisby, were formulated in the city of Wisby, on the island of Gothland in the Baltic Sea, in approximately the year 1288. The city of Wisby was regarded as the chief harbour of the whole island and was the center of northern trade.[16]

Merchants from all over Europe visited and used the part of Wisby for their trade and it is they who developed this part in to a flourishing trade center. Many similarities exist between the laws of Oleron and the Sea laws of Wisby. It is estimated that approximately half the articles in the Sea laws of Wisby are contained in the laws of Oleron.[17]

The provisions relating to salvage are exactly the same as those stated under the laws of Oleron. The similarities are not surprising. Since the port of Wisby was developed by foreign traders, it was inevitable that they would contribute their own customs and procedures to the trade in the port.

(vi) LAWS OF THE HANSA TOWNS OR THE HANSEATIC LEAGUE

The Hanseatic League comprised 81 cities. The League was formed as a result of the common interests of the various cities which were essentially to protect and defend themselves against the piracy and vandalism that threatened the advancement of commerce and trace.

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16 Malynes (Part 2), op cit, 14.
17 Paulsen, op cit, 1071.

This trading conglomerate soon developed into a celebrated commercial power-house consisting of, and governed by, merchants and traders. The Hanseatic League was regarded as being more powerful than any other single nation in existence in that era.

It was the unity between the cities coupled with the need to protect themselves from piracy that ultimately led to the birth of a maritime code in Lubeck[18] in 1597, which sought to regulate maritime activities.

This set of sea laws was based upon the sea-laws of Wisby and the Rolls of Oleron.[19]

The following provision contained in the maritime code of the Hanseatic League relates to salvage:

ARTICLE XLIV:

> 'When a ship happens to be cast away, the Mariners are bound to save as much as in them lies, and the Master ought to requite them for their pains to their content, and convey them at his own charges to their dwelling places. But, if the Mariners refuse to assist the master; in such case they shall have neither reward, nor wages paid them.'

(vii) MARINE ORDINANCES OF LOUIS XIV (1686)

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18 One of the first cities to become part of the Hanseatic League.
19 Malynes (Part 2), supra, op cit 23.

This Marine Ordinance published during the reign of Louis XIV, and under the direction of Colbert[20], had eclipsed all glory and lustre from previous maritime codes.[21]

The Ordinance incorporated the whole law of navigation, shipping, insurance and bottomry. It sought to retrench that which was superfluous, to enlighten that which was obscure, and to supply those things which had escaped the observation of the earlier founders of nautical law, or been recommended by the lights of experience.[22]

The Ordinance makes reference to salvage in an article which states:

TITLE FOURTH IX:

> 'If some part of the ship be preserved, the seamen shall be paid the wages that are due to them out of the wreck they have preserved; and if there be only goods saved, the seamen, even those that are engaged by the freight, shall be paid their wages by the master, proportionately to the freight he receives: and whatever way they be hired, they shall be over and above paid for the time they are employed in saving the wreck and goods.'

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20 Colbert was both minister and secretary to the King, as well as inspector and general superintendent of commerce and navigation.

21 Kent's Commentaries, op cit, 16; Gilmore & Black, op cit, 8.

22 Kent's Commentaries, op cit, 17.

CHAPTER 3
CURRENT LAW OF SALVAGE IN SO FAR AS IT RELATES TO "NO CURE – NO PAY"

ENGLISH LAW POSITION

To successfully obtain an award for salvage services certain classical requirements must be present. Such services must be voluntarily conferred to a recognised maritime subject which has encountered danger (or peril); and must be successful either in whole or part.

3.1 VOLUNTARINESS

An essential pre-requisite to recover salvage is that the services rendered must be voluntary. It is therefore evident that there must be no pre-existing contractual or legal duty to have acted.

There is no fixed definition as to who is a volunteer. The law does, however, provide guidance by placing limitations on who may be regarded as a salvor. In *The Neptune,*[1] Lord Stowell described a salvor as 'a person who, without any particular relation to a ship in distress, proffers useful service, and gives it as a volunteer adventurer, without any pre-existing convenant that connected him with the duty of employing himself for the preservation of that ship'.

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1 (1842) 1 W. Rob 439, 447

Public policy underlying the concept of salvage is to encourage persons to come to the assistance of vessels. It would therefore be inappropriate if such persons were already under a pre-existing duty to assist as this could lead to unethical behaviour where salvage services are withheld until certainty of a salvage award.

As a general rule it may be stated that the owner, master, crew or pilot of the salved vessel; or a tug towing the vessel in terms of a towage contract; the ship' agent; government officials acting within the scope of their duties; and passengers on board the salved vessel may not recover salvage for any services they may have rendered.[2] The exception to this is where such persons have acted beyond the scope of their duties and as such may be entitled to claim for salvage.

In this chapter the focus is two-fold: firstly, the pre-existing private or contractual duties will be considered and secondly, the services rendered in terms of a public or statutory duty will be examined.

3.1.1 (a) Pre-existing Private/Contractual Duty to Owner of Salved Property

Ordinarily the existence of a pre-existing private/contractual duty owed to the owner of the salved property will deny the salvor a successful claim for salvage. This, however, does not include the situation where an agreement is entered into after, and because the danger has arisen, as most salvage contracts are entered into at this time.[3]

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[2] Halsbury's Laws of England 4ed Vol. 43 para. 1040.

In *The Sarpen*[4] the court formulated the test for voluntariness as follows:

> "The test of voluntariness is only applicable as between the salvor and salved, and if the services be voluntary in relation to the salved, ie. not rendered by reason of any obligation towards him, ..."

Further the court used this test to determine if the duty was owed directly to the defendant. If so, then a claim for salvage would be denied.

The issue before the court was whether the owners, master and crew of the tug, who had rendered services after being requisitioned by the Admiralty, were volunteers and therefore entitled to claim salvage. It was concluded that the duty was not directly owed to the owner of the salved property, rather it was indirectly owed by virtue of the obligation to obey the order of the Naval authorities.

The existence of pre-existing custom prevents the successful recovery of a salvage reward. For this reason, the Admiralty courts have been hesitant to determine the existence of a custom, for fear that it would not encourage the rendering of salvage services.

This reluctance is highlighted in *The Waterloo*,[5] where Lord Stowell comments on the standard of evidence required in order to claim an exemption from salvage liability:

> "This information is peculiarly necessary in a case where the exemption is claimed from a right otherwise universally allowed, and

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[3] The National Defender [1970] 1 Lloyd's Rep. 40, 45.
[4] (1916) P. 306.
[5] (1820) 2 Dods 433,437

highly favoured in law, for the protection of those who are subjected to it; for it is for their benefit that it exists under the favour of the law. It is what the law calls *jus liquidissimum*, the clearest general right that they who have salved lives and property at sea would be rewarded for such salutary exertions; and those who say that they are not bound to reward, ought to prove their exemption in very definite terms, and by arguments of irresistible cogency."

Further, Dr Lushington in *The Swan*[6] stated that:

"for a custom to have any legal foundation, it must be founded upon the principle of mutual benefit and protection of property, and upon the assumption that the parties are embarked in common enterprise..."

To claim successfully an exemption from salvage liability the onus is on the owner to prove that the circumstances concerned with fall within the precise ambit of the custom.[7]

From the discussion thus far it is clear that a pre-existing duty owed to the owner of the salved property would invalidate a claim for salvage. At this juncture it is necessary to determine who is a volunteer and, therefore, entitled to claim salvage.

WHO ARE VOLUNTEERS?

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6 (1839) 1 W. Rob. 68, 70.

7 *The Waterloo*, supra; *The Red Rover* (1850) 3 W. Rob. 150: here a custom of Plymouth fishing boats to help each other gratuitously was regarded as being not within the precise ambit of the custom, as the boat of the sailor did not belong to that part.

(i) Shipowner

The issue as to whether a shipowner may claim a reward for salvage arises in the instance where the ship in distress, which requires salvage services, and the ship providing such services are "sister-ships" ie. they are in the same ownership. Generally such owner would have no right to sue himself even though the ships were separately insured.[8] The rationale for this is obviously to avoid the unscrupulous actions on the part of shipowners.

A common feature in marine insurance policies is the sister-ship provisions which allow the shipowner to recover. Clause 9, Institute Time Clauses Hulls, is an example of such a provision. It states:

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

Further evidence conferring such a right to the shipowner to recover is contained in Article 5 of the Brussels Convention on Salvage 1910, which provides:

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[8] Brice, *Maritime Law of Salvage* 2ed. (1993) 46.

"Remuneration is due notwithstanding that the salvage services have been rendered by or to vessels belonging to the same owner."

The corresponding provision in the Salvage Convention is Article 12(3)[9]:

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

The situation may also arise where the salving vessel is not owned but only chartered by the owner of the casualty. In this instance the owner of the chartered vessel is entitled to recover salvage.[10]

(ii) Seamen

The general principle is that if one owes a pre-existing duty directly to the owner of the salved property one is denied a claim for salvage. Thus, it becomes necessary to question whether seamen retain their right to recover salvage where their employer owes a duty to the owner of the salved ship.

In *The National Defender*[11] the court held that the seamen were entitled to recover salvage. In this instance the plaintiff seamen were employed on a ship which had been chartered to lighten a stranded ship. It was contended by the defence that the seamen were acting under the orders of their master and in the ordinary scope of their employment and as such could not be regarded as volunteers. Therefore, they were not entitled to recover

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9 International Convention on Salvage 1989, Article 12(3).
10 Brice, op cit, para 57, footnote 8.
11 [1970] 1 Lloyd's Rep. 40 (U.S. Dist. Court).

salvage. The court adopted the view that the seamen were not parties to the charterparty nor bound by its terms, thus their services were held to be voluntary.

In *The Oceanic Grandeur*[12] there existed an agreement between the owners of motor tanker A and those of the stranded motor tanker B, whereby tanker A was to lighten cargo from the stranded vessel so as to refloat her. Subsequently the crew and officers of the salving vessel claimed for salvage. The Court upheld the view taken in *The National Defender* and concluded that the agreement between the two shipowners did not prohibit the seamen from recovering salvage.

In contrast to the above-mentioned is the decision of Norris J in *Gark v Straits Towing Ltd and Sayer*[13], where a tugmaster in the course of performing his duties was held not to be a volunteer. Here a shipowner contracted with a tugowner to refloat a ship. The ship sank during the refloating operation and the tugmaster was sued in his individual capacity. The court held that in terms of the contract between the shipowners and tugowners, the tugmaster's duty of care was defined and further that this agreement was not a salvage agreement and the tugmaster not a volunteer. Sheen J, in *The North Goodwin No. 16*[14] held that the seamen were performing their ordinary duties as servant in terms of a towage contract and were not volunteers.

(iii) Master, Officers and Crew of the Ship in Danger

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12 [1972] 2 Lloyd's Rep. 396 at 405-406.
13 [1966] 2 Lloyd's Rep. 227.
14 [1980] 1 Lloyd's Rep. 71.

Ordinarily the master, officers and crew of the ship in danger are not allowed salvage. In *The Le Jonet*[15] it was stated:

> "The crew of a salved vessel cannot, under ordinary circumstances, have a persona standi as salvors against their own vessel."

The courts have been wary in allowing exceptions to this general rule since the added incentive of a salvage reward may seek to perpetuate unscrupulous behaviour in tempting seamen to be negligent and unfaithful in the execution of their duties.[16] Further, a seamen is already bound in terms of his contract of employment to render assistance when his ship is confronted with danger.[17]

A rather colourful and dramatic phrase which indicates the depth of commitment required from a seamen is as follows:

> "He is to be taken as having pledged his last ounce of strength for better or for worse."[18]

Thus, it is evident that any contract of employment must be first terminated for a claim for salvage to be successful.[19] It was stated in *The San Demetrio*[20] that a claim for salvage will only be successful where: "The ship was properly abandoned under the orders of her master". The court held in *The Florence*[21] that:

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15 (1827) L.R. 3A&E 556, 559. The decision here adhered to the principles set forth in *The Neptune* (1824) 1 Hag. 227 and *The Warrior* (1862) Lush. 476.
16 *The Neptune*, supra, 23.
17 *The Sappho* (1871) L.R. S.P.C. 690.
18 Kennedy, op cit, 196.
19 *The Florence* (1852) 16 Jur 572, 573.
20 (1941) 69 Lloyds, Rep 12.
21 *The Florence*, supra, 19.

"The true question is whether there was a *vis major* of so permanent a character as to dissolve the contract."

The termination or dissolution is effected by:

(a) discharge by the master;
(b) *bona fide* abandonment of the ship at the master's command,
(c) hostile capture of the ship.

(a) Discharge by the Master

A seaman's contract is terminated where he receives a discharge from the master.[22] There must be no misconduct on the part of the master in giving the discharge. If there is, there will be no interference with the seaman's release from his contract, provided that he is not a party to the misconduct by the master.[23] The discharge would be valid only where it is formal and unqualified, and where the master was acting in his authority as the agent of the owner.[24]

(b) Bona fide Abandonment of the Ship

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22 *The Warrior* (1862) Lush. 476.
23 Kennedy, supra, 464.
24 *The Albionic* (1941) L1.L Rep 257.

The *locus classicus* with regards to the bona fide abandonment of the ship is *The Florence* where the following four requirements were set forth by Dr. Lushington:

(i) the abandonment must take place at sea;
(ii) it must be *sine spe revertendi aut recuperandi* ie. "without hope of return or recovery";
(iii) it must be *bona fide* for the purpose of saving life, and
(iv) it must be by the order of the master in consequence of danger by reason of damage to the ship and the state of the elements.

The first two requirements are interlinked. Dr. Lushington adopted the view that if abandonment occurred on the coast, the chances of return or recovery would be considerably greater[25], as opposed to the situation where the abandonment occurred on the high seas. Thirdly, a seaman's claim for salvage is consequent to whether "the ship was properly abandoned under the orders of her master".[26] The decision of the master to abandon is justifiable where it is made in good faith and with the knowledge that it is necessary to save human life.

In such instances the crew would be justified in obeying the order to quit.[27] If at a later stage it becomes clear that the decision to abandon was unnecessary, then this nullifies the abandonment of the liberty of the seaman to recover salvage.[28] The following judgment of Hill J in *The Portreath*[29] illustrates the above point:

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25 *The Florence*, supra, 19.
26 *The San Demetrio*, supra, 20.
27 *The Florence*, supra, 19; *The Albionic* (1941) P. 81, 85.
28 Kennedy, supra, 470.
29 (1923) P. 155.

> "When one finds a master giving orders to his crew to abandon ship and go on board vessel because he thinks his ship is sinking, and then within a short time, on maturer judgement, he arrives at the conclusion that the ship is not sinking, there is no foundation for saying that there was any final abandonment of the ship."

Fourthly, the situation that is envisaged is one where the vessel, which has sustained damage, is at the mercy of the elements and thus the safety of lives of all aboard are threatened. It is a Herculean task to define the exact degree of danger necessary to justify abandonment. The following three factors are generally accepted as indicators of the existence of danger:[30]

- there must be danger by reason of the state of the elements;
- the ship must have been damaged,
- human life must be imperiled.

Dr. Lushington said that there must exist a limit to the risk to which a seaman is bound to expose himself and further that human life is more valuable in sight of God than any property, and that accordingly there is clearly a duty not to sacrifice human life.[31] Therefore, it is contended that even where a ship is undamaged the abandonment will not necessarily be seen as unjustifiable.

(c) Hostile Capture of the Ship

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30 Kennedy, supra, 466.
31 Kennedy, op cit, 467.

Hostile capture interferes with and renders the seaman's obligation to fulfil his contract impossible. It is therefore considered to be "*vis major* of so permanent a character as to dissolve the contract!"[32] A seaman's contract of service terminates and he is regarded as a volunteer, capable of recovering salvage where hostile capture has occurred and no recapture is probable.

It is important to bear in mind the distinction between hostile capture and mutiny. As in the instance of the latter a seaman is not released from his duties especially that of providing every assistance in his power to prevent or quell a mutiny.[33]

(iv) Pilots

Pilotage is considered to be a hazardous occupation and having voluntarily taken up such occupation with the knowledge of its inherent risks, pilots must be content with their ordinary remuneration.[34]

The reluctance of the courts to grant salvage to pilots is enunciated in *The Luigi Accame*[35], where Sir Boyd Merriman said:

> "I regard it as of the utmost importance to the seafaring community in general that there should be no temptation to pilots to convert their ordinary pilotage duties, or the normal hazards which may arise in the course of performing their ordinary pilotage duties, into salvage services... I agree with [Sir Samuel Evans P. in *The Bedeburn* that] it would be undesirable (I would use a stranger adjective] for the

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32 *Beale v Thompson* [1803] 3 Bros E.P405.
33 *The Governor Raffles* (1815) 2 Dods 14, 17-18.
34 *The Joseph Harvey* (1799) 1 Ch. Rob 306.

shipping community at large, and for the respectable body of men constituting the pilots of the country, that any encouragement should be given to them to become searchers after salvage."

This having been said, the courts will not undermine the policy of encouraging salvors as it must be borne in mind that there will always be circumstances which demand more from a pilot than is ordinarily required of him.

The test used to determine whether a pilot is entitled to recover salvage is reflected in the leading decision of the Court of Appeal in *Akerblom v Price, Potter, Walker & Co*[36] where Buette L.J. stated:

> "..... the tribunal must determine, whether under all the circumstances of the particular case the service, which the pilot has entered upon or has unexpectedly found imposed upon him, was rendered so different in responsibility or danger or kind from the ordinary service of a pilot, as to make it impossible that any fair owner should have insisted upon his being otherwise than by a salvage reward; or, whether, although there was some increased responsibility or danger or unusual kind of service, any fair pilot would have refused to enter upon the service or to continue to perform the service, unless paid otherwise then by a fair compensation for pilotage services."

In American law the position is similar to the English approach. It is said that a pilot "cannot be at the same time, and in the same act, a pilot and

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35 [1938] 60 Ll. L. Rep. 106, 110.
36 [1881] 7 QB 129, 134

salvor".[37] In *Hobart v Drogan*,[38] the standard used by the American courts in determining whether a service is more than ordinary pilotage, may be seen:

> ".... on the contrary, whenever he performs salvage services beyond the line of his appropriate duties, or under circumstances which those duties do not justly attach, he stands in the same relation to the property as any other salvor; that is, with a little to the compensation to the extent of the merit of his services, viewed in the light of a liberal public policy".

In *Jackson v Costa Lines*[39], a cruise ship ran aground and the pilot who boarded and assisted in refloating her was awarded salvage as the service rendered was regarded as being "beyond the line of his appropriate duties".

The onus of proving that the service rendered is more than a pilotage service and is in fact one of salvage, rests on the pilot.[40]

(v) Tugs

The relevant law as to whether tugs may successfully claim salvage is clearly stated in Article 4 of the Brussels Convention on Salvage 1910 and in Article 17 of the 1989 International Salvage Convention. The latter reads as follows:

> "Services rendered under existing contracts

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37 *Hand v The Elvira* F. Cas. 6015 (1829).
38 35 US (10 Pet.) (1836) 108.
39 490 F. Supp. 393 (1980).

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".

Dr Lushington in *The Princess Alice*[41] held that a towage service may be seen as the employment of one vessel to expedite the voyage of another when nothing more is required than the accelerating of her progress.

Lord Kingsdown in *The Minnehaha*[42], enunciated the legal position with regards to the duties of a tug rendering towage services as follows:

"When a steam-boat engages to tow a vessel for a certain remuneration from one point to another, she does not warrant that she will be able to do so and will do so under all circumstances and at all hazards; but she does engage that she will use her best endeavours for that purpose, ..."

Towage by its very nature is suggestive of the fact that the ship is faced with difficulties. Therefore, the mere fact that the towage becomes arduous does not dissolve the tug from her original obligations.[43] A rather intricate issue is to determine when a contract of towage ceases and becomes salvage.

It is only when "the towing vessel incurs risks and performs duties which were not within the scope of her original engagement, she is entitled to additional remuneration for additional services if the ship be saved, and

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40 *The Bedeburn* [1914] P. 146.
41 (1849) 3 W. Rob. 138 at 139.
42 (1861) 15 MOO. P.C. 133, 153.
43 *The True Blue* (1843) 2 W. Rob. 176, 180.

may claim as salvor, instead of being restricted to the sum stipulated to be paid for mere towage..."[44]

Therefore, it may be stated that the circumstances which are necessary and justify an award for salvage are where:

> "(1) The tow is in danger by reason of circumstances which could not reasonably have been contemplated by the parties.
>
> (2) Risks are incurred or duties performed by the tug which could not reasonably be held to be within the scope of the contract".[45]

It must however be borne in mind that "... the two kinds of services cannot co-exist during the same space of time. There must be a moment when the towage service ceases and the salvage service begins; and if the tug remains at her post of duty, there may come a moment when the special and unexpected danger is over, and then the salvage service will end, and the towage service would be resumed."[46]

The burden of proving that the circumstances warrant an award for salvage rests on the claimant. If the services commenced when a towage contract was already in existence then the clearest proof is required as it must be borne in mind that "... a ship in tow is at the mercy of the tug; how easily, with the knowledge which the crews of such boats usually have of the waters on which they ply, they may place a ship in their charge in great, real or apparent peril; how difficult detection of such a crime must be, and

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44 *The Minnehaha*, supra 135
45 *The Homewood* [1928] 31 Ll. L. Rep. 336, 339-340.
46 *The Leon Blum* [1915] P. 90; affirmed an appeal [1915] P. 290.

how strong the temptation to commit it, their Lordships are of the opinion that such cases require to be watched with the closest attention and not without some degree of jealousy".[47]

In terms of English law, clause 6 of the United Kingdom Standard Conditions for Towage and Other Services, ensures that a tugowner retains his right to claim salvage or special compensation where he has rendered any extraordinary services.

The International Salvage Union (ISU) has made provision, in its standard forms for towage, for a lump sum price ie. (Towcon) or for a daily ie. (Towhire), wherein clause 15 states:

> "(a) Should the tow break away from the tug during the course of the towage service, the tug shall render all reasonable services to reconnect the towline and fulfill this Agreement without making any claim for salvage.
>
> (b) If at any time the tugowner or the tugmaster considers it necessary or advisable to seek or accept salvage services from any person or vessel on behalf of the tug or tow or both, the hirer hereby undertakes and warrants that the tugowner or his duly authorised servant or urgent including the tugmaster shall have the full actual authority of the hirer to accept such services on behalf of the town on reasonable terms".

Under both these ISU contracts it is clear that the tugowner in most circumstances retains no right to recover salvage, save for the following two instances:

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[47] *The Minnehaha*, supra 136.

(1) Where the tugowner has exhausted all reasonable efforts but a salvage service is still necessary, eg. when the tow has grounded on a rocky shore and has been badly damaged so as to require the undertaking of a major salvage operation well outside mere towage; or

(2) Where the tugowner has salved property not belonging to the "hirer" and has not waived his right to salvage as regards that owner.

The provisions in American law[48] regulating the circumstances where a tug which is under a contractual obligation to tow may recover salvage, is similar to the English provisions as discussed above.

Essentially the tug is under a duty not to abandon the tow if it comes into difficulty and salvage would be awarded only where extraordinary services, not within the scope or contemplation of the towage contract, have been rendered.

In the South African case of *The Sellasia*[49] Gardiner, JP adopted Dr Lushington's views in *The Princess Alice*[50]. It provided for towage to be converted into salvage where the tow is disabled in her hull or rigging, or where she is aground, or where the service itself is necessarily attended with danger or extraordinary labour to the towing vessel.

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48 Brice, *supra,* para 1-264; Benedict on Admiralty (1981), chapter 13.
49 1926 CPD 437.
50 3 W. Rob. 138.

In *The Manchester*[51] the relationship between towage and salvage within the context of a standard form contract was considered. Clause 4 of the towage contract stated :

> "The Administration shall, notwithstanding anything contained herein, or any rule of law the contrary, have the right to claim a reward for salvage, if the services rendered to the said vessel should be such as to warrant a salvage awards."

Burger J, allowed a claim for salvage on the basis that the contract entitled the plaintiffs to claim salvage. He opined that the circumstances justified such an award. The judge reasoned that the vessel was in danger (she had a fractured tailshaft which could not be repaired at sea) and he equated this danger with the concept of 'distress' as contained in s301 of the Merchant Shipping Act (the applicable statute at the time). Therefore, since the vessel was 'in distress' a statutory entitlement to salvage in terms of s301 was possible. The court failed to take into account that the hourly rate was to be paid whether the Manchester was "lost or not lost". Which essentially meant the absence of "no cure – no pay" the underlying principle of salvage services. Some commentators argue that the court should have regarded the contract as one for extraordinary towage or other extraordinary service short of salvage.

The Manchester was considered by Hofmeyr A.J. in *Petjalis Engineering Works (Pty) Ltd v SA Transport Services*.[52] The learned judge rejected the approach in *The Manchester*. He stated as follows :

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[51] *South African Railways and Harbours v Johnson Navigation Co. SA. (The Manchester)* 1981 (2) SA 798 (C).; Staniland 'Towage or Salvage'1988 *LMCLQ* 16. See also Doucas, 'Towage Contracts – When does conversion from a towage to a salvage contract take place?' The Manchester Revisited, unpublished LLM dissertation submitted to Faculty of Law UCT, 1993.

> "It is not authority, in my view, for the view that the words 'in distress' introduced a criterion for the award of salvage which differs from that which had hitherto been the case. In my view a ship is 'in distress' if she is 'in danger' in the sense in which that phrase is understood in the law of salvage."

The learned judge explained that he obtained support for his view from the history of s301 of the English Merchant Shipping Act of 1894. He held that to constitute a salvage service "there must be a reasonable possibility of danger and the ship must be saved (preserved) from that danger."

The approach adopted by the court in *Petjalis Engineering* is wider and does not limit the concept of danger to only 'physical' danger, rather the Court regarded danger and 'distress' as both being sufficient for a salvage claim.

In the *MV Mbashi : Transnet Ltd vs MV Mbashi and others* [53] the court found that the services rendered, to a vessel whose engines had ceased functioning in heavy seas and in grave danger of running aground, were to be regarded as salvage and not towage. In this instance while the court was not asked to consider the question as to whether there had been a conversion of towage services to salvage, it is welcoming to note that in reaching its decision the approach and reasoning adopted by the court represents a departure from that used in *The Manchester* as the approach in *The Manchester* was simplistic and failed to recognise that the towage obligations encompassed the salvor's actions in saving the vessel.

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52 1988 (1) SA 103 (C) 112F-I
53 2002 (3) SA 217

(vi) Passengers

According to *The Branston*[54], a passenger would not be able to recover salvage "where there is common danger; it is the duty of everyone on board the vessel to give all the assistance he can". Further, he would be more than adequately rewarded by the very factors that motivated his services ie. a self-interest to preserve and protect his life and property.

However, it seems that where a passenger provides assistance which is not self-serving and where there exists a means of escape from danger for himself and his property but he refuses this, choosing to remain and render services which are not ordinarily expected from passenger, he would be entitled to claim salvage.[55]

In the American case *Towle v The Great Eastern*[56], a civil and mechanical engineer was successfully able to execute a plan for steering the vessel and was subsequently rewarded as a salvor for his efforts. The reasons of the court were stated as follows by Shipman, J:

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[54] (1826) 2 Hag. 3
[55] *The Vrede* (1861) Lush 322; see also Kennedy, op cit, 529
[56] (1864) 2 M.L.C. 148 (U.S. District Court of Admiralty, Southern District of New York)

"these services in order to constitute him a salvor, must be of an extraordinary character, and beyond the line of his duty, and not mere ordinary services such as pumping and aiding in working the ship by usual and well-known means".

3.1.2 Pre-existing Public or Statutory Duty

There are circumstances where, even though the services rendered are by virtue of a public or statutory duty, a claim for salvage would be allowed.

Section 6 of the Maritime Conventions Act 1911, which essentially adopted Article 11 of the Brussels Convention on Salvage, states:

Section 6(1) "The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, her crew and passengers (if any), render assistance to every person, ... who is found at sea in danger of being lost, and, if he fails to do so, he shall be guilty of a misdemeanour".

More importantly s 6(2) provides that, "compliance by the master ... with the provisions of this section shall not affect his right or the right of any other person to salvage".

Further statutory obligations are imposed by s 422 of the Merchant Shipping Act 1894, which is exclusively concerned with the situation in which a collision has occurred. It imposes a duty on the master of each vessel (provided it is without danger to his own vessel, crew and

passengers), to render whatever necessary and practical assistance that may be required by the master, crew and passengers of the other vessel. Further, the master is required to remain by the other vessel until such time as he has knowledge that she has no need for further assistance. A breach of this duty makes him guilty of a misdemeanour. [57]

In determining, in the instance of a collision, whether the master and others were entitled to recover salvage, the courts used to distinguish between "fault" and "no-fault". Where the collision had been the fault (in whole or in part) of one of the vessels, then neither her owners nor her crew could claim as salvors for any services that she may have rendered to the other vessel. [58]

However, it has been stated by the House of Lords, in *The Beaverford (Owners) v The Kafiristan (Owners)* [59]that:

> "the duty cast by the Merchant Shipping Acts upon one of the two colliding vessels to stand by and render assistance, does not prevent that vessel if she renders assistance from claiming salvage".

In South African law s 5(1) of the Wreck and Salvage Act 94 of 1996 imposes an obligation on the master of a South African ship to render assistance to ships in distress. The statutory duty of the master does "not affect his right to salvage"[60]

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[57] Section 422(3) Merchant Shipping Act 1894.
[58] *The Cargo ex Capella* (1867) L.R. 1 A & E 356.
[59] (1938) A.C. 136, 147
[60] Section 5(6) Wreck and Salvage Act 94 of 1996

In the instance of a collision between two or more ships it is "... the duty of the master of each ship, if and ... without danger to any person on the ship"[61] to:

> "render to the other ship and every person thereon such assistance as may be practicable and necessary to save them from any danger by the collision and to stay by the other ship until he or she has ascertained that there is no need for further assistance"[62].

The Act[63] further provides that such a duty will not affect the master's right to salvage.

3.2 **DANGER**

The second essential pre-requisite for a successful salvage claim is that the salved property must have been preserved from danger. The onus of proving danger rests on the salvor.

The 1910 Brussels Convention on Salvage does not provide a precise definition of danger but simply stipulates that in the determination of the salvage award, the court must have regard to "the danger run by the salved vessel by her passengers, crew and cargo ..."[64]

Similarly, article 13.1(d) of the 1989 International Salvage Convention requires the court to consider "the nature and degree of the danger".

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[61] supra, s 7(1)
[62] Ibid, s 7(1) (a)
[63] Ibid, s 7(2)
[64] Article 8 Brussels Salvage Convention (1910)

There is, however, one significant difference between these conventions, which is reflective of the impact that society's environmental awareness has had on the law of salvage.

Article 13.1(b) of the 1989 Convention stipulates that "the skill and efforts of the salvors in preventing or minimizing damage to the environment", must be considered when assessing the salvage award.

In assessing the existence of danger, the approach in English law is to not only consider immediate and obvious perils, but also future and contingent perils. [65]

On the other end of the spectrum is the American approach. Benedict is of the view that:

> "the peril which can properly be considered in determining a salvage award is not to be estimated in the light of subsequent or contingent events, but of the facts which surround the salvage service at the time that it is rendered. The danger to the salved vessel which had been pulled off a shoal and delivered to a safe port is not increased by the fact that two days later the weather became stormy." [66]

Commentators correctly argue that the former approach is superior as it allows the court to consider what would have happened to the salved property had the salvage services not been rendered. This enables the court to assess the actual benefit conferred by the salvor. [67]

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[65] Brice, supra, para 1 - 126
[66] Benedict, supra, para 249
[67] Brice supra, para 1-129

The classic pronunciation by Dr. Lushington in *The Charlotte*[68] provides the necessary guidance in determining the existence of danger:

> "It is not necessary that the distress should be actual or immediate or that the danger should be imminent and absolute. It is sufficient if, at the time the assistance is rendered, the ship has encountered any damage or misfortune which might possibly expose her to destruction if the services were not rendered."

Further, the danger need not be absolute. So long as the vessel is in a state of difficulty and there exists a reasonable apprehension of danger, this would ensure that the services rendered constitute salvage.[69]

In *The Smaragd*[70] the court held that the services rendered did constitute salvage as there was a reasonable apprehension of danger by the crew that their vessel was about to explode. It must, however, be borne in mind that such apprehension must have its basis in fact[71], and the danger must not be fanciful or vaguely possible.[72] Only then would the services rendered constitute salvage.

In establishing danger it is not necessary to show actual physical damage or that a threat of such damage exists. Danger may also be evidenced by a risk of some financial harm to the owners of the salved property arising out of the circumstances of the casualty[73], ie. financial danger.

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[68] (1848) 3 Wm. Rob. 68, 71
[69] *The Phantom* (1866) L.R1 A& E 58, 60
[70] [1927] 28 L1.L Rep. 302, 306
[71] Brice, supra, para 1 - 124
[72] *The Mount Cynthos* [1937] 58 L1.L.Rep 18,25
[73] Brice, supra, para 1 - 120

Highlighting this principle is the case of *The Merannio*[74]. In this instance a vessel which was being towed in fog had been struck by another vessel which had dragged her anchor. Lord Merrivale awarded salvage to the tugs which pulled the first vessel free of the other, as he was of the opinion that she had been prevented from sinking and stated that:

> "the owners would have had the expense of removing her, or might have found themselves without either vessel or cargo, because the Port of London authorities might have thought that the proper mode of clearing the channel was to destroy her".

This concept of financial danger was further canvassed in *The Glaucus*[75] and *The Trolius*[76]. In *The Glaucus* the ship had been disabled due to boiler trouble and therefore required a tow to a harbour for repairs. Upon her arrival at Aden, a safe port, she had to be subsequently towed to another port to enable the necessary repairs to be effected. The issue was whether the latter service rendered constituted salvage. It was therefore necessary to determine if the vessel was subject to any danger notwithstanding the fact that she was in a safe port. The court concluded that "unless the vessel was taken to a place where the necessary repairs could be executed she was completely immobilised".

This, of course, clearly indicated that her capacity to generate income would now be lost and she could therefore be regarded as a financial burden to her owners. Willmen J. commented on this by stating:

> "It is no use saying that this valuable property, worth something approaching a million pounds, is safe, if it is safe in circumstances

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74 [1927] 28 Ll.L. Rep. 352
75 [1948] 81 Ll.L. Rep 262
76 [1951] A.C 821

where nobody can use it. For practical purposes, it might just as well be at the bottom of the sea."

The case of *The Trolius,* considered three years later by the House of Lords, was similar. In this instance a steamship with a cargo of foodstuffs was enroute from Australia to Liverpool in England. She subsequently lost her propeller in the Indian Ocean but was otherwise unimpaired. She was towed 1050 miles to safe anchorage at Aden. There were no facilities at Aden for the necessary repairs or for the discharging and storing of her cargo. She was then towed by another tug to the United Kingdom for repairs.

Lord Porter said that no general rule existed that where a vessel was immobile, both she and her cargo would be in danger until she was repaired. Further he was of the view that determining whether a vessel and her cargo have reached a place of safety:

> "... depends upon the facts of each case, one of which is the facility for repairs at the place in question, and another the possibility of safety discharging and storing the cargo and sending it on to its destination and the danger of deterioration".

The learned judge "did not accept the view that no salvage award is permissible because the damaged vessel has reached some place where she can lie for an indefinite period in physical safety but from which no method of egress has been shown to exist, and where, unless some means of further progress is obtained, the ship must lie deteriorating and the cargo ultimately perishing".

It can therefore be concluded that in determining whether the services rendered constitute salvage, both destruction or risk of physical damage to the salved property and the risk of financial harm by virtue of immobilisation to the owners of the salved property, must be considered.

3.3 SUCCESS

The penultimate requirement for a successful salvage claim is that there must be some degree of success. It is from this requirement that the classic salvage concept of "no cure - no pay" is derived. The statement of Lord Phillimone in *The Melanie (Owners) v The San Onofre (Owners)*[77], is regarded as being the *locus classicus* of principles applicable to this area. He stated that:

> "... success is necessary for a salvage reward. Contributions to that success, or as it is sometimes expressed meritorious contributions to that success, give a title to salvage reward. Services, however meritorious, which do not contribute to the ultimate success, do not give a title to salvage reward."

As an indication of such success it is required that the property in peril, or at least a part thereof, must have been preserved from the danger to which it was subjected.[78] The rationale of this is that the salved property provides the fund out of which the salvage award would be made.[79]

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77 [1925] A.C. 246
78 *The Renpor* [1883] LR1A & E 115
79 *The Cargo ex Schiller* (1877) 2 P.D. 145

Further, this limits the owner's liability to the portion of his property that has been salved.[80]

Article 2 of the Brussels Convention on Salvage 1910 reflects the above by stating:

> "In no case shall the sum be paid exceed the value of the property salved."

Likewise, Article 13(3) of the 1989 Salvage Convention provides:

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

The judgment of Lord Phillimore[81] makes it clear that the services need not have finally salved the property. It is sufficient if they contributed to that success. This is echoed by Article 2 of the Brussels Convention which provides that "every act of assistance or salvage which has had a useful result gives a right to equitable remuneration" and that "no remuneration is due if the services rendered have no beneficial result".

Similarly the 1989 Salvage Convention provides as follows:

Article 12(1): Salvage operations which have had a useful result give right to a reward.

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[80] *The Renpor*, supra, 115.
[81] The San Onofre, supra, 246.

Article 12(2): Except as otherwise provided, no payment is due under this Convention if the salvage operations have no useful result.

It is therefore obvious that even where the salvor has only partly contributed to the success, he will be entitled to recover salvage. Such contribution would include the situation where a vessel has been brought to a position of greater safety than that in which it was found[82], or even where the increase in danger has been minimised.[83]

It is often difficult to establish where the ship or cargo have been salved or where a benefit has been conferred. In *The Tarbet*[84] a tug attempted to tow a sinking ship ashore which by some misfortune struck a bank before the towage was complete. Her cargo valued at £17,000 was discharged as she lay on the bank. The ship was later declared a constructive total loss. Hill J. held that there was no "benefit", as evidence indicated that had the ship been allowed to sink in deep water, then portions of her cargo could have been saved with approximately the same monetary value.

It is contended that where there is some doubt as to whether services conferred a benefit, courts will, considering the general maritime and commercial interest in encouraging men to assist life and property in danger at sea, favour a claim for salvage.[85]

Indicative of this approach adopted by the courts is *The E.U.*[86], where lifeboatmen had boarded a vessel in distress and got her head to the north

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82 *The Camellia* (1884) 9 P.D. 27.
83 *The Jonge Bastiaan* (1804) 5 Ch Rob. 322; *The August Korff* [1903] P.166, 175-176.
84 [1921] P.372
85 *Owners of The Melanie v San Onofre*, supra, 246.
86 (1853) 1 Spinks E & A 63, 66

but were later forced to leave her. She was subsequently salved by a steamer. Dr Lushington, considering the case as a whole and especially the courage of the lifeboatmen and general maritime policy, awarded salvage.

However, the courts will not adopt a benevolent attitude where no genuine doubt exists as to whether the services conferred a benefit.

A salvage award will not be made to a claimant who of his own accord relinquishes attempts at salvage and, although in a position to continue salvage, decides to abandon the vessel with no intention to resume salvage services.[87]

An exception to the general rule that for a right to salvage to accrue that salvor must have contributed to the success, is where the services have been rendered on request (commonly referred to as the doctrine of "engaged - services").[88]

Neither the Brussels Convention on Salvage 1910, nor the 1989 Salvage Convention make reference to "engaged services" that may constitute salvage. However, it is the view of some commentators[89] that such services do fall within the "salvage operation" as defined within Article 1(a) of the 1989 Convention. This view, in my opinion is the correct approach as the ambit of Article 1(a) is broad enough to encompass the doctrine of 'engaged services'.

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[87] *The Edward Hawkins* (1862) 15 Moore P.C. 486

[88] Referred to by Phillimore J, in *The Dart* (1899) 8 Asp. 481, 482. Also *The Hassel* [1959] 2 Lloyd's Rep. 82, 85.

[89] Brice, supra, para 1-322

The leading statement regarding this issue of engaged services is found in *The Undaunted*[90], wherein Dr Lushington stated:

> "There is a broad distinction between salvors who volunteer to go out and salvors who are employed by a ship in distress. Salvors who volunteer, go out at their own risk for the chance of earning reward, and if they labour unsuccessfully, they are entitled to nothing: the effectual performance of salvage service is that which gives them a title to salvage remuneration. But, if men are engaged by a ship in distress, whether generally or particularly, they are to be paid according to their efforts made, even though the labour and service may not prove beneficial to the vessel ...The engagement to render assistance to a vessel in distress, and the performance of that engagement, so far as necessary or so far as possible, establish a title to salvage reward."

In determining remuneration for engaged services it is important to establish:

(i) the exact nature of the services requested as this will indicate whether the services performed by the claimant fall within the ambit of the request.

(ii) the ship must be ultimately saved.

(iii) that the services were rendered pursuant to a request.

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[90] (1860) Lush. 90,92

The focus of *The Undaunted* were the following. The ship had lost her anchors in a gale and subsequently fired rockets for assistance. A merchant vessel came up and the master of the casualty requested the merchantmen to fetch an anchor and cable. This, among other things was done. However, before the merchant vessel could return with the items requested, the *Undaunted* made her way to safety at first under her own power and then under tow of another vessel.

Salvage was awarded to the merchant vessel as they did do all in their power to reach the vessel in distress but "were only disappointed of effecting their service by the act of God".

A similar position was adopted in *The Melpomene*[91] where a tug had passed a hawser to a vessel in distress which had subsequently come away. Eventually the vessel was assisted to safety by other tugs.

Sir Robert Phillmore awarded some remuneration to the first tug and explained as follows:

> "... that where a vessel makes a signal of distress and another goes out with the *bona fide* intention of assisting that distress, and, as far as she can, does so, and some accident occurs which prevents her services being as effectual as he intended them to be, and no blame attaches to her, she ought not to go wholly unrewarded".

A claimant will not be awarded remuneration where he has either failed to perform an indivisible engaged service[92] or where, by virtue of his

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91 [1873] L.R.4 A& E 129

92 See *The Tabert* [1921] P. 372.

negligence or voluntarily abandoning performance, he deprived himself of entitlement to an award.

The American law is similar to English law as it advocates that "success" is a necessary element of a salvage service.[93] This is highlighted in the decision of *Anderson v Adam*[94] where it was stated:

> "success has always been held to be an essential element of a salvage service and its absence fatal to a claim for salvage compensation".

3.4 PROPERTY

A claim for salvage remuneration is only successful if the salved property is recognised in law as being a proper subject of salvage.

The 1910 Brussels Convention did not comment on what constituted a recognised subject of salvage. Traditionally in terms of English law a vessel, her apparel, stores, bunkers, cargo and freight were recognised as proper subjects of salvage. This position has been significantly altered by the 1989 Salvage Convention.[95]

English law recognises certain restricted classes of property that are capable of being salved. Any property outside these recognised classes will not permit a salvage award to be granted by the Admiralty Court.[96] It is

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93 See Benedict, supra, chapter 7.
94 13F. 135 (1882)
95 For a discussion on the 1989 Salvage Convention, see infra chapter 5.
96 Brice, 'Salvage: present and future' (1984) LMCLQ 394

generally accepted worldwide that ships, cargo, freight, wreck, aircraft and life, even where no property is saved, are subjects of salvage.[97]

In stark contrast to the restrictive approach found in English law, is the American law position where certain property, other than ships and vessels, have been held to be subjects of salvage.[98] It, therefore, seems more likely that an unmanned gas float would be capable of salvage in the U.S.A. but not in the U.K.[99]

The law in South Africa not only reflects current international thinking but is more progressive as it extends the definition even further than the convention by including as a subject of salvage "any fixed or floating platform or any mobile offshore drilling unit whether or not it is engaged in the exploration, exploitation or production of sea-bed mineral resources".[100]

Of significance is also the definition of "ship" as contained in the Admiralty Jurisdiction Regulation Act[101] It is defined as "means any vessel used or capable of being used on the sea or internal waters, and includes any hovercraft, power boat, yacht, fishing boat, submaring vessel, barge, crane barge, floating crane, floating dock, oil or other floating rig, floating mooring installation or similar floating installation, whether self-propelled or not". The South African position in my view correctly reflects the manner in which Salvage Law should be developing.

3.4.1 The Ship, her stores and her apparel

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97 Ibid.
98 The *Gas Float Whitton No. 2* [1896] P.42 (C.A.); [1897] A.C. 337
99 Ibid.
100 Section 2 (6) of the Wreck and Salvage Act No. 94 of 1996
101 No. 105 of 1983

A ship is perhaps the most common subject of salvage. It was recognised as a subject which, when saved, would result in an award for salvage being given by the common or original law of the Admiralty Court.

In terms of s 742 of the Merchant Shipping Act 1894, the definitions afforded to a "vessel" and "ship" are as follows:

(1) vessel includes any ship or boat or any other description of vessel used in navigation,

(2) ship includes every description of vessels used in navigation not propelled by oars.

It is clear from the above that the definition of "ship" is more restrictive than "vessel" in that it does not include a vessel propelled by oars.

In *The Gas Float Whitton (No. 2)* Lord Herschell in determining whether a gas float in the shape of a boat was a proper subject of salvage, adopted the view that the definition of a vessel was restricted to craft capable of being used in navigation. It was subsequently concluded by the House of Lords that a gas float was not a proper subject of salvage. Rather, it was a lighted buoy or beacon made of iron and boat-shaped but not constructed for the purpose of being navigated nor for the conveying of cargo or passengers.

The apparel of a ship refers to property associated with a ship other than her hull, machinery, stores and cargo. Thus it tends to include her navigational equipment, tackle, furnishings, lifeboats, etc.[102]

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[102] Brice, supra, para 3-17

The ship's stores are a form of salved property. In practice it is the salved value of the stores that is generally included in the salved value of the ship.[103]

This definition is considerably wider in its approach and extends to cover floating cranes and floating dry docks. Article 3 of the Convention excludes such structures as well as mobile offshore drilling units from being proper subjects of salvage if they are "on location engaged in the exploration, exploitation or production of seabed mineral resources". The explanation for this is that salvage of these structures often require intricate and technical skills which are beyond the capability of the ordinary salvor whose expertise lies in the salvage of ships.[104]

It is contended that the exclusion in Article 3 is inexplicable as these structures pose a significant threat to the environment when "on location and engaged in the exploration, exploitation or production of seabed mineral resources" and by not being recognised as proper subjects of salvage, they, in the event of a disaster occurring, are not an attractive prospect to any salvor.

3.4.2. Cargo

Cargo essentially refers to the goods or merchandise carried by a ship and is considered to be a proper subject of salvage. The classification of this

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[103] Ibid.

[104] Brice, personal communication: Gaskell "Lof 1990" (1991) LMCLQ 104

concept has been extended considerably over the years thus embracing goods in the course of being transported by a vessel though not inside it.[105]

Article 1(c) of the 1989 Convention serves as a further indication of the liberal approach given to this concept in that it refers to "property" and not to the more restricted word "cargo". Here the definition of property essentially encapsulates any property which is not permanently and intentionally attached to the shoreline and also includes freight at risk.

The advent of containerization has further extended the traditional definition of cargo as it is common today to see salvage claims made both for the cargo in the containers and the containers themselves.

A further issue that arises is whether the tug and tow are to be seen as one unit when both are salved or whether they should be considered separately.

It has been suggested by Lord Herschell in *The Gas Float Whitton* that the term "cargo" might be extended to include goods in tow:

> "Where goods are being towed from place to place, although they are not, strictly speaking cargo, they yet partake of its character and are closely analogous to it. They are being transported from place to place by a vessel. Their transport is a maritime adventure of precisely the same nature as the carriage of goods in the body of a ship. All the ground of expediency in which the law of salvage is said to have had its origin would seem to apply to the one case as much as to the other. It may be, then, that in salvage law a broad and liberal

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[105] *The Gas Float Whitton, supra, 337*

construction should be extended to the word 'cargo' so as to embrace goods in the course of being transported by a vessel though not inside it."

Two American cases have attempted to provide some clarity on this issue. In *The JP Donaldson*[106], a tug was towing sailing barges which has their own means of propulsion and were under the control of a master. For fear of grounding during a storm, she had to cast free the barges which were subsequently lost. The court held that she was not liable for a general average contribution to the tow owners as the tug and tow could not be regarded as a single maritime adventure.

However, in *S.C. Leveland Co. v U.S.A*[107], where a tug was towing two barges, all the vessels being in common ownership, the court held that all three were liable in general average.[108] Some commentators contend that in determining whether tug and two are separate vessels, one should not depend on ownership but rather look to the physical state of affairs during the salvage operation.[109]

3.4.3. Freight

Freight is a recognised subject of salvage.[110] Article 1(c) of the 1989 Salvage Convention stipulates this as well, provided the freight is properly described as "freight at risk".

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106 (1897) 167 U.S. 599

107 (1963) A.M.C. 260 (1963)

108 Kennedy expresses the view that this case was wrongly decided as there was no obvious common danger to justify general average.

109 Brice, supra, 3-30

110 The *Gas Float Whitton* (No. 2), supra, 63 per Lord Esher M.R.

The term "freight" essentially refers to the remuneration payable for the carriage of goods in a ship. There are two classes of freight ie:

(i) "freight at risk" - which refers to freight due and payable upon delivery of the goods at its destination.

(ii) Pre-paid freight which refers to freight paid in advance and which is not returnable even where the ship or cargo may be lost.

The law of salvage concerns itself only with "freight at risk".[111] Since with prepaid freight irrespective of the dangers to cargo or ship, the recipient of the freight is not subject to any risk of having to repay it. Thus the salvor by his services can confer no benefit upon the owner of that freight and in this sense there would be no "freight at risk".[112]

The complexity in this area of law was noted by Brandon J in *The Pantanassa*[113] and he declined to express a view as to whether a claim for salvage lay against charters as owners of freight at risk.

SOUTH AFRICAN LAW POSITION

South Africa, by virtue of its status as a British colony in the 19th Century, adopted the salvage tenets of the English Admiralty Court.

In the relatively few reported cases dealing with salvage heard in South Africa, the courts have uniformly applied English law.[114] With regard to aspects of salvage which relate to wreck the law that applies is a combination of statute, Roman-Dutch law and English common law.

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111 Brice, supra, 3-34

112 See Brice, supra, para 3-33 to 3-50 for a discussion on this issue.

113 [1970] P.187, 192

114 Hare, *Shipping Law and Admiralty Jurisdiction in South Africa* (1999) 280

CHAPTER 4

CARDINAL ENVIRONMENTAL DISASTERS AND THE COMMERCIAL AND LEGAL RESPONSES IN THEIR WAKE

4.1 NEW CONSTRAINTS ON SALVAGE LAW

Having examined and considered the principles inherent in classic salvage law in the previous chapter, the aim of this chapter is to focus on the pressure placed on this ancient law, by changing political and environmental circumstances, as well as technological developments in the shipping and trade industries.

The international law of marine salvage has experienced greater pressures in the previous three decades than its whole history since its humble beginnings in the Mediterranean. It has served the maritime community well. However, developments within the shipping industry together with marine casualties with environmentally disastrous consequences, have indicated that this body of ancient law was inadequate in dealing with modern circumstances. Therefore, a total revision of its principles were required.

Two events which have been cited[1] as the most significant contributors to the size of the world tanker fleet and transportation of crude oil are firstly

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[1] Sheen 'Conventions on Salvage' (1983) 57 *TLR* 1394.

the seizure of the oil refinery at Abadan in 1951 and secondly the closure of the Suez Canal in 1956. These have brought untold complexities to the simple foundations of salvage law.

In 1951 former Prime Minister of Iran, Mohammed Mossadegh, seized the Anglo-Persian oil-refinery in Abadan. The consequence of this was that crude oil found in countries adjacent to the Persian Gulf had to now be transported to more politically stable countries where refineries were being built. Prior to this there had been very little carriage of crude oil by tankers, as the oil was refined at Abadan and transported in its refined state.[2]

After the 1951 seizure, the transportation of crude oil rapidly increased as the world's thirst for oil greedily escalated. This prolific transportation of crude oil caused many explosions on board tankers.[3]To the law of salvage this meant that much of the salvor's time was now involved in fire-fighting operations.

The cargo of crude oil, once spilled or escaped from the ship, was a problem in itself. Once lost the crude oil gives off dangerous gas for a period of time. More importantly, it defiles everything it comes into contact with.

President Nasser of Egypt closed the Suez Canal in 1956. Prior to this closure, the size of tankers using the canal were limited in draught. With the subsequent closure of the canal, tankers were compelled to use the longer route around South Africa. Therefore, no reasons existed to restrict tanker size and they rapidly increased as superships, ie. V.L.C.C.'s (Very

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2 Supra, 138.

Large Crude Carrier) and U.L.C.C.'s (Ultra Large Crude Carrier) plied the world's oceans.[4] As vessel capacity increased so too did the threat of vast marine pollution.

The *Torrey Canyon* disaster indicated just how ineffective marine pollution preventative measures were. Hence, legislation in place at the time was revised and new conventions regarding oil pollution compensation were drafted. It was only after the *Amoco Cadiz* catastrophe that it was decided that a new convention should supersede the 1910 Brussels Convention on Salvage.

A complete analysis of all international responses to marine pollution is beyond the scope of this work. Only those commercial and legal responses, as a result of selected marine casualties, from the shipping industry and international maritime law organisation will be considered.

4.2 CARDINAL DISASTERS

(i) Torrey Canyon

In comparison to modern shipping standards the *Torrey Canyon*[5] could be described as slightly over medium size, but in her time she was regarded as gigantic. In 1967 when disaster struck her, she was 974 feet long with a beam of 125 feet long and had had a deadweight tonnage of approximately 120 000 tons, thus making her the thirteenth largest vessel afloat.

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3 Ibid, 138.

4 Statistics on largest U.L.C.C.

5 For a discussion on the Torrey Canyon disaster, see Petrow *The Black Tide in the Wake of the Torrey Canyon* (1968) 5; Gill *The Wreck of the Torrey Canyon* (1967) 1; Cahill *Strandings and their Causes* (1985) 1.

She was owned by the Barracuda Tanker Co. of Bermuda and she flew the Liberian flag. Her officers and crew were Italian. On her last voyage she was on a single-voyage charter to the British Petroleum Company Limited, carrying a cargo of 119 328 tons of crude oil from Mena al Ahmadi in the Persian Gulf to the BP refinery at Milford Haven. Owing to her size she was prevented from using the Suez Canal and therefore used the longer route around the African continent. She departed from the Persian Gulf on 18 February 1967 and her passage via the Cape of Good Hope to the Canary Islands on 14 March was relatively uneventful.

In the shipping and oil industries, time and speed mean money. Every minute that a tanker is idle and not moving oil, amounts to a loss of income to its owners.

On 14 March the master of the Torrey Canyon was warned that he had to make the high tide at Milford Haven on the evening of 18 March. Failing this, he would have to wait until 24 March when the next tide would permit him to bring his ship into harbour. A delay of 6 days was unacceptable to any tanker owner. Thus the master was (as he would later testify in inquiry proceedings[6]) under great pressure to arrive in Milford Haven in time to catch the evening high tide on 18 March.

On 18 March 1967, as she approached the Scilly Isles, the Torrey Canyon ran aground on the Seven Stones. The Seven Stones are a group of dangerous rocks situated nearly in the fairway between the Scilly Isles and

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6 Petrow, supra, 110.

Land's End. They are covered at high water, and in rough weather the breakers upon them may be seen for a considerable distance.[7]

The events resulting in the grounding of the Torrey Canyon are tragic, succinctly it may be attributed to the negligence of the master in that there had been a failure to plan the final stages of the voyage thoroughly. Some commentator's[8] portray the master as a foolhardy, stubborn man who had a strained relationship with his Chief Officer and who was reluctant to admit an error in judgment in the presence of this chief officer.

Other commentators[9], while acknowledging the negligence of the master, provide in this writer's opinion a more complete and unbiased portrait of the master who commanded the ill-fated tanker. It was evident that the master deeply regretted the disaster and, after interviews with the vessel's insurers and owners, he said: "For a ship's captain, his ship is all, and I have lost mine".[10]

The Liberian government conducted an inquiry into the disaster. It concluded that the casualty was caused by human error and all the blame lay at the door of the master - Captain Rugiati. He was regarded as being "imprudent" in deciding to pass east of the Scilly Isles instead of west, and that his desire to reach Milford Haven to make the high tide would still have been possible if he altered his course and passed west of the Scilly Isles. Thus, his decision to pass east was seen as illogical. The position of

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7 Gill, supra, 11.
8 Cahill, supra, 5.
9 Petrow, supra, 148.
10 Op cit 158.

the master was eloquently summed up when a journalist at the time said: "Captain Rugiati was a good man. But not good enough".[11]

Once aground, problems arose as to how the casualty should be treated. The first line of defence in preventing widespread pollution was salvage. Thus, the 520-ton Utrecht, a Wijsmuller tug proceeded to the casualty and within a few hours the master had signed a standard Lloyd's "no cure - no pay" Open Form salvage contract. The news of this salvage contract was received with much delight at the salvors' headquarters in Holland.[12] Despite the risks attached to the "no cure - no pay" principle, the salvors were confident they could re-float the Torrey Canyon and the possibility of a successful salvage operation would, at the very least, mean a million dollar award to the salvor.

The salvage operation proper began on 20 March. There were fifteen Dutch salvage workers, two other Wijsmuller tugs - the 245-ton *Titan* and the 200-ton *Stentor*, as well as the *Praia de Adraga*, a 516-ton Portuguese tug (hired by Wijsmuller), were also alongside the casualty to provide assistance. The salvors attempted to re-float the casualty and first began to pump compressed air into her tanks. The first day of the salvage operation was in fact their best.[13] The next day it seemed the ship was rising off the rocks and into an upright position. But with hope came danger, for as the ship's buoyancy increased, so too did the amount of gas. A few hours after work had begun on the second day, an explosion rocked the engine-room and "ripped upwards through the main deck of the tanker where the swimming pool was located and the structural strength of the tanker's steel

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[11] Ibid, 249.
[12] Ibid, 98.
[13] Ibid, 109.

deck was weakest. Giant hunks of metal flew though the air ... Captain Stal was walking on the deck with his back towards the pool. A piece of metal was arching through the air towards him ... The jagged piece of shrapnel sliced across his spine and carried him through the ship's railing into the water below".[14] Later that day Captain Stal, Chief Salvage Master, died. *The Torrey Canyon* was subsequently evacuated.

The alternatives for minimizing pollution at this time, as viewed by the British Government, were:

(a) to transfer the oil into another tanker (this was seen as a long hazardous process;

(b) to burn the oil (this was regarded as causing insurmountable problems);

(c) to salve the ship by re-floating her.[15]

It was evident that salvage was the best alternative. While salvage operations continued, approximately 30 000 tons of oil had escaped from the tanker by 23 March. Three days later disaster struck. The Torrey Canyon broke her back and was lying in two sections. The oil continued to spread. On 27 March with rough seas and a heavy swell, the broken sections of the wreck moved further apart and began to sink. Her forward section broke and left the wreck in three parts. The oil, by now, had spread around the Cornish coast.

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[14] Ibid, 79.

On 28 March Wijsmuller ended their salvage contract, marking the conclusion of a salvage saga which is best described as "a dismal tale of personal disaster, growing disillusionment and eventual defeat".

The widespread media coverage of the disaster coupled with the public's distress and revulsion at the large scale pollution[16] eventually led to the decision of the British Government to destroy the doomed tanker.[17]

The wreck was subsequently bombed and set on fire by the RAF, thereby destroying all her oil. By 30 March all that remained of the ship were the pieces that lay at the bottom of the sea and a legacy of pollution that devastated both the French and British coasts.

(ii) Amoco Cadiz

On 16 March 1977 the 228 513 dwt VLCC *Amoco Cadiz*, fully laden with crude oil, lost her steering in the English Channel. She flew the Liberian flag and was crewed by Italians.[18]

At the first sight of trouble, it seemed to both the master and the crew that the malfunction of the steering gear was temporary and easily rectifiable and thus there was little cause for concern.[19] However, only when the *Amoco Cadiz* was 10 miles off the coast and drifting towards it in a gale, and when engineers were unable to rectify the malfunction or utilise the emergency steering, did the master realise the precariousness of his

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15 Ibid, 82.
16 For a detailed discussion on the effects of the pollution on marine life and the tourist trade, see Petrow, supra, 207.
17 Sheen, supra, 1395-1396.
18 Cahill, supra, 10.
19 Ibid.

position. It was only at this point in time, and after having consulted his owners for instructions, that a call for assistance was made.[20] The master of this doomed tanker was later criticized for his delay in requesting assistance. However, it was contended by some commentators[21] that one should not judge a master's reluctance too harshly, for one must consider the realities of shipping practice and far too many owners discourage their masters from taking an active interest in exercises that are likely to be costly.

Once the said assistance was requested, the German salvage tug Pacific responded and offered its services on the terms of Lloyd's Open Form Contract. Soon after towing operations began, the hawser snapped. Prior to a second attempt at towing, the *Amoco Cadiz* ran aground on the rocks off the coast of Brittany, spilling 220 000 tons of crude oil.

In total, loss of this modern vessel and her expensive cargo amounted to $60 million which was the lesser part of the total damage, when compared to $1.3 billion in pollution damage claims which resulted. The final award granted was $200 million which was still twice the value of the vessel and cargo.[22]

It has been suggested by some commentators that, had a tug been utilised much earlier, the disaster would not have occurred.[23] To this end it is significant to note the findings of the Liberian Marine Board of Investigation which held:

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20 Gold 'Marine Salvage: Towards a New Regime' (1989) *JMLC* 489.
21 Cahill, supra, 81.
22 Gold. supra, 489.

> "The plain fact is that as soon as the tug arrived, and without waiting for the conclusion of any contract, she took immediate steps to make fast, which she did with commendable speed and thereafter did her utmost to arrest the drift of the *Amoco Cadiz* to turn her head away from the land. The continuance of negotiations did not in any way delay the performance of her services ..."[24]

It has been argued that had the first attempt to engage the tow been made earlier, and thus the extensive pollution prevented, the salvage award may have been in the region of approximately $4-5 million.[25]

In the wake of this disaster, it became obvious that there was no incentive to a salvor to attempt salvage in a situation where success was unlikely and the threat of pollution high.[26]

The time had come for a revision of the time-honoured principle of "no cure - no pay".

(iii) The Atlantic Empress and the Aegean Captain

The collision off the West Indies coast, between the two VLCC's *Atlantic Express* and *Aegean Captain*, further contributed to the debate that classic salvage law needed to be reviewed and amended to accommodate modern circumstances.

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23 Ibid, 490.
24 Abecassis 'Some Topical Considerations in the Event of a Casualty to an Oil Tanker' (1979) *LMCLQ* 449.
25 Gold, supra, 490.
26 Ibid.

This collision was no different from any other maritime casualty, except that its notoriety lay in its size. Together these supertankers were carrying approximately 470 000 tons of crude oil.

Salvors were engaged under Lloyd's Open Form and began extinguishing the fire on board the Atlantic Empress but their efforts were frustrated by neighbouring Caribbean states who refused the stricken tanker entry into their territorial waters.[27] Eventually the vessel with flames leaping 30 metres from the deck and leaking oil was towed out into the Atlantic. She subsequently sank when an explosion ripped her hull apart. This $45 million supertanker was thus lost.

For the salvors who were engaged under LOF, this spelt NO SUCCESS - NO CURE and therefore NO PAY! The prerequisite for salvage that property actually be salved was not met. This was a totally undesirable situation as one salvor alone incurred expenses at the rate of $75 000 per day for two weeks in his attempts to salve the casualty.

Perhaps the only fortunate feature in this dismal saga was that the 275 976 tons of crude oil in the *Atlantic Empress* had dispersed in the Atlantic and pollution along the coast of Trinidad and Tabago was averted.

The smaller vessel *Aegean Captain* which had sustained severe damage was successfully towed to Curacao with much of its cargo intact. She was later declared a Constructive Total Loss. Prior to the collision, this 11 year old vessel was valued at only $7,5 million. After being declared a Constructive Total Loss, it meant that the salvors were left with very little

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[27] Referred to colloquially as the "NIMBY" attitude, ie. Not-in-my-back-Yard.

salved hull value from which to be compensated. Fortunately, the vessel was loaded with valuable cargo failing which the salvors' compensation would essentially depend on the vessel's scrap value.[28] This problem was expressed by the President of the ISU at the time, when he stated:

> "Even large, modern, sophisticated vessels now tend to get written off like automobiles after an accident. Engine-room flooding or fire damage can quickly turn a ship into a constructive total loss, although the shell and main structure may have suffered little damage. This means that the professional salvor is often solely dependent on the value of only cargo to provide his remuneration.[29]

This catastrophe further indicated that the major concern of the salvors was not the inadequacy of "no cure - no pay", but rather the inequitable results it produced.[30]

The salvors in this case argued that there had in fact been considerable success in the salvage operation as massive pollution had been averted and thus they had saved the shipowners from paying out large sums of money in liability claims. It was contended that surely this could be construed as a "cure". However, classic salvage law did not permit this and the salvors were left out in the cold.

It was now clear that there was diminishing incentive for salvors to undertake salvage, on a LOF basis, where the risks were too high.[31]

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28 Gold, supra, 491.
29 Gold, supra, 491, fn 13.
30 Coulthard 'A New Cure for Salvors? - A Comparative Analysis of LOF 1980 and the CMI Draft Salvage Convention' (1983) 14(1) *JMLC* 50.
31 Gold, supra, 492.

(iv) The Andros Patria

On 31 December 1978 the *Andros Patria*, a supership of 218 665 dwt, had developed a 15 meter crack amidship on her waterline, while on stormy seas off the Spanish coast. In the meantime, her cargo of crude oil lay exposed to the sea. Subsequent explosions forced her crew to abandon ship. She was left some 80 km off the Spanish coast and headed on a westerly course via the automatic pilot.

The salvage tug *Typhoon* had, on 3 January, come to her assistance and attempted to tow the tanker safely into a port of refuge. It was at this point that the salvor's difficulties began. The Spanish authorities refused to allow the stricken vessel any closer to their coastline; the threat of pollution being only too obvious. Likewise, English, French and Portuguese authorities turned down any request for a port of refuge. The *Andros Patria* became a maritime leper and the objectives of a speedy and efficient salvage operation were thwarted.

Later, the Portuguese authorities reluctantly decided that the tanker could lie up in its dry docks, but subject to certain restrictions.[32] The tanker continued to deteriorate and the problems confronting the salvors took a turn for the worse when Portuguese authorities changed their minds and forced her out of their waters. The salvors, who were now desperate, decided to tow the stricken vessel to the Azores while off-loading along the way.

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[32] Her cargo had to be unloaded beyond their 200 nm EEZ.

Six weeks later, as she approached the Cape Verde Islands, only 50 000 tons of her 166 000 ton cargo remained on board. The supertanker, without much of her cargo, was now manageable and less of a risk but this did not convince the Cape Verde authorities to provide her with a safe port. Instead they ordered her out of their waters. The ill-fated tanker now limped back towards Portuguese waters and after a lengthy inspection was received into port.

The *Andros Patria* fiasco reflects the reluctance of coastal states in allowing stricken vessels into their ports where the threat of pollution is too high.

The problem of the flying Dutchmen would not be so severe today as Article II of the 1989 Salvage Convention provides:

> "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".

Some commentators[33] believe that Article II is a little more than an exhortation, as port entry may still be subjected to certain restrictions and

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[33] Brice *Maritime Law of Salvage* 2ed (1993) para 1 - 318.

even be prohibited. This is the position in the United Kingdom in terms of the Dangerous Vessels Act 1985.

All four catastrophic events brought a glaring message to the international community: Salvage law was outdated and its inequitable results were crippling the salvage industry.

The glaring lack of incentive to salvors in providing services where a considerable risk existed had to be addressed. The ultimatum to the international legal and shipping community was therefore simple: a formula to encourage salvors to render assistance to vessels which posed a threat to the environment had to be found.

4.3 RESPONSES FROM THE COMMERCIAL AND LEGAL MARITIME SECTORS

It is now necessary to consider the responses by the commercial maritime sector and those of the international legal community under the auspices of the Comité Maritime International (CMI).

4.3.1 Commercial Sector Responses

(a) Lloyd's Open Form 1980 (LOF 80)

At the time the first attempt to rectify the problems that arose was from the marine insurance industry when the committee of Lloyd's began to review and update the Lloyd's Standard Form of Salvage Agreement. The committee also included

representatives from the International Chamber of Shipping, the Oil Companies International Marine Form as well as the International Group of Protection and Indemnity Associations.[34] In May 1980, within two years of its appointment, the committee published LOF 80. The speed at which this new agreement was concluded served only to indicate the urgency of the issues it sought to rectify.

In light of the rapid rate at which changes occur in salvage law and the fact that LOF 80 has subsequently been amended and superseded by the current LOF, it is not my intention to consider in detail all clauses contained in LOF 80. Rather the discussion to follow will examine in detail those clauses which deviate from its predecessor, ie. Lloyd's Standard Form of Salvage Agreement 1972, and which represent an advancement of traditional salvage law.

The most memorable change contained in LOF 80 constituted an exception to the traditional "no cure - no pay" principle, "where the casualty is a laden or partly laden tanker".

Before examining the above-mentioned provision in detail, a discussion on the duty and remuneration as provided for by LOF 80 for general application to all vessels, will first be made.

Clause 1(a) - "best endeavours"

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34 Coulthard, supra, 41.

This clause expressly requires the salvor to use his "best endeavours" to salve the property and to take it to a place of safety. In determining "a place of safety" the test is a subjective one for the salvor. This is essentially a question of fact on the nature of the damage to the casualty, the port of anchorage, facilities available, prevailing weather conditions, etc.[35]

Further, it contains an anti-pollution provision which is applicable to all casualties and not restricted to laden or partly laden tankers. This provision creates a new duty on the salvor "to use his best endeavours to prevent oil from the vessel which performing the services of salving the subject vessel and/or her cargo bunkers and stones". The incentive for the salvor to carry-out this new duty and prevent pollution is an entitlement to an enhanced award. Such an award is to be made out only against the owner or owners of the tanker.

The above-mentioned provision clearly reflected the growing environmental awareness at the time. The use of the phrase "best endeavours" attempts to convey that a specific degree of skill and care is required of the salvor in reducing the threat of damage to the environment during salvage operations. It must be borne in mind that it is not perfect; it does have some loopholes.[36] This may be explained by the following:

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35 Miller 'Lloyd's Standard Form of Salvage Agreement - LOF 80: A Commentary' (1981) 12(2) *JMLC* 247.

36 Brice, supra, para 4 - 208.

(a) First, the salvor's duty is only aimed towards oil and there is no distinction as to whether this refers to oil carried as cargo or oil in bunkers.

(b) Second, it concerns itself with the prevention of the "escape" of oil from the vessel. Thus, it does not impose any duty on the salvor with regards to oil which may have already left the vessel.

Some commentators[37] see these restrictions as reflective of the commercial sector of the salvage industry, and "the evident unwillingness of commercial interests to adopt the concept of 'liability salvage'".

(c) Third, it restricts the salvor's obligations to a specific time period, ie. "while performing the services of salving the subject vessel and/or her cargo bunkers and stores". This, in effect, means that there is no obligation on the salvor once salvage operations have ended.

(d) Fourth, the "best endeavour" of the salvor and the entire salvage operation are still subject to the traditional "no cure - no pay"[38] maxim and accordingly there would be no enhanced award for anti-pollution preventive measures unless there exists some salved property.

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37 Coulthard, supra, 55.
38 Brice, supra, para 4 - 209.

Clause 1(a) - "safety-net"

Although LOF 80 retains the traditional salvage principle of "no cure - no pay", it creates an erosion thereto by breaking the rule that a salvor is to be compensated only from the salved property. Clause 1(a) makes special reference to tankers which are "laden or partly laden with a cargo of oil" and states that if salvage is rendered on a "no cure - no pay" basis and where such services are (i) not successful, (ii) partially successful or (iii) the salvor is prevented from completing the services, then he:

> "... shall nevertheless be awarded solely against the owners of such tanker his reasonably incurred expenses and an increment not exceeding 15 per cent 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 exception to the principle of "no cure - no pay" expenses shall in addition to actual out of pocket 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."[39]

This enterprising provision guaranteed financial reparation to salvors for services rendered, despite a failure to salve any

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[39] Clause 1(a) Lloyd's Open Form 1980.

property. Its application was limited to circumstances where the salvor is (i) not successful, (ii) prevented from taking action and (iii) partially successful. It is contended that the first two circumstances take cognisance of the difficulties that intervention by coastal states present to salvors, ie. where the coastal state wishes to have the casualty sunk or where a "maritime-leper"[40] situation exists. By including the situation where the salvor is only "partially successful" LOF 80 takes into account that the possibility may arise where the arrived salved value of the property is too low and that any award based thereon fails to provide adequate remuneration to the salvor.

LOF 80 operates by limiting the availability of the "safety net" to instances where it exceeds the amount "otherwise recoverable". Thus, the exception in clause 1(a) operates as a true "safety net", providing remuneration only when that which is traditionally available is insufficient.[41] The difficulties of tanker salvage, as experienced by salvors, are clearly addressed by the "safety-net" provision and this exception to "no cure - no pay" represented a welcome relief to salvors at the time.

It is, however, inadequate in some aspects. This is seen by its exclusive application to tankers with cargoes of oil This deficiency was significant; it failed to provide sufficient

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40 As shown in the '*Atlantic Empress / Aegean Captain*' saga, also The '*Kurdista*', The '*Andros Patria*'.

41 Coulthard, supra, 57.

encouragement to salvors to prevent pollution from substances other than oil. Further, it ignored the environmental threat presented by vessels carrying highly toxic or hazardous substances.[42] Further, by only referring to "laden or partly laden tankers", it did not cover tankers in ballast. This was a grave omission, as a VLCC with thousands of tons of bunker oil or tankers in ballast remained a threat to the marine environment.

Finally, the remuneration to the salvor in terms of the "safety net" has to be considered. Where the salvor qualifies to invoke the "safety net" provision, he "is entitled to his expenses plus an increment up to 15 per cent thereof as a profit margin, to the extent that the total amount does not exceed any other available award". Some commentators[43] correctly believe that an award based solely on expenses fails to consider those factors which traditionally affected an award for salvage, ie. degree of risk, damage to imperiled property, etc. Further, the percentage of the increment needs to be higher, as it is contended that if the actual expenses are low but the other factors (as mentioned above) are high, an award of expenses together with the 15 per cent increment would not be adequate remuneration for the salvor.

Then there is the question as to what exactly does a "fair rate for all tugs, craft, personal and other equipment used by the

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42 This is rather unfortunate as the *El Paso Kayser* Salvage case showed that a Large Noxious Gas Carrier cannot only be successfully salved but that the risks involved are very high.

43 Coulthard, supra, 58.

contractor" mean? LOF 80 does not clearly define "fair" and as such gives rise to disagreement.

Clause 2 - "place of safety"

The main aim of this clause was to provide a solution to the intervention by coastal states, therefore alleviating "maritime leprosy". Clause 2 creates an obligation on the "owner, his servants and agents" to co-operate fully with the salvor during salvage operations. Further, it imposes a duty on the owner to assist the salvor in obtaining a place of safety for the vessel. It further obliges the owners to accept, without any delay, redelivery of the vessel at the place of safety.

Clause 10 - "interim awards"

In terms of this clause, the Arbitrator is authorised to make an interim award to the salvor pending the final award. This highly advanced provision presented a welcome relief to salvors who had incurred high out-of-pocket expenses.

Clause 21 - "salvors' limitation of liability"

This provision was drafted in response to the problems faced by salvors in light of the practically unfortunate[44] decision in *The Tojo Maru*[45] where the House of Lords held that the salvors could not limit their liability since the negligent act was not in the course of management of the tug and because the salvor was not 'on board' the tug. Essentially, it allowed for the salvor to limit any liability to the owners of the salved property:

> "in the manner and to the extent provided by English law and as if the provisions of the Convention on Limitation of Liability for Marine Claims 1976 were part of the law of England".

Clause 21 presented a perplexing situation indeed, as LOF 80 incorporated provisions of the 1976 Limitations of Liability

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44 Bessemer-Clark 'The role of Lloyd's Open Form' (1980) *LMCLQ* 303.
45 [1972] AC 242.

Convention, ie. s7, and schedule 4, while English law[46] denied the salvor such limitation. This situation ensued until the United Kingdom ratified the 1976 Convention, thereby incorporating the relevant provisions into domestic legislation.

LOF 80 recognised and compensated anti-pollution preventative measures taken by salvors and further provided that where, despite such measures, salvage failed the salvor had the "safety-net" as protection. In appreciating the innovativeness of this document, the true nature of LOF must be borne in mind, ie. it is a commercial document which is designed for speedy agreement under unenviable circumstances. LOF 80 was the first step in the transformation of traditional salvage law.

(ii) Tovalop

TOVALOP and CRISTAL are acronyms for the voluntary agreements from the tanker and oil industries relating to liability for oil-pollution clean-up and damage. Only a brief examination will be made of provisions in these agreements, seen as directly alleviating the problems created by marine pollution. A detailed analysis will not be made as these two agreement expired in February 1997.

The Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP) was signed on 7 January 1969 and was operative with effect from 6 October 1969. At this latter date, approximately "50% of

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[46] As reflected by the decision of the House of Lords in *The Tojo Maru*.

the tanker tonnage of the world had become parties".[47] By 1993 97% of the world's tanker tonnage had been subjected to it. The reasons for the creation of TOVALOP are clear from its preamble; where it is acknowledged that traditional maritime law lacked sufficient mechanisms to provide adequate compensation to Governments or tanker owners who had incurred expenses in avoiding or mitigating pollution damage caused by the discharge of oil in the event of a marine casualty.

In terms of TOVALOP each tanker owner (including a bareboat charterer)[48], regardless of fault, was obliged to either:

> "remove a spill (discharge) of persistent oil which through negligence originates from one of his tankers and causes or threatens to cause damage by pollution to coast lines
>
> to reimburse a national government which reasonably incurs costs in removing such spill"[49].

The upper limit of liability in 1969, under TOVALOP, was set at $10 million. However, after a series of amendments this amount increased and eventually the maximum limit under the TOVALOP Standing Agreement was set at US $ 160 per ton or US $ 16,8 million, whichever is the lesser.[50]

1987 saw a revolutionary change to TOVALOP when the TOVALOP Supplement, to be distinguished from the TOVALOP Standing Agreement,

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47 Becker, Gordon 'A Short Cruise on the Good Ships TOVALOP and CRISTAL' (1974) 5(4) *JLMC* 610.

48 Clause I(b).

49 Clause IV(A) TOVALOP Standing Agreement (1969).

50 Clause VII(A) TOVALOP Standing Agreement (1969).

was created. It increased the levels of compensation subject to the condition that the cargo spilled had to have been owned by a CRISTAL member. It set the limit of liability at US $ 35 million for tankers up to 5000 gross tons.[51] For those tankers in excess of 5000 gross tons, it prescribed an additional $ 493 per gross ton up to a total of US $70 million.

In terms of the TOVALOP Standing Agreement, tanker owners assumed strict liability for pollution damage and for the 'cost of Threat Removal Measures which was taken as a result of the incident'.[52]

A major refitting[53] of TOVALOP was seen in 1978 to accommodate the 1969 Civil Liability Convention. This Convention gave rise to strict liability on the part of the polluter and also increased the shipowner's liability.

There are certain circumstances which TOVALOP would not apply. With regards to the Standing Agreement, there will be no payment if the CLC applies. Further, there will be no compensation where the 'incident':

- "resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
- was wholly caused by an act or omission done with intent to cause damage by a third party, or

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51 TOVALOP Supplement cl. 3[C](3).
52 Clause IV(A) TOVALOP Standing Agreement (1969).
53 Cohen 'Revisions of TOVALOP and CRISTAL: Strong Ships for Stormy Seas' (1987) 18(4) *JMLC* 525.

- was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function".[54]

(iii) CRISTAL

It must be noted that the provisions relating to Cristal is being considered at this juncture only to the extent that, at the time of its introduction it was a positive response by the commercial sector to alleviate the difficulties that were being encountered in salvage law at the time.

In 1971 the Oil Companies formed the Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution. This was meant to supplement the liability of tanker owners for pollution damage under TOVALOP.

In terms of this agreement two conditions had to be fulfilled before payment could be effected[55]:

(1) the oil spilled must have been "owned" by a CRISTAL member

(2) the tanker from which the oil escaped must have been owned by a TOVALOP member (inclusive of a bareboat charterer)[56].

CRISTAL set the limit for liability of tankers up to 5000 gross tons at a maximum of US $ 36 million.[57] For those tankers in excess of 5000 gross

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54 Clause IV(B) TOVALOP Standing Agreement (1969).
55 CRISTAL Clause IV(D)(1).
56 This was subsequently revised in 1978 to include tanker owners not belonging to TOVALOP.

tons, the limit was US $ 36 million with an additional US $ 733 per gross ton up to a maximum of US $ 135 million.

TOVALOP and CRISTAL have served the victims of oil pollution damage for approximately 25 years. They have been a "prompt and simple vehicle for the recovery of damages without resort to protracted litigation and excessive legal costs".[58]

4.3.2 LEGAL SECTOR RESPONSE

CMI / Montreal Draft Convention on Salvage

The CMI was given the task to review the principles of salvage. It set up an International Subcommittee under the chairmanship of Professor Erling Selvig of Norway.

The threat of pollution was a major concern in the drafting of this document. Its major changes reflect this. Like LOF 80, it contains the exception to the "no cure - no pay" principle. While it was similar to LOF 80 in most respects, it was at times more superior[59] in its approach thereto.

This draft convention also contained a broader definition of "salvage operations"[60] than that of the 1910 Brussels Convention. Further, it gave a more expansive definition of "vessel"[61]. The Draft Convention was not the epitome of perfection, nevertheless it represented a considerable

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57 CRISTAL Clause IV(D)(5)(a).
58 Cohen, supra, 538.
59 Coulthard, supra, 52; O'May 'Lloyd's Form and the Montreal Convention' (1983) 57 *TLR* 1412.
60 Article 1-1(1) Montreal Draft International Convention on Salvage, 1981.
61 Ibid.

advancement from its predecessor. It was welcomed by salvors who considered the "safety-net" under LOF 80 as not being sufficiently generous.

4.4 DISASTERS OF THE PAST DECADE AND THEIR CONSEQUENCES

(i) EXXON VALDEZ

On 24 March 1989, the *Exxon Valdez*, a 987 foot, single-hulled tanker, owned by Exxon Shipping Co. Inc. and loaded with 1,264,155 barrels of North Slope crude oil, ran aground on Bligh Reef in Prince William Sound, Alaska. She spilled approximately 11,3 million gallons of oil into the Pacific Ocean.

The vessel had, shortly before the grounding, been safely guided through the Valdez Narrows and past Rocky point by a harbour pilot on board whereafter control of the vessel was with its Captain. Soon thereafter the Captain noticed that small icebergs from the Columbia Glacier were drifting into the sound and in order to avoid them, he would have to change course. He subsequently notified the Coast Guard of the change in course and received the Coast Guard's permission to move into the northbound lane. Prior to retiring to his cabin for the night, the Captain instructed his third mate to steer the vessel back into the southbound lane once it had passed Busby Island. It has been established that the third mate did give the instruction to the helmsman to steer the vessel to the right, however the vessel was not turning sharply enough and a 12:04 am the vessel hit Bligh

Reef.[62] It had not been established whether the order was given too late, or whether there was something wrong with the vessel's steering system, or if the helmsman failed to follow instructions correctly.[63] The impact of the collision was so great that it ripped the tanker's cargo tanks resulting in the worst oil spill in America's history. A factor which further aggravated the effects of the spill is that the Captain failed to contact the Coast Guard promptly. Instead, he attempted to free the vessel from the reef but after two hours of no success he ceased his attempts at steering the vessel.

Strong north-easterly winds arose and began to disperse the oil beyond any hope of containment. The slick eventually drifted 500 miles, covering 10,000 miles of shoreline.

The response effort involved *inter alia* the lightering of unspilled cargo, vessel salvage, booming of sensitive areas, cleaning of oiled beaches, and rescuing of wildlife. Manor clean-up operations took place during 1989-1992. In 1989 more than 11,000 people and 1,400 marine vessels were utilised. By 1992 the combination of natural processes and clean-up activities had eliminated nearly all of the surface oil. This lengthy clean-up cost approximately $1.2 million.

OIL POLLUTION ACT 1990

In response to this disaster, the United States government passed the Oil Pollution Act, 1990 (OPA'90). Regarded as one of the most significant

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62 Lynch 'Oil, Environment and Trade' (1998)
Unpublished Article received from Haight, Gardner, Holbud and Knight Attorneys, New York, New York, U.S.A.

63 Ibid.

environmental statutes in the United States, this act consolidates the federal response mechanisms for oil spills. The Act is perhaps most well known for its adoption of tough criminal penalties.[64]

*(ii) **BRAER***

On 5 January 1993, *The Braer*, a Liberian registered and US owned oil tanker, ran aground off the Southern tip of the Shetlands, when its engines were flooded with seawater. Owing to the tanker being continuously tossed against the rocks, by 12 January she began to break up into three sections and her entire cargo of 85,000 tonnes of light crude oil spilled into the North Sea.

At this time the seas were extremely choppy and winds were reaching approximately 100 m.p.h., which meant that the oil could not be recovered. These prevailing weather conditions were responsible for tempering the effects of the spill and thus, although regarded as the twelfth largest spill, there was no major and long-term environmental damage.

After the *Exxon Valdez* catastrophe many shipping companies began using double-hulled ships. Although the *Braer* spill had occurred long after the *Exxon Valdez*, she (the *Braer*) was a single-hulled vessel. It has been argued by some commentators[65] that had the *Braer* been double-hulled, the spill could have been averted or its consequences mitigated.

The reason for the *Braer* being single-hulled rather than double-hulled was because of the flags of convenience. It is well established that many of the

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64 See chapter 6 and 7, infra, for a discussion on the Act.
65 Lynch, supra.

ships which are registered in developing countries under flags of convenience are old, in a state of disrepair and mostly single-hulled. It has been determined that flags of convenience ships, because of age and disrepair, are twice likely to sink, than those operated under the national flag of the owner.[66]

A critical factor that played a role in the *Braer* spill was that its personnel were poorly trained, lacked a common first language and were not fluent in English. They were comprised of Polish maintenance workers, Filipino crew and Greek and Filipino officers.

DONALDSON INQUIRY AND "SAFER SHIPS - CLEANER SEAS" REPORT

In response to this disaster, the United Kingdom government requested Lord Donaldson of Lymington to chair an inquiry as to "what further measures could and should be taken to reduce the risk of pollution to the UK coastline from merchant shipping".[67]

The subsequent report "Safer Ships, Cleaner Seas" indicated the advantages of a government-sponsored agreement retaining strategic salvage cover around the UK coastline.[68]

(iii) ***SEA EMPRESS***

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66 Ibid.

67 Donaldson 'Safer Ships, Cleaner Seas - Full Speed Ahead or Slow?' [1998] *LMCLQ* 170; See also Wallace 'Safer Ships, Cleaner Seas: The Report of the Donaldson Inquiry into the Prevention of Pollution from Merchant Shipping' [1995] *LMCLQ* 404.

68 See chapter 6, infra, for an indepth discussion on government-sponsored salvage agreements worldwide.

During the early 1960's the oil refining industry became established around Milford Haven. The naturally deep waters here provided berthage for even the largest crude oil supertankers. Over the years there have been many spills which have caused damage to the waters of the Haven and to the adjacent Pembrokeshire coast.

On 15 February 1996 the *Sea Empress*, a Spanish built, Norwegian owned, Cypriot registered, Glasgow managed, French chartered, Russian crewed and Liberian flagged ship, struck the Milford Channel Rock in Milford Haven Harbour, Wales. As a result, half her cargo of 70,000 tonnes of North Sea light crude spilled into the Irish Sea.

On the night of the tragedy the pilot attempted to steer west of the Milford Channel Rock, which was situated in the middle of the harbour. However, a strong eastward tugging tide arose and he had to subsequently change the vessel's course to the left. Tragically, despite his maneuvering, the single-hulled ship failed to miss the Channel Rock.

Evidence indicated that the reasons for the disaster may be attributed to a lack of planning of the vessel's approach. Additionally, there was a communication problem between the crew members and port officials, as the Russians were not fluent in English.

The *Sea Empress* spill has been recorded as the largest spill thus far in the area. The scale of the pollution was on par to that of the *Torrey Canyon*.[69] More than 100 Km of pristine coastline was severely polluted by oil. Conservation, fishing and recreation in the area was also adversely

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[69] Pryrynda & Symberlist 'Sea Empress Oil Spill' 1998 *University of Wales Swansea* 1.

affected. During late February and early March, the pollution had reached its zenith when there were huge oil slicks at sea and many shores were experiencing large-scale bulk oil pollution. The spill caused thousands of casualties to the sea-birds.

There was also much damage to the shoreline[70], as shore seaweeds and invertebrates were killed in large quantities.

MILFORD HAVEN FINE & RESPONDER IMMUNITY

The Donaldson report also considered the *Sea Empress* incident and the subsequent fine of £4 million which was levied against the Milford Haven Port Authority in terms of the Water Resources Act, 1991. The Water Resources Act imposes a strict liability regime, the outrage of the marine and salvage industry toward the imposition of this fine is justifiable in the circumstances. Lord Donaldson has called for an amendment to the Water Resources Act, and the marine salvage industry has vowed to continue its campaign to obtain "responder immunity" for its members.[71]

Six years have passed since the request for an amendment to S85(1) of the Water Resources Act, 1991 and the United Kingdom governments subsequent promise to review the law and to ensure that salvors acting "reasonably" to prevent pollution would not be prosecuted. However nothing has actually happened to change the legal position and no immunity exists for salvors in the performance of their jobs.

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70 Ibid.

71 See chapter 7, infra, for a detailed discussion on this issue.

CHAPTER 5

INTERNATIONAL CONVENTION ON SALVAGE 1989 AND LOF 1990

INTERNATIONAL CONVENTION ON SALVAGE 1989

The Comité Maritime International's draft convention was revised on many occasions by the IMO's legal committee. The final draft was subsequently considered at the Diplomatic Conference in London and the new International Convention on Salvage was adopted on 28 April 1989. The convention entered into force on 1 July 1996, exactly one year after the date on which 15 states ratified it.[1]

The Preamble of the Convention provides one with an insight into the circumstances out of which the convention was born.

The 1989 Convention heralded a new era to salvage law. The heart of the convention is Article 14, commonly referred to as "special compensation". The article reflects the "safety net" and "enhanced award" provisions of LOF 80. It constitutes an exception to the traditional "no cure - no pay" maxim where the salvor carries out salvage operations in respect of a vessel which by itself or its cargo threatens damage to the environment but fails to earn an article 13 award at least equivalent to his expenses. Then he is nevertheless entitled to recover his expenses.[2] Where the salvor performs services that are not successful in saving ship or cargo, but "prevent" or

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1 International Convention on Salvage 1989, Article 29 (1).
2 International Convention on Salvage 1989, Article 14 (1).

"minimize" damage to the environment, then the award under article 14 (1) can be increased to a maximum of thirty percent.[3] In instances where it is "fair and just to do so" this increment may be subjected to a further increase up to one hundred percent of the salvor's expenses.

The aim of this chapter is to examine and analyse those provisions of the convention which represent a modernization of the law.

It notes that "substantial developments, in particular the increased concern for the protection of the environment", as well as "the major contribution which efficient and timely salvage operations make to the safety of vessels ... and to the protection of the environment". Further it recognises that there must be adequate incentives available to salvors. This is indeed a far cry from its predecessor which was essentially a benediction to various Kings, Queens and Emperors of the time.[4]

5.1. General Provisions

(i) Article 1

Contained in this article are a number of significant definitions. Article 1 (a) defines a "salvage operation" as:

> "any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever."

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3 International Convention on Salvage 1989, Article 14 (2).

This definition clearly preserves the traditional requirement that there be danger to the salved property. The importance of this article is that it expands the geographical areas within which salvage may take place. It is now clear that salvage is not restricted to the high seas. It can occur in "any river whether tidal or not, or whether separated from the sea by locks; any canal or any inland lake, whether natural or man-made".[5] This represented an important amendment to the law of salvage in English law. Traditionally, in accordance with the common law, the jurisdiction of the English admiralty court was limited to the high seas. This was reaffirmed in *The Goring*[6] where it was held by Lord Brandon that a cause of action for salvage would not arise in the instance of navigable non-tidal river waters. This decision attracted ferocious criticism[7] which subsequently ensured that the Merchant Shipping Act 1894 was amended to allow for salvage in tidal waters.

It is submitted that the dissenting view in *The Goring* represents a superior approach to the issue in contention wherein Sir John Donaldson MR stated:

> "The voyage over tidal and non-tidal waters is a single maritime adventure and should not attract wholly different rights and obligations by reference to the tidality of the water in which the vessel is for the time being sailing."[8]

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4 Preamble 1910 Brussels Convention for the Unification of Certain Rules of Law Relating to the Assistance and Salvage at Sea.

5 Gaskell "The 1989 Salvage Convention and LOF 90" (1991) 16 *TMLJ* 26.

6 1988 AC 831, 855.

7 See Kerr 'Salvage in Non-Tidal Waters: The Goring' (1987) *LMCLQ* 262; Gaskell 'Non-Maritime Admiralty Claims: The Goring" (1986) *LMCLQ* 276.

8 (1987) QB 687 (CA) 707 A-B.

The English delegation to the negotiations concerning the drafting of the 1989 Convention opposed the concept of salvage in inland waters: They argued that salvage should not apply to "the recovery of diamond rings dropped into ponds (let alone bathtubs) to the dousing of galley fires in house-boats or to the lifting of vehicles from canals".[9]

In support of the objection raised by the British delegation was that various practical difficulties may be encountered with salvage in inland waters. Some commentators suggested that it may "encourage fraudulent claims when vessels are cast adrift by vandals and then 'salved' by them or accomplices".[10]

It is contended that while expanding the geographical limits of salvage, the convention provides that a state party is able to make a reservation when:

(a) "the salvage operations take place in inland waters and all vessels involved are of inland navigation"[11];

(b) "the salvage operations take place in inland waters and no vessel is involved."[12]

Notwithstanding the practical difficulties that may be associated with inland waters the inclusion of the aforementioned definition must be seen as a progressive development to the law of salvage.

Article 1 (b)

This article defines "vessel" and reads as follows:

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9 Kerr 'The International Convention on Salvage, 1989 - How it came to be' (1990) *ICLQ* 530.
10 Gaskell, op cit, 28.
11 International Convention on Salvage 1989, Article 30 (1) (a).
12 International Convention on Salvage 1989, Article 30 (1) (b)

"Vessel means any ship or craft, or any structure capable of navigation".[13]

It is widely argued that the phrase "capable of navigation" qualifies "structure", not "ship or craft"[14]. Therefore, a stranded and immobile ship is included in this definition, since it may be capable of navigation. Further, this definition of "vessel" would also include a moored storage tanker[15].

Article 1 (c)

Property under the convention is defined as:

"any property not permanently and intentionally attached to the shoreline and includes freight at risk".[16]

Initially the CMI Draft definition of "property" was meant to cover exclusively the issue of freight. However, the phrase "any property not permanently and intentionally attached to the shoreline" was added to the definition at the insistence[17] of the International Salvage Union. This was to clarify the position of piers, jetties and land-based terminals which are excluded from the above definition.

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13 International Convention on Salvage 1989, Article 1 (b)

14 Brice 'The New Salvage Convention: Green Seas and Grey Areas' (1990) *LMCLQ* 32; Staniland 'Should the 1989 International Convention on Salvage be Enacted in South Africa?' (1991) *SALJ* 292.

15 Brice, op cit, 41.

16 International Convention on Salvage 1989, Article 1 (c).

17 Shaw 'The 1989 Salvage Convention and English Law' (1990) *JMLC* 202.

Article 1 (d)

This article defines "damage to the environment" as

> "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".[18]

This definition clearly recognizes the relationship between environmental concerns and modern shipping. It is wide in its interpretation as it provides not only for damage caused by oil pollution but also that caused by dangerous chemicals.

(ii) Article 3

This article excludes from the convention:

> "... fixed or floating platforms or mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources".[19]

During the negotiations leading to the 1989 Convention, the representatives of the International Association of Drilling Contractors (IADC)[20] expressed grave reservations at the prospect of allowing a volunteer salvor to salve a

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18 International Convention on Salvage 1989, Article 1 (d).
19 International Convention on Salvage 1989, Article 3.
20 Shaw, op cit, 210.

sophisticated drilling rig without possessing the necessary knowledge of its complex systems. Further, such structures often have detailed safety and response plans which may be interfered with by a salvor whose expertise lies in ships rather than oil rigs.[21] It was with these thoughts in mind that the above-mentioned exclusion was made.

The exclusion in article 3 is conditional. It only applies when such platforms or units are "working", that is "... are on location engaged in the exploration, exploitation or production...."

Offshore platforms and rigs which are in port or in transit would fall within the ambit of the definition of "vessel" or "property" and as such are not excluded. Thus, should a Mobile Offshore Drilling Unit (MODU) accidentally drift away from its drilling site, it most definitely can be salved.

This article has attracted unfavourable comment[22] and is regarded as unfortunate and illogical as offshore platforms and rigs constitute the greatest threat to the environment when "working".

In analyzing article 3, one must also consider article 6 (1) which allows for a contract to override the convention. Thus, article 3 may only serve to hinder and delay the start of a salvage operation in the instance where beneficial services may be rendered by professional salvors and where either LOF or a special contract have been negotiated with the rig owners.

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21 It does not however necessarily reflect the situation in practice, one need only consider the spectacular recovery by Wijsmuller of the rig *Orion* aground on the rocks in the Channel Island in February 1978. Personal Communication with Wijsmuller representatives at ITS '98 in Cape Town.

22 Kerr, op cit, 509; Gaskell, op cit, 32; Shaw, op cit, 210.

Article 3 is inconsistent with the spirit and purpose of the 1989 Convention in so far as providing for the expansion to the category of property capable of salvage as provided for in articles 1 (a), (b) and (c).

(iii) Article 4

This article essentially provides that the convention will not apply to warships and other non-commercial state-owned vessels. These vessels are "... entitled at the time of salvage operations to state immunity under generally recognised principles of international law unless the State decides otherwise".[23]

The subsection to article 4 allows a state party the option of making the convention applicable to its warships and/or non-commercial vessels. This is subject to the proviso that upon doing so the Secretary-General be notified of such decision as well as any terms or conditions thereto.

(iv) Article 5

The issue of salvage operations controlled by public authorities is examined in this article[24]. In light of the heightened concern for our environment and coastlines the possibility of public authorities being involved in salvage operations have substantially increased. This article is applicable both at the time when the salvage operations are carried out by the public authorities and when they control such operations.[25] It represents

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23 International Convention on Salvage 1989, Article 4 (1).
24 This article must be read in conjunction with article 9 which considers the Rights of Coastal States.
25 International Convention on Salvage 1989, Article 5 (1).

a compromise and allows for both the public authority and the salvor to retain a degree of autonomy.

(v) Article 6

Subsection 1 of this article preserves the concept of "freedom of contract". During negotiations leading to the 1989 Convention, representatives from the ISU, International Group of P & I Associates and the International Chamber of Shipping indicated that they were in favour of retaining "freedom of contract". Consideration was also given to the fact that no convention would be able to adequately consider all situations which give rise to the need for salvage services[26]. Further the need for flexibility in unusual cases was stressed.

Ratification of the convention was also a factor which had to be borne in mind in the drafting of article 6 (1) as many states indicated that they would be reluctant to ratify[27] the convention should the provisions be mandatory.

Article 6 (2)

The purpose of this article is two-fold. First, it states the general principle that the master has the authority to conclude contracts for salvage on behalf of the owners of the vessel.

Second, it allows the master the authority to conclude similar contracts "on behalf of the owner of the property on board the vessel". At the time when

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[26] Wooder 'The New Salvage Convention: A Shipowner's Perspective' (1990) 21 *JMLC* 81.

this provision was drafted, the position under English law was that a master did not possess the authority to bind cargo-owners unless the situation gave rise to an agency of necessity.[28] The circumstances giving rise to an "agency of necessity" were enunciated by Lord Simon of Glaisdale in *The Winson*[29] where he stated:

> "One of the ways in which an agency of necessity can arise is where A is in possession of goods the property of B, and an emergency arises which places those goods in imminent jeopardy: if A cannot obtain instructions from B as to how he should act in such circumstances, A is bound to take without authority such action in relation to the goods as B, as a prudent owner, would himself have taken in the circumstances. The relationship between A and B is then known as an 'agency of necessity'... The action taken must be necessary for the protection of the interest of the alleged principal, not of the agent; the alleged agent must have acted *bona fide* in the interests of the alleged principal..."

In practice, the difficulty arises where the master is confronted with an emergency and fails to consult with the accessible cargo-owners before he signs a salvage contract which binds them. Under these difficult circumstances it seems unreasonable to burden the master further by insisting that he contact cargo owners as very often there are many cargo owners. Some commentators suggest that "it is not in the public interest to burden him or the shipowners automatically and as a matter of legal principle in every case with the duty of investigating the whereabouts of the cargo owners ... and obtain their authority to a reasonable salvage

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27 O'May 'Lloyd's Form and the Montreal Convention' (1983) 57 *TLR* 1412.
28 *The 'Choko Star'* (1990) 1 Lloyd's Rep 516 (CA) 524.
29 *China Pacific S.A. v Food Corp. of India (The Winson)* [1982] AC 939, 965.

contract".[30] Despite the presence of these practical difficulties the courts have ruled that it is possible for owners of cargo or other property to withdraw the master's authority to sign LOF.[31]

Thus, considering the practical difficulties facing the master and the position under English law at the time, article 6 (2) represented a welcome change to the law.[32]

(vi) Article 7

This article provides for the annulment and modification of contracts where:

(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".[33]

This approach is similar to that adopted by Dr. Lushington during the mid 19th Century where the importance of just and equitable salvage contracts were stressed.[34] The provisions herein ensure that both the rights of salvors and owners are protected and therein lies its importance to any salvage contract.

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30 Brice, op cit, 37.

31 *The M Vatan* [1990] 1 Lloyd's Rep 336.

32 Both Parker LJ and Slade LJ have acknowledged that article 6 (2) may improve English Law. See *The 'Choko Star'*, supra, 524, 527.

33 International Convention on Salvage 1989, Article 7.

34 See *The Pensacola* (1864) Br & Lush 306; *The White Star* (1866) L.R. 1 A & E 68, where Dr Lushington said at 70-71 that a contract would not be upheld if to do so "would be contrary to all principles of justice and equity".

5.2 PERFORMANCE OF SALVAGE OPERATION

(i) Article 8

This innovative provision dictates special duties to the salvor, the owners of property and the master of the vessel. The Brussels Convention did not impose any such duties on the parties. At common law the only duty on the parties to a salvage contract was to take reasonable care.

Article 8 (1) (a) merely restates the common law principle and requires that the salvor exercise his duties with "due care". Subsection (b) breaks new ground by imposing on the salvor the duty to exercise due care to prevent or minimize damage to the environment. Further, new duties imposed on the salvor require him, in certain instances, to seek the assistance[35] of other salvors and, where necessary, to accept[36] the intervention by other salvors. Where the salvor accepts such intervention his position in respect of his award is protected.[37]

In respect of the owners of property, the vessel and the master the new convention imposes three duties. First, it requires that they co-operate fully with the salvors.[38] Secondly, there is the duty to exercise due care to prevent or minimize damage to the environment.[39] Thirdly, they are obliged to accept re-delivery of the vessel when reasonably requested to do so by

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35 International Convention on Salvage 1989, Article 8 (1) (c).
36 International Convention on Salvage 1989, Article 8 (1) (d).
37 Ibid.
38 International Convention on Salvage 1989, Article 8 (2) (a).
39 International Convention on Salvage 1989, Article 8 (2) (b).

the salvor.[40] It is obvious that this provision was drafted in the hope that it would alleviate the maritime leper problem.

The importance of these duties under article 8 are two-fold: First, they are mandatory in nature in terms of article 6 (3) and thus they may not be excluded from any contract made in terms of article 6 (1). Secondly, the duty of the salvor in respect of the environment will be among the criteria considered when the salvage award is being determined.[41]

(ii) Article 9

This provision reflects the concern for the environment expressed by many delegations to the 1989 conference. It recognises and preserves the rights of coastal states to protect their coastlines or related interests from pollution or the threat of a maritime casualty. The rights given in terms of this article must be read in conjunction with article 5.

The inclusion of Article 9 in the convention is a direct result of the increased awareness of and concern for marine environmental pollution.

(iii) Article 11

The concern for the environment and the importance of efficient and successful salvage operations are key factors that have led to the drafting of this article. It requires that a State party must co-operate with salvage operations and must consider and facilitate co-operation between salvors, other interested parties and public authorities.

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[40] International Convention on Salvage 1989, Article 8 (2) (c).

The drafters of the convention hoped that this provision would assist with the acceptance of re-delivery of salved vessels to a safe port or place of safety, thereby alleviation the maritime leprosy phenomenon. One need only consider the *Atlantic Empress*.[42] The latter which, according to Len Harrison, "ploughed a furrow in the North Sea" as she was being towed up and down awaiting a port of refuge.

5.3 RIGHTS OF SALVORS

(i) Article 12

The classic salvage principle of "no cure - no pay" is preserved in paragraph one of this article. The words "except as otherwise provided" found in paragraph two serves to indicated an important change to salvage law, namely the special compensation payment under article 14. Paragraph three makes provision for sister-ship salvage.[43]

(ii) Article 13

The first part of this provision lists the criteria that must be considered when determining the salvage award. The only addition and improvement to the law was that the arbitrator had to now consider "the skill and efforts of the salvors in preventing or minimizing damage to the environment".[44] This clearly echoed the intentions of the draughtsmen to protect the

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41 International Convention on Salvage 1989, Article 13 (1) (b).

42 Kerr 'The 1989 Salvage Convention: Expediency or Equity' (1989) 20 *JMLC* 505, 512.

43 The issue as to whether it is possible for a vessel to render salvage to another vessel in the same ownership was considered in *The Beaverford v The Kafiristan* [1938] AC 136. It is nowadays common to find a "sister-ship clause" in most standard hull insurance policies.

44 International Convention on Salvage 1989, Article 13 (1) (b).

environment as well as to encourage and sustain the existence of the professional salvage industry. The "availability and use of vessels or other equipment intended for salvage operations"[45] is also among the criteria that must be considered when fixing the salvage award. The relevance of the inclusion is that it recognises that salvors need to be compensated for idle time and the costs involved in ensuring their state of preparedness.

Article 13 (2) provides that the payment of the reward (article 13 (1)) be in accordance to the proportion of the salved values. During negotiations to the diplomatic conference, the representatives of the United States delegation voiced their concern about articles 13 (1) (b) and 13 (2) as follows:

> "Article 13 presently permits consideration of the salvor's efforts to protect the environment without limitation other than the general limitation that the total award cannot exceed the value of the property salved. Because salved value historically has far exceeded the amount of the salvage award, the effect of the failure to otherwise limit the 'enhancement' can be substantial ... The uncertainty created by the failure to provide a practical limitation upon the value of the 'enhancement' creates significant difficulties".[46]

The above concerns were undoubtedly influenced by cargo interests who objected to payment of the reward being made in accordance with the proportion of salved values. In this respect they "clung to the absurd view that in environmentally dangerous situations, cargo is entirely 'innocent'".[47]

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45 International Convention on Salvage 1989, Article 13 (1) (i).
46 Kerr, op cit, 512.
47 Ibid. This view is derived from the context of a collision caused by the carrier or third party.

This view certainly loses its relevance in a pollution incident where it is the cargo itself that is the pollutant.

Eventually after several rounds of negotiations, a resolution was reached and the addition of "Attachment 1"[48] to the convention was made.

Article 13 (3) retains the principle that 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".

(iii) Article 14

Article 14 is the most important provision in the new convention. It represents a departure from the time-honoured principle of "no cure-no pay". It's purpose was obviously to "induce salvors to undertake particularly difficult salvage operations where the possibility of success was slim but the risk of environmental damage considerable.[49]

Article 14 (1) provides that a salvor who has failed to earn a reward under article 13 and whose services have been rendered "in respect of a vessel which by itself or its cargo threatened damage to the environment", shall be entitled to special compensation. Such compensation is to be equivalent to his expenses.

Article 14 (2) applies when the salvor has actually "prevented or minimized damage to the environment". Under these circumstances, the tribunal may award the salvor an increase up to a "maximum" of 30% of his expenses (as per article 14 (1)). The latter part of article 14 (2) states that the tribunal

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48 This relates to the inter-relationship between articles 13 and 14 of the convention.

49 Gold 'Marine Salvage: Towards a New Regime' (1989) 20 *JMLC* 487, 499.

may increase the special compensation even further up to 100% of the salvor's expenses provided that this is "fair and just to do so".

In terms of article 14 (4) special compensation is only payable if it is greater than any award obtainable under article 13.

Article 14 (5) provides that in the event of negligence on the part of the salvor, "he may be deprived of the whole or part of any special compensation payable under this article".

It is important to note that the special compensation is payable by the shipowner alone. During negotiations, agreement was reached with P & I clubs that they would cover this liability. To ensure that this could not be recovered from cargo in general average, Article VI of the York-Antwerp Rules (1974) has been amended to exclude any sum payable by the shipowner as special compensation.[50]

(iv) Article 15

Apportionment of salvage between salvors is dealt with by this article. Such apportionment is to be made in accordance with the criteria set out in article 13 (10). Where the salvage has been carried out from a vessel, then apportionment will be made according to the law of the flag of such vessel.[51] Such apportionment between owner, master and crew of the salving vessel must be fair and reasonable in all circumstances.[52] If the salvage has not been carried out from a vessel then the relevant law

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50 International Convention on Salvage 1989, Attachment 2.
51 International Convention on Salvage 1989, Article 15 (2).
52 Shaw, op cit, 223.

governing the apportionment would be that of the salvor and his employees.

(v) Article 16

The issue of life salvage is discussed in the provision. The contents of this article is essentially a restatement of its predecessor in the Brussels Convention. A significant addition to this was made by article 16 which provides that a salvor of life 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".

(vi) Article 17

This article preserves the classic requirement that the salvor be a volunteer and that his services are performed free of any pre-existing contract. In *The Texaco Southampton*[53] the court considered the requirement of voluntariness and said that this depends largely on the question of whether the services were without the scope of pre-existing contractual duties. It is submitted that this is exactly the same test used in this article.

(vii) Article 18

The issue of salvor's negligence[54] is dealt with in this article. Essentially it provides that where "salvage operations have become necessary or more difficult because of fault or neglect" of the salvor or where he is "guilty of

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53 [1983] 1 Lloyd's Rep 94.

54 For an indepth discussion on this issue see chapter 7 infra.

fraud or other dishonest conduct", then he "may be deprived of the whole or part of the payment due".

This provision is wider than its predecessor in the 1910 Brussels Convention, since it includes the word "neglect". Some commentators have said that it has not clarified the law as it "fails to address adequately the question of the salvor's liability in damage for any negligent act he commits during the operation"[55].

This provision gives the owner, or master the right to refuse salvage assistance. Services rendered under circumstances where such refusal is "express and reasonable" shall not give rise to payment under the convention. It has been suggested by some commentators[56] that given the strict duties imposed toward the environment, it is possible that "a master of a pollutant casualty would not be entitled to refuse salvage".

In my view it is unfair that the master of a vessel be forced to accept salvage services as this vitiates contractual freedom. In the event of such refusal resulting in environmental damage then the relevant statutory sanctions can and may be imposed.

5.4 CLAIMS AND ACTIONS

(i) Article 21

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55 Darling & Smith LOF 90 and the New Salvage Convention (1991) 68.
56 Darling & Smith op cit 69.

The owner of the salved property is obliged to provide security in respect of the salvor's claim.[57] Further, a duty is imposed on the "owner of the vessel to use his best endeavours to ensure that the owners of cargo provide satisfactory security".[58] A failure to post such security will result in the prohibition on the removal of the salved vessel and other property from its place of safety, unless consent has been given by the salvor to do otherwise.[59]

(ii) Article 22

According to this article, provision is made for interim payments. This provision represented a welcome change to salvors who incurred high out-of-pocket expenses. It sought to address the cash-flow problems that salvors may experience.

(iii) Article 24

A salvor's right to interest on the salvage award is dependent on the "law of the State in which the tribunal seized of the case is situated". English and American law has allowed for the salvor to receive interest. The period for calculation of such interest has generally been from a period of six months after the termination of services.[60]

(iv) Article 27

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57 International Convention on Salvage 1989, Article 21 (1).
58 International Convention on Salvage 1989, Article 21 (2).
59 International Convention on Salvage 1989, Article 21 (3).
60 *David James & Others v Vennootschap G Ver Vries ZN & Others (The "Pergo")* [1987] 1 Lloyd's Rep 582.

This article provides for state parties to encourage the publication of salvage awards. In this way it would provide for the wider dissemination of expertise as to the approach on the application of the environmental factors under article 13 and 14. Further, it would encourage consistency between arbitral awards[61] and, it would serve as the ideal platform for the increase of jurisprudence[62] in salvage.

There is however a shortcoming to this article. It has in my view, been correctly, described as "toothless"[63] and as constituting a mere invitation to the parties. This is so, as one needs to bear in mind that arbitral tribunals are not courts of record and their proceedings are confidential between the parties. Salvors are also not keen on any disclosure that may identify them or the level of awards that they receive.

In practice, there have been moves to provide for the accessibility of salvage practices in that Lloyds has published LOF Digest. This consists of a summary of points of law and practice as considered by Lloyd's Arbitrators. (There is no identification of the case of the parties).

LOF 1990

To prevent any delay as is generally the case with ratification and implementation of international conventions, Lloyds have incorporated many of the conventions innovative provisions in an amended Lloyd's Open Form Salvage Agreement, known as LOF 1990.

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61 Darling & Smith op cit chapter 4, 71.
62 Vincenzini *International Salvage Law* (1992) chapter 7, 190.
63 Gaskell, *op cit*, 22.

The most striking feature of LOF 90 is the inclusion of specific articles from the convention and thereby giving contractual effect thereto. Clause 2 incorporates articles 1 (a) and (e) "Definitions", 8 "Duties of Salvor and of the Owner and Master", 13 (1) and 13 (2) first sentence, 13 (3) criteria for fixing the reward" and 14 "Special Compensation", into LOF 90.

As these articles have already been examined, the discussion infra examines the possible difficulties that this inclusion may give rise to as well as a general commentary on LOF 90.

The preamble to LOF 90, which states the agreement by the master on behalf of the owners of the vessel, now contains the addition of the phrase "and any other property thereon". This serves to indicate that the owners of cargo are also included in this agreement.

By the inclusion of article 1 from the convention, the definitions of salvage operation, vessel, property, damage to the environment and payment are incorporated into LOF 90. In this regard it is important to bear in mind that LOF 90 does not incorporate article 3 of the convention. It is therefore possible to claim an award for salvage in respect of services rendered to "a drilling rig even though permanently attached to the sea bed, since the sea bed is not the shoreline".[64]

A potential difficulty that arises with the inclusion of article 8 from the convention is that there are two different standards placed on the salvor's duties. Clause 1 (a) (i) states that the "Contractor shall use his best endeavours", while on the other hand article 8 uses the words "due care". Some comentators[65] rationalise this difference by stating that the higher

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64 Allen 'The International Convention on Salvage and LOF 1990' (1991) *JMLC* 119.
65 Gaskell 'LOF 1990' (1991) *LMCLQ* 104.

standard of "best endeavours" is more applicable to the professional salvor to which LOF 90 would mostly apply. While on the other hand the "due care" standard is objective, based on reasonableness and takes cognisance of the general standards in the salvage and marine industries and would therefore not constitute as difficult a burden on the average or general salvor. In my view, this rationalization is correctly made.

Clause 3 provides the salvor with the right to make reasonable use of the owner's equipment. Further, the owner, his servant or agent is obliged to co-operate fully with the salvor during the salvage operations, and in assisting him with obtaining entry into a place of satety or the specified part of re-delivery.

Clauses 4 and 5 contain the necessary provisions as to security. They are essentially similar to those contained in LOF 80. Clause 4 (b) has been added in light of article 14. It provides that only the owners of the vessel are obliged to provide security for special compensation. Clause 4 (1) requires that the amount for the security be reasonable, and a new addition is that the Council of Lloyd's will now accept security from persons, firms or corporations not resident in the United Kingdom, provided such security is acceptable to the contractor. In terms of clause 4 (d) the owners of the vessel are obliged to use their best endeavours to ensure that cargo owners provide security.

Clause 5 (a) provides the contractor with a maritime lien on the salved property for his remuneration. In terms of clause 5 (b) the contractor may not unreasonably arrest or detain the salved property. Clause 5 (c) sets out the powers of the Arbitrator and Appeal Arbitrator(s) to award the

contractor the expenses incurred in dealing with security and enforcement and/or protection of his lien.

Clause 6 provides for the appointment of an Arbitrator. An innovative feature by virtue of clause 6 (c) provides for the recovery of costs by the Council of Lloyds where the matter does not proceed to arbitration. Clause 7 is similar to its predecessor in LOF 80, but now contains a proviso that the contractor's remuneration shall not be diminished by reason of the special compensation provisions found in article 14 of the convention.

Clause 9 relates to the conduct of the arbitration. In terms of sub-section (c) any award made (subject to Appeal) is "final and binding on all the parties concerned whether they were represented at the Arbitration or not".

The provisions relating to interest are discussed in clause 10. It has been an established and acceptable practice for the arbitrator to award interest on the principal sum from a date six months after termination of salvage services. This has been commonly referred to as "Aldora" interest.[66] This practice has unfortunately led to the various parties responsible for payment delaying payment until the end of the six months. Clause 10 (i) clearly rectifies this situation by requiring that interest is payable on any sum awarded and unpaid "from the date of termination of the services"[67], although the Arbitrator retains an absolute discretion to decide otherwise.

Clause 18 is completely new. It gives the owner of the vessel the right to terminate the salvage services where it is clear that there is no "reasonable prospect of a useful result leading to a salvage reward in accordance with

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66 Ibid, 127.

67 This is illustrated by the judgment of Brandon J in *The Aldora* [1975] 1 Lloyd's Rep 617.

Convention Article 13". This clause obviously attempts to dissuade unscrupulous contractors from continuing with services which, although not giving rise to payment of salvage under "no cure-no pay", would attract payment by way of special compensation. More importantly it protects the owner from contributing to the payment of excessive special compensation.

While the convention and its innovative concept of Special Compensation had been greatly welcomed at the time, there have been many practical problems in its operation[68]. Dissatisfaction has been expressed as to the manner of assessing special compensation, as set out in article 14 of the convention and as to the lack of involvement of the P & I clubs in salvage operations[69].

Practice has revealed that difficulties were experienced with the provision of security, salvors have reported experiencing difficulty in obtaining the requisite security from the relevant P & I clubs.

Another difficulty emerged with the article 14 "trigger mechanisms" which required that there be a "threat of damage to the environment".

This phrase was defined as :

> "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".

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[68] Bishop 'Special Compensation: Main Provisions of the SCOPIC Clause' *International Salvage Union Bulletin* 17, November 1998, 4.

Salvage arbitrators and the industry as a whole have experienced difficulty in determining:

- what constitutes "substantial damage
- what is a sufficient "threat"
- how far do "coastal waters" extend
- where exactly are "areas adjacent thereto".

There was also the problem of assessing a "fair rate". Although the decision by the House of Lords in the "*Nagasaki Spirit*"[70] provided useful judicial guidance, the article 14 procedure remains complex, costly and riddled with many uncertainties.

Any delay or confusion arising from misunderstandings due to the interpretation, is more than likely to prove costly in the event of a major casualty.[71]

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69 See chapter 10 for a discussion on the SCOPIC clause, ie. the proposed new solution to article 14 - Special Compensation.

70 [1997] 1 Lloyd's Rep. 141

71 Ibid.

CHAPTER 6

MARINE POLLUTION: A SALVOR'S PANACEA

Having considered and examined how marine pollution has contributed to the development and changes to the law of salvage in the previous chapters, it is necessary to examine and discuss the impact marine pollution has had on the salvor and the salvage industry. This chapter examines the important role played by the salvor in marine pollution prevention. It then examines how the phenomenon of marine pollution has assisted the salvor by creating new opportunities, increased income and new incentives for him.

THE SALVOR'S ROLE IN MARINE POLLUTION PREVENTION

Historically salvage has been concerned with the saving and/or preservation of imperiled property at sea. The law only had regard to the rights and duties owed between two parties, i.e. the salvor and the owner of the property in danger.

With the development of oil tankers and the carriage of crude oil and other hazardous cargoes concern over the threat of environmental pollution has increased markedly. Oil is the lifeblood of the modern world and tankers are the lifeline and supply. Statistics have revealed that in 1990 fifty-eight per cent of all the oil used throughout the world was transported by sea. This translates to approximately 1,800 million tons.[1] With the growth in the world oil trade, the need to protect the marine environment was only too obvious. Prior to the grounding of the *Torrey Canyon* there existed no effective means for the protection of the marine environment from the effects of a major casualty involving the carriage of oil or other hazardous

substances. It therefore became necessary to ensure that salvage services had to not only have regard to salving the imperiled property, but they now also had the responsibility of protecting the marine environment.

It is as a result of this new responsibility that the professional salvor today spends much of his time and effort in marine pollution prevention, unlike his predecessors who concentrated wholly on traditional salvage.

The professional salvors maintain *inter alia* powerful and expensive tugs, fire-fighting equipment, pumps, compressors, diving equipment. which are maintained in a state of readiness to be transported wherever they may be required. So, as to ensure the effectiveness of their operations, these salvors also employ skilled divers, engineers, naval architects and experienced naval masters.

To acquire and maintain such equipment and personnel is only possible with the availability of large financial resources. The salvage industry has encountered great difficulties in these times of dwindling maritime casualties[2]. The demand for salvage services has accordingly decreased. The result of this is that very few private salvors are able to maintain tugs and equipment dedicated wholly to salvage. This is unfortunate considering the vastness of the sea and the fact that the place where the next casualty will occur cannot be predicted with any accuracy.

In many salvage operations the main priority is to prevent or at the very least minimize damage to the environment.

More often than not the desire to prevent a spill would dictate the manner in which the salvage operation should be carried out. The professional

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1 http://www.intertanko.com: 50% of US oil (crude oil and refined products) are transported by sea, ie.e approximately 130,000,000,000 gallons per year.

2 The occurrence of maritime casualties has declined by one-third since 1973. See http://www.intertanko.com

salvors as represented by the International Salvage Union (ISU) are committed and strive towards providing an effective first line of defence against marine pollution. The mission statement by which ISU members live is "keep the pollutant in the ship". Results of their annual pollution prevention survey reveals that in 1997 ISU salvors had performed 255[3] salvage operations as a result of collisions, groundings, fires, structural failures and other marine accidents. In 159 of these operations the vessels posed a serious threat to the environment. When combined, these ships were laden with 1.35 million[4] tons of oil, hazardous chemicals and bunkers.

In 1997 salvors assisted in 20 tanker casualties, the largest of which had over 250,000 tons of oil on board. The total volume of crude oil recovered from these casualties amounted to 996,465 tons. When compared to other large-scale oil-spill disasters, it is interesting to note that this volume of oil is equivalent to over 11 spills[5] of *Braer* size or nearly 27 spills[6] of *Exxon Valdez* size. In addition to crude oil recovery, salvage operations during 1997 saw the recovery of over 138,416[7] tons of hazardous chemicals. Salvage teams were also responsible for recovering 58,767 tons of bunkers, as well as 158,745 tons of other pollutants inclusive of dirty ballast, gasoil and condensate.

An overall analysis of pollutants recovered during the three year period (1994-1997) reveals that salvors have assisted 595[8] casualties which posed a threat to the marine environment. They were successful in recovering 6.7

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3 ISU Pollution Prevention Survey (covering the period 1994 - 1997) *International Salvage Union Bulletin* (No. 17) November 1998.

4 This figure, whilst high, is not exceptional, as in 1996 salvage teams recovered 1.87 million tonnes of oil and other pollutants.

5 ISU Pollution Prevention Survey, supra.

6 Ibid.

7 This figure represents a marked increased on the 61,952 tonnes of hazardous chemicals recovered during 1996

million tons of oil and chemicals. This included 5.97 million tons of crude oil, 343,733 tons of hazardous chemicals, 224,327 tons of bunker and 158,745 tons of "other pollutants".

Results of the 1998 ISU pollution prevention survey reveals that there was an increase of 37%[9] in the number of casualties which posed a threat to the environment. During 1998 salvage assistance was provided to fourteen oil tankers, the largest of which was an Ultra Large Crude Carrier with 300,000 tons of oil on board.

The total volume of pollutants recovered which posed a threat to the environment amount to 1,183,138 tons.[10] This in essence means that in the years 1994-1998 professional salvors throughout the world have recovered 7,880,749 tonnes[11] of potential pollutants (oil and chemicals) which consisted of 6,956,922 million tonnes of crude oil (equivalent to 100 spills of *Sea Empress* size),[12] 428,728 tonnes of hazardous chemicals, 288,969 tonnes of bunkers and 206,130 tonnes of "other pollutants".

In 2001, ISU salvors performed 247 salvage services. In these instances the ships were laden with 539,073 tonnes of oils, hazardous chemicals and bunkers.

This relatively low figure for pollutants recovered in 2001 reflects the absence of serious incidents involving very large laden tankers. Nevertheless, during 2001 ISU salvors recovered over 340,000 tonnes of

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8 ISU Pollution Prevention Survey, supra.

9 ISU Annual Pollution Prevention Survey, 1998. Salvors had assisted 218 vessels which had posed a threat to the environment.

10 Ibid.

11 Ibid.

12 Ibid.

oil from tanker casualties. This volume of crude oil is equivalent to about 9 spills of *Exxon Valdez* size. Further, in 2001 salvors recovered over 65,000 tonnes of bunkers and nearly 73,000 tonnes of other pollutants.

The International Salvage Union's Pollution Prevention Survey for the period 1994 – 2001 reveals that salvors assisted 1,602 casualties with a potential to cause pollution, recovering 9.5 million tonnes of oils and chemicals. This included 8 million tonnes of crude oil 554,861 tonnes of hazardous chemicals and 502,060 tonnes of bunkers.

The salvor has been instrumental in preventing significant spills over the years and thereby preventing damage to the coastlines of the world. They are the "protectors of the oceans". This vital industry represents the first line of defence in marine pollution.

6.1. INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS 1973 AND ITS PROTOCOL OF 1978 (MARPOL 73/78)

MARPOL 73/78 is an international convention which recognises "the need to preserve the human environment in general and the marine environment in particular"[13] and its main objective is to "achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharge of such substances".[14]

Article 2(2) defines harmful substances as:

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[13] Preamble to MARPOL.

"... any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea ..."

This definition would include pollution by both oil cargoes or bunkers.[15]

Article 8 contains provisions for the reporting of incidents involving harmful substances. Any reports made hereunder must be executed in accordance with the provisions of Protocol I to the convention.[16] In terms of article 1 (1) of Protocol I there is a duty on the master or any other person in charge of the ship to report the details of an incident "without delay and to the fullest extent possible" in accordance with the provisions of Protocol. Article 3 of Protocol I provides that any report must include details of the following:

(i) the identity of the ships involved,
(ii) time, type and location of the incident,
(iii) quantity and type of the harmful substance involved, and most importantly
(iv) assistance and salvage measures.[17]

The rest of Protocol I highlights the importance of salvage in pollution incidents. Principle 3.1 of the Annex to Protocol I sets out guidelines for reporting pollution incidents. It states that "the intent of these guidelines

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14 Ibid.
15 Brice *Maritime Law of Salvage* (1993) 2ed 340.
16 Article 8 (1), MARPOL 73/78.
17 MARPOL 73/78, Protocol I, Article 3 (1) - (d).

and those contained in the appendix is to enable coastal states and other interested parties to be informed without delay of any incident giving rise to pollution, of the marine environment, as well as of assistance and salvage measures, so that appropriate action may be taken." The importance of informing the coastal state is further highlighted where the following is stated:

> "whenever a ship is engaged in or requested to engage in an operation to render assistance to or undertake salvage of a ship involved in an incident ... the master of the former ship should report, without delay, the particulars of the action undertaken or planned. The coastal states should also be kept informed of developments."[18]

A final reference to salvage is made in the Appendix to Protocol I which describes the information that should be included in the report. It requires that any assistance or salvage operations which have been requested or provided, together with details of the action undertaken, must be set out in the report.

In 1985 certain amendments to Protocol I were made, they also provided for general requirements relating to the reporting of pollution incidents. They oblige the Master or any other person in charge of a vessel which is involved in a discharge or probable discharge of oil or other harmful substance, to report the details of such incident "by the fastest

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[18] MARPOL 73/78, supra, Protocol I, Annex, Principle 3.3.

telecommunications channels available with the highest possible priority to the nearest coastal state".[19]

Amendments in 1991 made to Annex I of MARPOL 73/78, essentially required that every oil tanker with a gross tonnage of 150 tons or more as well as any vessel with a gross tonnage of 400 tons or more, had to "carry on board a shipboard oil pollution emergency plan ..."[20] The purpose of the plan is to essentially ensure that a procedure for reporting pollution incidents exists, it shall contain "... the list of authorities or persons to be contacted in the event of an oil pollution incident; a detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of oil following the incident; and the procedures and point of contact on the ship for co-ordinating shipboard action with national and local authorities in combating pollution."[21]

Protocol I and the Amendments do not discuss salvage requirements nor do they oblige the owner or operator to retain salvage companies under contract, however they do compel owners and operators to focus on pollution prevention, including salvage as the first line of defence in preventing pollution.[22] In so doing, the owner and operator are made to realise the necessity and importance of an adequate salvage response to a casualty which has caused or poses harm to the marine environment. To ensure that they are adequately prepared in the event of a pollution incident arising the owner or operator must be aware of the salvage resources available to him and he must be in a position to utilise these resouces.

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19 *Ibid*, Article 5.
20 Ibid, Regulation 26(1).
21 Ibid, Regulation 26(2) (b-d).
22 Shirley & Whyte Katas 'Marine Pollution: The Salvors Saviour or Albatross?' paper delivered at the 15th International Tug & Salvage Convention, Cape Town, November 1998.

By highlighting the importance of salvage to marine pollution MARPOL 73/78 has ensured that the salvage industry enjoys the status of being the first line of defence to marine pollution. This has in turn resulted in growth of the industry and greater incentives to salvors.

6.2 ARTICLE 13, INTERNATIONAL CONVENTION ON SALVAGE, 1989

The courts, when determining a salvage award, take cognisance of various factors which include the following: the value of the property recovered; the degree of danger from which it was rescued; the salvor's skill, energy, labour; exposure to risk; the value of the property the salvors used, and the danger to which it was exposed.[23]

As the shipping industry developed and the carriage of oil increased, many casualties arose where the threat of harm to the environment was high and the salved property value low. Thus, it was clear that there was a critical defect in traditional salvage law to reward its salvors adequately in situations where harm to the environment was great.[24]

"Liability Salvage" was seen as a potential solution to this defect. It covers the situation where a salvor prevents or minimises the liability of a shipowner to a third party. Essentially it "is based on the concept that salvage rewards should reflect the value of the owner's assets preserved

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23 *The Blackwall* 77 U.S. 1 (1869); *The Industry* (1835) 3 Hag Adm 203.

24 Binney 'Protecting the Environment with Salvage Law: Risks, Rewards, and the 1989 Salvage Convention' 64 *Wash. L. Rev.* 639, 652 (1990).

from liability claims, as well as the value of the recovered property".[25] It addresses the shortcomings of the "no cure - no pay" system in the following ways[26]: first, it raises the rewards ceiling, such that it encourages salvors to still undertake an operation even though the value of the salved ship is small when compared to the extended effort. Second, liability salvage assists in preventing or minimising large scale environmental damage as it offers incentives to salvors to limit spill damage in cases where the vessel cannot be saved. Third, it ensures that salvage awards are re-apportioned to their economically efficient level.

The predominant view expressed in English law has been that it is beyond the scope of a salvage action to investigate and obtain detailed evidence and findings as to who would be liable in damages to third parties and the exact amounts thereto.[27] Therefore, the concept of "liability salvage" has been rejected in English law.

The courts in the United States have also rejected "liability salvage" due to the uncertainty of calculating the avoided damages and the lack of statutory authority.[28] In *Westar Marine Services v Heerema Marine Contractors*, a salvor had prevented an oil derrick and a flotilla of barges from causing damage to a bridge. The court held that in fixing the salvage reward, it could consider the danger to the flotilla but not the value of the damage to the bridge that the salvor had prevented.[29]

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25 Binney, supra, 646.
26 Cassidy 'The New Laws of Salvage' unpublished article.
27 Brice, op cit, 266.
28 *Allseas Maritime, S.A. v M/v Mimosa* 812 F. 2d 243 (5th Cir. 1987); *Fine v Rockwood* 895 F. Supp. 306 (S.D. Fla 1995); *Hendrick v Gordon Gill* 737 F. Supp. 1099 (Alk. 1989); *Westar Marine Services v Heerema Marine Con.* 621 F. Supp. 1135, 1140 (N.D. Cal. 1985).
29 Ibid, 1136, 1144.

The court acknowledged the merits of "liability salvage" in *Allseas Maritime, S.A. v M/v Mimosa* and indicated that in a proper case it might award it. The court then concluded that this was not a proper case, as the owners of the *Mimosa* would be able to limit their liability to the value of the salved property.[30] Thus refusing to consider the benefit accrued to the other parties as a result of the salvors efforts, the court held that the salvor's reward was limited to the value of the salved property.

Trico Marine Oper. Inc. v Sow Chem Co.[31] also illustrates the failure to compensate salvors adequately. Here a group of salvors had prevented significant damage to the environment but faced compensation only for the salved value of the property. The court rejected the concept of "liability salvage". It decided that since the 1989 Salvage Convention did not provide for liability salvage, it would not follow the dicta in *Allseas Maritime, S.A. v M/v Mimosa* which suggested that salvors should receive compensation for liability salvage. Although at the time of the decision the salvage convention was not in force, the court was influenced by Article 13 of the convention where environmental protection was one of the criteria to be used in fixing the salvage award. In *Margate v M/v Ja Orgeron*[32] the district court refused to award "liability salvage". The Court of Appeals for the 5th Circuit subsequently held that such decision "did not preclude the court from properly considering all of the legal risks that the salvor incurred, environmental or otherwise, under the rubric of traditional salvage factors".

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30 812 F. 2d 243 (5th Cir. 1987) 247.
31 809 F. Supp. 440 (E.D. La 1992).
32 1988 *WL* 310124 (5th Cir. June 29, 1998).

The solution provided by Article 13 of the salvage convention, which considers "the skill and efforts of the salvors in preventing or minimising damage to the environment" when calculating the salvage award, represented an additional mechanism by which salvors could increase their income.

6.3 ARTICLE 14, INTERNATIONAL CONVENTION ON SALVAGE, 1989

This article was designed to provide the salvor with better rewards when he undertook environmentally sensitive jobs with a risk of low payment.[33] Salvors are entitled to special compensation where:

(1) they have carried out salvage operations in respect of a vessel;
(2) the vessel or its cargo threatened damage to the environment, and
(3) they were unable to earn a reward under Article 13 at least equivalent to their expenses.[34]

There are relatively few cases reflecting Article 14 damages. The decisions in these cases have been mostly positive for salvors. An important case considering special compensation is *Semco Salvage and Marine PTE Ltd. v Lancer Na. Co. Ltd ("The Nagasaki Spirit").*[35] On 19 September 1992, the tanker *Nagasaki Spirit* was partly laden with a cargo of Khafji crude oil. She collided with the container ship *Ocean Blessing* in the Malacca Straits. A portion of the crude oil was released and caught fire, engulfing both

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33 Gaskell 'The 1989 Salvage Convention and Lloyd's Open Form 1990' (1996) 16 *TMLJ*
34 International Salvage Convention, 1989, Article 14.

35 [1997] 1 *Lloyd's Rep.* 141.

ships. All those on board the *Ocean Blessing* died and only two crew members of the *Nagasaki Spirit* survived.

On 20 September the Singaporean-based salvor *Semco* undertook to salve both ships and signed LOF 1990, which incorporated certain articles of the 1989 Convention. Salvors were soon able to extinguish the fire on the *Nagasaki Spirit*. The salvor was then ordered by Malaysian police, who were concerned about pollution, to tow the ill-fated tanker away. On 3 October she was anchored off Belawan in Indonesia. On 22 October the salvors were granted permission by the Indonesian authorities for a ship-to-ship transfer of the remaining cargo on board the *Nagasaki Spirit*. On 29 October transhipment of the cargo to the *Pacific Diamond* began. On 25 November the tow to Singapore commenced and on 12 December she was redelivered to her owners.

The matter was to be resolved in the usual way by arbitration. Special compensation in terms of Article 14 was determined and the rate of 65% was set as a fair increment. In terms of this finding, the salvage award totaled approximately $12,635,893. An appeal was made against this finding. The appeal arbitrator set aside the award and reduced it to a "fair rate" of $8,607,066.90. This reduction essentially meant that the salvor received no extra payment for his pollution prevention work. This resulted in an appeal by both *Semco* and the shipowner to the High Court. Succinctly it may be said that the decision by the House of Lords was disadvantageous to the salvage industry.[36] The court held that the 'fair rate' payable to a salvor under article 14 for equipment and personnel, should not include an element of profit.

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[36] For an in-depth discussion on the decision by the House of Lords relating to the definition of "fair rate" see chapter 7, infra.

There was however one element in the decision which was favourable to the salvors. This related to the period in which compensation may be calculated. The law lords concluded that compensation should be calculated from the start of a casualty until the completion of the salvage operations.[37]

The increased incentives offered by Article 14 seek to encourage participation of the salvage industry. It rewards salvors for their efforts in environmental protection in those circumstances where the value of the salved property is low and the threat to the environment high. In this way, it increases the availability of salvors in environmentally sensitive situations.

6.3 OIL POLLUTION ACT, 1990 (OPA'90

Environmental disasters, such as the grounding of the *Exxon Valdez* in Prince William Sound, Alaska; the *American Trader* incident in California, and the *Mega Borg* explosions and fire in the Gulf of Mexico, led to the passage of the Oil Pollution Act 1990 (hereinafter referred to as OPA'90), which was signed into law by President Bush on 18 August 1990.[38]

The act establishes a comprehensive oil spill liability, response and compensation framework which essentially consolidates[39] the various federal liability provisions into one statute, without pre-empting state liability laws or implementing the international oil spill conventions. It

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37 *The Nagasaki Spirit*, supra.

38 Shirley & Whyte Kattas 'Marine Salvage: From OPA'90 to Salvage 2000' Paper delivered by James T. Shirley and Richard E Fredericks before the Connecticut Maritime Association and the Maritime Association of the Port of New York and New Jersey, 20 November 1997.

39 Wagner 'The Oil Pollution Act of 1990: An Analysis' (1990) 21 *JMLC* (No.4) 69.

governs the discharge or threat of discharge of oil into or upon the navigable waters (including the territorial sea) adjoining shorelines, and the exclusive economic zone of the United States.[40] OPA'90 imposes liability on the owner, operator, or demise charterer of the vessel, who is described as the "responsible party". The "responsible party" is required to pay for the removal costs incurred by the federal[41] or state government or an Indian tribe pursuant to a variety of federal and state laws, as well as for the removal costs incurred by any person for acts consistent with the National Contingency Plan.[42] The act defines removal costs as:

> "the costs of removal that are incurred after discharge of oil has occurred or in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimise, or mitigate oil pollution from an incident".[43]

The act also contains the following important provisions:[44]

- a single, unified federal fund, called the Oil Spill Liability Trust Fund, to pay for the cleanup and other costs of federal response to oil spills;[45]

- stronger federal authority to order removal action or to conduct the removal action itself;[46]

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40 Oil Pollution Act, 1990, s 2702 (a).
41 In terms of, for instance, the Clean Water Act 33 U.S.C. §§ 1251 - 1387; and the Intervention on the High Seas Act 33 U.S.C. §§ 1417 - 1487.
42 See OPA'90, § 2702 (b) (1).
43 Ibid, § 2701 (31).
44 Darmody 'The Oil Pollution Act's Criminal Penalties: On a Collision Course with the Law of the Sea' 21 *B.C. Envtl. Aff. L. Rev.* 89, 112.
45 OPA '90 § 9001.
46 Ibid, § 4201.

- new controls for prevention of spills and plans to control spills that must be drafted by the owners or operators of onshore facilities, offshore facilities, and vessels;[47]

- tougher criminal penalties;[48]

- higher civil penalties for spills of oil and hazardous substances;[49]

- tighter standards and reviews for licensing crews of tank vessels, and for equipment and operations of tank vessels, including the requirement of double hulls;[50]

- several provisions pertinent to Prince William Sound, to Alaska at large, and to other portions of the United States.[51]

The act has also been responsible for highlighting the importance of salvage in pollution prevention and containment and, in so doing, has opened up new opportunities for salvors. This is evidenced by the National Contingency Plan.

It provides "for the co-ordination of the various public entities involved in a cleanup, the procurement and storage of equipment and supplies, the establishment of Coast Guard Strike Teams equipped and trained to deal

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47 Ibid, § 4202.
48 Ibid, § 4301.
49 Ibid, § 4301, 4302.
50 Ibid, § 4101 - 4115.
51 Ibid, § 5001 - 5007.

with oil spills, as well as other matters deemed necessary to ensure a co-ordinated government response".[52]

An important feature of the National Contingency Plan requires owners and operators of tank vessels to prepare and submit individual oil spill response plans.

These plans are obliged to "identify an individual having full authority to implement removal actions, identify and ensure by contract that private personnel and equipment are available to remove a 'worst case' discharge and describe the training to be provided to personnel on a vessel to mitigate or prevent a discharge of oil".[53]

An owner or operator of a vessel carrying groups I through IV petroleum oil is required to "identify in the response plan and ensure the availability of, through contract or other approved means, the following resources:

(i) A salvage company with expertise and equipment;

(ii) A company with vessel fire-fighting capability that will respond to casualties in the area(s) in which the vessel will operate.[54]

The parties identified as being the providers of these services "may not be listed in the plan unless they have provided written consent to be listed in the plan as an available resource".[55]

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52 Rodriquez & Jaffe 'The Oil Pollution Act 1990' (1990) 15 *TMLJ* 1, 23.
53 Ibid, 24.
54 33 (F.R. § 155.1050 (K) (1) (1996).

Salvors may charge for being listed in vessel response plans, either directly or by requesting a subsidy for their standby costs. Even where the salvors do not charge for being listed, they place themselves in a position of "first call" in a salvage situation.

While these provisions create incentives and promote the salvage industry, some commentators[56] correctly believe that in practice they are somewhat problematic. There is a failure to provide a definition as to what constitutes a "salvage company with expertise" or a company "having vessel fire-fighting capability". Further, the regulations do not state the type of equipment that a company should possess nor does it provide any means for the verification. Another problematic issue is that there are no guidelines stating the course of action that should be followed in the event where designated company's resources are unavailable to a particular plan holder's emergency.

The failure to address these issues serves only to hinder and delay a timely salvage response.

Those vessel reponse plans submitted for re-approval on or after 18 February 1998 had to fulfil the following requirement:

> "the identified resources (the salvage and fire-fighting companies) must be capable of being deployed to the port nearest to the area in which the vessel operates within 24 hrs of notification".[57]

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55 Ibid, (K) (2).
56 Shirley and Whyte Kattas, supra, 3 & 8.
57 33 (F.R. § 155.1050 (K) (3) (1996).

The vagueness inherent to the above-mentioned clause gives rise to difficulties as there is a failure to provide any procedure to ensure that a company's identified resources are able to be deployed in time, nor is there a definition of "port nearest to the area in which the vessel operates".

A further obligation on the owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo is that he must "identify in the response plan and ensure the availability of, through contract or other approved means, certain response resources required by § 155.1035 (c) (5) (ii) or § 155.1040 (c) (5) (i), as appropriate. (1) These resources must include (i) Fendering equipment; (ii) Transfer hoses and connection equipment, and (iii) Portable pumps and ancillary equipment necessary to offload the vessel's largest cargo tank in 24 hours of continuous operation".[58]

These resources are further required to be capable of reaching the locations in which the vessel operates within the following time periods:

> "(i) Inland (except tankers in Prince William Sound covered by § 155.1130) nearshore, and Great Lakes water - 12 hours;
>
> (ii) Offshore waters and rivers and canals - 18 hours;
> (iii) open ocean water - 36 hours".[59]

It is contended that only time and practice will prove whether companies are capable of achieving the above-mentioned response times. Until such time, these requirements represent a desired ideal and not reality.

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[58] 33 (F.R. § 155.1050 (1) (i) (1996).

Despite its shortcomings, OPA'90 must be commended as it has been responsible in ensuring that the salvage industry is at the forefront of marine pollution prevention and response in the United States,[60] and has presented salvors with more opportunities to increase their income and increase their readiness and capability.

6.5 NEW OPPORTUNITIES AND INCREASED INCOME

The position of the salvor has been greatly improved by governments who are concerned with environmental protection. As a result of this concern, there now exists in place standby agreements[61] between salvors and governments. These agreements provide the salvors[62] with the opportunity to increase their income in exchange for providing a "guaranteed level of protection for busy waters and vulnerable coastlines".[63]

In 1975 South Africa was the first country worldwide to initiate a standby agreement with private salvors. In terms of this arrangement, powerful tugs were maintained in a state of readiness to respond to marine casualties.

The *Amoco Cadiz* disaster prompted the French government in 1978 to enter into agreement with a private salvor which ensured that standby tugs were stationed at Brest and Cherbourg. The agreement provided that the government would contribute towards the maintenance of the tugs in exchange for the salvors guaranteed assistance in the event of marine

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59 Ibid, (1) (2).
60 Shirley & Whyte Kattas, supra, 3.
61 Adelbert 'Marine Oil Pollution Prevention - Born at the Cape of Storms' Paper presented at the 15th International Tug & Salvage Convention, Cape Town, 3 November 1998.
62 A majority of professional salvors belonging to the ISU participate in such standby agreements.
63 "More governments seek security of retained salvage services". ISU Bulletin, 6 October 1996.

accidents. The agreement further stipulated that the tugs must be available within 40 minutes of having been requested. Further, the tugs are required to be put to sea when bad weather threatens and take station offshore in a position where they would be able to quickly respond to casualties. The contract between the French government and the salvor is based on "award sharing" where, after costs are taken into consideration, the award is shared on an equal basis between the parties.

The German government utilises the deep sea salvage tug, *Oceanic*, as a safety and emergency rescue vessel off the North Sea Coast.

In Italy, harbour towage companies have a duty to retain at least one vessel at readiness to respond to emergency situations.

In Spain, private salvors and state agencies work together in terms of a national plan for salvage and pollution abatement.

A joint venture between three private salvors in the Dutch government is in place in the Netherlands. The salvage tug, Waker, is stationed at Den Helder and is obliged to put to sea whenever bad weather threatens.

The grounding of the *Braer* and the resultant 85,000 tonne oil spill prompted the UK government to retain 3 private tugs under contract at strategic locations around their coastlines for oil pollution prevention.

These government sponsored agreements are vital as they not only assist in protecting the world's coastlines, but they also present new income-producing opportunities for salvors.

Advancement of technology combined with public concern for the environment and the sensitivity inherent to pollution operations has resulted in salvors possessing and having access to a wide range of vessel and equipment capability, thus enabling them to deal with almost any type of pollution threat. Approximately thirty to forty years ago a salvor would have been unable[64] to do much about retrieving hazardous cargoes lost overboard in deep water. The position today is quite different with the availability of wide-swath sidescan sonar and deep ocean search and recovery capability, the recovery of such cargoes by professional salvors "may not only be possible, but may be demanded by the government with jurisdiction over the waters affected by the lost cargo".[65]

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64 Shirley & Kattas, supra, 1.
65 Ibid, 1.

CHAPTER 7

MARINE POLLUTION: A SALVOR'S PANDORA'S BOX

Having discussed in the previous chapter the ways in which marine pollution has assisted and benefited the salvor, this chapter examines the other side, namely, the difficulties and additional risks which marine pollution has created for the salvor.

7.1 AN OVERVIEW OF SALVORIAL NEGLIGENCE AND ITS CONSEQUENCES

From its Rhodian origins salvage law has penalised salvors for certain acts:

> Article LI: "If any man move grievously oppressed shipwrecked persons, and forcibly carries off any shipwrecked goods, after restitution made; if he is a freeman, he shall be condemned to three years banishment if a man of law degree, he shall be employed in the public works during that time. And if a slave he shall be put to the most severe and hardest labour".[1]

The salvor owes a legal duty of care to the owner of the salved property. LOF imposes by virtue of its first three clauses an obligation on the salvor to utilise his "best endeavours" in the execution of his duty. The Salvage Convention, 1989, obliges the salvor to exercise "due care" when carrying out salvage operations.[2]

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1 Article LI Rhodian Maritime Law.
2 Article 8 (1) (a) International Convention on Salvage, 1989.

A breach of the salvor's legal duty will mean that the salvor, in accordance with the ordinary principles of law, would be liable in damage in respect of loss and damage as a result of his actions. The 19th Century saw the courts adopt a policy of leniency towards salvors. This policy was based on the principle that the salvors are volunteers and that "everything possible be done to encourage them to put at risk their persons and property to the benefit of those distressed upon the seas".[3] While this policy of leniency towards salvors is still recognised and has judicial approval, it does not serve as a justification for the salvor to enjoy total immunity from liability. The courts have considered that the need to compensate for harm done must be balanced against the "leniency towards salvors" and have concluded that in the "proper" circumstances a salvor may, without remorse or scruple, be labelled negligent.[4]

Traditionally it has been held that those who are wrongdoers shall not benefit from their wrongs.[5] Dr. Lushington said that this principle was founded in justice and equity and for this reason must be followed. In determining the consequences that the salvor faces, it is necessary to examine the exact nature of the negligence. Where the error or misjudgement was of a trivial nature, the salvor may be denied his costs.[6] Where the negligence amounts to misconduct the salvor must forfeit his reward. In *The Lady Worsley*, Dr. Lushington stated:

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3 Thomas 'Salvorial Negligence and its Consequences' (1977) *LMCLQ* 167.
4 *The St Blane* [1947] 1 Lloyd's Rep. 557 per Brandon J at 560.
5 *The Blenden Hall* (1814) 1 Dods 414; *The Clan Sutherland* [1918] P. 332.
6 *The Pinnas* [1898[6 Asp. M.L.C. 313; *The Trumpeter* [1947] 80 Ll. L. Rep. 263.

> "It is an established rule of this Court and one I shall never depart from, that however valuable a service may be, salvors may forfeit their just reward if they are guilty of misconduct".[7]

Forfeiture was also possible in those circumstances as set out by Dr. Lushington in *The Magdalen* where he stated:

> "The principles are these - that salvage is forfeited by wilful misconduct, bad faith, an intention not to do the whole of the duty, or an intention to protract doing that duty for the purposes of piracy".[8]

Thus, it is clear that the salvor's conduct had to be gross,[9] culpable,[10] grave[11], or capable of being considered "criminal"[12] before a forfeiture was granted.

The issue as to whether the salvors should be liable in damages was considered in *The Thetis.*[13] In this case the salvage vessel had negligently collided with the vessel which it was attempting to salve, resulting in it being declared a complete loss. The court held that the owners of the vessel were entitled to recover damages from the salvor. In *The Dwina* the court held that for a counterclaim for damages to succeed an allegation of mere negligence is insufficient, rather "conduct of an aggravation beyond reasonable tolerance must be shown".[14] Sir Charles Butt stated in this case

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7 (1885) 2 Spinks E & A 253, 256.
8 (1861) 31 L.J. Ad. 22.
9 *The Lockwoods* (1845) 9 Jur. 1017; *The Baltic* [1874] LR 4 A & E 178.
10 *The Duke of Manchester* 6 Moore P.C. 98.
11 *The Atlas* (1862) Lush. 518.
12 Ibid.
13 (1869) LR 2 A & E 365; See also *The C.S. Butler* (1874) LR 4 A & E 178.
14 Thomas, supra, 171.

that "the finding is not that there was negligence, but there was such want of skill as to diminish the amount of salvage". This point was further emphasised by Sir Robert Phillimore in *The C.S. Butler* where he stated "this is a case of negligence of that gross kind which entitles the salved to redress and reparation".[15]

The leading authority on salvorial liability for damages is *Owners of the Motor Vessel "Tojo Maru" v. N.V. Bureau Wijsmuller (The Tojo Maru)*.[16] *The Tojo Maru* had a gross tonnage of 25,104, was 692 feet in length and a beam of 95 feet. On 25 February 1965 the vessel had loaded her cargo at Mena al Ahamdi, shortly thereafter she was involved in a collision with the *Fina Italia*. At the time the *Tojo Maru* was laden with 267,639 barrels of crude oil. Due to the collision, she sustained major damage to her port side in way of the No. 3 fuel tank which was open to the sea. On 26 February the tug Groningen which was stationed in the Persian Gulf approximately 180 miles away from the casualty had arrived and offered her services under LOF 1990. These services were only accepted two days later. The priority of the salvage plan was to:

1. Stop the leaks from the No. 3 oil tank into the engine-room.

2. Pump the water out of the engine-room by stages, taking preventative measures to minimise damage to the engine parts as they came above water.
3. Construct a steel patch and place it over the wound in the side of the vessel and make it watertight.

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15 *The CS Butler*, supra, 183.
16 [1972] A.C. 242.

4. Thereafter to tow the vessel to repair port for which purpose it was decided to discharge the cargo where the vessel was.

In attaching the patch, the plan was to ballast the No. 3 fuel oil tank as the vessel was not gas free, and then to bolt the patch firmly into place. The No. 3 tank had not yet been ballasted down when the chief diver, acting contrary to orders he had received, proceeded to bolt the patch into place with a Cox Bolt gun. This resulted in an explosion inside the vessel which was followed by other explosions causing extensive damage in several of the tanks and the rupture of the deck. The salvage services, apart from the incident causing the explosion, had been carried out skilfully and professionally.

The matter was referred by the salvors to LOF arbitration. The arbitrator concluded that for their efforts (not considering the issue of the explosion) the salvors had earned a reward of approximately $300,000. The tanker-owners subsequently counter-claimed for $1 million in damages. The salvors argued that they enjoyed "special status" which recognised that they were volunteers in dangerous situations and were thus not liable in damages to the tanker-owners.

The decision in the Court of Appeal favoured the salvors where Lord Denning, using a colourful analogy, said that the salved property interests might employ a plea of salvorial negligence as a shield to avoid an unconscionably large salvage award being made against them, but surely not "as a sword to pierce the salvor to the heart".[17]

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[17] See Kerr 'The 1989 Salvage Convention: Expediency or Equity?' [1989] 20 JMLC 505.

However the House of Lords concluded that salvors, like dentists or gardeners, enjoyed no "special status", and where their efforts resulted in "more harm than good", they would be monetarily liable for the difference.[18] Thus the salvor received no monetary compensation for efforts and had to pay approximately $700,000 to the tanker-owners.

The principles laid down in the *Tojo Maru* have been followed in the *St. Blane*.[19]

The American authorities reflect that traditionally a salvor will not be held liable for his negligence unless the salved property sustained an injury that was distinguishable from the peril from which it was being saved.[20] Even where the salvor's misconduct has prevented a successful salvage, damages will generally not be awarded against the salvor unless there has been a finding of gross negligence or wilful misconduct.[21]

7.2 INCREASED CRIMINAL LIABILITIES & THE UNITED STATES OIL POLLUTION ACT, 1990

In certain salvage situations where the vessel is likely to pollute, a salvor's actions may result in damage and harm to the environment.[22] This would be evident where the salvor's only hope of saving the vessel, her cargo or crew, is to pump cargo out to sea or increase leakage by towing the

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18 [1971] 1 Lloyd's Rep. 341.

19 [1974] 1 Lloyd's Rep. 557; See also the Australian case of *The Cythera* [1965] 2 Lloyd's Rep. 454 and the Canadian case of *Gark v Straits Towing Ltd & Sayer* [1966] 2 Lloyd's Rep. 277.

20 *Sharp v US* 1979 AMC 2282.

21 *Basic Boats v USA* 1973 AMC 522.

22 Binney "Protecting the Environment with Salvage Law: Risk, Rewards and the 1989 Salvage Convention" [1990] 65 *Wash. L. Rev.* 639.

vessel.[23] Marine pollution has thus also meant additional liabilities and the increased risk of criminal prosecution for salvors in many instances.

In the United States salvors are confronted with additional liabilities as a result of the Oil Pollution Act, 1990 (hereinafter referred to as OPA'90), the Water Pollution Prevention and Control Act ("Clean Water Act), which allows for the criminal prosecution of marine polluters. The "Clean Water Act" contains provisions holding persons criminally liable for negligent violations, knowing violations or knowing endangerment.[24] There is also the Rivers and Harbours Appropriation Act of 1899[25] ("Refuse Act") and the Migratory Bird Treaty Act[26] which provide for no-fault criminal sanctions against environmental polluters.

OPA'90 allows for criminal sanctions against any vessel that negligently or knowingly pollutes or endangers the environment. Section 4301 has increased the civil and criminal penalties for the discharge of oil or hazardous substances. In terms of s 4301 (a) there are stringent penalties for the failure to notify the appropriate agency of the Federal Government about a discharge.

The failure to report a spill is now regarded as a felony, and the penalties were raised from $10,000 and/or one year imprisonment to not more than $250,000 for an individual or not more than $500,000 for an organisation and/or three years imprisonment. Section 4301 (c) provides that violations of the prohibition on discharge of oil or hazardous substances are subject to criminal penalties. These penalties are:

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23 Ibid.
24 33 USC §§ 1319 (c).
25 33 USC §§ 407, 411.

- between $2,500 and $25,000 and/or one year imprisonment for negligent violations;

- between $5,000 and $50,000 and/or three years imprisonment for knowing violations;

- and up to $250,000 and 15 years imprisonment for knowing endangerment.

The use of criminal penalties to enforce the substantive provisions of OPA'90 reflects a government-wide trend towards adopting, strengthening and vigorously enforcing criminal provisions to protect the environment.[27] In the seven year period between 1983 and 1990 the United States Department of Justice had secured 569 criminal indictments from which 432 convictions or guilty please resulted.[28] In 1990 alone there were 134 indictments, ninety-eight percent of which named corporations, presidents, owners, vice-presidents, directors and managers as defendants. It has been speculated that the emphasis on criminal enforcement in environmental law places the issue of pollution in its proper context. This view finds strong support from the statement of Richard Thornby, a former Attorney General when he stated:

> "It says that we believe as a nation and as prosecutors that a polluter is a criminal who has violated the rights and the sanctity of a living

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26 16 USC §§ 703 - 712.

27 Darmody 'The Oil Pollution Act's Criminal Penalties: On a Collision Course with the Law of the Sea' (1993) 21 *BC Envtl. Aff. L. Rev.* 89,116.

28 Ibid.

thing ... the largest living organism in the known universe - the earth's environment".[29]

The threat of criminal punishment is a powerful factor which seeks to deter people from causing harm and damage to the environment in particular and society in general. It is this concept of deterrence which is the underlying policy of the Department of Justice as it is believed that "the stigma associated with a criminal conviction and the dislocation of incarceration combine to make the threat of criminal prosecution a major tool to improve the rate of compliance with the nation's environmental laws".[30]

OPA'90 has worked remarkably well in the United States: the number of domestic oil spills has dramatically reduced over the years since OPA'90 was enacted. Statistics have revealed that in 1990, there was a total of 35 major and medium size oil spills.[31] In 1997 as a direct result of OPA'90 there were no major oil spills and the number of medium spills were reduced to eight.[32] The composition of OPA'90 reveals that the US Congress "... carefully balanced the imposition of stronger criminal and civil penalties with the need to promote enhanced co-operation among all the parties involved in the spill prevention and response effort".[33]

Since the Department of Justice increased its efforts to prosecute environmental crimes committed by the maritime industry, "more than a dozen ship-owning companies and more than twenty-four corporate

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29 Ibid, 117.
30 Ibid, 117.
31 Hearings on Criminal Liability for Oil Pollution before the Subcommittee on Coast Guard and Marine Transportation of the House Committee on Transportation and Infrastructure, 105th Congress, 2nd Session (1998) [Statement of Judson W. Starr, Attorney Venable, Baetjer, Howard & Civiletti].
32 Ibid.
33 Ibid.

officers and crew members, both US and foreign, have been indicted for environmental crimes". The maritime and oil transportation industry in the United States are concerned with criminal prosecutions arising from the use of no-fault or strict liability statutes. The two most commonly used strict liability statutes in the United States are the Refuse Act and the Migratory Bird Treaty Act. In terms of these two statutes, "no matter how careful a company and its employee's have been, they face automatic criminal penalties"[34]. They do not require intent to commit a crime, nor any evidence of irresponsible or reckless behaviour is required to send someone to jail.

An example of the use of such no-fault statutes was seen in the Eklof Marine Corporation Oil Spill in Rhode Island. On 18 January 1996 the tug Scandia, with the barge North Cape in tow, left Bayonne, New Jersey, and was headed for Providence, Rhode Island. On the next day, a fire broke out on the Scandia causing the crew to abandon her, leaving both vessels adrift. They subsequently ran aground on Moonstone Beach, Rhode Island resulting in 828,000 gallons of oil being spilt into Black Island and Rhode Island Sounds. The spill was the largest in Rhode Island's history and resulted in extensive damage to natural resources, including marine life and migratory birds.

On 25 September 1997 Eklof Marine Corporation, Thor Towing Corporation and Odin Marine Corporation, which jointly owned the Scandia and North Barge, together with the President of Eklof Marine and the Captain of the Scandia, were charged with violating the Clean Water

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[34] Hearings on Criminal Liability for Oil Pollution before the Subcommittee on Coast Guard and Marine Transportation of the House Committee on Transportation and Infrastructure, 105th Congress, 2nd Session, (1998). [Statement of Congressman Wayne Gilhrest].

Act, the Refuse Act and the Migratory Bird Treaty Act. The defendants, forced by the use of these no-fault criminal laws, pleaded guilty to the Federal criminal charges as well as to the State criminal charges which were filed by the State of Rhode Island.

A total of $7 million in criminal fines were paid by the three companies of which half was paid to the State and the other half to the Federal government. Eklof Marine also agreed to pay $1 million for the upgrade of safety features on its ships. The companies were also responsible to pay $1.5 million to the Nature Conservancy for the purchase of ecologically sensitive land in the area of the spill. A further $3 million was paid to the State and Federal government for clean-up reimbursement costs.

This case has resulted in increased concern by individuals in the maritime industry who fear that they will be unable to avoid exposure to criminal liability, regardless of how diligently they adhere to prudent practice and safe environmental standards.

Another equally alarming possibility is that the use of those strict liability statutes are more than likely to affect the co-operation in oil spill response efforts. In support of this contention is the statement made by Douglas Eklof after the criminal prosecutions against his company where he stated:

> "had I known then what I know now ... that the government would eventually criminally prosecute my company ... I must honestly tell you that we might not have laid ourselves open to the government to the degree that we did. I am not even certain that we would have allowed so many of our people to remain at the scene, much less

communicate openly with government representatives absent the presence of defence counsel".[35]

It is unfortunate that because the success of salvage operations depend on a high level of co-operation and communication between the responsible parties. Where such co-operation and communication is lacking, the success of the operation is jeopardised.

It has been stated by some commentators that the use of no-fault criminal statutes have not been responsible for a decrease in pollution incidents,[36] rather this decrease must be attributed to the existence of OPA'90.

It is evident that the quest for criminal prosecutions further intensifies the risks inherent to environmentally dangerous situations. It is equally clear that the scope of conduct subject to criminal sanctions is increasing and the standard of proof needed to show the accused's *mens rea* is diminishing.[37] With the constant threat of criminal sanctions looming, response efforts are sure to be more time-consuming as all parties would attempt to ensure that their actions do not increase the potential for criminal liability. This unfortunately means that in many salvage operations, the focus on the salvage itself would be usurped by the pre-occupation to avoid criminal prosecution.

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35 Hearings on Criminal Liability for Oil Pollution before the Subcommittee on Coast Guard and Marine Transportation of the House Committee on Transportation and Infrastructure, 105th Congress, 2nd Session, (1998). [Statement of Douglas Eklof, Chief Executive Officer of Eklof Marine Corporation].

36 Hearings on Criminal Liability for Oil Pollution before the Subcommittee on Coast Guard and Marine Transportation of the House Committee on Transportation and Infrastructure, 105th Congress, 2nd Session, (1998). [Statement of Dennis L Bryant, Senior Counsel of Haight Gardner Holland & Knight].

37 Shirley & Whyte Kattas 'Marine Pollution: The Salvor's Saviour or Albatross?' Paper delivered at the 15th International Tug & Salvage Convention, November 1998, Cape Town.

English Law

Criminal and civil penalties for environmental damage in England and Wales have a long history.[38] Criminal liability for water pollution has existed from 1876 when the Rivers Pollution Prevention Act was enacted. English law does contain stringent penalties and remedies for harm from environmental damage. These laws have not been given recognition or frequently used in the past. However, the present view is that, as circumstances change and the British public become more environmentally aware and litigious and as potentially powerful environment agencies become well established, these statutes will be used more frequently.

A recent example of the use of a strict liability statute to prosecute for damages or harm caused to the environment is the case which stems from the *Sea Empress* tanker accident. In this case the UK Environment Agency prosecuted the Milford Haven Port Authority, using the strict liability statute - the Water Resources Act, 1991. As a result of this, the Milford Haven Port Authority were fined £4 million.

The Water Resources Act with its strict liability regime was designed to deter polluters. Prior to its use in the *Sea Empress*, it was regarded as exclusively concerned with the pollution of rivers and inland waters. Its use therefore in a marine context had attracted widespread criticism from the maritime and salvage industry. President of the International Salvage Union stated:

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[38] Fogleman 'English Law - Damage to the Environment' 72 *TLR* 571.

"The salvor had only one interest - to fulfil his duty and prevent pollution. Speed of response is critical. It would be traumatic for a salvor to be called upon to help, only to be confronted with the possibility of draconian action under the Water Resources Act. In this situation the salvor would have no choice but to hold back ... This is not the way to encourage rapid response to marine emergencies and pollution threats".[39]

The review of English salvage law as undertaken by Lord Donaldson of Lymington proposed that the Water Resources Act should be amended,[40] as the threat of draconian civil and criminal penalties that exist under this legislation, serve only to deter a salvage team from intervening to prevent pollution.

7.3 *"NAGASAKI SPIRIT"* : BAD TIDINGS FOR SALVORS

The decision by the House of Lords had far-reaching consequences for salvors. The principal issue before the House of Lords[41] concerned the definition of "expenses" in article 14 (3) of the Salvage Convention and specifically as to what constituted a "fair rate". The court identified four possible elements as components of a "fair rate":

(i) "the direct costs to the salvor of performing the service;

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39 ISU Media Information. "Pollution threats in UK Waters: Milford Haven fine could deter salvage teams". Issued 28 February 1999, ISU Website.

40 ISU Media Information. "UK Oil Pollution Defence: Marine Salvors Welcome Donaldson Recommendations". Issued 16 March 1999, ISU Website.

41 Semco Salvage and Marine Pte Ltd v Lancer Na. Co. Ltd (The Nagasaki Spirit) [1997] 1 All ER 502.

(ii) the additional costs of keeping the vessels and equipment on standby;

(iii) a further element to bring the recoverable 'expenses' up to a rate capable of including an element of profit;

(iv) a final element bringing the recovery up to the level of a salvage award".[42]

The point at contention was whether 'fair rate' should include an element of profit. The salvors strongly asserted this while the owners strongly denied that it should be considered in the calculation under article 14 (3). In determining this, the Law Lords looked to the language of the 1989 Convention. Lord Mustill stated that "the concept of 'expenses' permeates the first three paragraphs of article 14. In its ordinary meaning this word denotes amounts either disbursed or borne, not earned as profits".[43] He further stated that:

> "It is ... highly significant that article 14 (2) makes use twice of the expression 'expenses incurred' by the salvor, for in ordinary speech the salvor would not incur something which yields him a profit. The idea of an award of expenses as a recompense, not a source of profit, is further reinforced by the general description of the recovery as 'compensation', which normally has a flavour of reimbursement".[44]

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[42] Ibid, 509.
[43] Ibid, 512.
[44] Ibid, 512.

The Law Lords then compared the above-mentioned textual interpretation with the aims of the convention. Counsel for the salvor contended that the purpose of the convention as per its preamble was to provide 'adequate incentives' thereby ensuring that salvors were always in readiness to protect the environment, and as such a level of compensation which furnishes, in cases where the efforts fail without the salvor's fault, no more than direct and no more than standby costs is not adequate for this purpose. While agreeing that this was the purpose of the convention, the Law Lords in the words of Lord Mustill stated as follows:

> "In the first place I do not accept that the salvors need a profit element as a further incentive. Under the former regime the undertaking of salvage services was a stark gamble. No cure no pay. This is no longer so, since even if traditional salvage yields little or nothing under article 13 the salvor will, in the event of success in protecting the environment, be awarded a multiple not only of his direct costs but also the indirect standby costs, yielding a profit. Moreover, even if there is no environmental benefit, he is assured of an indemnity against his outlays and receives at least some contribution to his standby costs".[45]

The court then considered the relationship between articles 13 and 14. Once again, in the words of Lord Mustill, it was stated:

> "... Thus, although article 14 is undoubtedly concerned to encourage professional salvors to keep vessels readily available, this is still for the purpose of a salvage, for which the primary incentive remains a

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[45] Ibid, 512.

traditional salvage award. The only structural change in the scheme is that the incentive is not made attractive by the possibility of obtaining new financial recognition for conferring a new type of incidental benefit. Important as it is, the remedy under article 14 is subordinate to the reward under article 13, and its functions should not be confused by giving it a character too closely akin to salvage".[46]

On completion of this analysis, the Law Lords held that the 'fair rate' payable to a salvor under article 14 for equipment and personnel used in an operation to salve a vessel that threatened environmental damage, should not include an element of profit.

ISU president at the time, Arnold Witte, described the decision as containing "something for everyone".[47] He said that the decision was "disadvantageous to the salvage industry in the short".[48] In my opinion this view is correctly held. The 'fair rate' finding by the court has made the salvage industry realise that there are difficulties with the interpretation of the convention. It is this, coupled with other factors, that has led to the creation of Salvage 2000.

7.4 COMPLICATED BUREAUCRATIC INTERFERENCE

Traditionally the parties involved in the salvage operation have been the salvor, the owner of the property being salved and his underwriters. As there were few parties to the operation, there was little or no confusion and

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46 Ibid, 513.

47 'Ruling on *Nagasaki Spirit* Lets Salvors Know Where They Stand' *Shipping Times*, Strait Talk 1; *Business Times* [Singapore], 12 February 1997.

the salvor retained exclusive control over the salvage operation. However, increased governmental and public concern over the environment has inevitably led to increased and frequent involvement by governments in salvage operations.

With the implementation of legislation like OPA '90, which provides for a Unified Command System, the salvor now faces untold complexities. In this regard the salvor must "... assist and provide direction to a Unified Command comprised of the federal government, the state government and the responsible party".[49] In most instances where governments are involved much consideration is given to political agendas, often fulled by increased media coverage, and therefore little attention is given to the practical and technical aspects of the salvage operation itself. The negative role and impact that governmental involvement has on salvage has been expressed by one commentator as follows:

> "... have responded enthusiastically to the opportunities of OPA '90 and show up at every casualty no matter how minor and focus on environmental damage aspects, often defining minor threats as major ones, sometimes to the detriment of an effective response to the casualty as a whole".[50]

On certain occasions some governments have even taken the liberty to approve salvage plans and also to either demand or prohibit specific salvage measures.[51] To the salvor this effectively means that he has very little or no control over the salvage operations and hence his reputation is

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48 Ibid.

49 Whyte-Kattas 'Marine Salvage From OPA '90 to Salvage 2000', op cit, 12.

50 Milwee "Living with OPA '90: Salvage Contracting in a Highly Regulated Environment" Paper delivered at ITS '94 - International Towage and Salvage Convention and Exhibition, 29.

51 Ibid.

often placed at risk through no fault of his own. Further the salvor is unable to "... direct the operation as he sees fit based on the traditional values of technical and commercial merit. He must now follow the directions of regulators coming from a very different direction with very different motivation, interests and goals".[52]

An illustration as to just how complicated a salvage operation may become would be to consider the example of Penang's task force implemented to deal with oil spills. Penang had experienced some effects from the *Nagasaki Spirit* collision and was at the time totally ill-prepared and had to depend on federal agencies for the clean-up operations.

Subsequently it established a task force to deal with oil spills becoming the first state to do so. The contingency plans of this state would, in a worst case scenario, include the government's Marine Department, Department of Environment, the Harbour Master, the marine police, oil companies, the District Office, army, police, fire and rescue services department and other volunteers.[53] Clearly such a multi-headed arrangement can only give rise to confusion, delays and increased costs.

It is not only governments who are guilty in burdening the salvor in the proper execution of his duty. The media frenzy that usually accompanies many of the casualties, places the salvor on centre stage and this in turn creates immense pressure for the salvor. Then there is the pressure of environmental protection groups that must be considered.

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52 Ibid, 30.

53 Kathirasen 'Penang Takes the Head in Oil Spill Task Force', *New Straits Times* (Malaysia) 11, 28 October 1997; See also, Seafarer 'Is Compromise on Salvage Issue the Best Way Forward?' *Business Times* (Singapore) 1, 17 December 1998.

Further developments in the law of salvage have seen the implementation of SCOPIC[54] which allows the shipowner to appoint a Special Casualty Representative (SCR) to monitor the salvage services and to be kept fully advised as to how the operation is to be carried out. SCOPIC clearly provides that the SCR does not have the power to interfere with the authority of the salvage master who would always be in control of the operation.[55] The salvage master is however obliged to inform the SCR about the operations any consider any views that he (SCR) may express. Further the master is required to compile daily reports to the SCR and the SCR has to either endorse this report or specifically indicate which aspects he disagrees with.

While it is clear that the above-mentioned provisions are important for P & I Clubs who want to be informed about the progress in salvage operations, which may ultimately affect their interests and that the rules regarding the SCR aim to be as unobtrusive as possible on the salvor, they nonetheless are an addition to the ever increasing bureaucratic chain present in salvage today.

It is evident that the traditional and uncomplicated role that the salvor previously enjoyed can exist no more as new agendas converge on the salvage scene. This bureaucratic interference complicates salvage operations, lends itself to confusion, undoubtedly kills precious time and impinges on the salvor's role during the salvage operations and in this way creates a heavy burden for salvors to bear.

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[54] This refers to the Special Compensation P & I Clause which replaces Article 14 compensation. For an in-depth discussion, see chapter 10.

[55] Bishop 'SCOPIC *Explained International Tug and Salvage,* November/December 1998, 29.

7.5 INCREASED EXPENSES

The salvor's expenses were previously incurred as a direct result of owning, hiring and maintaining expensive equipment for salvage purposes. With the constant threat of pollution, professional salvors have invested large sums of money in acquiring STS equipment and other equipment often utilised in pollution abatement.

To most professional salvage companies world-wide, there has been an increase in their overheads as they focus on new methods to ensure their survival in a highly competitive industry. In order to adequately respond to the demands placed by marine pollution, professional salvors had to implement many changes within their companies which immediately sky-rocketed their costs. For the Wijsmuller Group it meant the following:[56]

- Increase in the size of our legal department, now not only to deal with settlement discussions or arbitrations, but also in an early stage to study the local, national laws and rules governing salvage in a given country.[57]

- Implementation of a more professional external communication department in order to responsibly liase with the media and environmental organisations.[58]

- Develop a network of local partnerships in order to be able to adequately address and negotiate with authorities.[59]

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[56] Wijsmuller & Harvey 'Practical Aspects of Environmental Issues and Today's Pandora's Box' Paper delivered at the 15th ITS Convention, November 1998, Cape Town.

[57] Ibid.

[58] Ibid.

[59] Ibid.

- Provide our salvage masters with media training and teach them how to address and negotiate with authorities.[60]

- Join forces as much as possible with local partners in respect of chartering out emergency towing vessels to national governments.[61]

- Employ experts in the field of hazardous and noxious substances.[62]

Owing to the use of strict liability statutes shipowners may be reluctant to communicate information vital to the salvage operation, thus the salvage may become more time-consuming which ultimately leads to an increase in the overall expenses. Where there are many parties to the salvage operation, this also means an increase in costs.

7.6 RESPONDER IMMUNITY NEEDED TO KEEP SALVORS AFLOAT

Salvors who are the first line defenders against pollution are vulnerable and remain exposed to the risk of prosecution in the course of their duties. It is highly possible that pollution may occur during salvage operations, for example, in the event of cargo being jettisoned. Further, it is accepted that while salvors are generally very experienced and well equipped, they sometimes have to take calculated risks when engaged in a salvage operation and that neither they or any one else can predict the outcome with certainty. Perhaps the classic example is the deliberate release into the

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60 Ibid.
61 Ibid.
62 Ibid.

water of some oil from a grounded tanker in order to re-float the vessel and thus save her from breaking up and causing much worse pollution.

It is rather harsh to threaten salvors with civil and criminal liabilities when their skills and abilities are vital to the salvage of marine casualties and for the prevention of environmental damage. Should the threat of these civil and criminal liabilities persist, they would only result in salvage teams being reluctant to undertake salvage in certain circumstances. As one commentator succinctly stated:

> "It is not exactly encouragement to go to the aid of somebody if your mind is fixed on potential criminal charges before you even start".[63]

The International Salvage Union has campaigned to obtain comprehensive "responder Immunity" for its members. In the United States, which is renowned for its "tough regulatory regime", spill response and clean-up contractors are granted "responder immunity". These individuals are regarded as Good Samaritans and are given this protection. It is possible that US legislation "might provide a salvor with some degree of 'responder immunity' from civil actions, but there is no similar protection from criminal liability. This could have the paradoxical result of responders being criminally charged as a matter of prosecutorial discretion, while being legally immune from any civil liability for removal costs or damages.".[64]

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63 Salvors Anger Over 'Spill Crime' *Lloyd's List*, 16 December 1997.

64 James Shirley, in a paper delivered at the Second International Marine Salvage Conference in London, March 1999.

It has been argued that salvors should receive the same protection even though "the salvor's operational position is a little different: he seeks to prevent pollution rather than clean up after a spill, but his activities are also based on good intentions".[65]

The president of the ISU has stated:

> "the salvor needs responder immunity if he is to develop his pollution prevention role. This requires commitment and investment. Lodging claims against a good Samaritan is not the way to engender confidence. I believe it makes sense to offer the salvor - who operates in a difficult, dangerous and unpredictable environment - the comfort of responder immunity. We need to press for such protection for our members. In addition to civil immunity, the ever more frequent threat of criminal prosecution for participation in an environmental solution is absolutely wrong and is a sure road to non-response in critical situations, if cooler heads do not prevail".[66]

The potential civil and criminal liabilities that threaten salvors must be eradicated, since if utilised they are capable of destroying the salvor's "personal and professional reputation, wreak financial havoc on their company and even deprive them of their personal liberty".

It is important to bear in mind that "a marine casualty, by its very nature, is constantly subject to the vagaries of nature and the unknown. Quick, instinctive reaction is often required to effectively combat the ever

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[65] 'ISU Voices Concern over Failure to Provide Salvors with 'Responder Immunity' *Lloyd's List*, 21 July 1998.

[66] Ibid.

changing conditions ... Much still needs to be done to enable salvors to perform their abilities without the threat of civil and criminal sanctions".[67] Salvors in the United Kingdom were promised a review of the law used to prosecute the Milford Haven Port Authority; however, no amendment has been tabled and some salvors have expressed the concern that any such protection may be illusory rather than real.[68]

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67 'Salvors Consider the Need for Responder Immunity' ISU Website: www.marine-salvage.com. Issued 24 March 1999.

68 'Bunker Convention' British Maritime Law Association Website : www.bmla.org.uk.

CHAPTER 8

THE SOUTH AFRICAN LAW OF SALVAGE AND THE ROLE OF THE SOUTH AFRICAN SALVOR IN MARINE ENVIRONMENTAL PROTECTION

This chapter examines and discusses the South African law of salvage. It traces the development of the law from its historical origins to its present day encapsulation as the Wreck and Salvage Act 94 of 1996. As its secondary aim, this chapter analyses the role and effectiveness of the South African salvor in combating pollution along the coast.

8.1 HISTORICAL ORIGINS OF SALVAGE IN SOUTH AFRICA

The earliest recorded instance of salvage in South Africa was a journal entry in the diary of the Dutch settler, Jan van Riebeeck. On 17 April 1656 he wrote:

> "During the night the cable of the Olifant broke as a result of the carelessness of the watchmen, and the vessel drifted close to the sand dunes of Lion's Rump. Fortunately she missed the numerous rocks and got onto a sand bank, not without danger of being wrecked as she was hitting the bottom somewhat; but as she had missed the rocks ... she was off on the morning of the 18th with the aid of all available and after great effort, and brought to where the other ships were anchored. Not the slightest leakage or other damage had been

caused by the grounding ... Almighty God be praised for the safety of the said ship".[1]

During the 17th Century, many Roman-Dutch writers developed and recorded principles of salvage.[2]

English law and Roman-Dutch law has influenced the South African legal system. To ensure that South African salvage law accorded with the "uniform international rules regarding salvage operations", the legislature enacted the Wreck and Salvage Act 94 of 1996. The act is a combination of "... traditional salvage law inherited from England, and the broadly accepted principles of the International Convention on Salvage, 1989".

The act consolidates all the Merchant Shipping Act's provisions relating to wreck and salvage. It includes the full text of the convention as a schedule which has the force of law.

South Africa decided not to accede or to ratify the convention, because it was considered that the convention was lacking in certain aspects, with regards to the application and calculation of article 14 – Special Compensation.

8.2 THE WRECK AND SALVAGE ACT 94 OF 1996

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1 Hare *Shipping Law and Admiralty Jurisdiction in South Africa* (1999) 279.

2 Ibid. The jurists Grotius 2.4.3.6; 3.29.4; 3.29.10-14; Huber Decis Fris 1-10; 3-44 and Van Leeuwen 2.3.8 & 9 have all dealt with salvage in their writings.

Section 2 – Application and Interpretation of Convention

Section 2(1) gives the convention the force of law in South Africa.

In terms of s 2(5) a court of law or tribunal may consider *the travaux preparatoires* of the convention as well as foreign judgements when interpreting the convention.

This section is notable for extending the application of the convention in the following areas:

- First, a subject of salvage shall include "... any fixed or floating platform or any mobile offshore drilling unit whether or not it is engaged in the exploration, exploitation or production of sea-bed mineral resources".[3]

- Second, "damage to the environment" is extended and, unlike the convention, it is not restricted to coastal or inland waters or areas adjacent thereto, but rather it applies "to any place where such damage may occur".[4]

- Third, the expression "fair rate" is to include "a rate of remuneration which is fair having regard to the scope of the work and to the prevailing market rate, if any, for work of a similar nature".[5]

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3 Section 2(6), Wreck and Salvage Act 94 of 1966.
4 Section 2(7), Wreck and Salvage Act 94 of 1966.
5 Section 2(8), Wreck and Salvage Act 94 of 1966.

Section 3 – Court Trying Salvage Claim May Be Assisted By Assessors

A court that is hearing a salvage matter has the right to appoint one or more assessors who must be both impartial and conversant with maritime matters.

This provision also assists in providing transparency to proceedings and "recognises the ability of local professionals, academics and even operators to contribute in determining equitable awards".[6]

Section 4 – Application to Aircraft

This section provides that the provisions in the act as they relate to wreck and salvage of life and property shall be equally applicable to aircraft.

Section 5 – Obligation to Assist Ships in Distress

The master of a South African ship is obliged to assist all vessels in distress. Reasons for any failure to respond are required to be set forth in the official logbook:

> "If the master of a South African ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, is unable or in the special circumstances of the case considers it unreasonable or unnecessary to go to the assistance of the person in distress, he or she shall forthwith cause a statement to be entered in

the official logbook, of his or her reasons for not going to the assistance of that person".[7]

Section 6 – Duty to Render Assistance to Persons in Danger at Sea

The master of all ships, both South African and foreign, are obliged to assist persons in distress at sea.

Section 7 – Duty of Masters of Ships in Collisions to Render Assistance

The act empowers the Minister to appoint "suitably qualified persons" as salvage officers. The powers, duties and functions of these officers are prescribed by the act.

Section 9 – Payment of Allowances to Salvage Officers

The remuneration and allowances of a salvage officer, who is not employed by the government, shall be determined by the Minister of Transport in consultation with the Minister of Finance.

Section 10 – Exercise of Powers in Absence of Salvage Officer

In the absence of a salvage officer, provision is made for a member from the South African National Defence Force to carry out the instructions of the salvage officer.

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6 Gongzola *The South African Wreck and Salvage Act 94 of 1996* Research Project, University of Natal, Durban (year 1996).

7 Section 5(5), Wreck and Salvage Act 94 of 1966.

There is also an express prohibition on the salvage officer or his representative from interfering with the services by a lawful salvor.

Section 11 – Investigation Concerning Ships Wrecked, Stranded or in Distress

The act empowers a salvage officer to conduct an investigation when any ship is "wrecked, stranded or in distress".

Section 12 – Powers to Pass Over Adjoining Lands

The act empowers persons rendering salvage assistance to pass over private property.

Any damage sustained by the owner or occupier of the property shall result in a charge on the ship, which was the subject of salvage.

The owner's claim "shall, in the event of a dispute, be determined in the same manner as salvage is determined in terms of the Act".

Section 13 – Power of Salvage Officer to Suppress Plunder and Disorder

This provision is markedly different from its predecessor as it takes cognisance of the South African Constitution. It protects individuals rights to privacy as contained in the Bill of Rights of the South African Constitution.

It provides that when a ship is wrecked, stranded or in distress, "no person shall plunder, create disorder or obstruct the preservation of the ship or shipwrecked persons or the wreck, and the salvage officer or his or her authorised representative may cause any person contravening the provisions of this section to be detained".

Section 14 – Interfering with Wrecked Ship or Aircraft

Unauthorised persons are prohibited from boarding, impeding the salvage of any ship or aircraft wrecked, stranded or in distress.

Section 15 – Salvage Payable for Life

Salvage is payable regardless of whether ship or wreck has been saved, when services are rendered in saving life.

Payment of salvage in respect of the preservation of life shall have priority over all other salvage claims.

When the value of the ship or wreck is insufficient to pay the amount of salvage payable for saving life, then the Minister has the discretion to award an *ex gratia* payment.

Section 16 – Salvage Payable by Commissioner for Customs and Excise

The Customs and Excise Officer is obliged to pay the person responsible for the salvage of a ship which is ordered to be disposed of by the Customs and Excise officer.

Section 17 – Detention of Wreck until Salvage is Paid

The salvage officer is empowered to detain a ship or wreck until payment is made for salvage due or until process for the arrest or detention of such ship or wreck by a competent court is served.

Where the salvage officer receives security "to his or her satisfaction", he is required to release the ship or wreck.

Section 18 – Power of Minister in Respect of Certain Wrecks and Ships

This section empowers the Minister to contact the owners or master of a vessel and direct the removal, etc. of the vessel. Where the owner or master fail to do so, the "Minister may cause such act to be performed".

Section 19 – Agreement to Forfeit Right to Salvage is Void

Any agreement by a South African seaman to abandon his right to salvage is prohibited.

Section 20 – Restrictions on Assignment of Salvage

The salvage due to a seaman of a South African ship shall not be liable to:

- attachment or subject to any form of execution under a judgment or order of any court;

- an assignment or hypothecation thereof shall not bind the person making the same;

- a power of attorney or authority for the receipt thereof shall not be irrevocable.

Section 22 – Offences and Penalties

Contravention or failure to comply with certain provisions is punishable by fine or imprisonment.

Section 24 – Act to Bind the State

The act binds the State and thus makes the salvage of State owned vessels, and salvage by government vessels of private or other State vessels, subject to its provisions.[8]

Sections 25 – 30

These sections provide for the repeal of those sections (from the Merchant Shipping Act) re-written in the Act.

8.3 SOUTH AFRICAN ACT AT THE FOREFRONT OF INTERNATIONAL SALVAGE?

The analysis of the provisions of the Wreck and Salvage Act clearly indicate that the Act is highly advanced and modern in its approach to the time-honoured concept of salvage.

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[8] Hare, supra.

The Act is an advancement to the law of salvage because of the three extensions to the applicability of the Convention:

First, it extends the definition of a subject of salvage.

Second, 'damage to the environment' for the purposes of Article 14 special compensation is extended.

Third, 'fair rate' referred to in Article 14 includes the element of profit which was ruled against by the House of Lords in the Nagasaki Spirit.

Since salvage is an "international concept affecting multi-national interests", a brief comparative review of salvage legislation from foreign jurisdictions is appropriate.

8.3.1 United Kingdom

Part IX of the Merchant Shipping Act 1894 consolidated the statutory provisions relating to wreck and salvage. The Maritime Conventions Act 1911 is also relevant to salvage history in the United Kingdom; the English legislature did not enact the Brussels Salvage Convention 1910, instead only a part of the convention was enacted in the Maritime Conventions Act 1911.

At present the relevant statute regulating salvage is the Merchant Shipping (Salvage and Pollution) Act 1994, which incorporated the 1989 Salvage Convention, thus making it a part of English law before it came into effect.

English salvage law thus enjoys the support of the various parties and lobbying interests from the maritime community which includes salvors, shipowners, property underwriters and P & I Clubs.

Its dominance as one of the world's most frequently used salvage law may be attributed to:

- London being the salvage arbitration capital of the world, and

- the influential use of LOF in salvage operations which stipulates English law as the *lex contractus*.

8.3.2 China

The Maritime Code of the People's Republic of China, the country's first-ever maritime code, was promulgated on 7 November 1992. Chapter 9 of the code is entitled "Salvage at Sea" and its provisions are based on the principles of the 1989 Salvage Convention.

Prior to the 1992 code, there was no provision in Chinese law for salvage. This was a highly undesirable state of affairs, as China does not only have "a huge national fleet but also holds the largest salvage potential". During the period "the 1989 to 1991, Chinese professional salvage companies conducted 358 dry salvage operations and 168 wet ones...".[9]

The principles of the Code are identical in nature to the 1989 Salvage Convention. The point of difference between the two instruments concerns

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[9] Huang 'The Chinese Maritime Law of Salvage' (1995) *LMCLQ* 269.

the scope of application of their provisions. The Chinese Maritime Code is narrower in its application than the 1989 Salvage Convention.[10]

The Convention applies to salvage operations conducted in all waters whereas the code does not apply to salvage operations performed in inland waters except where these waters are navigable and adjacent to the sea.

In the event that the law fails to provide clarity or guidance, the 1989 Salvage Convention will be used to provide the necessary guidance. This is the only recourse as the convention is the foundation upon which the Chinese Maritime Code has been built."[11]

8.3.3 Germany

Provisions relating to salvage are codified in the German Commercial Code. German salvage law has been criticised for being unable to uphold the principle of equity as it does not afford crew members from being regarded as salvors.[12]

It has also been identified as rigid and inflexible as it is still based upon the Brussels Salvage Convention of 1910 and has failed to take cognisance of important developments in international salvage law, especially as it does not provide for "special compensation" in oil pollution incidents. This shortcoming has led to the German salvor Bugsier-Reederei-und-Bergungs-

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10 Ibid.
11 Ibid.

12 Kaestner *Legal Encouragement for Salvage* (Unpublished Masters thesis) Shipping Law Unit, University of Cape Town (1988) 145.

Gesellschaft MBH & Co. to incorporate the "special compensation" regime in their standard form salvage agreement.

It is submitted that the South African salvage law is innovative in its approach. It is also the most salvor-friendly by ensuring that it provides many incentives for salvors, which include:

1. the salvor's right to claim for salving life;[13]
2. the possibility for a salvor to arrest an "associated" or "sister-ship" to enforce his claim for salvage;
3. the incorporation of the 1989 Salvage Convention as a Schedule to the act which has the force of law;[14]
4. the broader and more liberal interpretation afforded to a "subject of salvage", "damage to the environment" and "fair rate".[15]

The South African law is attractive to salvors but its application in practice is rare. Professional South African salvor, Smit Marine, always undertake to sign LOF in their major operations.[16] South African salvors seem to be content with utilising LOF which stipulates English law as the *lex contractus*,[17] as it has proven to be equitable for all parties involved and fair arbitration is guaranteed. It therefore does not seem likely that the South African provisions will be frequently used in the international context. Although cognisance must be taken of the SCOPIC clause which adopts the liberal interpretations of "fair rate" and "damage to environment" as contained in our law.

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13 Section 15(1), Wreck and Salvage Act 94 of 1996.
14 Memorandum on the Objects of the Wreck and Salvage Act, 1996.
15 Sections 2(6) 2(7) and 2(8) respectively.
16 Personal communication with Dave Main and Clare du Plooy of Pentow Marine, Cape Town.
17 Clause 1(g), LOF 1995.

While South African law is, on the one hand, advanced; on the other it is not applied. In this sense it can not be regarded as being at the forefront of international salvage at this stage.

English law enjoys an unrivalled dominance on the international salvage forum. Its popularity stems from the historical development of salvage in England, the experience acquired by admiralty courts over the centuries and the wide circulation of LOF which ensures that English law is retained as the *lex contractus*.

8.4 THE ROLE OF THE SOUTH AFRICAN SALVOR IN MARINE ENVIRONMENTAL PROTECTION

South Africa is strategically situated on one of the busiest shipping routes in the world. Approximately 30% of the Middle East oil exports pass around the Cape each year.[18]

Current figures from BP's Statistical Review of Energy has revealed that some 120 million tons of oil carried in laden tankers pass the South African coast each year which is at least 40 large tankers each month.[19] This heavy traffic along the South African coastline is a significant factor as it increases the threat of marine pollution.

Another factor that contributes to casualties occurring along our coastline is the weather patterns experienced along the Cape Coast. The combination of "abnormal waves" on the southeast coast, and strong southwesterly gales

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[18] See http//:ww.intertanko.com

[19] Adelbert 'Marine Oil Pollution Prevention – Born at the Cape of Storms' paper delivered at the ITS '98 in Cape Town

during the winter months prove hazardous to vessels, many of which have been "damaged, some fatally, as a result of encounters with such waves."[20]

The existence of the Agulhas current, which can at times reach a speed of up to 6 Knots, also impacts upon the "abnormal waves" creating treacherous conditions. On its own, it is equally deadly as it "tends to drive shipping onshore".

There is also the presence of fog along the southern coast which has the potential to reduce visibility to zero.

The presence of these hazardous natural conditions has given the South African coastline the reputation of being inhospitable and dangerous. It has is not surprising that it is known as "The Cape of Storms" and "Coast of 1000 Wrecks".

Private salvage companies, like Smit Tak BV, Wijsmuller and Bugsier, had maintained tugs at permanent salvage stations which were strategically located on major shipping routes. During the sixties and seventies, Cape Town was a popular salvage station which ensured a high income return for the various tug owners.

The birth of the supertanker had meant that high horsepower tugs needed to be built. Needless to say, great expense were incurred in building these tugs. During this time there was a major growth in the offshore oil exploration industry and tug owners, not content to have their tugs sit idle, were lured by lucrative and continuous employment from oil-rig towage

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[20] Ibid

contracts. This in turn meant that "...salvage stations were vacated with the lead time for tug availability going from hours to days, and often weeks meaning that salvage capability was no longer a certainty that the private tug owners had previously identified as 'hot spots'".[21]

Thus, in 1971, when the laden tanker, *Wafra*, ran aground at Cape Agulhas, there was no efficient or effective salvage assistance available. The resultant 68,570 tons oil spill caused wide-spread pollution and environmental damage along the coastline. In a pioneering move the South African government decided in 1973 to implement a government-assisted oil pollution tug service.

The tugs *John Ross* and *Wolraad Woltemade*, designed specifically to deal with ULCC's in distress, were placed on standby. The tugs each have "two main engines driving a single screw which delivers a bollard pull of some 80 tons. They are examples of the last classic profiled deep-sea tugs..."[22]

By 1975 five oil pollution vessels in the Kuswag series were acquired. In 1985, an aircraft was acquired to enhance the anti-pollution capability of the operation.

This government-sponsored initiative with South Africa's professional salvor, Pentow Marine, has been in operation for 28 years[23] during which major disasters were averted.

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[21] Zandee 'The Salvor's Contribution to Environmental Protection and the Recovery of Private Investment in South Africa's salvage Capacity' paper delivered at the 6th National Maritime Conference, March 1999, Durban.

[22] Hare, supra 276

[23] For many years the South African initiative stood alone until the *Amoco Cadiz* disaster in 1978 prompted the French government to enter into agreement with private salvors. See chapter 6 for more information on world-wide government-sponsored salvage assistance.

Using the government-sponsored tug contract as a foundation, Pentow Marine is able to provide the shipowner "...professional seamen versed in tankers, their cargoes, pilots, discharge advisors, divers, tanker teams, ship-to-ship transfer gear, salvage engineers and naval architects together with some three million Rands worth of equipment other than boats, launches and other vessels".[24]

It is said, probably correctly, that "the collective resources of Pentow, Department of Transport and Department of Environmental Affairs can be viewed as an operation equivalent to the pollution response centres at Southampton and Singapore ... It is driven by the philosophy of retaining the oil in the casualty for, once on the beach, clean up on the South African coast will be difficult, sometimes impossible and always expensive".[25]

Salvage and marine environmental protection along the South African coast "... is thus a combination, on the one hand, of a Government Contract and, on the other hand, of ongoing investments by a privately owned company that together provides for the capacity and capability that exists...".

8.4.1 Major Salvage Operations along the South African Coast

Smit Marine, as South Africa's only professional salvor is largely responsible for oil pollution abatement along the South African coast.

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[24] Sandee, supra 11
[25] Adelbert, supra 12

In keeping with its motto "Caring for the environment is our business", the major thrust of its anti-oil pollution activities is preventative in nature and is based on the following three prime areas of activity:[26]

1. Large tugs capable of towing the biggest tankers afloat.

2. The ability to carry out routine and emergency lightering of oil cargoes whilst underway or anchored, through availability of ship-to-ship transfer equipment (including *inter alia*, transfer hoses, large fenders, mooring lines, etc.) and personnel to plan as well as execute the complete operation, together with support craft.

3. Frequent coastal patrols, on behalf of the Government Department responsible for environmental affairs, utilising our high-wing turboprop aircraft fitted with oil pollution surveillance equipment.

Secondary activities consist of abatement services which are based on a fleet of dedicated coastal patrol vessels equipped for dispersant spraying.

Considering the "sheer volume of passing oil traffic" and the number of cargoes in distress, the potential for oil spills are great. It must be borne in mind that, while oil tankers pose the greatest risk because of their cargoes, any vessel in trouble poses an environmental threat because of the fuel that it carries.

During the period 1976 to 1998 Pentow Marine (as it was previously known) has assisted 94 tankers, 19 of which required trans-shipment of

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[26] Pentow Marine Booklet, 15.

their cargoes, involving the movement of 4,663 192 tons of oil under salvage conditions.

Shipping Casualties On The South African Coast Involving Laden Tankers[27]

Period	Tanker Incidents	Tons of Oil at Risk	Tankers Salved	Other Casualties
1976 – 1980	31	7,097,000	11	41
1981 – 1985	16	3,136,000	6	50
1986 – 1990	20	5,775,000	5	41
1991 – 1995	21	4,664,000	15	45
1996 – 1998	6	1,588,000	5	19
1996 – 1998	94	22,260,000	42	196

In December of 1977 the world's largest collision between the 330,000 ton sister tankers, *The Venpet* and *The Venoil* occurred in our waters and South African salvors provided the necessary salvage assistance.

In August 1983 when the 245 000 dwt tanker *Castillo de Bellver* caught fire and broke her back, South African salvors averted major damage to the environment.

During the course of the year in 1991 the 360 000 dwt ULCC, *Mimosa*, lost her steering and consequently 200 m^2 of her side plating. At this time, swells of 23 meters were documented in the area causing the powerless ship to drift within sight of the beaches of Algoa Bay. Salvors towed the casualty out to sea and the leaks were sealed whereafter she was brought to a safe haven to facilitate a ship-to-ship transfer.

Later on the same year, in September, the 200 000 dwt tanker, *Atlas Pride*, lost her bow due to heavy weather. Initially a 13 000 HP anchor handling tug was contracted to render rescue towage, but was overwhelmed by the size of the operation and the extreme weather conditions and was subsequently replaced by *The John Ross*. The casualty was successfully towed to Algoa Bay for a ship-to-ship transfer.

In March of 1992 *The Katina P*, a 66 000 dwt tanker laden with heavy fuel oil, was en route to the scrappers. While off the coast of Maputo Bay, she started leaking cargo. The salvage tug *John Ross* sailed from Cape Town to assist her but, while under tow, the vessel broke her back and sank. Fortuitously, the current formed a barrier between the vessel and the South African coast, thereby significantly reducing the threat of oil pollution.

The salvage of the 275 000 dwt tanker *Tochal*, which had lost her entire underwater bow structure off Agulhas in June of 1994, prevented large scale protential pollution.

1994 also saw the *Apollo Sea*, an iron ore bulk carrier, sink off Saldanha Bay which resulted in 4 000 tons of heavy grade bunker oil soiling Cape Town's premier beaches of Clifton and Camps Bay. The clean-up cost has been estimated at approximately R20 million. Two years after the disaster, the beaches were still affected by the oil.[28]

In March 1996 the 360 000 dwt, *Kraka*, experienced failure of her propulsion gear. Salvage of this vessel saw the largest world-wide transfer of crude oil under salvage conditions.

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27 Table courtesy of Pentow Marine.

28 Adelbert, supra 15.

Later the same year, in July, the 300 000 dwt tanker, *Galp Funchal*, suffered the partial loss of her bow structure in the southern Mozambique Channel.

September 2002, saw one of the most dramatic and environmentally sensitive salvage operation performed along the South African coast.

On 10 September 2002, at approximately eight pm the master of the Italian-owned ro-ro container ship, *Jolly Rubino*, which was bound for Mombassa called Richards Bay port control and reported a fire in the engine room. The port helicopter crew was placed on standby and took off 30 minutes later. By this time the flames were to be seen at the port side of the bridge. After valiantly attempting to fight off the blaze, the master decided to abandon ship. And in atrocious weather with the vessel pitching and rolling in "huge" swells, a single helicopter lifted 22 seamen to safety.

The fear was that the vessel could lose the 1100 tons of fuel oil it was carrying and its cargo, which included new cars, flammable toxic chemicals and steel coils.

The vessel continued to burn while the salvage tug *Wolraad Woltemade* made its way from Cape Town. She subsequently ran aground 300m from the shore off the Cape St Lucia lighthouse, at the southern edge of the Greater St Lucia Wetland Park, South Africa's first natural World Heritage Site.

Salvage operations began in earnest and a salvage dive team managed to patch a crack on the port side of the vessel to reduce any oil spillage, while arrangements to refloat the casualty were being put in place.

A towline had been connected by helicopter, from the ships bow to the salvage tug *Wolraad Woltemade*. The plan to refloat the casualty was paramount as the priority was to prevent the 500 tons of heavy fuel oil in the fuel tanks from being released.

The pollution patrol aircraft *Kuswag VII* had reported that the wind and sea were assisting in breaking up the oil, but some oil had been seen in the surf about 500m south of the ship.

Almost all hope of towing the stricken vessel away from the coast were abandoned on the 17th September 2002 after the salvage team discovered new structural damage caused by the raging fire and wave action.

At this stage, Smit Salvage were of view that the situation had deteriorated to such an extent that there was only a one percent chance of pulling it off the sandbank before it broke in half.

Salvage operations took a further dramatic turn when a full drum of a possibly highly toxic chemical washed ashore near the St. Lucia estuary mouth.

The focus of the salvage operation then turned to the removal of the remaining fuel oil on board. The new damage to the vessel completely opened the starboard tank and the underneath of the vessel and resulted in the oil flowing freely into the sea. This oil was heavier than its original

form because of its exposure to the fire and was therefore dispersing and sinking rapidly.

At this stage the vessel was effectively cracked through the middle.

The removal of the remaining fuel necessitated a ship-to-ship transfer to the tanks of the Anchor Handler 'Pentow Service'. The operation to remove the fuel was interrupted by high swells of between 5 and 6m in the vicinity of the grounded vessel.

By 6 November 2002, two important phases of the salvage operation had been completed. All hazardous cargo on board the vessel had been airlifted. Salvors had removed 2169 burnt out drums thought to have contained hazardous cargo, as well as empty containers from the deck.

A total of 407 tonnes of fuel had been removed from the casualty since the fuel removal operation began. In addition all pumpable fuel as well as the 235.5 tonnes of oil skimmed from the surface of the water in the engine room, generator room and corridor deck. The remaining fuel in the corridor deck was the consistency of sludge and very thick, this was stored in the casualty's tanks for later removal.

Once salvor's had completed the removal of the hazardous cargo and fuel the vessel was prepared for her watery grave and approximately 3 months after she ran aground the *Jolly Rubino* was blown up and sank.

Smit Salvage was busy attempting to refloat the *Sealand Express*, a U.S.A. flagged container ship built in 1980. She has a length of 257m and is 30 metres wide. The 32,926 DWT container vessel ran aground at 07h30, 200

metres off Sunset Beach, north of the Port of Cape Town on the 19th August 2003, in severe weather and wave conditions typical during Cape Town's winter storms.

A LOF contract was awarded.

Salvage operations commenced with the ship-to-ship transfer of the heavy fuel oil. By 28 August 2003, 3518 tonnes of the fuel oil was off the grounded vessel. Preparations then began for the refloating of the vessel. On completion of the ship-to-ship transfer, a dredger commenced working in the immediate vicinity of the vessel. Salvors were hoping to take advantage of the high tide and high swells, as well as the spring tide that was to be experienced around the 30th August 2003.

By Sunday 31 August, the salvage team was able to remove the cargo from 2 containers classed as hazardous, bringing to 10 the number of hazardous cargo containers removed to date, The hazardous cargo removal operation began a priority, for salvors after unsuccessful attempts at refloating the casualty. The 3 products classed as hazardous removed thus for include explosives, LPG gas and corrosive acids.

Although not entirely successful, refloating attempts have resulted in the casualty moving 180 metres forward and poviting 27 degrees seaward. 1 tug remains connected in order to assist in maintaining the vessel's position. The dredger resumed working in the vicinity of the vessel on the evening of 6th September and will continue dredging the area until such time as a further refloating attempt is considered viable either before or at the next spring tide of 11th or 12th September. The salvors maintain that

stress monitors fitted to the casualty's hull indicate that her condition was still sound.

During the next attempt at refloating the salvage tug *John Ross* and the tugs *Pacific Worker* and *Pacific Brigand* were used.

The vessel was successfully refloated on 13 September 2003.

The above discussion on South African salvage operations is by no means a reflection of Smit Pentow's entire involvement in salvage. Rather, it simply highlights the major salvage operations involving casualties carrying large volumes of oil (as cargo or bunker) which were rendered unfit to continue their voyages and posed major pollution threats to the coast of South Africa.

CHAPTER 9

A COMPARATIVE ANALYSIS OF FOREIGN SALVAGE FORMS

Lloyd's Open Form Salvage Agreement remains the leading salvage contract, there are however other national contracts in use around the world. This chapter examines the various national contracts. The examination reveals that the underlying principles of the 1989 Salvage Convention and various editions of LOF have been incorporated in these national contracts.

9.1. TURKISH MARITIME ORGANIZATION SALVAGE AND ASSISTANCE AGREEMENT

Article 1

This article expressly states that the agreement between the parties is based on the "no cure – no pay" principle. The article has as its authority article 1223 of the Turkish Commerce Code which reflects the Turkish law of salvage.

Article 2

The rights and duties of the salvor are explained in this provision. The chief onus on the salvor is to "do his best in salvage assistance". The salvor is also obliged to redeliver the casualty to the master at the nearest anchorage or a specifically named place.

This article allows the salvor to retain the right to cancel the salvage agreement and abandon the operation when he is of the opinion that the salvage and assistance will not give rise to a "satisfactory result" or when the "vessel and the values on board" are too low when compared to the expenses of the salvage. In the event of such cancellation, the salvor is not responsible for any loss.

Article 3

This provision regulates the technical aspects of the salvage operation. It places a duty on the master of the casualty to follow the salvor's instructions. Specific reference is made to the performance of manoeuvres and operations deemed necessary by the salvor. It is stated further that the salvor bears no responsibility for total loss or damages or loss of *inter alia* the hull, cargo, equipment, which may have occurred during the salvage operations.[1]

Article 4

The duties and obligations of the master and seamen of the casualty are set down in this article. The master and seamen do not have any right to interfere with the salvage operation; to prevent any part or parts of the operation, or to perform any operations on their own. They are obliged to inform the salvor of the information they possess about *inter alia*, the vessel, and its cargo.

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[1] This casts the salvor in an extremely favourable position and can only serve to encourage Turkish salvors.

There is a further obligation on the master to inform the salvor, in writing, about the "nature and values of the cargo and bunker on board; name of the insurance company for cargo, freight and vessel, and the insurance amounts; portions of collected and uncollected freight amounts and the risky and unrisky freight".

In the event of the salvage operation being terminated or prevented due to interference by the master, then it will be presumed that the services have been successfully completed and the salvor's award will be calculated as if the services have been fully rendered.

Article 5

Article 5 discusses termination of the salvage assistance and provisions relating to security. The salvage is terminated when the casualty is delivered to a place of safety; or when the vessel is taken under security; or when the scenario described in article 4 occurs.

Further, the salvor retains the right of pledge and detention on the salved values.[2] Therefore a prohibition exists on the removal of the vessel and her contents. A similar prohibition prevents cargo and other goods from being discharged from the vessel without written approval from the salvor.

The master is obliged to provide the salvor with security in the form of an unlimited letter of guarantee from an insurance company. In the event of such acceptance, the salvor is entitled to exercise his option to accept security from all salved values. However, the overall responsibility still lies

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2 This is pursuant to the conditions of the Turkish Commerce Code.

with the shipowner. Where the security demanded is "higher than normal", the salvor is not liable for the costs to the owner.

Article 6

The matters relating to arbitration are set forth in this article. All actions, claims and conflicts which arise out of the salvage agreement are to be resolved by arbitration in Istanbul.

The responsibility to pay the salvage award, arbitration, attorney fees, all the expenses to the salvor, rests on the owner of the salved vessel.

Two arbitrators are appointed: one by the master or shipowner and the other by the salvor. Where the shipowner or the representative fails to appoint and inform the salvor of their arbitration within 7 days of having received notification of the appointment of the salvor's arbitrator, then the Istanbul Commerce Court will appoint an arbitrator.

Where there is no agreement between the two arbitrators in reaching a decision then the Court will appoint a third arbitrator.

The arbitrators have the power to award interest on the salvage award from the date of completion of the salvage.

The arbitrators are entitled to the following fees:

1. 10% of the award, where there are two arbitrators;
2. 12% of the award, where there are three arbitrators;

Article 7

Article 7 deals with the instance where the vessel salves herself by her own means until the salvor's arrival. Under these circumstances, the salvor has a right to receive reasonable remuneration for the expenses and losses.

Article 8

This article states that the salvage award, attorney's fees, arbitration fees, etc. must be paid to the salvor within 7 days of the master or shipowner having received notification of the arbitrator's decision. Failing this, the salvor is entitled to "... collect all his credits from the securities or vessel or uncollected freight or cargo".

This form is extremely favourable towards salvors and, which in my opinion serves as an incentive which operates as encouragement and support for the continued existence and maintenance of professional salvage services.

9.2 CONTRAT D'ASSISTANCE MARITIME [FORM OF MARITIME SALVAGE AGREEMENT, EDITION JV 1990

Clause I

By virtue of this clause the provisions of the 1989 Salvage Convention are expressly incorporated into the salvage agreement.

Clause II

The salvor is obliged to use his "best endeavours" during the salvage and to bring the vessel to a place of safety as well as to avoid damage to the environment.

Clause III

This clause specifically incorporates the "no cure – no pay" principle. Where the salvor has achieved partial success he is entitled to a partial reward.

There is a further stipulation that the salvage award must not exceed the value of the salved property.

The criteria used to calculate the salvage award is based on article 13(1) of the 1989 Salvage Convention.

Clause IV

This clause discusses the payment of special compensation. It is essentially an adoption of articles 13 and 14 of the 1989 Salvage Convention.

Clause V

The salvor is entitled to make reasonable use of the vessel's equipment during the salvage operation. There is an onus on the master and chief engineer to supply the salvor with useful information about the vessel and her cargo.

Clause VI

Responsibility for any damage caused through the operation will rest on the master. This is even where such damage occurs through the fault of a third person, unforeseen circumstances or an act of God.

Clause VII

The salvor is entitled to abandon the operation should he be of the opinion that it is reasonably impossible for him to succeed or where there is a change in circumstances.

Clause IX

This provision relates to security. The salvor is entitled to retain the salved property at the place of redelivery pending security being given.

He is entitled to exercise a maritime lien over the property.

Clause X

The salvage award and/or special compensation are to be fixed by arbitration.

Clause XI

Owners of the salved property are jointly and severally liable for the payment of the security and salvage award.

Clause XII

Payment of interim awards may be paid out of the security provided. Interest is calculated 15 days after notification of the award.

This national form of salvage is identical to the 1989 Salvage Convention. It is interesting to note that Clause VI while it seeks to protect and encourage the salvor, it is in this writers opinion, unfair and too harsh on the master of the vessel.

9.3 CONDITIONS OF GERMAN COURT OF MARITIME ARBITRATION [DEUTSCHES SEESCHIEDSGERICHT]

Clause 1

The salvor undertakes to use his "best endeavours" in the performance of the salvage operations. He further agrees that the salvage services shall be performed on a "no cure – no pay" basis.

Clause 2

Clause 2 provides the salvor with the right to withdraw from the operation if it emerges that there is no further prospect of success.

Clause 3

This clause regulates the salvor's indemnification against liabilities. The salvor is not responsible for any environmental damage, save in the case of personal misconduct.

Clause 4

Remuneration for services rendered will be fixed by mutual agreement between the parties.

Should this not be possible, the Maritime Arbitration Court shall fix the remuneration. The aforementioned court shall also settle all disputes that arise out of this agreement.

Clause 5

The salvor is entitled to a maritime lien over the salved property until security has been provided.

Once again, with this national form the similarities to the LOF contract are striking. Clauses 2 and 3 represents welcome encouragement to salvors in environmentally sensitive situations.

9.4 CHINESE SALVAGE CONTRACT. CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE SALVAGE CONTRACT: NO CURE - NO PAY

The Chinese national contract is based on the "no cure – no pay" principle. This is evident both from the title and the latter clause of the contract.

Clause 1

The salvor is obliged to exercise due care to salve the vessel, her cargo, freight, bunkers, stores and any other property. He is further obliged to take them to a place of safety.

Clause 2

This clause allows the salvor to make reasonable use of the vessel's gear, chains, anchors, etc. during the course of the salvage.

Clause 3

The "no cure – no pay" principle is contained in this clause.

Clause 4

In terms of this provision any dispute arising from the contract must be referred to the Maritime Arbitration Commission of the China Council for the Promotion of International Trade (hereinafter referred to as the Maritime Arbitration Commission).

Clause 5

The owners of the vessel are obliged to pay security to the Maritime Arbitration Commission immediately after the salvage operation has been terminated.

Where there has been a failure to give security then the salvor is entitled to stipulate the amount for which he requires security to be given.

Clause 6

This provision prohibits the removal of the vessel and salved property from its place of safety in the instance where security has not been given. This prohibition on removal may be waived when consent has been granted in writing by either the salvor or the chairman of the Maritime Arbitration Commission.

Clause 7

Upon the salvor's request prior to making an award on the dispute, the Commission is entitled to reimburse the salvor for his reasonably incurred expenses from the amount submitted as security or out of proceeds from the realization of any property provided as security.

Clause 8

In terms of this provision, the arbitration is governed by the procedural rules of the Maritime Arbitration Commission.

Clause 9

This provision provides that the Captain acts as a representative of the owners of vessel, cargo and freight, and binds them to the due performance of the contract.

Clause 10

This provision relates to the communication of addresses of legal representatives in China which is required for the service of documents.

Addendum

This features provisions in respect of the protection of the environment. These provisions, to a large extent, mirror the safety-net provisions of LOF 80.

The Chinese national form encapsulates the "No Cure – No Pay" principle. It is attractive to salvors as its Addendum the mirrors the LOF80 safety-net provisions.

9.5 THE DOCUMENTARY COMMITTEE OF THE JAPAN SHIPPING EXCHANGE, INC. SALVAGE AGREEMENT [NO CURE – NO PAY]

The Japanese form expressly states the "no cure – no pay" principle.[3]

Clause 1 (Salvage Services)

This clause obliges the salvor to use his "best endeavours" during the course of the salvage operation and requires him to take the vessel to a place of safety or to a place agreed upon between the parties.

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[3] This is evident from the title.

There is a further obligation on the salvor to use his "best endeavours" to prevent or minimize damage to the environment.

Clause 2 (Assistance from other Salvors)

In reasonable circumstances, where the assistance of other salvors is required, the salvor is obliged to seek such further assistance.

He is also obliged to accept the intervention by other salvors at the reasonable request of the salved parties or the master of the vessel.

It is also provided that the amount of the salvor's award will not be prejudiced where the request was unreasonable.

Clause 3 (Co-operation of Salved Parties)

The provision obliges the owners of the salved property and their employees to co-operate with the salvor, specifically in obtaining a safe haven for the casualty. Further, they are obliged to accept re-delivery of the vessel at the place of safety.

Clause 4 (Termination of Salvage Services)

The owners of the vessel are empowered to terminate the salvage services where there is no longer any reasonable prospect of salving vessel or cargo. The notice of termination must be communicated to the salvor in writing.

Clause 5 (Salvage Services Rendered Prior to the Date of the Agreement)

This clause facilitates the retroactive application of provisions in the agreement to services already rendered.

Clause 6 (Use and Disposal of Hull, etc.)

In terms of this clause the salvor is entitled with the advance consent of the master to make use of the vessel's hull, engines, machinery, etc where he deems it necessary to do so. He incurs no liability for any costs and expenses in utilising the equipment.

In the event of an emergency the salvor, using his own discretion and without prior consent from the master, may use such equipment which is reasonably required for salvage purposes.

Clause 7 (Daily Report of Salvage Services)

The salvor has a duty to report daily to the master and owner of the casualty as to the condition of the vessel and progress of the salvage itself.

Clause 8 (Salvage Remuneration)

Where the salvor obtains either complete or partial success, he is entitled to salvage remuneration.[4]

In determining the salvage award, the court is obliged to consider, as a main factor, the salvor's costs and expenses reasonably incurred.

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[4] Clause 8(1).

Additional factors that must be considered are:

1. the nature and degree of the danger;
2. the degree of difficulties and the dangers encountered by the salvor;
3. the skill of the salvor;
4. the measure of success attained by the salvor;
5. the promptness of the services rendered;
6. the state of readiness and the efficiency of the salvor's equipment and the value thereof, and
7. the skill and the efforts of the salvor in preventing or minimizing damage to the environment.

The clause further stipulates that the award shall not exceed the total salved value. The salvage award is to be paid by the salved parties in proportion to their respective salved values.

Clause 9 (Special Compensation)

Where the salvor has carried out salvage in respect of a vessel which by itself or its cargo has threatened damage to the environment and he has failed to earn a reward in terms of clause 8 to at least equivalent of his expenses, then such a salvor is entitled to claim special compensation from the vessel's owners.

Where the salvor has prevented or minimized damage to the environment, he is entitled to claim special compensation equivalent to his expenses together with an increment of 30% of such expenses.

In certain exceptional circumstances, and where it is "fair and just to do so", the increment may be raised to a maximum of 100% of his expenses.

The Japanese national form expressly incorporates the "no cure-no pay" principle. It may be seen as a contract which is favourable to salvors. It is however, not biased towards salvors as may be seen from the inclusion of Clauses 4 and 7. Clause 4 provides that the owner/s of the vessel retain the power to terminate the salvage services. This ensures that the owner remains a vital and integral player in the salvage operations. In terms of Clause 7 the salvor has a duty to report daily to the master and owner as to the condition of the vessel and the progress of the salvage operaton. This is a further indication of the key role that the owner of the vessel retains in the salvage operation.

This national form also must be commended for a further reason, as it greatly assists salvors by obliging the owners of the vessel, in terms of Clause 3, to accept re-delivery of the vessel at a place of safety. It is valuable as it attempts to prevent the 'maritime leper' scenario. Although it must be borne in mind that its effect in practice may be thwarted by coastal states who by virtue of their national laws may refuse a safe haven to a stricken vessel.

9.6 MARITIME ARBITRATION COMMISSION AT THE RUSSIAN CHAMBER OF COMMERCE AND INDUSTRY IN MOSCOW

Clause 1

The salvor has an obligation to salve both the vessel and "cargo and any other property aboard".

He is further obliged to take the vessel to a safe port or any other place to be agreed with the captain.

Clause 2

In the performance of the salvage operations, the salvor is entitled to make reasonable use of the vessel's gear, anchors, chains, etc.

Clause 3

This clause reinforces the "no cure – no pay" principle; the salvor is entitled to receive remuneration where "useful results are attained".

Where the parties fail to agree on the amount of the remuneration, then such remuneration shall be fixed by the Maritime Arbitration Commission at the Russian Chamber of Commerce and Industry in Moscow.

The Moscow form maintains the "no cure – no pay" principle. It represents an inexpensive option to its national salvors as it provides, in the event of disagreement as to renumeration, then the matter is to be referred to the national maritime arbitral commission.

It is submitted that the most significant difference between these national salvage contracts and Lloyd's Open Form (LOF) is that their respective countries' legal system and not English law regulate the national contracts.

Further, arbitral proceedings are not referred to London. It is certainly more convenient and less expensive not to refer arbitration to London when all the relevant parties to the contract are from outside the United Kingdom.

While English law may not directly apply to these national salvage contracts, it does have an indirect influence on them, as the national contracts are fairly uniform with the salient principles of LOF.

CHAPTER 10

SPECIAL COMPENSATION P & I CLAUSE SALVAGE 2000

The formulation of a new method to assess special compensation was borne as a result of the complexities and vagueness prevalent in the article 14 methodology.[1] Further, the P & I clubs wished to become more closely involved in the salvage operation.

Owing to the dissatisfaction arising from the above-mentioned factors, representatives from the International Group of P & I Clubs, the International Salvage Union (ISU), the London Property Underwriting Market, and the International Chamber of Shipping began discussions with the aim of finding a solution.

The solution reached consists of a scheme which "... maintains the principle of Special Compensation but radically changes the method by which it is assessed providing for greater involvement by insurers".[2] This scheme is SCOPIC.

This chapter examines the new methodology used to calculate special compensation. It also discusses the relevant Codes of Practice agreed upon and adopted by the negotiating parties. Consideration is also given to cases where SCOPIC has been invoked.

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1 See Chapter 5.

2 Bishop "pecial Compensation: Main Provisions of the SCOPIC Clause" (1998) 17 *ISU Bulletin* 4.

10.1 SPECIAL COMPENSATION P & I CLAUSE / SCOPIC

The SCOPIC clause came into operation on 1 August 1999. It had been agreed upon for a 2-year trial period, subject to annual review when amendments may be made in light of practical experience gained.

SCOPIC was warmly welcomed by the maritime community but experience gained through its use identified a number of matters which needed clarification to confirm the original intent behind SCOPIC and a number of gaps which needed to be filled in the wording of SCOPIC, especially Appendix A (Tariff Rates). In this regard the SCOPIC drafting sub-committee produced an amended version of SCOPIC i.e. SCOPIC 2000 which came into effect on 1 September 2000.

The most significant advantage of SCOPIC is that it removes restrictions on special payments for pollution prevention, unlike article 14 which was only applicable to a threat in coastal or inland waters or "areas adjacent thereto". It is this global availability to salvors that adds to the attractiveness of this scheme.

The SCOPIC clause is purely voluntary: the salvor is free to invoke this clause at any time during the salvage operation and "regardless of environmental threat or geographic location".[3] This clause is, however, only available to member salvors of the ISU who sign LOF when assisting vessels entered with members of the International Group of P & I Clubs.

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[3] "Salvage: Talks on LOF 98/Special Compensation Enter Final Phase" *Lloyd's List* 15 April, 2.

The negotiating parties had originally planned to make the SCOPIC clause binding between all members of the ISU and the International Group of P & I Clubs. This was not followed through, as it emerged that, in the absence of legislation, it would not be practical to compel any person to be bound by the terms of the clause. It is therefore now possible for the SCOPIC clause to be incorporated into a LOF contract if the parties thereto so wish. The incorporating clause reads as follows:

> "It is agreed that the SCOPIC clause is incorporated into this contract".

(i) Clause 1

This clause contains general information relating to SCOPIC. It states that SCOPIC is supplementary to any Lloyd's Form Salvage Agreement "No Cure – No Pay" (which is referred to as the "Main Agreement"). It incorporates the definitions of LOF into the SCOPIC agreement. Importantly, it provides that in the event of any inconsistency arising between the provisions of LOF and SCOPIC, then the "... SCOPIC clause, ... shall override such other provisions to the extent necessary to give business efficacy to the agreement".[4]

(ii) Clause 2

The importance of this clause is twofold. Firstly, it indicates the voluntary nature of the agreement by giving the salvor the option

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[4] Clause 1, SCOPIC.

to invoke the contract by written notice at any time during the salvage operation.

Secondly, it removes the restrictions on special compensation for pollution prevention as contained in article 14. This is a marked improvement from the article 14 methodology and eliminates arguments as to whether a threat to the environment exists or what is meant by "areas adjacent thereto".[5]

It is stated that SCOPIC remuneration shall be calculated from the time written notice has been given to the owners of the vessel. Those services rendered prior to such written notice will not be included under SCOPIC remuneration, but will be calculated in accordance with article 13 as per the LOF agreement.

(iii) Clause 3

Provisions relating to security are contained in this clause. The owners of the vessel are obliged to provide security of US $ 3 million, within 2 working days after having received written notice of the contractor's decision to invoke the SCOPIC clause.[6]

Provisions are also made for reducing or increasing the initial security at the termination of services.[7]

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5 Bishop, supra; see also 'Salvage: Talks on LOF 98/Special Compensation Enters Final Phase' *Lloyd's List* 15 April, 2.

6 Clause 3(i), SCOPIC.

7 Clause 3(ii) and (iii), SCOPIC.

In the absence of agreement between the parties, any dispute relating to the form of security, etc. is to be resolved by the arbitrator.[8]

(iv) Clause 4

Where the owners fail to provide the requisite security within the two-day notice period, clause 4 allows the salvor to exercise his option to withdraw his notice invoking SCOPIC. He is then entitled to revert to LOF as if it had not incorporated SCOPIC. In this event, the salvor is still able to maintain his claim under article 14.

This provision represents a major boost to the salvor: he is either given a guarantee or, where one is not given, he is not left out in the cold as he is able to maintain his claim under article 14.

(v) Clause 5

Provision is made in this clause for SCOPIC remuneration to be assessed in accordance with tariff rates. The total SCOPIC remuneration payable includes "the total of the tariff rates of personnel; tugs and other craft; portable salvage equipment; out-of-pocket expenses, and the bonus due".[9]

The tariff rates refer to those rates in force at the time of the salvage services. These tariff rates have been agreed to by the

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8 Clause 3(iv), SCOPIC.
9 Clause 5(i), SCOPIC.

negotiating parties and are set out in Appendix "A" of the SCOPIC clause.[10] The salvor is also entitled to an uplift of 25% of the tariff rates.[11]

The inclusion of tariff rates in calculating remuneration replaces article 14.2 which used a "fair rate" as its criteria. This new method is certainly more advantageous as it confers a substantial benefit to the salvor and it eliminates the difficulty of using a "fair rate" to calculate remuneration.

The contractor's out-of-pocket expenses refer to all monies "reasonably paid or for and on behalf of the contractor to any third party and in particular includes the hire of men, tugs, other craft and equipment used and other expenses reasonably necessary for the operation".[12]

(vi) **Clause 6**

Assessment regarding salvage services under LOF (the Main Agreement) will be assessed in accordance with article 13, even where the contractor has invoked SCOPIC.[13] Further, it provides that SCOPIC remuneration is payable "only by the owners of the vessel and only to the extent that it exceeds the total Article 13 Award payable by all salved interests (including cargo, bunkers,

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10 Clause 5(ii), SCOPIC.
11 Clause 5(iv), SCOPIC.
12 Clause 5(iii), SCOPIC.
13 Clause 6(i), SCOPIC.

lubricating oil and stores) but before interest and costs even if the Article 13 Award or any part of it is not recovered".[14]

Clause 6 expressly states that the award under article 13 "shall not be diminished by reason of the exception to the principle of "no cure – no pay" in the form of SCOPIC remuneration.[15]

(vii) Clause 7

Where the contractor has invoked the SCOPIC clause and the article 13 award exceeds the SCOPIC remuneration, then the article 13 award is to be discounted by 25% of the difference between the article 13 award and the SCOPIC assessment.[16]

The policy underlying the inclusion of this provision is to discourage salvors from invoking the SCOPIC clause except in those cases where it is absolutely necessary. The negotiating parties felt that if this penalty did not exist, "there would be a natural tendency for salvors to invoke the SCOPIC remuneration provision in every case which would entirely remove the 'no cure – no pay' element of the existing contract".[17]

Thus the provision exists to prevent this undesirable situation and the discount operates for the benefit of the property underwriters.

(viii) Clause 8

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14 Ibid.
15 Clause 6(ii), SCOPIC.
16 Clause 7, SCOPIC.
17 Bishop, supra.

Clause 8 stipulates the dates when SCOPIC remuneration becomes payable. Where there is no potential salvage award under article 13, then the SCOPIC remuneration must be paid within one month from the date of the claim.[18]

Where there is a claim for an article 13 award, "then 75% of the amount by which the assessed SCOPIC remuneration exceeds the total article 13 security demanded from ship and cargo" must be paid by the owners of the vessel within one month.[19]

Interest is payable in both the aforementioned instances from date of termination of the services until the date of payment.[20]

The contractor is obliged to provide the owners of the vessel with indemnity in respect of any overpayment.[21]

(ix) Clause 9

The contractor can terminate his services by written notice to the vessel owners where he is of the opinion that the total cost of his services is likely to exceed:

- "the value of the property capable of being salved;
- all sums to which he will be entitled as SCOPIC remuneration".[22]

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18 Clause 8(i)(a), SCOPIC.
19 Clause 8(i)(b), SCOPIC.
20 Ibid. The applicable rate for the interest is at the US prime rate plus 1%.
21 Clause 8(ii), SCOPIC.

The owner of the vessel also has the power to terminate the contract, provided he gives the contractor 5 clear days notice of such termination.[23]

This right of the owner to terminate the contract has been specifically included at the insistence of some P & I Clubs who felt that it is important and it prevents them from the situation of being tied up in a contract with a contractor who may be inappropriate.[24]

The rights to terminate the contract by both contractor and owner cannot be exercised where the salvor is restrained from demobilising his equipment, by local or port authorities, etc.[25]

(x) Clause 10

The duties and liabilities of the contractor under SCOPIC are to remain the same as under LOF. viz; to use his best endeavours to salve the vessel and property thereon and in so doing to prevent or minimise damage to the environment.[26]

(xi) Clause 11

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22 Clause 9(i)(a) & (b), SCOPIC.
23 Clause 9(ii), SCOPIC
24 Bishop, supra, 3.
25 Clause 10, SCOPIC
26 Clause 11, SCOPIC; see Appendix "B" of the SCOPIC Clause for terms and conditions relating to the SCR.

Once the SCOPIC clause has been invoked, the owners of the vessel are entitled to a Special Casualty Representative (SCR).[27]

The primary duty of the SCR is essentially the same as the contractor: he is obliged to use his best endeavours to assist in the salvage and help prevent and minimise damage to the environment.

The presence of the SCR is not to impinge on the salvage master's authority. The master remains in overall control of the operation. He is, however, obliged to listen to and consider the views of the SCR.

The master is also obliged to send daily salvage reports to the SCR, which must include information on the following:

1. the salvage plan (followed by any changes thereto as they arise);
2. the condition of the casualty and the surrounding area (followed by any changes thereto as they arise);
3. the progress of the operation;
4. the personnel, equipment, tugs and other craft used in the operation that day.

The SCR is obliged to state whether he endorses the salvage report or if he disagrees with the contents. Where he disagrees, he is obliged to prepare a report setting out the objection and

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[27] Clause 11, SCOPIC; see Appendix "B" of the SCOPIC Clause for terms and conditions relating to the SCR.

deliver this to the salvage master and also transmit this report to Lloyd's, the owners of the vessel, their liability insurers, etc.[28]

The inclusion of the SCR to the salvage operation seeks to appease the P & I Clubs, who were not previously actively involved in the salvage operation. As it is their interests that are ultimately affected, it is only desirable that they become active players to the salvage operation.

(xii) Clause 12

The property underwriters are given the power to appoint two "Special Representatives": one for the hull – referred to as "Special Hull Representative" and the other for cargo – "Special Cargo Representative".

It is specifically stated that these Special Representatives "shall be technical men and not practicing lawyers".[29]

The salvage master, vessel owners and the SCR are obliged to co-operate with the Special Representatives. The Special Representatives are to "have full access to the vessel to observe the salvage operation and to inspect such of the ship's documents as are relevant to the salvage operation".[30]

(xiii) Clause 13

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28 See Appendix "B" to SCOPIC.
29 Clause 12, SCOPIC
30 See Appendix "C", SCOPIC.

Any prevention and/or removal of pollution in the immediate vicinity of the casualty that is necessary for the proper execution of the salvage shall be included in the assessment of the SCOPIC remuneration.[31]

(xiv) Clause 14

This provision stipulates that SCOPIC remuneration is not recoverable under General Average.

(xv) Clause 15

Any disputes arising under the SCOPIC clause are subject to arbitration as provided for in terms of LOF.

10.2 CODES OF PRACTICE

(i) Code of Practice Between International Salvage Union and International Group of P & I Clubs

The SCOPIC agreement is backed by two codes of practice between the P & I Clubs and the salvage and property underwriting industries. These codes are not legally binding to those practising in the respective industries, rather they have been formulated as a result of the various parties' commitment to ensure the smooth operation of the SCOPIC clause.

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[31] Clause 13, SCOPIC.

Since they are not binding, the relevant organizations may only recommend to their members the use of the codes.[32]

This code of practice regulates the nature of the P & I Club's obligations in relation to the salvor's when SCOPIC has been invoked. The following is a summary of the important features of the Code:

Clause 1

Once it becomes apparent to the salvor that a Special Compensation claim is possible, he is obliged to inform the relevant P & I Club of this development.

Clause 2

Where a SCR has not been appointed in terms of SCOPIC, the P & I Club retains the right to appoint an observer to attend the salvage operation.

The salvor is obliged to accept the presence of this individual and keep him and the P & I Club informed of the salvage plans.

Clause 3

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[32] Clause 11, Code of Practice Between International Salvage Union and International Group of P & I Clubs; Clause 3, Code of Practice Between International Group of P & I Clubs and London Property Underwriters Regarding the Payment of the Fees and Expenses of the SCR under SCOPIC.

I Club Letter of Undertaking (i.e. "Salvage Guarantee Form – ISU 5").[33]

Further, it is agreed that the salvors will not insist on the provision of security at Lloyd's.

Clause 7

The P & I Club is obliged to respond to a request for security "as quickly as reasonably possible".

Where salvage services are performed under LOF incorporating the SCOPIC clause, the P & I Club must inform the salvor, within two working days of SCOPIC being invoked, as to whether or not security will be given.

Clause 8

The P & I Clubs undertake to advise the vessel owners not to exercise their right[34] to terminate the contract without reasonable cause.

Clause 9

The shipowners and his liability insurers agree that they will not attempt to claim in General Average against the other parties for liability incurred for SCOPIC remuneration.

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33 See Appendix "D".
34 Clause 9(ii), SCOPIC.

Upon the reasonable request by the salvor, the P & I Club is obliged to immediately provide details as to whether the particular member is covered for any liability which he may have for special compensation or SCOPIC remuneration.

Clause 4

This clause relates to the provision of security. It states that the P & I Club's obligation to provide security is not automatic.

The clubs are entitled to refuse to provide security where there "will be non-payment of calls, breach of warranty rules relating to classification and flag state requirements or any other breach of the rules allowing the club to deny cover".

Clause 5

Where security is requested by a port authority or any other competent authority to facilitate entry of the vessel to a port of refuge or a place of safety, the P & I Clubs must agree to consider the provision of such security, subject to the reasonableness of the request and to the provisions of clause 4.

Clause 6

In terms of this clause, the salvors agree to accept security for special compensation or SCOPIC remuneration by way of a P &

Clause 10

The P & I Clubs and the ISU undertake that, if consulted, they will recommend to their respective members to incorporate the SCOPIC clause in any LOF.

The code succeeds in providing total control of the salvage operation to the salvors; at the same time the P & I Clubs will have the right to appoint an observer to attend the salvage operation.

Further salvors are now able to respond to pollution threats with greater confidence without delays and uncertainties.[35]

(ii) Code of Practice Between International Group of P & I Clubs and London Property Underwriters Regarding the Payment of the Fees and Expenses of the SCR under SCOPIC

Clause 1

This provision states that the vessel owner is liable for the payment of the fees and disbursements of the SCR.

Further, subject to the club rules and terms; conditions of club cover as well as the terms of any insurance policy/ies covering

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[35] In terms of clause 4 the P & I Clubs undertake not to unreasonably refuse to provide security.

the salved property, the vessel owner shall be reimbursed for such fees and disbursements in the following manner:

1. 50% by Liability Underwriters (i.e. the International Group of P & I Clubs)
2. 50% by Property Underwriters[36] (subject to Clause 2).

Clause 2

In terms of subsection (a), the property underwriters will pay 50% of the SCR's fees and disbursements in proportion to the salved value of the insured property.

It also states that where 50% of the SCR's fees and disbursements exceed the salved value of the ship and cargo less the article 13 award, then the liability underwriters would reimburse the owners of the vessel for the excess proportion.

Clause 3

This provision states that the Code is not intended to have any legal effect.

The Liability Underwriters and Property Underwriters both undertake to recommend the Code of Practice to their members.

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[36] The "London Property Underwriters" are collectively made up of the Lloyd's Association and the International Underwriters Association of London.

10.3 SCOPIC IN PRACTICE

Although SCOPIC had officially come into operation on 1 August 1999, it had been noted prior to the official date, in the following cases:

1.	1 March 1999	–	"Arabian Pride"
2.	29 April 1999	–	"Marimar Pride"
3.	3 July 1999	–	"Emin"
4.	13 July 1999	–	"Bjorn"
5.	24 July 1999	–	"Irish Sea"

27 February 2003 saw SCOPIC being invoked under LOF 200 when Smit Salvage and Semco Salvage Marine were attending to the salvage of the LPG carrier Gas Roman and the general cargo vessel Springbok who had collided with each other east of Horsburgh, near Singapore.

The following is a statistical analysis of instances where SCOPIC has been invoked[37] and incorporated:[38]

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[37] Statistics courtesy of Lloyd's Salvage Arbitration Branch. Also available from http:// www.lloydsagency.com

[38] Ibid

SCOPIC INVOKED

VESSEL NAME	SALVOR	REPORTED
203 (19)		
ACCORD	Shanghai Salvage	24/01/2003
ALLIANCE SPIRIT	Smit Salvage BV	05/02/2003
AMER THAMES	Smit Salvage BV	01/09/2003
BIANCA	Wijsmuller Salvage BV	14/04/2003
CANDIOTA	Wijsmuller Salvage BV	17/01/2003
CARIBE C	Tsavliris Russ (World Wide Salvage & Towage) Ltd	29/07/2003
FONG KUO NO 6	United Salvage Pty Ltd	06/05/2003
FU SHAN HAI	Wijsmuller Salvage BV	02/06/2003
GREEN GLORY	Boa	29/06/2003
IDRIS BAY	Smit Salvage and Omur Salvage	16/01/2003
JAMBO	Klyne Tugs (Lowestoft) Ltd and Smit Tak BV	01/07/2003
KARIN CAT	Megalohari-Hellenci Tug Boats	19/02/2003
NADA V	Smit Salvage BV	13/08/2003
OFFSHORE SUPPLIER / REBECCA VII	Wijsmuller Salvage BV	04/08/2003
RMS MULHEIM	Wijsmuller Salvage BV	25/03/2003
SAN SEBASTIAN	Smit Salvage BV	06/05/2003
SEA-LAND EXPRESS	Smit Marine South Africa (Pty) Ltd and Swire Pacific Offshore Services Pte Ltd	19/08/2003
SPRINGBOK	Semco Salvage marine and Smit International Singapore	27/02/2003
SPRUTTENBERG	Titan Maritime (UK) Ltd	10/04/2003

SCOPIC INCORPORATED

VESSEL NAME	SALVOR	REPORTED
203 (23)		
ACCORD	Shanghai Salvage	24/01/2003
ALLIANCE SPIRIT	Smit Salvage BV	05/02/2003
AMER THAMES	Smit Salvage BV	01/09/2003
BIANCA	Wijsmuller Salvage BV	14/04/2003
CANDIOTA	Wijsmuller Salvage BV	17/01/2003
CARIBE C	Tsavliris Russ (World Wide Salvage & Towage) Ltd	29/07/2003
FONG KUO NO 6	United Salvage Pty Ltd	06/05/2003
FU SHAN HAI	Wijsmuller Salvage BV	02/06/2003
GREEN GLORY	Boa	29/06/2003
IDRIS BAY	Smit Salvage and Omur Salvage	16/01/2003
JAMBO	Klyne Tugs (Lowestoft) Ltd and Smit Tak BV	01/07/2003
KARIN CAT	Megalohari-Hellenci Tug Boats	19/02/2003
LOOTSGRACHT	Alfons Hakans	07/04/2003
NADA V	Smit Salvage BV	13/08/2003
OFFSHORE SUPPLIER / REBECCA VII	Wijsmuller Salvage BV	04/08/2003
PELICAN I	Multraship / URS	24/07/2003
POS AMBITION	Omur Salvage Co	18/03/2003
RMS MULHEIM	Wijsmuller Salvage BV	25/03/2003
SAN SEBASTIAN	Smit Salvage BV	06/05/2003
SEA-LAND EXPRESS	Smit Marine South Africa (Pty) Ltd and Swire Pacific Offshore Services Pte Ltd	19/08/2003
SIBOTURA	Multraship / URS	27/02/2003
SPRINGBOK	Semco Salvage marine and Smit International Singapore	27/02/2003
SPRUTTENBERG	Titan Maritime (UK) Ltd	10/04/2003

CHAPTER 11

LOF 2000 : A 21st CENTURY SALVAGE CONTRACT

The Lloyd's Open Form Salvage Agreement has had a long and successful tenure, spanning over one hundred years. The first modern text of this form was adopted in 1892. By 1908 the text had been standardised. Since then LOF has undergone 10 revisions.

During November 1999 Lloyds form working party met to discuss the introduction of a new LOF. LOF 2000 was launched and took effect in September 2000.

This chapter examines LOF 2000, its key features and its suitability for the 21st Century. The aim of LOF 2000 was to resolve the problems currently associated with the article 14 provision in the present edition of LOF (i.e. LOF 1995), by replacing the existing article 14 with the new method of assessing Special Compensation (i.e. SCOPIC).

As the new LOF incorporates SCOPIC, there is no longer any reliance on the vague "trigger – mechanisms" of the article 14 provision. Some commentators have suggested that "this should make for a faster response, with the salvor responsible for reaching a rapid and correct judgment on the applicability of Special Compensation".[1]

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[1] Witte 'Consultation Now Under Way on New LOF Contract' 1998 *Shipping World and Shipbuilder* 3.

The LOF 2000 did not require fundamental changes to be made to salvage agreements. The article 13 salvage award would continue to be assessed in the usual way, it would then be compared with the amount for special compensation. The special compensation payable will only be the amount by which the assessment exceeds the traditional article 13 award.

The special compensation will be assessed on a time and material basis, with agreed predetermined market rates and tariffs, including an uplift applying to tugs, personnel and equipment. The salvor's out–of–pocket expenses together with an agreed bonus will be allowed. It is in this way that LOF 2000 hopes to eliminate the difficulties experienced in assessing a "fair rate".

The format of LOF 2000 is concise and streamlined. This reflects the working parties' determination that the contract is less expensive to administer and less time consuming to resolve.[2]

The clarity of LOF 2000 is vital when one considers that at the time of signing LOF the parties are operating in high-pressurised circumstances and there is certainly no time to sift through the legalese.

The terms used in the form are clearly defined. This increases certainty, and is hoped would, reduce the scope for costly legal argument.[3]

The popularity of the Lloyd's Open Form continues to grow and in the year 2001, there was 108 LOF cases notified to Lloyd's. Only a portion of

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2 Brice 'Salvage Forum Discussion' 15th International Tug & Salvage Convention, Cape Town, 2-6 November 1998.

3 Witte 'Professional Salvage Services: Shaping the Future' 1998 *Shipping World and Shipbuilder* 8.

these were arbitrated, the majority were settled commercially, on an amicable basis and with a significant saving in both expense and time.

At the time of this writing, the following is a list of the cases where LOF 2000 was signed:[4]

Recent Cases	Statistics		
Date Reported	Vessel Name	Vessel Type	Flag
04/09/2003	SEALAND WASHINGTON	Container	Greece
04/09/2003	HANA NO. 7	Chemical Tanker	Korea (South)
01/09/2003	AMER THAMES	Chemical /Oil Carrier	Panama
19/08/2003	SEA-LAND EXPRESS	Container	USA
13/08/2003	PRITZWALK	Container	Liberia
13/08/2003	NADA V	Vehicle Carrier	Panama
11/08/2003	PENG FEI	General Cargo	China
04/08/2003	TASMAN SPIRIT	Crude Oil Tanker	Malta
04/08/2003	ARGOLIKOS	Container	Cyprus
04/08/2003	OFFSHORE SUPPLIER / REBECCA VII	Tug	Cayman Islands
29/07/2003	CARIBE C	General Cargo	St Vincent & Grenadines
29/07/2003	BASKA	Bulk Carrier	Malta
28/07/2003	LADY	Bulk	Cyprus
25/07/2003	AL FARABI	Chemical Tanker	Saudi Arabia
23/07/2003	EGEON P	Cement Carrier	Greece
21/07/2003	PELICAN I	Container Carrier	Malta
21/07/2003	SEAJET 1	Ferry	Greece

[4] Table courtesy of Lloyd's Salvage Arbitration Branch

The new LOF 2000 is a fair and balanced contract; it succeeds in encouraging salvors to prevent pollution, even in adverse circumstances, and avoids the problems associated with article 14.

It essentially ensures a more effective response to marine pollution incidents and is a worthy foundation for salvage in the millennium.

CHAPTER 12

CONCLUSION

The principles of salvage and salvage law have evolved over many centuries. A fundamental concept is that the salvor should be encouraged by the prospect of an appropriate salvage award to intervene in any casualty situation to salve the ship property and, in particular, to save life and prevent pollution. The salvor's right to a reward is based on natural equity, which allows the salvor to participate in the benefit conferred to the ship owner, the ship itself and the ship's cargo.

The development of marine salvage law from its Rhodian origins to its current framework has been phenomenal. This development in the law has been pre-empted by various socio-political factors. We have seen that the birth of the supertanker, marine pollution, and public and private concern for the environment have all contributed to the changes in this body of the law.

Despite the rapid development of the law during the last three decades, it has been able to retain its founding principles of equity and impartiality.

Society's increased awareness of the environment and the various socio-political factors surrounding tanker-related marine pollution incidents have not only created pressure on the law of salvage, they have also played a significant role in the changes to the professional salvage industry.

Professional salvors the world over are constantly preparing and investing thousand of dollars, equipment and personnel to ensure that they are able to meet the environmental challenge that marine pollution brings. A total of 4,462 salvage operations were performed in the period 1978-2001 by salvors belonging to the International Salvage Union. Approximately 60 per cent were carried, out under LOF, "no cure – no pay"[1]. The "salved value" of ships, bunkers, and cargoes involved totalled some US$26.3 billion.[2]

The global shipping community's safety and environmental record has improved. Consequently, the demand for salvage services has declined and, as such, the salvage industry continues to experience difficult times. Nevertheless it has managed to survive the economic crisis that once threatened it and has emerged as an industry at the forefront of marine environmental protection.

The dynamic nature of marine salvage law has ensured that it remains a body of law of utmost significance to mankind today. The continued and frequent application of salvage law today ensures that it will not be relegated to the annals of history or that it is confined to the domain of a select group of individuals.[3]

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[1] See ISU website : http/:www.marine-salvage.com

[2] Ibid

[3] 'ship salvage is a science of vague assumptions based on debatable figures from inconclusive instruments performed with equipment of problematic accuracy by persons of doubtful reliability and of questionable mentality.' Extract taken from R. Field 'The South African Wreck and Salvage Act', delivered at the 15th International Tug & Salvage Convention, Cape Town, 1998).

LOF 2000

9.2

LLOYD'S

LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(APPROVED AND PUBLISHED BY THE COUNCIL OF LLOYD'S)

NO CURE - NO PAY

1. Name of the salvage Contractors: (referred to in this agreement as "the Contractors")	2. Property to be salved. The vessel: her cargo freight bunkers stores and any other property thereon but excluding the personal effects or baggage of passengers master or crew (referred to in this agreement as "the property")
3. Agreed place of safety:	4. Agreed currency of any arbitral award and security (if other than United States dollars)
5. Date of this agreement:	6. Place of agreement:
7. Is the Scopic Clause incorporated into this agreement?	State alternative : Yes/No
8. Person signing for and on behalf of the Contractors Signature:	9. Captain or other person signing for and on behalf of the property Signature:

A. **Contractors' basic obligation:** The Contractors identified in Box 1 hereby agree to use their best endeavours to salve the property specified in Box 2 and to take the property to the place stated in Box 3 or to such other place as may hereafter be agreed. If no place is inserted in Box 3 and in the absence of any subsequent agreement as to the place where the property is to be taken the Contractors shall take the property to a place of safety.

B. **Environmental protection:** While performing the salvage services the Contractors shall also use their best endeavours to prevent or minimise damage to the environment.

(continued on the reverse side)

C. **Scopic Clause:** Unless the word "No" in Box 7 has been deleted this agreement shall be deemed to have been made on the basis that the Scopic Clause is not incorporated and forms no part of this agreement. If the word "No" is deleted in Box 7 this shall not of itself be construed as a notice invoking the Scopic Clause within the meaning of sub-clause 2 thereof.

D. **Effect of other remedies:** Subject to the provisions of the International Convention on Salvage 1989 as incorporated into English law ("the Convention") relating to special compensation and to the Scopic Clause if incorporated the Contractors' services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay" and any salvage remuneration to which the Contractors become entitled shall not be diminished by reason of the exception to the principle of "no cure - no pay" in the form of special compensation or remuneration payable to the Contractors under a Scopic Clause.

E. **Prior services:** Any salvage services rendered by the Contractors to the property before and up to the date of this agreement shall be deemed to be covered by this agreement.

F. **Duties of property owners:** Each of the owners of the property shall cooperate fully with the Contractors. In particular:

(i) the Contractors may make reasonable use of the vessel's machinery gear and equipment free of expense provided that the Contractors shall not unnecessarily damage abandon or sacrifice any property on board;

(ii) the Contractors shall be entitled to all such information as they may reasonably require relating to the vessel or the remainder of the property provided such information is relevant to the performance of the services and is capable of being provided without undue difficulty or delay;

(iii) the owners of the property shall co-operate fully with the Contractors in obtaining entry to the place of safety stated in Box 3 or agreed or determined in accordance with Clause A.

G. **Rights of termination:** When there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Convention Articles 12 and/or 13 either the owners of the vessel or the Contractors shall be entitled to terminate the services hereunder by giving reasonable prior written notice to the other.

H. **Deemed performance:** The Contractors' services shall be deemed to have been performed when the property is in a safe condition in the place of safety stated in Box 3 or agreed or determined in accordance with Clause A. For the purpose of this provision the property shall be regarded as being in safe condition notwithstanding that the property (or part thereof) is damaged or in need of maintenance if (i) the Contractors are not obliged to remain in attendance to satisfy the requirements of any port or habour authority, governmental agency or similar authority and (ii) the continuation of skilled salvage services from the Contractors or other salvors is no longer necessary to avoid the property becoming lost or significantly further damaged or delayed.

I. **Arbitration and the LSSA Clauses:** The Contractors' remuneration and/or special compensation shall be determined by arbitration in London in the manner prescribed by Lloyd's Standard Salvage and Arbitration Clauses ("the LSSA Clauses") and Lloyd's Procedural Rules. The provisions of the LSSA Clauses and Lloyd's Procedural Rules are deemed to be incorporated in this agreement and form an integral part hereof. Any other difference arising out of this agreement or the operations hereunder shall be referred to arbitration in the same way.

J. **Governing law:** This agreement and any arbitration hereunder shall be governed by English law.

K. **Scope of authority:** The Master or other person signing this agreement on behalf of the property identified in Box 2 enters into this agreement as agent for the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.

L. **Inducements prohibited:** No person signing this agreement or any party on whose behalf it is signed shall at any time or in any manner whatsoever offer provide make give or promise to provide or demand or take any form of inducement for entering into this agreement.

IMPORTANT NOTICES :

1. **Salvage security.** As soon as possible the owners of the vessel should notify the owners of other property on board that this agreement has been made. If the Contractors are successful the owners of such property should note that it will become necessary to provide the Contractors with salvage security promptly in accordance with Clause 4 of the LSSA Clauses referred to in Clause I. The provision of General Average security does not relieve the salved interests of their separate obligation to provide salvage security to the Contractors.

2. **Incorporated provisons.** Copies of the Scopic Clause; the LSSA Clauses and Lloyd's Procedural Rules may be obtained from (i) the Contractors or (ii) the Salvage Arbitration Branch at Lloyd's, One Lime Street, London EC3M 7HA.

Tel.No. + 44(0)20 7327 5408

Fax No. +44(0)20 7327 6827

E-mail: lloyds-salvage@lloyds.com.

www.lloyds.com

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1.9.2000

LLOYD'S

LLOYD'S

LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(APPROVED AND PUBLISHED BY THE COUNCIL OF LLOYD'S)

LLOYD'S STANDARD SALVAGE AND ARBITRATION CLAUSES

1. INTRODUCTION

1.1. These clauses ("the LSSA Clauses") or any revision thereof which may be published with the approval of the Council of Lloyd's are incorporated into and form an integral part of every contract for the performance of salvage services undertaken on the terms of Lloyd's Standard Form of Salvage Agreement as published by the Council of Lloyd's and known as LOF 2000 ("the Agreement" which expression includes the LSSA clauses and Lloyd's Procedural Rules referred to in Clause 6).

1.2. All notices communications and other documents required to be sent to the Council of Lloyd's should be sent to:

Salvage Arbitration Branch
Lloyd's
One Lime Street
London EC3M 7HA

Tel: +44 (0) 20 7327 5408/5407/5849
Fax: +44 (0) 20 7327 6827/5252
E-mail: lloyds-salvage@lloyds.com

2. OVERRIDING OBJECTIVE

In construing the Agreement or on the making of any arbitral order or award regard shall be had to the overriding purposes of the Agreement namely:

(a) to seek to promote safety of life at sea and the preservation of property at sea and during the salvage operations to prevent or minimise damage to the environment;

(b) to ensure that its provisions are operated in good faith and that it is read and understood to operate in a reasonably businesslike manner;

(c) to encourage cooperation between the parties and with relevant authorities;

(d) to ensure that the reasonable expectations of salvors and owners of salved property are met and

(e) to ensure that it leads to a fair and efficient disposal of disputes between the parties whether amicably, by mediation or by arbitration within a reasonable time and at a reasonable cost.

3. DEFINITIONS

In the Agreement and unless there is an express provision to the contrary:

3.1. "award" includes an interim or provisional award and "appeal award" means any award including any interim or provisional award made by the Appeal Arbitrator appointed under clause 10.2.

3.2. "personal effects or baggage" as referred to in Box 2 of the Agreement means those which the passenger, Master and crew member have in their cabin or are otherwise in their possession, custody or control and shall include any private motor vehicle accompanying a passenger and any personal effects or baggage in or on such vehicle.

3.3. "Convention" means the International Convention on Salvage 1989 as enacted by section 224, Schedule II of the Merchant Shipping Act 1995 (and any amendment of either) and any term or expression in the Convention has the same meaning when used in the Agreement.

3.4. "Council" means the Council of Lloyd's

3.5. "days" means calendar days

3.6. "Owners" means the owners of the property referred to in box 2 of the Agreement

3.7. "owners of the vessel" includes the demise or bareboat charterers of that vessel.

3.8. "special compensation" refers to the compensation payable to salvors under Article 14 of the Convention.

3.9. "Scopic Clause" refers to the agreement made between (1) members of the International Salvage Union (2) the International Group of P&I Clubs and (3) certain property underwriters which first became effective on 1st August 1999 and includes any replacement or revision thereof. All references to the Scopic Clause in the Agreement shall be deemed to refer to the version of the Scopic Clause current at the date the Agreement is made.

4. PROVISIONS AS TO SECURITY, MARITIME LIEN AND RIGHT TO ARREST

4.1. The Contractors shall immediately after the termination of the services or sooner notify the Council and where practicable the Owners of the amount for which they demand salvage security (inclusive of costs expenses and interest) from each of the respective Owners.

4.2. Where a claim is made or may be made for special compensation the owners of the vessel shall on the demand of the Contractors whenever made provide security for the Contractors claim for special compensation provided always that such demand is made within 2 years of the date of termination of the services.

4.3. The security referred to in clauses 4.1. and 4.2. above shall be demanded and provided in the currency specified in Box 4 or in United States Dollars if no such alternative currency has been agreed.

4.4. The amount of any such security shall be reasonable in the light of the knowledge available to the Contractors at the time when the demand is made and any further facts which come to the Contractors' attention before security is provided. The arbitrator appointed under clause 5 hereof may, at any stage of the proceedings, order that the amount of security be reduced or increased as the case may be.

4.5. Unless otherwise agreed such security shall be provided (i) to the Council (ii) in a form approved by the Council and (iii) by persons firms or corporations either acceptable to the Contractors or resident in the United Kingdom and acceptable to the Council. The Council shall not be responsible for the sufficiency (whether in amount or otherwise) of any security which shall be provided nor the default or insolvency of any person firm or corporation providing the same.

4.6. The owners of the vessel including their servants and agents shall use their best endeavours to ensure that none of the property salved is released until security has been provided in respect of that property in accordance with clause 4.5.

4.7. Until security has been provided as aforesaid the Contractors shall have a maritime lien on the property salved for their remuneration.

4.8. Until security has been provided the property salved shall not without the consent in writing of the Contractors (which shall not be unreasonably withheld) be removed from the place to which it has been taken by the Contractors under clause A. Where such consent is given by the Contractors on condition that they are provided with temporary security pending completion of the voyage the Contractors maritime lien on the property salved shall remain in force to the extent necessary to enable the Contractors to compel the provision of security in accordance with clause 4.5.

4.9. The Contractors shall not arrest or detain the property salved unless:

(i) security is not provided within 21 days after the date of the termination of the services or

(ii) they have reason to believe that the removal of the property salved is contemplated contrary to clause 4.8. or

(iii) any attempt is made to remove the property salved contrary to clause 4.8.

5. APPOINTMENT OF ARBITRATOR

5.1. Whether or not security has been provided the Council shall appoint an arbitrator ("the Arbitrator") upon receipt of a written request provided that any party requesting such appointment shall if required by the Council undertake to pay the reasonable fees and expenses of the Council including those of the Arbitrator and the Appeal Arbitrator.

5.2. The Arbitrator and the Council may charge reasonable fees and expenses for their services whether the arbitration proceeds to a hearing or not and all such fees and expenses shall be treated as part of the costs of the arbitration.

6. ARBITRATION PROCEDURE AND ARBITRATORS POWERS

6.1. The arbitration shall be conducted in accordance with the Procedural Rules approved by the Council ("Lloyd's Procedural Rules") in force at the time the Arbitrator is appointed.

6.2. The arbitration shall take place in London unless (i) all represented parties agree to some other place for the whole or part of the arbitration and (ii) any such agreement is approved by the Council on such terms as to the payment of the Arbitrator's travel and accommodation expenses as it may see fit to impose.

6.3. The Arbitrator shall have power in his absolute discretion to include in the amount awarded to the Contractors the whole or part of any expenses reasonably incurred by the Contractors in:
(i) ascertaining demanding and obtaining the amount of security reasonably required in accordance with clause 4.5
(ii) enforcing and/or protecting by insurance or otherwise or taking reasonable steps to enforce and/or protect their lien

6.4. The Arbitrator shall have power to make but shall not be bound to make a consent award between such parties as so consent with or without full arbitral reasons

6.5. The Arbitrator shall have power to make a provisional or interim award or awards including payments on account on such terms as may be fair and just

6.6. Awards in respect of salvage remuneration or special compensation (including payments on account) shall be made in the currency specified in Box 4 or in United States dollars if no such alternative currency has been agreed.

6.7. The Arbitrator's award shall (subject to appeal as provided in clause 10) be final and binding on all the parties concerned whether they were represented at the arbitration or not and shall be published by the Council in London.

7. REPRESENTATION OF PARTIES

7.1. Any party to the Agreement who wishes to be heard or to adduce evidence shall appoint an agent or representative ordinarily resident in the United Kingdom to receive correspondence and notices for and on behalf of that party and shall give written notice of such appointment to the Council.

7.2. Service on such agent or representative by post or facsimile shall be deemed to be good service on the party which has appointed that agent or representative.

7.3. Any party who fails to appoint an agent or representative as aforesaid shall be deemed to have renounced his right to be heard or adduce evidence.

8. INTEREST

8.1. Unless the Arbitrator in his discretion otherwise decides the Contractors shall be entitled to interest on any sums awarded in respect of salvage remuneration or special compensation (after taking into consideration any sums already paid to the Contractors on account) from the date of termination of the services until the date on which the award is published by the Council and at a rate to be determined by the Arbitrator.

8.2. In ordinary circumstances the Contractors' interest entitlement shall be limited to simple interest but the Arbitrator may exercise his statutory power to make an award of compound interest if the Contractors have been deprived of their salvage remuneration or special compensation for an excessive period as a result of the Owners gross misconduct or in other exceptional circumstances.

8.3. If the sum(s) awarded to the Contractors (including the fees and expenses referred to in clause 5.2) are not paid to the Contractors or to the Council by the payment date specified in clause 11.1 the Contractors shall be entitled to additional interest on such outstanding sums from the payment date until the date payment is received by the Contractors or the Council both dates inclusive and at a rate which the Arbitrator shall in his absolute discretion determine in his award.

9. CURRENCY CORRECTION

In considering what sums of money have been expended by the Contractors in rendering the services and/or in fixing the amount of the award and/or appeal award the Arbitrator or Appeal Arbitrator shall to such an extent and insofar as it may be fair and just in all the circumstances give effect to the consequences of any change or changes in the relevant rates of exchange which may have occurred between the date of termination of the services and the date on which the award or appeal award is made.

10. APPEALS AND CROSS APPEALS

10.1. Any party may appeal from an award by giving written Notice of Appeal to the Council provided such notice is received by the Council no later than 21 days after the date on which the award was published by the Council.

10.2. On receipt of a Notice of Appeal the Council shall refer the appeal to the hearing and determination of an appeal arbitrator of its choice ("the Appeal Arbitrator").

10.3. Any party who has not already given Notice of Appeal under clause 10.1 may give a Notice of Cross Appeal to the Council within 21 days of that party having been notified that the Council has received Notice of Appeal from another party.

10.4. Notice of Appeal or Cross Appeal shall be given to the Council by letter telex facsimile or in any other permanent form. Such notification if sent by post shall be deemed received on the working day following the day of posting.

10.5. If any Notice of Appeal or Notice of Cross Appeal is withdrawn prior to the hearing of the appeal arbitration, that appeal arbitration shall nevertheless proceed for the purpose of determining any matters which remain outstanding.

10.6. The Appeal Arbitrator shall conduct the appeal arbitration in accordance with Lloyd's Procedural Rules so far as applicable to an appeal.

10.7. In addition to the powers conferred on the Arbitrator by English law and the Agreement, the Appeal Arbitrator shall have power to:
(i) admit the evidence or information which was before the Arbitrator together with the Arbitrator's Notes and Reasons for his award, any transcript of evidence and such additional evidence or information as he may think fit;
(ii) confirm increase or reduce the sum(s) awarded by the Arbitrator and to make such order as to the payment of interest on such sum(s) as he may think fit;
(iii) confirm revoke or vary any order and/or declaratory award made by the Arbitrator;
(iv) award interest on any fees and expenses charged under clause 10.8 from the expiration of 28 days after the date of publication by the Council of the Appeal Arbitrator's award until the date payment is received by the Council both dates inclusive.

10.8. The Appeal Arbitrator and the Council may charge reasonable fees and expenses for their services in connection with the appeal arbitration whether it proceeds to a hearing or not and all such fees and expenses shall be treated as part of the costs of the appeal arbitration.

10.9. The Appeal Arbitrator's award shall be published by the Council in London.

11. PROVISIONS AS TO PAYMENT

11.1. When publishing the award the Council shall call upon the party or parties concerned to pay all sums due from them which are quantified in the award (including the fees and expenses referred to in clause 5.2) not later than 28 days after the date of publication of the award ("the payment date")

11.2. If the sums referred to in clause 11.1 (or any part thereof) are not paid within 56 days after the date of publication of the award (or such longer period as the Contractors may allow) and provided the Council has not received Notice of Appeal or Notice of Cross Appeal the Council shall realise or enforce the security given to the Council under clause 4.5 by or on behalf of the defaulting party or parties subject to the Contractors providing the Council with any indemnity the Council may require in respect of the costs the Council may incur in that regard.

11.3. In the event of an appeal and upon publication by the Council of the appeal award the Council shall call upon the party or parties concerned to pay the sum(s) awarded. In the event of non-payment and subject to the Contractors providing the Council with any costs indemnity required as referred to in clause 11.2 the Council shall realise or enforce the security given to the Council under clause 4.5 by or on behalf of the defaulting party.

11.4. If any sum(s) shall become payable to the Contractors in respect of salvage remuneration or special compensation (including interest and/or costs) as the result of an agreement made between the Contractors and the Owners or any of them, the Council shall, if called upon to do so and subject to the Contractors providing to the Council any costs indemnity required as referred to in clause 11.2 realise or enforce the security given to the Council under clause 4.5 by or on behalf of that party.

11.5. Where (i) no security has been provided to the Council in accordance with clause 4.5 or (ii) no award is made by the Arbitrator or the Appeal Arbitrator (as the case may be) because the parties have been able to settle all matters in issue between them by agreement the Contractors shall be responsible for payment of the fees and expenses referred to in clause 5.2 and (if applicable) clause 10.8. Payment of such fees and expenses shall be made to the Council within 28 days of the Contractors or their representatives receiving the Council's invoice failing which the Council shall be entitled to interest on any sum outstanding at UK Base Rate prevailing on the date of the invoice plus 2% per annum until payment is received by the Council.

11.6. If an award or appeal award directs the Contractors to pay any sum to any other party or parties including the whole or any part of the costs of the arbitration and/or appeal arbitration the Council may deduct from sums received by the Council on behalf of the Contractors the amount(s) so payable by the Contractors unless the Contractors provide the Council with satisfactory security to meet their liability.

11.7. Save as aforesaid all sums received by the Council pursuant to this clause shall be paid by the Council to the Contractors or their representatives whose receipt shall be a good discharge to it.

11.8. Without prejudice to the provisions of clause 4.5 the liability of the Council shall be limited to the amount of security provided to it.

GENERAL PROVISIONS

12. **Lloyd's documents:** Any award notice authority order or other document signed by the Chairman of Lloyd's or any person authorised by the Council for the purpose shall be deemed to have been duly made or given by the Council and shall have the same force and effect in all respects as if it had been signed by every member of the Council.

13. **Contractors personnel and subcontractors.**

13.1. The Contractors may claim salvage on behalf of their employees and any other servants or agents who participate in the services and shall upon request provide the owners with a reasonably satisfactory indemnity against all claims by or liabilities to such employees servants or agents.

13.2. The Contractors may engage the services of subcontractors for the purpose of fulfilling their obligations under clauses A and B of the Agreement but the Contractors shall nevertheless remain liable to the Owners for the due performance of those obligations.

13.3. In the event that subcontractors are engaged as aforesaid the Contractors may claim salvage on behalf of the subcontractors including their employees servants or agents and shall, if called upon so to do provide the Owners with a reasonably satisfactory indemnity against all claims by or liabilities to such subcontractors their employees servants or agents.

14. **Disputes under Scopic Clause.**

Any dispute arising out of the Scopic Clause (including as to its incorporation or invocation) or the operations thereunder shall be referred for determination to the Arbitrator appointed under clause 5 hereof whose award shall be final and binding subject to appeal as provided in clause 10 hereof.

15. **Lloyd's Publications.**

Any guidance published by or on behalf of the Council relating to matters such as the Convention the workings and implementation of the Agreement is for information only and forms no part of the Agreement.

LLOYD'S

LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(APPROVED AND PUBLISHED BY THE COUNCIL OF LLOYD'S)

PROCEDURAL RULES

(pursuant to Clause I of LOF 2000)

1. Arbitrators Powers

In addition to all powers conferred by the Arbitration Act 1996 (or any amendment thereof) the Arbitrator shall have power:

(a) to admit such oral or documentary evidence or information as he may think fit;

(b) to conduct the arbitration in such manner in all respects as he may think fit subject to these Procedural Rules and any amendments thereto as may from time to time be approved by the Council of Lloyd's ("the Council");

(c) to make such orders as to costs, fees and expenses including those of the Council charged under clauses 5.2 and 10.8 of the Lloyd's Standard Salvage and Arbitration Clauses ("the LSSA clauses") as may be fair and just;

(d) to direct that the recoverable costs of the arbitration or of any part of the proceedings shall be limited to a specified amount;

(e) to make any orders required to ensure that the arbitration is conducted in a fair and efficient manner consistent with the aim to minimise delay and expense and to arrange such meetings and determine all applications made by the parties as may be necessary for that purpose;

(f) to conduct all such meetings by means of a conference telephone call if the parties agree;

(g) on his own initiative or on the application of a party to correct any award (whether interim provisional or final) or to make an additional award in order to rectify any mistake error or omission provided that (i) any such correction is made within 28 days of the date of publication of the relevant award by the Council (ii) any additional award required is made within 56 days of the said date of publication or, in either case, such longer period as the Arbitrator may in his discretion allow.

2. Preliminary Meeting

(a) Within 6 weeks of being appointed or so soon thereafter as may be reasonable in the circumstances, the Arbitrator shall convene a preliminary meeting with the represented parties for the purpose of giving directions as to the manner in which the arbitration is to be conducted.

(b) The Arbitrator may dispense with the requirement for a preliminary meeting if the represented parties agree a consent order for directions which the Arbitrator is willing to approve. For the purpose of obtaining such approval, the Arbitrator must be provided by the contractors or their representatives with a brief summary of the case in the form of a check list, any other party providing such comments as they deem appropriate so that the Arbitrator is placed in a position to decide whether to approve the consent order.

(c) In determining the manner in which the arbitration is to be conducted, the Arbitrator shall have regard to:

(i) the interests of unrepresented parties;

(ii) whether some form of shortened and/or simplified procedure is appropriate including whether the arbitration may be conducted on documents only with concise written submissions;

(iii) the overriding objectives set out in clause 2 of the LSSA clauses.

3. Order for Directions

Unless there are special reasons, the initial order for directions shall include:-

(a) a date for disclosure of documents including witness statements (see Rule 4);

(b) a date for proof of values;

(c) a date by which any party must identify any issue(s) in the case which are likely to necessitate the service of pleadings;

(d) a date for a progress meeting or additional progress meetings unless all represented parties with reasonable notice agree that the same is unnecessary;

(e) unless agreed by all represented parties to be premature, a date for the hearing and estimates for the time likely to be required by the Arbitrator to read evidence in advance and for the length of the hearing;

(f) any other matters deemed by the Arbitrator or any party to be appropriate to be included in the initial order.

4. Disclosure of documents

Unless otherwise agreed or ordered, disclosure shall be limited to the following classes of document:

(a) logs and any other contemporaneous records maintained by the shipowners personnel and personnel employed by the Contractors (including any subcontractors) and their respective surveyors or consultants in attendance during all or part of the salvage services;

(b) working charts, photographs, video or film records;

(c) contemporaneous reports including telexes, facsimile messages or prints of e- mail messages;

(d) survey reports;

(e) documents relevant to the proof of:

(i) out of pocket expenses
(ii) salved values
(iii) the particulars and values of all relevant salving tugs or other craft and equipment

(f) statements of witnesses of fact or other privileged documents on which the party wishes to rely.

5. Expert Evidence

(a) No expert evidence shall be adduced in the arbitration without the Arbitrators permission.

(b) The Arbitrator shall not give such permission unless satisfied that expert evidence is reasonably necessary for the proper determination of an issue arising in the arbitration.

(c) No party shall be given permission to adduce evidence from more than one expert in each field requiring expert evidence save in exceptional circumstances.

(d) Any application for permission to adduce expert evidence must be made at the latest within 14 days after disclosure of relevant documents has been effected.

6. **Mediation**

The Arbitrator shall ensure that in all cases the represented parties are informed of the benefit which might be derived from the use of mediation.

7. **Hearing of Arbitration**

(a) In fixing or agreeing to a date for the hearing of an arbitration, the Arbitrator shall not unless agreed by all represented parties fix or accept a date unless the Arbitrator can allow time to read the principal evidence in advance, hear the arbitration and produce the award to the Council for publication in not more than 1 month from conclusion of the hearing.

(b) The date fixed for the hearing shall be maintained unless application to alter the date is made to the Arbitrator within 14 days of the completion of discovery or unless the Arbitrator in the exercise of his discretion determines at a later time that an adjournment is necessary or desirable in the interests of justice or fairness.

(c) Unless all parties represented in the arbitration agree otherwise the Arbitrator shall relinquish his appointment if a hearing date cannot be agreed, fixed or maintained in accordance with rule 7(a) and/or (b) above due to the Arbitrator's commitments. In that event the Council shall appoint in his stead another arbitrator who is able to meet the requirements of those rules.

8. Appeals

(a) All references in these Rules to the Arbitrator shall include the Arbitrator on Appeal where the circumstances so permit.

(b) In any case in which a party giving notice of appeal intends to contend that the Arbitrator's findings on the salved value of all or any of the salved property were erroneous, or that the Arbitrator has erred in any finding as to the person whose property was at risk, a statement of such grounds of appeal shall be given in or accompanying the notice of appeal.

(c) In all cases grounds of appeal or cross-appeal will be given to the Arbitrator on Appeal within 21 days of the notice of appeal or cross- appeal unless an extension of time is agreed.

(d) Any respondent to an appeal who intends to contend that the award of the Original Arbitrator should be affirmed on grounds other than those relied upon by the Original Arbitrator shall give notice to that effect specifying the grounds of his contention within 14 days of receipt of the grounds of appeal mentioned in (c) above unless an extension of time is agreed.

SCOPIC CLAUSE

1. **General**

This SCOPIC clause is supplementary to any Lloyd's Form Salvage Agreement "No Cure - No Pay" ("Main Agreement") which incorporates the provisions of Article 14 of the International Convention on Salvage 1989 ("Article 14"). The definitions in the Main Agreement are incorporated into this SCOPIC clause. If the SCOPIC clause is inconsistent with any provisions of the Main Agreement or inconsistent with the law applicable hereto, the SCOPIC clause, once invoked under sub-clause 2 hereof, shall override such other provisions to the extent necessary to give business efficacy to the agreement. Subject to the provisions of Clause 4 hereof, the method of assessing Special Compensation under Convention Article 14(1) to 14(4) inclusive shall be submitted by the method of assessment set out hereinafter. If this SCOPIC clause has been incorporated into the Main Agreement the Contractor may make no claim pursuant to Article 14 except in the circumstances described in sub-clause 4 hereof. For the purposes of liens and time limits the services hereunder will be treated in the same manner as salvage.

2. **Invoking the SCOPIC Clause**

The Contractor shall have the option to invoke by written notice to the owners of the vessel the SCOPIC clause set out hereafter at any time of his choosing regardless of the circumstances and, in particular, regardless of whether or not there is a "threat of damage to the environment". The assessment of SCOPIC remuneration shall commence from the time the written notice is given to the owners of the vessel and services rendered before the said written notice shall not be remunerated under this SCOPIC clause at all but in accordance with Convention Article 13 as incorporated into the Main Agreement ("Article 13").

3. **Security for SCOPIC Remuneration**

(i) The owners of the vessel shall provide to the Contractor within 2 working days (excluding Saturdays and Sundays and holidays usually observed at Lloyd's) after receiving written notice from the contractor invoking the SCOPIC clause, a bank guarantee or P&I Club letter (hereinafter called "the Initial Security") in a form reasonably satisfactory to the Contractor providing security for his claim for SCOPIC remuneration in the sum of US$3 million, inclusive of interest and costs.

(ii) If, at any time after the provision of the Initial Security the owners of the vessel reasonably assess the SCOPIC remuneration plus interest and costs due hereunder to be less than the security in place, the owners of the vessel shall be entitled to require the Contractor to reduce the security to a reasonable sum and the Contractor shall be obliged to do so once a reasonable sum has been agreed.

(iii) If at any time after the provision of the Initial Security the Contractor reasonably assesses the SCOPIC remuneration plus interest and costs due hereunder to be greater than the security in place, the Contractor shall be entitled to require the owners of the vessel to increase the security to a reasonable sum and the owners of the vessel shall be obliged to do so once a reasonable sum has been agreed.

(iv) In the absence of agreement, any dispute concerning the proposed Guarantor, the form of the security or the amount of any reduction or increase in the security in place shall be resolved by the Arbitrator.

4. **Withdrawal**

If the owners of the vessel do not provide the Initial Security within the said 2 working days, the Contractor, at his option, and on giving notice to the owners of the vessel, shall be entitled to withdraw from all the provisions of the SCOPIC clause and revert to his rights under the Main Agreement including Article 14 which shall apply as if the SCOPIC clause had not existed. PROVIDED THAT this right of withdrawal may only be exercised if, at the time of giving the said notice of withdrawal the owners of the vessel have still not provided the Initial Security or any alternative security which the owners of the vessel and the Contractor may agree will be sufficient.

5. **Tariff Rates**

(i) SCOPIC remuneration shall mean the total of the tariff rates of personnel; tugs and other craft; portable salvage equipment; out of pocket expenses; and bonus due.

(ii) SCOPIC remuneration in respect of all personnel; tugs and other craft; and portable salvage equipment shall be assessed on a time and materials basis in accordance with the Tariff set out in Appendix "A". This tariff will apply until reviewed and amended by the SCR Committee in accordance with Appendix B(1)(b). The tariff rates which will be used to calculate SCOPIC remuneration are those in force at the time the salvage services take place.

(iii) "Out of pocket" expenses shall mean all those monies reasonably paid by or for and on behalf of the Contractor to any third party and in particular includes the hire of men, tugs, other craft and equipment used and other expenses reasonably necessary for the operation. They will be agreed at cost, PROVIDED THAT:

(a) If the expenses relate to the hire of men, tugs, other craft and equipment from another ISU member or their affiliate(s), the amount due will be calculated on the tariff rates set out in Appendix "A" regardless of the actual cost.

(b) If men, tugs, other craft and equipment are hired from any party who is not an ISU member and the hire rate is greater than the tariff rates referred to in Appendix "A" the actual cost will be allowed in full, subject to the Shipowner's Casualty Representative ("SCR") being satisfied that in the particular circumstances of the case, it was reasonable for the Contractor to hire such items at that cost. If an SCR is not appointed or if there is a dispute, then the Arbitrator shall decide whether the expense was reasonable in all in the circumstances.

(iv) In addition to the rates set out above and any out of pocket expenses, the Contractor shall be entitled to a standard bonus of 25% of those rates except that if the out of pocket expenses described in sub-paragraph 5(iii)(b) exceed the applicable tariff rates in Appendix "A" the Contractor shall be entitled to a bonus such that he shall receive in total

(a) The actual cost of such men, tugs, other craft and equipment plus 10% of the tariff rate, or

(b) The tariff rate for such men, tugs, other craft and equipment plus 25% of the tariff rate whichever is the greater.

6. **Article 13 Award**

(i) The salvage services under the Main Agreement shall continue to be assessed in accordance with Article 13, even if the Contractor has invoked the SCOPIC clause. SCOPIC remuneration as assessed under sub-clause 5 above will be payable only by the owners of the vessel and only to the extent that it exceeds the total Article 13 Award (or, if none, any potential Article 13 Award) payable by all salved interests (including cargo, bunkers, lubricating oil and stores) after currency adjustment but before interest and costs even if the Article 13 Award or any part of it is not recovered.

(ii) In the event of the Article 13 Award or settlement being in a currency other than United States dollars it shall, for the purposes of the SCOPIC clause, be exchanged at the rate of exchange prevailing at the termination of the services under the Main Agreement.

(iii) The salvage award under Article 13 shall not be diminished by reason of the exception to the principle of "No Cure - No Pay" in the form of SCOPIC remuneration.

7. Discount

If the SCOPIC clause is invoked under sub-clause 2 hereof and the Article 13 Award or settlement (after currency adjustment but before interest and costs) under the Main Agreement is greater than the assessed SCOPIC remuneration then, notwithstanding the actual date on which the SCOPIC remuneration provisions were invoked, the said Article 13 Award or settlement shall be discounted by 25% of the difference between the said Article 13 Award or settlement and the amount of SCOPIC remuneration that would have been assessed had the SCOPIC remuneration provisions been invoked on the first day of the services.

8. Payment of SCOPIC Remuneration

(i) The date for payment of any SCOPIC remuneration which may be due hereunder will vary according to the circumstances.

(a) If there is no potential salvage award within the meaning of Article 13 as incorporated into the Main Agreement then, subject to Appendix B(5)(c)(iv), the undisputed amount of SCOPIC remuneration due hereunder will be paid by the owners of the vessel within 1 month of the presentation of the claim. Interest on sums due will accrue from the date of termination of the services until the date of payment at US prime rate plus 1%.

(b) If there is a claim for an Article 13 salvage award as well as a claim for SCOPIC remuneration, subject to Appendix B(5)(c)(iv), 75% of the amount by which the assessed SCOPIC remuneration exceeds the total Article 13 security demanded from ship and cargo will be paid by the owners of the vessel within 1 month and any undisputed balance paid when the Article 13 salvage award has been assessed and falls due. Interest will accrue from the date of termination of the services until the date of payment at the US prime rate plus 1%.

(ii) The Contractor hereby agrees to give an indemnity in a form acceptable to the owners of the vessel in respect of any overpayment in the event that the SCOPIC remuneration due ultimately proves to be less than the sum paid on account.

9. Termination

(i) The Contractor shall be entitled to terminate the services under this SCOPIC clause and the Main Agreement by written notice to owners of the vessel with a copy to the SCR (if any) and any Special Representative appointed if the total cost of his services to date and the services that will be needed to fulfil his obligations hereunder to the property (calculated by means of the tariff rate but before the bonus conferred by sub-clause 5(iii) hereof) will exceed the sum of:-

(a) The value of the property capable of being salved; and

(b) All sums to which he will be entitled as SCOPIC remuneration

(ii) The owners of the vessel may at any time terminate the obligation to pay SCOPIC remuneration after the SCOPIC clause has been invoked under sub-clause 2 hereof provided that the Contractor shall be entitled to at least 5 clear days' notice of such termination. In the event of such termination the assessment of SCOPIC remuneration shall take into account all monies due under the tariff rates set out in Appendix A hereof including time for demobilisation to the extent that such time did reasonably exceed the 5 days' notice of termination.

(iii) The termination provisions contained in sub-clause 9(i) and 9(ii) above shall only apply if the Contractor is not restrained from demobilising his equipment by Government, Local or Port Authorities or any other officially recognised body having jurisdiction over the area where the services are being rendered.

10. Duties of Contractor

The duties and liabilities of the Contractor shall remain the same as under the Main Agreement, namely to use his best endeavours to salve the vessel and property thereon and in so doing to prevent or minimise damage to the environment.

11. Shipowner's Casualty Representative ("SCR")

Once this SCOPIC clause has been invoked in accordance with sub-clause 2 hereof the owners of the vessel may at their sole option appoint an SCR to attend the salvage operation in accordance with the terms and conditions set out in Appendix B.

12. Special Representatives

At any time after the SCOPIC clause has been invoked the Hull and Machinery underwriter (or, if more than one, the lead underwriter) and one owner or underwriter of all or part of any cargo on board the vessel may each appoint one special representative (hereinafter called respectively the "Special Hull Representative" and the "Special Cargo Representative" and collectively called the "Special Representatives") at the sole expense of the appointor to attend the casualty to observe and report upon the salvage operation on the terms and conditions set out in Appendix C hereof. Such Special Representatives shall be technical men and not practising lawyers.

13. Pollution Prevention

The assessment of SCOPIC remuneration shall include the prevention of pollution as well as the removal of pollution in the immediate vicinity of the vessel insofar as this is necessary for the proper execution of the salvage but not otherwise.

14. General Average

SCOPIC remuneration shall not be a General Average expense to the extent that it exceeds the Article 13 Award; any liability to pay such SCOPIC remuneration shall be that of the Shipowner alone and no claim whether direct, indirect, by way of indemnity or recourse or otherwise relating to SCOPIC remuneration in excess of the Article 13 Award shall be made in General Average or under the vessel's Hull and Machinery Policy by the owners of the vessel.

15. Any dispute arising out of this SCOPIC clause or the operations thereunder shall be referred to Arbitration as provided for under the Main Agreement.

APPENDIX A (SCOPIC)

1. PERSONNEL

(a) The daily tariff rate, or pro rata for part thereof, for personnel reasonably engaged on the contract, including any necessary time in proceeding to and returning from the casualty, shall be as follows:

Office administration, including communications	US$ 1,000
Salvage Master	US$ 1,500
Naval Architect or Salvage Officer/Engineer	US$ 1,250
Assistant Salvage Officer/Engineer	US$ 1,000
Diving Supervisor	US$ 1,000
Diver	US$ 750
Salvage Foreman	US$ 750
Riggers, Fitters, Equipment Operators	US$ 600
Specialist Advisors – Fire Fighters, Chemicals, Pollution Control	US$ 1,000

(b) The crews of tugs, and other craft, normally aboard that tug or craft for the purpose of its customary work are included in the tariff rate for that tug or craft but when because of the nature and/or location of the services to be rendered, it is a legal requirement for an additional crew member or members to be aboard the tug or craft, the cost of such additional crew will be paid.

(c) The rates for any personnel not set out above shall be agreed with the SCR or, failing agreement, be determined by the Arbitrator.

(d) For the avoidance of doubt, personnel are "reasonably engaged on the contract" within the meaning of Appendix A sub-clause 1(a) hereof if, in addition to working, they are eating, sleeping or otherwise resting on site or travelling to or from the site; personnel who fall ill or are injured while reasonably engaged on the contract shall be charged for at the appropriate daily tariff rate until they are demobilised but only if it was reasonable to mobilise them in the first place.

(e) SCOPIC remuneration shall cease to accrue in respect of personnel who die on site from the date of death.

2. TUGS AND OTHER CRAFT

(a) (i) Tugs, which shall include salvage tugs, harbour tugs, anchor handling tugs, coastal/ocean towing tugs, off-shore support craft, and any other work boat in excess of 500 b.h.p., shall be charged at the following rates, exclusive of fuel or lubricating oil, for each day, or pro rata for part thereof, that they are reasonably engaged in the services, including proceeding towards the casualty from the tugs' location when SCOPIC is invoked or when the tugs are mobilised (whichever is the later) and from the tugs' position when their involvement in the services terminates to a reasonable location having due regard to their employment immediately prior to their involvement in the services and standing by on the basis of their certificated b.h.p.:

For each b.h.p. up to 5,000 b.h.p.	US$ 2.00
For each b.h.p. between 5,001 & 10,000 b.h.p.	US$ 1.50
For each b.h.p. between 10,001 & 20,000 b.h.p.	US$ 1.00
For each b.h.p. over 20,000 b.h.p.	US$ 0.50

(ii) Any tug which has aboard certified fire fighting equipment shall, in addition to the above rates, be paid:

US$500 per day, or pro rata for part thereof, if equipped with Fi Fi 0.5
US$1,000 per day, or pro rata for part thereof, if equipped with Fi Fi 1.0

for that period in which the tug is engaged in fire fighting necessitating the use of the certified fire fighting equipment.

(iii) Any tug which is certified as "Ice Class" shall, in addition to the above, be paid US$1,000 per day, or pro rata for part thereof, when forcing or breaking ice during the course of services including proceeding to and returning from the casualty.

(iv) For the purposes of paragraph 2(a)(i) hereof tugs shall be remunerated for any reasonable delay or deviation for the purposes of taking on board essential salvage equipment, provisions or personnel which the Contractor reasonably anticipates he shall require in rendering the services which would not normally be found on vessels of the tugs size and type.

(b) Any launch or work boat of less than 500 b.h.p. shall, exclusive of fuel and lubricating oil, be charged at a rate of US$3.00 for each b.h.p.

(c) Any other craft, not falling within the above definitions, shall be charged out at a market rate for that craft; exclusive of fuel and lubricating oil, such rate to be agreed with the SCR or, failing agreement, determined by the Arbitrator.

(d) All fuel and lubricating oil consumed during the services shall be paid at cost of replacement and shall be treated as an out of pocket expense.

(e) For the avoidance of doubt, the above rates shall not include any portable salvage equipment normally aboard the tug or craft and such equipment shall be treated in the same manner as portable salvage equipment and the Contactors shall be remunerated in respect thereof in accordance with Appendix A paragraphs 3 and 4 (i) and (ii) hereof.

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(f) SCOPIC remuneration shall cease to accure in respect of tugs and other craft which become a commercial total loss from the date they stop being engaged in the services plus a reasonable period for demobilisation (if appropriate) PROVIDED that such SCOPIC remuneration in respect of demobilisation shall only be payable if the commercial total loss arises whilst engaged in the services and through no fault of the Contractors, their servants, agents or sub-contractors.

3. PORTABLE SALVAGE EQUIPMENT

(a) The daily tariff, or pro rata for part thereof, for all portable salvage equipment reasonably engaged during the services, including any time necessary for mobilisation and demobilisation, shall be as follows:

Generators	Rate – US$.
Up to 50 kW	60
51 to 100 kW	125
101 to 300 kW	200
Over 301 kW	350
Portable Inert Gas Systems	
1,000m³/hour	1,200
1,500m³/hour	1,400
Compressors	
High Pressure	100
185 Cfm	150
600 Cfm	250
1200 Cfm	400
Air Manifold	10
Blower; 1,500m³/min.	850
Pumping Equipment	
Air	
2"	75
Diesel	
2"	50
4"	90
6"	120
Electrical Submersible	
2"	50
4"	150
6"	500
Hydraulic	
6"	600
8"	1,000
Hoses	
Air Hose	
¾"per 30 metres or 100 feet	20
2"per 30 metres or 100 feet	40
Layflat	
2" per 6 metres or 20 feet	10
4" per 6 metres or 20 feet	15
6" per 6 metres or 20 feet	20
Rigid	
2" per 6 metres or 20 feet	15
4" per 6 metres or 20 feet	20
6" per 6 metres or 20 feet	25
8" per 6 metres or 20 feet	30
Fenders	
Yokohama	
1.00m. x 2.00m.	75
2.50m. x 5.50m.	150
3.50m. x 6.50m.	250
Low Pressure Inflatable	
3 metres	70
6 metres	70
9 metres	150
12 metres	250
16 metres	250

Welding & Cutting Equipment	Rate – US$.
Bolt Gun	300
Gas Detector	100
Hot Tap Machine, including supporting equipment	1,000
Oxy-acetylene Surface Cutting Gear	25
Underwater Cutting Gear	50
Underwater Welding Kit	50
250 Amp Welder	150
400 Amp Welder	200
Pollution Control Equipment	
Oil Boom, 24", per 10 metres	30
Oil Boom, 36", per 10 metres	100
Oil Boom, 48", per 10 metres	195
Lighting Systems	
Lighting String, per 50 feet	25
Light Tower	50
Underwater Lighting System, 1,000 watts	75
Winches	
Up to 20 tons, including 50 metres of wire	200
Storage Equipment	
10' Container	25
20' Container	40
Miscellaneous Equipment	
Air Bags, less than 5 tons lift	40
5 to 15 tons lift	200
Air Lift 4"	100
6"	200
8"	300
Air Tugger, up to 3 tons	75
Ballast/Fuel Oil Storage Bins, 50,000 litres	100
Chain Saw	20
Damage Stability Computer and Software	250
Echo Sounder, portable	25
Extension Ladder	20
Hydraulic Jack, up to 100 tons	75
Hydraulic Powerpack	75
Pressure washer, water	250
steam	450
Rigging Package, heavy	400
Light	200
Rock, Drill	50
Splitter	400
Steel Saw	20
Tirfors, up to 5 tonnes	10
Thermal Imaging Camera	250
Tool Package, per set	175
Ventilation Package	20
VHF Radio	10
Z Boat, including outboard up to 14 feet	200
over 14 feet	350

Shackles	Rate – US$.
Up to 50 tonnes	10
51 to 100 tonnes	20
101 to 200 tonnes	30
Over 200 tonnes	50

Distribution Boards	
Up to 50 kW	60
51 to 100 kW	125
101 to 300 kW	200
Over 301 kW	350

Protective Clothing	Rate – US$.
Breathing Gear.	50
Hazardous Environment Suit	100

Diving Equipment	
Decompression Chamber,	
2 man, including compressor	500
4 man, including compressor	700
Hot Water Diving Assembly	250
Underwater Magnets	20
Underwater Drill	20
Shallow Water Dive Spread	225

(b) Any portable salvage equipment engaged but not set out above shall be charged at a rate to be agreed with the SCR or, failing agreement, determined by the Arbitrator.

(c) The total charge (before bonus) for each item of portable salvage equipment, owned by the contractor, shall not exceed the manufacturer's recommended retail price on the last day of the services multiplied by 1.5.

(d) Compensation for any portable salvage equipment lost or destroyed during the services shall be paid provided that the total of such compensation and the daily tariff rate (before bonus) in respect of that item do not exceed the actual cost of replacing the item at the Contractors' base with the most similar equivalent new item multiplied by 1.5.

(e) All consumables such as welding rods, boiler suits, small ropes etc. shall be charged at cost and shall be treated as an out of pocket expense.

(f) The Contractor shall be entitled to remuneration at a stand-by rate of 50% of the full tariff rate plus bonus for any portable salvage equipment reasonably mobilised but not used during the salvage operation provided

(i) It has been mobilised with the prior agreement of the owner of the vessel or its mobilisation was reasonable in the circumstances of the casualty, or

(ii) it comprises portable salvage equipment normally aboard the tug or craft that would have been reasonably mobilised had it not already been aboard the tug or craft.

(g) SCOPIC remuneration shall cease to accrue in respect of portable salvage equipment which becomes a commercial total loss from the date it ceases to be useable plus a reasonable period for demobilisation (if appropriate) PROVIDED that such SCOPIC remuneration in respect of demobilisation shall only be payable if the commercial total loss arises while it is engaged in the services and through no fault of the Contractors, their servants, agents or sub-contractors.

4. DOWNTIME

If a tug or piece of portable salvage equipment breaks down or is damaged without fault on the part of the Contractor, his servants, agents or sub-contractors and as a direct result of performing the services it should be paid for dunng the repair while on site at the stand-by rate of 50% of the tariff rate plus uplift pursuant to sub-clause 5(iv) of the SCOPIC clause.
If a tug or piece of portable salvage equipment breaks down or otherwise becomes inoperable without fault on the part of the Contractor, his servants, agents or sub-contractors and as a direct result of performing the services and cannot be repaired on site then:

(a) If it is not used thereafter but remains on site then no SCOPIC remuneration is payable in respect of that tug or piece of portable salvage equipment from the time of the breakdown.

(b) If it is removed from site, repaired and reasonably returned to the site for use SCOPIC remuneration at the standby rate of 50% of the tariff rate plus bonus pursuant to sub-clause 5(iv) of the SCOPIC clause shall be payable from the breakdown to the date it is returned to the site.

(c) If it is removed from the site and not returned SCOPIC remuneration ceases from the breakdown but is, in addition, payable for the period that it takes to return it directly to base at the stand-by rate of 50% of the tariff rate plus bonus pursuant to sub-clause 5(iv) of the SCOPIC clause.

APPENDIX B (SCOPIC)

1. (a) The SCR shall be selected from a panel (the "SCR Panel") appointed by a Committee (the "SCR Committee") comprising of representatives appointed by the following:

   3 representatives from the International Group of P and I Clubs
   3 representatives from the ISU
   3 representatives from the IUMI
   3 representatives from the International Chamber of Shipping

   (b) The SCR Committee shall be responsible for an annual review of the tariff rates as set out in Appendix A.

   (c) The SCR Committee shall meet once a year in London to review, confirm, reconfirm or remove SCR Panel members.

   (d) Any individual may be proposed for membership of the SCR Panel by any member of the SCR Committee and shall be accepted for inclusion on the SCR Panel unless at least four votes are cast against his inclusion.

   (e) The SCR Committee shall also set and approve the rates of remuneration for the SCRs for the next year.

   (f) Members of the SCR Committee shall serve without compensation.

   (g) The SCR Committee's meetings and business shall be organised and administered by the Salvage Arbitration Branch of the Corporation of Lloyd's (hereinafter called "Lloyds") who will keep the current list of SCR Panel members and make it available to any person with a bona fide interest.

   (h) The SCR Committee shall be entitled to decide its own administrative rules as to procedural matters (such as quorums, the identity and power of the Chairman etc.)

2. The primary duty of the SCR shall be the same as the Contractor, namely to use his best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment.

3. The Salvage Master shall at all times remain in overall charge of the operation, make all final decisions as to what he thinks is best and remain responsible for the operation.

4. The SCR shall be entitled to be kept informed by or on behalf of the Salvage Master or (if none) the principal contractors' representative on site (hereinafter called "the Salvage Master"). The Salvage Master shall consult with the SCR during the operation if circumstances allow and the SCR, once on site, shall be entitled to offer the Salvage Master advice.

5. (a) Once the SCOPIC clause is invoked the Salvage Master shall send daily reports (hereinafter called the "Daily Salvage Reports") setting out:-

   - the salvage plan (followed by any changes thereto as they arise)
   - the condition of the casualty and the surrounding area (followed by any changes thereto as they arise)
   - the progress of the operation
   - the personnel, equipment, tugs and other craft used in the operation that day.

   (b) Pending the arrival of the SCR on site the Daily Salvage Reports shall be sent to Lloyd's and the owners of the vessel. Once the SCR has been appointed and is on site the Daily Salvage Reports shall be delivered to him.

(c) The SCR shall upon receipt of each Daily Salvage Report:-

(i) Transmit a copy of the Daily Salvage Report by the quickest method reasonably available to Lloyd's, the owners of the vessel, their liability insurers and (if any) to the Special Hull Representative and Special Cargo Representative (appointed under clause 12 of the SCOPIC clause and Appendix C) if they are on site; and if a Special Hull Representative is not on site the SCR shall likewise send copies of the Daily Salvage Reports direct to the leading Hull Underwriter or his agent (if known to the SCR) and if a Special Cargo Representative is not on site the SCR shall likewise send copies of the Daily Salvage Reports to such cargo underwriters or their agent or agents as are known to the SCR (hereinafter in this Appendix B such Hull and Cargo property underwriters shall be called "Known Property Underwriters").

(ii) If circumstances reasonably permit consult with the Salvage Master and endorse his Daily Salvage Report stating whether or not he is satisfied and

(iii) If not satisfied with the Daily Salvage Report, prepare a dissenting report setting out any objection or contrary view and deliver it to the Salvage Master and transmit it to Lloyd's, the owners of the vessel, their liability insurers and to any Special Representatives (appointed under clause 12 of the SCOPIC clause and Appendix C) or, if one or both Special Representatives has not been appointed, to the appropriate Known Property Underwriter.

(iv) If the SCR gives a dissenting report to the Salvage Master in accordance with Appendix B(5)(c)(iii) to the SCOPIC clause, any initial payment due for SCOPIC remuneration shall be at the tariff rate applicable to what is in the SCR's view the appropriate equipment or procedure until any dispute is resolved by agreement or arbitration.

(d) Upon receipt of the Daily Salvage Reports and any dissenting reports of the SCR, Lloyd's shall distribute upon request the said reports to any parties to this contract and any of their property insurers of whom they are notified (hereinafter called "the Interested Persons") and to the vessel's liability insurers.

(e) As soon as reasonably possible after the Salvage services terminate the SCR shall issue a report (hereinafter call the "SCR's Final Salvage Report") setting out:

- the facts and circumstances of the casualty and the salvage operation insofar as they are known to him.
- the tugs, personnel and equipment employed by the Contractor in performing the operation.
- A calculation of the SCOPIC remuneration to which the contractor may be entitled by virtue of this SCOPIC clause.

The SCR's Final Salvage Report shall be sent to the owners of the vessel and their liability insurers and to Lloyd's who shall forthwith distribute it to the Interested Persons.

6. (a) The SCR may be replaced by the owner of the vessel if either:

(i) the SCR makes a written request for a replacement to the owner of the vessel (however the SCR should expect to remain on site throughout the services and should only expect to be substituted in exceptional circumstances); or

(ii) the SCR is physically or mentally unable or unfit to perform his duties; or

(iii) all salved interests or their representatives agree to the SCR being replaced.

(b) Any person who is appointed to replace the SCR may only be chosen from the SCR Panel.

(c) The SCR shall remain on site throughout the services while he remains in that appointment and until the arrival of any substitute so far as practicable and shall hand over his file and all other correspondence, computer data and papers concerning the salvage services to any substitute SCR and fully brief him before leaving the site.

(d) The SCR acting in that role when the services terminate shall be responsible for preparing the Final Salvage Report and shall be entitled to full co-operation from any previous SCRs or substitute SCRs in performing his functions hereunder.

7. The owners of the vessel shall be primarily responsible for paying the fees and expenses of the SCR. The Arbitrator shall have jurisdiction to apportion the fees and expenses of the SCR and include them in his award under the Main Agreement and, in doing so, shall have regard to the principles set out in any market agreement in force from time to time.

APPENDIX C (SCOPIC)

The Special Representatives

1. The Salvage Master, the owners of the vessel and the SCR shall co-operate with the Special Representatives and shall permit them to have full access to the vessel to observe the salvage operation and to inspect such of the ship's documents as are relevant to the salvage operation.

2. The Special Representative shall have the right to be informed of all material facts concerning the salvage operation as the circumstances reasonably allow.

3. If an SCR has been appointed the SCR shall keep the Special Representatives (if any and if circumstances permit) fully informed and shall consult with the said Special Representatives. The Special Representatives shall also be entitled to receive a copy of the Daily Salvage Reports direct from the Salvage Master or, if appointed, from the SCR.

4. The appointment of any Special Representatives shall not affect any right that the respondent ship and cargo interests may have (whether or not they have appointed a Special Representative) to send other experts or surveyors to the vessel to survey ship or cargo and inspect the ship's documentation or for any other lawful purpose.

5. If an SCR or Special Representative is appointed the Contractor shall be entitled to limit access to any surveyor or representative (other than the said SCR and Special Representative or Representatives) if he reasonably feels their presence will substantially impede or endanger the salvage operation.

CODE OF PRACTICE BETWEEN INTERNATIONAL SALVAGE UNION AND INTERNATIONAL GROUP OF P&I CLUBS

In the spirit of co-operation, the following Code of Practice is agreed between the International Salvage Union and the International Group of P&I Clubs in relation to all future salvage services to which Article 14 of the 1989 Salvage Convention is applicable or under Lloyd's Form where the Special Compensation P&I Club's (SCOPIC) Clause has been invoked by the Contractor.

1. The salvor will advise the relevant P&I Club at the commencement of the salvage services, or as soon thereafter as is practicable, if they consider that there is a possibility of a Special Compensation claim arising.

2. In the event of the SCR not being appointed under the SCOPIC clause, the P&I Club may appoint an observer to attend the salvage and the salvors agree to keep him and/or the P&I Club fully informed of the salvage activities and their plans. However, any decision on the conduct of the salvage services remains with the salvor.

3. The P&I Club, when reasonably requested by the salvor, will immediately advise the salvor whether the particular Member is covered, subject to the Rules of the P&I Club, for any liability which he may have for Special Compensation or SCOPIC Remuneration.

4. The P&I Clubs confirm that, whilst they expect to provide security in the form of a Club Letter either in respect of claims for special compensation (under Article 14 of the 1989 Salvage Convention) or SCOPIC remuneration (under the SCOPIC Clause), as appropriate, it is not automatic. Specific reasons for refusal to give security to the Contractor will be non-payment of calls, breach of warranty rules relating to classification and flag state requirements or any other breach of the rules allowing the Club to deny cover. The Clubs will not refuse to give security solely because the Contractors cannot obtain security in any other way.

5. In the event that security is required by a port authority or other competent authority for potential P&I liabilities in order to permit the ship to enter a port of refuge or other place of safety, the P&I Clubs confirm that they would be willing to consider the provision of such security subject to the aforementioned provisos referred to in para. 4 above and subject to the reasonableness of the demand.

6. The Contractors will accept security for either special compensation or SCOPIC remuneration by way of a P&I Club letter of undertaking in the attached form - "Salvage Guarantee form – ISU 5" - and they will not insist on the provision of security at Lloyd's.

7. The P&I Club concerned will reply to any request by the salvors regarding security as quickly as reasonably possible. In the event that salvage services are being performed under Lloyd's Form incorporating the SCOPIC clause, the P&I Club concerned will advise the Contractor within two (2) working days of his invoking the SCOPIC Clause whether or not they will provide security to the Contractor by way of a Club Letter referred to in para. 6 above.

8. In the event that salvage services are being performed under Lloyd's Form incorporating the SCOPIC clause, the P&I Clubs will advise the owners of the vessel not to exercise the right to terminate the contract under SCOPIC Clause 9(ii) without reasonable cause.

9. It is recognised that any liability to pay SCOPIC remuneration is a potential liability of the shipowner and covered by his liability insurers subject to the Club Rules and terms of entry. Accordingly, in the event of such payment of SCOPIC remuneration in excess of the Article 13 award, neither the shipowner not his liability insurers will seek to make a claim in General Average against the other interests to the common maritime adventure whether in their own name or otherwise and whether directly or by way of recourse or indemnity or in any other manner whatsoever.

10. The P&I Clubs, if consulted, and the ISU will recommend to their respective Members the incorporation of the SCOPIC clause in any LOF.

11. This is a Code of Practice which the ISU and the International Group of P&I Clubs will recommend to their Members and it is not intended that it should have any legal effect.

1.8.1999

CODE OF PRACTICE BETWEEN INTERNATIONAL GROUP OF P&I CLUBS AND LONDON PROPERTY UNDERWRITERS REGARDING THE PAYMENT OF THE FEES AND EXPENSES OF THE SCR UNDER SCOPIC.

The following understanding has been reached between the International Group of P&I Clubs (hereinafter called "Liability Underwriters") and members of the Lloyd's Underwriters' Association and the International Underwriters Association of London (hereinafter called "Property Underwriters") in relation to all future salvage services under Lloyd's Form where the Special Compensation P&I Clubs (SCOPIC) Clause has been invoked by the Contractor.

1. Whereas the primary liability for paying the fees and disbursements of the Shipowner's Casualty Representative ("SCR") rests upon the owner of the vessel, it is agreed that the owner of the vessel shall be reimbursed such fees and disbursements, subject always to the Club Rules and the terms and conditions of Club cover and the terms of any insurance policy or policies covering the salved property, in the following proportions:-

   - 50% by Liability Underwriters;

   - 50% by Property Underwriters (subject to Clause 2 hereof).

2. (a) Property Underwriters shall pay for 50% of the SCR's fees and disbursements in proportion to the salved value of the subject matter insured.

   (b) Should 50% of the SCR's fees and disbursements exceed the salved value of the ship and cargo less the Article 13 award, Liability Underwriters agree to reimburse such excess proportion of the said SCR's fees and disbursements to the owners of the vessel.

3. This is a Code of Practice which Liability Underwriters and Property Underwriters shall recommend to their Members and it is not intended that it should have any legal effect.

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PENTOW

PO BOX 1339 CAPE TOWN 8000

TELEPHONE: 251616

TELEX: 526071

CABLES: PENTOW

TOWAGE CONTRACT

DAILY HIRE

It is mutually agreed between:

PENTOW MARINE (PROPRIETARY) LIMITED of Cape Town which, for the purpose of this contract acts solely as manager and agent for
the owner of the tug " " hereinafter referred to as "Pentow" and:

party or parties of the second part hereinafter referred to as "Second Party" who warrants that the signatory hereto is authorised to make and does make this contract for and on behalf of the Owner of the object to be towed, that Pentow shall undertake, subject to the terms and conditions herein contained, the towage of —

(1) (a) DESCRIPTION OF OBJECT TO BE TOWED:

(tow)

from: (place of departure)

to: (place of destination)

via: (route)

provided that the tug and tow can always safely reach such places, lie always afloat and operate in accordance with local regulations.

Date of departure of tow:

Or

(b) Description of 'Other Services' to be rendered by Pentow:

(2) PRICE AND CONDITIONS OF PAYMENT:

per day (hereinafter called the "tug's daily rate of hire")

from and including the day

until and including the day

(for parts of a day full calendar days to be charged).
Pentow shall be paid in advance of despatching the tug, days hire representing the minimum hire period, an adjustment in conformance with the terms of this contract to be made within days from the termination of this service.

(a) All payments due to Pentow in respect of this contract shall be in the currency of

(b) If any amounts due under this contract are not paid when due then interest shall accrue at the rate of per on all such amounts until payment is received by Pentow.

(c) Any extension of time granted by Pentow to the Second Party or any indulgence shown relating to the time limits set out in this contract shall not be a waiver of Pentow's right under this contract to act upon the Second Party's failure to comply with the time limits.

(3) TOWING GEAR AND RIDING CREW:

(a) Pentow agrees to furnish the use of towing hawsers, bridles and other towing gear as deemed necessary for the towage service. The tow to be connected up in a manner that is subject to the absolute discretion of the tug master.

(b) In the event that any riding crew are placed on board the tow by Pentow, the number of such crew and their suitability for the work will be at the absolute discretion of the tug master. The riding crew shall throughout the towage service be under the orders of and subject to the exclusive control of the tug master, Pentow and its agents and shall be employed on board the tow in assisting in making fast and maintaining the towage connection during the tow. Pentow accepts no liability or responsibility whatsoever in respect of any work or activity undertaken or any advice or assistance given by the riding crew outside the scope of the employment as described herein.

(c) Pentow to supply men to form a riding crew for the tow. Second Party shall pay Pentow for this service.

(d) In the event that any personnel are placed on board the tow by the Second Party, all expenses, liability and responsibility for such personnel will be for the account of the Second Party. Such personnel shall at all times be under the absolute orders of the tug master but shall not thereby be deemed to be employees of Pentow.

(e) The riding crew are to be provided at Second Party's expense with suitable accommodation, victuals, fresh water, life-saving appliances and such other requirements as may be necessary to comply with S.O.L.A.S. Regulations for the duration of the tow voyage.

(f) Pentow may at its discretion make reasonable use of the tow's gear, power, anchors, anchor cables, radio communication and navigational equipment and all other appurtenances free of cost during and for the purposes of the towage or other services to be provided under this contract.

(4) TOW-WORTHINESS:

(a) The Second Party will arrange at their own expense to have the tow suitably trimmed, prepared and ready for towage upon the arrival of the tug. The tow will be in such a condition as will meet with the requirements of a Surveyor of or of a competent Classification Society necessary for securing a Towage Certificate in addition to the satisfaction of Pentow and/or the tug master, without Pentow thereby in any way warranting the tow-worthiness of the tow.

(b) Pentow will exercise due diligence to tender the tug at the place of departure in a seaworthy condition and in all respects ready to perform the towage, but Pentow gives no other warranties, express or implied.

(5) PLACE OF DEPARTURE:

If the tow is not offered to Pentow duly certified in terms of clause 4(a) hereof within days after the tug has reported ready to undertake this towage or service, then Pentow shall be entitled to treat this contract as terminated in which event Second Party shall become liable to pay Pentow at the tug's daily rate of hire from the day that hire commenced until the tug has returned to her station port which for the purpose of this clause shall be . If the tug does not return directly to her station port, then the time for the return voyage to that port shall be computed on the basis of the tug's normal cruising speed of knots.

(6) NECESSARY DEVIATION:

(a) If the tug during the course of this towage service puts into a port or place or seeks shelter or is detained or deviates from the agreed route because the tug master reasonably considers that the tow is not fit to be towed, or repairs or alterations to, or additional equipment for the tow are required to safeguard the venture and to permit the tow to be towed to destination, or for any other good and valid reason outside the responsibility of the tug or tug master, then Pentow shall be entitled to receive from the Second Party additional compensation at the tug's daily rate of hire for all time spent in such port or place and for all time consumed by the tug at sea in excess of the time which would have been consumed had such deviation not taken place.

(b) Any deviation howsoever or whatsoever by the tug or by Pentow not expressly permitted by the terms and conditions of this contract shall not amount to a repudiation of this contract and the contract shall remain in full force and effect notwithstanding such deviation.

(7) SALVAGE:

(a) In the event of the tow breaking away from the tug during the course of this service, the tug shall stand by and render all reasonable service in reconnecting the towline and saving the tow without making any claim for salvage. However, if circumstances arise beyond the contemplation of this towage service, the tug will render appropriate salvage assistance.

(b) If at any time Pentow or the tug master considers it necessary or advisable to seek or accept salvage services from any vessel or person on behalf of the tug or tow or both, the Second Party hereby undertakes and warrants that Pentow or its duly authorised servant or agent including the tug master have

(8) LIBERTIES:

The tug may, while en route to or in charge of the tow and without affecting the terms of this contract in any way, go to the assistance of any person, vessel or object in distress for the purpose of saving life or property, call at any port or place for fuel, repairs, supplies or other necessities, or land disabled seamen, but any time lost by the tug under such circumstances shall not entitle Pentow to claim additional compensation from Second Party except as otherwise provided in clause 6.

(9) PORT CHARGES AND EXPENSES:

All port charges, pilotages, agencies, taxes, dues, duties, canal tolls on the tug and tow and other expenses upon or in connection with the tug and tow, including all services of assisting tugs, where necessary, and any taxes, dues or stamp fees being assessed or levied upon the towage price or otherwise arising out of this contract shall be for Second Party's account.

(10) PENALTIES:

Pentow shall not be responsible for any consequences arising through any act, neglect, omission or error of the Second Party which for the purpose of this clause shall be deemed to include its managers, servants, agents, sub-contractors or assigns, in connection with any Government, Customs or Local Authority requirement, or any export or entry declarations in respect of the tow, and any penalty, fine, loss or expense incurred by Pentow, its managers, agents, tug master, crew, servants or sub-contractors by reason of such act, omission or error of Second Party shall be reimbursed by Second Party to Pentow and for any delay caused to the tug thereby, Pentow shall receive additional compensation from Second Party at the tug's daily rate of hire.

(11) LIEN FOR TOWING CHARGES:

Without prejudice to any other rights which he may have, whether in rem or in personam, Pentow, by itself or its servants or agents or otherwise shall be entitled to exercise a possessory lien upon the tow in respect of any sum howsoever or whatsoever due to Pentow under this contract and shall for the purpose of exercising such possessory lien be entitled to take and/or keep possession of the tow; provided always that the Second Party shall pay to Pentow all reasonable costs and expenses howsoever or whatsoever incurred by or on behalf of Pentow in exercising or attempting or preparing to exercise such lien and Pentow shall be entitled to receive from the Second Party the tug's daily rate of hire for any reasonable delay to the tug resulting therefrom.

(12) SUBSTITUTION OF TUGS:

(a) If the tug named above shall not be available to undertake the services herein, or if Pentow for any reason desires to substitute another tug (including two or more tugs for one or one tug for two or more), it is agreed that Pentow shall be permitted to substitute another tug or tugs of suitable power for either the whole or part of the service intended.

(b) If this contract covers more than one tug, then whenever the word "tug" is used herein, it shall be deemed to include all of the tugs engaged, unless the context otherwise requires.

(13) RISK AND INSURANCE:

(a) It is recognised by both Pentow and the Second Party that during the currency of this contract, risks of loss, damage or liability might arise involving any or all of the following:

1. The hulls of the tug and the tow including consequential loss arising therefrom such as delay or loss of use.
2. The cost of wreck removal or of moving or lighting or buoying either the tug or the tow or of preventing or abating pollution originating therefrom.
3. Loss of life and personal injury of employees, agents and sub-contractors of either party whether ashore, on board the respective vessels or tug crew acting as riding crew on board the tow, or any other persons whatsoever.
4. Cargo on board the tow.
5. Any other property of Third Parties whether fixed or floating.

(b) Pentow and the Second Party shall each carry and maintain throughout the duration of the tow voyage, with all cost thereof being for the account of each party hereto, hull insurance for the full value of the tug and the tow as well as Class I and II Protection & Indemnity Insurance or equivalent market cover and each party will procure that its insurances provide a waiver of all rights of subrogation against the other party by causing the other party to be named as an additional or co-assured. Such insurances are to be placed with Insurers and/or Clubs that are mutually acceptable to both parties.

(c) For the avoidance of doubt it is confirmed that by each party naming the other as an additional or co-insured, no claim by way of subrogation will be made by one party against the other or its employees, agents and sub-contractors by Underwriters or Insurers. In order to satisfy the requirements of the International Group of Protection and Indemnity Clubs (The Pool) it shall be expressly agreed by both parties that the tug shall be under no liability whatsoever for the wreck removal of the tow or cargo carried thereon.

(d) It is a condition of this contract that both parties produce to each other or their appointed represents-

(14) FORCE MAJEURE ETC:

(a) Pentow, its servants or agents shall not be liable in damages or howsoever to Second Party for failure to commence the towage, delay in commencement of the towage or delay during the towage for any reason whatsoever and in particular, but in no way limiting the generality thereof, Pentow, its servants or agents shall not be liable to Second Party for any loss or damage howsoever arising or resulting from or being attributable to breaking or slipping of tow ropes and/or towing gear, mechanical breakdown of the tug; shortage of bunkers due to bad weather; act of God; force majeur; perils of the sea; strikes; lockouts; labour troubles; shortage of labour or crew; enemies; hostilities; war; civil commotions; epidemic; quarantine; embargo; restraint of any government, rulers, princes or people; seizure under legal process; salvage operations or any other kind of assistance outside the scope of this towage contract undertaken by any Third Party for the benefit of the tow or the Second Party.

(b) In the event of any of the abovementioned events arising Pentow shall have the option of leaving the tow or any part thereof at the place of departure or any other port or place where the Second Party may take repossession and this shall be deemed a due fulfilment by Pentow of this contract and any outstanding sums and all extra costs of delivery at such place and any storage costs incurred by Pentow shall thereupon become due and payable by the Second Party.

(15) LAW GOVERNING THIS CONTRACT:

(a) This contract shall be construed and its performance shall be determined in accordance with the laws of England.

(b) In the event of any provision in this contract being found to be inconsistent with any applicable international convention or national laws which cannot be departed from by private contract, the provisions hereof shall, to the extent of such inconsistencies or conflict but no further, be null and void.

(c) This document is a contract for towage and shall not be construed to be a charter of the tug or be or give rise to a personal contract.

(d) Pentow and the tug, her owners, operators, managers, servants, agents or charterers shall be discharged from all liability whatsoever unless any claim for loss, damage or delay is made in writing within 14 (fourteen) days from the day of arrival of the tow at the place of destination, or termination of the services for any reason whatsoever, and action at law or suit in admiralty is brought to recover thereon within 1 (one) calendar year after the alleged loss or damage has been sustained.

(e) Should any dispute arise between Pentow and Second Party, the matter in dispute shall be referred to three persons in London, one to be appointed by each of the parties hereto and the two so chosen shall appoint a third and their decision shall be final and binding and for the purpose of enforcing any award, this agreement may be made a rule of Court. The arbitrators shall be commercial men.

(f) The provisions contained in this written document reflect all the terms and conditions of the contract between the parties to the exclusion of any other terms and conditions unless subsequently expressed in writing and thereby incorporated herein.

IN WITNESS WHEREOF THE DULY AUTHORISED PARTIES HERETO HAVE SIGNED THIS CONTRACT ON THE DATES SET FORTH BELOW AT:

SECOND PARTY: PENTOW:

DATE: DATE:

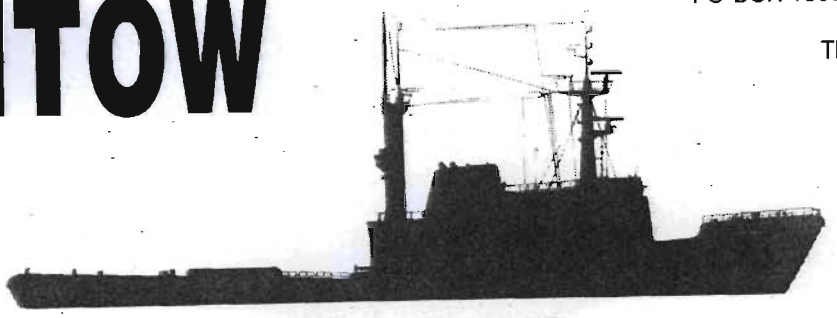
PO BOX 1339 CAPE TOWN 8000

TELEPHONE: 251616

TELEX: 526071

CABLES: PENTOW

PENTOW



TOWAGE CONTRACT

LUMP SUM

It is mutually agreed between:

PENTOW MARINE (PROPRIETARY) LIMITED of Cape Town which, for the purpose of this contract acts solely as manager and agent for the owner of the tug " " hereinafter referred to as "Pentow" and:

party or parties of the second part hereinafter referred to as "Hirer" who warrants that the signatory hereto is authorised to make and does make this contract for and on behalf of the Owner of the object to be towed, that Pentow shall undertake, subject to the terms and conditions herein contained, the towage of —

(1) (a) DESCRIPTION OF OBJECT TO BE TOWED:

(tow)

from: (place of departure)

to: (place of destination)

via: (route)

provided that the tug and tow can always safely reach such places, lie always afloat and operate in accordance with local regulations. It shall be a condition of this contract that the agreed route, or if none be stated, the customary route shall be and remain navigable by and open to the tow and Pentow shall not be under any obligation to perform or complete the towage by any other route.

Date of departure of tow:

(2) PRICE AND CONDITIONS OF PAYMENT:

(a) Hirer shall pay Pentow the sum of:

Payable as follows:

% on sailing of the tug from her station port

% at commencement of the tow voyage

% on arriving at or passing

% on arriving at or passing

and the balance on arrival at place of destination. The second and further instalment(s), insofar as they are not yet due and payable, to be on a "no cure — no pay" basis.

(b) Hirer shall prior to the departure of the tow, establish an irrevocable credit with a first class bank acceptable to Pentow for the whole contract price which shall provide for payment of the aforesaid monies to Pentow in the manner specified above.

(c) All payments due to Pentow in respect of this contract shall be in the currency of and paid by means of telegraphic transfer to such bank as Pentow may specify.

(d) If any amounts due under this contract are not paid when due then interest shall accrue at the rate of per on all such amounts until payment is received by Pentow.

(e) Any extension of time granted by Pentow to the Hirer or any indulgence shown relating to the time limits set out in this contract shall not be a waiver of Pentow's right under this contract to act upon the Hirer's failure to comply with the time limits.

(3) TOWING GEAR AND RIDING CREW:

(a) Pentow agrees to furnish the use of towing hawsers, bridles and other towing gear as deemed necessary for the towage service. The tow to be connected up in a manner that is subject to the absolute discretion of the tug master.

(b) In the event that any riding crew are placed on board the tow by Pentow, the number of such crew and their suitability for the work will be at the absolute discretion of the tug master. The riding crew shall throughout the towage service be under the orders of and subject to the exclusive control of the tug master, Pentow and its agents and shall be employed on board the tow in assisting in making fast and maintaining the towage connection during the tow. Pentow accepts no liability or responsibility whatsoever in respect of any work or activity undertaken or any advice or assistance given by the riding crew outside the scope of the employment as described herein.

(c) Pentow to supply men to form a riding crew for the tow. The Hirer shall pay Pentow for this service.

(d) In the event that any personnel are placed on board the tow by the Hirer, all expenses, liability and responsibility for such personnel will be for the account of the Hirer. Such personnel shall at all times be under the absolute orders of the tug master but shall not thereby be deemed to be employees of Pentow.

(e) The riding crew are to be provided at Hirer's expense with suitable accommodation, victuals, fresh water, life-saving appliances and such other requirements as may be necessary to comply with S.O.L.A.S. Regulations for the duration of the tow voyage.

(f) Pentow may at its discretion make reasonable use of the tow's gear, power, anchors, anchor cables, radio communication and navigational equipment and all other appurtenances free of cost during and for the purposes of the towage or other services to be provided under this contract.

(4) TOW-WORTHINESS:

(a) The Hirer will arrange at their own expense to have the tow suitably trimmed, prepared and ready for towage upon the arrival of the tug. The tow will be in such a condition as will meet with the requirements of a Surveyor of or of a competent Classification Society necessary for securing a Towage Certificate in addition to the satisfaction of Pentow and/or the tug master, without Pentow thereby in any way warranting the tow-worthiness of the tow.

(b) Pentow will exercise due diligence to tender the tug at the place of departure in a seaworthy condition and in all respects ready to perform the towage, but Pentow gives no other warranties, express or implied.

(5) TUG'S DAILY RATE OF HIRE:

In the event that the tow is unable to commence the tow voyage due to the inability of the tow to meet the conditions of Clause 4(a), or for any reason or circumstance whatsoever beyond the responsibility of the tug, then Pentow shall be entitled, after giving Hirer days notice, to treat this contract as terminated. In this event the Hirer shall pay Pentow a lump sum cancellation fee calculated at the rate of per day and pro rata for part of a day (hereinafter called the "tug's daily rate of hire") for all time consumed by the tug for the voyage from her station port to the place of departure and the computed time for the return voyage to that station port. If the tug does not return directly to her station port at then the time for the return voyage to that port shall be computed on the basis of the tug's normal cruising speed of knots via the customary route.

(6) DELAY AT PLACE OF DEPARTURE:

In the event that the Hirer does not have the tow ready, or the tow is delayed from commencing the tow voyage beyond 12 hours after the tug has served notice of readiness, the Hirer shall pay Pentow demurrage at the rate of per day and pro rata for part of a day until the actual time of departure.

(7) DELAY AT PLACE OF DESTINATION:

(a) The tow shall within 12 hours after arrival at the place of destination be accepted and taken over by the Hirer or his authorised representative.

In the event that the tug is delayed in entering the place of destination beyond the specified time, or prevented by prompt release and delivery of the tow to the Hirer for any reason whatsoever beyond the responsibility of the tug, then Hirer shall pay Pentow demurrage at the rate specified in Clause 6 until release of the tug.

(b) Should the tow not be accepted and taken over by the Hirer and delivery of the tow not have been effected within days of the tow's arrival at the place of destination, Pentow will be at liberty to instruct the tug to abandon the tow after having given 24 hours notice to the Hirer of its intention to so abandon the tow. Such abandonment shall not impose any liability upon Pentow, the tug, her master, officers, crew or agents for any loss of, or damage to the tow or damages suffered by the Hirer in any way whatsoever including the negligence of Pentow, its agents or employees.

(8) NECESSARY DEVIATION:

(a) If the tug, during the course of this towage service puts into a port or place, or seeks shelter, or is detained or deviates from the agreed route or slow steams because the tug master reasonably considers that the tow is not fit to be towed, or repairs or alterations to, or additional equipment for the tow are required to safeguard the venture and to permit the tow to be towed to destination, or it would be imprudent to do otherwise on account of severe weather, including but not limited to hurricanes or typhoons or reports thereof, or for any other good and valid reason outside the responsibility of the tug or tug master, then Pentow shall be entitled to receive from the Hirer additional compensation at the tug's daily rate of hire for all time spent in such port or place and for all time consumed by the tug at sea in excess of the time which would have been consumed had such deviation not taken place.

Additional compensation shall not begin to count until the tug has actually departed from her course for the purpose of deviation. Any assistance that the tug may render to the tow prior to such actual departure from her course shall not give rise to a claim for additional compensation.

(b) Any deviation howsoever or whatsoever by the tug or by Pentow not expressly permitted by the terms and conditions of this contract shall not amount to a repudiation of this contract and the contract shall remain in full force and effect not withstanding such deviation.

(9) SALVAGE:

(a) In the event of the tow breaking away from the tug during the course of this service, the tug shall stand by and render all reasonable service in reconnecting the towline and saving the tow without making any claim for salvage. However, if circumstances arise beyond the contemplation of this towage service, the tug will render appropriate salvage assistance.

(b) If at any time Pentow or the tug master considers it necessary or advisable to seek or accept salvage services from any vessel or person on behalf of the tug or tow or both, the Hirer hereby undertakes and warrants that Pentow or its duly authorised servant or agent including the tug master have the full actual authority of the Hirer to accept such services on behalf of the tow on any reasonable terms.

(10) LIBERTIES:

The tug may, while en route to or in charge of the tow and without affecting the terms of this contract in any way, go to the assistance of any person, vessel or object in distress for the purpose of saving life or property, call at any port or place for fuel, repairs, supplies or other necessities, or land disabled seamen.

(11) PORT CHARGES AND EXPENSES:

(a) Pentow shall arrange, provide and pay for:

All expenses incurred by the tug at the place of departure, at any intermediate port(s) or place(s) and at the place of destination including port charges, harbour dues, boatmen, pilot charges, agency, canal tolls, taxes, dues and stamp fees, custom dues, import and export dues, all normal insurance on the tug and other expenses in connection with the tug as well as any income tax due by Pentow resulting from this contract.

(b) The Hirer shall arrange, provide and pay for:

(i) All expenses incurred by the tow at the place of departure, at any intermediate port(s) or place(s) and at the place of destination including port charges, harbour dues, boatmen, pilot charges, agencies, canal tolls, taxes, dues and stamp fees, custom dues, import or export dues, and other expenses upon or in connection with, or assessed, or levied upon the tow, the contract price or this contract.

(ii) The cost of services of assisting tugs when deemed necessary by the tug master or when prescribed by Port or other Authorities.

(12) PENALTIES:

Pentow shall not be responsible for any consequences arising through any act, neglect, omission or error of the Hirer which for the purpose of this clause shall be deemed to include its managers, servants, agents, sub-contractors or assigns, in connection with any Government, Customs or Local Authority requirement, or any export or entry declarations in respect of the tow, and any penalty, fine, loss or expense incurred by Pentow, its managers, agents, tug master, crew, servants or sub-contractors by reason of such act, omission or error of the Hirer shall be reimbursed by Hirer to Pentow.

(13) LIEN FOR TOWING CHARGES:

Without prejudice to any other rights which he may have, whether in rem or in personam, Pentow, by itself or its servants or agents or otherwise shall be entitled to exercise a possessory lien upon the tow in respect of any sum howsoever or whatsoever due to Pentow under this contract and shall for the purpose of exercising such possessory lien be entitled to take and/or keep possession of the tow; provided always that the Hirer shall pay to Pentow all reasonable costs and expenses howsoever or whatsoever incurred by or on behalf of Pentow in exercising or attempting or preparing to exercise such lien and Pentow shall be entitled to receive from the Hirer the tug's daily rate of hire as specified in Clause 5 hereof for any reasonable delay to the tug resulting therefrom.

(14) CLAIM AND SUIT:

Pentow and the tug, her owners, operators, managers, servants, agents or charterers shall be discharged from all liability whatsoever unless any notice of claim for loss, damage or delay is made in writing within 14 (fourteen) days from the day of arrival of the tow at the place of destination, or termination of the services for any reason whatsoever. Thereafter such claim shall be prescribed unless suit has been brought within 12 months from the date the cause of action is alleged to have arisen.

(15) GENERAL:

(a) This contract is subject to the general conditions printed overleaf and which are made an integral part hereof.

(b) In the event of any provision in this contract being found to be inconsistent with any applicable international convention or national law which cannot be departed from by private contract, the provisions hereof shall to the extent of such inconsistencies or conflict but no further, be null and void.

(c) This document is a contract for towage and shall not be construed to be a charter of the tug or be or give rise to a personal contract.

(d) The provisions contained in this written document reflect all the terms and conditions of the contract between the parties to the exclusion of any other terms and conditions unless subsequently expressed in writing and thereby incorporated herein.

IN WITNESS WHEREOF THIS CONTRACT HAS BEEN EXECUTED

AT ON THIS DAY OF 19

THE HIRER PENTOW

GENERAL CONDITIONS

1) The agreement between the Tugowner and the Hirer is and shall at all times be ject to and include each and all of the conditions hereinafter set out.

For the purpose of these conditions:-

(i) "towing" is any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of the Hirer's vessel, and the expressions "to tow", "being towed" and "towage" shall be defined likewise.

(ii) "vessel" shall include any vessel, craft or object of whatsoever nature (whether or not coming within the usual meaning of the word "vessel") which the Tugowner agrees to tow or to which the Tugowner agrees at the request, express or implied, of the Hirer, to render any service of whatsoever nature other than towing.

(iii) "tender" shall include any vessel, craft or object of whatsoever nature which is not a tug but which is provided by the Tugowner for the performance of any towage or other service.

(iv) The expression "whilst towing" shall cover the period commencing when the tug or tender is in a position to receive orders direct from the Hirer's vessel to commence pushing, holding, moving, escorting, or guiding the vessel or to pick up ropes or lines, or when the tow rope has been passed to or by the tug or tender, whichever is the sooner, and ending when the final orders from the Hirer's vessel to cease pushing, holding, moving, escorting or guiding the vessel or to cast off ropes or lines has been carried out, or the tow rope has been finally slipped, whichever is the later, and the tug or tender is safely clear of the vessel.

(v) Any service of whatsoever nature to be performed by the Tugowner other than towing shall be deemed to cover the period commencing when the tug or tender is placed physically at the disposal of the Hirer at the place designated by the Hirer, or, if such be at a vessel, when the tug or tender is in a position to receive and forthwith carry out orders to come alongside and shall continue until the employment for which the tug or tender has been engaged is ended. If the service is to be ended at or off a vessel the period of service shall end when the tug or tender is safely clear of the vessel or, if it is to be ended elsewhere, then when any persons, baggage, goods, mails, specie, ship or engine parts or gear or articles of whatsoever description have been landed or discharged from the tug or tender and/or the service for which the tug or tender has been required is ended.

(vi) The word "tug" shall include "tugs", the word "tender" shall include "tenders", the word "vessel" shall include "vessels", the word "Tugowner" shall include "Tugowners", and the word "Hirer" shall include "Hirers".

(vii) The expression "Tugowner" shall include any person or body (other than the Hirer or the owner of the vessel on whose behalf the Hirer contracts as provided in Clause 2 hereof) who is a party to this agreement whether or not he in fact owns any tug or tender, and the expression "other Tugowner" contained in Clause 5 hereof shall be contrued likewise.

If at the time of making this agreement or of performing the towage or of rendering ny service other than towing at the request, express or implied, of the Hirer, the Hirer is ot the owner of the vessel referred to herein as "the Hirer' vessel", the Hirer expressly presents that he is authorised to make and does make this agreement for an on behalf the owner of the said vessel subject to each and all of these conditions and agrees at both the Hirer and the Owner are bound jointly and severally by these conditions.

Whilst towing or whilst at the request, express or implied, of the Hirer, rendering ny service other than towing, the master and crew of the tug or tender shall be deemed be the servants of the Hirer and under the control of the Hirer and/or his servants nd/or his agents, and anyone on board the Hirer's vessel who may be employed nd/or paid by the Tugowner shall likewise be deemed to be the servant of the Hirer and ne Hirer shall accordingly be vicariously liable for any act or omission by any such erson so deemed to be the servant of the Hirer.

Whilst towing, or whilst at the request, either express or implied of the Hirer, ndering any service of whatsoever nature other than towing:—

) The Tugowner shall not be responsible for or be liable

(i) for damage of any description done by or to the tug or tender, or done by or to the Hirer's vessel or done by or to any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or the tug or tender or by or to any other object or property;
or

(ii) for the loss of the tug or tender or the Hirer's vessel or of any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or the tug or tender or any other object or property;
or

(iii) for any personal injury or loss of life howsoever and wheresoever caused including personal injury or loss of life of the master and/or crew of and/or any person on board the tug or tender;
or

(iv) for any claim by a person not a party to this agreement for loss or damage of any description whatsoever,

arising from any cause, including (without prejudice to the generality of the foregoing) negligence at any time of the Tugowner's servants or agents, un-seaworthiness, unfitness or breakdown of the tug or tender, its machinery, boilers, towing gear, equipment, lines, ropes or hawsers, lack of fuel, stores, speed or otherwise, and

(b) The Hirer shall be responsible for, pay for and indemnify the Tugowner against and in respect of any loss or damage and any claims of whatsoever nature or howsoever arising or caused whether covered by the provisions of Clause 4(a) hereof or not (including any arising from or caused by the negligence of the Tugowner or his servants or agents) including the loss of or damage to the tug or tender, provided that the Hirer shall not be liable to the Tugowner for or in respect of loss, damage or claims which the Hirer proves (the burden of proof being on the Hirer) to have been solely caused by the failure of the Tugowner, and due to the actual fault or privity of the Tugowner, to make his tug or tender seaworthy for the towage or service other than towage.

Provided however, notwithstanding anything hereinbefore contained, the Tugowner shall under no circumstances be responsible for or be liable for any loss or damage caused or contributed to, by or arising out of any delay or detention of the Hirer's vessel or of the cargo on board or being loaded on board or intended to be loaded on board the Hirer's vessel or of any other object or property or of any person, or any consequences thereof, whether or not the same shall be caused or arise whilst towing or whilst at the request, either express or implied of the Hirer, rendering any service of whatsoever nature other than towing or at any other time whether before during or after the making of this agreement.

5. The Tugowner shall at any time be entitled to substitute one or more tugs or tenders for any other tug or tender or tugs or tenders. The Tugowner shall at any time (whether before or after the making of this agreement between him and the Hirer) be entitled to contract with any other Tugowner (hereinafter referred to as "the other Tugowner") to hire the other Tugowner's tug or tender and in any such event it is hereby agreed that the Tugowner is acting (or is deemed to have acted) as the agent for the Hirer, notwithstanding that the Tugowner may in addition, if authorised whether expressly or impliedly by or on behalf of the other Tugowner, act as agent for the other Tugowner at any time and for any purpose including the making of any agreement with the Hirer. In any event should the Tugowner as agent for the Hirer contract with the other Tugowner for any purpose as aforesaid it is hereby agreed that such contract is and shall at all times be subject to the provisions of these conditions so that the other Tugowner is bound by the same and may as a principal sue the Hirer thereon and shall have the full benefit of these conditions in every respect expressed or implied therein.

6. Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights which the Tugowner may have against the Hirer including, but not limited to, any rights which the Tugowner or his servants or agents may have to claim salvage remuneration or special compensation for any extraordinary services rendered to vessels or anything aboard the vessels by any tug or tender. Furthermore, nothing contained in these conditions shall limit, prejudice or preclude in any way any right which the Tugowner may have to limit his liability.

7. The Tugowner will not in any event be responsible or liable for the consequences of war, riots, civil commotions, acts of terrorism or sabotage, strikes, lockouts, disputes, stoppages or labour disturbances (whether he be a party thereto or not) or anything done in contemplation or furtherance thereof or delays of any description, howsoever caused or arising, including by the negligence of the Tugowner or his servants or agents.

8. The Hirer of the tug or tender engaged subject to these conditions undertakes not to take or cause to be taken any proceedings against any servant or agent of the Tugowner or other Tugowner whether or not the tug or tender be substituted or hired or the contract or any part thereof has been sublet to the owner of the tug or tender, in respect of any negligence or breach of duty or other wrongful act on the part of such servant or agent which, but for this present provision, it would be competent for the Hirer so to do and the owners of such tug or tender shall hold this undertaking for the benefit of their servants and agents.

9. Those who make use of the Tugowners' services therby accept these conditions with which they are deemed to be fully conversant.

This agreement shall be subject to the Law of the Republic of South Africa. The settlement of all disputes arising from this agreement shall, to the exclusion of any other judge, be submitted to the Supreme court at Cape Town subject to the right of appeal against the decision of the said Court, in accordance with the provisions of the Law of the Republic of South Africa.

RECOMMENDED
INTERNATIONAL OCEAN TOWAGE AGREEMENT (DAILY HIRE)
CODE NAME: "TOWHIRE"

PA

1. Date and place of Agreement

2. Tugowner/place of business

3. Hirer/place of business

4. Tow (name and type)

5. Gross tonnage/displacement tonnage

6. Maximum length/maximum breadth & towing draught (fore and aft)

7. Flag and place of registry

8. Registered owners

9. Classification society

10. P. & I. liability insurers

11. General condition of tow

12. Particulars of cargo and/or ballast and/or other property on board the tow

13. Tug (name and type)

14. Flag and place of registry

15. Gross tonnage

16. Classification Society

17. P. & I. liability insurers

18. Certificated bollard pull (if any)

19. Indicated horse power

20. Estimated daily average bunker oil consumption in good weather and smooth water

(a) at full towing power with tow

(b) at full sea speed without tow

21. Winches and main towing gear

(continu

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by authority of The Baltic and International Maritime Council (BIMCO), Copenhagen

22. Nature of service(s) (Cl. 1)

23. Place of departure (Cl. 7)	24. Date of departure	25. Place of destination (Cl. 8)

26. Contemplated route (Cl. 17)

27. Notices (state number of hours/days notice of arrival of tug at place of departure and to whom to be given)	28. Notices (state number of hours/days notice of arrival of tug and tow at place of destination and to whom to be given
29. Riding crew to be provided by (also state number to be provided) (Cl. 9)	30. If riding crew provided by Tugowner state amount per man per day payable by Hirer (Cl. 9
31. Mobilisation payment (optional, only to be filled in if expressly agreed) (Cl. 2(e))	32. Demobilisation payment (optional, only to be filled in if expressly agreed) (Cl. 2(f)
33. Daily rate of hire and advance payment period(s) (Cl. 2(a))	34. Payment of hire and /or riding crew (if any) (state currency, mode of payment place of payment and bank account) (Cl. 2(b)
35. Minimum period of hire, if any agreed	36. Commencement of period of hire (Cl. 2(a))
37. Termination of period of hire (Cl. 2(a))	38. Cancelling date, if any agreed (Cl. 16(e))
39. Interest rate (%) per annum to run from (state number of days) after any sum is due (Cl. 5)	40. Security (state sum, by whom to be provided and when) (optional, only to be filled in if expressly agreed) (Cl.

41. Cost of bunker oil and lubricating oils (state whether included or excluded from daily rate of hire; if included state type of bunkers and cost per metric tonne (per litre for lubricating oils) (Cl. 2(c

42. Cancellation fee (Cl. 16)	43. Numbers of additional clauses, covering special provisions, if agreed

It is mutually agreed between the party mentioned in Box 2 (hereinafter called "the Tugowner") and the party mentioned in Box 3 (hereinafter called "the Hirer") that the Tu owner shall, subject to the terms and conditions of this Agreement which consists of PART I including additional clauses, if any agreed and stated in Box 43, and PART II, u his best endeavours to perform the towage or other service(s) as set out herein. In the event of a conflict of terms and conditions, the provisions of PART I and any addition clauses, if agreed, shall prevail over those of PART II to the extent of such conflict but no further.

Signature (Tugowner)	Signature (Hirer)

PART II
"Towhire" International Ocean Towage Agreement (Daily Hire)

The Tow

"The Tow" shall include any vessel, craft or object of whatsoever nature including anything carried thereon as described in PART I to which the Tugowner agrees to render the service(s) as set out in Box 22.

Price and Conditions of Payment

(a) The Hirer shall pay the Tugowner the amount of hire set out in Box 33 per day or pro rata for part of a day (hereinafter called the "Tug's Daily Rate of Hire") from the time stated in Box 36 until the time stated in Box 37.

(b) (i) The Tug's Daily Rate of Hire shall be payable in advance as set out in Box 33; all hire or equivalent compensation hereunder shall be fully and irrevocably earned and non-returnable on a daily basis.

(ii) In the event of the Tug being lost, hire shall cease as of the date of the loss. If the date of the loss cannot be ascertained, then, in addition to any other sums which may be due, half the rate of hire shall be paid, calculated from the date the Tug was last reported until the calculated arrival of the Tug at her destination provided such period does not exceed 14 days.

(iii) In the event of the Tow being lost, hire shall continue until the Tug arrives at its destination or such nearer place, at the Tugowner's discretion, provided such period does not exceed 14 days.

(c) Within 14 days of the termination of the services hereunder by the Tugowner, the Tugowner will if necessary adjust in conformance with the terms of this Agreement hire paid in advance. Any hire paid by the Hirer but not earned under this Agreement and which is refundable thereunder shall be refunded to the Hirer within 14 days thereafter.

(d) (i) In the event that the Daily Rate of Hire includes the cost of bunkers and the average price per metric tonne of bunkers actually paid by the Tugowner differs from the amounts specified in Box 41 then the Hirer or the Tugowner, as the case may be, shall pay to the other the difference per metric tonne for every metric tonne consumed during the voyage. The average price specified above shall be the average of the prices per metric tonne actually paid by the Tugowner on the basis of quantities purchased at the last bunkering port prior to departure on the voyage, any bunkering port during the voyage, and the first bunkering port after completion of the voyage. The log book of the Tug shall be prima facie evidence of the quantity of bunkers consumed.

(ii) In the event that the Daily Rate of Hire excludes the cost of bunkers then the Hirer shall pay to the Tugowner the cost of the bunkers and lubricants consumed by the Tug in fulfilling the terms of this Agreement. The Tug shall be delivered with sufficient bunkers and lubricants on board for the tow to the first bunkering port (if any) or destination and be re-delivered with not less than sufficient bunkers to reach the next bunkering stage en route to the Tug's next port of call. The Hirer upon delivery and the Tugowner upon re-delivery shall pay for the bunkers and lubricants on board at the current contract price at the time at the port of delivery and re-delivery or at the nearest bunkering port.

*) (e) If agreed, the Hirer shall pay the sum set out in Box 31 by way of a mobilisation charge. This sum shall be paid on or before the commencement of the Tug's voyage to the place of departure, and shall be non-returnable, Tug and/or Tow lost or not lost.

*) (f) If agreed, the Hirer shall pay the sum set out in Box 32 by way of a demobilisation charge. This amount shall be paid tow lost or not lost, on or before the termination by the Tugowner of his services under this Agreement.

(g) The Hire and any other sums payable to the Tugowner under this Agreement (or any part thereof) shall be due, payable and paid without any discount, deduction, set-off, lien, claim or counterclaim.

*) *Sub-clauses (e) and (f) are optional and shall only apply if agreed and stated in Boxes 31 and 32, respectively.*

Additional Charges and Extra Costs

(a) The Hirer shall appoint his agents at the place of departure and place of destination and ports of call or refuge and shall provide such agents with adequate funds as required.

(b) The Hirer shall bear and pay as and when they fall due:-

(i) All port expenses, pilotage charges, harbour and canal dues and all other expenses of a similar nature levied upon or payable in respect of both the Tug and the Tow.

(ii) All taxes, (other than those normally payable by the Tugowner in the country where he has his principal place of business and in the country where the Tug is registered) stamp duties or other levies payable in respect of or in connection with this Agreement or the payments of hire or other sums payable under this Agreement or the services to be performed under or in pursuance of this Agreement, any Customs or Excise duties and any costs, dues or expenses payable in respect of any necessary permits or licences.

(iii) The cost of the services of any assisting tugs when deemed necessary by the Tugmaster or prescribed by Port or other Authorities.

(iv) All costs and expenses necessary for the preparation of the Tow for towing (including such costs or expenses as those of raising the anchor of the Tow or tending or casting off any moorings of the Tow).

(v) The cost of insurance of the Tow shall be the sole responsibility of the Hirer to provide.

(c) All taxes, charges, costs, and expenses payable by the Hirer shall be paid by the Hirer direct to those entitled to them. If, however, any such tax, charge, cost or expense is in fact paid by or on behalf of the Tugowner (notwithstanding that the Tugowner shall under no circumstances be under any obligation to make such payments on behalf of the Hirer) the Hirer shall reimburse the Tugowner on the basis of the actual cost to the Tugowner upon presentation of invoice.

War Risk Escalation Clause

The rate of hire is based and assessed on all war risk insurance costs applicable to the Tugowner in respect of the contemplated voyage in effect on the date of this Agreement.

In the event of any subsequent increase or decrease in the actual costs due to the Tugowner fulfilling his obligations under this Agreement, the Hirer or the Tugowner, as the case may be, shall reimburse to the other the amount of any increase or decrease in the war risk, confiscation, deprivation or trapping insurance costs.

5. Interest

If any amounts due under this Agreement are not paid when due, then interest shall accrue and shall be paid in accordance with the provisions of Box 39, on all such amounts until payment is received by the Tugowner.

6. Security

The Hirer undertakes to provide, if required by the Tugowner, security to the satisfaction of the Tugowner in the form and in the sum, at the place and at the time indicated in Box 40 as a guarantee for due performance of the Agreement. Such security shall be returned to the guarantor when the Hirer's financial obligations under this Agreement have been met in full.

(Optional, only applicable if Box 40 filled in).

7. Place of Departure

(a) The Tow shall be tendered to the Tugowner at the place of departure stated in Box 23.

(b) The precise place of departure shall always be safe and accessible for the Tug to enter, to operate in and for the Tug and Tow to leave and shall be a place where such Tug is permitted to commence the towage in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner which shall not be unreasonably withheld.

8. Place of Destination

(a) The Tow shall be accepted forthwith and taken over by the Hirer or his duly authorised representative at the place of destination stated in Box 25.

(b) The precise place of destination shall always be safe and accessible for the Tug and Tow to enter, to operate in, and for the Tug to leave and shall be a place where such Tug is permitted to redeliver the Tow in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner, which approval shall not be unreasonably withheld.

9. Riding Crew

(a) In the event that the Tugowner provides a Riding Crew for the Tow, such crew and their suitability for the work shall be in the discretion of the Tugowner. All expenses for such personnel shall be for the account of the Tugowner.

(b) In the event that any personnel are placed on board the Tow by the Hirer all expenses for such personnel will be for the account of the Hirer and such personnel shall be at all times under the orders of the Master of the Tug, but shall not be deemed to be the servants or agents of the Tugowner

(c) The Riding Crew shall be provided at the Hirer's sole expense with suitable accomodation, food, fresh water, life saving appliances and all other requirements to comply as necessary with the law and regulations of the law of the Flag of the Tug and/or Tow and of the States through the territorial waters of which the Tug will pass or enter. It is a requirement that members of the Riding Crew provided by the Hirer shall be able to speak and understand the English language or any other mutual language.

10. Towing Gear and Use of Tow's Gear

(a) The Tugowner agrees to provide free of cost to the Hirer all towing hawsers, bridles and other towing gear normally carried on board the Tug, for the purpose of the towage or other services to be provided under this Agreement. The Tow shall be connected up in a manner within the discretion of the Tugowner

(b) The Tugowner may make reasonable use at his discretion of the Tow's gear, power, anchors, anchor cables, radio, communication and navigational equipment and all other appurtenances free of cost during and for the purposes of the towage or other services to be provided under this Agreement.

11. Permits and Certification

(a) The Hirer shall arrange at his own cost and provide to the Tugowner all necessary licenses, authorisations and permits required by the Tug and Tow to undertake and complete the contractual voyage together with all necessary certification for the Tow to enter or leave all or any ports of call or refuge on the contemplated voyage.

(b) Any loss or expense incurred by the Tugowner by reason of the Hirer's failure to comply with this Clause shall be reimbursed by the Hirer to the Tugowner and during any delay caused thereby the Tug shall remain on hire.

12. Tow-worthiness of the Tow

(a) The Hirer shall exercise due diligence to ensure that the Tow shall, at the commencement of the towage, be in all respects fit to be towed from the place of departure to the place of destination.

(b) The Hirer undertakes that the Tow will be suitably trimmed and prepared and ready to be towed at the time when the Tug arrives at the place of departure and fitted and equipped with such shapes, signals, navigational and other lights of a type required for the towage.

(c) The Hirer shall supply to the Tugowner or the Tugmaster, on the arrival of the Tug at the place of departure an unconditional certificate of tow-worthiness for the Tow issued by a recognised firm of Marine Surveyors or Survey Organisation, provided always that the Tugowner shall not be under any obligation to perform the towage until in his discretion he is satisfied that the Tow is in all respects trimmed, prepared, fit and ready for towage but the Tugowner shall not unreasonably withhold his approval

(d) No inspection of the Tow by the Tugowner shall constitute approval of the Tow's condition or be deemed a waiver of the foregoing undertakings given by the Hirer.

13. Seaworthiness of the Tug

The Tugowner will exercise due diligence to tender the Tug at the place of departure in a seaworthy condition and in all respects ready to perform the towage, but the Tugowner gives no other warranties, express or implied.

PART II
"Towhire" International Ocean Towage Agreement (Daily Hire)

ititution of Tugs

Tugowner shall at all times have the right to substitute any tug or tugs for other tug or tugs of adequate power (including two or more tugs for one, ne tug for two or more) at any time whether before or after the com- cement of the towage or other services and shall be at liberty to employ or tugs belonging to other tugowners for the whole or part of the tow- or other service contemplated under this Agreement. Provided howev- hat the main particulars of the substituted tug or tugs shall be subject e Hirer's prior approval, but such approval shall not be unreasonably held.

age

Should the Tow break away from the Tug during the course of the towa- ervice, the Tug shall render all reasonable services to re-connect the ine and fulfill this Agreement without making any claim for salvage.

If at any time the Tugowner or the Tugmaster considers it necessary or sable to seek or accept salvage services from any vessel or person on alf of the Tug or Tow, or both, the Hirer hereby undertakes and warrants the Tugowner or his duly authorised servant or agent including the Tug- ter have the full actual authority of the Hirer to accept such services on alf of the Tow on any reasonable terms.

cellation and Withdrawal

At any time prior to the departure of the Tow from the place of departure Hirer may cancel this Agreement upon payment of the cancellation fee out in Box 42. If cancellation takes place whilst the Tug is en route to the e of departure or after the Tug has arrived at or off the place of depart- then in addition to the said cancellation fee the Hirer shall pay any ad- nal amounts due under this Agreement.

In the event that the towage operation is terminated after departure from place of departure, but before the Tow arrives at the place of destination out fault on the part of the Tugowner, his servants or agents, the Tugow- hall be entitled to be paid, and if already paid to retain all sums payable rding to Boxes 31/34 and any other amounts due under this Agree- t. The above amounts are in addition to any damages the Tugowner may ntitled to claim for breach of this Agreement.

The Tugowner may without prejudice to any other remedies he may ha- eave the Tow in a place where the Hirer may take repossession of it and ntitled to payment of cancellation fee or hire, whichever is the greater, all other payments due under this Agreement, upon any one or more of following grounds:

(i) If there is any delay or delays (other than delay caused by the Tug) at the place of departure exceeding in aggregate 21 running days.

(ii) If there is any delay or delays (other than a delay caused by the Tug) at any port or place of call or refuge exceeding in aggregate 21 running days.

(iii) If the security as may be required according to Box 40 is not given within 7 running days of the Tugowner's request to provide security.

(iv) If the Hirer has not accepted the Tow within 7 running days of arrival at the place of destination.

(v) If any amount payable under this Agreement has not been paid with- in 7 running days of the date such sums are due.

Before exercising his option of withdrawing from this Agreement as esaid, the Tugowner shall if practicable give the Hirer 48 hours notice turdays, Sundays and public Holidays excluded) of his intention so to draw.

Should the Tug not be ready to commence the towage at the latest at night on the date, if any, indicated in Box 38, the Hirer shall have the op- of cancelling this Agreement and shall be entitled to claim dameges for ntion if due to the wilful default of the Tugowner. Should the Tugowner cipate that the Tug will not be ready, he shall notify the Hirer thereof by x, cable or otherwise in writing without delay stating the expected date Tug's readiness and ask whether the Hirer will exercise his option to l. Such option to cancel must be exercised within 48 hours after the ipt of the Tugowner's notice, otherwise the third day after the date stat- n the Tugowner's notice shall be deemed to be the new agreed date to mence the towage in accordance with this Agreement.

ssary Deviation

f the Tug during the course of the towage or other service under this ement puts into a port or place or seeks shelter or is detained or devia- rom the original route as set out in Box 26 because either the Tugowner ugmaster reasonably consider

(i) that the Tow is not fit to be towed or

(ii) the Tow is incapable of being towed at the original speed contem- plated by the Tugowner or

(iii) the towing connection requires rearrangement, or

(iv) repairs or alterations to or additional equipment for the Tow are re- quired to safeguard the venture and enable the Tow to be towed to de- stination, or

(v) it would not be prudent to do otherwise on account of weather con- ditions actual or forecast, or

use of any other good and valid reason outside the control of the Tug- r or Tugmaster, or because of any delay caused by or at the request Hirer, this Agreement shall remain in full force and effect.

he Tug shall at all times be at liberty to go to the assistance of any ves- distress for the purpose of saving life or property or to call at any port ce for bunkers, repairs, supplies, or any other necessaries or to land iled seamen, but if towing the Tug shall leave the Tow in a safe place during such period this Agreement shall remain in full force and effect ny period so spent by the Tug in fulfilling or attempting to fulfil the pur- permitted by this sub-paragraph other than for normal replenishment kers or fresh water or supplies shall not entitle the Tugowner to recov- m the Hirer the Daily Rate of Hire for the said period

he Tug shall have liberty to comply with any orders or directions as to ture, arrival, routes, ports of call, stoppages, destination, delivery, re- on or otherwise howsoever given by the Government of the Nation un- hose flag the Tug or Tow sails or any department thereof or any per- cting or purporting to act with the authority for such Government or any department thereof or by the committee or person having under the terms of the War Risks Insurance on the Tug the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done the same shall not be deemed a deviation and delivery in accordance with such orders or directions shall be a fulfilment of this Agreement and hire and/or all other sums shall be paid to the Tugowner accordingly.

(d) Any deviation howsoever or whatsoever by the Tug or by the Tugowner not expressly permitted by the terms and conditions of this Agreement shall not amount to a repudiation of this Agreement and the Agreement shall remain in full force and effect notwithstanding such deviation, save that no hire shall be paid for the period of such deviation, and shall be without prejudice to any other remedies which the Hirer may have against the Tugowner.

18. Liabilities

1. (a) The Tugowner will indemnify the Hirer in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death occurring during the towage or other service hereunder to any of the following persons:

(i) The Master and members of the crew of the Tug and any other servant or agent of the Tugowner;

(ii) The members of the Riding Crew provided by the Tugowner or any other person whom the Tugowner provides on board the Tow;

(iii) Any other person on board the Tug who is not a servant or agent of the Hirer or otherwise on board on behalf of or at the request of the Hirer.

(b) The Hirer will indemnify the Tugowner in respect of any liability adjudged due or claim reasonably compromised arising from injury or death occurring during the towage or other service hereunder to any of the following persons:

(i) The Master and members of the crew of the Tow and any other servant or agents of the Hirer;

(ii) Any other person on board the Tow for whatever purpose except the members of the Riding Crew or any other persons whom the Tugowner provides on board the Tow pursuant to their obligations under this Agreement.

2. (a) The following shall be for the sole account of the Tugowner without any recourse to the Hirer, his servants, or agents, whether or not the same is due to breach of contract, negligence or any other fault on the part of the Hirer, his servants or agents:

(i) Loss or damage of whatsoever nature, howsoever caused to or sustained by the Tug or any property on board the Tug.

(ii) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tug or obstruction created by the presence of the Tug.

(iii) Loss or damage of whatsoever nature suffered by the Tugowner or by third parties in consequence of the loss or damage referred to in (i) and (ii) above.

(iv) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tug or in respect of preventing or abating pollution originating from the Tug.

The Tugowner will indemnify the Hirer in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage. The Tugowner shall not in any circumstances be liable for any loss or damage suffered by the Hirer or caused to or sustained by the Tow in consequence of loss or damage howsoever caused to or sustained by the Tug or any property on board the Tug.

(b) The following shall be for the sole account of the Hirer without any recourse to the Tugowner, his servants or agents, whether or not the same is due to breech of contract, negligence or any fault on the part of the Tugowner, his servants or agents:

(i) Loss or damage of whatsoever nature, howsoever caused to or sustained by the Tow.

(ii) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tow or obstruction created by the presence of the Tow.

(iii) Loss or damage of whatsoever nature suffered by the Hirer or by third parties in consequence of the loss or damage referred to in (i) and (ii) above.

(iv) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tow or in respect of preventing or abating pollution originating from the Tow.

The Hirer will indemnify the Tugowner in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage but the Hirer shall not in any circumstances be liable for any loss or damage suffered by the Tugowner or caused to or sustained by the Tug in consequence of loss or damage, howsoever caused to or sustained by the Tow.

3. Save for the provisions of Clauses 11, 12, 13 and 16 neither the Tugowner nor the Hirer shall be liable to the other party for loss of profit, loss of use, loss of production or any other indirect or consequential damage for any reason whatsoever

4. Notwithstanding any provisions of this Agreement to the contrary, the Tugowner shall have the benefit of all limitations of, and exemptions from, liability accorded to the Owners or Chartered Owners of Vessels by any applicable statute or rule of law for the time being in force and the same benefits are to apply regardless of the form of signatures given to this Agreement.

19. Himalaya Clause

All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Agreement or by any applicable statute rule or regulation for the benefit of the Tugowner or Hirer shall also apply to and be for the benefit of demise charterers, sub-contractors, operators, master, officers and crew of the Tug or Tow and to and be for the benefit of all bodies corporate parent of, subsidiary to, affiliated with or under the same management as either of them, as well as all directors, officers, servants and agents of the same and to and be for the benefit of all parties performing services within the scope of this Agreement for or on behalf of the Tug or Tugowner or Hirer as servants, agents and sub-contractors of such parties. The Tugowner or Hirer shall be deemed to

be acting as agent or trustee of and for the benefit of all such persons, entities and vessels set forth above but only for the limited purpose of contracting for the extension of such benefits to such persons, bodies and vessels.

20. War and Other Difficulties

(a) If owing to any Hostilities; War or Civil War; Acts of Terrorism; Acts of Public Enemies; Arrest or Restraint of Princes, Rulers or People, Insurrections; Riots or Civil Commotions; Disturbances; Acts of God; Epidemics; Quarantine; Ice; Labour Troubles, Labour Obstructions; Strikes, Lock-outs; Embargoes; Seizure of the Tow under Legal Process or for any other cause outside the control of the Tugowner it would be impossible or unsafe or commercially impracticable for the Tug or Tow or both to leave or attempt to leave the place of departure or any port or place of call or refuge or to reach or enter or attempt to reach or enter the port or place of destination of the Tow and there deliver the Tow and leave again, all of which safely and without unreasonable delay, the Tug may leave the Tow or any part thereof at the place of departure or any other port or place where the Hirer may take repossession and this shall be deemed a due fulfilment by the Tugowner of this Agreement and any outstanding sums and all extra costs of delivery at such place and any storage costs incurred by the Tugowner shall thereupon become due and payable by the Hirer

(b) If the performance of this Agreement or the voyage to the place of departure would in the ordinary course of events require the Tug and/or Tow to pass through or near to an area where after this Agreement is made there is or there appears to be danger of such area being blocked or passage through being restricted or made hazardous by reason of War, Acts of Terrorism, Trapping of Vessels, Civil War, Acts of Public Enemies, Arrest or Restraint of Princes, Rulers or People, Insurrection, Riots or Civil Commotions or Disturbances or other dangers of a similar nature then:

(i) If the Tug has not entered such area en route to the place of departure, or having entered has become trapped therein, for a period of more than 14 days either party hereto shall be entitled to terminate this Agreement by telex, cable or other written notice in which event, save for liabilities already accrued neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payments already made and all amounts due shall remain payable.

(ii) If the Tug and Tow whilst en route to the place of destination have not entered such area during the course of the towage or other service the Hirer shall continue to pay the Daily Rate of Hire for every day by which the towage is prolonged by reason of waiting for such area to become clear and/or safe and/or by reason of proceeding by a longer route to avoid or pass such area in safety.

(iii) If the Tug and Tow whilst en route to the place of destination have become trapped in such area during the course of the towage or other service either party shall, after a period of 14 days from the commencement of such trapping, be entitled to terminate this Agreement by telex, cable or other written notice, in which event, save for liabilities already accrued, neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payment already made and all amounts due shall remain payable.

21. Lien

Without prejudice to any other rights which he may have, whether in rem or in personam, the Tugowner, by himself or his servants or agents or otherwise shall be entitled to exercise a possessory lien upon the Tow in respect of any sum howsoever or whatsoever due to the Tugowner under this Agreement and shall for the purpose of exercising such possessory lien be entitled to take and/or keep possession of the Tow; provided always that the Hirer shall pay to the Tugowner all reasonable costs and expenses howsoever or whatsoever incurred by or on behalf of the Tugowner in exercising or attempting or preparing to exercise such lien and the Tugowner shall be entitled to receive from the Hirer the Tug's Daily Rate of Hire throughout any reasonable delay to the Tug resulting therefrom.

22. Warranty of Authority

If at the time of making this Agreement or providing any service under this Agreement other than towing at the request, express or implied, of the Hirer the Hirer is not the Owner of the Tow referred to in Box 4, the Hirer expressly represents that he is authorised to make and does make this Agreement for and on behalf of the Owner of the said Tow subject to each and all of these conditions and agrees that both the Hirer and the Owner of the Tow are bound jointly and severally by these conditions.

23. General

(a) If any one or more of the terms, conditions or provisions in this Agreement or any part thereof shall be held to be invalid, void or of no effect for any reason whatsoever, the same shall not affect the validity of the remaining terms, conditions or provisions which shall remain and subsist in full force and effect.

(b) For the purpose of this Agreement unless the context otherwise requires the singular shall include the plural and vice versa.

(c) Any extension of time granted by the Tugowner to the Hirer or any indulgence shown relating to the time limits set out in this Agreement shall not be a waiver of the Tugowner's right under this Agreement to act upon the Hirer's failure to comply with the time limits.

24. Time for Suit

Save for the indemnity provisions under Clause 18 of this Agreement, any claim which may arise out of or in connection with this Agreement or of any towage or other service to be performed hereunder shall be notified by telex, cable or otherwise in writing within 6 months of delivery of the Tow or of the termination of the towage or other service for any reason whatever, and any suit shall be brought within one year of the time when the cause of action first arose. If either of these conditions is not complied with the claim and all rights whatsoever and howsoever shall be absolutely barred and extinguished.

25. Law and Jurisdiction

This Agreement shall be construed in accordance with and governed by English law. Any dispute or difference which may arise out of or in connection with this Agreement or the services to be performed hereunder shall be referred to the High Court of Justice in London.

No suit shall be brought in any other state or jurisdiction except that either party shall have the option to bring proceedings in rem to obtain conservative seizure or other similar remedy against any vessel or property owned by the other party in any state or jurisdiction where such vessel or property may be found.

RECOMMENDED
INTERNATIONAL OCEAN TOWAGE AGREEMENT (LUMP SUM)
CODE NAME: "TOWCON"

1. Date and place of Agreement

2. Tugowner/place of business

3. Hirer/place of business

4. Tow (name and type)

5. Gross tonnage/displacement tonnage

6. Maximum length/maximum breadth & towing draught (fore and aft)

7. Flag and place of registry

8. Registered owners

9. Classification society

10. P. & I. liability insurers

11. General condition of tow

12. Particulars of cargo and/or ballast and/or other property on board the tow

13. Tug (name and type)

14. Flag and place of registry

15. Gross tonnage

16. Classification Society

17. P. & I. liability insurers

18. Certificated bollard pull (if any)

19. Indicated horse power

20. Estimated daily average bunker oil consumption in good weather and smooth water

(a) at full towing power with tow

(b) at full sea speed without tow

21. Winches and main towing gear

The Baltic and International Maritime Council (BIMCO)

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(contin

22. Nature of service(s) (Cl. 1)

23. Contemplated route (Cl. 17)

24. Place of departure (Cl. 7)

25. Place of destination (Cl. 8)

26. Free time at place of departure (Cl. 2(g))

27. Free time at place of destination (Cl. 2(g))

28. Notices (Place of departure) (Cl. 7(c))

(a) Initial departure period (from/to)

(b) Initial departure notice (days notice/days period)

(c) Final departure period and notice (days notice/days period)

(d) Final departure time and date notice (days notice)

(e) Notices to be given to

29. Delay payment (Cl. 2(g))

(a) Port rate

(b) Sea rate

30. Riding crew to be provided by (also state number to be provided) (Cl. 9)

31. If riding crew provided by Tugowner state amount per man per day payable by Hirer (Cl

32. Lump sum towage price (also state when each instalment due and payable) (Cl. 2)

(a) Lump sum towage price

(b) amount due and payable on signing Agreement

(c) amount due and payable on sailing of tug & tow from place of departure

(d) amount due and payable on passing of tug and tow off

(e) amount due and payable on arrival of tug & tow at place of destination

33. Payment of lump sum & other amounts (state currency, mode of payment, place of payment and bank acount) (Cl

34. Interest rate (%) per annum to run from (state number of days) after any sum is due (Cl. 5)

35. Security (state sum, by whom to be provided and when) (optional, only to b filled in if expressly agreed) (Cl

36. Current cost of tug's bunker oil (also state type of bunkers) (Cl. 2(e))

37. Cancelling date, if any agreed (Cl. 16(a))

38. Cancellation fee (Cl. 16)

39. Numbers of additional clauses, covering special provisions, if agreed

It is mutually agreed between the party mentioned in Box 2 (hereinafter called "the Tugowner") and the party mentioned in Box 3 (hereinafter called "the Hirer") that the T owner shall, subject to the terms and conditions of this Agreement which consists of PART I including additional clauses, if any agreed and stated in Box 39, and PART II, his best endeavours to perform the towage or other service(s) as set out herein. In the event of a conflict of terms and conditions, the provisions of PART I and any additio clauses, if agreed, shall prevail over those of PART II to the extent of such conflict but no further.

Signature (Tugowner)

Signature (Hirer)

For correct lining-in of Box 40, see instructions overleaf.

INSTRUCTIONS ON HOW TO FILL IN BOX 28 in PART I

Notices to be communicated according to Clause 7(c)

Initial Departure Period (Box 28(a))

The Tow shall be ready to sail from the place of departure between the dates indicated.

Initial Departure Notice (Box 28 (b))

The Hirer shall give the Tugowner the number of days notice of the number of days period falling within the initial departure period as to when the Tow will be ready to depart.

Final Departure Period and Notice (Box 28 (c))

The Hirer shall give the Tugowner the number of days notice of the number of days period falling within the initial departure notice period as to when the Tow will be ready to depart.

Final Departure Time and Date Notice (Box 28 (d))

The Hirer shall give the Tugowner the number of days notice of the time and date of sailing of the Tow which day shall fall within the final departure period.

Notices to be given to (Box 28 (e))

The above notices shall be given by the Hirer to the addressee mentioned in Box 28 (e).

PART II

"Towcon" International Ocean Towage Agreement (Lump Sum)

1. The Tow

"The Tow" shall include any vessel, craft or object of whatsoever nature including anything carried thereon as described in PART I to which the Tugowner agrees to render the service(s) as set out in Box 22.

2. Price and Conditions of Payment

(a) The Hirer shall pay the Tugowner the sum set in Box 32 (hereinafter called "the Lump Sum").

(b) The Lump Sum shall be payable as set out in Boxes 32 and 33.

(c) The Lump Sum and all other sums payable to the Tugowner under this Agreement shall be payable without any discount, deduction, set-off, lien, claim or counter-claim, each instalment of the Lump Sum shall be fully and irrevocably earned at the moment it is due as set out in Box 32, Tug and/or Tow lost or not lost, and all other sums shall be fully and irrevocably earned on a daily basis.

(d) All payments by the Hirer shall be made in the currency and to the bank account specified in Box 33.

(e) In the event that the average price per metric tonne of bunkers actually paid by the Tugowner differs from the amounts specified in Box 36 then the Hirer or the Tugowner, as the case may be, shall pay to the other the difference per metric tonne for every metric tonne consumed during the voyage. The average price specified above shall be the average of the prices per metric tonne actually paid by the Tugowner on the basis of quantities purchased at the last bunkering port prior to the voyage, any bunkering port during the voyage, and the first bunkering port after completion of the voyage. The log book of the Tug shall be prima facie evidence of the quantity of bunkers consumed.

(f) Any Delay Payment due under this Agreement shall be paid to the Tugowner as and when earned on presentation of the invoice.

(g) The Free Time specified in Boxes 26 and 27 shall be allowed for the connecting and disconnecting of the Tow and all other purposes relating thereto. Free Time shall commence when the Tug arrives at the pilot station at the place of departure or the Tug and Tow arrives at the pilot station at the place of destination or anchors or arrives at the usual waiting area off such places. Should the Free Time be exceeded, Delay Payment(s) at the rate specified in Box 29 shall be payable until the Tug and Tow sail from the place of departure or the Tug is free to leave the place of destination.

3. Additional Charges and Extra Costs

(a) The Hirer shall appoint his agents at the place of departure and place of destination and ports of call or refuge and shall provide such agents with adequate funds as required.

(b) The Hirer shall bear and pay as and when they fall due:-

(i) All port expenses, pilotage charges, harbour and canal dues and all other expenses of a similar nature levied upon or payable in respect of both the Tug and the Tow.

(ii) All taxes, (other than those normally payable by the Tugowner in the country where he has his principal place of business and in the country where the Tug is registered) stamp duties or other levies payable in respect of or in connection with this Agreement or the payments of the Lump Sum or other sums payable under this Agreement or the services to be performed under or in pursuance of this Agreement, any Customs or Excise duties and any costs, dues or expenses payable in respect of any necessary permits or licences.

(iii) The cost of the services of any assisting tugs when deemed necessary by the Tugmaster or prescribed by Port or other Authorities.

(iv) All costs and expenses necessary for the preparation of the Tow for towing (including such costs or expenses as those of raising the anchor of the Tow or tending or casting off any moorings of the Tow).

(v) The cost of insurance of the Tow shall be the sole responsibility of the Hirer to provide.

(c) All taxes, charges, costs, and expenses payable by the Hirer shall be paid by the Hirer direct to those entitled to them. If, however, any such tax, charge, cost or expense is in fact paid by or on behalf of the Tugowner (notwithstanding that the Tugowner shall under no circumstances be under any obligation to make such payments on behalf of the Hirer) the Hirer shall reimburse the Tugowner on the basis of the actual cost to the Tugowner upon presentation of invoice.

4. War Risk Escalation Clause

The Lump Sum is based and assessed on all war risk insurance costs applicable to the Tugowner in respect of the contemplated voyage in effect on the date of this Agreement.

In the event of any subsequent increase or decrease in the actual costs due to the Tugowner fulfilling his obligations under this Agreement, the Hirer or the Tugowner, as the case may be, shall reimburse to the other the amount of any increase or decrease in the war risk, confiscation, deprivation or trapping insurance costs.

5. Interest

If any amounts due under this Agreement are not paid when due, then interest shall accrue and shall be paid in accordance with the provisions of Box 34, on all such amounts until payment is received by the Tugowner.

6. Security

The Hirer undertakes to provide, if required by the Tugowner, security to the satisfaction of the Tugowner in the form and in the sum, at the place and at the time indicated in Box 35 as a guarantee for due performance of the Agreement. Such security shall be returned to the guarantor when the Hirer's financial obligations under this Agreement have been met in full.

(Optional, only applicable if Box 35 filled in).

7. Place of Departure/Notices

(a) The Tow shall be tendered to the Tugowner at the place of departure stated in Box 24.

(b) The precise place of departure shall always be safe and accessible for the Tug to enter, to operate in and for the Tug and Tow to leave and shall be a place where such Tug is permitted to commence the towage in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner which shall not be unreasonably withheld.

(c) (i) The Tow shall be ready to sail from the Place of Departure between the dates indicated in Box 28 (a), hereinafter called the Initial Departure Period.

(ii) The Hirer shall give the Tugowner such notice as is stipulated in Box 28 in respect of Initial Departure Notice (Box 28 (b)), Final Departure Period Notice (Box 28 (c)) and Final Departure Time and Date Notice (Box 28 (d)).

(iii) The Tow shall be offered to the Tugowner, duly certificated and otherwise in accordance with the terms and conditions of this Agreement.

(d) If the Hirer fails to comply strictly with the provisions of Cl. 7(c) the date of departure shall be deemed to be either the last day of the Initial Departure Period or the last day of the Final Departure Period, whichever is earlier, and this date shall be binding for all consequences arising in respect of Delay Payments and any other payments due or charges incurred in the performance of this Agreement.

8. Place of Destination

(a) The Tow shall be accepted forthwith and taken over by the Hirer or his duly authorised representative at the place of destination stated in Box 25.

(b) The precise place of destination shall always be safe and accessible for the Tug and Tow to enter, to operate in, and for the Tug to leave and shall be a place where such Tug is permitted to redeliver the Tow in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner, which approval shall not be unreasonably withheld.

9. Riding Crew

(a) In the event that the Tugowner provides a Riding Crew for the Tow, such crew and their suitability for the work shall be in the discretion of the Tugowner. All expenses for such personnel shall be for the account of the Tugowner.

(b) In the event that any personnel are placed on board the Tow by the Hirer all expenses for such personnel will be for the account of the Hirer and such personnel shall be at all times under the orders of the Master of the Tug, but shall not be deemed to be the servants or agents of the Tugowner.

(c) The Riding Crew shall be provided at the Hirer's sole expense with suitable accomodation, food, fresh water, life saving appliances and all other requirements to comply as necessary with the law and regulations of the law of the Flag of the Tug and/or Tow and of the States through the territorial waters of which the Tug will pass or enter. It is a requirement that members of the Riding Crew provided by the Hirer shall be able to speak and understand the English language or any other mutual language.

10. Towing Gear and Use of Tow's Gear

(a) The Tugowner agrees to provide free of cost to the Hirer all towing hawsers, bridles and other towing gear normally carried on board the Tug, for the purpose of the towage or other services to be provided under this Agreement. The Tow shall be connected up in a manner within the discretion of the Tugowner.

(b) The Tugowner may make reasonable use at his discretion of the Tow's gear, power, anchors, anchor cables, radio, communication and navigational equipment and all other appurtenances free of cost during and for the purposes of the towage or other services to be provided under this Agreement.

11. Permits and Certification

(a) The Hirer shall arrange at his own cost and provide to the Tugowner all necessary licenses, authorisations and permits required by the Tug and Tow to undertake and complete the contractual voyage together with all necessary certification for the Tow to enter or leave all or any ports of call or refuge on the contemplated voyage.

(b) Any loss or expense incurred by the Tugowner by reason of the Hirer's failure to comply with this Clause shall be reimbursed by the Hirer to the Tugowner and during any delay caused thereby the Tugowner shall receive additional compensation from the Hirer at the Tug's Delay Payment rate specified in Box 29.

12. Tow-worthiness of the Tow

(a) The Hirer shall exercise due diligence to ensure that the Tow shall, at the commencement of the towage, be in all respects fit to be towed from the place of departure to the place of destination.

(b) The Hirer undertakes that the Tow will be suitably trimmed and prepared and ready to be towed at the time when the Tug arrives at the place of departure and fitted and equipped with such shapes, signals, navigational and other lights of a type required for the towage.

(c) The Hirer shall supply to the Tugowner or the Tugmaster, on the arrival of the Tug at the place of departure an unconditional certificate of tow-worthiness for the Tow issued by a recognised firm of Marine Surveyors or Survey Organisation, provided always that the Tugowner shall not be under any obligation to perform the towage until in his discretion he is satisfied that the Tow is in all respects trimmed, prepared, fit and ready for towage but the Tugowner shall not unreasonably withhold his approval.

(d) No inspection of the Tow by the Tugowner shall constitute approval of the Tow's condition or be deemed a waiver of the foregoing undertakings given by the Hirer

13. Seeworthiness of the Tug

The Tugowner will exercise due diligence to tender the Tug at the place of departure in a seaworthy condition and in all respects ready to perform the towage, but the Tugowner gives no other warranties, express or implied.

14. Substitution of Tugs

The Tugowner shall at all times have the right to substitute any tug or tugs for any other tug or tugs of adequate power (including two or more tugs for one, or one tug for two or more) at any time whether before or after the com-

mencement of the towage or other services and shall be at liberty to employ a tug or tugs belonging to other tugowners for the whole or part of the towage or other service contemplated under this Agreement. Provided however, that the main particulars of the substituted tug or tugs shall be subject to the Hirer's prior approval, but such approval shall not be unreasonably withheld.

k. Salvage

(a) Should the Tow break away from the Tug during the course of the towage service, the Tug shall render all reasonable services to re-connect the towline and fulfill this Agreement without making any claim for salvage.

(b) If at any time the Tugowner or the Tugmaster considers it necessary or advisable to seek or accept salvage services from any vessel or person on behalf of the Tug or Tow, or both, the Hirer hereby undertakes and warrants that the Tugowner or his duly authorised servant or agent including the Tugmaster have the full actual authority of the Hirer to accept such services on behalf of the Tow on any reasonable terms.

l. Cancellation and Withdrawal

(a) At any time prior to the departure of the Tow from the place of departure the Hirer may cancel this Agreement upon payment of the cancellation fee set out in Box 38. If cancellation takes place whilst the Tug is en route to the place of departure or after the Tug has arrived at or off the place of departure then in addition to the said cancellation fee the Hirer shall pay any additional amounts due under this Agreement.

(b) In the event that the towage operation is terminated after departure from the place of departure, but before the Tow arrives at the place of destination without fault on the part of the Tugowner, his servants or agents, the Tugowner shall be entitled to be paid, and if already paid to retain all sums payable according to Box 32, accrued Delay Payments and any other amounts due under this Agreement. The above amounts are in addition to any damages the Tugowner may be entitled to claim for breach of this Agreement.

(c) The Tugowner may without prejudice to any other remedies he may have leave the Tow in a place where the Hirer may take repossession of it and be entitled to payment of the Lump Sum less expenses saved by the Tugowner and all other payments due under this Agreement, upon any one or more of the following grounds:

(i) if there is any delay or delays (other than delay caused by the Tug) at the place of departure exceeding in aggregate 21 running days.

(ii) if there is any delay or delays (other than a delay caused by the Tug) at any port or place of call or refuge exceeding in aggregate 21 running days.

(iii) if the security as may be required according to Box 35 is not given within 7 running days of the Tugowner's request to provide security.

(iv) if the Hirer has not accepted the Tow within 7 running days of arrival at the place of destination.

(v) if any amount payable under this Agreement has not been paid within 7 running days of the date such sums are due.

(d) Before exercising his option of withdrawing from this Agreement as aforesaid, the Tugowner shall if practicable give the Hirer 48 hours notice (Saturdays, Sundays and public Holidays excluded) of his intention so to withdraw.

(e) Should the Tug not be ready to commence the towage at the latest at midnight on the date, if any, indicated in Box 37, the Hirer shall have the option of cancelling this Agreement and shall be entitled to claim damages for detention if due to the wilful default of the Tugowner. Should the Tugowner anticipate that the Tug will not be ready, he shall notify the Hirer thereof by telex, cable or otherwise in writing without delay stating the expected date of the Tug's readiness and ask whether the Hirer will exercise his option to cancel. Such option to cancel must be exercised within 48 hours after the receipt of the Tugowner's notice, otherwise the third day after the date stated in the Tugowner's notice shall be deemed to be the new agreed date to commence the towage in accordance with this Agreement.

m. Necessary Deviation or Slow Steaming

(a) If the Tug during the course of the towage or other service under this Agreement puts into a port or place or seeks shelter or is detained or deviates from the original route as set out in Box 23, or slow steams because either the Tugowner or Tugmaster reasonably consider

(i) that the Tow is not fit to be towed or

(ii) the Tow is incapable of being towed at the original speed contemplated by the Tugowner or

(iii) the towing connection requires rearrangement, or

(iv) repairs or alterations to or additional equipment for the Tow are required to safeguard the venture and enable the Tow to be towed to destination, or

(v) it would not be prudent to do otherwise on account of weather conditions actual or forecast, or

because of any other good and valid reason outside the control of the Tugowner or Tugmaster, or because of any delay caused by or at the request of the Hirer, this Agreement shall remain in full force and effect, and the Tugowner shall be entitled to receive from the Hirer additional compensation at the appropriate Delay Payment rate as set out in Box 29 for all time spent in such port or place and for all time spent by the Tug at sea in excess of the time which would have been spent had such slow steaming or deviation not taken place.

(b) The Tug shall at all times be at liberty to go to the assistance of any vessel in distress for the purpose of saving life or property or to call at any port or place for bunkers, repairs, supplies, or any other necessaries or to land disabled seamen, but if towing the Tug shall leave the Tow in a safe place and during such period this Agreement shall remain in full force and effect.

(c) The Tug shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery, requisition or otherwise howsoever given by the Government of the Nation under whose flag the Tug or Tow sails or any department thereof, or any person acting or purporting to act with the authority for such Government or any department thereof by the committee or person having under the terms of the War Risks Insurance on the Tug the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done the same shall not be deemed a deviation and delivery in accordance with such orders or directions shall be a fulfilment of this Agreement and the Lump Sum and/or all other sums shall be paid to the Tugowner accordingly.

(d) Any deviation howsoever or whatsoever by the Tug or by the Tugowner not expressly permitted by the terms and conditions of this Agreement shall not amount to a repudiation of this Agreement and the Agreement shall remain in full force and effect notwithstanding such deviation.

18. Liabilities

1. (a) The Tugowner will indemnify the Hirer in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death occurring during the towage or other service hereunder to any of the following persons:

(i) The Master and members of the crew of the Tug and any other servant or agent of the Tugowner;

(ii) The members of the Riding Crew provided by the Tugowner or any other person whom the Tugowner provides on board the Tow;

(iii) Any other person on board the Tug who is not a servant or agent of the Hirer or otherwise on board on behalf of or at the request of the Hirer.

(b) The Hirer will indemnify the Tugowner in respect of any liability adjudged due or claim reasonably compromised arising from injury or death occurring during the towage or other service hereunder to any of the following persons:

(i) The Master and members of the crew of the Tow and any other servant or agents of the Hirer;

(ii) Any other person on board the Tow for whatever purpose except the members of the Riding Crew or any other persons whom the Tugowner provides on board the Tow pursuant to their obligations under this Agreement.

2. (a) The following shall be for the sole account of the Tugowner without any recourse to the Hirer, his servants, or agents, whether or not the same is due to breach of contract, negligence or any other fault on the part of the Hirer, his servants or agents:

(i) Loss or damage of whatsoever nature, howsoever caused to or sustained by the Tug or any property on board the Tug.

(ii) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tug or obstruction created by the presence of the Tug.

(iii) Loss or damage of whatsoever nature suffered by the Tugowner or by third parties in consequence of the loss or damage referred to in (i) and (ii) above.

(iv) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tug or in respect of preventing or abating pollution originating from the Tug.

The Tugowner will indemnify the Hirer in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage. The Tugowner shall not in any circumstances be liable for any loss or damage suffered by the Hirer or caused to or sustained by the Tow in consequence of loss or damage howsoever caused to or sustained by the Tug or any property on board the Tug.

(b) The following shall be for the sole account of the Hirer without any recourse to the Tugowner, his servants or agents, whether or not the same is due to breach of contract, negligence or any fault on the part of the Tugowner, his servants or agents:

(i) Loss or damage of whatsoever nature, howsoever caused to or sustained by the Tow.

(ii) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tow or obstruction created by the presence of the Tow.

(iii) Loss or damage of whatsoever nature suffered by the Hirer or by third parties in consequence of the loss or damage referred to in (i) and (ii) above.

(iv) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tow or in respect of preventing or abating pollution originating from the Tow.

The Hirer will indemnify the Tugowner in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage but the Hirer shall not in any circumstances be liable for any loss or damage suffered by the Tugowner or caused to or sustained by the Tug in consequence of loss or damage, howsoever caused to or sustained by the Tow.

3. Save for the provisions of Clauses 11, 12, 13 and 16 neither the Tugowner nor the Hirer shall be liable to the other party for loss of profit, loss of use, loss of production or any other indirect or consequential damage for any reason whatsoever.

4. Notwithstanding any provisions of this Agreement to the contrary, the Tugowner shall have the benefit of all limitations of, and exemptions from, liability accorded to the Owners or Chartered Owners of Vessels by any applicable statute or rule of law for the time being in force and the same benefits are to apply regardless of the form of signatures given to this Agreement.

19. Himalaya Clause

All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Agreement or by any applicable statute rule or regulation for the benefit of the Tugowner or Hirer shall also apply to and be for the benefit of demise charterers, sub-contractors, operators, master, officers and crew of the Tug or Tow and to and be for the benefit of all bodies corporate parent of, subsidiary to, affiliated with or under the same management as either of them, as well as all directors, officers, servants and agents of the same and to and be for the benefit of all parties performing services within the scope of this Agreement for or on behalf of the Tug or Tugowner or Hirer as servants, agents and sub-contractors of such parties. The Tugowner or Hirer shall be deemed to be acting as agent or trustee of and for the benefit of all such persons, entities and vessels set forth above but only for the limited purpose of contracting for the extension of such benefits to such persons, bodies and vessels.

20. War and Other Difficulties

(a) If owing to any Hostilities; War or Civil War; Acts of Terrorism; Acts of Public Enemies; Arrest or Restraint of Princes, Rulers or People; Insurrections; Riots or Civil Commotions; Disturbances; Acts of God; Epidemics; Quarantine; Ice; Labour Troubles; Labour Obstructions; Strikes; Lock-outs; Embargoes; Seizure of the Tow under Legal Process or for any other cause outside the control of the Tugowner it would be impossible or unsafe or commercially impracticable for the Tug or Tow or both to leave or attempt to leave the place of departure or any port or place of call or refuge or to reach or enter or attempt to reach or enter the port or place of destination of the Tow and there deliver the Tow and leave again, all of which safely and without unreasonable delay, the Tug may leave the Tow or any part thereof at the place of departure or any other port or place where the Hirer may take repossession and this shall be deemed a due fulfilment by the Tugowner of this Agreement and any outstanding sums and all extra costs of delivery at such place and any storage costs incurred by the Tugowner shall thereupon become due and payable by the Hirer.

(b) If the performance of this Agreement or the voyage to the place of departure would in the ordinary course of events require the Tug and/or Tow to pass through or near to an area where after this Agreement is made there is or there appears to be danger of such area being blocked or passage through being restricted or made hazardous by reason of War, Acts of Terrorism, Trapping of Vessels, Civil War, Acts of Public Enemies, Arrest or Restraint of Princes, Rulers or People, Insurrection, Riots or Civil Commotions or Disturbances or other dangers of a similar nature then:

(i) If the Tug has not entered such area en route to the place of departure, or having entered has become trapped therein, the Hirer shall pay a Delay Payment at the rate specified in Box 29 for every day of the resulting delay. Provided that if the delay is for a period of more than 14 days either party hereto shall be entitled to terminate this Agreement by telex, cable or other written notice in which event, save for liabilities already accrued, neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payments already made and all amounts due shall remain payable.

(ii) If the Tug and Tow whilst en route to the place of destination have not entered such area during the course of the towage or other service the Hirer shall pay Delay Payment at the rate indicated in Box 29 for every day by which the towage is prolonged by reason of waiting for such area to become clear and/or safe and/or by reason of proceeding by a longer route to avoid or pass such area in safety.

(iii) If the Tug and Tow whilst en route to the place of destination have become trapped in such area during the course of the towage or other service, the Hirer shall pay a Delay Payment at the rate specified in Box 29 for every day of the resulting delay. Provided that if the delay is for a period of more than 14 days either party hereto shall be entitled to terminate this Agreement by telex, cable or other written notice in which event, save for liabilities already accrued, neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payment already made and all amounts due shall remain payable.

21. Lien

Without prejudice to any other rights which he may have, whether in rem or in personam, the Tugowner, by himself or his servants or agents or otherwise shall be entitled to exercise a possessory lien upon the Tow in respect of any sum howsoever or whatsoever due to the Tugowner under this Agreement and shall for the purpose of exercising such possessory lien be entitled to take and/or keep possession of the Tow; provided always that the Hirer shall pay to the Tugowner all reasonable costs and expenses howsoever or whatsoever incurred by or on behalf of the Tugowner in exercising or attempting or preparing to exercise such lien and the Tugowner shall be entitled to receive from the Hirer the Tug's Delay Payment at the rate specified in Box 29 for any reasonable delay to the Tug resulting therefrom.

22. Warranty of Authority

If at the time of making this Agreement or providing any service under this Agreement other than towing at the request, express or implied, of the Hirer, the Hirer is not the Owner of the Tow referred to in Box 4, the Hirer expressly represents that he is authorised to make and does make this Agreement for and on behalf of the Owner of the said Tow subject to each and all of these conditions and agrees that both the Hirer and the Owner of the Tow are bound jointly and severally by these conditions.

23. General

(a) If any one or more of the terms, conditions or provisions in this Agreement or any part thereof shall be held to be invalid, void or of no effect for any reason whatsoever, the same shall not affect the validity of the remaining terms, conditions or provisions which shall remain and subsist in full force and effect.

(b) For the purpose of this Agreement unless the context otherwise requires the singular shall include the plural and vice versa.

(c) Any extension of time granted by the Tugowner to the Hirer or any indulgence shown relating to the time limits set out in this Agreement shall not be a waiver of the Tugowner's right under this Agreement to act upon the Hirer's failure to comply with the time limits.

24. Time for Suit

Save for the indemnity provisions under Clause 18 of this Agreement, any claim which may arise out of or in connection with this Agreement or of any towage or other service to be performed hereunder shall be notified by telex, cable or otherwise in writing within 6 months of delivery of the Tow or of the termination of the towage or other service for any reason whatever, and any suit shall be brought within one year of the time when the cause of action first arose. If either of these conditions is not complied with the claim and all rights whatsoever and howsoever shall be absolutely barred and extinguished.

25. Law and Jurisdiction

This Agreement shall be construed in accordance with and governed by English law. Any dispute or difference which may arise out of or in connection with this Agreement or the services to be performed hereunder shall be referred to the High Court of Justice in London.

No suit shall be brought in any other state or jurisdiction except that either party shall have the option to bring proceedings in rem to obtain conservative seizure or other similar remedy against any vessel or property owned by the other party in any state or jurisdiction where such vessel or property may be found.

INTERNATIONAL CONVENTION ON SALVAGE, 1989

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

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

A contract 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

(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

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

ations 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 ren-

rticle 18. The effect of salvor's misconduct

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 raud 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

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

(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.

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

ATTACHMENT 1

Common Understanding Concerning Articles 13 AND 14 of the International Convention on Salvage, 1989

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.

ATTACHMENT 2

Resolution Requesting the Amendment of the York-Antwerp Rules, 1974

THE INTERNATIONAL CONFERENCE ON SALVAGE, 1989,
HAVING ADOPTED the International Convention on Salvage, 1989,
CONSIDERING that payments made pursuant to article 14 are not intended to be allowed in general average,
REQUESTS the Secretary-General of the International Maritime Organization to take the appropriate steps in order to ensure speedy amendment of the York-Antwerp Rules, 1974, to ensure that special compensation paid under article 14 is not subject to general average.

"H"

WRECK AND SALVAGE ACT 94 OF 1996

[ASSENTED TO 12 NOVEMBER 1996] [DATE OF COMMENCEMENT: 1 FEBRUARY 199

(English text signed by the President)

as amended by

South African Maritime Safety Authority Act 5 of 1998
Ship Registration Act 58 of 1998

ACT

To provide for the salvage of certain vessels and for the application in the Republic of the International Convention of Salvage, 1989; and to provide for the repeal or amendment of certain provisions of the Merchant Shipping Act, 1951, and the amendment of the Admiralty Jurisdiction Regulation Act, 1983; and to provide for matters connected therewith.

1 Definitions

In this Act, unless the context indicates otherwise-

'Authority' means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998;

[Definition of 'Authority' inserted by s. 2 (2) of Act 5 of 1998.]

'Convention' means the International Convention on Salvage, 1989, contained in the Schedule;

'master', in relation to a ship, means any person, other than a pilot, having charge or command of such ship;

'Minister' means the Minister of Transport;

'owner of a ship' means any person to whom a ship or a share in a ship belongs;

'port' means a place, whether proclaimed a public harbour or not, and whether natural or artificial, to which ships may resort for shelter or to load or discharge goods or persons;

'prescribe' means prescribe by regulation under section 21;

'Republic' includes the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act 43 of 1948);

'salvage officer' means a salvage officer appointed in terms of section 8;

'seaman' means any person, except a master or a pilot, employed or engaged in any capacity on a ship;

'ship' means any vessel used or capable of being used on any waters, and includes any hovercraft, power boat, yacht, fishing boat, submarine vessel, barge, crane barge, crane, dock, oil or other rig, mooring installation or similar installation, whether floating or fixed to the sea-bed and whether self-propelled or not;

'South African ship' means any ship having South African nationality by virtue of section 3 of the Ship Registration Act, 1998;

[Definition of 'South African ship' substituted by s. 60 *(b)* of Act 58 of 1998.]

'wreck' includes any flotsam, jetsam, lagan or derelict, any portion of a ship or aircraft lost, abandoned, stranded or in distress, any portion of the cargo, stores or equipment of any such ship or aircraft and any portion of the personal property on board such ship or aircraft when it was lost, abandoned, stranded or in distress.

2 Application and interpretation of Convention

(1) The Convention shall, subject to the provisions of this Act, have the force of law and apply in the Republic.

(2) The provisions of Attachment 1 to the Convention shall have effect in connection with the application and interpretation of the Convention.

(3) This Act shall not affect any rights or liabilities arising out of any salvage operations or other acts started before the commencement of this Act.

(4) Any reference in the Convention to a State Party shall be construed as, or as including, a reference to the Republic.

(5) Notwithstanding anything to the contrary in any other law or the common law contained, a court of law or any tribunal may, in the interpretation of the Convention, consider the preparatory texts to the Convention, decisions of foreign courts and any publication.

(6) Notwithstanding anything to the contrary in article 3 or any other article of the Convention, a subject of salvage shall include any fixed or floating platform or any mobile offshore drilling unit whether or not it is engaged in the exploration, exploitation or production of sea-bed mineral resources.

(7) 'Damage to the environment' as defined in article 1 of the Convention shall for purposes of this Act, notwithstanding anything to the contrary contained in this Act, not be restricted to coastal or inland waters or to areas adjacent thereto, but shall apply to any

place where such damage may occur.

(8) Notwithstanding the provisions of article 14 (3) of the Convention, for the purposes of this Act, the expression 'fair rate' means a rate of remuneration which is fair having regard to the scope of the work and to the prevailing market rate, if any, for work of a similar nature.

(9) In the case of any conflict between the Afrikaans and English texts of this Act and the Convention the English text shall be decisive.

(10) Any claimant under this Act shall be entitled to enforce a maritime lien.

3 Court trying salvage claim may be assisted by assessors

The court in which proceedings for a claim relating to salvage have been instituted may, in its discretion, appoint one or more assessors acting only in an advisory capacity, and those assessors shall be impartial persons who are conversant with maritime affairs.

4 Application to aircraft

The provisions of this Act relating to wreck and to salvage of life or property and to the duty to render assistance to ships in distress shall apply to aircraft as they apply to ships, and the owner of an aircraft shall be entitled to the award of a sum for salvage services rendered by the aircraft and be liable to pay a sum of salvage in respect of services rendered in saving life from the aircraft or in saving the aircraft or any wreck from the aircraft in any case where the owner of the aircraft would have been so entitled or liable had it been a ship.

5 Obligation to assist ships in distress

(1) The master of a South African ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, shall proceed with all speed to the assistance of the persons in distress, informing them if possible that he or she is doing so, unless he or she is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to do so, or unless he or she is released under the provisions of subsection (3) or (4) from the obligation imposed by this subsection.

(2) Where the master of any ship in distress has requisitioned any South African ship that has answered his or her call for assistance, it shall be the duty of the master of the South African ship to comply with the requisition by continuing to proceed with all speed to the assistance of the person in distress unless he or she is released under the provisions of subsection (4) from the obligation imposed by this subsection.

(3) A master shall be released from the obligation imposed by subsection (1) as soon as he or she is informed of the requisition of one or more ships other than his or her

own and that the requisition is being complied with by the ship or ships requisitioned.

(4) A master shall be released from the obligation imposed by subsection (1), and if his or her ship has been requisitioned, from the obligation imposed by subsection (2), if he or she is informed by the person in distress, or by the master of any ship that has reached the person in distress, that assistance is no longer required.

(5) If the master of a South African ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to go to the assistance of the person in distress, he or she shall forthwith cause a statement to be entered in the official logbook, of his or her reasons for not going to the assistance of that person.

(6) Compliance by the master of a ship with the provisions of this section shall not affect his or her right, or the right of any other person, to salvage.

(7) In the application of this section every reference to a ship in distress shall be interpreted so as to include a reference to an aircraft or a survival craft from a vessel or an aircraft in distress.

6 Duty to render assistance to persons in danger at sea

(1) The master of a ship shall, so far as he or she can do so without serious danger to his or her ship or to any person on the ship, render assistance to every person who is found at sea in danger of being lost, even if that person is a citizen of a country at war with the Republic or with the country in which the ship is registered.

(2) Compliance by the master of a ship with the provisions of subsection (1) shall not affect his or her right, or the right of any other person, to salvage.

(3) This section shall apply to all ships, wherever they may be registered.

7 Duty of masters of ships in collision to render assistance

(1) In every case of collision between two or more ships, it shall be the duty of the master of each ship, if and in so far as he or she can do so without danger to any person on the ship-

(a) to render to the other ship and every person thereon such assistance as may be practicable and necessary to save them from any danger caused by the collision and to stay by the other ship until he or she has ascertained that there is no need for further assistance;

(b) to give to the master of the other ship, the name of his or her ship and of its port of registry and the name of the port from which it has come and to

which it is bound.

(2) Compliance by the master of a ship with the provisions of subsection (1) shall not affect his or her right, or the right of any other person, to salvage.

(3) This section shall apply to all ships, wherever they may be registered.

8 Salvage officers

(1) The Minister may appoint suitably qualified persons to be salvage officers at ports or other places in the Republic in respect of any defined area.

(2) Such officers shall be appointed for the period and under the conditions as the Minister may deem fit.

(3) The powers, duties and functions of salvage officers appointed under this section shall be as prescribed.

9 Payment of allowances to salvage officers

Any person appointed under this Act as a salvage officer and who is not in the employ of the Government shall be paid such remuneration and allowances towards subsistence and transport as the Minister with the concurrence of the Minister of Finance may determine.

10 Exercise of powers in absence of salvage officer

(1) If a salvage officer or his or her authorised representative is not present-

(a) a suitable qualified officer in the South African Police Service; or

(b) in the absence of an officer referred to in paragraph *(a)*, a suitably qualified commissioned officer in the South African National Defence Force,

may do anything he or she is authorised to do by the salvage officer.

(2) Any person acting for a salvage officer in terms of subsection (1) shall in respect of any wreck be considered to be the agent of the salvage officer and shall comply with the provisions of section 112 (2) of the Custom and Excise Act, 1964 (Act 91 of 1964), but shall not be deprived, by reason of his or her so acting, of any right to salvage to which he or she would otherwise be entitled.

(3) Any salvage officer or any person acting for a salvage officer shall not interfere with the lawful performance of a salvage service by a salvor.

11 Investigation concerning ships wrecked, stranded or in distress

If a ship is wrecked, stranded or in distress, a salvage officer or person authorised by him or her, may conduct an investigation into any or all of the following matters:

(a) The name and description of the ship;

(b) the names of the master and of the owners;

(c) the names of the owners of the cargo;

(d) the port from and to which the ship was bound;

(e) the cause of the wrecking, stranding or distress of the ship;

(f) the services rendered; and

(g) such other relevant matters or circumstances as he or she deems fit.

12 Powers to pass over adjoining lands

(1) Whenever a ship is wrecked, stranded or in distress all persons may, for the purpose of rendering assistance to the ship or of saving the lives of any shipwrecked persons or of saving any wreck, unless there is some public road or camping site equally convenient, pass and repass either with or without vehicles or animals over any lands and camp on such lands, without being subject to interruption by the owner or occupier, if they do so with as little damage as possible, and may also, on the same condition, deposit on such lands any goods required for the construction of a camp and their stay thereat, and any wreck recovered from the ship.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights granted by this section shall be a charge on the ship or wreck in respect of or by which the damage is caused.

(3) The amount payable in respect of the damage referred to in subsection (2) shall, in the event of a dispute, be determined in the same manner as salvage is determined in terms of this Act, and shall, in default of payment, be recoverable in the same manner as salvage is recoverable under this Act.

13 Power of salvage officer to suppress plunder and disorder

No person shall, when a ship is wrecked, stranded or in distress, plunder, create disorder or obstruct the preservation of the ship or shipwrecked persons or the wreck, and the salvage officer or his or her authorised representative may cause any person contravening the provisions of this section to be detained.

14 Interfering with wrecked ship or aircraft

(1) No unauthorised person shall board any ship or aircraft wrecked, stranded or in distress without the leave of the person in charge of such ship or aircraft, and any person boarding such ship or aircraft without permission may be repelled by reasonable force.

(2) No person shall-

(a) impede or hinder the saving of any ship stranded or in danger of being stranded, or otherwise in distress, or of any life from any such ship, or of any wreck;

(b) secrete any wreck, or deface or obliterate any marks thereon; or

(c) wrongfully carry away or remove any wreck.

15 Salvage payable for saving life

(1) Salvage shall be payable to the salvor by the owner of the ship or the owner of any wreck, whether or not such ship or wreck has been saved, when services are rendered in saving life from any ship.

(2) Notwithstanding anything to the contrary contained in the Convention, the payment of salvage in respect of the preservation of life shall have priority over all other claims for salvage.

(3) When the ship or wreck is lost or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Minister may, in his or her discretion, award to the salvor, out of moneys made available by Parliament for the purpose, such sum as he or she thinks fit, in whole or part satisfaction of any amount of salvage so left unpaid.

16 Salvage payable by Commissioner for Customs and Excise

When any ship is wrecked, stranded, abandoned or in distress or any wreck is found and services are rendered in saving such ship or wreck, salvage shall, subject to the provisions of section 15 (2), be paid to the person who rendered the services by the Commissioner for Customs and Excise if the ship or wreck is disposed of by him or her in terms of section 112 (3) of the Customs and Excise Act, 1964.

17 Detention of wreck until salvage is paid

(1) If the salvage officer is satisfied that salvage is due to any person under this Act, he or she shall detain the ship or wreck saved or assisted or from which life was saved until payment is made for the salvage due, or until process for the arrest or

detention of such ship or wreck by a competent court is served.

(2) The salvage officer may release any ship or wreck detained by him or her under subsection (1) if security to his or her satisfaction is given for the payment of the salvage due.

18 Powers of Authority in respect of certain wrecks and ships

(1) *(a)* When a ship is wrecked, stranded or in distress, the Authority may direct the master or owner of such ship, or both such master and such owner, either orally or in writing to move such ship to a place specified by the Authority or to perform such acts in respect of such ship as may be specified by the Authority.

(b) If the master or owner of a ship referred to in paragraph *(a)* fails to perform within the time specified by the Authority any act which he or she has in terms of that paragraph been required to perform, the Authority may cause such act to be performed.

(2) The Authority may, notwithstanding the provisions of subsection (1), cause any wreck or any wrecked, stranded or abandoned ship or any part thereof to be raised, removed or destroyed or dealt with in such a manner as it may deem fit, if it has not been able to contact the master or the owner of the said wreck, ship or part thereof.

(3) If the Authority incurs any expenses in connection with the exercise of any power in terms of subsection (1) *(b)* or (2), it may recover such expenses from the owner of the wreck or ship in question or, in the case of an abandoned wreck or ship, from the person who was the owner thereof at the time of the abandonment.

(4) If the Authority incurred or will incur any expenses in connection with the exercise of any power in terms of subsection (1) *(b)* or (2) in respect of any wreck or ship, it may cause any goods to be removed from such wreck or ship.

(5) The Authority may-

(a) sell any wreck or ship in respect of which any power has been exercised in terms of subsection (1) *(b)* or (2), any part of such wreck or ship and any goods removed therefrom in terms of subsection (4) and apply the proceeds of the sale towards the defrayal of any expenses incurred in connection with the exercise of such power; or

(b) cause any such wreck, ship or goods to be detained until security to the satisfaction of the Authority has been given for the payment of such expenses.

(6) If any wreck, ship or goods are sold in terms of subsection (5) and the proceeds of the sale exceed the amount of the expenses referred to in that subsection, the surplus shall be paid to the owner of the wreck, ship or goods in question after deducting

therefrom the amount of any duty payable in respect of such wreck, ship or goods in terms of the Customs and Excise Act, 1964.

(7) The Authority, or any person acting under the authority of the Authority, shall not be liable in respect of anything done in good faith in terms of the provisions of this section.

[S. 18 substituted by s. 2 (2) of Act 5 of 1998.]

19 Agreement to forfeit right to salvage is void

(1) A seaman of a South African ship shall not by agreement abandon any right that he or she may have or obtain in the nature of salvage, and any provision in any agreement with him or her inconsistent with the provisions of this section shall be void.

(2) The provisions of subsection (1) shall not apply to any provision made by a seaman belonging to a ship engaged in salvage service regarding the remuneration to be paid to him or her for salvage services to be rendered by that ship to any other ship.

20 Restrictions on assignment of salvage

The following provisions shall apply to salvage due or to become due to a seaman of a South African ship:

(a) Such salvage shall not be liable to attachment or subject to any form of execution under a judgment or order of any court;

(b) an assignment or hypothecation thereof shall not bind the person making the same;

(c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and

(d) a payment of salvage to a seaman shall be valid in law, notwithstanding any previous assignment or hypothecation of salvage, or any attachment of or execution upon that salvage.

21 Regulations

(1) The Minister may make regulations to prescribe any matter which in terms of this Act may be prescribed or which may be necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

(2) Any regulation contemplated in subsection (1) may for any contravention of or failure to comply with its provisions, provide for penalties of a fine or imprisonment for a period not exceeding three months.

22 Offences and penalties

Any person who contravenes or fails to comply with the provisions of section 5 (1) or (2), 6 (1), 7 (1), 13 or 14 (1) or (2) shall be guilty of an offence, and shall on conviction be liable-

(a) in the case of an offence mentioned in section 13 or 14 (1) or (2) to a fine or imprisonment for a period not exceeding two years; and

(b) in the case of an offence mentioned in section 5 (1) or (2), 6 (1) or 7 (1) to a fine or to imprisonment for a period not exceeding one year.

23 Declaration of wreck to be a monument

This Act shall not derogate from the operation of the National Monuments Act, 1969 (Act 28 of 1969).

24 Act to bind State

This Act shall bind the State.

25 Amends section 1 (1) of the Admiralty Jurisdiction Regulation Act 105 of 1983 by substituting paragraph *(k)* of the definition of 'maritime claim'.

26 Amends section 134 of the Merchant Shipping Act 57 of 1951, as follows: paragraph *(a)* substitutes subsection (1); and paragraph *(b)* deletes subsection (2).

27 Amends section 135 of the Merchant Shipping Act 57 of 1951 by substituting subsection (1).

28 Repeals sections 234, 258, 293 to 306, 330 and 331 of the Merchant Shipping Act 57 of 1951.

29 Amends section 344 of the Merchant Shipping Act 57 of 1951 by substituting subsection (1).

30 Substitutes section 345 of the Merchant Shipping Act 57 of 1951.

31 Short title and commencement

This Act shall be called the Wreck and Salvage Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule

PART 1
INTERNATIONAL CONVENTION ON SALVAGE, 1989

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 1
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

A contract 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 State 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 values 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 effect 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. The 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.

ATTACHMENT 1
COMMON UNDERSTANDING CONCERNING ARTICLES 13 AND 14 OF THE INTERNATIONAL CONVENTION ON SALVAGE 1989

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.

Versoek om sleepboot vir spesiale dienste
Request for tug services of a special nature

PORTNET

Aan die hawekaptein/*To Port Captain*

Hawe/*Port* _____

Ek/Ons _____

van _____, die behoorlike g

agent(e) of verteenwoordiger(s) van die eienaars van die vaartuig _____

versoek hierby dat 'n sleepboot gestuur word na die genoemde vaartuig ten einde sodanige hulp te verleen as wat die vaartuig nodig mag hê.

I/We _____

_____ *being the duly a*

agent(s) or representative(s) of the owners of the vessel _____

hereby request that a tug be dispatched to the said vessel for the purpose of rendering any assistance the vessel may require.

Ek/Ons kom ooreen dat die verskaffing van die sleepboot vir die doel wat hierin genoem word, onderworpe is aan die Standaard Handelsvoorwaardes vir Por
I/We hereby agree that the provision of the tug for the purpose mentioned herein shall be subject to the Standard Conditions of Trade of Portnet.

_____

Behoorlike gemagtigde agent(e) of verteenwoordiger(s) van die eienaar
Duly authorised agent(s) or representatives of the owners

_____ 19_____

'n Divisie van Transnet Beperk
Registrasienommer 90/00900/06
A division of Transnet Limited
Registration number 90/00900/06

37/212549 : PORTNET 95
Produksiehuis : Drukkery/Production House : Pri

Versoek om sleepboot vir spesiale dienste
Request for tug services of a special nature

PORTNET

Aan die hawekaptein/*To Port Captain*

Hawe/*Port* _____

Ek/Ons _____

van _____, die behoorlike gem

agent(e) of verteenwoordiger(s) van die eienaars van die vaartuig _____

versoek hierby dat 'n sleepboot gestuur word na die genoemde vaartuig ten einde sodanige hulp te verleen as wat die vaartuig nodig mag hê.

I/We _____

_____ *being the duly aut*

agent(s) or representative(s) of the owners of the vessel _____

hereby request that a tug be dispatched to the said vessel for the purpose of rendering any assistance the vessel may require.

Ek/Ons kom ooreen dat die verskaffing van die sleepboot vir die doel wat hierin genoem word, onderworpe is aan die Standaard Handelsvoorwaardes vir Portn
I/We hereby agree that the provision of the tug for the purpose mentioned herein shall be subject to the Standard Conditions of Trade of Portnet

_____

Behoorlike gemagtigde agent(e) of verteenwoordiger(s) van die eienaars
Duly authorised agent(s) or representatives of the owners

_____ 19_____

'n Divisie van Transnet Beperk
Registrasienommer 90/00900/06

1. TURKISH MARITIME ORGANIZATION SALVAGE AND ASSISTANCE AGREEMENT

This Salvage and Assistance Agreement has been held between the Master (Owner or authorized representative) of the vessel ..... belonging to the firm ....., who has sustained a casualty in ..... on ...../198..... and the Master ..... of the salvage tug (vessel), ... in the name and on account of Turkish Maritime Organization, as follows:

Master, Owner or representative of the vessel sustaining a casualty shall be shortly referred as the MASTER and the Master of the salvage tug or the Turkish Maritime Organization shall be shortly referred as the SALVOR.

The MASTER has signed this Agreement in representation of all the values on board the vessel, cargo and freight.

Article 1

Pursuant to Article 1223 of Turkish Commerce Code, this Agreement has been held on the basis of the principle (No cure, no pay), i.e. (In case of the rendered services not giving any results, no salvage or assistance remuneration can be demanded.)

No objection can be raised against the salvage-assistance duality of the service rendered according to this Agreement.

Article 2

The MASTER hereby requests the SALVOR to salve the vessel, cargo and freight, sustained to a casualty and to have them ready to be delivered to him at the nearest anchorage or at ....., against an award, by the condition that all the expenses shall be on account, of all the services shall be rendered by, and all the means shall be supplied by the SALVOR; and the SALVOR has accepted this offer and has undertaken to do his best in salvage assistance under the provisions of hereby issued Agreement.

The SALVOR has an absolute option both at the beginning and till the end of the services to determine whether or not the salvage and assistance shall give a satisfactory result and whether or not the vessel and the values on board are valuable enough to meet the expenses of salvage and assistance.

shall not give a satisfactory result or the vessel and the values on board are not worth to the expenses of salvage and assistance by taking into account the state of the vessel and her cargo, sustained to a casualty, and also the other conditions. SALVOR is hereby entitled to cancel the Agreement and to abandon the business even if the salvage activities have been started.

In cases of cancellation of this Agreement or abandonment of the business, SALVOR cannot be in any way claimed for any loss. If the vessel or her cargo or freight have been partly salved, SALVOR shall be awarded over the SALVED VALUES. But in no case this award can exceed the SALVED VALUES.

SALVOR is fully entitled to perform the services of salvage and assistance with any one of his salvage tugs stated in this Agreement or other ones or by other vessels and means and to change the vessel and means at any stage of the services.

Article 3

The vessel sustained to a casualty is obliged to perform the manoeuvres and the operations deemed as necessary by the SALVOR and to handle the equipment to the order of the SALVOR.

SALVOR is entitled to use the anchor, chains, equipment and installations of the vessel sustained to a casualty in salvage and assistance related services, free of any charge.

SALVOR may discharge the cargo, ballast, bunker, vessel equipment, etc. and all other materials on board; may freely change their places; may transship them or may jettison everything he deems it necessary under his sole opinion and option and cannot be subjected to a claim of indemnity because of his such acts.

SALVOR has no responsibility for total loss or damages or loss of the hull, equipment, cargo and similar values of the vessel sustained to a casualty because of manoeuvring, loading, discharging, towing and other acts and because of bad climatic conditions or of any other reason, during the operations of salvage and assistance.

MASTER has signed this Agreement upon his acceptance of above mentioned terms.

Article 4

MASTER and other seamen have no right to interfere with the salvage and assistance services in any manner; to prevent the manoeuvres or operation[illegible] to attempt to [illegible]

salvage tug of all the information and data known by them about the vessel, cargo and other matters.

Furthermore, MASTER has to inform in written form the types, nature and values of the cargo and bunker on board; name of the insurance company for cargo, freight and vessel, and the insurance amounts; the value; portions of collected and uncollected freight amounts and the risky and unrisky freight.

In case that the services are stopped or prevented to be finished by an interfere of the MASTER; salvage-assistance shall be deemed as if it has been successfully completed and the salvage-assistance award shall be determined and paid as if the services have been fully rendered.

Article 5

At the date when the vessel salved or assisted and the cargo and other values on board are brought to the place stated in Article 2 or taken under security in the place where they are or when the state mentioned in the last paragraph of the Article 4 occurs, the salvage-assistance liability shall be deemed as successfully completed and the vessel sustained to a casualty shall be delivered by the MASTER pursuant to the provisions of this Agreement.

Provided that the SALVOR may take the necessary measures and may have the salvage tug wait around the vessel sustained to a casualty until the date of guarantee issued under provisions of this Agreement. Expenses made or losses arising from this act of waiting shall be taken into account in determination of the salvage award. In the determination of this award, the time spend is calculated as the period from sailing of the salvage tug to returning to its original place.

The SALVOR reserves his right of pledge and detention on the salved values, pursuant to salvage-assistance provisions of the Turkish Commerce Code and this Agreement.

Vessel and her contents salved or assisted under the authorities based on such rights cannot be sailed or taken from their places, cannot be taken to some other place and cargo and other goods cannot be discharged from the vessel unless a written approval is received from the SALVOR pursuant to above given Article 2. The document showing the delivery of the requested security by the SALVOR shall be accepted as an approval.

MASTER is liable to submit a letter of guarantee issued by an insurance company acceptable by the SALVOR or by a known Bank, bearing [illegible] of unlimited joint debt and joint [illegible]nd the amount, of

vessel, cargo and freight, against his debts to be paid to the SALVOR together with the interests plus salvage-assistance expenses, attorney fees and arbitrator fees and arbitration expenses immediately upon the termination of salvage-assistance services. Sum of the security doesn't in any way affect the determination of expenses and salvage-assistance award by the arbitrators in future.

In case the SALVOR accepts in written form separate letters of guarantee for vessel, cargo or freight, instead of one letter of guarantee against all the salved values, the responsibility of the Owner shall be extended in spite of the letter of guarantee, and the SALVOR may follow up also the Owner with or without this letter of guarantee.

In case that security is not given or is not satisfactory, the SALVOR is free to use his rights of pledge and detention, to prevent the vessel to sail on by having a maritime lien on decision on the cargo and to apply to all the legitimatic ways for the purpose of collecting his credits until the said security is given or completed. Responsibility for loss, damage or total loss of vessel and cargo in the execution of this rights are limited to the vessel, cargo and freight.

In case that the cargo is loaded on the vessel without any security or under deficient security, Owner of the salved or assisted vessel is responsible against the SALVOR together with the Master of the vessel for the liabilities stated for the cargo in this Agreement.

If the security is collected higher than its normal level, no claim for indemnity can be brought forward to the SALVOR.

Article 6

Owner of the salved or assisted vessel is fully responsible to pay the salvage-assistance award, arbitration attorney fees, all the expenses and all the other financial liabilities due to be paid to the SALVOR, being a joint debtor responsible for whole of the credit together with its parts. SALVOR has the sole option and is fully free to bring the suit for the collection of his credits to only owner or to the owner of the cargo together with the Shipowner or to the Master under these principles, cepeccing upon the principles of joint-debtedness and participation for cargo, freight and vessel.

Shipowner accepts and agrees to pay all the salvage-assistance award and their details for vessel, cargo and freight and to be solely addressed to the suit.

Separate issuance of the securities doesn't affect the determination of who will be addressed to the suit.

All [illegible] the claims, actions and conflicts arising from this

Two arbitrators shall be appointed for vessel, cargo and freight; one by SALVOR and the other by MASTER or SHIPOWNER. In case that the Shipowner or master fails to appoint and to inform the SALVOR of their arbitrator within a week after the date of notification of the arbitrator appointed by the SALVOR, this arbitrator shall be elected by Istanbul Commerce Court upon the application of the SALVOR.

In case that these two arbitrators don't come to an agreement, they shall elect a third arbitrator. If they don't agree on the third arbitrator, the third arbitrator shall also be elected by Istanbul Commerce Court upon the application to be made by the SALVOR.

The arbitrators shall examine the conflict and make a decision within 55 days after their first meeting date held in the presence of the parties, but presence of the parties is not obligatory. In case a third arbitrator is appointed, this period shall be extended by another 45 days after the date of meeting held in the presence of three arbitrators and the parties, but presence of the parties is not obligatory; in this case, the arbitrators shall examine the conflict and make a decision within 45 days after their first meeting date.

Arbitrators are not bound to the Act of Jurisdical Procedures. Parties who don't attend the survey or meeting shall not be called and a decision of absence shall not be made.

Arbitration period may be extended by approval of the parties or by a decree of court.

In case separate securities are given for the vessel, cargo and freight, arbitrators shall separately state the values and proportions of the salved values in their decisions.

Arbitrators shall be paid an arbitration fee over the amount the, state in their decisions. This fee equals to 10% of the decided salvage-assistance award if the conflict is solved by two arbitrators and 12% of the said award if the conflict is solved by three arbitrators. Fee determined over this proportion shall be paid by the Defendant and shall be equally divided among the arbitrators.

Arbitrators shall apply an interest over the amount of salvage-assistance award beginning from the date of completion of the salvage-assistance, over the rate of reeskont interests prescribed by the Turkish Republic, Central Bank, for the short-term credits.

Article 7

If the vessel salves herself by her own means until the SALVOR comes to the casualty place, SALVOR gains the right to receive a reasonable remuneration for his expenses and losses.

borders is salved or assisted by the third persons or vessels, the vessel agrees to pay a full salvage-assistance award to the SALVOR.

Article 8

Salvage-assistance award and attorney fees and arbitration fees, their interests and arbitration expenses prescribed by the arbitrators shall be paid to the SALVOR within 7 days after the date of notification of the arbitration decision to the MASTER, Shipowner of their representatives. Otherwise, SALVOR is entitled to collect all his credits from the securities or vessel or un-collected freight or cargo.

This Agreement has been issued and signed in two copies on ...../...../198..... In the name of the vessel, her cargo and freight– Master of the Vessel. In the name of Turkish Maritime Organization– Master of Salvage Tug.

MARITIME (FORM OF MARITIME SALVAGE AGREEMENT) (EDITION JV 1990)

The[1] .....
at[2] .....

BETWEEN:

1—Mr[3] .....
Master of the[4] .....
hereafter called the MASTER, acting on behalf of the owners of the ship and her cargo, and freight.

AND:

2—Mr[5] .....
acting on behalf of the[6] .....
.....
hereafter called the SALVOR.

IT IS AGREED WHAT FOLLOWS:

I—The salvage operations which are the subject of the present contract are, by express agreement, ruled by the provisions of the "International Convention on Salvage, 1989", save from the complementary or contrary provisions which appear in the specials terms hereafter.

II—The SALVOR agrees, at his own risk and costs, to use his best endeavours to salve the said ship and her cargo, to do his utmost to prevent the outflow of any polluting substance from the vessel, its bunkers, or its cargo in order to avoid, as far as possible, any damage to the environment, to provide all proper machinery and other assistance and labour, in order to bring the vessel and her cargo to safety in the port of[7] .....
or to any other place which might be agreed subsequently by the parties.

[1] Date of the signing of the contract.
[2] Place of the signing of the contract.
[3] Name of the MASTER of the assisted vessel or of the representative of the owners of the salved property.
[4] Name of the ship, the machines or the assisted property.
[5] Name of the SALVOR's representative.
[6] Name of the SALVORS.
[7] Port or place where it has been decided to put the assisted property in safety.

III—These services will be rendered and accepted as salvage services. The reward will be paid, on application of the principle "No cure no pay", only if the assistance given by the SALVOR is successful. The reward will not exceed the value of the salved property. For a partial success a partial reward will be paid.

The reward will be calculated in accordance with the following rules of Article 13.1 of the International Convention on Salvage 1989. 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 value of the salved vessel and other salved 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.

IV—However,

(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 of the said Convention, at least equivalent to the special compensation assessable in accordance with the present article, he shall be entitled to special compensation from the owner of that vessel, equivalent to his expenses as herein defined in accordance with Article 14 of the International Convention on Salvage 1989.

(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 [illegible] of the said Convention, may increase such special compensation further, even up to a multiple, or some other amount in excess thereof, 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 provided in paragraphs (h), (i) and (j) of paragraph 1 of Article 13 of the said convention, as set out in Article III hereabove.

(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 of the International Convention on Salvage, 1989.

(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.

V—The SALVOR for this salvage may make a reasonable use of the vessel's gear and equipment, but he must not unnecessarily damage, abandon or sacrifice the same or any other of the property.

The MASTER and the chief engineer of the assisted vessel should supply the SALVOR with any useful information concerning the vessel and her cargo.

The SALVOR may require the co-operation of the ship's crew who, however, will never be considered as being in his service.

VI—The MASTER will be responsible for any damage caused through the operation, as well to his own vessel as to any third party, even when such damage occurs through the fault of persons as well as unforeseen circumstances or any act of God.

VII—The SALVOR will have the absolute right to give up the operation, should he think that it would reasonably be impossible for him to succeed or if there is a change in the circumstances.

VIII—When the services effected by this contract have been totally or partially completed by the SALVOR, when the contract has been signed, they will be totally ruled by the provisions of the present contract.

IX—Th[illegible]alved property will be kept as a guarantee of payment of the

his consent until a satisfactory security of payment at the place of arbitration has been given to the SALVOR, who must notify the amount required four days after the end of the operations. The SALVOR shall have a maritime lien on the property salved for his reward in case of delay in the completion of the aforesaid security or when he thinks the moving of part or all of the salved property is contemplated contrary to the above agreement.

The MASTER who must give the security can ask the Arbitrators to condemn the SALVOR to pay the cost of the part of the security which they may think excessive to him, and this sum will be deducted from the total amount of the salvage.

X—The amount of the reward for salvage and/or the amount of the special compensation will be fixed by artibration, which will be held in Paris according to the rules of the Chambre Artibrale Maritime de Paris.

XI—The different owners of the goods subjects of the present vessel salvage, freight, cargo etc . . . will be jointly and severally liable for the payment of the security and the salvage reward.

XII—The total amount charged to the MASTER, costs included, are payable all at the same time at the place of arbitration within fifteen days of the notification of the award. If no settlement intervenes within this time, the allocated sums will bear interest at the legal rate. The release of the security must be given as soon as payment is made.

The Arbitrators may give the SALVOR, at his request, a payment on account which will diminish the amount of the security.

MASTER[8]

SALVOR[9]

[8] Signature of the Owners or Master, whose name is put in at note 3, preceded by the note "Read and passed".

SCANDINAVIAN SALVAGE CONTRACT
"No Cure – No Pay"

Standard Form of Salvage Agreement 1994, approved by

Sweden
Sjöassuradörernas Förening
Sveriges Redareförening
Scandinavian Tugowners' Association

Norway
Gjensidige Skibsassuranseforeningers Komité
Norges Rederiforbund
Sjøassurandørernes Centralforening
Scandinavian Tugowners' Association

Denmark
Foreningen af danske Søassurandører
Danmarks Rederiforening
Scandinavian Tugowners' Association

1. Place and date	2. Name and home port of distressed Vessel
3. Cargo	4. Nature of distress
5. Salvor	6. Port of refuge
Signature (for the Salvor)	Signature (for the owners of the Vessel)

It is hereby agreed between the Captain of the Vessel named in Box 2, hereinafter called "the Vessel", (or other representative of the owners of the Vessel) which with the cargo of the composition stated in Box 3 is in distress for the reason(s) mentioned in Box 4, and the Salvor mentioned in Box 5, hereinafter called "the Salvor" that

1. The Salvor agrees to use his best endeavours to salve the Vessel and its cargo and in connection therewith to use his best endeavours to prevent or minimize damage to the environment, cf. the International Salvage Convention 1989 ("the Salvage Convention") art. 1, d and in accordance with separate agreement – or in the absence of such agreement, at the discretion of the Salvor – to take the Vessel to the port named in Box 6 or to the nearest port or place of repairs.

2. The Services are rendered on the basis "No Cure – No Pay" except where the Vessel itself or its cargo constitutes a threat of damage to the environment, cf. the Salvage Convention art. 1, d. When the Salvage services have been concluded in accordance with art. 1 the remuneration is assessed by agreement or, when that is not possible, by arbitration in accordance with art. 6.

3. It is agreed, that articles 1(a) through (e), 8, 13.1, 13.2, first sentence, 13.3, and 14 of the Salvage Convention are deemed to be incorporated in this contract for which reason the remuneration to the Salvor shall be assessed in accordance with the conditions and principles which are provided for in Lloyd's Standard Form of Salvage Agreement 1990.

4. When carrying out the salvage services the Salvor has the right to use without remuneration to a reasonable extent the equipment, stores and provisions of the Vessel. The owner of the Vessel shall fully cooperate with the Salvor and immediately after the conclusion of the services accept redelivery of the Vessel. Should it not be possible to salve the Vessel and its cargo the Salvor is reserved the right to salve parts thereof.

5. The Vessel must not be removed from the port or place where it has been brought after the completion of the salvage services until an acceptable security for the salvage award for the Vessel has been provided. Nor must salved cargo be removed until an acceptable security for the salvage award has been provided.

6. Disputes in respect of the award to the Salvor including payments in accordance with art. 3 as well as any other dispute which has arisen out of this contract shall be resolved by final arbitration in accordance with the rules of the Scandinavian Court of Arbitration in Salvage Cases.

7. A party is obliged to meet such obligations which are put upon him in an arbitral award against which appeal has not been made within the given time limit or in case of appeal when a final award has been rendered.

The arbitration rules referred to in art. 6 are printed on the back of this contract.

Arbitration Rules

of the Scandinavian Court of Arbitration in Salvage Cases

equest for arbitration shall be submitted to The Baltic and International Maritime Council (BIMCO), 161 Bagsvaerdvej, DK-2880 agsvaerd, Denmark, telephone 44 44 45 00, fax 44 44 4450, lex 19086, which out of a panel of permanent arbitrators (vide t. 2) appoints one sole arbitrator, which shall decide the case first instance.

ne panel of permanent arbitrators are for the time being (1994):
agdommer Gunnar Vefling, Oslo
øyesterettsadvokat Erling C. Hjort, Oslo
dvokat Jan-Fredrik Rafen, Oslo
dvokat Jan Erlund, Copenhagen
dvokat Bent Nielsen, Copenhagen
dvokat Lars Rahmn, Gothenburg
dvokat Robert Romlöv, Gothenburg, and
dvokat Jan Melander, Stockholm.
hese permanent arbitrators have been appointed jointly by sjöassuradörernas Förening, Sweden, Gjensidige Skibsassuranseforeningers Komité, Norway, Sjøassurandørernes Centralforening, Norway, Foreningen af danske Søassurandører, verieges Redareförening, Norges Rederiforbund, Danmarks Rederiforening and Scandinavian Tugowners' Association, which rganisations also may jointly alter such appointment or appointments.

rior to the appointment of an arbitrator BIMCO shall get in touch ith the prospective arbitrator to make sure that such a person is ot disqualified. Before BIMCO makes a final appointment IMCO shall request a written declaration from the prospective rbitrator confirming that he is not disqualified. An arbitrator is eemed to be disqualified. i.a. if he within the last years has asisted one of the parties as a lawyer. If possible each one of the ermanent arbitrators shall be used in deciding cases to the ame extent irrespective of that having the result that the arbitrar in question does not have the same nationality as the Salvor. all event an arbitrator of the same nationality as the parties hall be appointed should the parties jointly so request. In case f dispute beteeen the parties as to disqualification of an arbiator such a dispute may be referred to the Courts of the Country here the arbitration shall be held (vide art. 4) in accordance ith the laws of that country.

ne arbitration proceedings shall be held in Sweden, Norway or enmark respectively depending on the nationality of the Salvor, nd at the place decided by the arbitrator.
ne arbitrator shall apply Swedish, Norwegian or Danish subantive law and procedural law according to the nationality of e Salvor.
hould the Salvor not be Swedish, Norwegian or Danish the artration proceedings shall be held in Denmark according to anish substantive law and procedural law.
hen applying Swedish law the Swedish Arbitration Act of 1929 929:145) shall apply to the extent these rules do not provide herwise.
hen assessing the salvage award to the Salvor the arbitrator is ntitled to take into consideration for him known practice in setg salvage awards in addition to court cases and arbitral cases.

e court of arbitration gives directions at the commencement of e case and if necessary after consultation with the parties as to nes for the submission of written pleadings and other docuentation and also as to the time for the trial.
e parties exchange and submit apart from points of claim and fence also each one set of pleadings.
e proceedings at the trial shall be oral unless the parties at the ggestion of the arbitrator agree upon written proceedings, ich in particular should be the case in minor and uncompli-ted disputes.
Pleadings may be written in Swedish, Norwegian, Danish or English.
During the oral proceedings and in the award the Swedish, Norwegian or Danish language may be used or, provided the parties so agree, the English language.
Statements or other written declarations by witnesses may be used unless a party objects.
During the trial witnesses and parties may be examined.
In the default of a party the case shall be decided on the material before the court of arbitration.

6. Normally the arbitration proceedings shall be conducted in such an expeditious manner that no longer than six months elapse from the time at which the arbitrator was appointed until the time the award is given.

7. The award shall be in writing and contain reasons.
The arbitrator has the power to make an intermediate award by which the Salvor is given an amount on account against putting up of a security if so deemed fit.

8. The arbitrators are obliged to keep the case and their award secret. The award may not be published unless the parties so agree.

9. Such costs which may arise in connection with the appointment of an arbitrator according to article 1 shall be paid by the claimant. BIMCO has under no circumstances any liability for the costs of the court of arbitration.
The parties are liable in solidum for the costs of the court of arbitration.
The court of arbitration apportions the costs between the parties and normally awards the winning party its full costs. However, under the circumstances the court of arbitration can at its discretion reduce the costs to be awarded. In disputes in respect of the amounts of a salvage award a party has the right to give the arbitrator in a sealed envelope particulars as to the amount of award he has offered. Such an envelope is opened by the arbitrator when he has given his award as to the amount of the salvage award and the particulars of the offer will form part of the arbitrator's basis for assessing the question of costs.

10. By the award interest should be given on the salvage award from 30 days after the claim for salvage was made but at the earliest 90 days from the time when the salvage was completed. Interest is the rate of interest in court proceedings which is provided by the law of the country which the court of arbitration shall use in accordance with art. 4 although in respect of Norwegian law less 2%, and the salvage award shall be given in the currency of the country whose law is applicable.

11. An appeal can be made against an award to an appeal court of arbitration. This is made by a written submission to BIMCO. Should an appeal not be entered against an award within 14 days from the time it was made, such an award is final and a party is obliged to meet such obligations which are put upon him by such an award. Should that not be done the award can be enforced in accordance with the applicable rules or if neccessary be used as a basis for a claim against that party before the ordinary courts. The appeal court of arbitration consists of three of the permanent arbitrator which are appointed case by case by BIMCO, which also appoints the chairman of the tribunal.
In case of disagreement between the three arbitrators in the appeal court of arbitration the case is decided by majority.
Otherwise the rules in respect of arbitration cases in first instance are applicable to the extent possible. The period of time in art. 6 of six months shall be counted from the time the request for appeal was transmitted to the chairman of the appeal court of arbitration.

救 助 合 同

Salvage Contract

中国海事仲裁委员会(1994)标准格式

China Maritime Arbitration Commission Standard Form(1994)

中国海事仲裁委员会

China Maritime Arbitration Commission

中海仲 1994 年
CMAC1994

救 助 合 同

Salvage Contract

中国海事仲裁委员会(1994)标准格式

China Maritime Arbitration Commission Standard Form(1994)

_____年_____月_____日

_____

(签署地)

(被救助船舶所有人名称)

_____

(地址:_____

电话:_____ 传真:_____

电传:_____ 邮政编码:_____)的

_____号船舶

(船旗国:_____ 船籍港:_____

的船长(或船舶所有人)_____代表

_____号船舶、

船上货物、运费、燃料、物料和其他财产的所有人(下称"被救助方")同

(救助方名称)

_____

(地址:_____

电话:_____ 传真:_____ 电传:_____

邮政编码:_____)的代表_____

签订本合同。

第一条 救助方应以应有的谨慎救助_____号船舶及/或船上货物、运费、燃料、物料和其他财产,并将它们送到_____或以后商定的其它地点,如果没有上述约定或商定地点,可送往任一安全地点。

当获救的船舶及/或其它财产已被送到前款规定的地点时,被救助

方应及时接受救助方提出的合理的移交要求；如未及时接受，被救助方应对非属救助方过失造成的后果负责。

第二条 被救助方应与救助方通力合作，包括获得准许进入合同第一条规定的地点；免费提供救助方合理使用船上的机器、装置、设备、锚、锚链、物料和其他属具，但救助方不应无故损坏、抛弃或牺牲上述物件或其他被救财产。

第三条 救助方有义务在合理需要的情况下，寻求其他救助方援助。

被救助方或船长合理要求其他救助方参与救助作业时，救助方应接受此种要求，但要求不合理的，原救助方的救助报酬金额不受影响。

第四条 在救助作业过程中，救助方和被救助方、船长均有义务以应有的谨慎防止或减少环境污染损害。

第五条 除本合同第九条规定外，救助方对本合同规定的救助标的进行救助，取得效果（包括取得部分效果）的，有权获得救助报酬；未取得效果的，无权获得救助报酬。

第六条 在救助作业中救助人命的救助方，对获救人员不得请求酬金，但是有权从救助船舶或其他财产、防止或减少环境污染损害的救助方获得的救助款项中，获得合理的份额。

第七条 确定救助报酬，应体现对救助作业的鼓励，并综合考虑下列各项因素：

（一）船舶和其他财产的获救价值；

（二）救助方在防止或减少环境污染损害方面的技能和努力；

（三）救助方的救助成效；

（四）危险的性质和程度；

（五）救助方在救助船舶、其他财产和人命方面的技能和努力；

（六）救助方所用的时间、支出的费用和遭受的损失；

（七）救助方或者救助设备所冒的责任风险和其他风险；

(八)救助方提供救助服务的及时性；
(九)用于救助作业的船舶和其他设备的可用性和使用情况；
(十)救助设备的备用状况、效能和设备的价值。
救助报酬金额不得超过船舶和其他财产的获救价值。

第八条 由于救助方的过失致使救助作业成为必需或更加困难的，或者救助方有欺诈或其他不诚实行为的，应当取消或减少向救助方支付的救助款项。

第九条 对构成环境污染损害危险的船舶或船上货物进行的救助，救助方依照本合同第七条规定所获得的救助报酬，少于依照本条规定可以得到的特别补偿的，救助方有权依照本条规定，从船舶所有人处获得相当于救助费用的特别补偿。

救助方进行前款规定的救助，取得防止或减少环境污染损害效果的，船舶所有人依照前款规定应向救助方支付的特别补偿，可以另行增加，增加的数额可以达到救助费用的百分之三十。如果根据本合同第十三条组成的仲裁庭认为适当，并且考虑本合同第七条第一款规定的各项因素，可以裁决进一步增加特别补偿，但在任何情况下，增加部分的总数额不得超过救助费用的百分之一百。

本条所称救助费用，是指救助方在救助作业中直接支付的合理费用和实际使用的救助设备、投入救助人员的合理费用。确定救助费用应当考虑本合同第七条第一款第(八)、(九)、(十)项规定的各项因素。

在任何情况下，本条规定的全部特别补偿，只有超过救助方依照本合同第七条规定能够获得的救助报酬时，方可支付，支付金额为特别补偿超过救助报酬的差额部分。

由于救助方的过失未能防止或减少环境污染损害的，可以全部或部分地剥夺救助方获得特别补偿的权利。

第十条 为了保全救助方应得的救助报酬，在救助作业结束后，被救助方应根据救助方的要求，在十四个银行工作日内(法定节假日除外)提供满意的担保。

船舶所有人及其雇佣人、代理人应在获救的货物交还前，尽力使货物所有人对其应承担的救助报酬提供满意的担保。

在按本条第一款规定提供担保以前，未经救助方书面同意，不得将获救船舶和其他财产从救助作业完成后最初抵达的港口或地点移走。如果救助方有理由认为被救助方将要违反或企图违反本款规定，有权申请采取财产保全措施。

上述担保金额应包括利息和进行仲裁可能发生的合理费用在内。

第十一条 在本合同第九条的规定可能适用的情况下，船舶所有人应根据救助方的合理要求提供满意的担保。

第十二条 如果在签订本合同之前，被救助方或船长没有明确和合理地制止，救助方对遇险的船舶及/或船上货物、运费、燃料、物料和其他财产已提供了本合同所指的全部或部分救助服务，本合同的规定应适用于这种服务。

第十三条 本合同是由船长或船舶所有人代表船舶、船上货物、运费、燃料、物料和其他财产的所有人签订的，各所有人应各自履行本合同规定的义务。

救助报酬金额应由获救船舶和其他获救财产的各所有人，按照船舶和其他财产各自的获救价值占全部获救价值的比例承担。

第十四条 参加同一救助作业的各救助方的救助报酬及/或特别补偿，根据第七、八、九条的规定由各方协商确定。

第十五条 救助方和被救助方之间以及签订本合同的各救助方及/或各被救助方相互之间根据本合同所发生的或与本合同有关的一切争议，均应提交中国海事仲裁委员会(下称"仲裁委员会")仲裁解决。

仲裁委员会依照该会仲裁规则规定的程序进行仲裁。依据仲裁委员会仲裁规则组成的仲裁庭，有权根据救助方的请求，在合理条件下，作出中间裁决或部分裁决，要求被救助方向救助方先行支付适当的金额。被救助方根据仲裁庭上述裁决先行支付的金额，其提供的担保金额应作相应扣减。

仲裁委员会的裁决是终局的，对所有当事人均有约束力。

第十六条　除另有明确约定外，本合同和根据本合同进行的仲裁适用中华人民共和国法律。

第十七条　本合同前言中所列名称、地址、传真号、电传号和邮政编码如有变更，应立即通知仲裁委员会和对方。否则，一切发该地址邮寄的信件、文件等及发该号码传送的传真和电传，仲裁委员会或仲裁庭认为已经过合理的时间即视为已经送达。

_____
(dated)

_____
(place of signature)

It is hereby agreed between _____
(name of Master or Owner)
of the m. v. _____
(name of the vessel being salved)
(flag: _____ port of registry: _____)
owned by _____
(address: _____
tel: _____ fax: _____ telex: _____ postal code: _____)
for and on behalf of the m. v. _____, her cargo, freight, bunkers, stores and any other property thereon (hereinafter called "the salved party") and the representative of the salvor _____
(address: _____
tel: _____ fax: _____ telex: _____ postal code: _____)
that:

1. The salvor shall exercise due care to salve the m. v. _____ and / or her cargo, freight, bunkers, stores and any other property thereon and take them to _____ or such other place as may hereafter be agreed, or if no such place is named or agreed, to any other place of safety.

When the vessel and/or other property salved have been brought to the place named in the preceding Paragraph, the salved party shall promptly accept redelivery when reasonably requested by the salvor to do so. If the salved party failed to do so, they shall be responsible for the result to which the salvor has no fault.

2. The party salved shall co-operate fully with the salvor including obtaining permit of entry to the place as defined in Clause 1 of this Contract and

allowing the salvor to make reasonable use, free of expenses, of the vessel's machinery, gear, equipment, anchor and anchor chains, stores and other appurtenances provided that the salvor shall not unnecessarily damage, abandon or sacrifice the same or any other property being salved.

3. The salvor shall owe duty to seek the assistance of other salvors where reasonably necessary.

The salvor shall accept the intervention of other salvors when reasonably requested to do so by the salved party or the master, provided however that the amount of his reward shall not be prejudiced if such a request was found unreasonable.

4. During the salvage operations, the salvor and the salved party and the master are under an obligation to exercise due care to prevent or minimize pollution damage to the environment.

5. Except as otherwise provided for in Clause 9 of this Contract, where the salvage operations rendered to the subject-matter of the Salvage Contract have had a useful result (including partial result), the salvor shall be entitled to a reward, and the salvor shall not be entitled to a reward if the salvage operations have had no useful result.

6. The salvors of human life may not demand any remuneration from those whose lives are saved. However, salvors of human life are entitled to a fair share of the payment awarded to the salvor for salving the ship or other property or for preventing or minimizing the pollution damage to the environment.

7. The reward shall be fixed with a view to encouraging salvage operations, taking into full account the following criteria:

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

(2) skill and efforts of the salvor in preventing or minimizing the pollution damage to the environment;

(3) measure of success obtained by the salvor;

(4) nature and extent of the danger;

(5) skill and efforts of the salvor in salving the vessel, other property and life;

(6) time used and expenses and losses incurred by the salvor;

(7) risk of liability and other risks run by the salvor or their equipment;

(8) promptness of the salvage services rendered by the salvor;

(9) availability and use of ships or other equipment intended for the salvage operations;

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

The amount of reward shall not exceed the value of the vessel and other property salved.

8. Where the salvage operations have become necessary or more difficult due to the fault of the salvor or where the salvor has committed fraud or other dishonest conduct, the salvor shall be deprived of the whole or part of the payment payable to him.

9. If the salvor, performing the salvage operations in respect of the vessel which by itself or her cargo threatened pollution damage to the environment, has failed to earn a reward under Clause 7 of this Contract at least equivalent to the special compensation assessable in accordance with this Clause, he shall be entitled to special compensation from the owner of the vessel equivalent to his expenses as herein defined.

If the salvor, performing the salvage operations prescribed in the preceding Paragraph, has prevented or minimized pollution damage to the environment, the special compensation payable by the owner to the salvor under the preceding Paragraph may be increased by an amount up to a maximum of 30% of the expenses incurred for the salvage. The arbitration tribunal formed in accordance with Clause 15 of this Contract may, if it deems fair and just and taking into consideration the various factors defined in Paragraph 1 of Clause 7 of this Contract, render an award further increasing the amount of such special compensation, but in no event shall the total increase be more than 100% of the expenses incurred for the salvage.

The salvor's expenses referred to in this Clause means the salvor's out—of—pocket expenses reasonably incurred in the salvage operation and reasonable

expenses for the equipment and personnel actually used in the salvage operations. In determining the salvor's expenses, the provisions of Sub-paragaphs (8), (9) and (10) of Paragraph 1 of Clause 7 of this Contract shall be taken into consideration.

Under all circumstances, the total special compensation defined in this Clause shall be paid only if such compensation is greater than the reward recoverable by the salvor under Clause 7 of this Contract, and the amount to be paid shall be the difference between the special compensation and the reward.

If the salvor has failed, due to his negligence, to prevent or minimize the pollution damage to the environment, the salvor may be totally or partly deprived of the right to the special compensation.

10. In order to secure the remuneration to which the salvor is entitled, the owner of the salved property shall, after the completion of the salvage operations, provide satisfactary security at the request of the salvor within 14 bank working days(except holiday and Sunday).

The owner of the vessel, their servants and agents shall, before the release of the cargo, make best endeavours to cause the owners of the cargo salved to provide satisfactory security for their proportion of their salvage reward.

Without the consent in writing of the salvor, the vessel or other property salved shall not be removed from the port or place at which they first arrived after the completion of the salvage operations, until satisfactory security prescribed in Paragraphs(1)of this Clause has been provided. If the salvor has reason to believe that the party salved is to or attempts to violate the provision of this Paragraph, the salvor is entitled to apply for measure of property security.

The aforesaid amount (s) shall include interests and reasonable fees and expenses which might be incurred for arbitration.

11. In case the provisions of Clause 9 apply, the owner of the vesee! shall provide satisfactory security at the reasonable request of the salvor.

12. The provision of this Contract shall apply to the salvage services, wholely or partly, as defined in this Contract that have been rendered to the

vessel and/or her cargo, freight, bunkers, stores and other property in danger without the express and reasonable prohibition on the part of the salved party or the master prior to signing this Contract.

13. The master of the vessel or its owner enters into this Contract on behalf of owners of the vessel, her cargo, freight, bunkers, stores and any other property thereon and each of the respective owners is bound to the due performance of this Contract.

The salvage reward shall be paid by the owners of the vessel and other property salved in the proportion that the respective value of the salved vessel and property bear to the total salved values.

14. The distribution of salvage reward and/or special compensation among the salvors taking part in the same salvage operation shall be made by agreement among such salvors on the basis of the provisions of Clause 7,8 and 9.

15. Any dispute arising under or in connection with this Contract between the salvor and the salved party and among the salvors and/or the salved parties who are the paities to this Contract shall be referred to China Maritime Arbitration Commission (hereinafter called the Commission) for arbitration.

The procedures of arbitration shall be governed by the Arbitration Rules of the Commission. The Arbitration tribunal formed in accordance with the Arbitration Rules of the Commission shall have power to make, upon request by the salvor and under reasonable conditions, an interlocutory or partial award ordering the party salved to pay in advance an appropriate amount of the payment to the salvor. Such payment, if paid in advance by the salved party according to the aforesaid award of the arbitration tribunal, shall be deducted accordingly from the sum provided as security.

The award rendered by the Commission shall be final and binding on all the parties

16. Except otherwise expressly provided, the law of the People's Republic of China shall apply to this Contract and to the arbitration conducted under this Contract.

17. Any change(s)of the address, fax 、telex number and postal code given in the preamble of this Contract shall be immediately communicated to the Commission and the other party. Failing this, any letter and document mailed to such address as well as any facsimile and telex message transmitted to such number shall be deemed to have been dully served to the parties over a period of time as deemed reasonable by the Commission or the arbitration tribunal.

签　字：
Signature

代表救助方 For and on behalf of the salvor	代表被救助方 For and on behalf of the salved party
_____	_____

The Documentary Committee of The Japan Shipping Exchange, Inc.

Issued 18/12/1980
Amended 5/6/1985
Amended 3/10/1991

SALVAGE AGREEMENT
(No Cure — No Pay)

Place and date: .....

This SALVAGE AGREEMENT (hereinafter called "the Agreement") is made and entered into by and between .....
for and on behalf of the master..... for and on behalf of the Owners of the "....." (hereinafter called "the Vessel"), her cargo and other properties (the Owners of the Vessel, her cargo and other properties are hereinafter to be called "the Salved Parties"), and ..... for and on behalf of ..... (hereinafter called "the Salvor"):

Clause 1 (Salvage Services)

The Salvor agrees to use his best endeavours to render all necessary services to salve the Vessel and/or her cargo and other properties, and to take them to the nearest place of safety or other place to be hereafter agreed for delivery to the Salved Parties. The Salvor further agrees while performing the salvage services to use his best endeavours to prevent or minimize damage to the environment (which 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).

Clause 2 (Assistance from other Salvors)

Whenever circumstances reasonably require, the Salvor shall seek assistance from other salvors. The Salvor shall further accept the intervention of other salvors when reasonably requested to do so by the Salved parties or master of the Vessel; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

Clause 3 (Co-operation of Salved Parties)

The Salved Parties and their employees shall co-operate fully with the Salvor in and about the salvage services including obtaining entry to the place stipulated in Clause 1, and in so doing, shall exercise due care to prevent or minimize damage to the environment. The Salved Parties shall promptly accept redelivery of the salved properties at the place stipulated in Clause 1.

Clause 4 (Termination of Salvage Services)

Even if the Salvor has commenced salvage services under the Agreement, the Owners of the Vessel shall be entitled to terminate the services when there is no longer any reasonable prospect of success in salving the Vessel and/or her cargo and other properties after consideration of every relevant factor by giving notice to the salvor in writing.

Clause 5 (Salvage Services rendered prior to the date of the Agreement)

In the event of the services referred to in the Agreement or any part of such services having been already rendered at the date of the Agreement by the Salvor to the Vessel and/or her cargo and other properties, it is agreed that the provisions of the Agreement shall retroactively apply to such services.

Clause 6 (Use and Disposal of Hull, etc.)

With the consent of the Master, obtained in advance, the Salvor and/or his employees may, without being held liable for any costs and expenses, or without being attached any responsibility or obligation in respect of restitution, loss and/or damage which may arise during the period of the salvage services, use the hull, engines, machineries, appurtenances of the Vessel and the whole or part of her cargo, and may also dismantle, sever and work upon any part of the Vessel and/or jettison the whole or any part of her cargo, which may be reasonably required for the purpose of the salvage services. However, in the event of urgent and inevitable emergency, the Salvor may, at his own discretion and without obtaining the prior consent of the Master, resort to the aforementioned measures in such manner and to such extent as would be within the scope of reasonable necessity for the purpose of the salvage services.

Clause 7 (Daily Report of Salvage Services)

The Salvor shall report daily to the Master and the Owner of the Vessel concerning the condition of the Vessel and the situation regarding the salvage services.

Clause 8 (Salvage Remuneration)

(1) In the event that the salvor succeeds in salving the Vessel, her cargo or other properties whether entirely or partially, the Salvor is entitled to claim salvage remuneration against the Salved Parties.

(2) The amount of salvage remuneration shall be decided taking into account the costs and expenses reasonably incurred by the Salvor as a main factor, and further taking into account the value of the salved properties and other factors collectively; these are the nature and degree of the danger to which they were exposed, the degree of difficulties and dangers encountered by the Salvor, the skill of the Salvor in performing the services, the measure of success obtained by the Salvor, the promptness of the services rendered, the state of readiness and efficiency of the Salvor's equipment and the value thereof and the skill and efforts of the Salvor in preventing or minimizing damage to the environment.

The amount of salvage remuneration shall not exceed the total value of the salved properties at the time of termination of the salvage services, exclusive of any interest and legal costs (including costs of mediation and/or arbitration; should the same be applied as hereinafter provided).

(3) The Salved Parties shall each bear the salvage remuneration in proportion to the respective values of their property salved.

Clause 9 (Special Compensation)

(1) Notwithstanding paragraphs 1 and 2 of Clause 8, if the Salvor has carried out salvage services in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under Clause 8 at least equivalent to the special compensation assessable in accordance with this Clause, he shall be entitled to claim special compensation against the Owners of the Vessel equivalent to the expenses incurred by him as herein defined.

(2) If, in the circumstances set out in paragraph 1, the Salvor by his salvage services has prevented or minimized damage to the environment, he shall be entitled to claim special compensation against the Owners of the Vessel equivalent to the expenses incurred by him plus an increment of up to a maximum of 30% of such expenses. However in exceptional circumstances if it should be fair and just to do so bearing in mind the relevant criteria set out in paragraph 2 of Clause 8, he shall be entitled to claim special compensation equivalent to the expenses incurred by him plus an increment of up to a maximum of 100% of such expenses.

(3) Expenses incurred by the Salvor for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the Salvor in the salvage services and a fair rate for equipment and personnel actually and reasonably used in the salvage services.

(4) The total special compensation under this Clause shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the Salvor under Clause 8.

(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 clause.

(6) Nothing in this Clause shall affect any right of recourse on the part of the Owners of the Vessel.

Clause 10 (Security)

(1) The Salved Parties upon the termination of the salvage services, shall on demand of the Salvor provide security of a reasonable amount to ensure payment of the salvage remuneration (inclusive of interest and costs). In the event of failure to lodge the aforesaid security, the Salvor may exercise a maritime lien on the salved properties. The Owners of the Vessel shall use their best endeavours to ensure that the cargo owners provide security before the cargo is released.

(2) The Salved Parties shall each bear security in proportion to the respective values of their property salved.

(3) Where Clause 9 becomes likely to be applicable, the Owners of the Vessel shall on demand of the Salvor provide security of a reasonable amount for the Salvor's special compensation payable under Clause 9.

(4) In case the amount of security demanded by the Salvor under preceding paragraph (1) or (3) is excessive, the Salvor shall bear the whole or part of the expense incurred in lodging such excessive security.

(5) The aforesaid security means cash money and/or a written guarantee issued by a bank, insurance company, P & I Association and/or surety company, or any other form of guarantee, acceptable to the Salvor.

In case the security is in the form of a written guarantee issued by bank, insurance company, P & I Association and/or surety company, the amount of such guarantee shall be specified in Japanese currency unless otherwise agreed by the parties to the Agreement. In case the security is in cash and/or in any other forms equivalent thereto, such security shall be specified in Japanese currency.

(6) The aforesaid security shall be lodged with the Japan Shipping Exchange, Inc. (hereinafter called "the Shipping Exchange"). The Shipping Exchange shall keep the security until such time as payment of the salvage remuneration or the special compensation is effected in accordance with the decision made either by amicable settlement, mediation, arbitration or otherwise.

If expenses should be incurred in keeping the security, such expenses shall be borne by the party who has lodged the said security.

No interest shall accrue upon the security. In case interest accrues upon the cash security lodged, the said interest shall be credited to the account of the depositor.

(7) The Shipping Exchange shall not be responsible for any insufficiency arising from the difference between the amount of the security lodged and the salvage remuneration or the special compensation finally decided. Nor shall the Shipping Exchange be liable for any loss caused by any fluctuation in value of stocks, bonds or any other investment securities which are deposited with the Shipping Exchange.

Clause 11 (Payment of Salvage Remuneration or Special Compensation)

When the parties to the Agreement agree on the amount of the salvage remuneration prescribed in Clause 8 and/or of the special compensation in Clause 9, the Salved Parties shall pay the said salvage remuneration and/or special compensation and interest due under Clause 14 to the Salvor without delay in exchange for the security prescribed in Clause 10.

Clause 12 (Mediation for Settlement of Dispute)

(1) In case the parties to the Agreement fail to agree on the amount of the salvage remuneration and/or of the special compensation within 90 (ninety) days after the date of termination of the salvage services, the parties shall file a claim with the Mediation Commission of the Shipping Exchange, (hereinafter called "the Commission") for mediation of the said dispute.

(2) The parties may also by mutual consent file a claim with the Commission for mediation on any matters arising out of the Agreement other than those stipulated in the preceding paragraph.

(3) Where both parties in dispute so desire, the period stipulated in paragraph (1) of this clause may be shortened and a claim may be filed for mediation before 90 (ninety) days.

(4) Mediation of the Commission shall be held in accordance with the Rules of Mediation Procedures Pertaining to Salvage Remuneration, etc. instituted by the Shipping Exchange.

(5) When the Commission, in accordance with the Rules referred to in the preceding paragraph, instructs the parties in dispute to continue their negotiations, the parties in dispute must continue the negotiations using their best endeavours to settle the case amicably.

(6) During the period of negotiation or mediation under this clause, neither of the parties may foreclose or otherwise enforce his interest in the security by any available judicial procedure or reduce his claim to judgement or take any other legal action, except taking judicial procedure for preserving his claim when there is a danger of facing difficulties in it's enforcement.

Clause 13 (Arbitration)

(1) In case the mediation provided in Clause 12 ends in failure, the parties in dispute shall submit the case to arbitration by the Shipping Exchange, whose judgment or award shall be final and binding.

(2) The Arbitration shall be held in accordance with the Rules of Maritime Arbitration of the Shipping Exchange.

Clause 14 (Interest)

Interest shall be payable on the amount of the salvage remuneration prescribed in Clause 8 and/or of the special compensation in Clause 9 from a date three months after of the termination of the salvage services until the date of payment (or the date of payment on account in case there is any payment on account). Interest shall be at 6% per annum unless otherwise agreed.

Clause 15 (Changes in the rates of exchange)

In deciding the amount of the salvage remuneration prescribed in Clause 8 and / or the special compensation in Clause 9, the consequences of any changes in the relevant rates of exchange which may have occurred between the date of termination of the salvage services and the date on which such amount is fixed shall be taken into account.

Clause 16 (Currency in Mediation or Arbitration)

Where the dispute in respect of the amount of the salvage remuneration and/or of the special compensation has been submitted to Mediation provided in Clause 12 or to Arbitration provided in clause 13, the amount fixed by Mediation or Arbitration shall be specified in Japanese currency unless otherwise agreed by the parties to this Agreement.

Clause 17 (Jurisdiction)

Any action under this Agreement shall be brought before the Tokyo District Court in Japan.

Clause 18 (Governing Law)

This Agreement shall be governed by and construed in accordance with Japanese law.

IN WITNESS WHEREOF, the Parties hereto have signed and executed TWO (2) ORIGINAL COPIES of this Agreement at the place and on the date above written and each party shall hold one (1) original copy.

For and on behalf of the Salved Parties

For and on behalf of the Salvor

.....

Master

.....

The Rules of Mediation Procedures Pertaining to Salvage Remuneration, etc. of The Japan Shipping Exchange, Inc.

Made 18th December, 1980
In force 18th December, 1980
Amended 5th June, 1985
Amended 3rd October, 1991

Article 1. (Items for Mediation and Acceptance of Application for Mediation)

The Mediation Commission of the Japan Shipping Exchange, Inc. (hereinafter called "the Mediation Commission") shall accept the application for mediation as provided in Clause 12 of the Salvage Agreement instituted by the Documentary Committee of the Japan Shipping Exchange, Inc. (hereinafter called "the Salvage Agreement") in accordance with the procedures provided in Articles 2 and 3 of these Rules when any party to the Salvage Agreement submits such application as a result of failure amongst the parties concerned to agree on the amount of salvage remuneration (including special compensation, hereinafter called "salvage remuneration") and/or on other issues under dispute. The parties entitled to apply for mediation shall be the Salvor, the Owner of the salved vessel, the Owner(s) of her cargo and other properties.

Article 2. (Filing of Application for Mediation)

Any party who wishes to apply for mediation to the Mediation Commission under the prescribed Article shall submit to the Mediation Commission the Application for Mediation (hereinafter called "the Application") in triplicate (one original, one duplicate and one copy) with the following particulars:

(i) the names and addresses of the parties in dispute or their agencies (in case of a corporation, the trade name, and the names and capacities of its representatives),

(ii) the amount of salvage remuneration which the Applicant considers reasonable and/or other items to be settled by mediation.

The above Application shall be accompanied by the documents and papers hereinafter provided;

(a) In case the Applicant is the Salvor:- Particulars of Costs and Expenses of the Salvage Services, Estimate of Values of the Salved Properties, Daily Report of the Salvage Services, etc.

(b) In case the Applicant is the Owner of the salved vessel:- Sea Protest, Log Book, etc.

(c) In case the Applicant is a person other than those prescribed heretofore:- Statements and/or Papers describing the facts in dispute.

Article 3. (Deposit covering Costs and Expenses of Mediation)

The Applicant shall deposit in advance with the Japan Shipping Exchange, Inc. (hereinafter called "the Shipping Exchange") an amount covering the costs and expenses which will be incurred in the mediation, in accordance with the rates as specified by the Shipping Exchange.

Article 4. (Representative of Non-Resident Applicant of Japan)

In case the Applicant is a non-resident of Japan, the Applicant shall nominate and appoint his representative who resides in Japan.

Article 5. (Filing of Counter-Statement)

(1) The Mediation Commission shall forward without delay to the other party the duplicate of the Application accompanied by the attached documents and papers, and request the other party to file with the Mediation Commission a Counter-Statement within a limited period of time.

The other party shall, upon the aforesaid request by the Mediation Commission, submit the Counter-Statement in triplicate (one original, one duplicate and one copy) within the specified period, and shall cooperate in accordance with Clause 12, paragraph 2, of the Salvage Agreement with the Mediation Commission so that the mediation may proceed without delay.

(2) The Mediation Commission may apply the aforesaid measures upon any other person(s) concerned whose participation in the mediation is deemed to be appropriate or advisable.

(3) When the Counter-Statements are filed with the Mediation Commission by the other party to the Application and/or the other person(s) concerned, the Mediation Commission shall forward without delay the duplicate of the Counter-Statements to the Applicant.

Article 6. (Item to be described on Counter-Statement)

The Counter-Statement shall have the following particulars:

(i) the name and address of the party who lodges the Counter-Statement (in case of a corpornation, the trade name; and the names and capacities of its representatives),

(ii) the amount of salvage remuneration which the party lodging the Counter-Statement considers reasonable and/or the desirable terms of mediation.

The above Counter-Statement shall be accompanied by the documents hereinafter provided;

(a) In case the other party to the Application is the Owner of the salved vessel:- Sea Protest, Log Book, etc.

(b) In case the other party to the Application is the Salvor:- Particulars of Costs and Expenses of the Salvage Services, Estimate of Values of the Salved Properties, Daily Report of the Salvage Services, etc.

(c) In case the other party to the Application is any person other than either of the aforesaid parties:- Statements and/or Papers verifying the values of properties salved in the salvage services, etc.

Article 7. (Nomination of Mediator(s) by Parties)

The parties to the Application may each nominate one or two Mediators from among the persons listed in the Panel of the Mediators of the Mediation Commission. In case the parties unanimously agree, they may jointly nominate one Mediator instead of the above.

The Mediators nominated as aforesaid may nominate another Mediator by unanimous agreement.

Article 8. (Hearing)

The Mediator(s), upon and after deliberate examination of all the documents and papers filed with the Mediation Commission, shall hold hearings from the parties to the Application and, when necessary, from person(s) concerned and/or those whose cooperation is useful for mediation.

Article 9. (Mediation Commission and Mediator(s))

The Mediator(s) shall report, prior to presenting his (their) recommendation for settlement of the case in dispute (hereinafter called "the recommendation"), the details of the case and the circumstances involved to the Mediation Commission, who may give advice(s), if necessary, to the Mediator(s), provided however that the Mediator(s) shall not be bound by any opinions and/or comments made by the Mediation Commission.

Article 10. (Mediation)

When the Mediator(s) is(are) ready to present the recommendation, the Mediator(s) shall fix the date to summon the parties concerned or their representatives, and shall present to them the recommendation which the Mediator(s) consider(s) to be fair and reasonable regarding the amount of salvage remuneration and/or other items required for mediation.

Article 11. (Production of Mediation Agreement)

(1) When the settlement is reached by mediation as aforesaid, a Mediation Agreement shall be produced, which shall contain the outline of the Application and the recommendation accepted by the parties concerned, with seals and signatures of the parties concerned affixed thereto, and counter-signed by the Mediator(s) with the date.

In addition to the original copy, duplicate copies of the Mediation Agreement may be produced in any number as required by the parties concerned.

(2) The Mediator(s) shall produce the Statement of the Reasons which clarifies the grounds for the recommendation and shall report to the Mediation Commission by presenting the said Statement of the Reasons together with the original of the Mediation Agreement. Duplicate copies of the Statement of the Reasons shall be attached to the duplicate copies of the Mediation Agreement when so desired by the parties concerned.

(3) The Mediation Agreement and the Statement of the Reasons shall be produced in English, if required, provided however that any discrepancy arising in interpretation between the Japanese and the English texts, the Japanese text shall prevail.

Article 12. (Additional Deposit)

(1) In case the costs and expenses for the mediation prove likely to exceed the amount deposited under Article 3, the Mediation Commission may request an additional deposit from the parties concerned.

(2) The aforesaid additional deposit shall be borne equally by the Salvor and the Owners of the salved properties.

(3) In the event the parties concerned fail to deposit the additional amount requested as provided for in the aforesaid paragraph (1), the Mediation Commission may suspend further proceedings of the mediation thereafter and close the mediation.

Article 13. (Mediation Fee)

(1) The Salvor and the Owners of the salved properties shall equally bear the Mediation Fee fixed by the Mediation Commission.

(2) In case both the Salvor and the Owners of the salved properties or either of them are several in number, the respective parties shall each bear half of the Mediation Fee as prescribed in the above paragraph in proportion to:-

(a) the amount of salvage remuneration received and/or paid by the respective parties, in case an agreement is reached by the mediation.

(b) the amount of salvage remuneration claimed by each Salvor, or the respective values of the salved properties, in case the mediation fails.

(3) The deposit and the additional deposit set forth under Articles 3 and 12 of the Rules shall be allotted for advance payment of the Mediation Fee and shall be adjusted according to the aforesaid provisions by the Shipping Exchange at the time of settlement of the Mediation Fee.

Article 14. (Payment of Salvage Remuneration and Release of Security)

(1) The Owners of the salved properties shall pay to the Salvor the salvage remuneration without delay after the Mediation Agreement is produced under Article 11.

(2) Upon confirmation of the payment of the salvage remuneration under the aforesaid paragraph, the Shipping Exchange shall release the Security under Clause 10, paragraph 6, of the Salvage Agreement, and refund and/or return the said Security directly to the respective Owners of the salved properties.

Article 15. (Mediation Commission and its Secretariat)

(1) The Mediation Commission shall be managed in accordance with the Rules of the Mediation Commission.

(2) The Documentary and Arbitration Department of the Shipping Exchange shall be assigned as Secretariat of the Mediation Commission in order to render its service smoothly.

(3) Details with regard to the Mediation Commission and its Secretariat shall be set forth in the Rules of the Mediation Commission.

Any question regarding the above Rules shall be referred to:

The Japan Shipping Exchange, Inc.
The Documentary and Arbitration Dept.

Mitsui Rokugokan Bldg., 3-16, Nihonbashi-Muromachi 2-chome, Chuo-ku, Tokyo, Japan 103.
Phone: 03-3279-1651
Telex: 0222-2140-SHIPEX

6. MARITIME ARBITRATION COMMISSION AT THE CHAMBER OF COMMERCE, MOSCOW, USSR SALVAGE CONTRACT "NO CURE—NO PAY"

..... 198.....

It is hereby agreed between ..... (name of Captain) the Captain of the vessel ..... (name and port of registry) owned by .....

.....

.....

(full name and address) hereinafter called "the Captain" and the Salvor ..... in the person of ..... hereinafter called "the Salvor" on the following.

1. The Salvor undertakes to perform salvage operations to salve the above named vessel, her cargo or any other property on board and to take the vessel into ..... or any other place to be agreed upon later with the Captain.

2. For the purpose of the performance of the salvage operations, the Salvor may make reasonable use, free of cost, of the gear, chains, anchors and other appurtenances of the vessel being salved.

3. For the performance of the operations, provided for in clause 1 of this Contract, the Salvor, in case useful results are attained, shall receive remuneration to the amount of ..... or to the amount to be fixed by the Maritime Arbitration Commission at the USSR Chamber of Commerce in Moscow (Uliza Kuibysheva, 6) if the parties fail to agree on amount of remuneration.

Certain amount of salvage remuneration is provided for by the parties in the Contract, this amount may, nevertheless, be disputed before the Maritime Arbitration Commission by either party as well as by any other person interested. Any other disputes arising between the parties of this Contract shall also be settled by the Maritime Arbitration Commission.

4. Should the Salvor desire to secure his claim under this Contract, he shall, immediately after the termination of the salvage operations, notify the Maritime Arbitration Commission of same and state the amount which he requires as security.

The amount and form of the security for the Salvor's claim shall be determined by the President of the Maritime Arbitration Commission.

5. When submitting a dispute out of this Contract to the Maritime Arbitration Commission, each party must, within 30 days after

termination of the salvage operations, communicate to the President of the Maritime Arbitration Commission the name of the arbitrator chosen from among the members of the Maritime Arbitration Commission. If one of the parties fails to nominate an arbitrator within the above time limit, the President of the Maritime Arbitration Commission shall, at the request of the other party, appoint an arbitrator at his own discretion.

The parties may by mutual consent, leave the choice of arbitrators to the Maritime Arbitration Commission. In this case, the President of the Maritime Arbitration Commission may, at his own discretion entrust the settlement of the dispute to a sole arbitrator, appointed from among the members of the Maritime Arbitration Commission.

6. The arbitration procedure is governed by the Rules of Procedure of the Maritime Arbitration Commission approved by the Presidium of the USSR Chamber of Commerce.

7. Upon the Salvor's motion the Maritime Arbitration Commission may, before making the Award on the dispute as a whole, order that the Salvor be paid his expenses actually incurred in connection with the salvage out of the amount provided as security.

8. The Captain enters into this Contract as the representative of the ship-owners and the cargo-owners and binds each (and not one for the other of the Captain personally) to the due performance thereof.