UNIVERSITY OF SOUTHAMPTON

THE IMPACTS OF THE INTERNATIONAL CONVENTION ON SALVAGE 1989 ON MARINE INSURANCE

IN LAW AND PRACTICE

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ABSTRACT

FACULTY OF LAW

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THE IMPACTS OF THE INTERNATIONAL CONVENTION ON SALVAGE 1989 ON MARINE INSURANCE IN LAW AND PRACTICE

by Yuh-Kae Huang

The first chapter of this dissertation examines four kinds of various expenses or charges incurring for preventing a loss by perils insured under the 1906 Marine Insurance Act: they are general average, salvage charges, particular charges and suing and labouring expenses in order to find out the real statutory position and application of salvage on the 1906 Marine Insurance Act.

The second chapter continually examines the practical application of salvage on marine insurance policies/clauses. The policies or clauses discussed include the Foreign General Average Clauses, the York-Antwerp Rules 1974/1990/1994, Rule C1 of the Rules of Practice of Association of Average Adjusters; Institute Time Clauses for Hull, Institute Cargo Clauses and the P&I Insurance.

The third chapter discusses the changes of substantive law of salvage in the 1989 Salvage Convention which may affect the marine insurance. The selected issues include the new special compensation scheme, the duties clauses, the 1981 Montreal Compromise, the 1980 and 1990 Funding Agreement, the 1994 Pollution Compromise and the *Nagasaki Spirit* case.

The fourth chapter discuss separately the impacts of each major substantive change of the 1989 Salvage Convention on the 1906 Marine Insurance Act and the practical policies and clauses and further discover the problems which may reveal unsettled.

This dissertation provides lots of suggestions for various disclosed issues and problems existing and concealing in the 1989 Salvage Convention and marine insurance.

To My Late Father

(Who died on 8th May 1998 just after this dissertation was submitted)

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INTRODUCTION

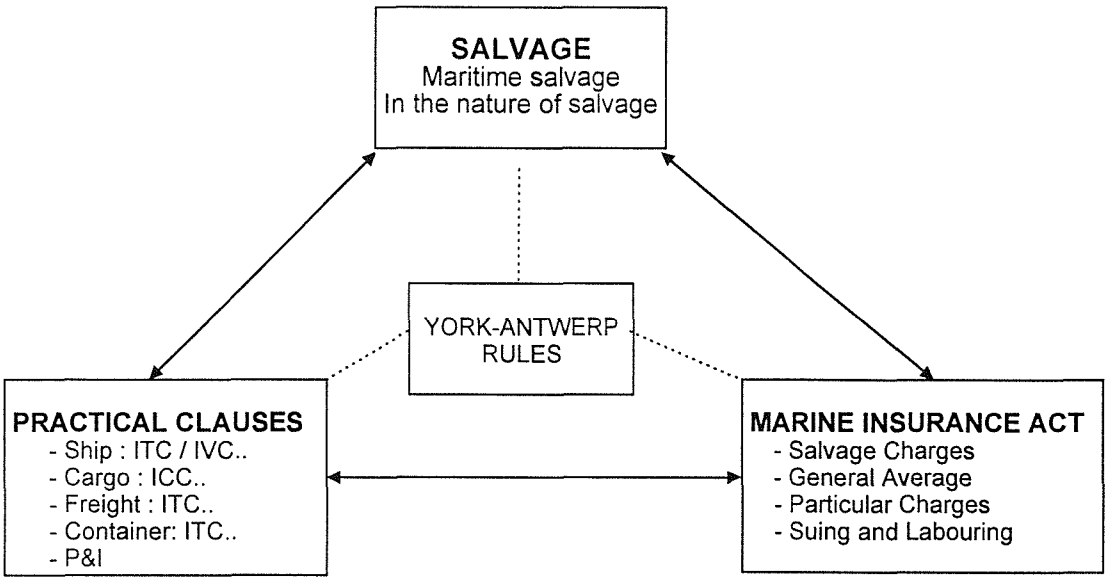
Introduction

Environmental protection has become a modern day issue and there is a tendency to date it back to the 1970s. In the shipping industry, the rapid economical development, the evolution of maritime transportation and the technological changes in the size and complexity of ships represent a greater potential danger on this planet we live. The disasters of 1967 *Torrey Canyon* and 1978 *Amoco Cadiz* pollution cases caused a series of international legislation on the different relevant aspects. For examples, the MARPOL 1973/78 provide more severe requirements on ships' construction and their safety for preventing purposes; the 1969 International Convention on Civil Liability for Oil Pollution, the 1971 International Convention on the Establishment of an International Fund for Compensation and their sequential amendments which provide for damages compensation; the 1989 International Convention on Salvage for encouraging salvors to minimize the environmental damage while rendering their services.. and so on. These international legislation are not only substantially affecting shipping parties, but also insurance parties behind them. The impact of the 1989 Salvage Convention on marine insurance is the subject of this paper intends to study.

The law relating to salvage can be exceedingly complex.[1] On the other hand, English law on marine insurance, as codified by the Marine Insurance Act 1906, classifies the costs of rescuing operations in a complicated way under four headings: salvage charges (section 65), general average (section 66), particular charges (section 65.1) and suing and labouring expenses (section 78). Furthermore, the practical Institute clauses give a different application on the costs of rescuing operation from the statute - Marine Insurance Act 1906, while the York-Antwerp Rules is also applied. These different situations and their inter-relationship (see the Diagram 1 below) are not only complex but also exist lots of disputes.

[1] Lowndes and Rudolf, *The Law of General Average and the York-Antwerp Rules*, 1997, 12th ed., at para 6.01.

Diagram 1.
The inter-relationship among M.I.A., practical clauses and salvage



The Issues:

What is the real legal status of the Lloyd's Open Form under the Marine Insurance Act 1906 ? "Particular charges" stands its legal status on the Marine Insurance Act 1906. However, almost all marine insurance textbooks state that particular charges can only be recovered under the suing and labouring clause. Is this viewpoint critical? The new "special compensation" scheme, which diverged from the traditional maritime salvage "no cure no pay" principle, may be the most important change which will strongly influence the marine insurance industry. But does the Salvage Convention lead to other changes which may also affect the marine insurance? For example, the Convention imposes some duties on the salvor, and the master and the owner of the vessel, and the owner of other property during the course of a salvage operation (Article 8 of the Convention). What is the effect under the existing marine insurance if the said owner or master failed to perform said duties ? Does the duty to sue and labour under the section 78(4) of the 1906 MIA apply in such circumstance ?

Subject to the Salvage Convention 1989, both the York-Antwerp Rules and the Lloyd's Open Form were amended in 1990 and sequentially amended as 1994 York-Antwerp Rules and the 1995 Lloyd's Open Form. The new Institute Time Clauses - Hulls were introduced in 1995 but were attacked by the P&I Clubs by reason that the new clauses might have changed the understanding achieved in the 1981 Montreal Compromise and the 1994 Pollution Compromise. What is the "Institute General Average - Pollution Expenditure Clause Hulls" and what is its effects ? Does it really fill up the gaps which appear in the new Institute Time Clauses - Hulls 1995 ? In 1980 and 1990, Lloyd's, the Institute of London Underwriters and the International Group of P&I Clubs made a public pronouncement of market agreement (said the Funding Agreement 1980 or 1990) undertook to continue to accept that Salvage Awards are recoverable by ship, cargo and freight under the existing forms of policies[2]. What is the legal effect of the said Funding Agreements?

The salvors (International Salvage Union) strongly attacked the "Nagasaki Spirit" case held by House of Lords on Feb. 1997. Did the "Nagasaki Spirit" case settle all problems related to the new "special compensation" scheme? An example of which the limitation of special compensation.

The Purpose and Importance of this research:

The 1989 Salvage Convention entered into force on 14 July 1996. It is expectable that the new 1994 York-Antwerp Rules and 1995 Lloyd's Open Form will be widely adopted both by shipping and insurance industries. There have been a lot of books and articles conducting comprehensive survey on the 1989 Salvage Convention. However, with the exception of the issues relating to the special compensation, very few survey dealt with the impacts and relationships between the Salvage Convention and marine insurance. The purpose and importance of this research is to try to make up for the above lack of research by way of not only to comment on the questions mentioned above but also to try to discover any other problems or resintegra which possibly exist and bring forth any possible solutions or recommendation.

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[2] *O'May on Marine Insurance*, 1993, at p407.

The Difficulties:

The cases being reported in between 1906 and 1980 in respect of the inter-relationship among salvage, general average and marine insurance are limited in number. It is also not surprising that the reported cases in respect of the new Salvage Convention, the Lloyd's Open Form and the York-Antwerp Rules from 1980 till now are very more limited. It may exist a difficulty that those reported cases seem to be unable to give any substantial assistance on lots of questions arose or disclosed in this research. Same difficult situation may also be encountered as far as authorities are concerned. Since mentioned, very few published works (textbooks and articles) dealt with said impacts and relationships.

On the other hand, it is also difficult, as lack of cases and other authorities supported, to challenge some misunderstandings which have existed for a long time in some important marine insurance textbooks. For instance, "the term 'particular charges' and 'suing and labouring expenses' are both used to refer to expenses recoverable under the suing and labouring clause" as well as "a distinction was drawn between salvors acting on the maritime law, and salvors working under special contract, in *Aitchison v. Lohre* case" mentioned in Arnould book.[3] Therefore, It would appear that a more detailed analysis is needed to support the viewpoints adopted by this research.

The Methodology:

Case study and searching of the related published works are the basic research methods in this dissertation. However, by reasons of lack of sufficient number of cases and other authorities, as well as the complicated relationship among the statute, the practice and the Salvage Convention, the comparative interpretation method will be constantly used in order to distinguish the application of the related similar items; also the historical interpretation method will be used in order to find out the true meaning of the statute and clauses discussed; and the constructive interpretation method will be used in order to disclose the framework of the M.I.A. 1906 and the legal status of each particular item in the context of the M.I.A.. A lot of diagrams and tables will be adopted to express those frameworks and comparisons.

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[3] Arnould *Law of Marine Insurance and Average*, 16th ed., 1981/1997, at para 908 and 911.

The Structure:

The work consists of five parts: 1) *the statute*: the M.I.A. 1906; 2) *the practice*: the York-Antwerp Rules, the Institute Clauses and P&I Insurance; 3) *the changes*: of the 1989 Salvage Convention; 4) *the impacts* and 5) *the conclusion.*

First chapter - The Statutory Position and Application of Salvage on Marine Insurance Act 1906

This chapter is the foundation of the whole dissertation. It will deal with the framework of the four kinds of saving acts in the 1906 Marine Insurance Act. They are salvage charges, general average, suing and labouring expenses and particular charges. All related provisions for said four kinds of saving acts and their individual features will first be discussed and then compared with their similarities and differences. The Bill and the Bill's draughtsman - Mr. Chalmers' first edition book 1901[4] and cases referred therein as well as other major published books[5] referred to by Mr. Chalmers will be examined in detail in order to disclose the real meaning and legislation background of the related provisions in the Marine Insurance Act 1906. Furthermore, Mr. Chalmers' second edition book 1913 will be also examined in order to compare any difference between the Bill and the final Act. Of course, the cases reported after the enactment of the M.I.A. 1906 will also be discussed to improve the interpretation on the M.I.A. 1906.

This chapter will also try to resolve some existing disputes and resintegra. For example, the legal status of the Lloyd's Open Form under the Marine Insurance Act; the problem implies in the traditional classification on salvage; the introducing of the mitigation rules under general contract law to resolve the problem if the policy imposes a duty on the assured to sue and labour but without express engagement of reimbursement; the duty to sue and labour and the right to claim sue and labour are different concepts under the Marine Insurance Act; the legal status of "particular charges", and its application and differences from the suing and labouring expenses.

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[4] M. D. Chalmers and Douglas Owen, *A Digest of the Law relating to Marine Insurance*, 1901

[5] They are Arnould 6th edition 1887; McArthur, 2nd edition 1890; Owen's Notes and Clauses, 3rd edition 1890; Lowndes, 2nd edition 1881. and Gow on Insurance.

Second chapter - The Practical Application of Salvage on Marine Insurance

This chapter will discuss the Foreign General Average Clause, which as a bridge, connects salvage with the York-Antwerp Rules; Rule C1 of the Rules of Practice of Association of Average Adjusters; Rule VI and other related rules of the York-Antwerp Rules; and the practical Institute Clauses presently used and the related risks cover offered by P&I Clubs. This chapter will examine in detail the origin, development and features of those Clauses and Rules and their differences from the Marine Insurance Act 1906.

Third chapter - The Changes of Substantive Law of Salvage in the 1989 Salvage Convention.

The 1910 Salvage Convention left a number of important topics unmentioned and not all respects of the 1910 Convention reflect the existing English Law of salvage. In many instances, the 1989 Salvage Convention, which was incorporated in the 1994 Merchant Shipping (Salvage and Pollution) Act, re-states the topics of 1910 Convention but also introduces many new schemes. The third chapter will discuss the principle, substantive law changes and disputes relating to the 1989 Salvage Convention. The new special compensation scheme, duty clause on salvor and owner/master, the Lloyd's Open Form, the 1981 Montreal Compromise, the 1980 and 1990 Funding Agreement, the 1994 Pollution Compromise and the "Nagasaki Spirit" case are the main issues will be discussed in this chapter.

Fourth chapter -The impacts of the 1989 Salvage Convention on marine Insurance.

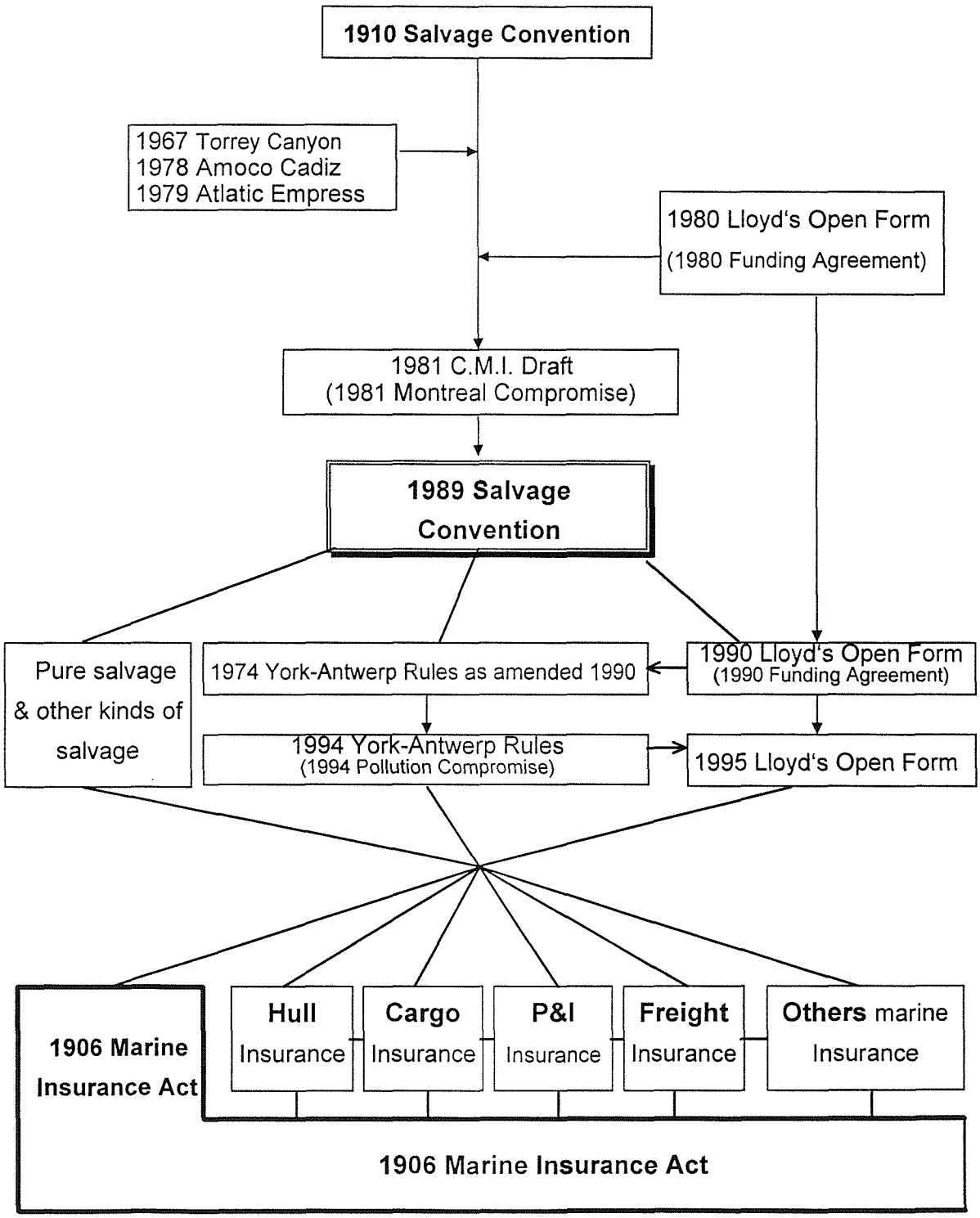
This chapter is the central core of the whole dissertation. It will not only discuss separately the impacts of each major substantive change of 1989 Salvage Convention on the statute - 1906 Marine Insurance Act and the practice - Institute clauses (Hull, cargo, freight & others), P&I insurance & the York-Antwerp Rules, but also try to discover the problems which may reveal unsettled.

Fifth Chapter: Conclusion

This chapter summarizes the existing disputes and problems dealt with in this research and the possible suggestions on them.

The framework of this research work is showed in diagram. 2 below:

Diagram. 2
The framework of this research



CHAPTER 1

Chapter 1

The Statutory Position and Application of Salvage under the 1906 Marine Insurance Act

1.1 Introduction

In simple terms, salvage is the payment made for the rescue of property from loss at sea, but the law relating to the subject can be exceedingly complex.[1] The 1906 Marine Insurance Act (M.I.A.) consists of four[2] kinds of expenses or charges incurring for preventing a loss by perils insured. They are general average, salvage charges, particular charges and suing & labouring expenses. The acts for incurring those expenses/charges are collectively called "saving acts".

1.1.1 Phraseology

Gow said that "there exists a great confusion in the meanings attached to the word "salvage" in commerce and even in insurance. Salvage used to mean the act of saving ship/goods at sea, the reward paid for such saving, the ship/goods themselves after being saved, the net profit to the concerned resulting from the saving ship/goods.[3] Chalmers also defined the word "salvage" that:

> In maritime law it (salvage) is applied alike to the salvor's service and the salvor's

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[1] Lowndes and Rudolf, *The Law of General Average and The York-Antwerp Rules*, 12th ed., 1997, para 6.01.

[2] The majority of text books classify the cost of the rescue operations in three headings: salvage charges, general average and sue and labour expenses. See Lowndes and Rudolf, O'May, Templeman, Arnould. For this research, the fourth heading "particular charges" is added and this charges will be discussed in detail in comparison with the above three headings for trying to find out its application on salvage.

[3] Gow, *Sea Insurance*, 1st ed., 1914, at p. 117.

reward..... In insurance law it is also used to denote the thing saved, as, for instance in the phrase "without benefit of salvage," or when a loss is referred to as a "salvage loss".4

The word "salvage" under the insurance law, collectively to say, is defined as: salvor's service, salvor's reward, the thing saved and the loss of salvage.[5]

The M.I.A.-1906 mentions the word "salvage" ten times. Their semantics need to be distinguished before making any further discussions. The respective meanings may be divided into two categories:

1. the materials salvaged

Both of the expressions "without benefit of *salvage* to the insurer" and "no possibility of *salvage*" are stated in M.I.A. section 4(2) included. In the case of *Allkins v. Jupe*, Lindley J said

> the underwriters cannot take possession of the profit upon the sale of goods and treat it as salvage; for the policy contains an express declaration that they shall not have 'benefit of salvage'. Therefore the assured may get more than an indemnity, and it follows that the policy is illegal within 19 Geo. 2, c. 37 [6]

Except for fire and motor insurance, salvage in this meaning is not generally used in modern insurance, specially in marine insurance. For example, the Institute Time Clauses- Hull uses the word "proceeds" instead of "salvage" (clause 11.5 of the Institute Time Clauses Hulls 1995). The difference between the insured value and its net "proceeds" is called "salvage loss". Gow suggested "As proceeds are in such a case(C.T.L.) technically termed salvage, this form of

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[4] Chalmers' *Marine Insurance Act 1906*, 9th ed. 1983 at p. 104.

[5] Those meanings are similar than its ordinary meanings as defined in the Oxford Dictionary that (The *Concise Oxford Dictionary of Current English*, Clarendon Press, 9th edition, 1995, at p. 1219.):

a. the rescue of a ship, its cargo or other property, from loss at sea;
b. the property saved in this way;
c. the saving and utilization of waste paper, scrap materials ..etc.; the materials salvaged;
d. payment made or due to a person who has saved a ship or its cargo.

[6] *Allkins v. Jupe* (1877) 2 C.P.D. 375 at p. 390.

settlement is known in the language of insurance by the name of 'salvage loss'".[7]

2. the rescue of a ship, its cargo or other property, from loss at sea:

The expressions "the expense of future *salvage* operation" in section 60; "in the nature of *salvage*" in section 65(2) and "*salvage* charges" in sections 64(2), 65(1), 65(2), 73(2), 76(2) and 78(2) are included in this meaning.

It is submitted that, for reason of certainty in legislation, using a complex but precise word is better than using a single word with several different expressions. In this paper, "salvage" referring to the rescuing of a ship, its cargo or other property from loss at sea will be called "salvage service" or "salvage operation"; whereas "salvage" referring to the payment to the salvor will be called "salvage charges".

1.1.2 Framework and regulation under the 1906 M.I.A. for various saving acts

"Salvage charges" as defined in the section 65 of the 1906 M.I.A. are the charges recoverable under maritime law by a salvor independently of contract (section 65.2), which incurred in preventing a loss by perils insured against (section 65.1).

Section 65.2 further states that "

> It (salvage charges) do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as *particular charges* or as a *general average loss*, according to the circumstances under which they were incurred."

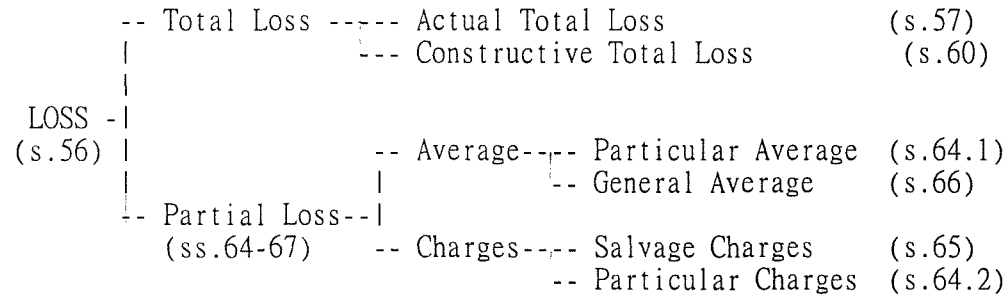
The services mentioned in this sub-paragraph do not refer to the "maritime law salvage" but instead to the saving act intentionally done by the insureds themselves or any persons employed by them for hire for rescuing the insured property or all property in common adventure or performing their pre-existing duty. The person who is entitled to receive the expense incurred for such

[7] Gow, *Marine Insurance*, 4th ed. 1917, at p.170.

services may be called "self-saving", "hire employee", or as Gow said[8], called "hire recoverer".

"Particular charges", as defined in section 64(2) of the 1906 M.I.A., are the expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges. "Particular charges" is a kind of charges under the heading of "Partial Losses". The same heading also includes salvage charges and general average. Particular charges are not included in particular average, which is a partial loss of the subject-matter insured, caused by peril insured against, and which is not also a general average loss (section 64.1). The diagram 3 below shows the various kinds of losses in the 1906 M.I.A.

Diagram 3.
The kinds of "losses" under the 1906 M.I.A.



The position which shall be further considered is the measure of indemnity. Assuming that the assured signed a *fixed daily hire contract* to re-float a stranded in ballast not charter vessel, with full insured value and all risk time hull policy attached; the operation failed and the vessel totally lose, could the assured recover the hire incurred in accordance with M.I.A.? If yes, on which item(s) she can rely (salvage charges, general average, particular charges)? Another extreme example assuming in the same situation, where the policy is warranted free from particular average (F.P.A.) and the operation succeeded. The damage repair cost would be less than the repaired value, but if taking into account the hire would be paid by them, the whole costs will exceed the value insured. What figure is recoverable? Would it be only the paid hire or the value

[8] Gow, *Sea Insurance*, 1914, at p.117.

insured in full, or also includes the amount exceeding the value insured?

Unless the policy otherwise provides, the general principle of measure of indemnity, as the 1906 M.I.A. provides, is the full extent of the insurable value in the case of an unvalued policy, or, the full extent of the value fixed by the policy in the case of a valued policy (section 67.1). However, the 1906 M.I.A. provides a further resource of indemnity. Where the policy contains a suing and labouring clause, the engagement thereby is deemed to be supplementary to the contract of insurance. The assured may thus recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss from particular average, either wholly or under a certain percentage (section 78.1). In other words, suing and labouring expenses may be considered as the fourth possible recoverable item for salvage under the 1906 M.I.A.

1.1.3 Research purpose and restriction of this chapter

This chapter will only concentrate on interpreting the related provisions of the "salvage charges", "general average", "particular charges" and "suing and labouring expenses" in the 1906 M.I.A. and also discuss their statutory characteristics and the inter-relationships in order to find out their statutory application on different kinds of salvage.

I have to admit that it would be better if the practical rules (especially York-Antwerp Rules) and clauses (Institute Clauses) are simultaneously considered in this chapter. However, in order to limit the length of this chapter and to avoid the complexity which may incur while dealing with all at once, the Rules and clauses which concern the practical application on salvage and their different points between the M.I.A. will be discussed in the next chapter.

Finally, I also have to admit that, where the York-Antwerp Rules (1974 or its latter visions) are applicable (in fact it is that), to make a detailed distinction among those expenses would be not so useful. However, for academic reasons, this will be done.

1.2 Salvage charges

1.2.1 Definition and classification

"Salvage charges", as defined in M.I.A. section 65(2), is the charges recoverable under *maritime law* by a salvor *independently of contract*. They *do not include* the expenses of services *in the nature of salvage* rendered by the assured or his agents, or any person employed for *hire* by them, for purpose of averting a peril insured against.

1.2.1.1 Traditional categorisation

Traditionally, M.I.A. section 65(2) is classified, by plenty of textbooks, into two kinds of salvage: 1) ***pure salvage*** (or voluntary salvage, salvage proper, speculation salvage, unemployed salvage) in respect of the charges recoverable under maritime law independently of contract and 2) ***contractual salvage*** (or employed salvage, salvage by contract) in respect of the services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them.

Pure salvage which interpreted by those textbooks is the "services rendered without a contract being made"[9]; or "rendered by volunteer salvors without a contract of any kind (verbal or otherwise)".[10] This paper, however, adopts another semantics interpretation on the words "independently of contract" that " the right to an award of salvage is independent of whether there was a contract or not"[11].

1.2.1.2 The importance of proper categorisation

Donald O'May in his book said "the categorisation of the various types of charges on underwriters may seem unnecessarily complicated, but the distinction between salvage, sue and labouring and general average is a logical

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[9] Templeman on *Marine Insurance*, 6th ed. 1986, at p. 369.

[10] Buglass, *Marine Insurance and General Average in the United States*, 3rd ed. 1991, at p. 330.

[11] Lowndes and Rudolf, ibid, at para 6.05; see also The *Hestia* (1895) 7 Asp M.C. 599.

one"[12]. Salvage charges, general average, particular charges and suing and labouring expenses are different recoverable items with standing their own individual legal effects under the 1906 Marine Insurance Act. It is therefore that the nature of any services rendered for preserving the subject matter insured must be carefully checked and categorized. For example, the dispute in categorizing the Lloyds' Open Form has existed for a long time. Arnould, Carver and Lowndes have given no firm answer; Donald O'May, Templeman and Buglass have considered it was not "salvage charges" under the 1906 M.I.A.; Victor Dover (*A Handbook to Marine Insurance*), Kenneth Goodacre (*Marine Insurance Claims*) have opined it was salvage charges.

1.2.1.3 The issue of "independently of contract" & Criticism on the traditional classification

Subject to general contract law and salvage law, except salving wrecks, it is difficult to imagine what kind of salvage service is "independently of contract". Harry Newson, in his book of *The Law of Salvage, Towage, and Pilotage,* with some supporting cases, dealt with the validation of "salvage contract or agreement" said that

> An agreement as to the amount of salvage remuneration deliberately entered into at the time of commencement of the services between perfectly competent parties will be valid, and the amount stipulated for as salvage will become payable on the services being brought to a successful issue.[13]

It is interested to note that the words "independently of contract" did not appear in the Bills which were introduced in the House of Lords in 1894, 1895, 1896 and 1899.[14] It is difficult now to trace why the words were finally added in the M.I.A. 65 (2). However, it is important to know that, during the Bills, some cases [The *Hestia* (1895) and *Five Steel Barges* (1890) affirmed by The *Cargo ex. Port Victor* (1901)] were reported in respect of the issue of "independently of contract" under maritime salvage and also that the precursor of the most

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[12] Donald O'May, *Marine Insurance Law and Policy*, 1st ed. 1993, at p. 390.

[13] Harry Newson, *The Law of Salvage, Towage, and Pilotage*, 1886, at p. 52.

[14] Section 66 (2) of Marine Insurance Bill, see Chalmers' *A Digest of the Law relating to Marine Insurance*, 1st ed., 1901, at p. 82.

important "no cure no pay" salvage contract (LOF) in the world had been introduced during that period.

Bruses J, in the case of The *Hestia (1895)*, said that:

> *Salvage claims do not rest upon contract.* Where property has been salved from sea perils, and the claimants have effected the salvage, or have contributed to the salvage, the law confers upon them the right to be paid salvage reward out of the proceeds of the property which they have saves or helped to save. No doubt the parties may by contract determine the amount to be paid; but *the right to salvage is in no way dependent upon contract, and may exist, and frequently does exist, in the absence of any express contract, or of any circumstances to raise an implied contract.*[15]

Lord Kennedy, in his book, cited the case of The *Hestia* pointed out that:

> Whilst the Court of Admiralty is not precluded from entertaining a salvage claim because the nature of the service or the amount of its reward has been fixed by agreement, *the right of the salvor is, essentially, independent of contract (The Hestia).*[16]

Sir James Hannen, in *Five Steel Barges*, said that:

> *The right to salvage may arise out of an actual contract; but it does not necessarily do so.* It is a presumption of law arising out of the fact that property has been saved that the owner of property who has had the benefit of it should make remuneration to those who have conferred the benefit upon him, *notwithstanding that he has not entered into any contract on the subject.*[17]

Sir F. Jeune, in The *Cargo ex Port Victor*, also said that:

> The true view is, I think, that the law of Admiralty imposes on the owner of property saved an obligation to pay the person who saves it *simply because in the view of that system of law it is just he shoul*d; and this conception of justice naturally imposes a proportionate obligation on any person whose interest in the property is real...I see no reason, therefore, why I should not follow the view of Lord Hannen (Five Steel Barges case). [18]

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[15] The *Hestia* (1895) P. 193, at p.199.

[16] Kennedy, *A Treatise on The Law of Civil Salvage*, 2nd ed. 1907, at p. 4.

[17] *Five Steel Barges,* (1890) 15 P. D. 142 at p. 146.

[18] The *Cargo ex Port Victor*, (1901) P. 243 at p. 249.

For short, "a contract being made or not" is not one of the fundamental ingredients of "salvage" under maritime law, provided that such contract is made under "no cure no pay" basis. "Independently of contract" in the 1906 M.I.A. section 65(2) is not formed as a condition or limitation to the extent of "salvage charges" under maritime law or the salvage charges recoverable under the Marine Insurance Act 1906. It does merely declare a general principle of maritime law salvage that the right to salvage is *independent of whether there was a contract or not*[19]. If not interpreted in this way, the existing problems, for example the classification of LOF or similar kinds of maritime salvage contracts, cannot be properly settled.

Furthermore, under the maritime law, it was a well settled issue that, under marine insurance, at least since the case of *Cary v. King*[20] in 1736, salvage incurred in preventing a loss by insured perils may be recoverable from the underwriters without there being any need for the policy special cover. This was also affirmed by a number of reported cases, such as *Aitchison v. Lohre* (1879)[21] and *Ballantyne v. Mackinnon* (1896)[22]. Contractual salvage under no cure no pay basis was well accepted as a kind of salvage under maritime law in this country. It is difficult to imagine that the Marine Insurance Act 1906, as a codifying act, cut apart the said maritime law principles on salvage and gave "contractual *salvage*" an independent position outside the maritime law.

1.2.1.4 "Aitchison v. Lohre"

Before discussing the second paragraph of the 1906 M.I.A. section 65(2), it is important to first cite the Lord Blackburn's wording in *Aitchison v. Lohre*[23]:

> ....And the object of this (sue and labour clause) is to encourage and induce the assured to exert themselves, and therefore the insurers bind themselves to pay in

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[19] The *Hestia*, (1895) 7 Asp MC 599.

[20] *Cary v. King* (1736) Cas. temp. Hardw. 304.

[21] *Aitchison v. Lohre* (1879) 4 App. Cas. 755.

[22] *Ballantyne v. Mackinnon* (1896) 2 Q.B. 455.

[23] Subject to Chalmers and Arnould, "*Aitchison v. Lohre*" is the leading case referred by the M.I.A. section 65 and 78 relating to the settlement of "salvage charges" and its relationship with suing and labouring expenses.

proportion any expense incurred, whenever such expense is reasonably incurred for the preservation of the thing from loss, in consequence of the efforts of the assured or their agents. It is all one whether the labour is by the assured or their agents themselves, or by persons whom they have hired for the purpose, but the object was to encourage exertion on the part of the assured; not to provide an additional remedy for the recovery, by the assured, of indemnity for a loss which was, by the maritime law, a consequence of the peril. In some cases the agents of the assured hire persons to render services on the terms that they shall be paid for their work and labour, and thus obviate the necessity of incurring the much ***heavier*** charges which would be incurred if the same services were rendered by salvors, who are to be paid nothing in case of failure, and a large remuneration proportional to the value of what is saved in the event of success. I do not say that such hire may not come within the suing and labouring clause. But that is not this case. The owners of the Texas did the labour here, not as agents of the assured, and being to be paid by them wages for their labour, but as salvors acting on the maritime.[24]

This wording may be examined that:

a. Who has done the labour? It is the assured or his agents or by persons whom have hired for preserving the thing from loss. That is identical under the *words* of the S.G. suing and labouring clause. However the *object* of such clause is to encourage exertion on the *assured* alone. Lord Blackburn, before holding above, said that "I think that general average and salvage do not come within either the *words* or the *object* of the suing and labouring clauses". It is therefore assumed that general average and salvage do not embrace the characters of "the labour is by the assured, their agents or by the person whom have hired" and "the object is to encourage the assured". Further, we may also assume that the wording of "..rendered by the assured or his agents, or any persons employed for hire by them" in the MIA section 65(2) second paragraph might codify Lord Blackburn's words cited above.
b. The words "not to provide an additional remedy" means general average and salvage (which do not come within the words or the object of the suing and labouring clause) can never be recovered under the suing and

[24] *Aitchison v. Lohre*, (1879) 4 App. Cas. 755 at p. 765.

labouring clause.

c. The words "in some cases....":

Arnould said "A distinction was drawn (by Lord Blackburn) between salvors acting on the maritime law, and salvors working under special contract"[25]. This opinion is critical. Actually, the key word of the whole sentence is the word "heavier". Lord Blackburn, by illustrating that the assured may deliberately choose a "whether successful or not" contractual services but not "no cure no pay" salvage service to obviate the much possible heavier charges which may incur from the latter, to consider whether the decision made by the assured met with the object of "encouraging the assured" under the suing and labouring clause or not. However, Lord Blackburn gave no firm answer on the problem of the said "whether successful or not salvage contract". I.e. the said "whether successful or not" contract to be treated as a hiring within the suing and labouring clause or not was unsettled in the face of the present case.

As we know, Lord Blackburn reversing Brett's L.J. decision in the Court of Appeal on the point that "maritime salvage could be recoverable under the suing and labouring clause", which Brett L.J. opined that

> ".. the nature and object of them (i.e. voluntary salvage and contractual salvage under no cure no pay basis) are precisely with the proposition above enunciated (i.e. within the suing and labouring clause, depends upon whether the liability or obligation to pay for such salvage services as were here rendered is within the clause)[26].

However, Brett L.J. in his decision, did not mention the case "whether service rendered under fixed hire basis is recoverable under the suing and labouring clause or not". It may properly be assumed that Lord Blackburn kept the same line drew by Brett L.J. but reversed it (i.e. voluntary salvage and no cure no pay contractual service are not recoverable under the suing and labouring clause) and gave no firm answer on the fixed hire salvage service.

More precisely, the district drew by Lord Blackburn was that "whether successful or not" hiring contract and the maritime law "no cure no pay" salvage service, but was not as opined by Arnould "salvors acting on the

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[25] Arnould, ibid., 1981 at para 911.

[26] *Lohre v. Aitchison* (1878) 3 QBD 558 at p. 568.

maritime law" and "salvors working under special contract". On the other hand, Arnould uses the word "salvors" who works under a special contract is also critical. The said "salvors", precisely say, are not the nominated salvors under maritime law. The use of the word "salvors" in accompanying with Arnould's opinion, by drawing a line of "maritime law" salvage and "special contract" salvage, confuses and over-clouds "no cure no pay" element under maritime law.

The wording of the 1906 M.I.A. section 65(2) "..or any person employed for hire by them(assured or his agents)", basically affirms Lord Blackburn's illustration that "whether successful or not" hiring contract is not within the meaning of "salvage charges" under maritime salvage. However, whether said hiring contract is within the suing and labouring clause is still not clear (as section 65(2) states such expenses may be recovered as "particular charges" or as a "general average" according to the circumstances).

The distinct line of "no cure no pay" was also affirmed by Lord Chancellor and Lord Hatherley in the same case. Lord Chancellor (Earl Cairns) said:

> It appears to me to be quite clear that if any expenses were to be recoverable under suing and labouring clause, they must be expenses assessed upon the *quantum meruit* principle. Now salvage expenses are not assessed upon the *quantum meruit* principle; they are assessed upon the general principle of maritime law...that if the effort to save the ship (however laborious in itself, and dangerous in its circumstance) had not been successful, nothing whatever would have been paid. [27]

Lord Hatherley also said that:

> where the salvage seems to have been an ordinary sort of salvage, namely, a ship perceiving another at a distance and in a state of distress comes to the rescue, no bargain being made. We were expressly told in the case that no bargain being made as to any remuneration which should be given, but it was rescued upon the simple and common principle of salvage.[28]

For short, the *Aitchison v. Lorhe* concluded that :a) "no cure no pay" is the central and basic element of maritime salvage which differs from the others

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[27] *Aitchison v, Lohre*, (1879) 4 App. Cas. 755, at pp. 766-767.

[28] supra, at p. 768.

kinds of services; 2) the labour rendered by the assured or their agents themselves, or by persons whom they have hired for preserving the subject matter insured is not "salvage charges". I believe that these conclusions may properly represent the distance line between first and second paragraph of the 1906 M.I.A. 65(2).

1.2.1.5 Maritime salvage and "in the nature of salvage"

"In the nature of", as interpreted by *Oxford Dictionary*[29], means "characteristically resembling to the class of". It represents a similar thing but not the same thing. That is to say that, the services rendered by the assured and so on in the second paragraph of the 1906 M.I.A. section 65(2) do not belong to the "salvage charges" in the first paragraph of section 65(2). Their nature may more or less accord with or relate to some ingredients of forming a "salvage charges" under maritime law as defined but something not.

There have been several treatises and many works on admiralty containing chapter on the subject of salvage and its general ingredients or elements. The following table summarizes the ingredients of salvage and their deductive principles, with supporting some leading cases[30] :

a.	***maritime property ("life" by statute)***	◎"they are ship, her apparel and cargo, including flotsam, jetsam, and lagan, and the wreck of these and freight; and that the only subject added by statute is life salvage."	The *Gas-Float Whitton, No.2* (1897) A. C. 337
b.	***danger***	◎"All services rendered at sea to a vessel in distress are salvage service. It is not necessary, I conceive, that the distress should be immediate and absolute; it will be sufficient if, at the time the assistance is rendered, the vessel has encountered any damage or misfortune which might possibly expose her to destruction if the services were	The *Charlotte* (1848) 3 W.Rob.58

[29] The *Concise Oxford Dictionary*, 9th ed. 1995, at p. 907.

[30] For according with the 1906 M.I.A. being drawn up, the cases cited here are before 1906.

not rendered."

◎"It is not necessary that there should be absolute danger in order to constitute a salvage service; it is sufficient if there is a state of difficulty and reasonable apprehension." — The *Phanton* (1866) L.R. 1 A.& E. 58.

c. ***voluntariness***

◎ *No owed a pre-existing duty*: "a person who, without any particular relation to the 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 in the preservation of that ship." — The *Neptune* (1824) 1 Hagg. 227.

◎ A fair a*greement fixing the amount of salvage remuneration under "no cure no pay" basis is acceptable and does not affect the character of the service:* "A salvage agreement is an agreement which fixes, indeed, the amount to be paid for salvage, but leaves untouched all the other conditions necessary to support a salvage award, one of which is the preservation of some part at least of the res, that is ship, cargo, or freight." — The *Hestia* (1895) P. 193.

d. ***success***

◎"The very principle of salvage is to give reward for services which have been successful." — The *E.U.* (1853) 1. Spinks, E.& A. 63

◎ "a salvage reward is for benefits actually conferred, not for a service attempted to be rendered." — The *Zephyrus* (1842) 1 W.Rob 329.

◎ "There must be something saved more than life, which will form a fund from which the salvage may be paid." — The *Renpor* (1883) 8 P. D. 115.

In paragraph 1.2.1.4, it was suggested that the words of "rendered by the assured or his agents, or any person employed for hire by them" in section 65(2) were codified the statement of Lord Blackburn in *Aitchison v. Lohre.* It was also suggested that the services rendered by said persons is not the statutory "salvage charges". But why the services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them could not be

included in "salvage charges" under maritime law? Two principles (no pre-existing duty and "no cure no pay" salvage agreement) which are listed as above together with the general legal principle of "a person cannot sue himself" may be adopted to interpret the second paragraph of section 65(2).

For the assured, the principle of "a person cannot sue himself" declared in *Simpson v. Thomson*[31] is applied in the matter of salvage. If the owner of the salving ship and the salved ship be one or the same person, he may claim salvage against the cargo on board the salved ship, but there can be no salvage claim on his account against the salved ship itself, for the claim in such a case would be a claim against his own property.[32] The same principle, of course, applies to the services rendered by the assured himself to save his own property.

For the agents, Lord Stowell in The *Neptune* case held "a salvor is.. as a volunteer adventurer *without any pre-existing convenant that connected him with the duty of employing himself in the preservation of that ship".*[33] Namely that, it should be existed no pre-contractual or official obligation to do so. Neither the crew nor the pilot navigating the ship nor the owner or the crew of the tug towing it under a contract of towage nor the ship's agent are ordinarily held entitled to obtain salvage reward in respect of the services rendered by them in the preservation of ship herself or of the lives or the cargo which she carries; for all of these persons are under a pre-existing obligation to work in their respective ways for the benefit of the life and property at risk.[34]

A post-M.I.A dispute arose in The *Gold Sky* (1972)[35] that the vessel's master was not included under the meaning of "agents" in section 78 (suing and labouring) which may also incur in the similar wording in section 65. No authorities dealt with this problem and actually it exists no dispute if we re-read the case of *Aitchison v. Lohre*. "The assured, or their agents themselves, or by persons whom they have hired" was summing up and trying to cover the words in whole of "the assured, their factors, servants, and assigns" used in the old S.G. policy. There are no reasons to interpret "his agents" restrictively by its literal meaning. Even not, the general wording of "any person employed for hire

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[31] *Simpson v. Thomson* (1877) 3 App. Cas. 279.

[32] See Kennedy, *A Treatise on The Law of Civil Salvage*, 2nd ed., 1907, at p. 76.

[33] The *Neptune* (1824) 1. Hagg. 227 at p. 236.

[34] Kennedy, ibid, at p. 28.

[35] The *Gold Sky* (1972) 2 Lloyd's Rep. 187.

by them (the assured or his agents) " may be properly interpreted to include the vessel's master, even the independent contractor.

For any person employed for hire by them, paragraph 1.2.1.3 have discussed in detail on its meaning in the section 65(2) of the 1906 M.I.A., which represents the services rendered by the person not on the "no cure no pay" basis but on the basis of "whether successful or not" or "quantum meruit".

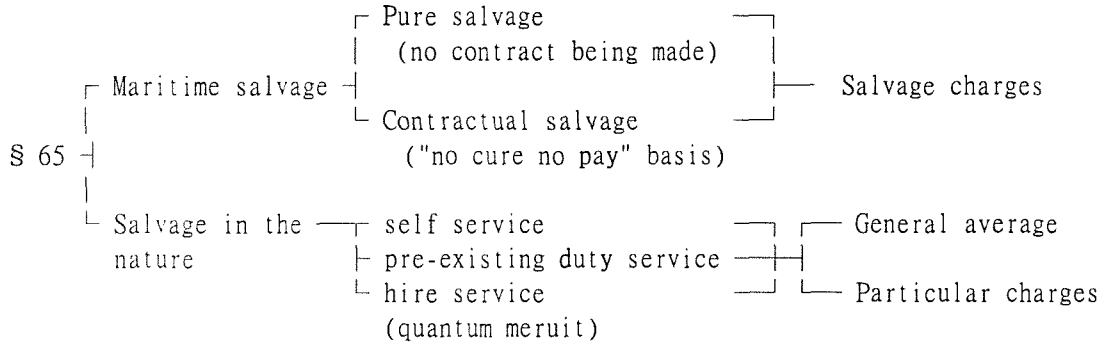
1.2.1.6 Short conclusion on traditional categorisation

"Independently of contract" do not mean "services rendered without a contract being made" or "rendered by volunteer salvors without a contract of any kind (verbal or otherwise) ". It is to declare a general principle of maritime law salvage that "the services rendered under maritime law not depends on a contract being made or not".

"Contractual salvage", if enters into and subject to the principle of "no cure no pay", is still the salvage under maritime law. Under the principle of "no cure no pay", said salvage contract may be agreed based on a fixed daily rate or lump-sum basis or leave decided by any agreed third party.

The traditional two-edged categorisation of "pure salvage" and "contractual salvage" on the 1906 M.I.A. section 65 needs to be re-categorized as "maritime salvage" and "hire and self services".

Diagram 4.
The categorisation under MIA section 65



1.2.2 The features of "Salvage Charges" on M.I.A s.65

A. maritime salvage :

Salvage in English law has evolved in two ways. Firstly it has grown under maritime law which was based on the *Rules of d'Oleron*. Four ingredients as mentioned earlier are essential before a salvor becomes entitled to claim an award for his services: they are maritime property, danger, voluntariness and success.

Secondly, salvage has been created by statute. Maritime law made no provision for volunteer salvors to be rewarded for life salvage were no property is saved. A statutory remedy to the gap in maritime law was first introduced in 1854 and later by sections 544 and 545 of the Merchant Shipping Act 1894 and then by the Merchant Shipping (Salvage and Pollution) Act 1994. The position of life salvage on the 1906 M.I.A. will be considered in the later chapter.

Note: this chapter/section deal only with the traditional statutory meaning of "salvage charges" under the 1906 M.I.A. The position/nature of the 1989 Salvage Convention, LOF and their effects on the 1906 M.I.A. (or example does the 1989 Salvage Convention meet with the meaning of "maritime law" under section 65.2 of the 1906 M.I.A. and the effects of the life salvage as well as environmental salvage) will be discussed in the later chapters.

B. subject to any express provision in the policy :

It is interesting in knowing what is the actual meaning of the expression :"subject to any express provision in the policy". There are two presumptions:

a. "salvage charges" is recoverable only while there exist any provisions in the policy expressly and specially insure it;
b. "salvage charges" whatsoever is recoverable, but it may be limited, qualified, or even excluded by any express provision in the policy.

Lord Hardwicke, in *Cary v. King*, said that: "Although it be not particularly laid in the declaration, the expense of salvage may be given in evidence in an action on the policy. The plaintiff may give in evidence any loss immediately

proceeding from the cause alleged".[36] Therefore, we may assume that the first presumption can be ignored and the salvage charges incurred in preventing a loss by insured perils are whatsoever recoverable from the underwriter under the 1906 M.I.A. section 65 without any need from the policy specially to express its coverage on the "salvage charges". Indeed, the old S.G. Form in the First Schedules to the 1906 Act contains no such inclusion and yet salvage charges were payable thereunder[37]. Ivamy classifies salvage charges and general average as "the perils not expressly mentioned" which the assured is also entitled to an indemnity although these matters are not expressly mentioned in the policy.[38] The insurer's liability to reimburse the assured in respect of salvage charges shall in any event be subject to the absence of any express provision to the contrary in the policy, for example the "total loss only" or agreed "no s/c (salvage charges)".

C. which incurred in preventing a loss by perils insured :

Salvage charges are recoverable only if it can be shown that they were incurred in preventing a loss covered by the policy. In *Ballantyne v. Mackinnon*[39], a vessel was sent to sea in an unseaworthy condition (insufficient bunkers) with the privity of the vessel's owner and incurred salvage charges for assistance. Lord Esher held that:

> ....the liability of an insurer to pay salvage does not rest upon any express or modified contract to pay for salvage expense as such, but upon the principle that where such expenses are incurred as the direct and immediate consequence of a peril against which he has insured they are treated as an average loss under the policy.

D. recoverable as a loss by the perils insured:

The words "recoverable as a loss by the perils insured" include three meanings. Firstly, the measure of indemnity for salvage charges is merged into the insured

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[36] *Cary v. King* (1736) Cas. t. Hardw. 304.

[37] Templeman on *Marine Insurance*, 6th ed., 1986, at p. 370.

[38] Hardy Ivamy, *Marine Insurance*, 3rd ed. 1984, at p. 190.

[39] *Ballantyne v. Mackinnon* (1896) 2 Q.B. 455.

perils as the "insured loss" prevented. The salvage charges can not be recovered in addition to the sum insured and the total liability of the insurer is limited to the sum insured. Secondly, as the salvage charges properly incurred to avoid a loss by perils insured against are recognised by the 1906 Act as recoverable as a loss by these perils, it follows that they can be added to material loss in order to make up a claim attaining or exceeding the franchise stipulated in the policy[40]. Thirdly, salvage charges can not be recovered in addition to the "insured loss", e.g. by way of suing and labouring expense. Section 78.2 provides that :"....and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause". In *Aitchison v. Lohre*, Lord Blackburn said:

> ..the object of this (suing and labouring) is to encourage and induce the assured to exert themselves...; not to provide an additional remedy for the recovery, by the assured, of indemnity for a loss which was, by the maritime law a consequence of the peril.[41]

However, it is suggested that, where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges (section 76.2).

E. reduced in proportion if under-insurance or part insurance:

Section 73.2 of the 1906 M.I.A. provides that:

> Where the insurance is liable for salvage charges the extent of his liability must be determined on the like principle.

"On the like principle" means in the same manner as in dealing with general average as stated on section 73(1). In other words, where the insured value is less than the value on which the salvage award was assessed, the amount recoverable is reduced in proportion. In *Steamship Balmoral Company v. Marten*, the Court of Appeal held that:

> ..there was a well-known and long-established practice in England that, where, as in the present case, a ship was valued in an insurance policy at a sum less than that which was taken as her value for the purpose of a salvage award or of a

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[40] Gow, *Sea Insurance*, at p. 117.

[41] *Aitchison v. Lohre* (1879) 4 App. Cas. 755 at p. 765.

general average adjustment, the underwriters were only liable to pay to the shipowner a sum which bore to the sum insured the same proportion that the insured value bore to the value upon which the salvage award or general average adjustment was based.42

Salvage changes, by its strict statutory meaning under the 1906 M.I.A., is an individual recoverable item from the insurer. The 1906 Act makes a clear distinction between "salvage charges"-the charges recoverable by a voluntary salvor under maritime law independently of contract (section 65.1), and "general average"-any extraordinary expenditure which is voluntary and reasonably made in time of peril for the purpose of preserving the property imperiled in the common adventure (section 66.2). However, in practice, since the York-Antwerp Rules (1974 or its further versions) are always incorporated in the contract of affreightment and also the insurance contract (through the general average clause or known foreign general average clause), the remuneration for salvage, whether pure salvage or contractual salvage ("no cure no pay" or not), incurred for the "common safety" is recoverable as part of the general average. However, there still are existing circumstances where the salvage charges will not apply in general average, for example, there is no common adventure or safety.

Furthermore, in order to prevent any possible confusion or misunderstanding, both of the words "salvage" and "salvage charges" co-exist in some practical policy forms. For example the Institute Time Clauses- Hull 1/11/1995 cl.10.1 provides "This insurance the Vessel's proportion of *salvage, salvage charges* and/or general average...". The practical application of the salvage charges will be discussed in detail in the later chapter.

1.3 General Average

The subject of general average contribution is of too great extent, and has too important a connection with the Law of Marine Insurance to be treated of incidentally in this place.[43] This chapter will not deal with this subject in detail, but only concentrate on its legal definition, general principles and its relationship with salvage. The York-Antwerp Rules as well as some practical clauses will be

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[42] *Steamship Balmoral Company v. Marten* (1901) 2 K.B. 896 at p. 897.

[43] Arnould, ibid., 1981, at para 908.

discussed in the next chapter.

1.3.1 General

1.3.1.1 The origin of general average

The common acknowledge of the origin of general average is came from the Phodian Law in B.C.800-600 which formed a chapter in the Digest of Justinian:

> "Lege Rhodia cavetur ut si levandae navis grantia jactus mercium factus est, omnium contributions sarciatur quod pro omnibus datum est" (The Rhodian law decreed that if in order to lighten a ship merchandise has been thrown overboard, that which has been given for all should be replaced by the contribution of all).[44]

Gow said "one of the earliest remnants of ancient maritime law preserved to us deals with jettison made for the sake of saving ship and cargo, and with the way in which loss arising out of such jettison was to be treated both as to its final incidence and to its apportionment".[45]

In Roman law, the general average principle has been developed to apply to many sacrifices of somewhat similar nature. Later it further developed into a principle according to which all extraordinary sacrifices and expenditures made or incurred voluntarily in order to avert from the whole venture some threatening, are divided pro rata over the whole of the items composing the venture. Since it concerns the whole venture in the payment for the loss or damage that is indicated by the word general, or common, or gross, the phrase general average, common average, or gross average (*avarie grossem grosse havarei*).[46]

Phodian law was contained in the code known as the *Rolls of Oleron*, which were copied into the Black Book of the English Admiralty, and confirmed by an Act of Parliament in 1402.[47] The legal definition of general average, as quoted below, was given in English courts which became the basis of English Law is *Birkley v. Presgrave*:[48]

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[44] Lowndes and Rudolf, ibid., at para 00.01.

[45] Gow, *Marine Insurance*, at p. 288.

[46] Supra, at p. 281.

[47] J. Kenneth Goodacre, *Marine Insurance Claims*, 2nd ed.1984, at p. 520.

[48] *Birkley v. Presgrave* (1801) 1 East 220.

> All loss which arises in consequence of extraordinary sacrifice made, or expenses incurred, for the preservation of the ship and cargo comes within General Average and must be borne proportionately by all who are interested.

1.3.1.2 General average and marine insurance

General average exists as a general rule of maritime law, independently of the contract of affreightment and in any event independently of marine insurance. In The *Brigella*, Lord Tenterden said that:

> The principle of general average, namely, that all whose property has been saved by the sacrifice of the property of another shall contribute to make good his loss, is of very ancient date, and of universal reception among commercial nations. The obligation to contribute depends therefore not so much upon the terms of any particular instrument as upon a general rule of maritime law. The obligation may be limited, qualified or even excluded by the special terms of a contract as between the parties to the contract.
>
> The obligation to contribute in general average exists between the parties to the adventure whether they are insured or not. The circumstances of a party being insured can have no influence upon the adjustment of general average, the rules of which are entirely independent of insurance. [49]

Also, in *Aitchison v. Lohre*, Lord Blackburn said that:

> It may be as well here to point out that the liability of the articles saved to contribute proportionally with the rest to general average and salvage, in noways depends on the policy of insurance. It is a consequence of the perils of the sea, first imposed, as regards general average, by the Rhodian law many centuries before insurance was known at all, and as regards salvage by the maritime law, not so early but at least long before any policy of insurance in the present from were thought of.[50]

Richard Lowndes in his book, *The Law of General Average* (2nd ed.,1874) said that "the subject of general average can never be as well understood as when it is studied apart from insurance, with which it is only accidentally associated, and

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[49] The *Brigella*, P 187, at pp. 196-197.

[50] *Aitchison v.. Lohre* (1879) 4 App. Cas. 755 at p. 765.

as an outlying branch of the law of affreightment to which it naturally belongs".[51] In other words, general average properly forms part of the obligations which arise out of the contract of affreightment, and is only secondarily connected with insurance. However, general average, at least since the Memorandum being introduced in the S.G. policy, has formed the best essential risk under the marine insurance policy, but in any general average case which have to determine first the rights and liabilities of the co-adventurers, and only then to consider each co-adventurer's position vis-a-vis his underwriters[52].

1.3.1.3 Insurers' obligation: contractual or statutory ?

General average, as mentioned earlier, exists under maritime law independently of marine insurance. Why is the assured entitled to recover the general average loss/contribution from the insurer ? and on what basis is it? contract, common law or statute?

Examination of the earlier policy, such as the *Tiger* form (1583), except the specified "jettezons", revealed no mention of general average. Gow said "English policy of insurance discloses a curious parallel to what is suggested above as the history of the *Rhodian* law, namely, the fact that the policy mentions specially no peril of a general average character except jettison"[53]. On the other hand, the General Words (...and of all other perils, losses, and misfortunes) in the S.G. policy can only be interpreted as an *ejusdem generis* thing of the named perils (i.e. jettison) in the S.G. policy. It may be suggested that "an *ejusdem generis* thing of jettison" could not be widely interpreted to cover general average loss/contribution of any kinds. The situation was changed while the words "unless general " in the "Memorandum" appeared at the foot of the S.G. Form in 1749. The words "unless general" may merely indicate that general average is not subject to any franchise. It is accepted that general average loss is payable irrespective of percentage. However, whether the said "unless general" in Memorandum was an absolute evidence on the assured to be entitled to recover general average loss from their insurers was still arguable. As it did also exist a dispute that the assured who might also own a right at the

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[51] Cited by Gow, *Sea Insurance*, at p. 282.

[52] Arnould, ibid., at para 917.

[53] Gow, *Sea Insurance*, at p. 119.

same time to recover his general average loss partly by contribution from the other interests in the common adventure. The circumstance became more clearer while the Foreign General Average Clause was introduced in the marine policies. Bovill C. J., in *Harris v. Scaramanga*, commented the general effect of the Foreign General Average Clause that:

> It seems to me that the general average of the memorandum (Foreign General Average Clause) is, to make the underwriters liable as for general average for whatever the owners of goods might be called upon to pay on that account by the foreign statement of adjustment. This memorandum was probably introduced in order to avoid all questions, not only as to the propriety of particular items being treated as the subjects of general average, but also as to the correctness of apportionment; [54]

Fletcher v. Poole (1769) held by Lord Mansfiled might be the oldest case reported in this country directly dealt with the insurers' liability on general average (the extraordinary wages and provision incurred during a vessel's detention while she had put in distress for repairs)[55]. After that case, more and more cases were reported as to various subjects of general average loss/contribution for which the insurers were liable or not. But, reviewing those cases, I believe that, except basing on the policy (for example the named peril - jettison and special Foreign General Average Clause agreed), they left the basic problem "why insurers had to reimburse the assured of the general average loss/contribution" untouched. The obligation to contribute general average by the common adventure under maritime law is existed independently of marine insurance contract. A link must be existed between the obligation of the assured (common adventure) to contribute under maritime law and the obligation of the insurer to reimburse the assured of the said general average obligation. The link was the usage of marine insurance and the cases which interpreted the contract affirmed the right. I personally do not think that, at least in this particular subject, the cases themselves could be treated as the basis of the insurer's liability. Bovill C. J. in *Harris v. Scaramanga*, implied this link on "ordinary policy" that

> If the sacrifice or loss which against or the consequences of them, or from proper endeavours to avert such perils or their consequences, to that extent the underwriters would, *under the terms of an ordinary policy, and according to well-*

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[54] *Harris v. Scaramanga* (1872) L.R.7 C.P. 481, at p. 489.

[55] Park, *Insurance* (8th ed. 115) cited by Gow, *Marine Insurance*, 4th ed. 1909, at p. 293.

known maritime usage, be liable to indemnity the assured,...[56]

Gow also said that:

> we may say that by the ordinary form of policy the English underwriter contracts with his assured to pay his proper proportion of the general average contribution demanded from the interest he insures.[57]

It may be concluded therefore that the liability of the insurer in general average before 1906 arose from the insurance contract and affirmed by the common law and since the Act of 1906 by statute.[58]

1.3.2 Statutory definition and essential factors of general average

Section 66 of the 1906 M.I.A. contains three definitions. They are general average loss, general average act and general average contribution.

It has to be borne in mind that, this section is only dealing with the ordinary general average under English common law applicable to the 1906 M.I.A. It does not include the well-known York-Antwerp Rules. The former, supported by judicial authority in England is that the right arises not out of contract, but from the old *Rhodian* laws, and has hence incorporated into the laws of England as part of the law maritime. The latter, i.e. the claim for general average contribution based on York-Antwerp Rules which incorporated into contract of affreightment, is contractual.[59]

1.3.2.1 General average loss

The 1906 M.I.A. section 66(1) defines general average loss as "a loss caused by

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[56] *Harris v. Scarmanga* (1872) L.R. 7 C.P. 482 at p. 488.

[57] Gow, *Marine Insurance*, at p. 311.

[58] This opinion slightly differs from Justice Bailhache's viewpoint in *Brandeis Goldschmidt and Co. v. Economic Insurance Co. Ltd.*(1922, 38 TLR 609 at p. 610) that: The liability in general average before 1906 arose at common law and since the Act of 1906 by statute. It did not arise under the policy, but the policy might contain express provision modifying or excluding it..

[59] Arnould, ibid., para 917, n10.

or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice". This paragraph divides general average into two classes, i.e. general average sacrifice and general average expenditure. The former, in most cases, represents the present and physical loss/damage to property, for example, the jettison of part of the ship or cargo, as mentioned in Rhodian law in order to save the imperiled co-adventurers' property. The latter is a non-physical loss/damage consisting of paying money or labouring maneuver, for example, the expenses of entering port of refuge or hiring a tug for preservation of said co-adventurers' property.

Basically, there is no difference in principle between general average sacrifice and general average expenditure. However, Arnould, in his book at para 915A, makes a timing distinct between general average sacrifice and general average expenditure that:

> It is true to say that a general average sacrifice must be made at a moment of peril in order to secure safety. When, however, this is said of a general average expenditure, it must be remembered that the expenditure itself is usually not made until after all danger is over. It is not necessary that the actual expenditure of the money should be made at a moment of peril; it is only necessary that the ship and cargo should have been in peril at the time when the extraordinary measures were adopted which subsequently entailed the extraordinary expense.

1.3.2.2 General average contribution

The 1906 M.I.A. section 66(3) provides:

> Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to ratable contribution from the other parties interested, and such contribution is called a *general average contribution*.

General average contribution refers to a debtor, who is imposed the obligation, subject to the maritime law, to contribute the general average loss; whereas the general average loss refers to a creditor, who is entitled to claim the general average contribution. Lord Watson in *Strang v. Scott,* said that:

> Each owner of jettisoned goods becomes a creditor of ship and cargo saved, and has a direct claim against each of the owners of ship and cargo, for a pro rata

contribution towards his indemnity, which he can enforce by a direct action. [60]

1.3.2.3 General average act

The 1906 M.I.A. section 66(2) provides:

> There is a *general average act* where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperiled in the common adventure.

There are five essential features :

Extraordinary	*The sacrifice or expenditure must be extraordinary.*	
	◎"The performance of a service owed by the shipowner to cargo was not a subject of general average."	*Wilson v. Bank of Victoria* (1867)
	◎"The loss of the shipowner is merely such as he would incur in the fulfillment of his ordinary duty as shipowner, it cannot be general average."	*Kemp v. Halliday* (1865).
	◎"The expenditure was not incurred on behalf of the master as agent of the shipowner, performing his contract to carry on the cargo to its destination and earn freight, but was an extraordinary expenditure for the purpose of saving the property at risk."	*Hingston v. Wendt* (1876)
	◎ "General average expenditure must be incurred to avoid extraordinary and abnormal peril as distinguished from the ordinary and normal perils of the sea."	*Societe Nouvelle D'Armement v. Spillers & Bakers Ltd.*(1917)
Voluntary	*The act and sacrifice made or expenditure incurred must be voluntary.*	
	◎"The loss is voluntarily incurred when it is an act of will on the part of the master."	*Robinson v. Price* (1876)
	◎"An expenditure must generally be voluntary in order that the shipowner may be entitled to call upon the other parties to the adventure for contributions."	*Ocean S.S. Co. v. Anderson*
		*Papayanni &

[60] *Strang, Steel & Co. v. A. Scott & Co.* (1889) 14 App. Cas. 601 at p. 606.

◎"The sanctioning of the scuttling by the master made the act "voluntary""

Jeromia v. Grampian SS. Co.Ltd. (1896).

Reasonably

The sacrifice made or expenditure incurred must be reasonably.

◎"The question (the judgment of the master) in all this case is, not whether the events shows the wisdom of what was done, but whether, under all the circumstances, it was the exercise of a reasonable, prudent, sound judgment."

Corry v. Coulthard (1876) unreported case, Exch. Div. Dec.31 1987 C.A.

◎"when ship and cargo in peril, the fact that the shipowner have by the act of the master become bound to pay and have paid a sum of money for preservation of ship and cargo, and that the master in so binding them pursued a reasonable course under the circumstances....; the expenditure agreed by the master was excessive and only that part of the expenditure which was fair and reasonable in the circumstances was allowed in general average."

Anderson Tritton & Co. v. Ocean Steamship Co. (1884)

General safety

Purposely resorted to for the general safety

◎ "The act...necessary to relieve the whole venture from the common peril."

Hamel v. P.& O. S.N. Co.(1908)

◎ "There shall be a voluntary sacrifice to preserve more objects than one exposed to a common jeopardy."

Kemp v. Halliday (1865)

◎"It (general average) arises when a ship, laden with cargo, is in peril on the sea, such peril indeed that the whole adventure, both ship and cargo, is in danger of being lost."

Australian Shipping Commission v. Green and Others (1971)

◎ "Any expenditure incurred entirely and exclusively for saving the whole subject of insurance should for the purpose of adjusting the loss on this policy, be treated as general average."

Oppenhein v. Fry (1864)

Peril

Peril must be real, imminent and appear

◎"The sacrifice must have been made under urgent pressure of some real; The word 'peril', not 'immediate peril', and 'peril' means the same thing as 'danger'; The peril must be real and not imaginary, that it must be substantial and not merely slight or negatory. In short, it must be a

Vlassopoulos v. British & Foreign Mar. Ins. Co. (1929)

real danger."

◎"Peril must be substantial and threatening, and something more than the ordinary perils of the sea." — *Societe Nouvelle d'Armement v. Sprillers & Bakers Ltd* (1917)

◎"A peril must in fact exist and any situation which 'looks as if there was a peril' was not good enough." — *Joseph Watson & Son Ltd. v. Firemen's Fund Ins. Co. of San Franciso* (1922)

1.3.2.4 Other features of general average

The features mentioned above deduced from the "general average act" form the central core of general average under the 1906 M.I.A. However, there are some other features which need to be further considered relating to marine insurance.

A. Insurers' liability for reimbursing assured's general average loss/contribution is subject to the coverage provided by the policy, not assured's obligation to contribute under maritime law

The obligation imposed under maritime law to contribute in general average existing between the parties to the common adventure is independent of the insurance contract. In other words, the insurer's liability on the property saved (if insured) is not subject to the obligation imposed under the maritime law on the parties concern, but subject to the term and condition of the insurance contract agreed between the insurer and the owner (the assured) of the property saved.

Section 66(5) of the 1906 M.I.A. provides "*Subject to any express provision in the policy*, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer". It can be assumed that the insurer's liability to reimburse assured's general average sacrifice, expenditure and contribution is now statutorily imposed by the 1906 M.I.A. Namely that, irrespective of the policy expressly cover the "general average" or not, the assured is entitled to recover general average from insurer subject to the nature of the policy. However, the insurers' statutory liability on "general average" may be saved subject to any special and express contractual terms mutually agreed between the insurance parties concerned. Namely that the insurers' obligation to pay the said general average contribution may be limited, qualified or even excluded by a special

term of the insurance contract.

Subject to the nature of the policy, some policy forms may not provide general average cover, for example a "total loss only" policy. One of the prerequisite for general average is that at least part of the properties in the common adventure must be survived. However, the "total loss only" policy is assumed that total loss of the ship will also mean "loss of adventure", i.e. no general average is established.

B. Purposes to avoid the perils insured against and in proportion to the amount insured

Insurers' contractual obligation to indemnify general average loss and contribution shall be always subject to two principles:

a) the general average was incurred to avoid the perils insured against; and
b) in proportion to the amount insured.

Both principles were deducted from *Harris v. Scarmanga.* In that case, Brett J. cited Phillips's statements that:

> The lex loci is that underwriters shall reimburse general average, if within the perils insured against...according to English and American law, the underwriter of a policy in the ordinary form is not liable to indemnity against any general average loss or contribution... if the general average loss be not incurred, or the general average contribution be not made, in order to avert loss by a peril insured against.
>
> the statements in the Phillips on Insurance - a book of highest authority as to English as well as American insurance law, - are clear and precise. "Underwriters are liable to make indemnity by payment of either a particular or *general average* or total loss *only by payment of it being caused by the perils insured against.*"...It is the loss to each and all caused by a sea peril, which must in this as in other cases be the loss caused by a peril insured against. "So far as general average is occasioned by perils insured against," says Phillis, "*the insurers are liable for it in proportion to the amount insured*"[61]

[61] *Harris v. Scaramanga* (1872) LR 7 CP 481 at pp. 496-497.

The 1906 M.I.A. section 65(6) codifies the first principle in *Harris v. Scarmanga* provides that:

> In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was *not* incurred for the purpose of avoiding, or in connexion with the avoidance of, a peril insured against.

By reason that the Foreign General Average Clause used in the end of nineteenth century simply worded "to pay general average as per foreign statement, if so made up (or if so required)"[62], it may incur some liability on insurers not in connection with the peril insured. Gow said "It is understood that this sub-section has been introduced in order to exempt English underwriters, using the form of policy given in the Schedule, from liability to contribution for general average for losses and expenses not arising from perils insured against in the policy"[63]. However, this sub-section not only codifies the principle of avoiding the peril insured against which affirmed by lots of English authorities, but also affirms that the burden of proof is first laid on the insurers if they intend to exempt their liability on general average.

The 1906 M.I.A. section 73(1) codifies the second principle implied in *Harris v. Scarmanga,* provides that:

> Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the under insurance, and where there has been a particular average loss which constitutes a deduction form the contributory value, and for which the issuer is liable, that amount must be deducted form the insured value in order to ascertain what the insurer is liable to contribute.

The complex situations in section 73(1) may be tabulated as following:

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[62] Douglas Owen, *Marine Insurance Note and Clauses*, 3rd ed. 1890, at p. 38.

[63] Gow, *Sea Insurance*, at p. 123.

with PA or not	the insured value and contributory valve in comparison	insurer' liability
without particular loss	full insurance (insured value = contributory value)	full contribution
	over insurance (insured value > contributory value)	full contribution
	under insurance (insured value < contributory value)	contribution in proportion (i.e. insured value / contributory value)
with particular loss	if (insured value - particular loss) = contributory valve	full contribution
	if (insured value - particular loss) > contributory valve	full contribution
	if (insured value - particular loss) < contributory valve	contribution in proportion (i.e. insured value - p.a. / contributory value)

C. Owned by the same assured

Gorell Barnes J. in The *Brigella*, gave opinion that there cannot be contribution unless there is diversity of interests and also affirmed two circumstances:

a. ship and chartered freight belong to the same assured under the same policy, no general average contribution by the insurer but may be under sue and labour clause;
b. ship and chartered freight belong to the same assured but under different policies, the respective policies should bear expenses of averting a loss of those interests in proportion.[64]

The above Gorell Barnes' J. judgment was overruled by *Montgomery & Co. v. Indemnity Mutual Marine Insurance Co.* In that case, Vaughan Willams L.J. said that:

> The object of this maritime law seems to be to give the master of the ship absolute freedom to make whatever sacrifice he thinks best to avert the perils of the sea, without any regard whatsoever to the ownership of the property sacrificed; and, in our judgment, such a sacrifice is a general average act, quite independently of unity or diversity of ownership.....

[64] The *Brigella* (1893) P 187, at pp. 196-197.

> the rule, as to what constitutes a general average or not, is founded upon the consideration, whether it is for the benefit of all, who are, or may be, interested in the accomplishment of the voyage; or only for the benefit of a particular party....if ...sacrifice be made for the common benefit of all concerned in the voyage; there can be no doubt that this would be a case of general average, and the underwriters on ship, cargo, and freight must all contribute as for a general average.[65]

The 1906 M.I.A. section 66(7) affirms *Montgomery & Co. v. Indemnity Mutual Marine Insurance Co.*, provides that:

> where ship, freight, and cargo, or any two of these interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subject were owned by different persons.

The Bill was initially drafted following The *Brigella* stated that "*Where ship freight and cargo, or ship and freight, are owned by the same assured, and insured with different insurers...*"[66] Chalmers' in his book said that

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[65] *Montgomery & Co. v. Indemnity Mutual Marine Insurance Co.* (1902) 1 K.B. 734, at p. 740 and p. 743.

[66] The Bill and the Act of M.I.A. section (66) in comparison

Present section 66 of M.I.A. **The Bill of M.I.A.**

subject. (7) as twice altered during the passage of the Bill through Parliament, and is not now very happily expressed. It was intended to affirm the recently established rule that there might be a claim on the insurer for a loss in the nature of a general average loss though there were no contributing interests, owing to single ownership"[67].

This sub-section overrides the common law "a man cannot sue himself" general principle. It is therefore that the shipowner is permitted by this sub-section to receive from the underwriters on ship, freight, and cargo, the same contributions as would have been recoverable from them if the shipowner and cargo-owner had been different persons.

The 1906 M.I.A. section 66(7) merely provides "ship, freight. and cargo, and any two of those interests.....". This provision could not well settle the case of sacrifice or expenditures made on a ballast voyage with no charter. Gow has

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66. -(1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntary and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover form the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having to enforce his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy. where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connexion with the avoidance of, a peril insured against.

(7) Where ship, freight, and cargo, and any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average or contributions is to be determined as if those subjects were owned by different persons.

67.- (1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntary and reasonably made or incurred in time of peril for the purpose of preserving the [ship and cargo].

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution. Apart from special contract, the parties interested are the owners of ship freight and cargo.

(4) Subject to any express provision in the policy, where the assured has suffered a general average loss, he may recover form the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having to enforce his right of contribution from the other parties liable to contribute. But nothing in this subsection affects the insurer's right of subrogation on payment.

(5) Subject to any express provision in the policy. where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

Provided that, in the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connexion with the avoidance of, a peril insured against.

(6) It is the duty of the ship-owner and his agents to take such steps as may be reasonable to provide that all general average contribution (whether due to himself or others) are adjusted and collected, and he has a lien on the cargo until this be done.

(7) Where ship freight and cargo, or ship and freight, are owned by the same assured, and insured with different insurers, the assured may recover pro ratio from the insurers for any loss which would constitute a general average loss if there were different owners.

[67] Chalmers' *The Marine Insurance Act 1906*, 2ed 1913, at p107.

opined that "if those expenses were of the nature of salvage charges incurred to prevent a loss by a peril, they would, under section 65, be recovered as a loss by that peril. If not salvage charges they would be, under section 64(2), particular charges"[68]. However, this problem was settled by contractual clause applicable to general average while 1936 Institute Time Clauses (1.6.1936)[69] introduced it (ballast voyage with no charter) in this market.

D. Different treatment in general average sacrifice and expenditure

Bovill C. J., in *Dickenson v. Jardine*, affirmed that

> the goods were insured against jettison and were jettison, then the assureds are therefore entitled to recover the sum insured. It is true there is a remedy against the owners of the ship and the remainder of the cargo. But this does not affect the assured's right against underwriter, who will then be entitled to stand in their place, and recover contribution from the other parties who are liable[70].

In *Mary Thomas* case, Court of Appeal affirmed the learned judge Gogrell Barnes's judgment that

> this proposition, which is found in *Dickenson v. Jardine, is wholly inapplicable to the case of expenditure,* as the expenditure was taken for the benefit of part not for all common adventure. Said expenditure is the money spent by the captain who acts as agents for the person whose property is at risk and all who are interested for said expenditure must contribute it, and then the underwriters, who have indemnified, have got to recoup him what he has paid[71].

Dickenson v. Jardine declared two principles:

a. the assured may direct claim general average sacrifice from the insurer; and
b. the insurer's payment would not affect the insurer's right of subrogation

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[68] Gow, *Sea Insurance*, at p. 124.

[69] D. J. Wilson, *The Historic Records Committee on Institute Time Clauses - Hulls*, The Insurance Institute of London Report H.R.3, 1963, at p. 56.

[70] *Dickenson v. Jardine* (1868) L.R. 3 C.P. 639, at pp. 642- 643.

[71] The *Mary Thomas*, (1894) P 108 C.A. at p. 118.

The *Mary Thomas* declared one principle

> the right to direct claim form insurer only apply to general average sacrifice, assured shall enforce his right of contribution from the other liable party for other kinds of general average loss before he recover it from his insurer.

The above three principles were all codified in The Bill[72]. However, the 1906 Act is slightly different from the Bill in two points. Firstly, "But nothing in this sub-section affects the insurer's right of subrogation on payment" in the Bill is not appeared in the 1906 Act. It is assumed that the general provision regarding to the insurer's subrogation rights under section 79 of the 1906 Act would properly cover the situation that the insurers have paid for general average loss. Secondly, the 1906 Act adopts two-shift classification method (sacrifice and expenditure), whereas the Bill adopted exception classification method (sacrifice and other kinds of general average loss other than sacrifice). It is difficult to imagine there is a third kind of general average loss other than "sacrifice" and "expenditure". But bearing in mind that, as general average sacrifice is always considered as the physical damage/loss to the property, the exception classification may be more properly to exhaust out the other kinds of general average loss in practice.

E. The duty of the shipowner in preparation of adjustment and liens

L.J. Lush, in *Crooks & Co. v. Allan,* held that

> a master or shipowner is bound to exercise the power he is invested with when a general loss has arisen, and to use the means in his power for adjusting the average claims and liabilities and securing their payment, and he accordingly ordained the defendants, who had neglected to perform that duty, to pay to the plaintiffs the whole amount of contribution to which they were entitled"[73]

Again, Lord Watson, in *Strang, Steel & Co. v. A. Scott & Co.* case, affirmed the settled law that

> the owner of goods sacrificed for the common benefit has a lien upon each parcel

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[72] The context of section 67(4) of the Bill, see n. 66.

[73] *Crooks v. Allan* (1879) 5 Q.B.D. at p. 38.

of goods salved belonging to a separate consignee for a due proportion of his individual claim. The cargo not being in his possession or subject to his control, his right of lien can only be enforced through the ship-master, whom the law of English, following the principles of Lex Rhodia, regards as his agent for that purpose."[74]

Section 67(6) of the Bill, affirmed *Crooks v. Allan* and *Strang, Steel & Co. v. A. Scott*, stated that "It is the duty of the ship-owner and his agents to take such steps as may be reasonable to provide that all general average contributions (whether due to himself or others) are adjusted and collected, and he has a lien on the cargo until this be done"[75]. This sub-section however is not appeared in the present Act of 1906. It is suggested that it seems not properly to be imposed the said settled maritime law duty (which relates to general average) in the 1906 Marine Insurance Act (which ruling the relationship among marine insurance parties).

What is the effect under the 1906 Act if the shipowner or his agents failed to due exercise their duty to adjust, collect and or to lien ? The situations may include:

(a) the ship was sacrificed, but failed to lien and collect from other interests
(b) the ship incurred expenditure, but failed to lien and collect from other interests
(c) one or more cargos (or interests) was sacrificed or incurred expenditure but shipowner failed to lien/collect from other cargos or interests.

According to the 1906 Act section 66(4), the assured has to enforce his rights of contribution from the other parties before he recover his incurred general average *expenditure* from the insurer. It is therefore that, for situation (b), it incurs no problems owing the assured did not first enforce his rights from the other parties. For situation (a), the general principle of the insurers' subrogation rights may apply. Namely, the insurers would be entitled to take credit for the value of the rights or remedies which had been waived or renounced and settle the balance as a claim under the policy; and if the full claim has already been paid under the policy, the insurers would be entitled to claim form the assured in

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[74] *Strang, Steel and Co. v. A. Scott* (1880) 14 App. Cas. 601 at p. 606.

[75] see n.66.

respect of the rights lost by the assured's action in waiving or renouncing rights against third parties[76].

For situation (c), the shipowner or his agents breached his duty under common law or maritime law as an agent for the interested parties who incurred the general average sacrifice/expenditure. It is a liability beyond the peril insured against[77] for which the insurer is not liable in accordance with the 1906 Act section 66(5),

F. Necessity of "survival"

At least part of the properties in the common adventure must be survived, otherwise there is nothing left to contribute. Some textbooks refer this element by "success"[78]. As the word "success" contains an implication of "causation" (i.e. the saving of full or part of properties imperiled is resulted from a general average act), it is suggested better to use the word "survival" instead of the word "success".

The essentials for general average are different among textbooks. Scrutton cited the case *Pirie v. Middle Dock Co* pointed out the need for success.[79] Scrutton's view may be critical. In that case, Watkin Williams J did merely state the fact of case which the operation (the water poured down the holds to extinguish the fire) was successful in saving the ship and a very large portion of the cargo[80]. The judge however did not give a clear view that 1) "the successful" constitutes as a principle or essential of general average and 2) it could not be allowed as general average in case the operation was not success.

Theoretically, it exists two theories in this element: "causation" and "survival". The former suggests that the causation must be existed between general average act and the property saved. Namely that, the saving of property in the common adventure must be the beneficial consequence of a general average act. I.e. no effort, no contribution. Frence, Japan and Italy adopt this theory.[81]

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[76] O'May on *Marine Insurance,* 1993, at p.488.

[77] However, this liability may be covered by P&I insurance.

[78] Susan Hodges, *Law of Marine Insurance*, 1st ed. 1996, at p. 444.

[79] Scrutton. art. 130.

[80] *Pirie v. Middle Dock Co.* (1881) M.L.C. 388 at p. 392.

[81] Bonlay-Party, *Assurance* I p.601(referred by Mr. W.C. Won in his book of "*Law of Marine Insurance and General Average*", Taiwan, 1983)

"Survival" theory, simply to say, is the obligation to contribute will be sufficiently sustained while there were a general average act and some property were saved. No causation is required between "general average act" and the property saved.

English law, subject to the "plainest equity" rule of contribution, basically do not adopt the "causation" theory. The liability of the property preserved to contribute general average loss is based upon the presence of general average act carried out by master on ship/cargo in the common danger. Lord Watson in *Strang Steel & Co. v. A. Scott & Co.* said :

> ..the rule of contribution has its foundation in the plainest equity. In jettison, the rights of those entitled to contribute, and the corresponding obligations of the contributors, have their origin in the fact of a common danger which threatens to destroy the property of them all.
>
> The Rhodian law, which in that respect is the law of England, bases the right of contribution not upon the causes of the danger to the ship and cargo, but upon its actual presence.[82]

Arnould illustrates a circumstance which may support this theory:

> a sacrifice may be properly and judiciously made. and the remaining interests may be subsequently preserved, but such preservation may be in no sense due to the sacrifice, but to the intervention of other causes, post hoc, and not propter hoc. In such a case it is confidently submitted that through the sacrifice has produced no good results and cannot therefore be called successful, it nevertheless gives claim to a general average contribution.[83]

However, under English law, the "causation" theory does still apply between the "general average act" and "general average loss" (sacrifice and expenditure), whereas not apply between "general average act" and "the property saved".

G. Subject to the nature, but not who is authorised of the "general average act"

Some jurisdictions, for example German, Japan and Taiwan, stipulate that the general average act must be ordered or authorised by the "master". However,

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[82] *Strang Steel & Co. v. A. Scott & Co.*(1889) 14 App. Cas. 601 at pp. 608- 609.

[83] Arnould, ibid., at para 919.

no similar requirement is mentioned under the 1906 M.I.A. In *Price v. Noble*[84] and *Papayanni v. Grampian S.S. Co.* [85], the sacrifice made by a "stranger" (French privateer, the captain of the port and the shore officers) to the adventure and in *Australian Coastal Shipping Commission v. Green*[86], the towage contracts entered into by shore officers were treated as general average.

Those cases support a conclusion that it is not essential that the sacrifice/expenditure should have been made under the authority of the master, but that the real question is whether it was necessary for the general safety.[87] However, for this section, the "necessary for the general safety" test is not sufficient enough. There shall exist some *genius relationship* between the "stranger" and the willing or natural justice of the master. Lowndes and Rudolf book gives an example that "If the master and crew abandoned a vessel completely and with no exception of returning to her, measures taken by a stranger in order to bring her to safety would not be of a general average nature under English law."[88]

H. General average in particular average warranties

Dickenson v. Jardine (1868) affirmed the direct liability of the insurer for general average sacrifice, but unfortunately it did not state whether said liability came under the head of General Average or Particular Average. In 1889 *Price & Co. v. A1 Ships' Small Damage Insurance Association*, the Court of Appeal decided that general average and particular average are entirely different in character and origin, so they cannot be added together to make up the percentage of franchise stipulated in the policy[89]. This decision was codified in section 76(3) of the 1906 Act, which provides that:

> Unless the policy otherwise provide, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the

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[84] *Price v. Noble* (1811) 4 Taunt. 123.

[85] *Papayanni v. Grampian S. S. Co.* (1896) 1 Com. Cas. 448.

[86] *Australian Coastal Shipping Commission v. Green* (1971) 1 Q.B. 456.

[87] Lowndes and Rudolf, ibid, at para A.20.

[88] Supra, at para A.22.

[89] *Price v. A1 Small Damage Insurance Association*, (1889), 22 Q.B.D. 580 C.A. at p. 590.

specified percentage.

It is understood that this sub-section is only for purpose of calculating the said specified percentage being achieved or not. It is not providing an additional remedy other than particular average. The aggregate amount of general average loss and particular average is limited to the amount insured.

I. General average contribution in estimating the C.T.L. on ship

In *Kemp v. Halliday* (1866), the Court of Appeal affirmed the decision of the learned judge Blackburn J in determining a question of C.T.L. who took account the liability of cargo and freight for general average contribution on the expenses of raising the ship. The Court of Appeal held that:

> the ship was not actually lost, but being with the cargo in imminent peril, the cost of raising ship and cargo would be general average; and that *the contribution of the cargo to the general average must be taken into account as reducing the cost of raising the ship.*[90]

But the 1906 M.I.A. section 60(2)(ii) provides:

> 60(2) In particular, there is a constructive total loss -
>
> (ii) In the case of damage to a ship, where she is so damaged by peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired;
>
> In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any general average contributions to which the ship would be liable if repaired;

Arnould say "it is arguable that *Kemp v. Halliday* is overruled by the Marine Insurance Act 1906 s.60(2)(ii)" and further say "the decision had already stood for 40 years at the time of the passing of the M.I.A.1906; if there is any doubt as to the meaning of the Act, it should be construed in accordance law as it was in 1906. On the whole, therefore, the better view seems to be that *Kemp v.*

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[90] *Kemp v. Halliday* (1866) L.R.1 Q.B. 520 at p. 523.

Halliday is not overruled"[91].

I personally do not believe it exists such argument as Arnould mentioned. The raising expenses dealt with in *Kemp v. Halliday was* a kind of general average *expenditure* and the general rule of section 60(1) for the "expenditure exceed its value" was applied. However, the particular rule of section 60(2)(ii) merely deals with the ship physical damage repairing cost which represents a kind of general average *sacrifice* if the damage incurred for general average purpose and the words "but account is to be....if repaired" is to re-affirm the general principle declared by 60(1).

For short, in principle, all kinds of "expenditure" (particular average, particular charges, salvage charges, general average loss possibly incur) will be taken into account to estimate whether the ship's value is exceeded. For this purpose, all the debit (the liability on ship for future salvage and general average contribution to other interests) will be included. On the other hand, all the credit (the liability on other interests to ship for contributing ship's general average sacrifice and expenditure) will be deducted (as *Kemp v. Halliday*). However, section 60(2)(ii) provides an exception from the general principle declared by section 60(1) (and *Kemp v. Halliday* case), that in estimating the repairing cost for the damage resulting form general average, the credit of contribution from other interests on said cost will be not taken into account. In other words, section 60(2)(ii) does not actually overrule the Kemp v. Halliday.

It is interested to know that said exception did not appear in the Bill. It is difficult to trace why this exception was finally added in the 1906 Act. Arnould mentions it should be construed in accordance with the common law as it was in 1906, but cited no supporting cases. Again, no evidences could be found in the Rules of Practice of A. A. A. at that time. It is suggested that it may be for practical reason to ease the complex works in estimating and adjusting the ship repair costs.

1.3.3 General average and salvage charges

The statutory distinction is drawn in the M.I.A. 1906 between salvage charges and general average. However, it exists some similarities between salvage charges and general average either in their ingredients or their statutory application. Their similarities may include:

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[91] Arnould, ibid., at para 1202.

1.3.3.1 Similarity

Salvage charges		***Items***	***General average***
ingredients	1.	the subject of saving shall be maritime property;	ingredients
ingredients	2.	danger was existing when rescuing;	ingredients
ingredients	3.	survival in whole or in part;	ingredients
s.65(2); *Aitchison v. Lohre*	4.	came from maritime law and independently of marine insurance;	s.65(2); *Aitchison v. Lohre*
s. 65(1)	5.	recoverable under marine insurance but subject to in preventing a loss by perils against;	s. 66(6)
s. 73(2)	6.	reduced in proportion if under under-insurance;	s.73(1)
s. 78(2)	7.	not recoverable under suing and labouring clause;	s.78(2)
s.76(2)	8.	recoverable whether there is warranted free from particular average	s. 76(1) (g. a. sacrifice only)
s.60(2)(ii)	9.	same calculation basic in estimating the C.T.L. on ship	s.60(2)(ii)

1.3.3.2 Difference

"The expenses if services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them" is the distinct line drawn by the 1906 M.I.A. section 65(2) between salvage charges and general average/particular charges. As discussed in para 1.2.1.5, this provision provides four different points between general average and salvage charges:

A. "Voluntariness on the salvor or stranger" on salvage charges, but not general average:
B. The principle of "a person cannot sue himself" does not apply to "general average", but apply to "salvage charges"[92];
C. The person with pre-existing duty for conducting the general average act will not effect the establishment of general average;
D. Hire employment under "quantum meruit" basis on general average, but "no cure no pay" basis on salvage charges.

Furthermore, in accordance with the 1906 M.I.A. section 76(3), it is also different that:

E. Salvage charges can be added to a particular average loss to make up the special percentage, but general average loss not.

For the duty imposed, by *Crooks & Co. v. Allan* and *Strang, Steel & Co. v. A. Scott & Co.* (see para 3.2.4.E), it is different that:

F. The shipowner and his master in general average owe the duty to prepare adjustment and lien, but salvage charges not; for the latter, each interest is individually or severally liable to the salvor for the value of the salvage services rendered.[93]

"Common safety" is one of the basic ingredients of general average. It may be adopted as the distinct line between general average and particular charges under the 1906 M.I.A. section 65(2), but can not be deemed as the distinct line between general average and salvage charges. Ship and goods may be simultaneously saved by a pure salvage service. It is critical if say "pure salvage on ship and goods is constructed a general average". Under contractual salvage, "common safety" test will be more difficult in deciding whether it is a general average or salvage charges.

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[92] It is noted that, by way of the "sister ship clauses", the principle of "a man cannot sue himself" is not exhaustively applied to salvage charges in practice of marine insurance.

[93] Susan Hodges, *Law of Marine Insurance*, 1996, at p.431.

1.4 Suing and Labouring Clauses

Considering the antiquity of the suing and labouring clause, it is rather surprising that there has been relatively little litigation concerning it. Alex opines that this may be due to the fact that it is rather clearly drafted.[94] However, this paper have different viewpoints. Firstly, section 78 of the MIA 1906, as a codifying act, is difficult to exhaustively embrace all issues relating to the suing and labouring clause. Secondly and in usage, the underwriters do always practically pay the "particular charges" or "special charges" for the direct outcome of a peril insured, for example the warehousing and forwarding charges, which also reduced the direct litigation under the subject of "suing and labouring".

1.4.1 The history and origin of the suing and labouring clauses

It is unknown when the sue and labour clause was first used in the marine insurance policy[95], but a similar type clause appeared in the *Tiger* policy 1613 [96] which stated that:

> ....And that in case of any misfortune it shall & may be lawful to the assureds their factors servants & assignees or any of them to sue labor & travile for in and about the defence safeguard & recouerie of the said Cloth Lead Kearsies Iron &c. or any parte or parcell therof without any prejudice to this assurance. To the charges

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[94] Alex L. Parks, *Marine Insurance: The Sue and Labor Clause*, *Journal of Maritime Law and Commerce*, Vol. 9, No. 4, July 1978, p. 415.

[95] Victor Dover, in his book -*A Handbook to Marine Insurance* 1983 at page 31 mentions the Sue and Labouring was foreshadowed in a complete form of marine insurance policy printed in the Florentine Ordinance of 1523 that "everything may be transacted which necessity shall require".

[96] Brendan P. O'sullivan, *The Scope of the Sue and Labor Clause*, *Journal of Maritime Law and Commerce*, Vol. 21 No. 4, Oct. 1990, p. 551. Gow, *Sea Insurance*, also mentioned that "the sue and labour clause is not found in the policy of De Salizar, of 1555, nor is there any clause of that character in the Florentine form of 1523, but the policy of the *Tiger* of 1613 contains the word.."

whereof we the assurers shall contribute each one according to the rate & quantity of his Some herein assured.[97]

Similar wordings in the traditional S.G. policy which introduced on 1779, stated that:

In case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour and travel for, in, and about the defence, safeguard and recovery of the said goods and merchandises, and ship, etc., or any part thereof, without prejudice to this insurance, to the charges whereof we the assurers will contribute,

Before considering the suing and labouring clause, it is convenient to review some rules existing under the present general contract law as to the "duty of mitigation of damage", since some corollaries of these rules of "mitigation of damage" are consistent with the suing and labouring clause under marine insurance.

1.4.1.1 Mitigation of damage under the general contract law

For purpose of preventing the waste of resources in society, there are three rules referred to mitigate the damage[98]:

First rule: The plaintiff cannot recover damages for any part of his loss consequent upon the defendant's breach of contract which the plaintiff could have avoided by taking reasonable steps.

Second rule: if the plaintiff in fact avoids or mitigate his loss consequent upon the defendant's breach, he cannot recover for such avoided loss, even though the steps he took were more than could be reasonably required of him under the first rule.

Third rule: were the plaintiff incurs loss or expense in the course of taking reasonable steps to mitigate the loss resulting from the defendant's breach, the plaintiff may recover this further loss or expense from the defendant.

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[97] Frederick Martin, *History of Lloyd's and of Marine Insurance in Great Britain*, 1876, p. 48.

[98] *Chitty on Contracts*, 27th ed., 1994, para 26-050.

The first rule imposes on a plaintiff the "duty" of taking all reasonable steps to mitigate the loss consequent on the breach and forbear from taking unreasonable steps that increase his loss[99], which debarred him from claiming any part of the damage which is due to his neglect to take such steps.[100] It is not strictly a "duty" to mitigate, i.e. breach of the "duty" gives rise to no legal liability, but rather a restriction on the damage recoverable.[101]The plaintiff needs not take risks with his money in attempting to mitigate[102], or involves him in unreasonable expenses[103], or under no duty, even under an indemnity from the defendant, to embark on a complicated and difficult piece of litigation against a third party[104], nor the plaintiff is required to sacrifice any of his property or rights in order to mitigate the loss[105]. The time when the plaintiff should have mitigated may depend on when he discovered or ought to have discovered that the defendant had broken his contractual obligation.[106]

The second rule concerns potential loss which is not actually suffered. The plaintiff is entitled to damages only for his actual loss. Damages will not be reduced where the benefit received by the plaintiff is dependent of any act of mitigation. For example, due to breach of contract, a partly-used working part of a machine had to be replaced with a new part, the plaintiff was nevertheless entitled to the full cost of the replacement.[107]Similarly, market price rose or fallen after the date of the breach is irrelevant in assessing damage.[108]

The third rule, the plaintiff may recover damages for loss or expense incurred by him in reasonably attempting to mitigate his loss following the defendant's breach, even when the mitigating steps were unsuccessful or in fact led to

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[99] G.H. Treitel, *The Law of Contract*, 9th ed. 1995, p. 881.

[100] Chitty, Ibid., para 26-051

[101] The *Solholt* (1983) 1 Lloyd's Rep. 605, at p608, C. A.; The *Good Friend* (1984) 2 Lloyd's Rep. 586, at p597; The *Alecos M.* (1991) 1 Lloyd's Rep. 120, at p. 124.

[102] *Jewelowski v. Propp* (1944) K.B. 510.

[103] *The Griparion* (1994) 1 Lloyd's Rep. 533.

[104] *Pilkington v. Wood* (1953) Ch. 770.

[105] *Elliott Steam Tug Co. v. Shipping Controller* (1922) 1 K.B. 127.

[106] *Youell v. Bland Welch & Co. Ltd. (The "Superhulls Cover")* (1990) 2 Lloyd's Rep. 431.

[107] *Bacon v. Cooper (Metals) Ltd.* (1982) 1 All E. R. 397.

[108] *Campbell Mostyn v. Barnett* (1954) 1 Lloyd's Rep. 65.; *Koch Marine Inc. v. D'Amico Societa di Navigazione A.R.L. (The "Elena D'Amico")* (1980) 1 Lloyd's Rep. 75.

greater loss.[109]In *Country Personnel (Employment Agency) Ltd. v. Alan R. Pulver & Co.*[110] , the Judge say:

> As most attempts are successful, it is in the interests of the defendant (as well as of the wider society) that the plaintiff, who is usually in the better position to minimise his loss, should be encouraged to try to do so: he may recover the cost of his reasonable attempt to "extricate" himself from the position in which he was placed by the breach.

Roy Goode in his book "Commercial Law" cites Professor Atiyah's viewpoint and comments that:[111]

> The duty to mitigate represents a major weakening of the plaintiff's right to protection of his expectation interest. The corollary, of course, is that it strengthens the defendant's position significantly by potentially reducing his liability.

1.4.1.2 The origin and purpose of the suing and labouring clause

The earlier reported cases cited by present contract law textbooks were at the beginning of nineteenth century. It is difficult to trace whether the above "mitigating of damage" rules deducted under the general contract law had been existed or not before the appearance of 1613 *Tiger* policy.

It may be assumed that the origin and development of the suing and labouring clause before the enactment of the 1906 M.I.A. was independent of the general contract "mitigation of damage" rules. It might originate from the special circumstance of early days of ocean traffic. Sea voyages at that time were of long duration and lack of communication which was often slow and unreliable. It was therefore essential and important for the insurer that, if the assured (who might also be the vessel's master) and his agents, in the event of misfortune, would be able to protect the insured property and save it from further

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[109] *Wilson v. United Counties Bank* (1920) A. C. 102, at p125; *Lloyd's and Scottish Finance Ltd. v. Modern Cars and Caravans (Kingston) Ltd.* (1966) 1 Q.B. 764, at pp782-783.

[110] (1987) 1 W.L.R. 916, at p926.

[111] Roy Goode, *Commercial Law*, 2nd ed., 1995, p 127.

damage after loss occurred.

A earlier common law adage said "Thou must not kill, but needs not strive officiously to keep alive". The insurers who wish even or rely upon the assured to protect the property insured, therefore expressly agree to indemnify the assured of the expenses incurred for this purpose, in exchange of imposing an opposite "duty" on the assured to do that.

Is it possible that the suing and labouring clause came from the concept of "agency" or "agency of necessity" for preserving the insurers' liability of indemnity? Namely that, while an insured loss happened or will happen, the assureds are acting as an agent of the insurers to avert and minimise the loss covered by the insurers; and on the other hand, the insurers reimburse the expenses incurred by the assureds who acting as an agent or doing as agency of necessity. It is difficult to trace and seems to be unable to follow under the S.G. policy, the 1906 M.I.A. and the concept of agency under the present contract law. It is difficult to decide the work done by the assured was for the property owned by assured or the liability bore by insurer. On the other hand, the S.G. policy and the 1906 M.I.A. have gave the suing and labouring clause a firm legal status other than the concept of agency.

1.4.1.3 The structure of the 1906 M.I.A. section 78

The 1906 M.I.A. section 78 basically consists of two sets of sub-clauses:

1) **the duty clause** (section 78.4), which imposes the statutory duty on assured to sue and labour; and
2) **the indemnity clause** (section 78.1, 78.2 & 78.3), which the insurer agrees to indemnify of the expenses incurred by assured.

The concept of the duty imposes on assured to sue and labour is different from the liability on insurer for paying the suing and labouring expenses under the 1906 Marine Insurance Act section 78. The statutory duty can not be exempted by agreement. However, the insurer's promise under the suing and labouring clause to indemnify the expenses incurred by assured may be saved if the policy does not incorporate this clause or expressly exclude it. Chalmers said "the liabilities of *the insurer* under suing and labouring clause in England rests on contract, where as in Continental is determined by law as the Continental Codes

embody the conditions of the suing and labouring clause".[112]

Theoretically speaking, as it exists no wording directly connect with the duty clause and indemnity clause, the extent of the duty clause and the indemnity clause are not identical and exists no absolute causation between them under the 1906 Marine Insurance Act section 78. This statutory situation under the 1906 M.I.A. is slightly different from some Institute clauses practically used, which the latter, by their wording[113], the duty clause and indemnity clause are conferred collaterally and causatively.

1.4.2 The "duty" clause

The 1906 M.I.A. section 78(4) provides that "It is the duty of the assured and his agents, in all cases, to take such measured as may be reasonable for the purpose of averting or minimising a loss".

1.4.2.1 A privilege, contractual duty or statutory duty ?

It is arguable that the suing and labouring clause on the S.G. policy imposed the assured a contractual "duty" to sue and labour, since the wording "it shall be *lawful* for the Assured..." is less compulsorily on responsibility. It is also suggested that suing and labouring is a privilege enjoyed by the assured which entitles, but does not oblige, the taking of all reasonable steps in order to avert and minimize losses flowing therefrom.[114]

Whereas he 1906 M.I.A. section 78(1) provides "Where the policy contains a suing and labouring clause,..." , section 78(4) expressly provides "It is the ***duty*** of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss". It may exist a

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[112] Chalmers and Owen, *A Digest of The Law relation to Marine Insurance*, 1st ed. 1901, at p. 102.

[113] For example, Institute Time Clause - Hull clause 11.2 states that "In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimizing a loss (the duty clause) which (the link) would be recoverable under this insurance (the indemnity clause)".

[114] Bennett, *The Law of Marine Insurance*, 1996, at p. 389.

probability that a policy does not contain a suing and labouring clause. In such case, two arguments may arise that 1) whether or not the assureds still owe the said duty to avert or minimise a loss; 2) if the assured actually performed the "duty" at his own expense, can it be recovered the expenses incurred from the insurer?

Arnould book (1981 edition) says "it seems no practical value to study those arguments, as the suing and labouring clause is almost invariably included in the policy."[115] However, the situation was changed while the insurance market abandoned the old S.G. policy and adopted the new Marine Policy Form in 1982/83. The new Marine Policy Form, which differs from the S.G. policy, does not contain the suing and labouring clause. Furthermore, some attached Institute Clauses do not also contain the said suing and labouring clause, such as the Institute Freight Time Clauses.

The first question is whether the duty to sue and labour is a statutory duty or is merely a "contractual" duty ? If it is a statutory duty, then whether a policy contains a suing and labouring clause or not is not concerned. The assureds in any event owe the duty to avert and minimise the loss. The answer is absolutely affirmative after the enactment of the MIA 1906. The reasons are:

a. the structure of the 1906 M.I.A.:

   Section 78 is classified under the head of "Measure of Indemnity". Section 78(1) deals with the assured may recover from the insurer any expenses properly pursuant to the clause. Section 78(2) & 78(3) provide the restrictive application to section 78(1). In other words, section 78(1), 78(2) and 78(3) are all relate to the head of "Measure of Indemnity". However, the nature of section 78(4) is wholly irrelevant to this head. Furthermore, section 78(4) contains no wording deal with the indemnity under the "suing and labouring clause". Basically, section 78 (4) forms as a particular provision independently of section 78(1), 78(2) & 78(3) and is better to be stipulated as an individual section. The reason of this duty clause to be put under section 78 might be for a simple reason of convenience in legislation. William Gow suggested that:

   > Different sub-sections of this section (i.e. section 78) stand in such close relation to one another that it is almost impossible to treat them separately, and this provision of the Act is one of such importance that it is desirable to

[115] Arnould, ibid., para 914A.

make matter as clear as possible.[116]

It is critical if say that the assured owe no such duty if the policy contains no suing and labouring clause. The statutory duty to sue and labour exists independently of the insurance contract. The "Suing & Labouring Clause" or the "Duty of Assured Clause" under the present various Institute clauses almost express that "...it is the duty of the Assured....". The purpose of such expression is merely to clearly restate and remind the assured of this duty. Another reason, I think, is the worldwide use of Institute Clauses. Since this statutory duty under the M.I.A. 1906 may be not enforceable in some other jurisdictions.

b. the duty to sue and labour may also imply the consideration of public policy : for purpose of preventing the waste of resources in society.

c. the rules of "mitigation of damage" under general contract law (see paragraph 1.4.1.1) have had well developed during the 19th century, i.e. before the draft and enactment of the 1906 M.I.A. Evidences show section 78(4) was drafted in reference to the common law principle. William Gow said that:

> It remains to consider Sub-section 4, which was introduced into the Bill after the original draft in order to embody in the Bill the common law principle that the assured and his agents are bound to use all reasonable efforts to avert and minimise a loss.[117]

Mr. Chalmers, the draftsman of the 1906 M.I.A., in his book (2nd edition 1913) also stated that "the section 78(4) was formulated in reference to Law of England vol. 17 (general contract) and German Com, Code, Art. 819 (continental code)"[118]. Namely that, while the 1906 Act was codified, the "duty" of assured to sue and labour was upgraded from the "contractual"

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[116] William Gow, *Sea Insurance*, ibid., at p.177.

[117] Supra, at p.181.

[118] Chalmers and Owen, *The Marine Insurance Act 1906*, 2nd ed. 1913, at p.124. However. this sentence was disappeared in present Chalmers' book -1993. German Commercial Code article 819 (Duty to diminish loss) provides that :

(1) The insured party is obliged, when an accident takes place, to exert himself as far as possible to save the insured things as well as to prevent greater damages.

(2) He shall, however, have previous consultation with the insurer concerning the required measures, if this is feasible.

duty under the S.G. policy or the soft duty of mitigation of damage under general contract law to the *statutory duty*.

1.4.2.2 Extent of the duty to sue and labour

The 1906 Act imposes a statutory duty on the assured to sue and labour, but expresses nothing about the real extent of that duty. This question was firstly submitted before Lord Sumner in *British and Foreign Marine Insurance Co. v. Gaunt* in 1921. However, Lord Sumner gave no detail interpretation on this question, but said:

> it (section 78.4) cannot possibly be read as meaning that if the agents of the assured are not reasonably careful throughout the transit he cannot recover for anything to which their want of care contributes
>
> It is one of the disadvantages of codification that new terms used or even unfamiliar sequences of propositions suggest that the law has been changed, where those familiar with the old decisions would not have suspected it.[119]

In *Irvin v. Hine* (1949) , Devlin J held that

> section 78(4) requires the assured to take such measures as may be reasonable for purpose of averting or minimising a loss; the assured failed to survey in dry dock was merely ascertained its extent, not averted or minimized the loss.[120]

In *The Gold Sky* (1972), Mocatta J, in order to settle the application conflict arose between section 55(2)(a) and section 78(4) of the 196 M.I.A., held that the words "his agents" are inapplicable to the master or crew. This case will be further discussed in para 1.4.2.4.

In *I.C.S. v. British Traders* (1984), the duty of assured under section 78(4) of the 1906 M.I.A. became a main issue in the Court of Appeal. The Court of Appeal affirmed Commercial Court and Official Referees' decision that the assureds' expenditure to recover scatted containers was necessarily incurred in order to prevent loss or damage to the container to which the sue and labour clause of the policy applied. Lord Justice Eveleigh further opines that:

> there was nothing in the sue and labour clause or in the Marine Insurance Act,

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[119] *British and Foreign Marine Insurance Co. v. Gaunt* (1921) 2 AC 41 at p. 65.

[120] *Irvin v. Hine* (1949) 1 KB 555 at p. 571.

1906, s. 78, which required the assured to show that a loss would "very probably" have occurred; the duty under s.78 imposed a duty to act in circumstances where a reasonable man intent upon preserving his property would act; whether or not the assured could recover should depend upon the reasonableness of his assessment of the situation and the action taken by him; the true test applicable in this case was whether or not in all circumstances the assured had acted reasonably to avert a loss when there was a risk that insurers might have to bear it.[121]

In *The Vasso* (1993), the court held that

the mere failure to apply for a Mareva injunction did not, without more, establish any failure to perform the duty imposed by cl.16 of the Duty of Assured clause of the Institute Cargo Clause (A). [122]

In the same case, Justice Hobhouse opines that

neither under the statute nor under the clause is the assured required to act unreasonably or to undertake any step other than one which could reasonably be expected to result in the avoidance or reduction of the loss".[123]

In *Now v. DOL* (1993), Colman J. adopts the "prudent uninsured" test in deciding whether or not the suing and labouring duty is well performed. Colman J. opines that:

in my view,.....78(4) probably had the limited function of stating that the assured must not fail o take such obvious steps to avert or minimize the loss as any prudent uninsured could be expected to take.[124]

A recent case, *State of Netherlands v. Youell* (1997), Justice Rix affirms Lord Sumner's rejection in *British and Foreign Marine Insurance Co. v. Gaunt* (1921), and says that:

In my judgment the duty to sue and labour does not arise until a peril is at any rate imminent: it is a duty which arises in response to a casualty, actual or imminent. Thus the right to recover sue and labour expenses, where a sue and labour clause exists, and the statutory duty to take reasonable measures for the purpose of averting or minimizing a loss, are in this respect correlative. That follow in my

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[121] I.C.S. v. British Traders (1984) 1 Lloyd's Rep. 154, at p. 158.

[122] The *Vasso* (1993) 2 Lloyd's Rep. 309 at p. 313.

[123] Supra, at p 313.

[124] *NOW v. DOL* (1993) 2 Lloyd's Law Reports,582, at p. 618.

view form Lord Sumner's rejection in Gaunt of the submission that the s. 78(4) duty existed throughout the period of risk, even in the absence of any casualty.[125]

1.4.2.3 Effects of breach the duty

In Arnould book, the editors state that "the consequences of a breach by the assured of the duty imposed by section 78(4) are uncertain. It has been suggested that the remedy of the underwriter is to counterclaim damages, and that in certain circumstances such a breach may give rise to a defence to the claim. The point has yet to be decided".[126] These suggestions may have already settled in *The Gold Sky* and *The Vasso*.

In *The Gold Sky*, Justice Mocatta in deciding the effect of breaching the section 78(4) duty said that:

> I think the right view to take on the facts here, if he had brought the sub-section into play, is that the defendant would be able to set off or counterclaim the ....particularized, if he could prove this figures.[127]

Further, in *The Vasso*, Justice Hobhouse affirms the decision of *The Gold Sky*, and says that:

> ...nothing there said alters the conclusion that a failure to minimize a loss or protect the value to the insurer of his rights of subrogation gives rise to more than a cross-liability of the assured to the insurer in damages and a potential for setting-off that liability against the liability of the insurer under the policy, either in whole or in part. On this the law is clear.[128]

Either counterclaim damages or potential set-off do not confer upon the insurer not liable to any loss/damages initially covered by the original main policy. The effect is quite similar to the general contract law that breach of the duty to mitigate the damages gives rise to no legal liability, but rather a restriction on the damage recoverable.

In *NOW v. DOL* (1993), Colman J. opines that "the consequence of his failure to do so would be that he would be unable to establish that the loss was

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[125] *State of Netherlands v. Youell* (1997) 2 Lloyd's Rep. 440 at p. 458.

[126] Arnould, ibid., at para. 770.

[127] The *Gold Sky*, ibid., at p. 221.

[128] The *Vasso*, ibid., at pp. 314-315.

proximately caused by an insured peril".[129]

1.4.2.4 The relationship between section 78(4) and 55(2)(a)

While the 1906 M.I.A. section 78(4) imposes the assured and *his agents* a statutory duty to sue and labour, it arose an application conflict between section 78(4) and section 55(2)(a). The 1906 M.I.A. section 55(2)(a) provides "the insurer is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the *misconduct or negligence of the master or crew*".

The decision - "the words 'his agents' in section 78(4) are inapplicable to the master or crew" held by Mocatta J. in *Gold Sky* (1972) is almost criticized by the present marine insurance textbooks[130]. Though those textbooks submit lots of criticism and suggestions on this application issue, but provide no firm answers on them. This paper will not discuss those criticism in detail, but try to find a theory and discuss whether or not this theory can balance the existing cases and disputes.

The theory simply comes from the "*supplementary contract*" nature of the suing and labouring clause. The legal effect in case the assured and his agents failed to perform the duty to sue and labour is restricted to the supplementary contract/clause itself. This supplementary engagement (i.e. suing and labouring clause) however could not prevail the insurer's liability under the main and original insurance contract.

It basically incurs no conflict to the circumstances that 1) it results from assured's willful misconduct and 2) it results from the misconduct of the master or crew with knowledge by the assured. For those circumstances, the insurer is not liable, under the original contract, to any loss/damage attributable to the assured's willful misconduct or the crew's willful misconduct with assured's knowledge. Once the insurer is not liable to the loss/damage under the main policy, he will also not be liable to any "suing and labouring expenses", under the supplementary engagement, incurred for preservation of said loss/damage attributable to those misconduct.

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[129] *NOW v. DOL* (1993) 2 Lloyd's Law Reports 582, at p. 618.

[130] For example, Arnould, at para 770; O'May, at p328; Susan Hodge, at pp.465-468; Howard Bennett, at pp.391-395; Ivamy, at pp.487-488; Templeman, at pp. 379-380.

To the circumstance, which the conflict arose from, that the loss/damage by a peril insured is resulted from the misconduct or negligence of master or crew. The insurer however is liable for the loss attributable to such master's misconduct under the original contract (and section 55.2.a). If at the same time the misconduct or negligence of master or crew is also to be deemed as the failure to perform the duty to sue and labour, the insurer is not liable, under the supplementary engagement, for any "suing and labouring expenses" actually incurred or may set off any presumed "suing and labouring expenses" from the original indemnity. Simply to say, breach the duty to sue and labour only results in the insurer to be entitled not to pay or may set off the suing and labouring expenses actually or presumably incurred, but not prejudice the assured's rights in recovering the loss or damage from the original policy. For short, section 55(2)(a) takes precedence over section 78(4).

Under this theory, it exists no conflicts between section 55(2)(a) and section 78(4). Both sub-sections operate with their own elements and effects. Section 78(4) does not modify section 55.[131] It is not necessary to consider 1) whether or not the master shall be excluded from words "the assured and his *agents*" in section 78(4) or the words "the assured and *their servants and agents*" under the present Institute Clauses; and 2) whether or not it was incurred before or after a casualty, as opined in Arnould book[132].

In *State of the Netherlands v. Youell* (1997), Justice Rix was requested to consider the conflict issue between section 78(4) and section 55(2)(a) of the 1906 Marine Insurance Act.

The *State of the Netherlands v. Youell* [133]was a case involved in two naval submarines building risks insurance. The policy contained a traditional suing and labouring clause. In the course of construction and trails, the submarines suffered debonding and cracking in their paintwork and the navy claimed the costs and expenses were incurred to recoat the submarines. The underwriter denies liability by alleging that the damage a) was due to the willful misconduct of either the navy and or the yard, both of them were named as assured in the policies in accordance to the section 55(2)(a) of M.I.A.; or alternative b) was due to their failure to take steps to avert or minimise the damage in accordance with

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[131] Atkin L.J., in *Guant v. British and Foreign Ins. Co.* [(1920) 1 K.B. 903 at p 917 C.A.] said that "I do not think that the provision of s.78, sub-s.4, modify the provisions of s. 55".

[132] Arnould, ibid., para 770.

[133] *State of Netherlands v. Youell* (1997) 2 Lloyd's Rep. 440.

section 78(4) of M.I.A.

Regarding to the willful misconduct issue, Justice Rix held that the willful misconduct of the yard would not be a defence to a claim brought by the navy on the ground that the loss in question would in the event not be a fortuity, but *a fortiori.*[134] Regard to the sue and labour issue, Justice Rix should make decision on following questions:

1. whether the yard's failure as assured to take reasonable measures to avert or minimise a loss can be raised as a defence against the navy's claim?
2. whether, as a matter of law, the yard can be the navy's agent for the purposes of section 78(4)?

For the first question, Justice Rix agrees with plaintiff's submission that the same principles apply to a failure to sue and labour as apply to willful misconduct, for the same reason.[135] Namely that the yard failed to sue and labour would not also be a defence to a claim brought by the navy.

For the second question, Justice Rix considers the meaning of the "agents" in section 78(4) is *who have either been instructed by the assured to take steps to preserve the property insured, or who are such agents by necessity* and the yard dealing with the submarines not as the navy's agent but as the submarines' builder under a building contract.

On the issue between section 78(4) and section 55(2)(a), Justice Rix basically agrees Arnould's "proximate cause" approach and held that "the function of s. 78(4) is to say that it provides a defence to the extent that the proximate cause of loss, in whole or in part, is the breach of the statutory duty rather than an incidence of risk under the perils covered by the policy".[136]

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[134] Supra, at p. 454. And the word "a fortiori" mean with stronger reason, used in logic to denote an argument to the effect that because one ascertained fact exists, therefore another, which is included in it, or analogous to it, and which is less improbable, unusual, or surprising, must also exist. (*Black's Law Dictionary*, 6th ed., 1990 at. p. 61.)

[135] Supra, at p. 455.

[136] Supra, at p. 458.

1.4.3 The indemnity clause

1.4.3.1 The engagement of the indemnity clause

The second question mentioned in paragraph 1.4.2.1 is that "if the assured have actually performed this "duty" at his own expense, could he recover the expenses incurred from the insurer if the policy contains not suing and labouring clause? The nature of the suing and labouring clause under section 78 (1) of the 1906 M.I.A., is a supplementary engagement to the contract of insurance. Theoretically speaking, the contract parties may mutually agree not to incorporate or expressly exclude this supplementary engagement (the suing and labouring clause) from the policy.

Suing and labouring clause basically is merely providing a kind of "Measure of Indemnity" which the insurer promises to reimburse the assured for the expenses incurred in averting or minimising the loss covered by the policy. The 1906 M.I.A. does not mention the contract parties are not allowed to exclude this supplementary engagement from the policy.

In the absence of a suing and labouring clause in the policy, it merely means "the assured may not recover his expenses incurred in accordance with the suing and labouring clause". It does not mean "the assured could not recover any of his expenses under the insurance contract". Steyn J. , in a breach of the duty of good faith case, said:

> Once it is accepted that the principle of the utmost good faith imposes meaningful reciprocal duties, owed by the insured to the insurer and vice versa, it seems anomalous that there should be no claim for damages for breach of those duties in a case where that is the only effective remedy. *The principle ubi jus ibi remedium succinctly express the policy of our law.* [137]

The suggestion is, subject to the nature of the expenses incurred, it may recover from the insurer by the item of "particular charges" or may be treated as the third rule of "mitigation of damage" under general contract law. The former will be discussed later. The application for the latter's rule may be difficult, as short of marine insurance supporting cases. However, "*eadem est ratio, eadem est lex - the same reason, the same law*", it exists no reasons can not apply to the general contract rules if no relevant provisions in the 1906 M.I.A. and lack of

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[137] *Banque Keyser Ullmann v. Skandia* (1987) 1 Lloyd's Rep. 69 at p. 96.

agreement by contract. On the other hand, the 1906 M.I.A. section 91(2) provides that:

> The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of the Act, shall continue to apply to contract of marine insurance.

Gow said "Speaking more particularly of Marine Insurance, what the present Act has done is to present in definite form the relations between the assured and the underwriter, but at no point in the Act is any suggestion given regarding the proper position of such contracts as those of Marine Insurance in a general codification of contract law".[138] However, it does not mean the general contract law would not apply to the marine insurance contract if exist no explicit provision in the 1906 M.I.A. or in the policy. This paper has no intention to create a backdoor for assured to claim said expenses regardless of the suing and labouring clause. While the traditional S.G. policy was abandoned and the new Marine Policy Form contains no similar suing and labouring clause, it is possible that some new Institute Clauses do not contain a suing and labouring clause. For example, the Institute Freight Time Clauses (CL.287).[139] However, it is worthy in noting that, the circumstance that the contracting parties mutually agree to exclude or delete "suing and labouring expenses (clauses)" under a policy which contains a printed "suing and labouring clause" is different from a policy which simply does not contain the suing and labouring clause. For the former case, the reference for liability for charges having been deliberately struck out[140] and the third rule of "mitigation of damage" under general contract law mentioned above is therefore not applied.

1.4.3.2 Case law development while short of indemnity clause

In an Australia case - *Emperor Goldmining Co. v. Switzerland General Insurance Co. Ltd.* (1964), the suing and labouring clause was not included in

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[138] Gow, *Sea Insurance*, at p. 192.

[139] The standard form of the Institute Time Clauses -Freight do not include any printed "Suing and Labouring Clause" or "Duty of Assured Clause". In the *Wondrous* case [(1992) 2 Lloyd's Rep. 566], a particular clause on "salvage, salvage charges and sue and labour" was specially included in the Institute Freight Clauses.

[140] Gow, *Sea Insurance*, at p. 178.

the policy. Manning J. held that:

> Sect. 84(4) plainly imposes on the assured a duty to take such measures as are reasonable for the purpose of averting or minimizing a loss. I am unable to read this provision as a duty to be carried out by the assured at his own expense, in the absence of a suing and labouring clause in the policy. [141]

In that case, the plaintiff's claim for the costs of unloading, storing, reloading and forwarding of cargos was succeeded -large items were in respect of the handling of explosives[142] and other items were particular charges. This case not only re-affirmed the statutory duty on assured to sue and labour, but also to imply an obligation on the insurers to reimburse the assured for any expenses incurred in carrying out the duty imposed by statute or by clause.

In *I.C.S. v. British Traders* (1981),[143] the policy contained the S.G. policy Form and the Institute Container Clauses. Neill J disagreed the plaintiffs' submission by reference to the decision of *Emperor Goldmining Co. v. The Switzerland General Insurance Co.* Neill J said that:

> In my opinion, if one adopts that approach, a duty on the insurers to reimburse is not to be implied by reason of the statutory duty to sue and labour or by reason of a clause similar to cl.9.[144]

Not long after the decision of *I.C.S. v. British Traders*, a very similar case - *Netherlands Insurance Co. v. Karl Ljungberg & Co.* (1986) was submitted in Privy Council. They are the same that both policies contained the S.G. policy Form and the Institute Cargo/Container Clauses 1963. The issue in dispute in *I.C.S. v. British Traders* was relating to the first half of the Duty of Assured clause, whereas in *Netherlands Insurance Co. v. Karl Ljungberg & Co.* was the second half of the same clause. Both cases did all adopt "business efficacy" test.

As to the general principal, *Netherlands Insurance Co. v. Karl Ljungberg & Co.* provided no difference with *I.C.S. v. British Traders.* In *Netherlands Insurance Co. v. Karl Ljungberg & Co.,* Lord Goff of Chieveley opined that

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[141] *Emperor Goldmining Co. v. Switzerland General Insurance Co.* (1964) 1 Ll. L. Rep. 348 at p. 454.

[142] However. Manning J did not clearly say the recoverable large items are the suing and labouring expenses.

[143] *I.C.S. v. British Traders* (1981) 2 Lloyd's Rep. 460 at p. 465.

[144] Supra, at p. 465.

their lordships do not feel able to accept that, as a general proposition, the mere fact that an obligation is imposed upon one party to a contract for the benefit of the other carried with it an implied term that the letter shall reimburse the former for his costs incurred in performance of the obligation[145]

But Privy Council considered that "the relevant obligation is indeed for the benefit of the insurers is a material factor which may be taken into account.. *a term must be implied in the contract, in order to give business efficacy to it.*[146]

The disputes in both cases might no longer exist while the market introduced the new Institute Cargo/Container Clauses in 1982. In the 1982 Institute Clauses either on cargo or container, the underwriters expressly agree to reimburse the assured for any charges incurred in pursuance of these duties.

However, a more difficult situation arose while the traditional S.G Form was abandoned and adopted the new MAR Form in 1982/1983. The latter MAR Form contains no printed standard suing and labouring clause. The following table lists different situations in using the S.G. form or new MAR form and the attached Institute Clauses which include or not the duty clause (the duty of assured to sue and labour) and reimbursement or indemnity clause (the insurer expressly agree to reimburse the expenses) :

	S. G. or MAR	(Institute) Clause attached	Example	Case applied
1	S.G. Form	Duty + Reimburse		
2	S.G. Form	Duty clause only	ICC (FPA) -63	I.C.S. v. British Traders (QB) Netherlands Ins. v. Karl Ljungberg
3	S.G. Form	no Duty & Reimburse	ITC (Hull) -70	
4	MAR Form	Duty + Reimburse	ITC (Hull) -83	
5	MAR Form	Duty clause only		
6	MAR Form	no Duty & Reimburse	ITC (Freight) -83	
7	no express provision of any kind			Emperor Goldmining v. Switzerland General Insurance Co.

The difficulty may incur in situations 5, 6 and 7. England courts adopted the "business efficacy" test instead of the simple "implied right" test decided in

[145] *Netherlands Insurance Co. v. Karl Ljungberg & Co.*(1986) 2 Lloyd's Rep. 19 at p. 23.

[146] Supra, at p. 23.

Emperor Goldmining v. Switzerland General Insurance Co. The "business efficacy" test does only apply to the situation that there is an express suing and labouring clause in the insurance contract. I personally do not believe the said "business efficacy" test may expandably apply the situation that if the policy contains no such clause.

In The *Wondrous* (1992), the circumstance of in the absence of a suing and labouring clause was submitted to the Court of Appeal. However, the Court of Appeal considered that "as the expenses in question are not recoverable by reason that there was no loss covered by the policy in accordance with section 78(3) of the 1906 Marine Insurance Act, so it is not necessary to consider whether the plaintiffs could in any event have recovered in the absence of a sue and labour clause in the policy."[147]

The 1906 Marine Insurance Act codifies the marrow of the suing and labouring clause in the traditional S.G. policy. However, the 1906 Act statutorily imposes the on assured to sue and labour, whereas it was merely a contractual duty before the enactment of the 1906 Act. It is one of the disadvantages of codification as said by Lord Sumner in *British and Foreign Marine Insurance Co. v. Gaunt.* [148] In considering its legislative purpose as mentioned in paragraph 1.4 and if the expenses was incurred actually for averting the loss covered by the policy (for the benefit of the insurers), the expenses incurred seems to be recoverable from the insurers. This question may be well settled in Continental countries in reference to the concept of returning of the *illegal profit*, whereas in this country, in reference to the existing rules of mitigation of damage under general contract law[149].

It is interesting in noting that, in *State of Netherlands of Youell* (1997), Justice Rix adopts the *mitigate of damage rule* under general contract or tort law to interpret the legal effect of breaching the duty to sue and labour.[150] However, Justice Rix does not mention whether the same mitigate rules under contract or tort may also apply to the circumstance in the absence of the suing and labouring indemnity clause.

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[147] The *Wondrous* (1992) 2 Lloyd's Rep. 566 at p. 576.

[148] *British and Foreign Marine Insurance Co. v. Gaunt* (1921) 2 AC 41 at p 65.

[149] See discussion in paragraph 1.4.1.1 of this chapter.

[150] State of *Netherlands v. Youell* (1997) 2 Lloyd's Rep. 440 at p. 458. Justice Rix said "The statutory duty (i.e. duty to sue and labour) seems to me to be taken into the duty to mitigate loss in response to a breach in contract or tort, which is also in essence a rule that a plaintiff cannot recover for avoidable loss".

1.4.3.3 The features of indemnifying the suing and labouring expenses

Section 78 of MIA 1906 does not embrace all the basic features concealed in the traditional suing and labouring clause in the S.G policy. In accordance with the section 30 (2) of the MIA 1906, the related wording in the S.G policy which forms as the First Schedule of the 1906 Act shall be also considered.

(a) The loss and misfortune must actual have occurred or commenced to operate and cease while they were no longer threatened by perils insured .

The opening words "In case of any loss or misfortune" under the standard suing and labouring clause in the S.G. policy do not appear in the 1906 M.I.A. section 78. However, the "stitch in time" approach[151] is adopted in interpreting the words "avert" or "minimise/diminish". The word "minimise" implies that some damage has already been sustained; the word "avert" means to prevent a loss from happening.[152] In *State of the Netherlands v. Youell and Hayward* (1997), Justice Rix affirms "the duty to sue and labour did not arise until a peril was at any rate imminent; it was a duty which arose in response to a casualty actual or imminent." [153]

In *I.C.S. v. British Traders*, Lord Justice Eveleigh held that "the sue and labour clause should cease to apply ..that they were no longer threatened by perils."[154] In *Kuwait Airways Co. v. Kuwait Insurance* (1996), Justice Rix also held that "the right to sue and labour to an end at the time the rights of the parties must be viewed as crystallized."[155]

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[151] In *I.C.S. v. British Traders* (1984) 1 Lloyd's Rep. 154, at p. 163, Lord Justice Dillon said "If the object of the sue and labour is to avoid or reduce loss which would otherwise fall on the insurers, there is obvious justification for a 'stitch in time' approach".

[152] Susan Hodges, *Law of Marine Insurance*, 1996, p. 457.

[153] *State of the Netherlands v. Youell* (1997) 2 Lloyd's Rep. 440, at p. 458.

[154] *I.C.S. v. British Traders* (1984), ibid, at p.160.

[155] *Kuwait Airways Co. v. Kuwait Ins. Co.* (1996) 1 Lloyd's Rep. 664 at p697. Affirming by C.A. (see 2 IRLN 10 Insurance and Reinsurance Law Newsletter Oct. 1997 at p. 93).

(b) The recoverable expenses must be incurred to avert or diminish a loss covered by the policy

The expenses recoverable by the assured under the suing and labouring clause in a policy of insurance are confined to the expenses which are necessary to avert a loss by reason of the operation of perils insured against[156] for which the insurer would be liable[157]. The traditional S.G. policy did not provide such requirement. The 1906 M.I.A. section 78(3) declares this requirement in a negative voice that "expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause". This negative voice basically gives no difference in coverage in nature compares with a positive voice. However, it may represent the burden of proof is therefore transferred to insurer under the 1906 M.I.A. The insurer, who intends to reject the suing and labouring expenses claim, has to first prove the expenses was incurred not for the loss covered. As before the enactment of the M.I.A. in 1906, the assured who wishes to claim the suing and labouring expenses had to show at first stage that the charges was incurred for the loss covered. This sub-section may be considered as the insurers' concession while the 1906 Act imposes a statutory duty on assured to sue and labour.

A freight insurance case - The *Wondrous* (1992), a particular clause was specially engaged to include the sue and labour expenses in the Institute Freight Clauses. The Court held there was no loss covered by the policy and further affirmed that, by reference to section 78(3) of the Marine Insurance Act 1906, the expenses incurred are not recoverable.[158]

(c) Expenses incurred by the assured, their factors, servants or assigns.

The persons who are authorized, in the terms of S.G policy, to sue, labour and travel are "the assured, their factors, servants and assigns". McArthur said "this description is applicable to the assured themselves, or to agents directly and voluntarily employed by them, but not to salvors."[159]

A statutory definition to the word "factor" means "a mercantile agent who in

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[156] *Kidston v. Empire Insurance Co.* (1866) 1 L.R.C.P. 535 at p. 547

[157] *Meyer v. Ralli* (1876) 1 CPD 358.

[158] The *Wondrous* (1992) 2 Lloyd's Rep. 566 at p. 576.

[159] McArthur, ibid., at p. 264.

the course of his business has authority to sell or buy goods, to consign goods for purpose of sale, or to raise money on the security of goods"[160] The word "servant" means "any person employed by another to do work for him on the terms that he, the servant, is to be subject to the control and direction of his employer in respect of the manner in which his work is to be done".[161] The word "assigns" same as "assignees" means "those to whom property is, will, or may be assigned" and it generally comprehends all those who take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law.[162] Those expressions are wide and general enough applicable not only to the assured himself, but also his assignees and all related parties working or employing for and on behalf of or controllable by the assured whether contractually or lawfully in the trading business for the subject-matter insured.

It is significant to note that the persons who are authorized to sue and labour is different in concept from the persons who are imposed a duty to sue and labour. This difference bases on the situation which the insurers agree to reimburse and the object of the duty imposed. It is not based on the literal difference between the S.G. policy (assured, their factors, servants, and assigns) and the 1906 M.I.A. section 78(4) (the assured and his agents). If do not be interpreted by this way, it may result in a mis-understanding that only the expenses incurred by the persons who also owe the duty to sue and labour can be recoverable under the suing and labouring clause. It is a work beyond this research to accurately analyze the scope and applicability between the words : "factors, servants and assigns" in the S.G. policy and "agents" in the 1906 M.I.A. section 78(4). However, from the view of the historical origin of the suing and labouring clause, the persons "assured and their factors, servants and assigns" in the S.G. policy who are authorized to sue and labour shall be interpreted as widely as possible[163], whereas the duty of the "assured and his agents" to sue

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[160] Factors Act 1889

[161] *Hewitt v. Bonvin* (1940)1 KB 188, see L B Curzon, *Dictionary of Law,* Pitman Publishing, 4th ed. 1994, at p. 349.

[162] *Black's Law Dictionary*, 6th ed.1991, at p. 119.

[163] It is claimed that the sue and labour clause (the *Tiger* policy and the S.G. policy) was foreshadowed by the inclusion of an agreement therein (a policy in Florentine Ordinance 1523) by a very extensive wording that "everything may be transacted which necessity shall require". see Victor Dover, in his book "*A Handbook to Marine Insurance*" at p. 31,

and labour under the 1906 M.I.A. section 78(4) shall be interpreted as narrowly as possible[164]. However, it is also worthy in noting that, under present Institute Hull or Cargo Clauses, the persons who are authorized are identical to the persons who owe the duty to sue and labour. They are *the assured and their servants and agents.* This identical situation provided in the Institute Clauses may result in some difficulties in applying the suing and labouring clause. For example, in cargo insurance, since it is always accepted that the master is the agent of necessity of all interested parties on board, the expenses of measures taken by the *master* to avoid and minimise the loss covered by cargo policy may be treated as suing and labouring expenses under the cargo insurance. However, unless we assume the "crew members" are also the agent of necessity for cargo owner or have been instructed by the cargo owner, otherwise it is difficult to say the expenses of measures taken by the *crew members* to save the cargo is also a suing and labouring expenses under the cargo policy.

(d) Expenses incurred must be properly, reasonably and extraordinary in nature.

The 1906 M.I.A. section 78(1) provides that "...the assured may recover from the insurer any expenses properly incurred pursuant to the clause....". The underwriters are liable, on their contract of indemnity, to repay them the amount

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[164] The draughtsman of the 1906 M.I.A. - Mr. Chalmers, in his books (1st ed. 1903 and 2nd ed. 1913) cited following authorities to support his draft on the 1906 M.I.A.:

	Subject in question	Person in duty
McArthur, ed. 2 p.263	see Currie v. Bombay Ins.	see Currie v. Bombay Ins. Co.
Kidston v. Empire Ins. Co.	charter freight	master of the ship
Currie v. Bombay Ins. Co.	cargo	master of the ship
Benson v. Chapman (1849)	ship & freight	master of the ship
Notara v. Henderson (1872)	cargo	master of the ship

This table does not imply the "assured's agent" is limited to the master of the ship only, but signify that a person who is entitled to act on behalf of the assured under the situation of the agent of necessity. For example, in certain (not all) circumstances, the master may be the agent of cargo-owner, charterer and shipowner. However, it seems difficult to say the crews are entitled in any events to act and on behalf of the cargo-owner and charterer, even shipowner.

which was properly and reasonable[165] for so much of the actual expense as would have been incurred had the cheaper method been adopted[166], or properly says "the smallest reasonable expense"[167]. They represent so much labour beyond and besides the ordinary labour of the voyage[168] and if without unusual or extraordinary labour or expense a loss will very probably fall on the underwriters.[169]

The 1906 Marine Insurance Act section 78 provides no decisive relationship between "any expenses properly incurred" under section 78(1) - as the *indemnity clause* and the "reasonable measures" under section 78(4) - as the *duty clause*. We may properly say the measures taken by the assured if unreasonable may be deprived of or reduced his titles for recovering the suing and labouring expenses. However, it may be improperly if says the recoverable suing and labouring expenses are always subject to the expenses are incurred by the assured by taking the reasonable measure by the assured while performing his suing and labouring duty. However, the institute Clauses create a direct link between section 78(1) and 78(4). Namely that, the underwriters will only contribute to the expenses which are properly and reasonably incurred by the assured in taking such measures as may be reasonable for the purpose of averting or minimising.[170]

In *The Nukila* (1996), Tuckey J adopts the *reasonableness* test and rejects the plaintiff's submission that the towing repairing and returning costs for the damaged accommodation platform are covered under the sue and labour clause. Turkey J says "all that was required to avert the loss, was jacking up the legs and anchoring and so all that can be recovered under the sue and labour clause is the cost of doing this.[171]

In *Royal Boskalis v. Mountain* (1997), Mr. Stuart-Smith L.J. affirms that:

> the terms on which the duty under s. 78(4) of the Marine Insurance Act, 1906 was expressed were wide enough on their natural meaning to embrace expenditure

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[165] Brett J, in *Lee v. Southern Insurance Co.* (1870) L.R. 5 C.P. 397 at p. 406.

[166] McArthur, ibid, at p. 269.

[167] Montague Smith J, in *Lee v. Southern Insurance Co.* (1870) L.R. 5 C.P. 397 at p. 405.

[168] Willes J, in *Kidston v. Empire Insurance Co.*, (1866) L.R. 1 C.P. 535 at p. 541.

[169] Brett L.J., in *Lohre v. Aitchison* (1878) 3 Q.B.D. 558 at p. 566.

[170] ITC-Hull 95 clause 11.1 & 11.2 and ICC - 82 clause 16.

[171] The *Nukila*, (1996) 1 Lloyd's Rep. 85, at p. 90.

> necessary to procure the release of a vessel that had been seized; unless the payment of a ransom was illegal it was recoverable from underwriters as an expense of suing and labouring.[172]

In *Kuwait Airways Co. v. Kuwait Insurance Co.* (1996), Justice Rix also affirms that :

> it is only expenditure which is both unusual or extraordinary and reasonably necessary that can be recovered in sue and labour.[173]

Finally, though Lord Chancellor (Earl Cairns) in the *Aitchison v. Lohre* (1879) case said "it appears to me to be quite clear that if any expenses were to be recoverable under suing and labouring clause. They must be expenses assessed upon the quantum meruit principle",[174] Pill L.J. in *Royal Boskalis v. Mountain* (1997) opines that

> the said Lord Chancellor as underlining the different between a salvage claim under maritime law and a claim under a sue and labour clause, I do not consider that the Lord Chancellor was supporting to lay down that in all circumstance it is a prerequisite of recovery under a sue and labour that the expenses must be capable of assessment upon the quantum meruit principle.[175]

(e) Supplementary coverage

Suing and labouring clause, as provided in the 1906 M.I.A. section 78 (1), is a *supplementary engagement* to the contract of insurance, which provides an additional indemnity beyond any claims recoverable under the original policy. The suing and labouring clause represents not an independent contract but an accessory clause. It represents as a supplementary engagement in the "measure of indemnity" in addition to the original contract and the related principles under the "principle/accessory" rules is always applied.

Under the supplementary character, the suing and labouring expenses may be recovered from the insurer notwithstanding the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from

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[172] *Royal Boskalis v. Mountain* (1997) Lloyd's Reinsurance Law Reports 523 at p. 615.

[173] *Kuwait Airways v. Kuwait Insurance Co.* (1996), ibid, at p698. Affirming by C.A. (see 2 IRLN 10 Insurance and Reinsurance Law Newsletter Oct. 1997 at p. 93).

[174] *Aitchison v. Lohre* (1879) 4 App. Cas. 755, at p. 766.

[175] *Royal Boskalis v. Mountain* (1997) Lloyd's Reinsurance Law Reports 523 at p. 622.

particular average, either wholly or under a certain percentage [section 78(1)].

Mr. Lindley J., in *Dixon v. Whitworth*[176], ruled that "the sue and labour charges are recoverable *in full* irrespective of the insured value".[177] Institute Time Clauses for Hull expresses the sum recoverable under said clause shall in no circumstances exceed the amount insured, i.e. up to 100% of insured value (Institute Time Clauses -Hull 1/111995 clause 11.6). However, the 1906 M.I.A. and Institute Cargo Clauses do not contain similar limitation. No reported cases dealt with this issue. It may be suggested that, while the reasonableness and apportion principles in applied, the suing and labouring expenses seems impossible to be incurred in excess of 100% of insured value. Theoretically, it may apply to the rule of "accessorium non ducit, sed sequitur suum principle". [178] The maximum recoverable amount under the supplementary engagement (the suing and labouring clause) in any event shall not exceed the maximum amount claimable same as its original policy (i.e. the insured value or insurable value). By reference to the same rule, the under-insurance reduction in proportion under the original insurance contract may also apply to the suing and labouring expenses.[179]

(f) Expenses incurred solely in connection with one particular interest

It may be that the property insured could not be saved except taking steps to save simultaneously other property; or other property may directly or indirectly obtain some benefit or preservation from such step taken. "*Aitchison v. Lohre*" case and the 1906 M.I.A. section 78 (2) provide general average and salvage under maritime law are not recoverable under the suing and labouring clause. The question is, if the steps taken simultaneously saved the property insured and other property but the expenses incurred belongs not to the general average or salvage charges as defined by the 1906 M.I.A., can it be recoverable under the suing and labouring clause? if yes, does the basis of *contribution* apply?

Lord Blackburn in *Aitchison v. Lohre*, dismissed Brett LJ 's decision and

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[176] *Dixon v. Whitworth* (1879) 4 CPD 371.

[177] Goodacre, *Marine Insurance Claims*, 3rd ed. 1996, at p. 301.

[178] That which is the accessory or incident does not lead, but follows, its principle.

[179] Some institute clauses, for example ITC-Hull 83 or 95 clause 11.4, express the under-insurance proportional reduction principle is applied to the suing and labouring clause.

ruled out the general average and salvage *under maritime law* could not recover under the suing and labouring clause. The 1906 M.I.A. section 78 (2), in reference to the above case, by using the words "as defined by this Act" to confine the scope of said exception not recoverable under the suing and labouring clause. Interpreting this sub-section oppositely, general average and salvage not defined by the 1906 M.I.A. *may* be recoverable under the suing and labouring clause.

The purpose of the suing and labouring clause is to encourage exertion on the part of assured. The consideration under the 1906 M.I.A. section 78(2) is whether or not the expenses or charges incurred come into the definition of general average or salvage under maritime law, but not whether the steps taken by assured involving other property or not.

In an American case *Watson v. Marine Insurance Co.*, the court held that "the labour and expense were incurred for the recovery of the ship, *notwithstanding that other subjects might incidentally enjoy the result of the effort*".[180] Gorell Barnes J, in *The Mary Thomas*, cited the above case and held that:

> the plaintiffs cannot, either by virtue of any principle, or by virtue of any authority, claim to recover from the underwriters of the ship the whole amount of the expenses incurred in saving the ship and the cargo, and can only recover the portion properly due to the ship.[181]

The insurers agree to contribute any expenses by the suing and labouring clause, which may be incurred in preserving the subject matter insured, but not includes the expenses of saving anything else. McArthur adopted the contribution principle using in general average regime that if charges are incurred for the safeguard and recovery of other subjects as well, they must be apportioned over the aggregate value.[182] The *contribution principle* apply between insured property and other properties simultaneously saved is slightly different from the *proportion principle* in case of the under-insurance. However, Walton J in *Cunard Steamship Co. Ltd. v. Marten* (1902), distinguished them no difference by the term of "apportioning principle" and said that "this is the perfectly well-established basis of every adjustment of suing and labouring

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[180] *Watson v. Marine Insurance Co.*, 7 Johnson's N. Y. Rep 57.

[181] *The Mary Thomas* (1894) P 108, at pp.120-121.

[182] McArthur, ibid, at p. 269.

clause".[183] In *Kuwait Airways Co. v. Kuwait Insurance Co.*, Justice Rix affirms the apportioning principle says:

> the sue and labour principles developed in the marine context, an assured is only entitled and an insurer only liable for a due proportion of expenses in accordance with their respective interests at stake at the time of the incurring of the expenses in question.[184]

It is surprised that, Robert Merkin in his recent book, cites a non-disclosure case - *St. Margaret's Trust Ltd. v. Navigators & General Insurance Co. Ltd.* (1949)[185] opines that "salvage charges and other costs other than those incurred under maritime law is recoverable under suing and labouring clause".[186] This opinion is difficult to follow as that case contained on a special revised suing and labouring clause which provided:

> In the case of misfortune to the insured vessel it shall be lawful to ....., without prejudice to this insurance and all charges thereof including salvage charges the cost of towing or removing the vessel to a place of safety so necessary incurred shall form part of the claim.

(g) Expenses must be incurred short of destination

The S.G. policy and the 1906 M.I.A. section 78 give no advice that the expenses recoverable under the suing and labouring clause must be incurred short of destination. Kenneth Goodacre and Victor Dover, in their own respective book, opine that :

> sue and labour charges can only be incurred short of destination, whereas other expenses, such as reconditioning costs, which are incurred after arrival at destination come under the category of "particular charges" only.[187]

They cite the case - *Kidston v. Empire Marine Insurance Co. Ltd* 1867, to

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[183] *Cunard Steamship Co. Ltd. v. Marten* (1902) 2 KB 624, at p. 629.

[184] *Kuwait Airways v. Kuwait Insurance Co.* (1996), ibid, at p697. Affirming by C.A. (see 2 IRLN 10 Insurance and Reinsurance Law Newsletter Oct. 1997 at p. 93).

[185] *St. Margaret's Trust, Ltd. v. Navigators & General Insurance Co. Ltd.* (1949) 82 Ll. L. Rep 752.

[186] Robert Merkin, *Annotated Marine Insurance Legislation*, 1997, at p. 66.

[187] Goodacre, *Marine Insurance Claims*, 3rd ed. 1996, at p302; Dover, *A Handbook to Marine Insurance*, 1983, at p. 303.

support their viewpoint that the re-forwarding charges and reconditioning charges are all incurred short of destination. Bearing in mind that, the reported cases for claiming the suing and labouring expenses were all involved the expenses incurred short of destination. For example, the iron transportation expense in *Great Indian Peninsular Ry. Co. v. Saunders* (1861); the bacon warehousing and reshipment expense in *Booth v. Gair* (1863); salvage charges in *Aitchison v. Lohre* (1879).

This "short of destination" theory may be properly interpreted evolving from the principle of the cease of the risk covered. In principle, the insurer liability on the perils insured basically ceased to run at the time that the subject-matter insured arrive, whether in safety or damage, or shall have arrived. The material benefit of insurer from suing and labouring only exists before the insurer's liability is not fixed, i.e. short of destination. The reconditioning charges for wetted cargo incurred at intermediate port is a suing and labouring expense, but not if incurred at destination.

(h) Succeed in preserving is not necessary

Another issue is whether the steps taken by assured should succeed in preserving the subject-matter insured fully or partly or not ? or whether the insurer is only liable for the expenses occurred related to the successful effort benefit by him? The answers are all negative. In *Lohre v. Aitchison*, Brett LJ said:

> These authorities (Arnould and Phillips) and the decision in Kidston v. Empire Marine Ins. Co. seem to us to shew that the clause in question is a wholly independent contract in the policy from the contract to pay a certain sum in respect of damage done to the subject-matter of insurance, and consequently that it applies, *whatever be the amount of such damage, and whether indeed any such damage occur or not*.....The only conditions necessary to give a valid claim under it, *are danger of damage to the subject insured by reason of perils insured against, and unusual or extraordinary efforts made or expenditure incurred in consequence of such efforts made to attempt to prevent such damage.*[188]

Once these conditions are sufficient, whether the steps taken by assured with

[188] *Lohre v. Aitchison* (1878) 3 QBD 558, at pp. 567-568.

the intention to benefit underwriters[189] or successfully in preventing the subject insured from loss/damage is not absolutely concerned. The expenses incurred is in any event recoverable in full under the suing and labouring clause.

1.4.4 Suing and labouring expenses, salvage charges and general average in comparison

There are considerable comparabilities in nature among salvage charges, general average and suing and labouring expenses. "But the object was to encourage exertion on the part of assured; not to provide an additional remedy for the recovery, by the assured, of indemnity for a loss which was, by the maritime law, a consequence of the peril" held by the Lord Blackburn in *Aitchison v. Lohre* overruled Brett's L.J. decision may be the most important factor to distinguish salvage charges and general average from suing and labouring expenses. The 1906 M.I.A. section 78(2) codifies the *Aitchison v. Lohre* provides "general average and salvage charges under maritime law are not recoverable under the suing and labouring clause." Suing and labouring expenses, general average and particular charges in comparison as showing in following table:

[189] *I.C.S. v. British Traders* (1984) 1 Lloyd's Rep at p163, Lord Dillon said " the absence or presence of intention to benefit underwriters cannot diminish or add to the valve or effect of the services rendered under the sue and labour clause."

Items	*Suing and labouring*	*Salvage charges*	*General Average*
danger was existing when rescuing	ingredients	ingredients	ingredients
in preventing a loss by perils against	ingredients	ingredients	ingredients
recoverable whether there is warranted free from particular average	s. 78(1)	s. 76(2)	s.76(1) (g.a. sacrifice only)
where there is a total loss	recoverable	unrecoverable	unrecoverable
under-insurance proportional reduction	applicable	apply s.73(2)	apply s. 73(1)
survival in whole or in part	unnecessary	ingredients	ingredients
relationship with insurance contract	supplementary	independently of	independently of
the person authorized	assured, his servant, agent and assignee	voluntary salvor or stranger	the parties in common adventure
the person with pre-existing duty to rescue	assured and his agent	no	shipowner, master and crew member
add to p.a. to make up the special percentage	not (s.76.4)	yes	not (s.76.3)
intention to rescue	for particular interest	?	for common interests
principle of contribution if others interests saved	apply	apply	apply
principle of reasonably in incurring the expenses	apply	apply (sbj to the award)	apply
recoverable amount (in addition to other damage/loss/expense covered)	≤ 200% of insured or insurable value	≤ 100% of insured or insurable value	≤ 100% of insured or insurable value
add in estimating the repair cost of CTL on ship	not add	yes	yes (ship contribution only)
principle of "a person cannot sue himself"	inapplicable	applicable	inapplicable

The classification of "quantum meruit" saving service unsettled in *Aitchison v. Lohre* case will be not clear until discussing the fourth saving expenses - particular charges.

1.5 Particular Charges

In *Kidston v. The Empire Marine Insurance*, it was found by the jury that:

> in the business of marine insurance, a well-known and definite meaning appertained to the term "particular average" as contra-distinguished from "particular charges", viz, that "particular average" denoted actual damage done to or loss of part of the subject-matter of the insurance, but that it did not include any expenses for which the insurers would have been liable, incurred in recovering or preserving the property, which latter were termed *particular charges*.[190]

However, the expenses in question (transshipment and storage charges) which the assured was entitled to recover from the insurers, held by the Willes C.J, was not under the term of "particular charges", but applied to the suing and labouring clause, as the occasion upon which these particular charges were incurred being such as to be within the suing and labouring clause.[191] This decision affirmed the existence of the usage of Lloyd's for reimbursing the particular charges. However, it provided no more detailed picture on the term "particular charges" under the shadow of the suing and labouring clause. The position is still unclear even in today. "The terms 'particular charges' and 'suing and labouring expenses' are both used to refer to expenses recoverable under the suing and labouring clause" opined by Arnould book[192] strongly confuses the real status of "particular charges" under the 1906 Marine Insurance Act.

1.5.1 Custom of Lloyd's and legal status of particular charges

Two kinds of charges, adopted by the earlier Rules of Practice of the Association of Average Adjusters of Great Britain (1890 or 1900), were accepted as "Custom of Lloyd's". Both of them were under the sub-title of "Particular Average On Goods"[193]:

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[190] *Kidston v. The Empire Marine Insurance,* (1866) L.R. 1 C.P. 535, at p. 538.

[191] Supra, at p. 536.

[192] Arnould, ibid, para 908.

[193] Franchise Charges now is under General Rules - section A

Franchise Charges (Custom of Lloyd's, 1876)[194]

> The expenses of protest, survey, and other proofs of loss, including the commission or other expenses of a sale by auction, are not admitted to make up the percentage of a claim; and are only paid by the underwriters in case the loss amounts to a claim without them.

Extra Charges (Custom of Lloyd's, 1876)[195]

> Extra charges payable by underwriters, when incurred at the port of destination, are recovered in full; but when charges of the same nature are incurred at an intermediate port they are subjected to the same treatment, in respect of insured and contributory values, as general average charges.

"Franchise Charges" are incurred to substantiate the claim but not to recover or preserve the subject-matter insured, are not particular charges. Franchise charges, as stated in the 1906 M.I.A., are the expenses of and incidental to ascertaining and proving the loss (the 1906 M.I.A. section 76.4). The real meaning and extent of the said "Extra Charges" is difficult to define. However, subject to the context of the said A.A.A. Rule, "Extra Charges" may be considered as any kinds of charges not of the nature of loss or damage, which may incur at destination and or at intermediate port, but not Franchise Changes or general average charges.

Both charges stated in the A.A.A. Rules of Practice 1900 were referred by Mr. Chalmers in his first edition book relating to the Bill. The Bill section 77(3) third paragraph stated that :

> Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded. But conditioning charges and other expenses incurred at the port of destination, which diminish the loss to an extent exceeding the said charges and expenses, may be added to the loss eventually ascertained.[196]

The "conditioning charges or other expenses" in the last paragraph contain an element of "diminishing the loss".

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[194] Rules of Practice, 1986 (Amended 1992) - Section A - General Rules - Rule A9.

[195] Rules of Practice, 1981- Section E - Particular Average on Goods - Rule E7, which not appear in Rules of Practice, 1986 (Amended 1992).

[196] M. D. Chalmers & Douglas Owen, *A Digest of The Law relating to Marine Insurance*, 1901, at p98. It is noted that the last 2 paragraphs not appear in M.I.A. 1906.

Particular charges, in its nature, include the warehouse rent, reloading expense and forwarding charges, as mentioned in *Kidston v. Empire Insurance Co.*, which were the custom of underwriters agreed to pay. However, this custom was not recognized as binding[197] before it was affirmed in *Kidston v. Empire Insurance Co.*

In *Kidston v. Empire Insurance Co.*, Willes J in the court of Common Plea affirmed the custom that:

> If necessary, we should have been prepared to hold that the evidence established... and to act upon such usage as equally sacred with the express part of the contract.[198]

Kelly C. B. in the Exchequer Chamber gave more affirmative decision on the said custom that

> "this evidence, or the usage which it proves, is in affirmance of the common law of England, which of itself defines the nature and character of these charges...".[199]

Later, the insurance market introduced a clause named "Forwarding Clause" in the F.P.A. policy. By incorporating this clause in the policy, the said custom was legalized by an express term. One of the Forwarding Clause adopted by Lloyd's in 1890[200] stated that:

> *Lloyd's Form -1890*
>
> Underwriters, notwithstanding this (i.e. the F.P.A.) warranty, to pay .....any special charges for warehouse rent, re-shipping, or forwarding; for which they would otherwise be liable.

Before the enactment of the Marine Insurance Act in 1906, the legal status of particular charges was very uncertain. It was covered, or properly says was controlled by the express suing and labouring clause on the S.G. policy.

It is interested to note that, differs from the present 1906 M.I.A., the head of "Partial Losses" in the Bill only included "salvage and general average", but contained no "particular charges". On the other hand, the Bill section 65(2) [now the section 64 of the 1906 Act] merely provided a definition on "particular

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[197] McArthur, ibid., at p. 304.

[198] *Kidston v. The Empire Marine Insurance Co.* (1866) L.R. 1 C.P. 535 at p. 552.

[199] *Kidston v. The Empire Marine Insurance Co.* (1867) L.R. 2 C.P. 357 at p. 367.

[200] Douglas Owen, *Marine Insurance - Notes and Clauses*, 3rd edition, 1890, at p. 54.

average", but did not mention about "particular charges".[201]It is difficult to trace why the 1906 M.I.A finally gave particular charges a more firm status. It might intend to affirm the said custom of underwriter to pay such kind of charges; or might give a firm definition on this charges in order not to result in confusion in applying other provisions which deal with the said "charges", for example, section 65(2), 76(2) & 76(4); or it might intend to give the suing and labouring expenses a different position beyond the classification of partial loss. However, irrespective of its real intentions, particular charges and suing and labouring expenses now are different recoverable items under the 1906 M.I.A.

1.5.2 Definition, ingredients and in comparison with the suing and labouring expenses

The 1906 M.I.A. section 64.2 defines particular charges that:

> Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter incurred, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average.

Particular charges is a kind of "Partial Losses", not total loss. The sum which the assured can recover in respect of a loss by which he is insured is to the full extent of the insurable value in an unvalued policy or the full extent of the value fixed by the policy in an valued policy. It should be incurred by the assured or his agents who is expressly sanctioned for the safety or preservation of the subject insured.

Particular charges are not included in particular average. Particular charges are not of nature of a *loss*, but are charges incurred to preserve and bring

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[201] The Bill section 65(2) stated that:

> Partial Losses (including Salvage and General Average)
>
> section 65(2) - A particular average loss is a loss, caused by a peril insured against, which is not a general average loss, and which falls exclusively on the owner or other person interested in insurable property, giving him no right of contribution against other persons who may be interested in the common marine adventure.

forward the property; the charges are indeed a consequence of the damage, and therefore, it is said, they are not a part of it.[202] Accordingly, particular charges are not admissible as form a part of the amount requisite to constitute a claim for particular average.

Particular charges originated from the custom of underwriters, whereas the suing and labouring clause came from the express engagement on the traditional S.G. policy. Some ingredients of particular charges are very similar or may apply to the suing and labouring expenses, but not all.

(a) The loss and misfortune must actual have occurred.

The "stitch in time" approach adopted in interpreting the words "avert" or "minimise/diminish" under the suing and labouring clause may be applied. However, the words "safety" and "preservation" using in section 64.2 may contain a further implication that the loss or damage not only has been commenced but also has already been sustained.

(b) Expenses incurred for purpose of the safety or preservation of the subject-matter insured.

Particular charges recoverable from insurers must be incurred for purpose of the safety or preservation of the *subject-matter insured.* It exists a slight difference between particular charges and the suing and labouring expenses. The suing and labouring expenses are incurred to avert or diminish any *loss* covered by the policy. However, the particular charges emphasizes in preserving or diminishing *the extent of damage on the subject-matter insured.* Namely that particular charges may incur while the subject-matter insured is in a safe position. The suing and labouring expenses emphasizes in averting or diminishing *a loss from the risks insured.* Namely that, the suing and labouring expenses may incur only while the subject-matter insured is in a dangerous position. For example, in case the charges incurred to distinguish the wetted cargoes from the other sound cargoes at intermediate port is for averting the wetted cargoes not to harm or not to further contaminate other sound cargos, it is suing and labouring expenses. However, if the separation is merely for increasing the auction value at intermediate port (i.e. reduce the insurer's liability

[202] McArthur, ibid., at p. 276.

to pay the claim), it is particular charges.

(c) Expenses incurred by the assured and his agents duly authorized

The 1906 M.I.A. section 64(2) provides "the expenses incurred *by or on behalf of the assured* for the safety or preservation.....". It is suggested that the persons who are authorized to incur particular charges may be considered as the same persons under the suing and labouring clause. However, particular charges may sometimes incur while the subject-matter insured is in a safe position, unlike in dangerous circumstance for incurring the suing and labouring expense, which the latter may encounter more pressure in time. A more strict interpretation shall be adopted to consider "the persons who are authorized to incur particular charges" if it is in dispute. However, the persons do absolutely not include the voluntary salvors under maritime law.

(d) Expenses actually incurred must be reasonably, properly and extraordinary

The underwriters are liable, on their contract of indemnity, to repay them the amount which was properly and reasonably[203] for so much of the actual expense as would have been incurred had the cheaper method been adopted[204].

The expenses incurred must be extraordinary, but not ordinary or its sequential increment. For example, the costs of carrying the damaged cargoes on land may be higher than carrying the sound cargoes. The increment in carriage cost is still ordinary but not extraordinary.

(e) Not supplementary or additional coverage

The suing and labouring clause, which as provided in the 1906 M.I.A. section 78 (1), is *supplementary* to the contract of insurance and providing an additional indemnity beyond any claims recoverable under the original policy. However, "particular charges" is designated are recoverable from underwriters as *the direct result of a peril insured against*[205]. This is the most important difference between "particular charges" and "suing and labouring expenses". It is therefore

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[203] Brett J, in *Lee v. Southern Insurance Co.* (1870) L.R. 5 C.P. 397 at p. 406.

[204] McArthur, ibid., at p. 269.

[205] Supra, at p. 262.

that particular charges (with other recoverable loss or damage under the policy) shall not exceed the whole insured value or insurable value, whereas the suing and labouring expenses as an additional reimbursement may exceed.

(f) Expenses may incur at destination

Same as suing and labouring clause, the S.G. policy and the 1906 M.I.A. provide no advice that whether the recoverable particular charges must be or may be incurred short of destination. The suing and labouring expenses is emphasized in averting or diminishing a loss from the *risks insured.* Insurers' liability cease at the time while the covered risks is terminated, i.e. short of destination. Particular charges are emphasized in preserving or diminishing the extent of *damage on the subject-matter insured.* The charges may incur while the subject-matter insured is located in a safe position either at intermediate port or at destination. This is another important difference between particular charges and suing and labouring expenses.

In *F.W. Berk & Co. Ltd. v. Style* (1955), plaintiff alleged the re-bagging cost on shipment for damaged kieselguhr at the loading port is recoverable under the suing and labouring clause. Justice Sellers dismissed plaintiff's submission by reason that there was no accident or casualty incurred. It is interested to note that Sellers J mentioned "if the underwriters were to be held liable, they would be paying for *the cost at the time and place of discharge...*".[206] However, Sellers J. provided no titles why the underwriters would be liable for the cost if incurs at the time and place of discharge. As mentioned, suing and labouring expenses can only be incurred short of destination, said re-bagging cost at discharge may be well assumed as the *particular charges* recoverable if incurs for the preservation of the damaged subject-matter insured.

(g) Expenses incurred solely in connection with one particular interest

Particular charges are incurred for the preservation of a particular interest, as of the ship or of the cargo, instead of for the common safety. However, an insuring risk may probably and simultaneously endanger other properties. The circumstance may exist that the property insured could not be saved except taking steps to save simultaneously other property; or other property may

[206] *F.W. Berk & Co. Ltd. v. Style* (1955) 2 Ll. L. Rep 382 at p. 390.

directly or indirectly obtain some benefit from such step. The principle of contribution, in applying to the suing and labouring clause/expenses, basically may also apply to particular charges.

(h) Succeed in preserving is not applied

Another issue, similar as suing and labouring clause, is whether the steps taken by assured should succeed in fully or partly preserving the subject-matter insured ? or whether the insurer is only liable to pay the part of particular charges incurred with successful benefit to the insurer? The answers are all negative the in suing and labouring clause[207], but not apply in claiming particular charges.

Suing and labouring clause is an *supplementary* engagement which the insurers agree to reimburse the assured while the ingredients are met, notwithstanding the insurer may have paid for a total loss.

Particular charges are a consequence of the loss or damage which is designated recoverable from insurers as the direct result of a peril insured against. The general rule of measure of indemnity expressed in the 1906 M.I.A. section 67 shall apply to particular charges. The 1906 M.I.A. section 67(1) provides that

> The sum which the assured can recover in respect of a loss by which he is insured is to the full extent of the insurable value in an unvalued policy or the full extent of the value fixed by the policy in an valued policy.

The real questions have to considered are a) whether the expenses incurred are of a consequence of loss/damage recoverable and b) whether it is incurred reasonably and necessarily, but not whether it has been succeed in preserving the subject matter insured. For example, Rules of Practice of A.A.A. Rule D1 provides that the necessary expenses incurred in moving the vessel to the port of repair shall be allowed as part of the cost of repair, and were the vessel after repairing forthwith returns to the port from which she was removed, the necessary expenses incurred in so returning shall also be allowed. The returning costs n any event involve no successful factor in preserving the vessel.

particular charges are of a consequence of loss or damage recoverable. Therefore, if the loss or damage is not recoverable under the policy, particular

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[207] See 1.4.2 para (f).

charges is also not recoverable. For example, the cost for repairing partial damage under "free particular average warranties" is not recoverable, the charges incurred by effecting said repair is of course not recoverable.

1.5.3 Application between "Particular charges" and "Sue and Labouring"

Arnould book cites the 1906 M.I.A. section 76(2) to support his viewpoint that "The terms 'particular charges' and 'suing and labouring expenses' are both used to refer to expenses recoverable under the suing and labouring clause".[208] As mentioned, this allegation confuses the real legal status of particular charges under the 1906 Marine Insurance Act. The 1906 M.I.A. section 76(2) provides:

> Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and for other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

The difficulty comes from the interpretation on the words "and for *particular charges and for other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against*". The proper interpretation suggested by this paper is that the insurer, under a policy with particular average warranties, is nevertheless liable for particular charges (and other expenses) which simultaneously have the same nature of suing and labouring. However, the insurer is not liable for particular charges (and other expenses) which implies no nature of the suing and labouring clause. The below diagram showing the various applications under the 1906 M.I.A. section 76(2):

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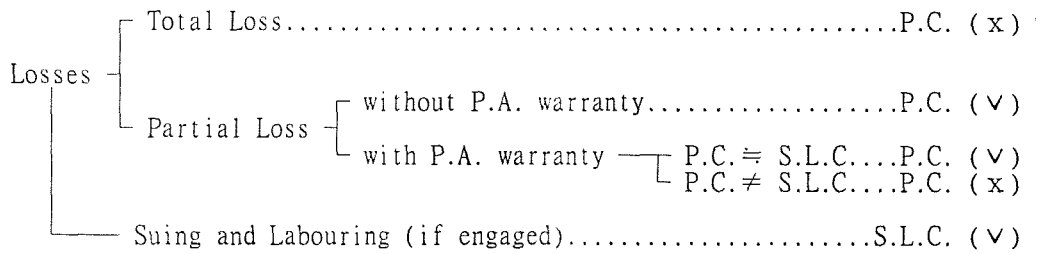
[208] Arnould, ibid., para 908, n8.

Diagram 5.
Various applications under the 1906 M.I.A. section 76(2)



In other words, particular charges is a different recoverable item under the 1906 M.I.A. from suing and labouring expenses. However, it may exist a situation that particular charges incurred may simultaneously exist with the same nature of suing and labouring. The reasons supporting my above viewpoint include:

1. The 1906 M.I.A. section 78(1) clearly provides that "any expenses properly incurred pursuant to the suing and labouring clause may recover from the insurer *notwithstanding that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.*" It is not necessary to repeat the same stipulation again on the 1906 M.I.A. section 76(2) if, as opined by Arnould, suing and labouring expense and the "particular charges" and "other expenses" are assumed as the same expenses/charges under the suing and labouring clause.
2. The 1906 M.I.A. section 76 is a general provision for a policy contains "warranted free from particular average", but not a special provision for ruling "particular charges in any event shall only be incurred and recoverable under the suing and labouring clause.
3. The suing and labouring clause is a supplementary engagement to the contract of insurance, which may be engaged or excluded by the contracting parties. The assured's right to recover suing and labouring expenses basically bases on a true engagement of the suing and labouring clause. However, the assured's right to recover particular charges came from the custom of underwriters. The custom for recovering particular charges is better not to be controlled by or wholly relied on a special engagement of the suing and labouring clause.

As discussed, particular charges and suing and labouring expenses are different recoverable items under the 1906 M.I.A. They have their own individual ingredients, though bearing in mind that those ingredients are sometimes not so easy to distinguish. A problem may arise that, while expenses are incurred for the safety of the subject-matter insured (not general average and salvage charges), which kind of charges/expenses (particular charges or suing and labouring expenses) have the priority to apply? The question is important, as suing and labouring expenses may recover in excess of the insured value.

Particular charges is a kind of "Partial Losses" and the 1906 M.I.A. section 64(2) basically gives "particular charges" the priority to apply. Namely that, any expenses incurred under partial losses, other than general average and salvage charges, shall be firstly considered whether it is "particular charges" or not (subject to any other express provisions in the 1906 M.I.A. or in the policy).

It is not the question that which charges/expenses are more comprehensive to include the other. Particular charges and suing and labouring expenses may exist consistently. Particular charges originated from the custom of underwriters. Suing and labouring clause came from the express engagement in the traditional S.G. policy. In applying an express agreement (the suing ad labouring clause) is more easier than to prove a custom or usage (particular charges). On the other hand, by the fact that the suing and labouring clause was almost invariably contained in marine S.G. policies as a supplementary indemnity engagement, the assureds might also prefer to recover the expenses incurred to claim the express suing and labouring expenses. Those situations resulted in particular charges were over-shadowed by the suing and labouring clause for a long time. Wills J. in *Kidston v. Empire Insurance Co*, perfectly annotated the above situation:

> *If necessary, we should have been prepared to hold* that the evidence established such an understood meaning, according to which "particular average" does not include "particular charges," and *to act upon such usage as equally sacred with the express part of the contract. It is needless, however, to enlarge upon this part of the case, because, upon the facts proved, and the true construction of the policy itself...*[209]

The custom of insurance market to pay particular charges was existed independently of the suing and labouring clause before the enactment of the

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[209] *Kidston v. Empire Insurance Co.* (1866) L.R. 1 C.P. 535, at p. 552.

1906 M.I.A. Today, particular charges do obtain its statutory status in the 1906 M.I.A. section 64(2) which differs from suing and labouring expenses.

1906 M.I.A. section 78(2) merely excludes two out of three kinds of various charges under the head of "Partial Loss" (i.e. only exclude general average and salvage charges) which are not recoverable under the suing and labouring clause, but does not exclude particular charges. It may be argued that, if interpreting section 78(2) conversely, particular charges are recoverable under the suing and labouring clause. This inference is critical. Any expenses recoverable under the suing and labouring clause or not shall be subject to 1) no exceptional stipulation by statute; 2) there is a suing and labouring clause on the policy; and 3) said expenses incurred met the essential factors of the suing and labouring clause. Some kinds of expenses/charges "particularly" incurred may meet the requirement of recovering suing and labouring expenses, but not all kinds of particular charges can be recovered under the suing and labouring clause.

Firemen's Fund Ins. Co. v. Trojan Power Co. (1918), an American case, might be the sole case which directly dealt with this application issue. Ross J commented that

1) the recovery of reshipment freight charges can not be sustained on the sue and labour clause of the policy, since the charges was not paid by it in order to prevent the explosives insured from being lost by reason of any impending peril;
2) said shipment charge to be recoverable from the insurer, both by the established law as well as the established custom of England, as a "particular charges"; and
3) after citing Arnould's language in Arnould's 8th edition book, Ross J further said that "Mr. Arnould, lays it down not only as the law but also the custom of England that particular charges include another class of losses, which, though not specially enumerated in the policy, are nevertheless recoverable thereunder".[210]This case clearly expressed a principal that particular charges are recoverable independently of the suing and labouring clause.

Ross J in *Firemen's Fund Ins. Co. v. Trojan Power Co.* accepted Arnould's viewpoint expressed in Arnould's 8th edition (1909). It is interested to note that the language used in that 8th edition book stated that:

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[210] *Firemen's Fund Ins. Co. v. Trojan Power Co.* (1918) 253 Fed Report 305 at pp. 306-308.

> In this event they are charges incurred "in and about the defense and safeguard" of the subject-matter of insurance, within the suing and labouring clause. *In certain cases they may also be recoverable from underwriters, apart from the suing and labouring clause, as losses occasioned by a peril insured against when they have been necessarily incurred in consequence of such a peril.*[211]

However, the last paragraph was omitted in Arnould's 15th edition (1961). In the 15th and present 16th editions of *Arnould's* book, the contributing editors simply opine that "The terms 'particular charges' and 'suing and labouring expenses' are both used to refer to expenses recoverable under the suing and labouring clause".[212] On the other hand, in its 15th edition, a footnote gave no authorities but simply stated that"....But it is submitted that particular charges are now recoverable *only* under the suing and labouring clause".[213] As mentioned, this critical opinion confuses the real legal status of particular charges under the 1906 Marine Insurance Act.

1.5.4 Particular charges, suing and labouring expenses, salvage charges and general average in comparison

Particular charges are not particular average and are also distinguished from general average and salvage charges as provided in the 1906 M.I.A. section 64(2). Particular charges constitute a species of claim under the policy, which are also distinguished from the expenses recoverable under the supplementary engagement of the suing and labouring clause. Those different kinds of charges/expenses contain their own particular ingredients and stand on their different legal status under the 1906Marine Insurance Act. The table below shows the similarities and differences among particular charges, suing and labouring, salvage charges and general average as defined in the 1906 M.I.A.:

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[211] *Arnould Law of Marine Insurance and Average*, 8th ed.(1909) vol II para 869; 9th ed. (1914) vol. II para 869 and 14th ed. (1954) para 869.

[212] *Arnould, ibid*, para 908.

[213] Supra, para 865.

Items	*Particular charges*	*Suing and labouring*	*Salvage charges*	*General Average*
danger was existing when rescuing	not necessary	ingredients	ingredients	ingredients
in preventing a loss by perils against	ingredients	ingredients	ingredients	ingredients
recoverable whether there is warranted free from particular average	≅sue & labour - yes ≠sue & labour - no s. 76(2)	s. 78(1)	s. 76(2)	s.76(1) (g.a. sacrifice only)
where there is a total loss	unrecoverable	recoverable	unrecoverable	unrecoverable
under-insurance proportional reduction	applicable	applicable	apply s.73(2)	apply s. 73(1)
survival in whole or in part	unnecessary	unnecessary	ingredients	ingredients
relationship with insurance contract	direct result of a peril insured	supplementary	independently of	independently of
the person authorized	assured and his authorized agents	assured, his servant, agent and assignee	voluntary salvor or stranger	the parties in common adventure
the person with pre-existing duty to rescue	assured and his agents	assured and his agent	no	shipowner, master and crew member
add to p.a. to make up the special percentage	not	not (s.76.4)	yes	not (s.76.3)
intention to rescue	for particular interest	for particular interest	?	for common interests
principle of contribution if others interests saved	intermediate - apply destination - not apply	apply	apply	apply
principle of reasonably in incurring the expenses	apply	apply	apply (sbj to the award)	apply
recoverable amount (in addition to other damage/loss/expense covered)	≤ 100% of	≤ 200% of insured or insurable value	≤ 100% of insured or insurable value	≤ 100% of insured or insurable value
add in estimating the repair cost of CTL on ship	yes	not add	yes	yes (ship contribution only)
principle of "a person cannot sue himself"	inapplicable	inapplicable	applicable	inapplicable

1.6 Summary on the statutory application of various salvages under the 1906 M.I.A.

The 1906 M.I.A. section 65(2) divides salvage into "salvage under maritime law" and "salvage in the nature". The former is recoverable by the term "salvage charges", whereas the latter are recoverable by the term "particular charges" or "general average".[214] The common prerequisite for recovering any one of those items is the expenses/charges should be incurred in preventing a loss by perils insured.

1.6.1 Pure salvage

Pure salvage is the services rendered by a voluntary salvor without a contract of any kind. The principle for giving reward for this pure salvage is the performing services should have been successful. No success, no reward. The charges recoverable under maritime law by a salvor who successfully salved the subject-matter insured, either for particular interest or common safety, are all recoverable by the item "salvage charges" from insurers.

1.6.2 "No cure no pay" contract salvage

As discussed, "no cure no pay" contract salvage is a kind of salvage under maritime law. In case the "no cure no pay" contract salvage have had a useful result to the subject-matter insured, whether the contract was engaged in preventing either for particular interest or common safety, the charges recoverable by that contractual salvor may be recovered by the item "salvage charges".

1.6.3 "Quantum meruit" contract salvage

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[214] See discussion in para 1.2 of this chapter and Diagram 4.

As discussed in paragraph 1.2.1.4, Lord Blackburn in *Aitchison v. Lohre* gave no firm answer on the issue that "whether successful or not salvage contract can be treated as a hiring within the suing and labouring clause." The 1906 M.I.A. section 65(2) may have properly resolved this issue. The 1906 M.I.A. section 65(2) provides that ".....such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstance under which they were incurred". Namely that, the expenses incurred in "quantum meruit" contract salvage for the preservation of the particular interest, are recoverable by particular charges; whereas for the common safety, are recoverable by general average. Suing and labouring clause, in such circumstances, is not applied unless:

1. the said "quantum meruit" contract salvage was unsuccess, the subject-matter insured lose totally (i.e. no claim for general average and particular charges), and is also met the requirements for claiming suing and labouring expenses .
2. The 1906 M.I.A. section 76(2) is in applied. Namely that, the "quantum meruit" contract salvage services have had useful result, but the particular charges for said "quantum meruit" salvage contract is initially not recoverable in accordance with the F.P.A. warranty. However and in accordance with section 76(2), it (particular charges) is recoverable if it is properly incurred pursuant to the provisions of the suing and labouring clause.

In *Aitchison v. Lohre*, Lord Blackburn said "the suing and labouring clause not to provide an additional remedy for the recovery, by the assured, of indemnity for a loss". The 1906 M.I.A. section 64(2) expresses said expenses may be recoverable as "particular charges" or as a "general average" according to the circumstance. It is suggested that the assured can not further rely on the suing and labouring clause for recovering the expenses in exceed of 100% of the insured value.

In *Australian Coastal Shipping Commission v. Green and Others*, a *quantum merit* basis contract (United Kingdom Standard Towage Condition) was submitted to the court. Lord Denning opined that:

> If the shipowners were not entitled to recover their expenditure as a general average loss, they would have sought to recover it under the suing and labouring

clause. As we hold that it is a general average loss, this point does not arise: see section 78(2) of the Marine Insurance Act 1906. *But I may say that in any case I do not think this expenditure was "charges" within the clause (i.e. suing and labouring clause)*[215].

This decision may verify the categorization method adopted by this research on the 1906 M.I.A. section 65[216] that *quantum meruit* hire/service charges may only be only recovered by either general average or particular charges, but not by the suing and labouring clause.

It may exist a difficult situation that while the assured entered into a *quantum meruit* salvage contract for common safety, but the service was not finally succeed. The expenses incurred is neither suing and labouring expenses nor particular charges, as it was for common safety; not general average, as no properties saved to contribute; also not salvage charges, as it is not a kind of salvage under maritime law. Namely that, under the 1906 M.I.A., no remedy or indemnity on said expenses incurred.

1.6.4 Summary

The diagram 6 below showing the statutory application of various salvages under the 1906 M.I.A. However, it has to note that the situations under the present Institute Clauses are partly different from the diagram 6 as showed, which will be discussed in the next chapter.

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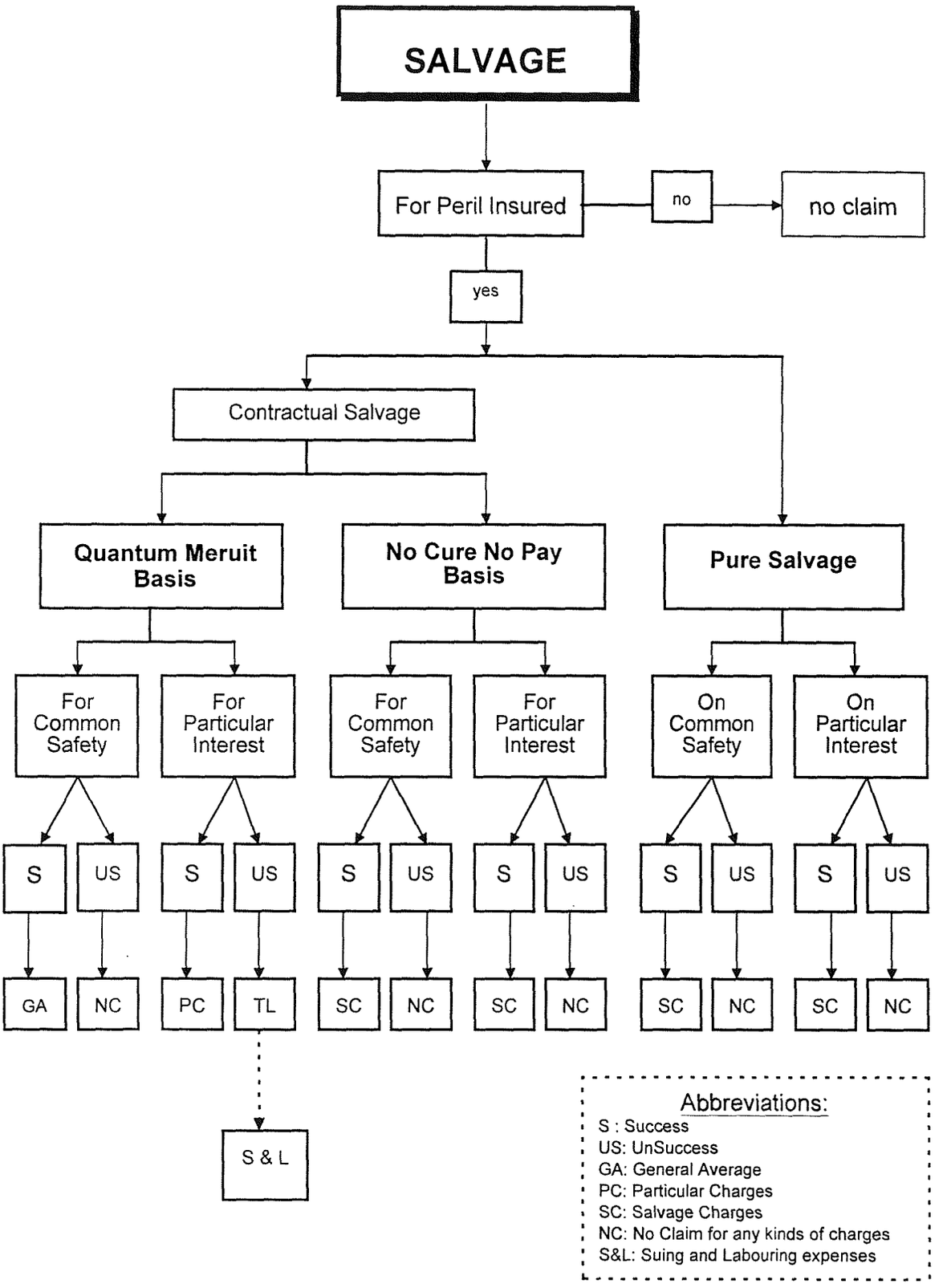
[215] *Australian Coastal Shipping Commission v. Green and Others* (1971) 1 QB 456 at p. 484.

[216] See Diagram 2.

Diagram 6.

Statutory Application of Various Salvages under the 1906 M.I.A.



CHAPTER 2

Chapter 2

The Practical Application of Salvage on Marine Insurance

2.1 Introduction

The Marine Insurance Act 1906, as a codifying act, gives a less compulsory application on the contract of marine insurance either generally used or particularly agreed by the contracting parties.[1] The circumstances of marine insurance in this century are more complex and technological than before. However, it is interested to note that, in comparison with the large number of cases reported before 1906, very few cases were submitted in courts in this century relating to the salvage charges, suing and labouring expenses and particular charges. It is suggested that the most related disputes might have already settled before and in the 1906 M.I.A. But another reason, I think, was the occasional amendment of the Institute Clauses world-wide used and the periodical revision of the York-Antwerp Rules.

The General Average Clause, or early Foreign General Average Clause erects the practical application of the York-Antwerp Rules in marine insurance/policies. The words "Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in General Average..." introduced in the 1974 York-Antwerp Rules - Rule VI give a different application on various salvage under the Marine Insurance Act 1906. This chapter, follows the lines drew in the previous chapter, will discuss the development in practice and the application of the related Institute clauses and the related rules of the York-Antwerp Rules.

2.2 The York-Antwerp Rules

In 1974, the York-Antwerp Rules introduced a whole new Rule VI - Salvage Remuneration :

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[1] It appears at least 38 times of "unless the policy otherwise provided", "subject to any express provision in the policy" or similar presentation in Marine Insurance Act 1906.

Expenditure incurred by the parties to the adventure on account of salvage, *whether under contract or otherwise*, shall be allowed in general average to the extent that salvage operations were undertaken for the purpose of preserving from peril the property involved in the common maritime adventure.

Apparently, in case of the 1974 York-Antwerp Rules is applied and the requirements of said Rule VI are also met, any kinds of salvage, either pure salvage (or "maritime salvage" in the 1906 M.I.A. section 65.1) or contractual salvage (or "in the nature of salvage" in the 1906 M.I.A. section 65.2) either under "no cure no pay" basis or "*quantum meruit*" basis, would all be allowable as general average. However, as we may see in Diagram 6, the statutory application of various salvages under the 1906 Marine Insurance Act are strictly divided into three kinds of charges. They are salvage charges, general average and particular charges.

2.2.1 Practical Approach and Development in U.K.

Mr. Lowndes in his earlier book wrote that "As jettison is regarded as the type or simplest form of a general average sacrifice, so salvage, it has been said, may be regarded as the type of a general average expenditure"[2]. However, the Courts in *Anderson v. Ocean Steamship Co.* and also in *The Raisby* cases, held that the defendants (the shipowners) were not primarily liable to pay salvage in respect of cargo; that they had not bound themselves by agreement to do so; and that it was not their duty to obtain a bond from the cargo owners for the proportion of any salvage which might be due.[3] In other words, the property salved is alone chargeable and that for this reason each interest incurs a separate liability on its own account. These cases has been a tendency in English jurisprudence to emphasize some elements which distinguish salvage from general average. From then on until about 1927, British adjusters treated salvage awards quite separately and distinctly from general average.[4]

The 1924 York-Antwerp Rules introduced an allowance of 2% commission and 5% interest on disbursements. For reason of uniformity, a new Rule of Practice - Rule No. 44(a) of Association of Average Adjusters (A.A.A.) was

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[2] Lowndes, *General Average*, 3rd ed. 1878, at p. 68.

[3] *Anderson v. Ocean Steamship Co.* (1885) 5 Asp. M.L.C. 401; The *Raisby* (1885) 10 P. D. 114.

[4] Lowndes and Rudolf, *The Law of General Average and The York-Antwerp Rules*, 12th ed. 1997, at para 6.9.

accepted in 1926 which was slightly amended in 1927 that:

> Commission on Advances and Interest Under York/Antwerp Rules, 1924
>
> That in the application of Rules XXI and XXII of York-Antwerp Rules, 1924, no distinction shall be drawn in practice between general average expenses and expenses for salvage services rendered by or accepted under agreement provided that such expenses were incurred for the common safety within the meaning of Rule A.

In the A.A.A. General Meeting 1927, the chairman - Mr. A. H. Watts, in his Minority Report admitted that "whilst it is true the wording of Rule A of the York-Antwerp Rules, 1924, would cover expenses for salvage services rendered by or accepted under agreement, such expenses differ materially from General Average, being awarded on a *quantum meruit* basis and on values existing at the termination of the salvage services, irrespective of what may happen subsequently....the Rule cannot be defended legally, but I hope the interested parties will continue to accept it on grounds of *equity*".[5]

On May of 1939, a Special Committee was appointed by the Committee of Management of A.A.A. to re-consider the desirability of retaining Rule of Practice No. 44(a). On 1942, the said Special Committee was reconstituted while A.A.A. received a letter from the Institute of London Underwriters for consulting an award case given by Mr. A. T. Miller. Mr. Miller gave affirmative answers on the following two special questions and also opined that the legal validity of Rule 44(a) might be open to some doubt:[6]

(1) Does the payment of a salvage award under a Lloyd's Form of Salvage Agreement fall under the heading of salvage charges as defined in section 65 of the Marine Insurance Act 1906 ?

(2) If so, should the payment in the present case be borne entirely by the ship, or be apportioned between the ship and the freight at risk in accordance with their respective values ?

In order to avail A.A.A. or the Committee themselves of the authority given to them to take legal advice, the Committee decided to submit the whole case to a Counsel - Mr. A.J. Hodgson. The Counsel gave some viewpoints wholly differed

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[5] Mr. N.G. Hudson, *Proposal For The Revision Of The York-Antwerp Rules* , Report of The General Meeting of A.A.A. -1973, at p. 29.

[6] Supra, at pp. 24-26.

from Mr. A.T. Miller's that :

a. both liability and assessment of amount arise under the contract (Lloyd's Open Form) and not independently of maritime law. It is therefore that the payment of an award for salvage services rendered under Lloyd's Open Form (or Admiralty Form D or any parole contract) is the charges recoverable under section 65(2) either as Particular Charges or as General Average, but not Salvage Charges as defined in section 65(1);
b. the fact that liability as between salvors and interests is several, and "not the one for the other", does not prevent the sacrifice being made for the common safety and preservation.
c. there is no reason why, once Rule "A" is satisfied, Rule "B" should not be applied as between the interests salved to adjust contributions and liabilities inter se.
d. it is therefore that Rule of Practice of A.A.A. No. 44(a) is in accordance with the law and further said that "I do not quite understand why it should be limited in terms to Rules XXI and XXII". [7]

The majority of the Members of the A.A.A. in the 1942 General Meeting agreed with the Counsel's opinions and therefore two Motions were passed:

(a) That Rule of Practice 44(a) be rescinded; and
(b) the following Rules of Practice be adopted:

Salvage Services Rendered Under An Agreement[8]

Expenses for salvage services rendered by or accepted under Agreement shall in practice be treated as General Average, provided that such expenses were incurred for the common safety within the meaning of Rule "A" of York-Antwerp Rules, 1924.

As discussed in paragraph 1.2.1, I had some viewpoints different from Mr. Hodgson's opinions. I do not want to say that Mr. Hodgson did merely try to define with more certain legal validity on Rule No 44(a) of Rules of Practice of A.A.A., as his opinions actually remain a lot of questions unascertained, either in

[7] Supra, at pp. 32-35.

[8] This Rule amended in 1950 to comply with 1950 York-Antwerp Rules and is now numbered C1 of the present Rules of Practice.

law or in practice. This might be the reason why the words "in practice" were inserted in the new adopted Rule No. 44(a) of Rules of Practice of A.A.A. in 1942.

It is suggested that "British Rules of Practice are not mandatory or binding on members, and it was always open for any adjuster to depart from the provisions of the Rule in appropriate circumstances."[9] In other words, the said Rule 44(a) of Rules of Practice of A.A.A introduced in 1942 basically resulted in no substantial legal effects on the law of marine insurance, unless the insurance parties expressly agree to apply the said Rules of Practice of A.A.A. or similar rules in the policy.

Seemingly, the only divergence between section 65 of the Marine Insurance Act 1906 and the said new Rule No. 44(a) of Rules of Practice of A.A.A. is the kind of "contractual salvage under no cure no pay basis". Rule No. 44(a) of Rules of Practice of A.A.A. provides no differences with the 1906 M.I.A. on the "pure salvage" or contractual salvage under *quantum meruit* basis. However, the new Rule No. 44(a) of Rules of Practice of A.A.A. arose a simple but important question that, for example, if Lloyd's Open Form was signed for and on behalf of a particular interest (i.e. the said Rule No. 44(a) was not applied as the service rendered was not for common safety), what kind of charges are recoverable for the payment of the award? salvage charges under section 65(1) or particular charges under section 65(2)?

In accordance with Mr. A.J. Hodgson's opinion, any kinds of contractual salvage are not the subject of section 65(1) of the 1906 M.I.A.. Namely that, the assured in such case could only claim the item of "particular charges" but not "salvage charges". To submit a "particular charges" claim may be difficult, as the legal status of "particular charges" is still not so clear in this country. The circumstance may become more difficult if the Arnould's opinion that "the terms particular charges and suing and labouring expenses are both used to refer to expenses recoverable under the suing and labouring clause" is correct. In accordance with the above Arnould's opinion, it may result in a very unreasonable circumstance that "if the service was engaged for common safety, the recoverable general average shall not exceed 100% of insured or insurable value (general average claim under section 65.2 of the 1906 M.I.A.); but if the service was engaged for particular interest, the amount recoverable may exceed 100% of insured or insurable value (suing and labouring expenses claim under section 78 of the 1906 M.I.A.)". In this situation, I think that the parties of the

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[9] Lowndes and Rudolf, *The law of General Average and The York-Antwerp Rules*, 12th ed.,1997 at para 6.10.

contract of affreightment may prefer to limit or even exclude the application of the said particular Rule 44(a), as it will be more easier and generous to claim "suing and labouring expenses" from their insurers instead of not waiting for the complex adjustment to be made.

On the other hand, while the Rule 44(a) of Rules of Practice of A.A.A. is not applied (e.g. due to not for common safety), the 1906 Marine Insurance Act shall then be resumed in applied. If we assume it (i.e. no cure no pay contract salvage) is salvage charges under section 65(1) of the 1906 M.I.A. It may result in a self-contradictory situation that, if it was engaged for particular interest, it was "pure salvage" independent of contract, but if it was engaged for common safety, it was general average "in the nature of salvage". Again, if we assume it is "particular charges", the difficult situation will also exist as discussed in the last paragraph.

For short, the said Rule No. 44(2) (or the Rule No. C1 of present Rules of Practice of A.A.A.) is contrary to the law of this country and it was established purely for two practical reasons : simplification and uniformity.

2.2.2 The York-Antwerp Rules 1974 - New Rule VI - salvage remuneration

The Rules of Practice of A.A.A., as a soft rule do not compulsorily bind the A.A.A. members and the interested parties in general average and salvage cases, and in no way changed the principle of English marine insurance law on salvage and actually there remained certain cases under LOF salvage contract dealt with as particular average. In short, Rule No. 44(2) of the Rules of Practice of A.A.A. in no way changed the principle of English law on salvage remuneration. It was therefore considered that a more powerful instrument should be relied on through a voluntary agreement - that was the York-Antwerp Rules which were frequently incorporated in contracts of affreightment as well as in policies of marine insurance.

On 1970, a questionnaire was distributed to the member Association of C.M.I. One of the questions [Question (a) of The Lettered Rules No. 7] dealt with salvage remuneration:

> The basis of adjustment of salvage remuneration sometimes gives rise to controversies; indeed in some instances, when the arbitration mention in their awards the contributions to be borne by the ship and by the cargo respectively, they calculate these contributions on the basis of values which may differ from the

contributory values calculated in accordance with the provisions of the York-Antwerp Rules. Is it desirable to meet this situation in one of the Rules, or in a Rule that would specially deal with that subject?[10]

On 1971, the British Maritime Law Association, in replying to the questionnaire, suggested that the clause (same wording as Rule No. C.1 of Rules of Practice of A.A.A.) should merely form the basis of discussion on the suggested new Rule VI for "salvage remuneration". On the report of the CMI Sub-Committee in December 1971, the Chairman said that

"Salvage Remuneration

Although some national associations said they had not encountered the problem in their own country, they were aware that in other countries difficulties sometimes arose because salvage awards were sometimes computed on a different basis from the contributory values for the purpose of general average. Several associations therefore suggested the following clause for inclusion as a numbered Rule....."[11]

On June 1972, the Sub-Committee of C.M.I. submitted the original draft, named "June Draft" or "Proposed Draft Amendments to the York-Antwerp Rules 1950", which basically followed the proposal submitted by A.I.D.E. (Association International Des Dispacheurs Europeens)[12]:

The *Aggregate of the liabilities* incurred by the parties to the adventure *on account of* salvage, whether *under maritime law* or under contract, shall be allowed in General Average to the extent that the salvage operations were undertaken for the purpose of preserving from the property involved in the common maritime adventure.[13]

During the debate at the Hamburg Conference 1974, objections were taken to the words of "the aggregate of the liabilities" and "under maritime law". For the former, it was thought that these words might have something to do with the liabilities of the salvor. The British delegation proposed that those words be replaced by the single word "expenditure", which was accepted by the majority of delegates. However, Mr. N. Geoffrey Hudson said that

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[10] C.M.I. 1970, Documentation IV, at p. 90.

[11] C.M.I. 1971, Documentation IV, at p. 288.

[12] A.I.D.E. 6th General Assembly 1971 at p. 195.

[13] C.M.I. Documentation 1973 I at p.28.

> No change in the meaning was intended by the substitution of the word 'expenditure' for 'the aggregate of the liabilities'; it being understood by all the delegates that if you add up all the expenditure incurred by all parties to the adventure, you will arrive at the aggregate amount."[14]

For the latter, as there was no equivalent in French jurisprudence for the expression "maritime law", whilst the word *loi* (law) on its own offended those who favoured accurate translation. There was no problem in comprehending the English words "salvage under contract" of any classification or "services in the nature of salvage".[15]

The most important change to the York-Antwerp Rules 1974 - Rule VI is the added words "or otherwise", which deviates extremely from the statutory understanding on section 65 of the 1906 Marine Insurance Act and the general ingredients of the defined general average act. These words comprise all those awards of salvage made under *maritime law* where no contracts have been entered into with salvor.[16] Pure salvage, not only in the U.K. but also U.S.A. and some other countries, not being in any position to make an "intentional" sacrifice or expenditure in accordance with the York-Antwerp Rules - Rule A.

Another important change to the 1974 York-Antwerp Rules - Rule VI, which this change also differs from Rule No. C1 of Rules of Practice of A.A.A., is the prerequisite of the expenditure incurred for allowing general average. As we may see the words "within the meaning of Rule A" in Rule No. C1 of Rules of Practice of A.A.A. were disappeared in Rule VI of the York-Antwerp Rules 1974. In other words, in case it was a salvage (of any kinds) and the salvage operations were also carried out for common adventure, the expenditure incurred might well be allowed as general average. It is not necessary to further consider whether the salvage operation and expenditure were incurred intentionally or not.

The inclusion of Rule VI of the York-Antwerp Rules in 1974, as opined by Mr. N.G. Hudson, was basically intended to bring the practice in the U.K. into line with that obtaining in all other marine countries.[17] However, the York-Antwerp Rules 1974 Rule VI seems to have been deviated too far from its initial

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[14] N. Geoffrey Hudson, *A Matter of Differentials,* A.A.A. of The United States, Bulletin 1989 - No.5, at p19.

[15] Lowndes and Rudolf, ibid., at para 6.13.

[16] Supra, at para 6.14.

[17] N. Geoffrey Hudson, *Proposal For The Revision Of The York-Antwerp Rules* , Report of The General Meeting of A.A.A. -1973, at p 28.

intention.

2.2.3 Rule VI of The York-Antwerp Rules 1974 as amended 1990 and The York-Antwerp Rules 1994

Rule VI of the York-Antwerp Rules 1974 was amended at the 1990 C.M.I. International Conference in Paris which considered the following Attachment of the International Convention on Salvage, 1989.

Resolution Requesting Amendment of York-Antwerp Rules, 1974

> The International Conference on Salvage, 1989, having adopted the [Convention], considering that payments made under article 14 are not intended to be allowed in general average, requests the Secretary-General (of the I.M.O.) to take 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.

On January 1990, International Sub-Committee was held in Paris and the following principles were agreed:

a. That for the sake of clarity and the avoidance of doubt Rule VI of York-Antwerp Rules, 1974 should be amended to make it clear that Article 14 Compensation should not be included in General Average.
b. It was appropriate also to amend Rule VI to make it clear that salvage rewards payable under Article 13 were to be allowable in General Average.

A draft was prepared for consideration by the C.M.I. Conference in Paris in June 1990. The following text of the new Rule VI was finally adopted by the C.M.I. and the whole rules are now called "The York-Antwerp Rules 1974 as amended 1990":

Rule VI - Salvage

(a) Expenditure incurred by the parties to the adventure *in the nature of* salvage, whether under contract or otherwise, shall be allowed in general average *provided that* the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure.

Expenditure allowed in general average shall include any salvage remuneration in

which the skill and efforts of the salvors in preventing or minimizing damage to the environment such as is referred to in Art. 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

(b) *Special compensation payable to a salvor by the shipowner under Art. 14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance shall not be allowed in general average.*

It is interested to note that, though the C.M.I. 1990 adopted the amended Rule VI accordingly, they also made the following remarks[18]:

1. The text represents a departure from the traditional basis of General Average, namely the principle of preserving from peril property involved in the common maritime adventure since the text by its reference to Article 13 and 14 introduced a new principle of policy namely the allowance in General Average of expenditure earned under Article 13 1(b) namely expenditure incurred as a result of the efforts of the salvor in preventing or minimising damage to the environment.

2. The text of the amendment to Rule VI departed from traditional drafting principles by making special reference to the Articles of a Convention. It was thought inappropriate to try to express the meaning and intent of Article 13 and 14 in other words. This same approach has now been adopted in L.O.F. 1990 which has been published since the conference.

3. It was agreed that any amendment to Rule VI should be given prompt effect, specially since Articles 13 and 14 of the Salvage Convention were already, even before ratification of the Convention, being given effect to by reason of those Articles being incorporated into current Salvage contracts. Accordingly the Sub-Committee recommended a draft Resolution to the Conference, which was adopted together with the text of Rule VI by 34 votes in favor, none against and three abstentions.

We know that Article 13.1(b) of the 1989 Salvage Convention rules that the salvor's skill and efforts in preventing or minimizing damage to the environment

[18] C.M.I. 1990 Documentation II, at pp.182-183.

is one of the criteria to be considered in arriving at a property salvage award shared by the properties salved subject to their salved values. The increased award for that purpose is called "enhanced award", which is different from the new scheme of "special compensation" to be paid by the shipowner alone introduced in Article 14 of the 1989 Salvage Convention. The "enhanced award" and "special compensation" are the quite important changes on traditional salvage law, which will be discussed in detail in the next chapter. In this chapter, I will only deal with the changes on Rule VI of the York-Antwerp Rules 1974 as amended 1990.

The resolution on the *attachment* of the 1989 Salvage Convention to amend the York-Antwerp Rules to disallow "special compensation" from general average was achieved in Rule VI paragraph (b).

The resolution did not mention any amendatory require on the Article 13.1(b) "enhanced award". However, the C.M.I. Paris Conference in 1990, as stated, considered Rule VI of the 1974 York-Antwerp Rules should also be revised to affirm allowance of Article 13 enhanced awards, because the motive of protecting the environment is foreign to traditional definitions of general average, which limit concern to the property involved in the common maritime adventure.[19] The affirmatory intention was achieved by three ways:

a. adopt the words "in the nature of salvage" instead of "on account of salvage" to give more soft but wide application on salvage;
b. adopt the words "provided that" instead of "to the extent that";
c. extend a whole new paragraph to affirm allowance of Article 13.1(b) of the 1989 Salvage Convention.

The intention to use the words "provided that" seems to be try to open a backdoor for allowing the environmental enhanced reward of Article 13.1(b) of the 1989 Salvage Convention in general average. But the effect of using the words "provided that" may be that the applicable extent of Rule VI of the York-Antwerp Rules may be widely expanded. The words "to the extent that" used in the previous 1974 version, as opined in the Lowndes & Rudolf earlier edition, serves as a restraining influence on the automatic changing to general average of all or any expense which may be put forward or masquerade as "salvage".[20] The words "to the extent that", represent as the limits of application, mean that

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[19] C. S. Hebditch, Address by the Chairman, Association of Average Adjuster of United States, 1990 at p.50.

[20] Lowndes and Rudolf., 11th ed., 1990, at para. 6.20.

the expenditure which allowable as general average under Rule VI of the York-Antwerp Rules is the expenditure only and directly incurred for the common adventure in the salvage operation. The prerequisite (salvage operation should be carried out for common adventure) is the same either uses the words "to the extent that" or uses the words "provided that", but the effect may be different. It may be argued but suggested that the words "provided that" as a condition, once the condition or prerequisite (salvage operation(s) for common adventure) was satisfied, the expenditure sequentially incurred, whether directly for common adventure or not, seems to be not absolutely related. All the expenditure incurred in salvage operation(s), except for special compensation, should be put altogether in the general average "melting pot" for adjustment. More difficulties may arise in complex salvage operations. If the above suggestion is correct, then the principle of equity in general average was sacrificed again, as not all salvage operations, and in fact it is sometimes not easy to distinguish, are for common safety. But if the suggestion is not correct, then the counsel and adjuster should also have to separate every stage of the salvage operations to distinguish which operation(s) was or were for particular interest and which was or were for common safety. For the latter case, I do not think the purpose of simplification is achieved. In Lowndes and Rudolf 's recent edition, the words "provided that" are interpreted of indicating that "a salvage operation must be judged as a whole, according to its primary purpose, in determining whether it was carried out for the purpose of preserving from peril the property involved in the common adventure."[21] However, by the replacement of *undertaken* by *carried out*, the effect of using the words "provided that" is alleviated and limited. Lowndes and Rudolf book opines that the replacement of "undertaken" by "carried out" that this change makes it clear that the purpose of the operations should not merely be judged when they were first embarked upon, but kept under review as they proceed.[22]

We may say that the principle of community of interest, which lie at the root of general average, was sacrificed again under the tendency of simplification in general average. The 1993 A.I.D.E. report mentioned that "this element may well be regarded as polluting the ideological purity of general average.....It was said that this was ugly from the point of view of legislative style"[23].

During the C.M.I. Conference Sydney 1994, considerable debates on the

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[21] Lowndes and Rudolf., 12th ed., 1997, at para. 6.25.

[22] Supra at para. 6.25.

[23] The A.I.D.E. report, *Review of the Law of General Average and Revision of the York-Antwerp Rules,* 1993, at p. 35.

problems arose from "differential salvage awards" at the meeting of the International Sub-Committee (ISC), but finally ISC recommended that no change be made. The existing Rule VI of 1974 as amended 1990 was adopted without debate at the Plenary Session.[24]

2.2.4 The Applicable Scope of the Rule VI

From the text of the York-Antwerp Rules 1994, the numbered Rule VI only deals with the "expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in General Average..". In accordance with the Rule of Interpretation, Rule VI prevails over the lettered Rules but can be overcome by Rule Paramount. Namely that, said expenditure of salvage remuneration may not be incurred *intentionally* but shall be *reasonably*.

There are two application questions: 1) in what situation the lettered Rules shall be applied ? and 2) which is given priority in case Rule VI is inconsistent or in conflict with other numbered Rules ?

Before discussing the first question, we may presume an example. In accordance with Article 3 of Lloyd's Open Form, the contractor (salvor) may make reasonable use of the vessel's machinery gear equipment...and other appurtenances during and for the purpose of the salvage services free of expense but shall not unnecessarily damage abandon or sacrifice the same or any property the subject of this agreement. We presume the vessel's machinery was reasonably used by the salvor and was also damaged necessarily. Could said machinery damage be allowed in general average? Said damage (i.e. salvee's damage, not salvor's damage) is not one of the criteria in fixing the salvage reward in accordance with Article 13.1 of the 1989 Salvage Convention. It could not be treated as the mentioned "expenditure" in Rule VI of the York-Antwerp Rules. But could it be another kind of general average sacrifice?

Whether a kind of damage can be treated as a general average sacrifice or not shall be subject to the strict prerequisite that it is an act subsequent of general average as defined on Rule A of the York-Antwerp Rules. Reviewing the background of introducing the Rule VI in the York-Antwerp Rules and Rule No. C1 in Rules of Practice of A.A.A., we can not find any intention to expressly affirm that a) the conduct of the master to conclude a salvage contract may be

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[24] Charles S. Hebditch and John Macdonald, *York-Antwerp Rules 1994 - An Analysis*, Richards Hogg Limited, 1994, at p. 20.

deemed a general average act defined; or 2) salvage operation rendered by a voluntary salvor is also accepted as a kind of general average act. Whether the master concludes a salvage contract with a salvor may be deemed is a general average act or not is still in dispute. Could we, by reference to the said issue which is still in dispute, further consider that said damage done by the salvor is a subsequent of the general average act?

The text of Rule VI, under the heading of "salvage remuneration", is so plain and simple. Irrespective of it may deviate from the English general average law, it only covers a kind of general average loss. That is expenditure incurred by the parties to the adventure in the nature of salvage. It is difficult and may be dangerous to interpret Rule VI of the York-Antwerp Rules beyond its plain text. In other words, any kind of general average loss, other than the expenditure incurred in salvage which Rule VI of the York-Antwerp Rules so provided, shall be subject to the other rules of the York-Antwerp Rules.

The machinery damage in that example, if incurred reasonably and necessarily, may be grudgingly said that, it is a general average sacrifice as the salvor was performing a contractual salvage concluded by the vessel master. But if the damage was done by a voluntary salvor (pure salvage), it will be difficult to say that it is a general average sacrifice, as it is not the direct consequence of the general average act under Rule A (see also Rule C) of the York-Antwerp Rules, even though it may be argued that it is a loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety (see Rule II or Rule VII).

For the second question (numbered rule against numbered rule), it is difficult to find any existing cases or published works dealing with this issue. Theoretically, there are four circumstances:

a. one numbered rule expressly allows, but another rule expressly does not allow.
b. one numbered rule expressly allows, but another rule impliedly does not allow.
c. one numbered rule impliedly allows, but another rule impliedly does not allow.
d. one numbered rule expressly does not allow, but another rule impliedly allows.

The general interpretation rules are: express prevails over implied; negative prevails over affirmative. It is therefore that situation a. c. & d. will be disallowed; but situation b. may be allowed in general average.

The situation may incur to the salvage case which the York-Antwerp Rules - Rule VI is applied. For example, Rule XVIII of the York-Antwerp Rules states that the value of the ship shall be assessed without taking into account the

beneficial or detrimental effect of any demise or time charter party to which the ship may be committed, which is so called "without charter" value. However, such effect mentioned in Rule XVIII is used to assess as the salved value of the ship (i.e. the "with charter" value). It will result in a conflict between Rule VI and Rule XVIII in relation to the expenditure incurred in salvage which may be allowed in general average. In this instance, the adjusters not only have to treat said expenditure as a global salvage award and apportioning them pro rata over the contributory at destination, but also have to re-assess the salvage remuneration for Rule XVIII purpose. Rule XIII of the York-Antwerp Rules for assessing the ship damage repair cost allowable in general average is another example. The rule of no deduction for "new for old" for below 15 years old mentioned in Rule XIII will not be of course followed by the maritime lawyer in assessing the damaged ship salved value.

2.2.5 Criticisms on Rule VI

2.2.5.1 Applicability of the Rule VI on General Average and Salvage

The system of general average and salvage both originated from ancient maritime law. They exist not only independently of marine insurance but also independently of each other. Whereas general average law rules over the interior relationship among the interested parties in the common maritime adventure, salvage law rules over the particular relationship between each individual property saved and the salvor(s).

Traditionally, English jurisprudence emphasizes the following elements which distinguish salvage from general average:

Firstly, in English law, only "volunteers" are entitled to reward from the salved property by reason of their voluntary efforts; but in general average it is the duty if those on board the ship to exert themselves for the safety of the ship and cargo.

Secondly, whereas in a salvage case, the salvor's maritime lien attaches at the time and place where the salvage services terminate; in general average, the shipowners' right of lien or right to demand security does not attach until the ship arrives at her contemplated destination.

Thirdly, in salvage case, the salvor's remuneration, unless amicably agreed or settled by arbitration, has to be determinated by proceedings in a court exercising Admiralty jurisdiction. But in general average, the duty of the

shipowner to proceed adjustment of the general average usually discharged by appointing an average adjuster to prepare the general average statement. If one of the parties does disagree, his objection may be settled by negotiation or reference to arbitration or re-adjustment, or commence proceedings in the High Court, which may be expected to be placed on the Commercial list.[25]

Bearing in mind that, if the parties in general average are the same parties of the owner of the properties salved in salvage, there are no reasons that the said parties could not, subject to any express agreement, mutually treat salvage award/remuneration as a kind of general average. However, any intentions to include salvage remuneration in general average shall be always subject to a strict prerequisite that this inclusion in any event can not cause any reduction on salvor's right under maritime law. It is another question whether the such inclusion may also result in any effect on the parties' respective insurance. Subject to this prerequisite, the law seems do not disallow the salved properties/parties concerned to achieve a voluntary arrangement to re-deploy their responsibility. For example, the law does not disallow the shipowner could not involve the risk for providing security for cargo's separate liability for salvage, if the shipowner would like to and has expressly agreed to do so; and the security provided by shipowner if accepted by the salvor, will not result in any deduction on salvor's right to claim salvage remuneration and exercise his lien. But two very important questions shall be resolved here that, merely incorporates the York-Antwerp Rules 1974/1990 or 1994 in the contract of carriage, 1) shall the shipowner be deemed as having agreed to accept said risk for others in the common adventure ? and 2) shall the providing of said security by shipowner be deemed as a general average act and therefore binding others in the common adventure? The answers to all questions is negative.

The York-Antwerp Rules do not represent all the law of general average. The engagement of the York-Antwerp Rules merely means the contracting parties agree to follow the principle either the basis and method of contribution or the definition of general average act provided in the York-Antwerp Rules. Shipowner or the master concluded a salvage contract for and on behalf of other parties concerned may be interpreted as a general average act in case of the Rule VI of the York-Antwerp Rules is applied. But we can certainly affirm that the providing of security and its sequential problems are outside the scope of the York-Antwerp Rules in apply.

The situation is more critical while the kind of pure salvage was embraced in

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[25] N. Geoffrey Hudson, *A Matter of Differentials*, Association of Average Adjusters of the United States, Bulletin Spring 1989 No. 5 at pp. 13-14.

Rule VI of the York-Antwerp Rules in 1974, as pure salvage however is not *intentionally* made by the property in the common maritime adventure concerned. But why the parties concerned could not contractually and specially treat the expenditure incurred in pure salvage as a particular kind of general average loss subject to the Rule of Interpretation? In general, this engagement does not cause any effects on salvage and general average laws outside the scope of the York-Antwerp Rules (if applied). It is another question whether the said engagement may cause any effects on marine insurance, since general average is existed independently of marine insurance, unless said engagement was expressly covered by the insurance policy.

It is another issue that the avoidance of pollution or environmental damage, however laudably, is not in itself an objective which gives rise to a claim in general average, and it follows that in principle the costs of avoidance measures are not as such allowable in English law, even if they are carried out as part of an operation performed for the common safety; they are only allowable if they are *a necessary part, or a direct consequence*, of such an operation.[26] But the salvage award increased as a result of the salvors' skill and efforts in preventing or minimising pollution not in any event are a necessary part or a direct consequence of such an operation.

2.2.5.2 Applicability on the 1906 M.I.A.

It may be said that Rule VI of the York-Antwerp Rules(1974, as amended 1990 or 1994) may disorder or deviate, but could not say it legally violates, the original deploy of section 65 of the 1906 Marine Insurance Act. The beginning words "Subject to any express provision in the policy" in section 65(1) of the 1906 M.I.A. basically allow the insurance parties may *expressly* conclude any terms and conditions in the policy which may differ from the said provision. The said "any express provisions" of course may include the contracting parties, by incorporating the York-Antwerp Rules in the policy, agree to treat "salvage under maritime law" as general average.

The York-Antwerp Rules may arise two applicable questions to the 1906 Marine Insurance Act: 1) if the York-Antwerp Rules is applied, does it effect any other provisions of the 1906 M.I.A. rather than section 65; and 2) if the York-Antwerp Rules is not applied, does it still change the original deploy of section 65 of the 1906 M.I.A. ?

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[26] Lowndes and Rudolf, ibid., at para. 11.37.

For first question, an example comes from section 76 of the 1906 M.I.A.. In accordance with section 76 of the 1906 M.I.A., general average loss cannot be added to a particular average loss to make up the specified percentage warranted free from particular average (section 76.3), but salvage charges should be added to make up the specified percentage, even though the insurer is nevertheless liable for salvage charges if the subject-matter is insured warranted free from particular average (section 76.2). It exists no difference in indemnifying the general average loss or salvage charges, but it is different in making up the specified percentage. In other words, in case salvage charges may be treated as general average, some marginal cases may will not reach the specified percentage.

For the second question, Rule VI of the York-Antwerp Rules 1974/1990/1994 positively rule over any kinds of salvage for preserving the common maritime adventure may be treated as general average. The question may arise in case the condition of "preserving the common maritime adventure" in Rule VI of the York-Antwerp Rules is not met ? Theoretically speaking, in that situation, the law of the 1906 Marine Insurance Act will then be resumed to apply, provided that there are no other special related agreement expressly in the policy.

2.2.5.3 Equity between parties to the common adventure

Most criticisms and debates on Rule VI of the York-Antwerp Rules focused on the Rule VI may result in unfair situation in some aspects between parties to the common adventure. For example differential salvage award, contribution value and different kind of danger.. etc..

(1) Differential Salvage Award

Differential salvage awards, shortly speaking, is where ship and cargo interests agree separate awards with salvors for differing percentages of their salved values.[27] A typical case is when the proportion of salvage remuneration to the salved property consequently differs because the ship and cargo interests have either settled separately, or on interest has reached a settlement and the other seeks arbitration. In such situation and when the total amount of salvage remuneration is recast, the efforts of the interests who sought arbitration and

[27] Charles S. Hebditch and John Macdonald, ibid., at p. 20.

obtained a low salvage award will have been in vain, and if the separately settled salvage remuneration is higher that of the arbitration award, there may be dissatisfaction on the part of the other interests that they had made an easy compromise.[28] It is well accepted that there is an increasing tendency for the various interests to provide separate security to salvors and to have separate legal representation at the salvage arbitration.

In 1983, the Advisory Committee of the Association of Average Adjusters issued an opinion re-stating the differential expenditure on account of salvage should be allowed in general average but however in the end, the Committee declined to act feeling that "the solution lies, partly at least, in closer co-operation between salved interests in the negotiation of settlements with salvors and/or in decisions as to the lodging of appeals"[29]. However, the argument was not subsided until the C.M.I. Sydney Conference 1994, even in today.

Problems arose from differential salvage awards were the most important debate on Rule VI on C.M.I. Sydney Conference 1994. Some delegations put forward a proposal to exclude such differential salvage awards from this Rule, but defeated.[30] They considered the differing salvage awards should be excluded from general average and allowed to lie just where they fall; i.e. they will be apportioned over the salved values at the place at which the salvage services terminated and be treated as a special or particular charge on the individual properties saved to which they relate.[31]

The debate also came from the adjusters themselves. Mr. Geoffrey Hudson, in his address on Association of Average Adjusters of the United Stated, said "it may be convenient in practice to treat salvage as general average when ship and cargo interests pay their due proportion of the same salvage award, but I do consider it quite ludicrous when those parties cast aside their community of interest and settle separately".[32]

(2) Contribution value and salved value

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[28] Masakazu Nakanishi, *Rule VI of the York-Antwerp Rules 1974 - The exclusion of salvage remuneration from general average*, the 36th General Meeting of the Association of Average Adjusters of Japan, 1993.

[29] Advisory Committee of Association of Average Adjuster - Opinion No. 40 dated 1/July 1983.

[30] Charles S. Hebditch and John Macdonald, ibid., at p. 20.

[31] N. Geoffrey Hudson, *A Matter of Differentials*, Association of Average Adjusters of the United States, Bulletin Spring 1989 No. 5 at p. 24.

[32] Supra, at p. 25.

Whereas the salvage award is assessed based on the values of the property at the time and place where the salvage services is end, the general average contribution value is subject to at destination (Rule G of the York-Antwerp Rules). The salved values at salvage terminate may be materially different from the general average contribution values at destination. For example, fluctuations (sudden rise or fall) in the market values of the ship and cargo, or by reason of subsequent damage to any of the property between the port where the salvage services terminate and the destination.[33]

Interpretively says, Rule VI, as a numbered rule describing the expenditure incurred (assessing based on salved value at the end of salvage) in salvage shall be allowed in general average, which shall prevail over the lettered Rule G (based on the values at the adventure end). Namely that, in accordance with the plain text of Rule VI, the expenditure mentioned in the Rule VI is the salvage remuneration assessed based on the salved value at the salvage end but not adventure end. Any fluctuations or subsequent damage arose between the port where the salvage services terminate and the destination is another question beyond Rule VI of the York-Antwerp Rules.

The adjusting practice mentioned in Lowndes and Rudolf book that "there is much to be said in favour of treating a global salvage award and all associated legal costs as general average, and apportioning them pro rata over the general average contributory values at destination"[34] seems not really simplify the adjustment procedure under the present York-Antwerp Rules 1994.

A sudden rise or fall in the value of one part of the property between the date/place of salvage services terminate and at the final destination will not only endanger the equity between the parties in the common adventure, but also affect the insurance behind those parties if they were insured.

(3) Different kinds of danger

The 1910 or 1989 Salvage Convention express some criteria to assess the salvage reward, e.g. the nature of the danger, the efforts and the risk.. etc. The proportion of the salvage award to the salved property may differ because the ship and cargo have been exposed to different kinds of danger and not just a difference in the degree of danger.

Salvage arbitrator may give separate lump-sum awards on ship and cargo salved but always not detach the differential risks/danger among salved parties

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[33] Lowndes and Rudolf, ibid., at para 6.08.

[34] Lowndes and Rudolf, ibid., at para 6.07.

and their respective award amount. They are all the "expenditure" incurred under Rule VI of the York-Antwerp Rules, but may be incurred not for the common maritime adventure.

2.2.6 Other Rules may relate to the 1989 Salvage Convention

Since the International Convention on Salvage 1989 was enacted and the Rule VI of York-Antwerp Rules was introduced in 1990, it naturally arose some discussions relating to the environmental damage. E.g. the costs connected with measures, whether relate salvage operations or not, necessarily incurred or imposed by public authorities to avoid damage to the environment and the expenses or liabilities incurred in respect of damage to the environment as a consequence of a general average act. The concern specially came from the underwriter on ships and cargos, who asserted they should not be liable for pollution "through the back door" of General Average.[35]

In 1991, C.M.I. sent a questionnaire to its members Associations which listed the following categories of costs and liabilities which may have a direct connection with a general average act:[36]

The categories:

I Costs necessarily incurred or imposed by public authorities to avoid (liability for) damage to the environment, as a condition of a General Average Act,
e.g. - entering a port of refuge,
- continued stay at a port of refuge
- measure undertaken to refloat a grounded vessel
- extinguishing a fire on shipboard
- discharge of hazardous cargo at a port of refuge;

II. Liabilities or extra costs incurred by shipowners, charterers or cargo-interests as a consequence of a General Average act,
e.g. - jettison of hazardous cargo,
- discharge of hazardous cargo at a port of refuge
- direct damage to the environment (e.g. a coral reef) or escape of hazardous cargo or bunkers caused by a general average act (e.g. refloating operations, intentional grounding).

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[35] Charles S. Hebditch and John Macdonald, ibid., p. 11.

[36] CMI Questionnaire -July 1991 (CMI document GRNAV I).

The queries:

1) Would in your country the costs listed above under I be allowed in General Average? If not all, could you, please special which costs would and which not be so allowed?
2) Would in your country the costs and liabilities mentioned under II above be allowed in General Average? If not all, could you please specify which costs and liabilities would and which would not be so allowed?
3) Should costs, expenses or liabilities in respect of environmental damage be disallowed altogether in G.A.?
4) If disallowed from General Average would such costs and liabilities fall under the cover provided by any P&I Club, liability - or other insurance ? Please specify the insurance concerned.
5) Would you like to make any further comments regarding to connection which may exist between the consequences of environmental damage and General Average?

"Pollution compromise" is the major change in the York-Antwerp Rules emerging from the Sydney Conference 1994.[37] In the course of the discussion leading to the conference, a compromise was proposed that, while pollution liabilities resulting from General Average act should themselves be excluded from General Average, the costs incurred by the parties to the adventure to prevent or minimise such liability should, in certain circumstance, be allowable.[38] For former, a new paragraph was added to the lettered Rule C to provide general exclusion on pollution liabilities. For latter, a new numbered Rule XI(d) was created to include certain kinds of costs to be allowable in general average. Both amendments were mainly based on the suggestion proposed by the British Maritime Law Association.[39]

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[37] Charles S. Hebditch and John Macdonald, ibid., at p. 11.

[38] Supra, at p. 11.

[39] The proposals of BMLA are: (cited from The A.I.D.E. Report 1993 -Review of the Law of General Average and Revision of the York-Antwerp Rules, Appendix 6 - CMI Addendum and Questionnaire)

a) a new paragraph to be added to Rule C:

In no case shall there be any allowance in general average for expenses or liabilities incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in common maritime adventure.

2.2.6.1 Rule C - general exceptions on environmental damage

Rule C new second paragraph provides:

> In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.

The amendment originally proposed by the BMLA included a direct reference to "liability", but this was perceived by some delegates and observers as creating an apparent expansion in the area of non-environmental damages.[40] The word "liability" deleted and was instead of the words same as the first paragraph of Rule C i.e. "losses, damages or expenses". The disappearance of the word "liability" in any event do not reduce the common understanding that the words "losses, damages or expenses" were wide enough to comprehend all liabilities for environmental damage.[41] In other words, the exclusion extends not only to physical loss or damage to the environment and to clean-up costs, but also to liabilities incurred to third parties in respect of environmental damage.

Except for Rule VI - salvage remuneration, new Rule XI (d) is also an express exception to Rule C of the York-Antwerp Rules 1994 .

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b) a new Rule XI (d):

The cost of measures undertaking to prevent or minimise damage to the environment shall be allowed in general average when incurred:

(i) as part of an operation undertaken for the common safety which, if undertaken by a party outside the common maritime adventure, would have entitled such party to claim a salvage reward;

(ii) as a condition of entry into any port or place in the circumstances prescribed in Rule X(a);

(iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule XI(d), but when there is an actual escape or release of pollutant substance no part of the cost of the measures then undertaken to prevent or minimise pollution or environmental damage shall be charged to the general average.

[40] N. Geoffrey Hudson, ibid., at p. 54.

[41] An answer by Lord Donaldson of Lyminington in CMI Sydney Conference. See N. Geoffrey Hudson, ibid., p. 54.

2.2.6.2 Rule XI (d) - special treatment of environmental damage prevention measures

In accordance with the "pollution compromise" agreed at the Sydney Conference 1994, certain of the costs of avoidance measures are admittable as general average. Lowndes and Rudolf book say "Rule XI(d) was selected as the vehicle for the provisions which allow the costs of these avoidance measures".[42] Rule XI(d) reads that:

(d) The cost of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average when incurred in any or all of the following circumstances:
   (i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;
   (ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);
   (iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule XI(b), provided that when there is an actual escape or release of pollutant substances the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average;
   (iv) necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operation is admissible as general average.

The most important thing on the Rule XI(d) is that allowance under this Rule are limited to the *cost of measures* undertaken to prevent or minimise environmental damage when incurred in the circumstances set out in paragraphs (i) - (iv).[43]

It is hardly to imagine that Rule XI(d) was created merely to cope with the 1989 Salvage Convention. However, Lowndes and Rudolf book adopts lots of definition used in the 1989 Salvage Convention to interpret this sub-Rule, for example the words "prevent or minimise" and "damage to the environment" both used in this sub-Rule XI(d) and the 1989 Salvage Convention.[44]

The words "prevent or minimise" represent the allowance apply to the

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[42] Lowndes and Rudolf, ibid., para. 11.38.

[43] N. Geoffrey Hudson, ibid., at p. 185.

[44] Lowndes and Rudolf, ibid., at para. 11.40 - 11.43.

circumstances that the environmental damage has already occurred and or would probably occur. The test of "damage to environment" will be not limited only to include the circumstance that "the escape or release of pollutant substances" as contained in Rule C.

As to the sub-paragraph (i), Mr. N. G. Hudson say the intention of this paragraph (i) is to ensure that when the salvage operation (to use that expression in its wider sense) is performed under a contract or on terms which do not include the "no cure - no pay" element, the cost of the environmental protection measures will likewise be brought into general average.[45] Again, Lowndes and Rudolf book also say that "the purpose of sub-paragraph (i) is to ensure that a party to the adventure who carries out salvage operations for the common safety, or who hires a contractor to perform the operations at a fixed price or rate, can recover in general average the costs of those measures for preventing or avoiding damage to the environment which, had they been performed by a salvor working on a "no cure no pay" basis, would have entitled him to an enhanced award under 1989 Salvage Convention".[46] For short, the intended purpose of this sub-paragraph (i) is that the non-voluntary salvage shall be treated without difference with the voluntary salvage regarding to the costs of the measures for preventing or avoiding damage to the environment. However, as short of direct link between Rule VI and Rule XI(d), it may exist different application between non-voluntary salvage and voluntary salvage. For example, Rule XI(d) contains no special requirement that the claimant's efforts in preventing or minimising environmental damage should be such as would merit an enhanced reward under the 1989 Salvage Convention[47].

Sub-paragraph (ii), (iii) and (iv) deal with the costs of measures to prevent or minimise damage to environment as a condition of entry into or departure from or remaining at any port or place or necessarily in connection with the discharging, storing or reloading the cargo. The proviso - "there is an actual escape or release of pollutant substances the costs of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average" in sub-paragraph (iii) does not apply to the sub-paragraphs (ii) and (iv).

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[45] N. Geoffrey Hudson, ibid., at p. 186.

[46] Lowndes and Rudolf, ibid., at para. 11.42.

[47] Supra, at para. 11.42 n.46.

2.2.6.3 Rule XVII - contributory values

Second paragraph of Rule XVII reads:

> To these values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, *except such charges as are allowed in general average or fall upon the ship by virtue of an award for special compensation under Article 14 of the International Convention on Salvage, 1989 or under any other provision similar in substance.*

The method to assess the contributory value on ship may be formularised that:

	Actual net value	(at the time of completion of discharge and without taking into account the beneficial or detrimental effect of any demise or time charterparty)
(+)	**Make good**	(make goods as general average for property sacrificed)
(-)	**Extra charges**	(incurred thereof subsequent to the general average act)
=	**Contributory value**	

In the 1974 York-Antwerp Rules (and its earlier versions), the extra charges if are allowable as general average, said extra charges will not be deducted from and therefore reduce the contributory value. For removing the confusion that the "special compensation" may fall upon the meaning of "extra charges", the York-Antwerp Rules 1994 specially express said special compensation will not be entitled to deduct the charges in determining the contributory value of the ship.

2.3 The Foreign General Average Clause

The general average adjustment between the parties to the adventure is, in the absence of agreement to the contrary, governed by the law of the place at which the adventure ends.[48] However, general average exists in any event

[48] Lowndes and Rudolf, ibid., at para G.43; Carver, *Carriage by Sea*, 13th ed., at para1453;

independently of marine insurance. It was existing a confusion at least began from the later eighteenth century that whether the underwriters were liable upon an English contract to indemnify the assured in respect of payments made under foreign law or adjustment, which by the law of England was wholly or partly not general average?

In *Walpole v. Ewer* (1789), the lender upon respondentia to contribute general average under the law of Denmark was submitted before Lord Kenyon. Lord Kenyon held that:

> the solemn decision of a court of competent jurisdiction is of much greater weight, than the opinions of advocates, however eminent, or even than the extra-judicial opinions of the most able judges. It seems as if, in this case, the underwriters were bound by the law of the country, to which the contract relates.[49]

Again, in *Newman v. Cazalet*, general average adjusted by the court of Pisa against underwriters. Justice Buller held that

> ....on the general law, the plaintiff (the assured) would fail; but in all matters of trade, usage is a sacred thing. I do not like these foreign settlements of average, which make underwriters liable for more than the standard of English law. But if you are satisfied it has been the usage, upon the evidence given, it ought not to be shaken. 50

However, in *Power v. Whitemore* (1815), Lord Ellenborough held the insurers is not liable to indemnify the assured of the paid general average contribution by the law of Lisbon. Lord Ellenborough further opined that:

> This contract must be governed in point of construction by the law of England....unless the parties are to be understood as having contracted on the foot of some other known general usage amongst merchants relative to the same subject, and shewn to have obtained in the country where by the terms of the contract the adventure is made to determine, and where a general average would of course come to be demandable."[51]

Reversibly, in *Simonds v. White* (1824), the court held the assured is entitled to recover the general average contribution adjusted according to the law of Russia. In that case, Abbott C.J affirmed two points of general average usage

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Arnould, *Law of Marine Insurance*, 16th ed., at para 992.

[49] *Walpole v. Ewer* (1789) quoted in Park on Insurance at p 898.

[50] *Newman v .Cazalet* (n.d.) quoted in Park on Insurance at pp. 898-900.

[51] *Power v. Whitmore* (1815) 4 M&S 141 at pp. 149-150.

that

> "There are, however, many variations in the laws and usage of different nations as to the losses that are considered to fall within this principle. But in one point all agree; namely, the place at which the average shall be adjusted, which is the place of the ship's destination or delivery of her cargo. I believe also, that all are agreed on another point; namely, that the master is not compellable to part with the possession of goods until the sum contributable in respect of them, shall be either paid or secured to his satisfaction."[52]

The Historic Record of the Insurance Institute of London stated that:

> The grammatic constructions of the language used in the judgment, as a whole, is not easy to follow, and this may account for the fact that the decision threw the market into confusion....However unjustified this conclusion may have been, the fact remains that uncertainty there was, and this continued until at least 1872. The authors of all text-books on marine insurance published before that date drew different conclusions from the case and upheld their particular viewpoint with equal vehemence.[53]

By reason of the uncertainty, a Foreign General Average Clause, with a likely wording that "General average payable according to official foreign adjustment", was first introduced at any time after 1810s'- but only for those requesting it who was not to fall between two stools.[54]

In the *Harris v. Scaramanga* (1872) [55], general average loss admitted by the German law, proximately caused merely by reason of the master's want of funds which such a risk was not insured against under the ordinary policy, came before Bovill C.J. Keating J and Brett J. of the Court of Common Pleas. The policy in question contained a clause which the underwriters liable:

> To pay general average as per foreign statement, if so made up.

Their Lordships were able to reach their decision without reference to the earlier cases mentioned above, but all appeared to be of the opinion that, even without the addition of the Foreign General Average Clause, the underwriters were liable for any amount properly charges in general average to assured, in accordance

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[52] *Simonds v. White* (1824) 2 B&C 805 at p 811.

[53] The Insurance Institute of London, *Historic Records Report H.R. 3* on Institute Time Clauses - Hulls, 1963. at p. 48.

[54] Supra, at p. 49.

[55] *Harris v. Scaramanga* (1872) LR 7 CP 481.

with the law of the port of destination. Bovill C.J. ruled a general principle that:

> If the sacrifice or loss which occasioned the general average arose from any of the perils insured against or the consequences of them, or from proper endeavours to avert such perils or their consequences, to that extent the underwriters would, under the terms of an ordinary policy, and according to well-known maritime usage, be liable to indemnity the assured, though, as between the shipowner and the owner of the cargo, matters might be introduced into the statement of general average for which the underwriters, upon the ordinary form of policy, would not be liable.[56]

Regarding to the general effect of the Foreign General Average Clause inserted in the Policy, Bovill C.J. further said that:

> It seems to me that the general effect of the memorandum (i.e. the Foreign General Average Clause) is, to make the underwriters liable as for general average for whatever the owners of the goods might be called upon to pay on that account by the foreign statement of adjustment. This memorandum was probably introduced in order to avoid all questions, not only as to the propriety of particular items being treated as the subject of general average, but also as to the correctness of the apportionment; and I find it difficult to place any other reasonable construction upon the terms of the policy and memorandum.[57]

Their Lordships in *Harris v. Scaramanga* case ruled the underwriters in any events were liable for any amount properly charges in general average to assured, in accordance with the law of the port of destination. However, they also ruled out a position that there should be "without any exception of any matters which are *expressly* excluded by other parts of the policy", for example capture or seizure.

The *Harris v. Scaramanga* only applied to the case on general average *contribution*. The position was not so clear when it concerned a general average *sacrifice* to the assured's own property. In *Mavro v. Ocean Marine Insurance Co,* (1875)[58], wheat cargo was insured on F.P.A. policy and damaged while the carrying vessel straining under a press of sail carried to keep her off a lee-shore. This kind of loss was treated as general average according to the foreign law, but would have been a particular average loss in England at that time. The court

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[56] Supra, at p. 488.

[57] Supra, at p. 489.

[58] *Marvo v. Ocean Marine Ins. Co.* (1875) LR 10 CP 414.

held the underwriters were liable to this loss under the term of Foreign General Average Clause.

The Foreign General Average Clause originated initially for overcoming the uncertainty of law and practice existed before the early 19th century. It represents not the risk cover for the general average itself, but a term which the underwriter expressly agree to pay a particular kind of general average adjusted in accordance with the foreign law of practice which differs from the law and practice in this country.

The *Harris v. Scaramanga* (1872) limited the applicability of the Foreign General Average Clause by wording that "the underwriter would, under the terms of an ordinary policy (the S.G. Form) and according to well-known maritime usage, be liable to indemnify the assured in accordance with the foreign adjustment". However, the 1906 Marine Insurance Act allows the contractual parties, by any express provision in the policy, to extend, limit or even exclude the liability of underwriters to general average. The General Average Clause in today, as a later generations of the ancient Foreign General Average Clause, not only retains the contents of the ancient Foreign General Average Clause, but also as a bridge connects with the marine insurance and the York-Antwerp Rules.

2.4 The Institute Clauses

In the Historic Records of The Insurance Institute of London No. H.R. 3, it stated that:

> By 1880... The introduction of steamships and the growing tendency to insure them by Time, instead of by Voyage, raised numerous problems. Until 1824 an Act of Parliament had precluded the conduct of marine insurance business by companies other than the London Assurance and the Royal Exchange Assurance. During the 50 years following repeal of the Act at least seventy new companies entered the field and many adopted their own particular form of clauses. The passing of the Joint Stock Companies Acts tended to transfer the ownership of ships and merchandise from private hands to those of she holders, for whose greater protection the directors were obliged to seek wider cover, and for smaller losses, than the "merchant-princes" of earlier times had thought necessary. Litigation became popular and this increased the multiplicity of clauses in

use....uniformity in the wording of clauses became a crying need.[59]

in 1883, Mr. Douglas Owen collected the copies of clauses from the principle marine insurance companies in London and Liverpool and published a book entitled "Marine Insurance Notes and Clauses". In the same year, Lloyd's held a meeting and later adopted a considerable number of their own Lloyd's Clauses.

In 1884, the Institute of London Underwriters (ILU) was formed. On December 1884, ILU recommended the general adoption of three clauses for steamers and first "set" of clauses was issued in 1888. The Historic Records stated "The original objects of this body, as recorded in the Memorandum of Association, made no specific reference to clause, but the Institute has rendered a great service to the marine market in this field of activity".[60]

2.4.1 The Institute Clauses - Hull

The first set of Institute Clauses for Hull was issued by ILU in 1888. This original 1888 set did not originate with the Institute but was 'borrowed' from a London marine insurance company unable to identify.[61]

In the early years, new clauses were introduced and amended frequently. The record shows there were forty-three versions in 54 years between 1888 and 1941. But since the Second World War they have changed less often, they are 1.10.1952, 22.7.1959, 1.10.1969, 1.10.1970, 1.10.1983 and recent 1.11.1995 versions.

It is evidently that the 1989 Salvage Convention directly materialized in the amendment on three clauses of the Institute Time Clauses - Hulls 1995 (hereinafter called "ITC-Hulls"). They are clause 8.4.5 (3/4ths Collision Liability), clause 10.3 and 10.5 (General Average and Salvage clause) and clauses 11.2 and 11.5 (Duty of Assured (Sue and Labour) clause). However, the said clauses are not the sole impact of the 1989 Salvage Convention on the ITC-Hulls. These amendment and impacts will be discussed in the fourth chapter and this chapter will concentrate on the related clauses in the I.T.C.- Hulls 1983 version.

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[59] *Historic Records - Report H.R.3*, at p.1.

[60] Supra, at p.2.

[61] Supra, at p.2.

2.4.1.1 General average and salvage clause

I.T.C. 1983 clause 11 reads that:

11.1 This insurance covers the Vessel's proportion of salvage, salvage charges and/or general average, reduced in respect of any under-insurance, but in case of general average sacrifice of the Vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.

11.2 Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules.

11.3 When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1994 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port to place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.

11.4 No claim under this Clause 10 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.

Clause 11.1 was first introduced in 1983, which was established for two purposes:

a) to emphasise the terms of the 1906 Marine Insurance Act : section 73(1) (reduced in under-insurance) and 66(4) (general average sacrifice may recover without first enforcing their right of contribution from other parties)[62]; and

b) to emphasise and express the coverage on general average, salvage and particularly on salvage charges.

It is noted that the ancient Foreign General Average Clause before 1880's did not contain the words "salvage" or "salvage charges". The record shows the words "salvage charges" appeared in the Lloyd's clause in 1884 and then adopted in the first set of Institute Clause 1888.[63] The Foreign General Average

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[62] J. Kenneth Goodacre, *Institute Time Clauses - Hulls*, 1983, at p. 12.

[63] Douglas Owen, *Marine Insurance Notes and Clauses*, 3rd ed., 1890, at p.38.

Clause in 1888 ITC-Hulls read "General Average and *Salvage Charges* payable according to foreign statement, or per York-Antwerp Rules if in accordance with the contract of affreighment". In the 1908 ITC - Hulls version, the word "salvage" was instead of "salvage charges" until the introduction of the 1983 ITC - Hulls version.[64]

The words used in the earlier versions before ITC - Hulls 1983, neither they represented the insurers expressed to cover salvage or salvage charges, since the insurers' liability on salvage or salvage charges was expressly laid down by the common law and the 1906 Marine Insurance Act, nor they represented the liability of insurer was limited to the extent that the payable salvage or salvage charges should be subject to "the adjustment obtaining at the place where the adventure ends or according to the York-Antwerp Rules". The inclusion of "salvage" or "salvage charges" in the earlier Foreign General Average Clause might merely represent that the English insurers admitted the fact that "other countries treated or might treat salvage expenditure as a kind of general average and adjusted them subject to the place where the adventure ends", for such circumstance, which was different from the English law, the insurers expressly agreed to cover. It is interested to note that a clause entitled "The Salvage Charges Clause" was introduced in the 1918 ITC -Hulls, which read "in the event of expenditure for Salvage, Salvage charges, or under the Sue and Labour Clause, this Policy shall only liable for its .....". However, the words "Salvage, Salvage charges" in that clause were removed from the 1959 ITC -Hulls and from then on till 1970, this clause, though remained the title of "Salvage Charges Clause", was a clause specially dealt with suing and labouring expenses.

Strictly speaking, by the introduction of clause 11.1, clause 11 of 1983 I.T.C.-Hulls is no longer a pure "Foreign General Average Clause" or "Foreign General Average or Salvage Clause". It is now an express "risk covered" clause particularly on general average, salvage and salvage charges. The 1983 ITC - Hulls simultaneously uses the words "salvage" and "salvage charges" may intend to reduce the word-splitting confusion on the word "salvage" defined under maritime law or the words "salvage charges" strictly defined under the Marine Insurance Act 1906.

Regarding to clause 11.2 of the 1983 ITC-Hulls, the word "adjustment" was instead of "General average and salvage". It is noted that the ITC - Hulls General Average Clauses between 1904 version and 1970 version stated

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[64] See Appendix 1 - showing the amendments of General Average Clause introduced to the I.T.C. Hulls Clauses.

"General Average and salvage (salvage charges) to be adjusted according to the *law and practice at the place where the adventure ends*....". These wording might cause some misunderstandings that a) did the insurers agree in the policy to cover the salvage expenditure which was calculated based on the value of the salvage service end ? and b) whether the prerequisite of the insurers' liability under this clause was the general average and salvage should be *adjusted* and adjusted at the place where the adventure ends.

In accordance with clause 11.2 of the 1983 ITC-Hulls, the hull insurers' liability on general average, salvage or salvage charges shall only be determined by 1) according to the law and practice obtaining at the place where the adventure ends; or 2) according to the York-Antwerp Rules of any versions if or subject to the contract of affreightment makes provision for them.

It was doubtful concerning to the insurers' liability if the contract of affreightment provided for general average to be adjusted according to the York-Antwerp Rules in any modified or extended form. In 1904, the Association of Average Adjusters introduced Rule No. 43 of Rules of Practice, which stated that:

> That in all cases where the contract of affreightment provides for the application of York-Antwerp Rules in any modified or mutilated form, and when the policies of insurance provide for the application of York-Antwerp Rules, if in accordance with the contract of affreightment, in applying the claims to such policies, no effect shall be given to York-Antwerp Rules.

Subject to this Rule No. 43, unless the shipowner used the York-Antwerp Rules in their entirely, he (the assured) would recover from his underwriters only the contribution payable according to the law of destination, which would probably be considerably less.[65] However, Rule No. 43 of Rues of Practice of A.A.A. was rescinded in 1968. It is suggested that whether the shipowner modified and mutilated the York-Antwerp Rules in the contract of affreightment or not is not absolutely related with the General Average Clause in the contract of insurance which the underwriters only agree their liability should be calculated based on the entire York-Antwerp Rules without modified.

1959 ITC-Hulls and its sequential versions merely describe "York-Antwerp Rules". What version of the York-Antwerp Rules would be applicable ? Basically, it is the version as stated in the contract of affreightment in question.

Clause 11.3, first introduced in 1936 ITC-Hulls version, deals with the situation when the vessel sails in ballast, not under charter. The claim for this

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[65] *Historic Records - Report H.R.3*, at p.43.

clause is often termed a "policy G. A." as there being no "common adventure".[66] This clause allows the shipowner to claim any kind of expenses, disbursements or sacrifice, mainly are wage and maintenance at port of refuge and during the prolongation of the voyage, which as may be claimable in a real general average case. Rule XX (2% commission) and XXI (5% interest) of the York-Antwerp Rules are excluded. The choice of Rules under this clause is the 1974 York-Antwerp Rules in the 1983 I.T.C.-Hulls This is a special clause which the underwriters agree to cover shipowner's distinct disadvantage, as compared with the vessel are loaded or chartered, and without concerning the law and practice of the place the adventure ends or the York-Antwerp Rules version as agreed in the contract of affreightment. Namely that, we presume the contract of affreightment incorporate the 1950 York-Antwerp Rules, clause 11.2 applies to the 1950 York-Antwerp Rules if incurs a real general average matter; but clause 11.3 applies to the 1974 York-Antwerp Rules if incurs a "policy general average" matter.

Again, clause 11.4 was firstly introduced in 1983 Clauses to echo with section 66(6) of the 1906 Marine Insurance Act to avoid any misunderstanding if the Clauses being used in other jurisdiction.

2.4.1.2 Duty of assured (sue and labour)

Clause 13 of 1983 ITC-Hulls modernized the traditional Sue and Labour clause in the S.G. Policy, which also reflected the provisions under section 78 of the Marine Insurance Act 1906. The whole clause 13 read that:

13.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.

13.2 Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 13.5) and collision defence or attack costs are not recoverable under this Clause 13.

13.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the Subject-matter insured shall not be considered

[66] J. Kenneth Goodacre, *Marine Insurance Claims*, 3rd ed. 1996, at p. 948.

as a waiver or acceptance of abandonment or otherwise prejudice the right of either party.

13.4 When expenses are incurred pursuant to this Clause 13, the liability under this insurance shall not exceed the proportion of such expenses that amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where Underwriters have admitted a claim for total loss and property insured by the insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.

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

13.6 The sum recoverable under this Clause 13 shall be in addition to the loss otherwise under this insurance but shall in no circumstances exceed the amount insured under this insurance in respect of the Vessel.

Clause 13.1, as the duty clause, imposes an express contractual duty on the "Assured and their servants and agents" to sue and labour, since it is possible that there may be no similar statutory duty likes as section 78 of the 1906 Marine Insurance Act in some other jurisdictions. The word "agents" was added in 1983 in order to modify the *Gold Sky* case (1972).[67]

Clause 13.2 is the indemnity clause which the insurers agree to pay suing and labouring expenses reasonably incurred. As discussed in paragraph 1.4.3.3 in the first chapter, the persons who are authorized to sue and labour may be not same as the persons who owe the duty to sue and labour. However, by the present wording of clause 13.2, they are the same now. Namely that, the insurers merely agree to indemnify the expenses reasonably incurred by the

[67] The *Gold Sky* (1972) 2 Lloyd's Rep. 187. See also discussion in paragraph 1.4.2.3 of the first chapter.

persons who also owe the duty to sue and labour for averting or minimizing the loss insured. It has to know that the wording in clause 13.2 that "general average, salvage charges and collision defence or attack costs are not recoverable under this clause 13" do not mean the ***duty*** to sue and labour is not also applied to the circumstances of the risks are run for which those kinds of charges, expenses or costs incurred. In other words, the assureds still owe the duty to sue and labour to avoid or mitigate the general average, salvage charges and collision defence or attack costs, as those average/charges/costs are also formed as a "loss" under section 78(4) of the 1906 Marine Insurance Act. If the assured failed to do, the underwriters would be able to set off or counterclaim in damages. And if the duty was duly performed, the charges/costs incurred recoverable fell on the related risk cover clauses, for example General Average Clause or 3/4 Collision Liability Clause, but not the Suing and Labouring Clause.

The second paragraph, echoes with section 78(2) of the 1906 Marine Insurance Act and the case *Xenos v. Fox* (1869)[68], precludes the general average, salvage charges and the collision defence or attack costs from claiming suing and labouring expenses. It is interested to note that the item "particular charges" is not precluded in clause 13.2. However, "not preclude" do not mean it is "included". Any charges, other than the expenditure in general average loss and salvage charge, are recoverable in the suing and labouring clause or not shall be subject to 1) all the features of constructing a suing and labouring expenses are satisfied; 2) its recovery is not against the existing law and practice. As discussed in paragraph 1.5 of the first chapter, some kind of "particular charges" may be recoverable by the suing and labouring expenses, but not all.

Rule VI of the 1974 York-Antwerp Rules introduced salvage of any kinds, if for the common adventure, will be allowable as general average. The introduction of Rule VI of the 1974 York-Antwerp Rules basically do not substantively change the applicability of clause 13.2 of the 1983 ITC - Hulls. The effect is, while the York-Antwerp Rules 1974 or 1994 is applied, it merely changes the claimable item from "salvage charges" as defined in the 1906 Marine Insurance Act to "general average" for pure salvage and salvage under no cure no pay basis. However, either salvage charges or general average are all precluded in clause 13.2 of the ITC-Hulls 83.

Clause 13.3, as the waiver clause, taken from the traditional S.G. Form is stipulated in modern language. The words "Or otherwise prejudice the rights of either party" were added in 1983 ITC-Hulls in order to include any possibility

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[68] *Xenos v. Fox* (1868) LR 3 CP 630.

which may damage the rights of the assured and the underwriter in any aspects, other than the rights in abandonment issues.

The first paragraph of clause 13.4 declares the principle of *proportion* in under-insurance shall also apply to the sue and labour expenses. The second paragraph deals with the special application of said proportion principle if the vessel is admitted as total loss.

Clause 13.5 declares the application of the principle of *contribution* while a claim for total loss is admitted and the expenses are also incurred in saving other property.

Clause 13.4 and 13.5 may be classified into following situations:

Situation 1 : Partial Loss

if agreed value = sound value	proportion of the amount insured bears to the agreed value
if agreed value < sound value	proportion of the amount insured bears to the sound value

Situation 2 : Total Loss and Vessel not saved (not for common interests)

under-insurance as stated in situation 1 in apply

Situation 3 : Total Loss and vessel saved (not for common interests)

if sue and labour expenses > saved value	for the expenses = saved value : - pay in full for the expenses > saved value : - under-insurance as stated in situation 1 in apply
if sue and labour expenses < saved value	pay sue and labour expenses in full

Situation 4 : Total Loss and Expenses incurred for common interests

if no proceeds	pay pro rata share of the vessel (proportion to under-insurance also applied)
if sue and labour expenses > proceeds	for the expenses = proceeds : - pay in full for the expenses > proceeds : - pay pro rata share of the vessel (proportion to under-insurance also applied)

Situation 5 : Partial Loss and Expenses incurred for common interests

if allowable in general average	no claim for sue and labour expenses
if not allowable in general average	? [69]

[69] The I.T.C.-Hulls do not deal with this particular situation. Theoretically speaking, it seems to be claimable but subject to the contribution principle shares with other interests and proportion principle in under-insurance still in applied.

Clause 13.4 and clause 13.5 were introduced in 1918, which intended to overcome a doubtful situation as stated in the Historic Records that

> Prior to the introduction of this clause in 1918 the view was extensively held that, in the case of expenditure for Salvage or Salvage Charges, if the vessel was in ballast, and specially when unchartered, the underwriters of a valued policy or Ship were liable for the whole of the expense whether the vessel were fully insured or not.[70]

As discussed in paragraph 1.4.3.3 (d), Lindley J., in *Dixon v. Whitworth* (1879) case, opined that "sue and labour charges are recoverable *in full irrespective of the insured value".* However, Lindley J. further said that "there are no words to the effect that the assured shall only be repaid such proportion of those charges as, on an equitable adjustment between himself and others, would fall on him alone".[71] In other words, clause 13.4 and 13.5, even 13.6, do not disobey the rule laid down by Lindley J. in *Dixon v. Whitworth* (1879).

It is interested to note that clause 13.4 and clause 13.5 were initially introduced in 1918 for "salvage or salvage charges or under the Sue and Labour Clause", with a title named "The Salvage Charges Clause". The ILU Historic Records explained that "which underwriters also took the opportunity to reduce their strict legal liability to pay Sue and Labour Charges in full even when the property was underinsured".[72] Later, on the grounds that underwriters' liability for salvage and salvage charges was identical with that laid down in the Marine Insurance Act and that no special reference was therefore required,[73] all reference to Salvage and Salvage Charges in that "The Salvage Charges Clause" were omitted in 1952 ITC-Hulls, and the word "salved" was further replaced by "saved" in 1983 ITC-Hulls. In other words, clauses 13.4 and 13.5 (or the earlier Salvage Charges Clause) were introduced originally for salvage or salvage charges, but now is an exclusive clauses specially for suing and labouring expenses.[74]

Those adulterate sub- clauses may cause some misunderstanding on the principle of the suing and labouring clause. For example, clause 13.5 deals with

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[70] *Historic Records - Report H.R.3*, at p.62.

[71] *Dixon v. Whitworth* (1879) 4 C.P.D. 371 at p.378.

[72] *Historic Records - Report H.R.3*, at p.62.

[73] Supra, at p.63.

[74] See Appendix 2 - showing the amendment of the Suing and Labouring Clause introduced in the I.T.C. Hulls Clauses.

the situation of "expenses have been reasonably incurred in saving or attempting to save the Vessel and other property..". The text may be wrongly considered that suing and labouring expenses incurred by the assured could be for the purpose of saving the common interests. However, as it was discussed that, simultaneously saving other property is merely a sequential effect, not a real purpose, of suing and labouring. The word "proceeds" used in clause 13.5 is another issue. Does it represent the proceed for the Vessel alone or the proceeds for other property is also included ? Since clause 13.5 uses plural wording "there *are no* proceeds", it may be assumed that the word "proceeds" may include the proceeds of both the vessel and other property. Clause 13.5 merely deals with the circumstances when there are no proceeds and to the expenses exceed the proceed, but provides nothing if the expenses do not exceed the proceeds. It is also not clear that the calculation of the "pro rata share of such proportion of the expenses". It may be easier to understand if the above circumstances is incurred and applied to a clause on salvage for the common interests, but is difficult to apply to this illusive Suing and Labouring Clause.

Clause 13.6 is a new clause introduced in the 1983 ITC-Hulls. The nature of supplementary engagement for additional coverage declared in section 78(1) of the 1906 Marine Insurance Act to the Sue and Labour Clause is affirmed in modern language in clause 13.6. However, the hull underwriters again, in addition to the proportion and contribution principles introduced in clause 13.4 and 13.5 respectively in 1918 and 1959 versions, further to limit their liability on paying suing and labouring expenses not to expend a sum exceeding 100% of the sum insured.

In briefly, Hull underwriters complicatedly introduced three ways to reduce and or limit their liability on suing and labouring expenses. They are:

1. *proportion* in under-insurance (clause 13.4);
2. *contribution* with other interests saved (clause 13.5); and
3. *limitation* not exceed 100% of the sum insured (clause 13.6).

It exists some conflicts among these clauses. For an extreme case, sound value of the Vessel at $100,000, insured valve at $60,000, sue and labour expenses incurred at $120,000, Vessel partial loss at $50,000. If apply to clause 13.4 firstly and then clause 13.6, the hull underwriters shall pay $60,000 sue and labour expenses [120,000 x (60,000/100,000) = 72,000 > 60,000; only pay 60,000]. But if apply to clause 13.6 firstly and then clause 13.4, the hull underwriters shall only pay $36,000 [because 120,000 is larger than 60,000,

only 60,000 in applying the proportion in under-insurance, i.e. 60,000 x (60,000/100,000) = $ 36,000]. It exists $24,000 in difference if adopts different calculation methods. The problem not only exists in ITC -Hulls, but also may exist in some jurisdictions. For example, Article 240 of the Maritime Code of the People's Republic of China 1992 provides the payment to suing and labouring expenses shall be calculated subject to the proportion principle to under-insurance as well as the limitation of 100% of the sum assured.

2.4.1.3 3/4ths collision liability (or running down) clause

It is not necessary to discuss here of the collision liability in whole, as except for its coverage and exception, every marine insurance textbooks have exhaustively analysed it.

Collision between two vessels may give rise to circumstances of incurring general average sacrifice or expenditure or in need of salvage assistance. In The *Marpessa* (1891), the claim for jettison of cargo due to collision must be disallowed, as the loss sustained by the ship in having to make the general average contribution was not directly due to the collision, but arose from the obligation to contribute, resulting from the relation between ship and cargo.[75] In the Owners of Cargo ex "*Greystoke Castle" v. Morrison Steamship Company Ltd.* (1946), The *Marpessa* case was overruled by House of Lord. House of Lord held that:

> the cargo had an independent and direct right to recover as a head of damage such expenditure from the wrongdoing ship (the colliding ship).[76]

it is interested to note that the Running Down Clause introduced in the first set of ITC-Hulls 1888 did almost maintain its wording till the 1959, which roughly provided the "assured.. become liable to pay, and shall pay by ways of damages to any other person or persons any sum or sums in respect of such collision".[77]

The major change to the Running Down Clause was in 1969, which was incorporated in the 1970 ITC-Hulls. 1970 ITC-Hulls contained 3 items in coverage and 4 items in exclusive:

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[75] The *Marpessa*, (1891) P. 403.

[76] Owner of Cargo Ex "*Greystoke Castle" v. Morrison Steamship Co, Ltd.*, (1946) 80 Ll.L.Rep. 55.

[77] See Appendix 3 - showing the amendments of 3/4 Collision Liability Clause introduced in the ITC Hulls Clauses.

1970 ITC-Hulls

...in respect of such collision for:

(i) loss of or damage to any other vessel or property on any other vessel,

(ii) delay to or loss of use of any such other vessel or property thereon, or

(iii) general average of, salvage of, or salvage under contract of, any such other vessel or property thereon.

.....

Provided always that this Clause shall in any event to any sum which the assured may become liable to pay, or shall pay for in respect of:

(a) removal or disposal, under statutory powers or otherwise, of obstructions, wrecks, cargoes or any other thing whatsoever,

(b) any real or personal property to thing whatsoever except other vessels or property on other vessels,

(c) the cargo or other property on or the engagements of the insured Vessel,

(d) loss or life, personal injury or illness.

In 1971, the Running Down Clause was amended to add a separate exclusion in respect of pollution and contamination that:

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

The purpose of introducing "pollution or contamination" exclusion was to make it without doubt that the cover did not extend to liability of the shipowner for the expenses of removal of oil on beaches, etc., or anything whatsoever,[78] and which may was directly or indirectly resulted from the headache of oil pollution arising from the *Torrey Canyon* catastrophe in 1967.

Particularizing the items of coverage may be easier to read, but on the other hand it also limits the scope of applicability. The liability to collision may be different among countries. Though the intention to uniform by an international convention on the assessment of damages in maritime collisions was failed in C.M.I. 1985 Conference, but the 1987 Lisbon Rules,[79] which finally adopted by

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[78] Victor Dover, *A Handbook To Marine Insurance*, 9th ed. 1983. at p. 549.

[79] "The Lisbon Rules - Compensation for Damages in Collision Cases" CMI News Letter, Spring 1987.

the C.M.I., may be considered as a general guideline to assess the collision damages widely accepted by the market. The "damages" payable to the claimant in the 1987 Lisbon Rules can be classified (example for vessel only):

1. Cost of purchasing a similar vessel (if total loss)
   Temporary repair and permanent repairs (if damage)
2. Salvage, general average and other charge and expenses reasonably incurred
3. Sums for liability to third party legally
4. Net freight, bunkers and gear lost
5. Loss of use (if total loss)
   Loss of earnings and operating costs during detention (if damage)
6. Interest (date of collision/loss to date of payment)

In comparison with the items expressly covered in the ITC-Hulls 1970 Collision Liability Clause, the recoverable "damages" in the 1987 Lisbon Rules as mentioned are apparently wider than the coverage provided in ITC-Hulls. The words "loss of or damage to" used in ITC-Hulls make it clear that the indemnity only relates to *physical loss or damage* to the other vessel or property on board it.[80] Whether "net freight" and "interest" fall on the meaning of "loss of or damage to any other property" or not seems to be still in dispute.

2.4.2 Institute Clauses - Cargo

The first set of Institute Cargo Clauses (hereinafter called ICC) would not appeared until the sinking of supposedly unsinkable "*Titanic*" disastrous in 1912. Only seven clauses[81] were contained in the first set of ICC which was intended to be used for "with average (W. A.)", each of which is recognisable as forming the basis of the much developed clauses in use today. Said clause as the

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[80] Donald O'May, *Marine Insurance*, 1st ed., 1993, at p. 233.

[81] They are :

1. Free of capture, seizure etc. clause
2. Strikes, riots and civil commotions clause
3. General average clause
4. Deviation clause
5. Warehouse to Warehouse clause
6. Craft, etc. clause
7. Bill of lading etc. clause

"neutral" set if included in addition to the "F.P.A. clause" to be treated as ICC (F.P.A.). The 1912 F.P.A. clause read:

> 8. FREE FROM PARTICULAR AVERAGE CLAUSE Warranted free from Particular Average unless the vessel or craft be stranded sunk or burnt, but the Assurers are to pay the insured value of any package or package with may be totally lost in loading transhipment or discharge, also any loss of or damage to the interest insured which may reasonably be attributed to fire, collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at a port of distress, also to pay landing warehousing forwarding and special charges if incurred.

The issuing of the Institute Clauses was accompanied by an exhortation to insurers not to grant wider cover than that provided by the standard clauses, even on payment of an additional premium. It was felt that if extra cover was granted at an additional premium it would merely be a matter of time before the extra premium was whittled away, leaving the insurer with wider cover at the old barely adequate rate.[82] The situation seems to be existed without major changes until the introduction of the All Risks clauses in 1951 by wordings that:

> 5. All Risks clause: This insurance is against all risks of loss of or damage to the subject-matter insured but shall in no case be deemed to extend to cover loss damage or expense proximately caused by delay or inherent vice or nature of the subject-matter insured
>
> 6. Irrespective of percentage: Claims for loss or damage within the terms of these clauses shall be payable irrespective of percentage.

By reason of the criticisms expressed by UNCTAD in its report titled "Marine Insurance, Legal and Documentary Aspects of the Marine Insurance Contract" in 1978, three new sets of Institute Cargo Clauses (A), (B) and (C) were introduced in 1982 instead of the "All Risks", "W.P." and "F.P.A." forms previously used.

2.4.2.1 Clause 2 - general average clause

[82] *Historic Records - Report H.R.5,* at p. 5.

Except for a simple word "per" was replaced by "to" in ICC 1958, the wording of the general average clause used in the first set of ICC 1912 was almost unchanged until the introduction of the new ICC in 1982. The General Average Clause in 1963 ICC read:

> General Average and salvage charges payable according to Foreign Statement or to York-Antwerp Rules if in accordance with the contract of affreightment.

Obviously, the General Average Clause used in 1963 ICC (and its earlier versions) was originated from the ancient Foreign General Average Clause. It represented not a risk cover clause, but the indemnity clause which the underwriter agreed to indemnify the general average and salvage charges if adjusted in accordance with the foreign statement or the York-Antwerp Rules. The situation is different while the new ICC was introduced in 1982. ICC 1982 clause 2 - General Average Clause (under the heading of "Risks Covered") read:

> This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clause 4,5,6 and 7 or elsewhere in this insurance.

The General Average Clause in 1982 ICC is now not only an indemnity clause but also a risk covered clause. In accordance with this clause, the underwriters not only agree to indemnify the general average and salvage charges if adjusted or determined according to the contract of affreightment, but also contractually express to cover general average and salvage charges.

It is interested to note that, unlike 1983 ITC-Hulls, 1982 ICC only expresses the words "general average" and "salvage charges" in its General Average Clause, which the word "salvage" is not included. It may cause some difficulties if the words "salvage charges" are interpreted without difference from the words "salvage charges" in section 65 of 1906 the Marine Insurance Act. The difficulty comes from the words "salvage charges" in section 65 of the 1906 M.I.A. are strictly interpreted by lots of textbooks as merely a kind of "pure salvage". For instance, the expenses incurred under a Lloyd's Open Form salvage but the York-Antwerp Rules is not applied. In this case, unless the persons, either the master or shipowner or carrier, who concluded the Lloyd's Open Form to be deemed as the servants or agents of the Assured under the "Duty of Assured" clause, and therefore apply to that clause for claiming the known "suing and labouring expenses", otherwise the assured seems have to

seek recovery from the item of "particular charges". As discussed, the legal status of "particular charges" in this country is still unsettled.

Furthermore, unlike ITC-Hulls 1983 and previous versions of ICC, the expression of the York-Antwerp Rules is not appeared in 1982 ICC. It is suggested that the cargo assureds normally stand on a weak position to decide the choice of law/rules in the contract of affreightment and actually also that the York-Antwerp Rules is always incorporated in the contract of affreightment. However, as the clause contains no expression of the York-Antwerp Rules, it is suggested that, the ICC will cover the situation that the York-Antwerp Rules of any versions is amended, limited even exempted in the contract of affreightment.

The meaning of the words "governing law and practice" in the ICC 82 General Average Clause is also not clear. it seems not the English law and practice as provided in the ICC clause 19 and also not the law and practice obtained at the place of adventure end or destination. It does represent any applicable law and practice contained in the contract of affreightment.

It is interested to note that the last paragraph of the 1982 ICC General Average Clause expresses " general average and salvage charges incurred to avoid or in connection with the avoidance of loss from *any cause* except those excluded in Clauses 4, 5, 6 and 7." It is slightly different from section 66(6) of the 1906 Marine Insurance Act, which section 66(6) provides that "the loss was incurred for purpose of avoiding or in connexion with avoidance of *a peril insured against*". It makes no difference in the ICC (A) which provides all risks coverage, but may be different in the ICC (B) and (C). In other words, even though general average or salvage charges was incurred ***not*** for avoiding or minimizing the risks expressly covered under Clause 1 of the 1982 ICC(B) and (C), it still would be recoverable under the Clause 2, unless it was incurred for the risks excluded in Clause 4, 5, 6 and 7.

2.4.2.2 Clause 16 and 17 - minimising losses

The ancient suing and labouring clause and waiver clause used in the S.G. Form and the known Bailee Clause which introduced in 1925 ICC are now incorporated in clause 16 and clause 17 - with section headed "Minimising Losses" in 1982 ICC. Clause 16 and clause 17 read that:

16. Duty of Assured Clause

It is the duty of the Assured and their servants and agents in respect of loss

recoverable hereunder

16.2 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

17. Waiver Clause

Measure taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

It is interested to note that the 1982 ICC uses the heading of "Duty of Assured" but not "Suing and Labouring". It may be suggested that it is no longer a pure suing and labouring clause as the Bailee Clause is also contained thereon. The new heading of "Duty of Assured" will not effect the real legal status of clause 16.1 to be a suing and labouring clause, though section 78(1) of the 1906 Marine Insurance Act provides that "Where the policy contains a *suing and labouring clause,* the engagement.....". The reason is that even the clause used in traditional S.G. Policy was not contained a name headed "Suing and Labouring Clause".[83] In other words, clause 16.1 is a suing and labouring clause and the principle evolved from section 78 of the 1906 Marine Insurance Act shall be applied. It is argued that whether clause 16.2 is also a suing and labouring clause ? In the *Netherlands Insurance Co. v. Karl Ljungberg & Co.* (1986), the Bailee Clause was submitted to the Privy Council. The Bailee Clause in 1963 ICC, which attached to the S.G. Form, read:

9. It is the duty of the Assured and their Agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss and to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised.[84]

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[83] Kenneth Goodacre, in his book *Goodbye to The Memorandum* (1988 at p. 47) has different opinion that ""It can be seen at once that there is no longer any mention of Suing and labouring as such, and that Clause 16 can be taken as it is, without any reference to S.78 of the Marine Insurance Act, which was specifically related to the *Sue and Labour Clause* in the S.G.

[84] See Table 4, which showing the amendments of Duty of Assured Clause introduced to the

In that case, the assured commenced proceedings against the carriers in order to preserve the time bar subject to the Bailee Clause, but the insurer denied liability to pay the costs as no express terms in the policy which the insurer agree to indemnity the costs. Lord Goff of Chieveley doubted if the terms of the sue and labour clause in the standard S.G. Form have much impact upon the construction of the bailee clause included in the ICC. Their Lordships opined:

> the conjunction of the two obligations in the bailee clause, one (i.e. the duty to avert or minimise the loss) of which admittedly carries a duty of reimbursement by the insurers, reinforces the respondents' argument that an implied duty of reimbursement applied to both obligations under the clause" and their Lordships finally consider that "a term must be implied in the contract, in order to give business efficacy to it, that expenses incurred by an assured in performing his obligations under the second limb of the bailee clause shall be recoverable by him from the insurers in so far as they relate to the preservation or exercise of rights in respect of loss or damage for which the insurers are liable under the policy".[85]

For short, in that case, the first limb of the bailee clause (the duty to avert or minimise the loss) was treated as the sue and labour clause as in the S.G. Form, but not to the second limb of the bailee clause (the duty to prevent the rights against carriers or any third parties).

In The *Vasso* (1993), the situation is not so clear. In The *Vasso*, the cargo owner failed to obtain *Mareva injunction* against shipowner and the insurer denied liability by reason that assured was in breach of the clause 16 of 1982 ICC. Mr. J. Hobhouse, in order to set up a link between clause 16 and section 78 of the 1906 Marine Insurance Act, opines that "clause 16 (without separated the clause 16.1 and clause 16.2) simply imposes a duty, directly *similar* to that imposed by s. 78,....".[86]

The Bailee Clause was firstly introduced in 1925 because of the formulation of the Hague Rules in 1924. It is noted that the creation of Bailee Clause was merely to protect the rights only against carrier or other bailee under the Bill of Lading and/or contract of carriage. But the situation was slightly changed in 1963 ICC. The wordings "Bill of Lading" and or "contract of carriage" were disappeared and "other third parties" were added in 1963 ICC. In other words, under the 1963 and 1982 ICC, the assureds not only have to protect the rights

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Institute Cargo Clauses.

[85] *The Netherland Insurance Co v. Karl Ljungerg & Co.* (1986) Lloyd's Law Report. vol.2, 19, at pp. 22-23.

[86] The *Vasso* (1993) 2 Lloyd's Rep. 309.

against the carrier or other bailee under contract of affreightment, but also have to protect the rights against any third parties who may are liable to the loss covered, for example the collision wrongdoer or the liable contractor either under the salvage agreement or towage agreement if concluded by the assured or his agents.

It is interested to know the reason way the assureds owe the duty to protect the rights against any parties who are liable to the loss of subject-matter covered ? Though the assured shall act as an uninsured owner, but this seem to be not the reason why the assured therefore owes the duty to protect the rights against any liable parties under the contract of insurance. The purpose of this obligation imposed on the assured in the Bailee clause, as opined by their Lordships in the *Netherlands Insurance Co. v. Ljunberg & Co.*, "is indeed for the benefit of the insurers, which is a material factor may be taken into account."[87] The benefit of the insurers in most cases are the insurers' right of subrogation. The assured failed to perform this duty will normally not increase or diminish the actual loss covered, but may protect the possible recovery, which the insurers are entitled to the advantage, from the liable parties.

In the 1934 and 1958 ICC, the insurers expressly agreed to reimburse the assured the expenditure incurred to protect the rights. However, unlike clause 16 as we may see in the 1982 ICC, said reimbursement in the 1934 and 1958 ICC was not recoverable in addition to any loss. In the 1963 ICC, with reasons unknown, the reimbursement wording were removed and this was the key issue in the case - *Netherlands Insurance Co. v. Ljunberg & Co.*(1986). However, the issue in *Netherlands Insurance Co. v. Ljunberg & Co.* is now beyond doubt as the 1982 ICC expresses that the underwriters will reimbursement the assured for such charges in addition to any loss recoverable.

A further question is the nature of the said reimbursement. It is neither salvage charges as defined in section 65 of the 1906 M.I.A., nor particular charges as it may recover in addition to any loss recoverable, nor suing and labouring expenses as considered in the *Netherlands Insurance Co. v. Ljunberg & Co.* It is a kind of special charges which the insurers agree to reimburse in addition to the loss recoverable. The basis of reimbursement to the bailee clause may come from the concept of "agency". The measures taken by the assured against any liable parties may be considered to exercise or protect insurers' rights of subrogation. The expenditures or costs incurred for this

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[87] *The Netherland Insurance Co v. Karl Ljungerg & Co.* (1986) Lloyd's Law Report. vol.2, 19, at p. 23.

purpose shall therefore fall on the insurers.[88] The payment for such expenditures incurred basically is a kind of reimbursement specially agreed by the insurers outside the indemnity of loss covered by the policy and not limit to the insured amount.

Both duties under clause 16.1 and 16.2 are reimbursable from the insurer *in addition to any loss recoverable*. Subject to the nature as mentioned above, both expenses can be recovered not only in addition to any loss but also recoverable separately from each other. The insurers shall reimburse all the expenses properly and reasonably incurred without reference to the amount insured.[89]

In the 1934 ICC, it is agreed that the assured shall with all diligence bring and prosecute under the direction and control of the underwriters to perform the obligation to against carriers and bailees. However, such requirement was disappeared in the 1958 ICC, and further in the 1963 ICC, it was replaced by a general word that all rights against carriers are "properly" preserved and exercised.

There are two questions shall be further considered to clause 16.2 of 1982 ICC that 1) the extent of the obligation have to perform; and 2) the effect if assured failed to perform this duty? In The *Vasso* (1993) as mentioned, Mr. Hobhouse J. held that

> mere failure to apply for a *Mareva injunction* did not, without more, establish any failure to perform the duty imposed by cl.16. ....the duty was a contractual duty the breach of which gave rise to a liability in damages; and a failure to minimize a loss or protect the value to the insurer of his rights of subrogation gave rise to more than a cross-liability of the assured to the insurer in damage and a potential of setting-off that liability against the liability of the insurer under the policy.[90]

The *Vasso* case, except for "*Mareva injunction*", did neither express any general principle on the extent of the obligation in clause 16.2, nor explain the extent of the "damages" which the insurers are entitled to cross claim. Except for The *Vasso* case, no further cases were reported dealt with the problems mentioned. It may be difficult to the insurers to prove their damages which actually resulted from the assured failed to perform the duty against the liable party. General

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[88] The concept of agency seems not to be applied to Clause 16.1. (see discussed in paragraph 1.4.1.2 in the first chapter).

[89] Clause 16.1 may apply to the 100% limitation of insured amount (see discussed in paragraph 1.4.3.3 (e) in the first chapter) but not for Clause 16.2.

[90] The *Vasso* (1993) Lloyd's Law Report vol. 2, 309 at p. 310.

speaking, unless the liability of the carriers or bailees or any liable parties have been finally decided by a proper authority, the liability of the carriers.. etc.. is basically still unascertained. The assured failed to perform his duty, in most situations, may therefore lose his rights against the liable parties' "possible liability" but not "ascertained liability". It is difficult to say the insurer's subrogation right is therefore harmed and the said "possible liability" is to be deemed as the insurer's damages.

It is interested to note that clause 16 and 17 of 1982 ICC are suggested to simplify as :[91]

16. The insured, its servants and agents must take reasonable steps to

16.1 avoid or minimise loss

16.2 ensure legal rights against others are not lost and are exercised and Insurers will reimburse the Insured for charges properly and reasonably incurred.

17. If the Insured or Insurers take steps aimed at saving, protecting or recovering the insured Goods, this will affect rights.

These wording will cause more confusion on the application of the Minimising Clauses in the ICC. "In addition to any loss recoverable hereunder" is removed because the Duty of Assured Clause stands on its own as additional to the cover specified in the Risks Clause.[92] In addition, the wording which the insurer agree to reimburse is directly following the clause 16.2. It is not an independent paragraph apply to both clause 16.1 and clause16.2. In other words, subject to the suggested wording, the insurers do only agree to reimburse the charges incurred for purpose of clause 16.2, but leave no mentions on clause 16.1.

2.4.3 Institute Clauses - Freight

The word "freight" is a compendious one capable of many meanings and is sufficiently wide to comprise the payment made under a bill of lading or a voyage chapter, or hire paid under a time charterparty.[93] It also includes the definition in section 90 of the Marine Insurance Act 1906 and the Rules for

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[91] Marine Insurance Report, Issue No. 146, March 1996, at pp. 58-59.

[92] Supra, at p. 58.

[93] Lowndes and Rudolf, ibid., at para 17.40.

Construction of Policy No. 16 of the 1906 Act that:

> "Freight" includes the profit derivable by a shipowner from the employment of his ship to carry own goods or moverables, as well as freight payable by a third party, but does not include passage money.

In *Forbes v. Aspinall* (1811), Lords Ellenborough ruled that

> in every action upon a freight policy, evidence must be given, either that the goods were put on board from the carriage of which freight result, to that there was some contract under which the shipowner, if the voyage were not stopped by the perils insured against, would have been entitled to demand freight.[94]

It is therefore suggested that the reference to a binding engagement is extremely important in the establishment of insurable interest in freight.[95]

Freight may be at risk to the carrier and payable only upon right delivery of the goods at destination; or may be pre-paid on ship and/or cargo lost or not lost, or partly pre-paid and partly at risk. The Insurable value on freight is the gross amount of the freight at the risk of the assured, plus the charges of insurance (section 16.2 of the 1906 Marine Insurance Act). The amount recoverable under the Institute Clause for Freight for any claim loss of freight shall not exceed the *gross freight actually lost* (ITC -Freight 1983 -clause 13.1). The gross freight actually lost if partial as expressed in section 70 of the 1906 Marine Insurance Act is the proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy. The Institute Freight Clauses, either for Time or Voyage serve a dual purpose since freight can be at risk either from a casualty to the vessel, or due to a loss of cargo, or both.[96] The perils insured against by the Institute Freight Clauses are the same as those appearing in the Institute Time/Voyage Clauses for Hulls, but the Freight Clauses adopt "franchise", not deductible using in the Hulls Clause, which the former does not cover partial loss, other than general average, under 3% unless caused by fire, sinking, stranding or collision with another vessel (Clause 12 of ITC-Freight 1983).

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[94] *Forbes v. Aspinall* (1811) 13 East 323.

[95] Kenneth Goodacre, *Marine Insurance Claims*, 3rd ed., 1996, at p. 569.

[96] Supra, at p. 577.

2.4.3.1 General average and salvage clause

Institute Time Clauses -Freight 1/10/83 clause 11 reads:

11.1 This insurance covers the proportion of salvage, salvage charges and/or general average attaching to freight at risk of the Assured, reduced in respect of any under-insurance.

11.2 Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules.

11.3 No claim under this Clause 11 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.

The effect of this clause is similar to the ITC-Hulls 83 clause 11, except for three points: 1) the subject matter insured under the Freight Clauses is "freight at risk"; 2) the declaration of "general average sacrifice may recover without enforcing the assured right of contribution from other parties" is disappeared on the Freight Clauses; and 3) the Freight Clauses provide no special allowance for the circumstance that the vessel sails in ballast without charter.

Due to the variations on the term of "freight" are endless, to decide the "freight at risk" becomes the most complex thing in a general average matter. The York-Antwerp Rules 1994 Rule XV deals with loss of freight; the York-Antwerp Rules 1994 Rule XVII deals with the calculation of the contribution values; Rules of Practice of A.A.A. Rule No. B.25 deals with the contributory value of freight; Rule No. B.26 deals with the circumstance of the vessel sails in ballast and under charter; Rule No. B.27 deals with the chartered freight (ulterior); Rule No. B.28 deals with the deductions from the freight at charterer's risk; Rule No. B.29 deals with the forwarding charges on advanced freight; Rule No. F.20 deals with the amount to be made good on freight sacrificed; and Rule No. F.22 deals with the contributory value of freight.

The York-Antwerp Rules 1994 Rule XVII first paragraph read:

> The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure *except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo,*

deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge. The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.

In accordance with the above Rule XVII of the 1994 York-Antwerp Rules[97], freight at the risk of cargo contributes as an element on the cargo value and freight only contributes as a separate interest when it is at the risk of carrier.[98]

Institute Freight Clauses do not mention the general average sacrifice may recover without enforcing the assured's right of contribution from other parties. The word "sacrifice" always means as a loss of or damage of *physical property*.[99] Freight may be considered as an invisible property or quasi property. However, it seems difficult to say it is a physical property likes cargoes or vessel. It is also difficult to imagine the situation which the subject of "freight" may be directly sacrificed by a general average act. The loss of freight at risk, if allowable, is a kind of general average loss incurred *attaching* to the loss of damage of the physical property in common adventure. In other words, it is sometimes not so easy to be distinguished into general average sacrifice and or expenditure on freight, unless we consider the general average loss on the physical property which the freight at risk attached thereto.

Again, the Freight Clauses do not mention about the special allowance on York-Antwerp Rules 1994 (excluding Rules XX and XXI) while vessel sails in ballast without charter. "Vessel sails in ballast without charter" may be well presumed that there are no freight involved, but not all. In practic, freight insurance may be taking out on "anticipated freight" where the expectation of earning freight is real enough to be able to show insurable interest at the time of any loss, by use such words as "On freight, chartered or as if chartered, and/or anticipated freight".[100] Lord Wright, by taking an example that "vessel has no cargo on board and no freight engagement, but if she had not been damaged, and had been put on the berth, there would have been abundant cargo offering",

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[97] According to English Law, claims in general average for loss of or damage to cargo are based on the market value on the day of discharge at the port of destination or other place where the adventure ends. However the York-Antwerp Rules are based on the invoice values to the receiver, and there can thus be marked differences in the ultimate allowances under two system. (see discussion in Lowndes and Rudolf, ibid., at para. 16.01)

[98] N. Geoffrey Hudson, ibid., at p. 236.

[99] Lowndes and Rudolf, ibid., at para. A.93.

[100] J. Kenneth Goodacre, *Marine Insurance Claims*, 3rd ed., 1996, at p.570.

opined that in such a case it should be held, if apt words were used in the policy, that there was an insurable interest.[101]The question is that shall the said anticipated freight be contribute the general average loss? The shipments which the anticipated freight attached is a future shipments to be shipped. It is difficult to imagine the said "future shipments" could be actually involved in a general average matter. It may be therefore assumed that the anticipated freight would not be the party to contribute general average loss. Rule No. B.27 of Rules of Practice of A.A.A. also affirms the situation that the ulterior chartered freight shall not contribute to the general average.[102] Clause 10.3 of ITC-Hulls 83 is a special and express allowance while vessel sails in ballast without charter provided by hull underwriters. The freight underwriters seem have no intention to provide the same "Policy G. A. " coverage.

2.4.3.2 Suing and labouring clause

It may be surprised that, even though at least four reported cases[103] were involved in the same dispute arose from the absence of the suing and labouring clause in the Institute Freight Clauses, the Institute Freight Clauses not only in the 1983 version but also the 1989 and 1995 versions do not contain any equivalent provision to the "Duty of Assured Clause" or "Suing and Labouring Clause". It is obviously that the freight underwriters are intentionally not to contain such clause in the Freight Policy. The questions are therefore arose that 1) do the assured and his servants and agents owe the duty to sue and labour ? and 2) for what circumstance the freight underwriters shall be liable to the expenses incurred in endeavouring to avert or minimise a loss ?

Though *Kidston v. Empire Marine Insurance Co* (1867) and *Lee v. Southern Insurance Co,* (1870)[104] ruled the forwarding charges reasonably

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[101] Lord Wright, Address to Association of Average Adjusters 1939.

[102] Rule B.27 reads: That when at the time of a general average act the vessel has on board cargo shipped under chapter-party or bills of lading, and is also under a separate charter to load another cargo after the cargo then in course of carriage has been discharged, the ulterior chartered freight shall not contribute to the general average.

[103] *Emperor Goldmining Co. v. Switzerland General Insurance* (1964) 1 Ll.L.Rep. 348; *I.C.S. Inc. v. British Traders Insurance Co.* (1981) 2 Lloyd's Rep. 460, *The Netherlands Insurance Co. v. Karl Ljungberg & Co.* (1986) 2 Lloyd's Rep. 19; and The *Wondrous*

incurred may be recoverable from freight underwriters under the suing and labouring clause on the traditional S.G. Form, but the real intention of freight underwriters not to include the suing and labouring clause in the present Freight Clauses is still unclear and also not reported by the present marine insurance textbooks. My suggestion is that the duty and extent to avert or minimise a loss covered by the Freight Clauses is not so easy to be distinguished from the option of the shipowner or carrier to forward the cargo which the freight attached thereto under complex variations of the contract of affreightment at present. To be in a position to exercise an option to forward cargo there must be a rightly assessed frustration of the contract of affreightment, and that without fault of either of the parties.[105] On the other hand, unless the contract of affreightment provides otherwise, cargo has to be delivered in the original ship and customarily only liner bill of lading is given the liberty to deliver by any ship and of course freight is seldom at risk of the shipowner and/or charterer in these circumstances. Generally speaking, presumed the contract of affreightment was frustrated caused by a risk covered, to forward cargo at shipowner's own expense and earn the freight at his risk is shipowner's option, but not his absolute duty. This may be the reason why the freight underwriters prefer to leave question unsettled by not to include the suing and labouring clause in the freight policy.

In the absence of the "suing and labouring clause" or "duty of assured clause" in the Institute Freight Clauses does not mean the forwarding charges will be then not recoverable from the freight underwriter if the charges incurred is for purpose of averting or minimising a loss covered by the Freight Clauses. My suggestion is the charges may be recovered by the item of "particular charges"[106] or alternative, according to the third rule of mitigation of damage under general contract law.[107]

2.4.3.3 Freight collision clause

As discussed in paragraph 2.4.1.3, the words "loss of or damage to any property" used in the 1983 ITC-Hulls seem not to be included the net freight loss

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(1870) LR 5 CP 397.

[105] Maurice E.V. Denny, *Freight Insurance*, 1st ed., 1986, at p. 87.

[106] Wills J. in *Kidston v. Empire Insurance Co.* (1867) case opined the forwarding charges may recoverable from the "particular charges". See discussion in paragraph 1.5.3.

[107] See discussion in paragraph 1.4.1.1 and paragraph 1.4.3.1.

to the other vessel. It therefore may result in a circumstance that the 3/4ths Collision Liability of hull policy could not adequately protect by reason of the hull valuation being insufficient for his needs. The Institute Freight Collision Clause is framed to meet such a contingency, and is in practice included in the owners' freight policy.[108] The Freight Collision Clause in the Institute Freight Clauses 1983 basically follows the ITC-Hulls 83, except for the following exceptions:

9.2.2 no claim shall attach to this insurance:

9.2.2.1 which attaches to any other insurance covering collision liabilities

9.2.2.2 which is, or would be, recoverable in the terms of the Institute 3/4ths Collision Liability Clause if the Vessel were insured in the terms of such Institute 3/4ths Collision Liability Clause for a value per ton of her gross registered tonnage not less than the equivalent in pounds sterling, at the time of commencement of this insurance, of 66.67 Special Drawing Rights as defined by the International Monetary Fund;

In accordance with these exceptions, the Freight Collision Clause will only become effective when all other policies covering collision liabilities have been taken into account.[109] The freight underwriters are only covering an excess sum, assuming the vessel is insured under the hull policies for a value of net less than her statutory limit of liability of 66.67 SDR[110] coverting into sterling at the time the insurance commences.

2.4.4 Institute Clauses - War

War risks traditionally were combined together with marine risks in the S.G. Form to cover the sea, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermarkt, surprisals, taking at sea, arrests, restraints, and detainments of all kings, princes, and people... In the end of nineteenth century, the underwriters gradually felt that they have exposed under the potential risks unable to face, as the modern weapons which differed greatly

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[108] J. Kenneth Goodacre, *Marine Insurance Claims*, 3rd ed., 1996, at p.664.

[109] Supra, at p. 665.

[110] The words "66.67 SDR" was replaced by "calculated in accordance with Article 6.1(b) of 1976 Limitation Convention" in Institute Freight Clauses 1995.

from those of the Napoleonic Wars[111] and in 1883, the predecessor of "F.C.&S." clause was adopted by Lloyd's by wording that "Warranted free from all consequences of hostilities and warlike operations". An amended "F.C.& S." clause was inserted in the second set of Institute Clause for Hulls in 1889 and also accepted in the first set of Institute Cargo Clauses in 1912.

Before the New MAR forms of policy to be introduced in 1982/1983, "back to back" method was the traditional way used to set out the risks covered by War Risks Policy which provided that war risks policy only cover "the risks excluded from the Standard Form of English Marine Policy by the F.C.& S. clause..". Though the "back to back" method was abandoned together with the traditional S.G. Form, the risks covered clause under the new Institute War Risks Clauses, either for hulls, freight or cargo, are almost identical with the risks excluded by the new marine risks clauses (see Appendix 5[112] and Appendix 6[113]). It is not necessary to deal with the War Exclusion Clause in marine risks policy and the Risks Covered Clause in war risks policy. This section will only discuss the general average and salvage clause, suing and labouring clause and collision liability clause under the present Institute War Clauses.

2.4.4.1 Institute Clauses - War - Hull and Freight

The Institute War and Strikes Clauses 1983 adopt "incorporation" method to provide coverage on general average, salvage, suing and labouring and collision liability. The Incorporation Clause reads:

> The Institute Clauses -Hulls 1/10/83 (including 4/4ths Collision Clause) except Clause 1.2, 2, 3, 4, 6, 12, 21.1.8, 22, 23, 24, 25 and 26 are deemed to be incorporated in this insurance in so far as they do not conflict with the provisions of these clauses.

In accordance with this Clause, the Institute Time or Voyage Clauses - Hulls 1/10/83 Clause 8 (3/4ths Collision Liability); Clause 11 (General Average and Salvage) and Clause 13 (Duty of Assured (Sue and Labour)) are automatically

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[111] O'May, *Marine Insurance*, at p. 252.

[112] Appendix 5 showing the Exclusions Clauses in ITC-Hulls 1983 in comparison with the Perils Covered and Exclusions in Institute War and Strikes Clauses - Hulls 1983.

[113] Appendix 6 showing the Exclusion Clauses in Institute Cargo Clauses -1982 in comparison with the Risks Covered Clause and Exclusion Clauses in Institute War Clause (Cargo) 82 and Institute Strikes Clauses (Cargo) 82.

incorporated into the Institute War and Strikes Clauses.

Basically, it makes no difference in interpreting the above three clauses between the Institute War and Strikes Clauses and the Institute Clauses for Hulls, except that 1) the incurring of general average, salvage or salvage charges, collision liability and suing and labouring expenses shall be for purpose of preventing a loss by the *perils insured* by the Institute War and Strikes Clauses; 2) the war and strikes risks do not cover any liability that are recoverable from the hull policy with ITC-Hulls 83; and 3) the collision liability provided in the Institute War and Strikes Clauses is not limited 3/4ths collision liability but full legal liability of the assured, i.e. 4/4ths collision liability.

2.4.4.2 Institute Clauses - War - Cargo

Whereas the Institute War and Strikes Clauses for Hull and Freight adopt "incorporation" method to provide coverage on general average...etc., the Institute War Clauses (IWC- cargo) adopt "express coverage" method to provide coverage on general average, salvage and salvage charges in Clause 2 and Duty of Assured and Waiver clause in Clause 11 and 12. The wording of the said three clauses in IWC-Cargo are identical to the related clauses in the ICC 1983, and which may be treated as the same manner in interpreting those clauses in IWC and ICC.

2.4.5 Institute Clauses - Strikes

The F.C.& S. clause, first introduced in the second set of ITC-Hulls in 1889, was amended in 1893 ITC-Hulls to exclude "all consequences of riots, civil commotions", but these wording were removed from ITC-Hulls in 1898 and not appeared again until the market introduced the whole new ITC-Hulls version in 1983 by a clause entitled "Strikes Exclusion". For cargo insurance, "Strikes, Riots and Civil Commotions Clause" was one of the seven original clauses in the first set of Institute Cargo Clause 1912.

For hull and freight insurance, war risks and strikes risks are combined in one, named Institute War and Strikes Clauses. For cargo insurance, war risk and strikes risks are separated into two individual clauses. The content of the risks covered clause under the Institute War and Strikes Clauses for hull and or for freight are identical with the Strikes Exclusion in the Institute Clauses for hull or for freight. In other words, the Institute War and Strikes Clauses basically provide the "back to back" war and strikes risks protection which the Institute

Clauses for hull and freight are exclusive. The situation is different in the Institute Strikes Clauses (ISC) for cargo. The ISC does not provide "back to back" risks covered which excluded by the ICC.

2.4.5.1 Institute Clauses - Strikes - Hull and Freight

See also discussion in paragraph 2.4.4.1.

2.4.5.2 Institute Clauses - Strikes - Cargo

See also discussion in paragraph 2.4.4.2.

2.5 Protection and Indemnity Insurance

P&I insurance as a mutual insurance stands its special status in applying to the 1906 Marine Insurance Act (section 85). Normally, the word "protecting" or "protection" represents the liabilities those which may be incurred by a shipowner in respect of the ship itself, its officers and crew, and any passengers which it may carry. And the word "indemnity" represents the liabilities those losses, expenses and damage for which a shipowner may become legally liable in consequence of carrying cargo by sea.[114]

The flexibility of the rules covered is one essential element of P&I Clubs, not only by inserting the "omnibus rule" as a catch all provision, but also they change the rules almost year after year to meet the constantly changing shipping scene and new legislation brought in by governments worldwide which affect the operation of shipping.[115] Different construction of the rules covered existing among Clubs, but the basis of coverage offered by the Clubs who are also the member of the International Group of P&I Clubs are in conformity.

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[114] H.G. Lay, *A Text Book of the History of Marine Insurance*, 1925, at p.133; Peter Young *"Mutuality" The Story of The UK P&I Club*, 1995, at p.10.

[115] Christoff Luddeke, *Marine Claims*, 2nd ed. 1996, at p.3.

2.5.1 The nature of P&I Insurance and its relationship with Hull Insurance

P&I clubs originated from the 1/4ths Running Down liability uninsured by hull insurance. It was naturally that the follow-on P&I insurance excluded their cover on the liability, costs or expenses which their shipowner member may recover from their own hull policy.

The present P&I Clubs' Rules almost contain an exclusion clause that "the club expresses not to indemnify the owner of entered ship against any liabilities, costs or expenses against which that the owner would have been insured if at the time of the incident giving rise to those liabilities, costs or expenses the ship had been fully insured for its proper value under Hull policies on the terms equivalent to those of the Lloyd's Marine Policy MAR form 1/1/82 with the Institute Time Clauses Hull 1/10/83 (or 1/11/95) attached."[116]

The choice of the standard hull policies are Institute Time Clauses Hulls 1/10/83 or 1/11/95 or any other policies on terms equivalent to ITC 83/95. The said ITC 83/95 are full terms of ITC -Hulls, but not restricted or limited terms of Institute Time Clauses for hulls.

P&I insurance is a liability but not property insurance. Physical loss or damage to the entered ship, the equipment thereon and their sequent costs or charges, for example the repairs cost, loss of freight or hire, salvage on said property...etc., basically are all excluded from P&I coverage, provided and however that it contains a few kind of costs or expenses expressly covered by the club. They are life salvage, unrecoverable general average contribution, ship's proportion of general average, special compensation[117], sue and labour and legal costs and expenses incurred by direction of the Club.[118]

2.5.2 Collision with Other Ships

P&I Clubs cover the collision liability unrecoverable under the standard hull policy. They are:

a. 1/4th of collision liability;
b. removal or disposal of obstructions, wrecks, cargoes or any other thing

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[116] For example, Rule 5 section D of UK P&I Club Rules.

[117] P&I Cover on special compensation will be discussed in the fourth chapter.

[118] Rule 5 section G of UK P&I Club Rules.

whatsoever;

c. any real or personal property or any thing whatsoever except other ships or property on other ships;
d. the cargo or other property on the entered ship, or general average contributions, special charges or salvage paid by the owners of that cargo or property;
e. loss of life, personal injury, illness, repatriation or substitute expenses;
f. an escape or discharge (other than from the entered ship), of oil or any other substance, or threat thereof

P&I Clubs also cover the owner's liabilities arising out of the collision which exceeds the sum recoverable under the Hull Policy of the entered ship solely by reason of the fact that the sum of the liabilities arising out of the collision exceeds the valuation of the ship in that policy.[119] The valuation of the ship is the proper value which is the value, after periodic review, at levels approximating to the market value of the ship without commitment.

2.5.3 Life Salvage

In B*osworth No.3* (1962), Mr. McNair J. held that

> life salvage was not a form of common-law maritime salvage, but a species of salvage created by Act of Parliament; the award (to the trawler named *Wolverhampton Wanderers*) against ship, cargo and freight for services rendered to ship, cargo and freight, enhanced by services rendered for saving life, it was recoverable under Lloyd's policy and not from P&I Club; but the sum paid to another salving vessel (named *Finnmerchant*) was solely life salvage and would have been recoverable from the P&I Club.[120]

The Clubs invariably cover life salvage but only to the extent that such life salvage payment are not recoverable under the hull policies of the entered ship or from cargo owners or underwriters. What is the real meaning of the words "payment are not recoverable under the hull policies..."? Hill says "recovery under this rule by an owner member would be in circumstances where *only* life had been saved".[121] However, if there was only life had been saved, no payment should be incurred and the rule seems no longer to be applied. On the other

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[119] Rule 2 section 10 (C) of UK P&I Club Rules.

[120] The *Bosworth No. 3* (1962) Lloyd's List Law Report 483.

[121] Christopher Hill, *Introduction to P&I*, 2nd ed., 1996, at p.83.

hand, if the salvage award was enhanced against the ship, cargo and freight salved, the property salved (and or their underwriters) should share the enhanced salvage award subject to their individual salved value. To what circumstance the Clubs' rule will be applied? The circumstance incurred in The *Bosworth No.3* is so much unusual which involved in a complex salvage operation and the vessel *Finnmerchant* was awarded solely for salving the life.

Subject to the Exclusion Rule of the sums insurable under Hull Policies as above mentioned, the shipowner member would have been insured for its proper value for full terms of ITC 83 or 95, which this Exclusion Rule is also applied to the life salvage. Namely that, the Club only reimburses the life salvage payment which is not recoverable from the presumed ITC 83 or 95. A further question is that does all life salvage payment not recoverable from ITC 83 or 95 are reimbursable from P&I Club? The situations which life salvage is not recoverable from hull insurance may include: 1) the salvage service rendered was not for the risk covered by the hull policy; 2) the assured breached the warranty either expressly or impliedly; 3) it existed a statutory excluded loss, for example it was attributable to the willful misconduct of the assured in section 55(2) of Marine Insurance Act; 4) the salvage service rendered was for a risk expressly excluded by the hull policy, for example the war risk; and 5) not recoverable merely because of under-insurance or deductible or franchise. General speaking, unless the Directors of the Club otherwise decide in accordance with the omnibus rule, only situation 1 may be reimbursed by the Club.

2.5.4 Unrecoverable General Average Contribution

The Club covers the proportion of general average, special charges or salvage which her shipowner member may be entitled to claim from cargo or from some other party to the marine adventure and which is not legally recoverable solely by reason of a breach of the contract of carriage.[122]

The general rule is, if the general average act arose from a breach of the contract of carriage by the shipowner e.g. unseaworthiness caused by the shipowner's failure to exercise due diligence before and at the commencement of the voyage (Article 3.1 of Hague or Hague-Visby Rules), the shipowner will not be entitled to a contribution from the other parties.

The words "special charges" represent the expenses incurred on behalf of

[122] Rule 2 Section 19 of UK P&I Club Rules.

the cargo owner for the safety and preservation of the cargo, which not admissible in general average because the safety of the ship itself is not at risk and thus there is no common peril.[123] Under this rule, the prerequisite for claiming the said special charges is that it should be actually existed a general average and or salvage matter. Any special charges incurred on cargos outside the common understanding on general average and salvage is a problem under the Rule for Cargo Cover.

A simple word "salvage" is used in this rule. It represents the salvage of any kinds. The occurrence of a salvage case always follows general average and then to be treated as general average. However, not all salvage cases rendered are for common safety and to be treated as general average in accordance with the York-Antwerp Rules.

Some limitation and exceptions which related to Cargo Cover are also apply to this Rule, e.g. standard term of carriage (The Hague Visby Rules) in applied, the diviation proviso and or the general average shall be adjusted according to the York-Antwerp Rules.

2.5.5 Ship's Proportion of General Average

The Club covers the entered ship's proportion of general average, special charges or salvage not recoverable under the Hull Policies by reason of the value of the ship being assessed for contribution to general average or salvage at a sound value in excess of the insured under the Hull Policies.[124]

This rule always contains a proviso that the cover shall be limited to the amount of the ship's proportion which not have been recoverable under Hull Policies of the ship had been insured at the *proper value*. The said "proper value" is the value, after periodic review, at levels approximating to the market value of the ship without commitment.

The words "special charges", same as the special charges discussed in paragraph 2.5.3, represent the expenses incurred on behalf of the shipowner for the safety and preservation of the ship, which not admissible in general average because the safety of the cargo or other property themselves are not at risk and thus there is no common peril. The question is that there are no corresponding words of "special charges" being used in the Institute Time Clauses even in the Marine Insurance Act 1906. However, whether the said "special charges" fall on

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[123] The Standard P&I Club, *A Guide to P&I Cover*, 2nd ed. 1997, at p. 180.

[124] Rule 2 section 20 of the UK P&I Club.

the items of "particular charges" or "suing and labouring expenses" as discussed is not related, since the Club has expressly agreed to cover such "special charges" incurred in general average and or salvage events not recoverable under Hull Policies.

2.5.6 Sue and Labour and Legal Costs

Likes as marine hull and cargo insurance, the shipowner member is also imposed the duty to sue and labour, and on the other hand, the Club agrees to reimburse the related expenses incurred.

The duty clause states "upon the occurrence of any casualty, event or matter liable to give rise to a claim by the shipowner member upon the Club, it shall be the duty of the shipowner member and his agents to take and to continue to take all such steps as may be reasonable for the purpose of averting or minimizing any expense or liability in respect whereof he may be insured by the Club."[125] The persons who owe the duty to sue and labour under the P&I Club rules are the shipowner member and his agent. The word "servants" contained in the ITC - Hulls, is not appeared in the Club's rule. On the other hand, a susceptible word "continue" is also adopted in the Club's rule. Both of them may be considered as a special character of P&I insurance that the liability covered are always "long-trail" and the liability incurred in most circumstance are due to the neglect of shipowner's servants (master and or crew member).

ICC and ITC - Hulls do not mention the effect if the assured, his servants or agents breached the duty to sue and labour. The principle adopted in the *Gold Sky* and The *Vasso* cases is the insurer would be able to set off or counterclaim against the liability of the insurer under the policy.[126] The UK Club Rules state that "in the event that the shipowner commits any breach of this obligation, the Directions of the Club may in their discretion reject any claim by the shipowner against the Club arising out of the casualty, event or matter, or reduce the sum payable by the Club in respect thereof by such amount as they may determine".[127] In accordance with this Rule, the Club may reduce even reject *any claim with causal connection with the casualty* which the shipowner breach his duty, but not merely to reduce or reject the claim which directly result from the breach of such duty. The effect of breaching the duty in the UK Club Rule is

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[125] Rule 5 section M of UK P&I Club.

[126] See paragraph 1.4.2.3 in the first chapter.

[127] Rule 5 section M of UK P&I Club..

different from the words "condition precedent" mentioned in the Hazelwood Book.[128]It is dangerous to use the words "condition precedent" in marine insurance, which represent the insurer is discharged from *any liability,* not only for the liability in relating to the casualty or duty, from the date of the breach of said "condition precedent".[129]

As to the indemnity clause, the Club covers "extraordinary costs and expenses reasonably incurred on or after the occurrence of any casualty, event or matter liable to give rise to a claim upon the Club and incurred solely for the purpose of avoiding or minimizing any liability or expenditure against which the shipowner is wholly or by reason of a deductible, partly insured by the Club, but only to the extent that those costs and expenses have been incurred with the agreement of the Manager of the Club or the extent that the Directors of the Club in their discretion decide that the shipowner should recover from the Club."[130] Unlike ICC 82 and ITC - Hulls 83/95, the Club Rules do not exist any wording connect with the duty clause and indemnity clause for suing and labouring. The situation is very similar with section 78(4) and 78(1) of the 1906 Marine Insurance Act (see discussion in paragraph 1.4.3 of the first chapter).

The said indemnity rule contains a proviso which is different from the 1906 M.I.A., ICC and ITC- Hulls. The recoverable sue and labour expenses in P&I insurance shall be the expenses incurred with the advanced agreement of the Managers. As discussed in the first chapter, this indemnity clause on suing and labouring may be modified, limited even excepted by contractual parties.

The Club also covers the legal costs and expenses relating to any liability or expenditure which the shipowner is wholly or partly insured by the Club. This coverage is similar to the legal costs incurred in contesting liability covered in the ITC 3/4ths Collision Liability Clause. it is the same that both of them are only recoverable while the costs or expenses have been incurred with the previous agreement/consent of the insurer or the Managers of the Club.

Section 78(1) of the 1906 Marine Insurance Act declares the supplementary nature in claiming the suing and labouring expenses. On the other hand, the limitation of the Club's liability is always subject to the "legal liability" of the shipowner which may be determined and fixed by law. Bearing in mind that, the suing and labouring expenses incurred are not included in the said "legal liability". Before the 1995/1996 P&I policy year, the Clubs normally offered unlimited cover, except for oil pollution. To discuss whether suing and

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[128] Stevens J. Hazelwood, *P&I Clubs Law and Practice*, 2nd ed. 1994, at p. 309.

[129] The *Good Luck* (1992) 1 AC 233.

[130] Rule 2 section 25 of UK P&I Club.

labouring expenses may be recoverable in addition to the "legal liability" or not is unrealistic under the said unlimited cover. In 1995, the Clubs Member of the International Group of P&I Clubs agreed to adopt $20bn limit[131] on the overspill claims (or catastrophe claim) and effected in 1996/1997 policy year. It represents the century-old system of unlimited P&I cover have brought into an end. Under the new limitation role, any reference to a claim incurred by the Club or by any other party to the Pooling Agreement shall be deemed to include the *costs and expenses* associated therewith.[132] In accordance with this rule, suing and labouring expenses incurred shall be included in the claim covered to calculate the maximum single amount of overspill claim. In other words, the recovery of suing and labouring expenses in P&I insurance can not be in addition to its original claim.

2.5.7 Expenses Incurred by Direction of the Club

In addition to suing and labouring expenses and legal costs, the Club also cover the expenses, costs and loss incurred by reason of a special direction of the Directors (or Board or Committee) of the Club. This type of claim does not often come before the Board. Sometimes the Board has instructed the Managers and the Owner member not to put up security for a particular demand because the demand was considered outrageous. In return the Board has agreed to reimburse the Owner for running costs.[133]

It is interest to note that the expenses reimbursable in this rule is which the expenses are incurred by the direction of the *Director (or Board or Committee)*, but not the *Managers* of the Club. The related rule in most Clubs Rules always provide that the Manager of the Club shall be with extensive discretionary power in relation to claims-handling.[134] For example, Rule 37 of the UK P&I Club states that the Manager shall have the right include to 1) control or direct the conduct of any claim or legal or other proceedings relating to any liability, loss or damage insured; and 2) to require the Owner to settle, compromise or otherwise dispose of such claim or proceeding in such manner and upon such terms as the Manager see fit. It further states that if the Owner does settle, compromise or dispose of a claim or of proceedings after being required to do so by the

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[131] The limit is down to $4.25bn in 1998/1999 policy year.

[132] Rule 22, section 1. B of UK P&I Club Rules 1996/1997.

[133] The Standard P&I Club, *A Guide to P&I Cover*, 2nd ed., 1997, at p. 198.

[134] Steven J. Hazelwood, *P&I Clubs Law and Practice*, 2nd ed. 1994, at p. 239.

Managers, any eventual recovery by the Owner from the Club in respect of such claim or proceeding shall be limited to the amount he would have recovered if he had acted as required by the Managers.[135] However, there are no express coverage that the Club will reimburse the costs, expenses and loss incurred by the Owner by reason of the Owner followed the instruction of the *Manager* of the Club.

2.6 Summary on the Practical Application of Various Salvage which differ from the M.I.A. 1906

The 1906 Marine Insurance Act gives a less compulsory application on the contract of insurance agreed by the contracting parties. In some aspects, the Institutes Clauses and the York-Antwerp Rules (if apply) change the original deploy in the 1906 Marine Insurance Act regarding to the general average, salvage and suing and labouring expenses.

2.6.1 Institute Clauses - Hulls

In comparison with Diagram 6 (which shows the statutory application of various salvages in the Marine Insurance Act 1906), the Diagram 7 in the following page showing there are four points in the Institute Clauses- Hulls 1983 (the York-Antwerp Rules 1974 or 1990 or 1994 is also applied) which differ from the 1906 Marine Insurance Act.

The first two differences are, according to ITC-Hulls 1983 clause 11.2 which if the York-Antwerp Rules are also applied, pure salvage and no cure no pay basis contractual salvage are treated as *general average* but not *salvage charges*.

As to the third difference, according to clause 13.4, services rendered under *quantum meruit* contract basis if success but the expenses incurred exceed the value of such property saved, it is particular charges in the nature of salvage under section 65(2) of the 1906 Marine Insurance Act, but recoverable under the suing and labouring clause to the amount of the expenses in excess of such salved value under the ITC-Hulls.

To the circumstance that the expenses have been reasonably incurred in saving or attempting to save the vessel and other property and there are no

[135] Rule 37.B of UK P&I Club Rules.

proceeds or the expenses exceed the proceeds (i.e. for common safety), there is no claim under the 1906 Marine Insurance Act, neither particular charges as it was for common safety, nor general average or salvage charges as it was not success and or did not incur any expenses if services rendered under pure salvage or no cure no pay basis. However, according to clause 11.5 of the ITC - Hulls 1983, the hull underwriters will agree to pay ship's proportion to that expenses incurred. This is the fourth difference differs from the 1906 Marine Insurance Act.

2.6.2 Institute Clauses - War and Strikes- Hulls

The practical application of the Institute Clauses - War for Hulls or Freight, which differ from the 1906 Marine Insurance Act, are identical with the ITC-Hulls 1983. (see also discussion in paragraph 2.6.1 and Diagram 7)

2.6.3 Institute Clauses - Cargo

The third and fourth differences in the ITC-Hulls 1983 are the hull underwriters specially agree to pay by suing and labouring expenses. These special reimbursement in the Hull policies would not apply to cargo policy as short of such special engagement contained in the cargo policy. In other words, only pure salvage and no cure no pay salvage for common safety, which is recoverable by the item "salvage charges" under the 1906 Marine Insurance Act, is now recoverable by term "general average" if the York-Antwerp Rules 1974 is applied. Diagram 8 showing the practical application of various salvages on the I.C.C. 1982.

2.6.4 Institute Clauses - Freight

The circumstance on freight policy is similar to the cargo policy, except for no suing and labouring clause is contained in the freight policy.

Diagram 7.
Practical Application of Various Salvages in I.T.C.-Hulls 1983

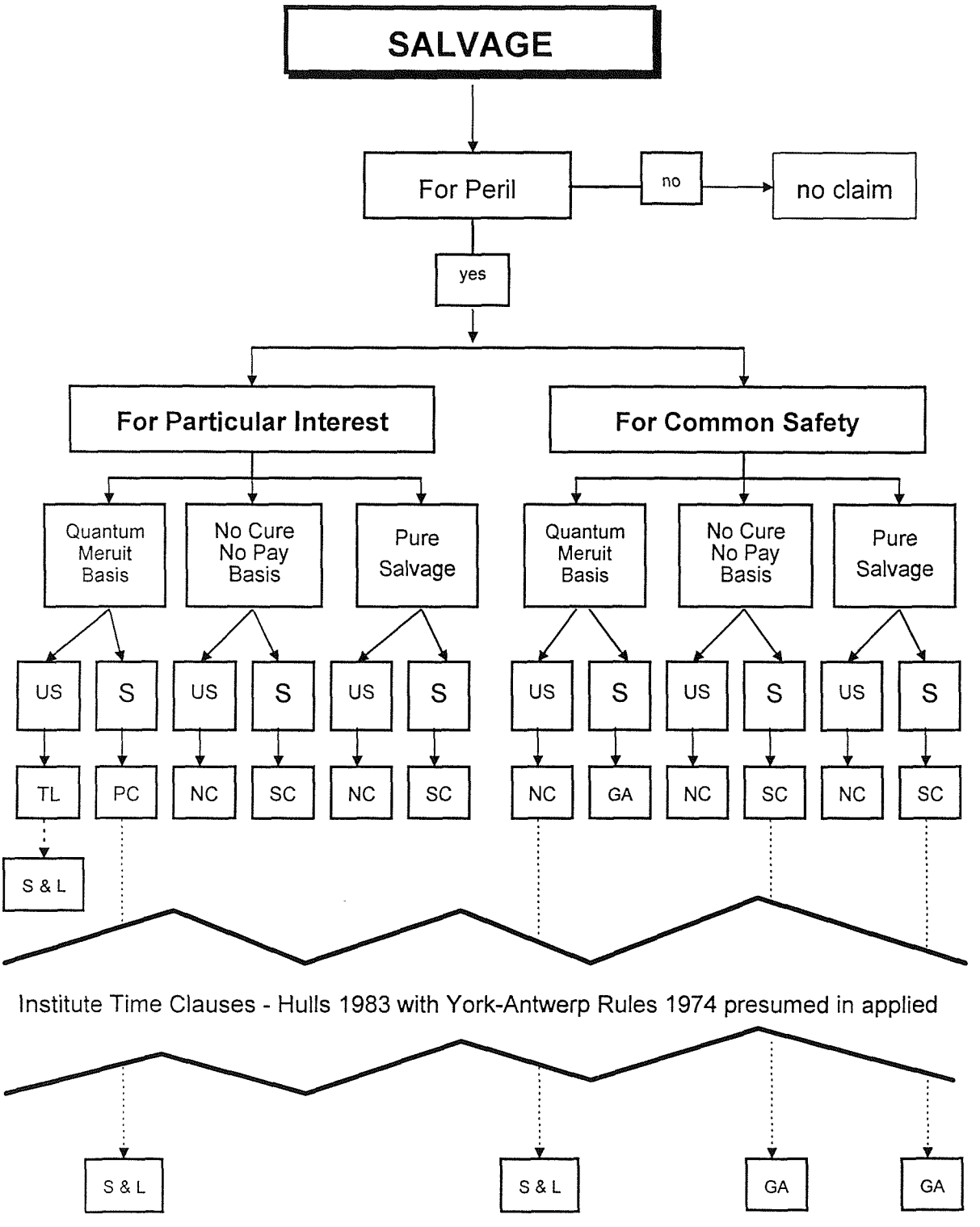
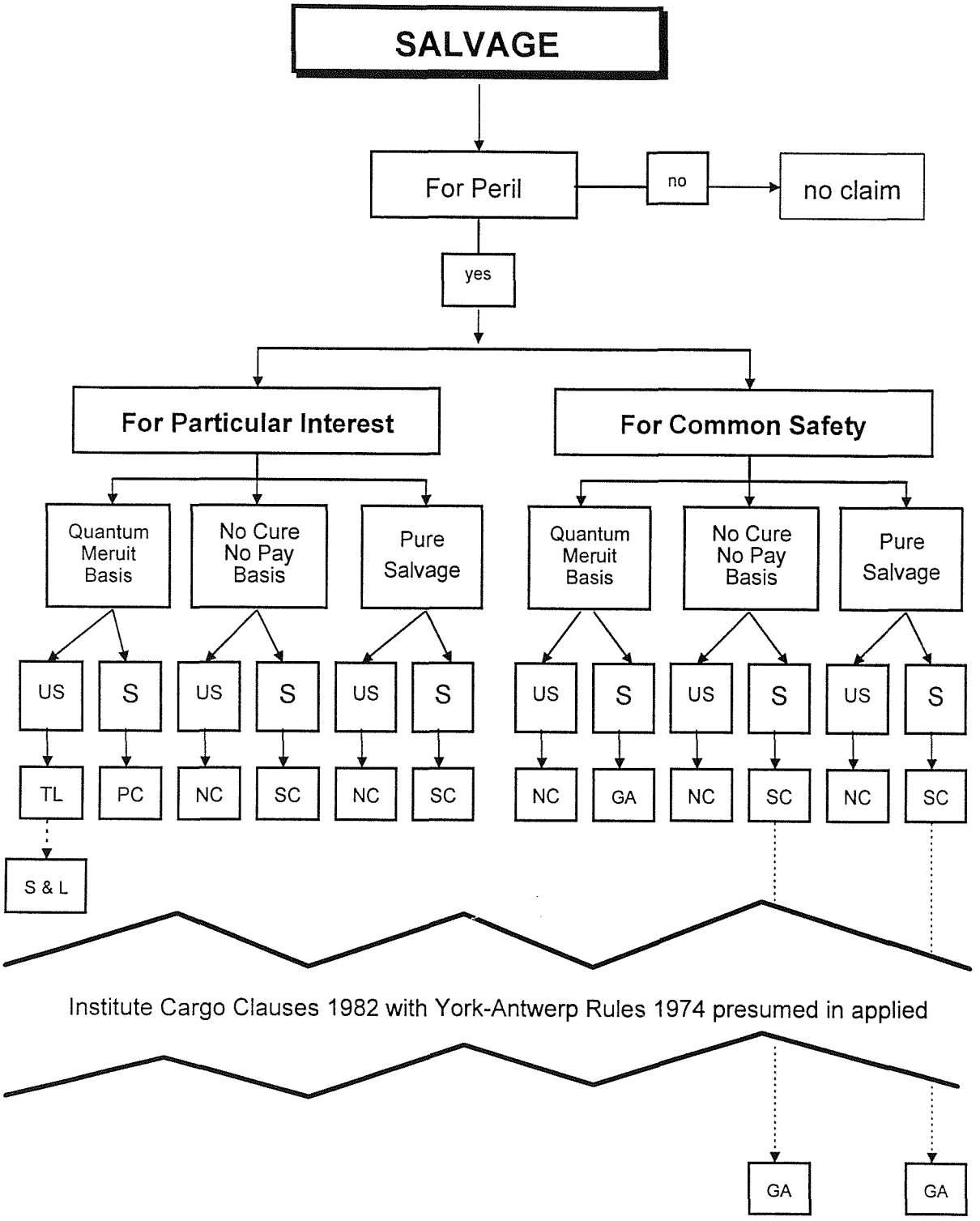


Diagram 8.
Practical Application of Various Salvages in I.C.C. 1982



Institute Cargo Clauses 1982 with York-Antwerp Rules 1974 presumed in applied

CHAPTER 3

Chapter 3

The Changes of Substantive Law of Salvage in the International Convention on Salvage, 1989

The law of salvage which may affect marine insurance may come from four aspects: the Brussels Convention on Salvage and Assistance 1910, the changes of English law of salvage either case law or by statute after the enactment of the Marine Insurance Act 1906, the adoption of various salvage contract(s) world-wide practicably used acceptable by the insurance parties, and finally the London International Convention on Salvage, 1989.

The 1910 Salvage and Assistance Convention was the first international attempt to uniformize the law of salvage. The 1910 Convention left a number of important topics assumed and unmentioned and in many but not all respects of the 1910 Convention reflected the existing English law of salvage.[1] Hundreds of salvage cases were submitted in courts in this century, some of them affirmed the salvage law existed before the enactment of the Marine Insurance Act 1906, but not all. Since then the first formal set of the Lloyd's Standard Salvage Agreement (LOF) was introduced in 1908, the tenth version of LOF has approved by Lloyd's Council in 1995[2]. By 12 years discussions in C.M.I. and I.M.O. after the "*Amoco Cadiz*" disaster 1978, the new International Convention on Salvage was enacted in 1989 and came into force at 14 July 1996[3]. These convention, statutes, cases, contract forms and their changes either on the substantive or procedure law of salvage and whatsoever insignificant or extremely important, are directly or indirectly affecting the parties related to the

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1 Geoffrey Brice, *Maritime Law of Salvage*, 2nd ed., 1993/1995 at para 1-47. The United Kingdom enacted only part of 1910 Brussels Salvage Convention in the Maritime Convention Act 1911.

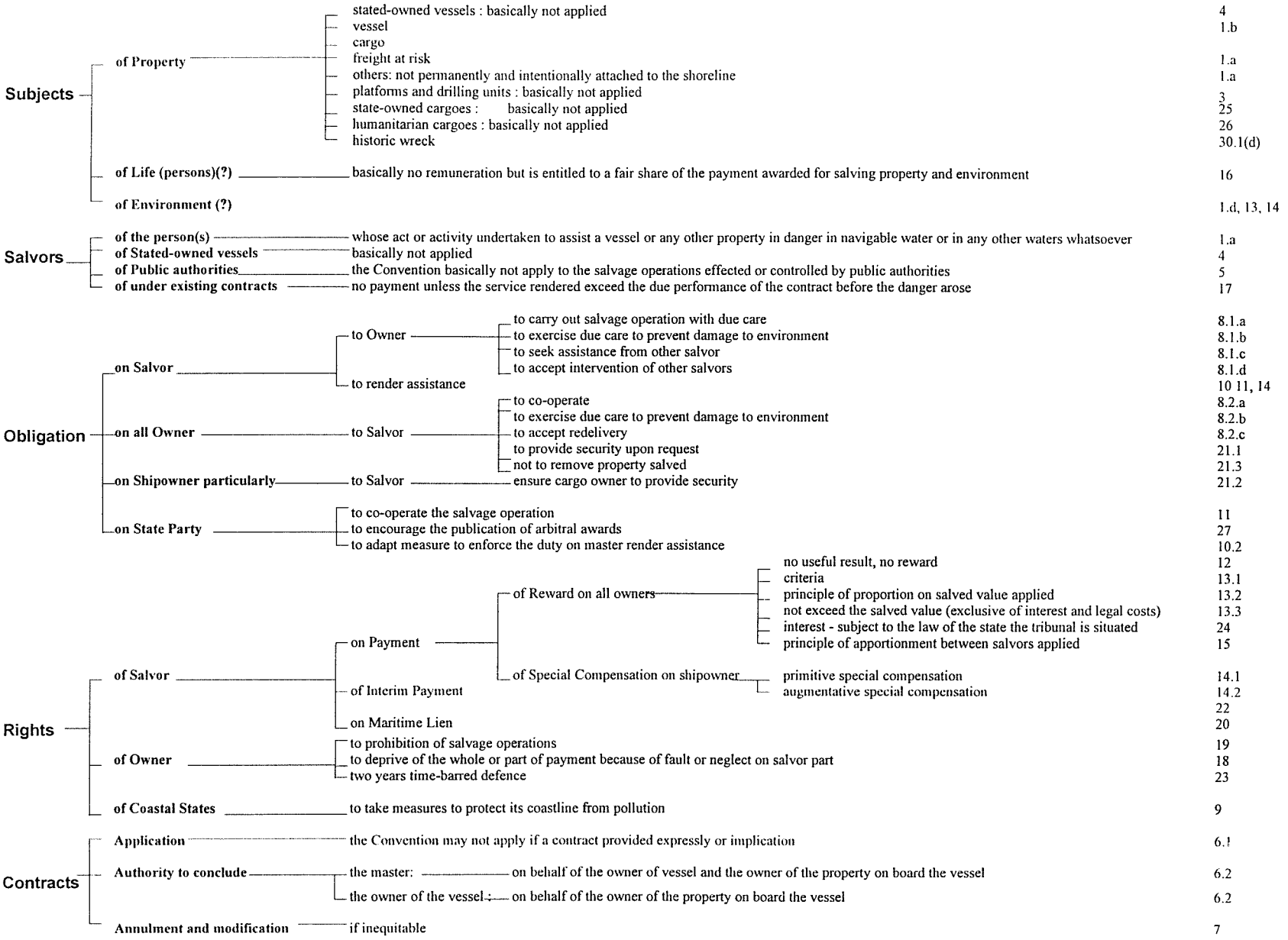
2 See Appendix 8 -Lloyd's Standard Form of Salvage Agreement (1908-1995) Chronology.

3 See Appendix 7 -1910 Convention, its 1967 Protocol and 1989 Convention and its Drafts in Comparison.

of use of the sea. There were uncountable works on this subject being done[4], it is unnecessary here to duplicate the same work in discussing all issues in detail on those convention, statutes, cases and LOFs. This chapter is trying to, follow the structure as shows in Diagram 9 in next page, discuss the principle, changes and disputes revealed in the 1989 Salvage Convention.

[4] At least 200 works of articles, reports, books, seminar or conference materials are collected on this subject for purpose of this research. See Bibliography sub-section on Salvage.

Diagram 9.
The Structure of 1989 Salvage Convention chapter I - IV



3.1 The Subjects

Broadly speaking, a salvable subject may embrace anything, including liability, or persons in anywhere which or who got any kind of benefits directly or indirectly from a salvage service. However, the salvage remuneration is only recoverable if that which has been salved is recognised in law as a proper subject of salvage.[5]

The subjects expressed in Article 1(a) of the 1989 Salvage Convention are generally restricted to "a vessel or any other property in danger in navigable water or in any other waters whatsoever", with some kind of property, for example platforms and drilling units, particularly excepted. Life salvage and the salvage operation preventing damage to the environment are not the express salvage subject under the 1989 Salvage Convention. However, life salvage and environmental salvage stand their own special provision in recovering the salvage remuneration and or special compensation.

The salvage law in this country as we know it today was largely developed in the nineteenth century and that many, if not all, of the important principle date from cases of that period[6], specially the cases judged by Dr. Lushington[7]. On the other hand, the Merchant Shipping Act (M.S.A.)1854 also declared the statutory principle of salvage law. Section 458 of 1854 M.S.A. stated that:

> In the following cases, thenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the United Kingdom, and services are rendered by any person -
>
> (1) In assisting such ship or boat;
> (2) In saving the lives of the persons belonging to such ship or boat;
> (3) In saving the cargo or apparel of such ship or boat, or any portion thereof, and whenever any wreck is saved by any person other than a receiver within the United Kingdom,
>
> There shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, to the person by whom such services, or any of them, are rendered, or by

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[5] Brice, ibid., at para. 3-01.

[6] Gerald Darling and Christopher Smith, *LOF90 and The New Salvage Convention*, 1991, at p.24.

[7] Waddams, *Dr. Lushington's Contribution to the Law of Maritime Salvage (1838-1867)*, (1989) LMCLQ 59.

whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined, in case of dispute, in manner hereinafter mentioned.

3.1.1 Subject - "Vessel" and "Property"

One of the relevant changes to the revision of the rules on traditional salvage considered by the C.M.I. Committee before 1981 Draft was the "widening of the notion of (salved) vessel".[8] The 1981 C.M.I. initial Draft Article 1-1.2, specially defined the word "vessel" to include "any vessel which is stranded, left by its crew or sunk". On the other hand, Article 1-2.2 (d) expressed the Convention does not apply to the "removal of wrecks". In the I.M.O. 55th session in 1985, some delegations opposed to include the sunken vessels on the ground that in some jurisdictions sunken vessel are always considered to be wrecks, the removal of which is governed by other rules than salvage rules.[9] The above wording in the 1981 Draft Article 1-2.2 were then removed from the definition of "vessel" in the 1987 Draft. Furthermore, the whole Article 1-2.2 (including sub-paragraph d. - the "removal of wrecks") was also deleted in the 1987 Draft in order to avoid the issues of the conflict of laws. In other words, under the present texts of the 1989 Salvage Convention, it is not clear that whether the 1989 Salvage Convention applies to "sunk vessel" or "wreck". Same problem may exist in this country, specially that while the section 546 (salvage of cargo or wreck) of the Merchant Shipping Act 1894 ceased to have effect after the M.S.A. 1994. Prof. Gaskell opines "it is submitted that the natural meaning of the English wording, and the understanding of the 1989 Diplomatic Conference, was that sunken property could be salved."[10]

The 1989 Salvage Convention Article 1(c) defines "property" means "any property not permanently and intentionally attached to the shoreline and

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[8] C.M.I. New Letter, Dec. 1981, at p. 3.

[9] C.M.I. New Letter, Winter, 1985, at p. 1.

[10] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994,* Current Law Statutes 1994 vol. 2, at p. 28-31.

includes freight at risk". The words "not permanently and intentionally attached to the shoreline" were not added until the 1987 Draft. It was discussed in the I.M.O. 55th session that whether drilling platforms while working should be considered vessel or other property as it is relevant, because the draft contains a number of rules which are only applicable with respect to owners of vessels, not of other property, e.g. the important rules concerning the shipowners' duties to arrange salvage and to pay special compensation.[11] The earlier Drafts gave a more detailed expression on the word "freight". For example, the 1981 initial Draft Article 1-1.3 provided ".... including freight for the carriage of the cargo, whether such freight be at the risk of the owner of the goods, the shipowner or the charterer." The 1989 Diplomatic Conference accepted the U. K. delegate proposal to amend this sub-paragraph to read "and includes freight at risk". In that proposal, U.K. delegate commented that:

> For salvage purpose the value of cargo is assessed at its sound arrived value. The only freight which could constitute an additional salved value would be freight which the shipowner would earn on arrival of the cargo at the port of destination and which he could have lost had the cargo not been salved.[12]

The following table provides the English salvage law relating to the subjects of salvage between the 1994 M.S.A. and the 1989 Salvage Convention.

	English law before 1994 M.S.A	**1989 Convention**
Geographical Extent	❑ on the shore of any sea or tidal water (Merchant Shipping Act 1854, s. 458) ➠ affirmed by House of Lords in The *Goring* 1988 case[13] ※ M.S.A. 1994 Schedule I Part II s. 2 (1) provides " the provisions of the Convention do not apply - (a) to a salvage operation which takes place in inland waters of the United Kingdom and in which all the vessel involved are if inland navigation; and to a salvage operation which takes place in inland waters of the United Kingdom	❑ in navigable waters or in any other waters whatsoever (Article 1.a) ⇐ unless the State reserve the right to apply (Article 30.1)

[11] C.M.I. New Letter, Winter, 1985, at p. 1.

[12] LEG/CONF.7/14.

[13] The *Goring* (1988) 1 Lloyd's Rep. 397.

		and in which no vessel is involved.	
I N C L U S I V E	Vessel	**Generally include :** ❑ "***ship***" : every description of vessel used in navigation not propelled by oars. (M.S.A. 1854, s.2); ❑ including any structure, whether completed or in the course of completion, launched and intended for use in navigation of the ship or part of the ship.[1958 M.S.A. (Liability of Shipowner and Other) Act] ❑ "***boat***" : means any vessel of small size intended and adapted for the conveyance of persons of goods upon the water.[14] ❑ Not limit to "***sea-going vessel***" (J.Blackburn in *Ex parte Ferguson*[15]) ❑ "***Apparel of the ship***" : any property associated with a ship, includes hull, machinery, navigational equipment, tackle, furnishing, life boats and the like. (Brice at para. 3-17) **Particularly include:** ❑ "***Hopper barge***" used for dredging and had no masts or sails and which was not navigable without external assistant, was a ship (The *Mac*[16]) ❑ "***Dumb barge***" propelled by oars and plying on the river Thames for purpose of carrying goods (*Gapp v. Bond*[17]) ❑ "***Wherry***" (Kennedy, at p. 51) ❑ "***Pontoon***" part of a dismantled floating crane.[18] ❑ "***Dreadnought***" used as a hospital preserved afloat.[19] **Particularly not include:**	means any ship or craft, or any structure capable of navigation (Article 1.b)

[14] William Kennedy, *The Law of Civil Salvage*, 1st ed., 1891, at p.51.

[15] Not reported, cited in The *Mac* (1882) 7 P. D. 126.

[16] The *Mac* (1882) 7 P. D. 126.

[17] *Gapp v. Bond* (1887) 19 Q.B.D. 200.

[18] *Marine Craft Constructors Ltd. v. Erland Blomquist (Engineers) Ltd.* (1955) 1 Lloyd's Rep. 514.

[19] The *Gas Float Whitton* (No.2) (1898) P. 42.

	❑ "***Thames wherry***" (*Gapp v. Bond*) ❑ "***Raft***" (*Gapp v. Bond*)[20] ❑ "***Gas float***" [21] ❑ "***Jet ski***" [22] ❑ "***Floating landing stage***"[23] ❑ "***Ship used for coal hulk***"[24] ❑ "***Racing skill and a racing eight***" used in navigation but propelled by oars.[25]	
Hovercraft	❑ Salvage services to hovercraft are treated as if they were salvage services to a ship [Hovercraft (Application of Enactments) Order 1972, s. 8].	Article 1.b
Cargo	**Includes:** ❑ all merchandise on board the salved ship, to whom it may belong.[26] ❑ Luggage and valuables not in daily use and are in the custody of the ship **Not include:** ❑ ***Personal effects*** of the master or the crew; ❑ Personal effects and wearing apparel of passengers for daily use.[27]	"Property" as defined in Article 1(c) may include "personal effects"
Freight at risk	❑ ***Freight at risk*** if it has been earned through the salvage, is a subject of salvage. ❑ Freight consist of ***passage-money***.[28] ❑ Freight may consist of ***charter freight*** but shall subject to 1) the contractual terms; 2) really at risk while salvage; and 3) no contribution if the freight was calculated into the value of other property salved.	Property" as defined in Article 1(c) may include "passage money" as well as "charter freight"
	❑ Include ***jetsam***, ***flotsam***, ***lagan***, and ***derelict***, in or on the shores of the sea or	The circumstance in the Convention is unclear. Prof.

[20] Also in The *Raft of Timber* (1844) 2 W. Rob. 251.

[21] The *Gas Float Whitton* (No. 2) (1896) P. 42. C.A.

[22] *Steedman v. Scholfield and Firth* (1992) 2 Lloyd's Rep. 163.

[23] The *Craighall* (1910) P. 207, C.A.

[24] *European and Australian Royal Mail Co. v. P. O. Steam Navigation Co.* (1866) 14 L. P. 704.

[25] *Edwards v. Quickenden & Forester* (1939) P. 261.

[26] Kennedy, ibid., at p.52.

[27] The *Willem III* (1871) L.R. 3 A.& E. 487.

[28] The *Medina* (1877) 2 P. D. 5.

	Wreck (Sunken vessels and cargoes)	any tidal water (M.S.A. 1854, s. 2) and it appears to be used in relation to salvage, to signify generally, besides derelict, have previously formed any part or fragment of a ship or of a boat or cargo, whether aground or afloat. ❑ "***Flotsam***" is the goods float on the sea where a ship is sunk. ❑ "***Jetsam***" is the goods cast into the sea where the ship is in danger of being sunk. ❑ "***Lagan***" is the goods cast into the sea but marked by the mariners intents to have them again. ❑ "***Derelict***" is a thing which is abandoned and deserted at sea by those who were in charge of it without hope on their part of recovering it and without intention of returning to it.[29]	Gaskell suggests the wreck may be a salvage subject under the Convention.
	Aircraft and their apparel and cargo	any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section 51 of the Civil Aviation Act 1949, of the law relating to salvage to aircraft and their apparel and cargo. (S.C.A. 1981, s.20.2 (j))	Aircraft may be not sufficient to the definition of "vessel" but may be the "property" as defined in Article 1(c).
	Equipment of fish vessels	Fisheries Act 1968 section 17.	The "property" as defined in Article 1(c).
	Royal fish	The captors are entitled to payment in the nature of salvage.	The "property" as defined in Article 1(c).
	Property pirated	Property (a) in the possession of and (b) belonging to pirates is a droit.[30]	The "property" as defined in Article 1(c).
EXCLUSIVE	Platforms and drilling units	The circumstance was not clear, but platforms and drilling units seem not to be sufficed the definition of "vessel" and "ship" under M.S.A. 1894 section 742 which request "used in navigation".	The Convention shall not apply to the fixed or floating platforms or to mobil offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources. (Article 3)

[29] *Cossman v. West* (1887) 12 App. Cas. 160.

[30] Brice, ibid., at para.3-65.

Stated-owned property	❑ Salvage of ship and stores belonging to a sovereign state may be exempted for claiming salvage[31] (see also the State Immunity Act 1978). ❑ Nothing in this Act (Crown Proceedings Act 1947) shall authorise proceedings in rem in respect of the arrest of any Crown ships or of any cargo or other property belonging to the Crown. (C.P.A. 1947, s. 29) ❑ Same exemption also apply to all property of sovereign state on board a private ship. [32] ◆ A vessel ***hired*** by the government as a transport seems doubtful.	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 25)
Property on the Stated-owned vessel	❑ Private goods on board the warship for public purposes may to share the immunity from arrest enjoyed by the ship itself.[33]	Subject to the sovereign immunity under generally recognized principles of international law. (Article 4)
Humanitarian cargoes	No mention	Not apply, if the State has agreed to pay for salvage services rendered in respect of such cargoes. (Article 26)
Historic wreck	❑ Owner of any wreck in the possession of the Receiver to claim the same (upon paying salvage, fees and expenses) (M.S.A. 1894, s. 521). ❑ Her Majesty is entitled to all unclaimed wreck found in any part of Her Majesty Dominions.	Subject to the national regulation. (Article 30 - Reservations)

3.1.2 Subject - "Life"

"Lives of the persons" belongs to the ship or boat in salving is an express subject of salvage under section 458 of the 1854 M.S.A. and section 544 of the 1894 M.S.A. In *Nourse v. Liverpool Sailing Ship Owners Mutual P&I Association* (1896), Lord Esher commented that "although it is called salvage (life salvage),

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[31] The *Constitution* (1879) 4 P. D. 39; The *Parlement Belge* (1880) 5 P. D. 197.

[32] Kennedy, ibid., at p.62.

[33] The *Constitution* (1879) 4 P. D. 39.

the reward given by the statute is not like ordinary salvage. It is a new head of salvage altogether".[34] Again, in the *Bosworth No.3* (1962), J. McNair also observed that "life salvage is not a form of common law maritime salvage..it is a species of salvage created by Act of Parliament."[35] Life salvage, by the statute, has standed its special status on the English law of salvage on the award which the life salvor may obtain from the owner of property saved and or from public fund. The essential ingredients of the ordinary salvage, i.e. danger, voluntariness and success, do still apply to the life salvage.

Even though Article 16 of the 1989 Salvage Convention gives life salvor a right to fair share the payment and Article 10 also imposes master of the vessel a duty to render assistance to any person in danger, "life" is still not an express subject of the defined "salvage operation" in Article 1(a) of the 1989 Salvage Convention. On the other hand, Article 16 provides nothing except for the rights of life salvor to fair share the payment. In other words, the whole 1989 Salvage Convention, except for Article 10.1 and Article 16, are not directly applied to life salvage. For example, it is difficult to say that life salvors shall owe the duty to carry out the life salvage with due care to prevent damage to the environment in Article 8; or the services rendered under existing contracts in Article 17; or the effect of life salvor's misconduct in Article 18; or have the right to require interim payment in Article 22..etc. My suggestion is the existing English law on life salvage is not affected by the 1989 Salvage Convention and which shall be subject to the law of the forum. This opinion may be inconsistent with some existed suggestions, for instance, the geographical extent of life salvage. Article 1.a of the 1989 Salvage Convention extends the geographical extent of "salvage operation" from "tidal water" under the M.S.A. 1854 (and the *Goring* case) to the "navigable waters or in any other waters whatsoever". However, bearing in mind that this extension does apply only to "any act or activity undertaken to *assist a vessel or any other property*" as defined in Article 1.a, to which salvage of "life" is not included. The question is, subject to the M.S.A. 1995, whether such extension does also apply to life salvage? Furthermore, the M.S.A. 1995 Schedule 11 Part II section 2 expresses "the provisions of the Convention do not apply to a *salvage operation* which takes place in inland water of the U. K." Does this section also apply to life salvage? This paper, subject the plain definition of "salvage operation" in the 1989 Salvage Convention, adopts negative answers

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[34] *Nourse v. Liverpool Sailing Ship Owners Mutual P&I Assocn* (1896) 2 Q.B. 16.

[35] The *Bosworth No.3* (1962) 1 Lloyd's Rep. 483.

on them. In other words, it is a blind point under the 1989 Salvage Convention and the M.S.A. 1995 Schedule 11 Part II regarding to the geographical extent of life salvage.[36]

The law relates to life salvage, before the M.S.A. 1994, was embodied principally in section 544 of the M.S.A. 1894, which may be summarized as following:[37]

1. The life salvage claim is awarded a statutory priority over all other claims where the property was insufficient;
2. It entitled life salvor to reward out of any property that by any means escaped destruction[38], and It empowered the Board of Trade (now the Secretary of State for Trade) to reward life salvor out of the Mercantile Marine Fund.
3. Life salvage award under the Act are pronounced separately and without prejudice to the property salvor;
4. The Act applied to all British vessels wheresoever the service be rendered, but applied only to foreign vessels where the services is rendered wholly or in part within British waters.
5. To claim under the statute it is essential that property be salved although it is not necessary to show that both property and life were salved as part of the same general welfare service;

Some of principles listed above were changed while the 1989 Salvage Convention was inescapably incorporated in the M.S.A. 1994; and section 544 (salvage payable for saving life) and section 545 (salvage of life from foreign vessels) of the 1894 M.S.A. were repealed in the M.S.A. 1994 Schedule II. The changes may be highlighted onto the following:

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[36] However, the Supreme Court Act 1981, s.20(6), as amended that "salvage services" in the Act includes "services rendered in saving life from a ship".

[37] See also discussion by D. Rhidian Thomas, *Life Salvage in Anglo-American Law*, JMLC vol.10 at pp. 79 -104; and Nicholas Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-70; and Michael Thomas and David Steel. *The Merchant Shipping Acts*, Vol. 2, 7th ed., 1976, at para 494.

[38] It is not confined to the actual legal owner of the property salved, but extends to a person having an interest therein which has been rendered being brought into a position of security (see Michael Thomas and David Steel. *The Merchant Shipping Acts*, Vol. 2, 7th ed., 1976, at para 496.)

1. Section 544(1) made the *owner of property* (including the person have interest therein) liable for life salvage, but the 1989 Salvage Convention made parasitically on the *salvor;*
2. Section 544(2) gave priority over other claims, but the 1989 Salvage Convention does not mention such an approach;
3. While no provisions in the M.S.A. 1994 and 1995 re-enacted the deleted section 545 (salvage of life from foreign vessels) of the 1894 M.S.A., it is therefore wondered that whether life salvage from foreign ships outside British waters is still allowable to be adjudicated upon by British courts.[39]

The 1989 Salvage Convention does also slightly affect the long-existed rule of "salvage of life alone originally not entitled to reward" declared by Sir John Nicholl in the *Queen Mab* case.[40] The life salvor under the 1989 Salvage Convention is entitled to a fair share of the payment awarded not only to the property salvor but also to the environmental salvor. In accordance with Article 14 of the 1989 Salvage Convention, the payment awards to the environmental salvor may exist even in case no physical property was saved.

Section 544(3) of the 1894 M.S.A. was re-enacted in the M.S.A. 1995 Schedule 11 Part II. Namely that, the recourse for life salvage payment from public fund is remained unchanged.

Whether the life salvor under the 1989 Salvage Convention has a maritime lien on the salved property is another issue. Professor Gaskell says "life saver under Article 16.2 cannot have a maritime lien on the salved property as these

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[39] According to Prof. Gaskell's opinion, section 545 was largely redundant as only one Order appears ever to have been made and also as the Article 16 of the 1989 Salvage Convention would apply to such claims now, even where the ship concerns was registered in a State which was not a party to the 1989 Salvage Convention (*Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-70), but the real question is that Article 16 of 1989 Salvage Convention only provides a special right to life salvor for fair sharing the payment from property salvor, but not a provision on jurisdiction by Order. On the other hand, by the wording of section 545, British court, if by Order in Council, may not only adjudicate the fair share amount to life salvor, but also the insufficient amount which is less than a reasonable amount for services rendered in saving life. It appears that Article 16 does not cover the latter position.

[40] The *Queen Mab*, 1 C. Rob 271 at p 283.

interests have no liability towards it".[41] This paper adopts a slightly different opinion.[42] Firstly, whereas Article 16.1 of the 1989 Salvage Convention provides "..nothing in this article (of course includes article 16.2) shall affect the provisions of national law on this subject" and again Article 20.1 also provides that "Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law", section 552.1 of the 1894 M.S.A. gave life salvor a statutory right to detent the liable property and this section 552.1 of the 1894 M.S.A. did not be repealed either on 1994 or 1995 M.S.A. Furthermore, no amendment is made to the Supreme Court Act 1981 to exclude life salvage. On the contrary, the Supreme Court Act 1981 expressly give jurisdiction over claims "in the nature of salvage". Secondly, the proper intention of Article 16 of the 1989 Salvage Convention was trying to higher life salvor's payment, followed the line but gave a better position than 1910 Salvage and Assistance Convention, by entitling a fair share of the payment not only awarded to the property salvor but also to environmental salvor. The C.M.I. and I.M.O. documents contained nothing in respect of the issue of life salvors right of maritime lien. In other words, the 1989 Salvage Convention itself at least during its Drafts has no intentions to limit the life salvor's right to have maritime lien not on the property salved. For short, under the existing English law, life salvor still has a right of maritime lien either on the *salved property* or on the *payment* awarded to the property salvor and environmental salvor. It is another problem that life salvor may be affected by the insolvency or misconduct or other disadvantageous matter resulted from the property and or environmental salvor.

Another issue is for what circumstance the life salvor is entitled to fair share the payment ? We may divide life salvage into the following three circumstances:

a. life salvor is one of the same set of salvors who rendered services on property and or environment;
b. life salvor is not one of the same set of property/environmental salvors, but taking part in the services rendered on the occasion of the accident giving

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[41] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994, Current Law Statutes 1994* vol. 2, at p. 28-71.

[42] Prof. Jackson seems adopted different opinion by wording that "Nothing in the Convention is to affect the "salvor's maritime lien". Although the life salvor has lost any statutory priority...". see *Enforcement of Maritime Claims*, 2nd ed., 1996, at p.30.

rise to salvage;

c. life salvor is not one of the same set of property/environmental salvors, and also not taking part in the services rendered on the occasion of the accident giving rise to salvage.

For circumstance a., Dr. Lushington in The *Fusilier* said that:

> ....where life and property had been saved by one set of salvors, it was the practice of the Court to give a large amount of salvage than if the property only had been saved....[43]

For circumstance c, in *Nourse v. Liverpool Sailing Ship Owners' Mutual P&I Association*,[44] the services rendered by the steamship *Normannia* who rescued the master and crew of the vessel *Arno* in danger was quite independently of the services rendered by another vessel *Merrimac* for packing up the vessel *Arno*. Mathew J. held that the steamship *Normannia* may only recover an award for true life salvage under the Merchants Shipping Act 1894, by reason that they had not helped to save the ship or cargo at all.

The existing cases law relates to the circumstance b. is not so clear. The *Bosworth (No.3)*[45] case involved in a complex property and life salvage operation. The Admiralty Court awarded £ 11,400 to the trawler *Wolverhampton Wanderers* for his salvage services rendered to life and to the vessel *Bosworth* and her cargo/ freight. The vessel *Finnmerchant* rendered true life salvage and received £ 1,250 by way of compromise settlement (not by way of award). In other words, the vessel *Finnmerchant* did not join the sue by the trawler *Wolverhampton Wanderers* and the Court did not also take into account of the true life salvage rendered by the vessel *Finnmerchant*.

Those cases may be induced that: 1) a salvor rendered services to the ship and the property on board and also saved the life, he is entitled to recover as against the ship and the property an enhanced award for life salvage; 2) the former rule does not apply to the true life salvage whose services rendered independently of any property salvage; and 3) the circumstance b. is unsettled.

Refers back to the 1989 Salvage Convention. Except that the life salvor is further entitled to fair share the payment awarded to environmental salvor, the

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[43] The *Fusilier* (1865) Brown & Lush. 341 at p. 344.

[44] *Nourse v. Liverpool Sailing Ship Owners' Mutual P&I Assoc.* (1896) 2 Q.B. 16.

[45] The *Bosworth (No.3)* (1962) 1 Lloyd's List Law Rep. 483.

line drew by the 1989 Salvage Convention is not different from the above points induced from the existing English law. Article 13.1(e) provides "the skill and efforts of the salvors in salving life" shall be taken into account in assessing the reward represent the reward may be enhanced for life salvage. The words " a salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage" used in Article 16.2 represent the 1989 Salvage Convention does not apply to the kind of true life salvage. However, the treatment for circumstance b. is also not so clear under the 1989 Salvage Convention, which shall be subject to the interpretation for the words "who has taken part in the services rendered on the occasion of the accident giving rise to salvage". The wording used in the 1989 Salvage Convention apparently coped from the Article 9.2 of the 1910 Salvage Convention. Mr. Ina H. Wildeboer in his book said "These words (i.e. Article 9.2 of the 1910 Convention) have been intentionally chosen in this way in order to show clearly that the life salvage need not be simultaneous with the assistance to ship and cargo, the participation of the salvors of life not being an essential condition".[46] If the same interpretation may apply to the 1989 Salvage Convention, life salvor in circumstance b. seems to be entitled to fair share the payment awarded to the property/environmental salvor.

There is no argument that, in the case of the property salvor who also rendered life salvage, the tribunal is directed to consider the saving of life in accordance with Article 13.1(e) of the 1989 Salvage Convention in assessing the salvage reward. However, it will be a problem that, in case the life salvor is not same as property/environmental salvor, whether the tribunal is entitled to enhance the Article 13 reward or Article 14 special compensation to the property or environmental salvor, by taking into account the fact that there had been a life salvage ? To this case, in my opinion, the tribunal who decides on the appropriate reward for the property salvor is under no obligations to take into account the fact that there had been a life salvage rendered by another salvor independently of the property salvage.

Article 13 of the 1989 Salvage Convention provides the criteria for fixing the reward is with a view to encouraging "salvage operations". The said "salvage operations" is limited to property salvage as defined in Article 1.a of the 1989 Salvage Convention. In other words, the "salvors" in the language of Article 13.1(e) should be strictly interpreted as the property salvors. However, if the

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[46] Ina H. Wildeboer, *The Brussels Salvage Convention*, 1965, at p.251.

property salvor who also saved the life, his skill and efforts in salving life may be taken into account to enhance the Article 13 reward.

Furthermore, the wording "the payment awarded to the salvor for salving the vessel or other property" in Article 16.2 represent the reward awarded in accordance with Article 12, 13 and 15 of the 1989 Salvage Convention. Again, the words "the payment awarded to the salvor for preventing or minimizing damage to the environment" in Article 16.2 of the 1989 Salvage Convention represent the special compensation equivalent to his expenses as defined under Article 14 of the 1989 Salvage Convention. In accordance with Article 14.3 of the 1989 Salvage Convention, the defined "salvor's expenses" in any event contain no criteria for salving life.[47]

On the other hand, "no remuneration is due from persons whose lives are saved" is the basic principle of life salvage declared in Article 16.1 of the 1989 Salvage Convention. It is suggested that, unless there are any special provision for example Article 13.1(e) provided otherwise, the tribunal would act as presumed that "no remuneration is due from persons whose lives are saved" to assess the Article 13 reward and Article 14 special compensation. For short, the difference between Article 13.1(e) and Article 16 is that: Article 13.1(e) apply to the circumstance that the property salvor who is also the life salvor, Article 16 apply to the circumstance that the property salvor who is not also the life salvor.

In conclusion, life salvor under Article 16.2 of the 1989 Salvage Convention is given a special statutory right to fair share on the payment awarded to property/environmental salvor. It represents that, if the life salvor exercises his fair share claim, the real revenue of the property/environmental salvors may be less than the payment awarded to them. However, it does not mean the tribunal shall enhance the reward or special compensation by taking into account any possible fair share claim from other life salvor to level the payment awarded to property/environmental salvors.[48]

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[47] Article 14.3 only mentions the criteria set out in Article 13, paragraph 1 (h),(i) and (j) shall be taking into consideration, in which Article 13.1(e) not included.

[48] My conclusion is partly different from Mr. Ina H. Wildeboer and Professor Gaskell. Mr. Ina H. Wildeboer opined that the reward of life salvors has to be paid completely out of their (vessel and cargo) remuneration, but he sequentially opined that "the court, when determining the compensation to be awarded to the salvors of ship and cargo, may take into account the "equitable part" , the reasonable part which may be claimed for the preservation of life" (ibid., at p. 248). Professor Gaskell did not separate the circumstances a and b but roughly opined that " the

Subject to whether the life salvor is same as property salvor and whether the property and or environmental salvage is successful or not, the subject which the life salvor is entitled to a fair share may be classified that:

	property (saved) environment (saved)	property (saved) environment (not saved)	property (not saved) environment (saved)	property (not saved) environment (not saved)
Life salvor = property salvor (who is also the environment salvor)[49]	reward may be enhanced but not on special compensation	reward may be enhanced	no claims	no claims as no payment
Life salvor ≠ property salvor	fair share on the reward and also on the special compensation	fair share on the reward awarded to the property salvor only	fair share on the special compensation	no claim as no payment

(Note: the said "environment saved" includes Article 14.1 and Article 14.2; and above table is made under the presumption that there exists no difference between property salvors. If it exists difference, for example a salvor salved the ship and life, but another salvor salved the cargo, the column of "life salvor ≠ property salvor" in applied)

3.1.3 Subject - "Environment"

Environmental issue perhaps was the key factor which promoted the changes of international salvage law in the past 20 years. Though the 1989 Salvage Convention creates several new regimes either by imposing duty or provides enhanced award or special compensation in preventing or minimizing damage to the environment, "environment" is still not an express subject of the defined "salvage operation" in Article 1(a) of the 1989 Salvage Convention. It represents that, except for any express provisions, the whole 1989 Salvage Convention does not certainly apply to environmental salvage.

Everyone in anywhere saves the environment of any kinds from damage may be called an environmental salvor, but the qualification of being an

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tribunal is directed to consider the saving of life in Article 13.1(e)" and also said that "the tribunal would be entitled to take into account the existence of a parasitic life salvage claim in deciding whether to exercise its discretion to award an uplift under Art.14.2" (see *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994, Current Law Statutes 1994* vol. 2, at p. 28-71)

[49] By the words used in Article 14.1 (the salvor has carried out *salvage operation*), it may be presumed that the qualification of being an environmental salvor entitled to claim special compensation shall be sufficed as a property salvor defined under the Article 1.a.

environmental salvor who is entitled to claim special compensation of Article 14 of the 1989 Salvage Convention is very limited and shall satisfy the following ingredients:

a. *shall be one of the property salvor who has carried out the salvage operation as defined in Article 1.a of the 1989 Salvage Convention:*

   Article 14.1 of the 1989 Salvage Convention provides "if the salvor has carried out salvage operation.....". It represents that anything which may affect the qualification of being a property salvor may also affect of being an environmental salvor under the 1989 Salvage Convention, for examples:

   1) a vessel which the services rendered to assist is not in danger even the cargo on board may threaten damage to the environment;
   2) services rendered outside the geographical extent of the 1989 Salvage Convention;
   3) services rendered to assist the platforms and drilling units as defined in Article 3 of the 1989 Salvage Convention;
   4) from a pure life salvor.

   Furthermore, a pure environmental salvage beyond the salvage operation as defined can not be qualified as an environmental salvor under the 1989 Salvage Convention, as this salvor did not actually carry out the defined "salvage operation" to a vessel or any other property.

b. *the salvage operation carried out was in respect of a vessel which by itself or its cargo threatened damage to the environment* (Article 14.1):

   The vessel and property to be salved should be not only in danger but also itself or its cargo threatened damage to the environment. The 1989 Salvage Convention uses the words "*in respect of* a vessel" but not "to a vessel" represent the salvage operation under Article 14 of the 1989 Salvage Convention is not limited to render services on the vessel alone.[50]

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[50] Professor Gaskell adopts a narrow viewpoint on the words "in respect of a vessel" by illustrating that 1) operations to recover a container of dangerous chemicals that has been

In other words, once existed a circumstance that a vessel itself or its cargo threatened damage to environment, the salvors rendered salvage operation as defined not only to a vessel but also to the property *may* be qualified as an environmental salvor.

Article 14.1 of the 1989 Salvage Convention is unclear to the question that whether only the salvage operation is rendered *directly* to "the vessel or its cargo which also actually threatens damage to the environment" may be considered as the qualified environmental salvors ? For instance, a pure container salvor or a pure "innocent cargo" salvor, in the common salvage operations to a vessel threatened damage to the environment, salved some containers or innocent property valued at USD10,000 but incurred USD20,000 in expenses. Can this pure container salvors be an environmental salvor and claim special compensation for his expenses incurred? It is difficult to say that those "containers" may threaten damage to the environment ! However, in accordance with the plain wording used in Article 14.1 of the 1989 Salvage Convention, this pure container salvor seems to be entitled to claim the Article 14.1 primitive special compensation,[51]by reasons that:

1) the container salvor has carried out the "salvage operations" as defined;
2) his salvage operation carried out was related to a casualty in respect of a vessel threatened damage to the environment; and
3) Article 14.1 provides nothing about the causal requirement that

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washed overboard cannot fall within article 14.1 and 2) straightforward cargo recovery work, unconnected with vessel salvage, is not covered. (see *The 1989 Salvage Convention*, Tulane Maritime Law Journal, vol. 16, 1991, at p56). However, the words "in respect of " with parallel meaning "as concerns; with reference to" do not have any semantic monopoly meaning that the salvage operation shall be rendered to the vessel. On the other hand, from the drafting background, CMI report mentioned "Art.3-3 provides special compensation to salvors, who without success attempt to salve a *vessel and* ***her cargo***, when these threaten environment damage" (C.M.I. News Letter, Sept. 1984, at p.6)

[51] Said pure container salvor absolutely can not claim the kind of augmentative special compensation in Article 14.2, as his salvage operation *has not* actually prevented or minimized damage to environment.

[52] CMI Report to I.M.O. on the Draft International Convention On Salvage (Montreal 1981), CMI News Letter, Sept. 1984, at p.23.

the salvor shall have prevented or minimized damage to the environment.

This assumption is so unreasonable as the pure container or innocent-property salvor really contribute nothing to prevent or minimize damage to the environment. However, reviewing the historic background in the C.M.I. or I.M.O. sessions and the 1989 Diplomatic Conference, they provided no clear picture that the 1989 Salvage Convention contains an implication to exclude the salvor whose salvage operation contributed nothing to the environment from claiming special compensation. In the 1984 C.M.I. report, it stated that:

> Art.3-3.1. provides that the shipowner shall pay the costs of salvage operations carried out in respect of a casualty if it threatens to cause damage to the environment. If this condition is met *all costs of the all salvage operations are included, whether or not the costs had any relation to the environment, the only condition being that the costs are reasonably incurred as provided in Art.3-3.3.* [52]

In accordance with this statement and the text of the 1989 Salvage Convention finally adopted, the salvor under Article 14.1 of the 1989 Salvage Convention is widely enough to include any kinds of vessel/property salvors who rendered services to a casualty if it threatens to cause damage to the environment. It includes the salvor to the vessel, cargo (guilty or innocent), other property (containers, store, fuel, freight at risk...) and wreck. It does *not* have to consider 1) whether the salving subject itself threatens damage to the environment or not, and 2) it shall exist some relations between the subject salved and to prevent or minimize the damage to the environment. This deduction suggested that Article 14.1 is needed to amend to reduce the dispute at least by declaring the relationship between the subject salved and the damage to the environment.

c. *Saving the environment is merely a sequence or parasitic outcome or benefit of the property salvage operation but not main purpose of the salvage operation as defined.*

For example, the measure adopted to *recover* the spilled cargo crude oil is

sometimes different from the measure purely to *clean up* the spilled oil. The main purpose for the former is to recover (or to salve) the spilled oil, but for the latter is to clear up the spilled oil. Both measures adopted may have the same effort to prevent or minimize damage to the environment. However, the salvor of the latter (clean up the spilled oil) is not carrying out the "salvage operation" as defined.

This factor may conclude that

1) the pure environmental salvor (as discussed in paragraph a) can not be qualified as a salvor who is entitled to claim special compensation;
2) any salvage services rendered not directly to the vessel and any property as defined, whether or not it really achieved considerable useful efforts in saving the environment, is still not the salvor who is entitled to claim special compensation under the 1989 Salvage Convention; and
3) any costs or expenses incurred without any relationship to salve the vessel or other property shall be excluded from claiming special compensation.

This factor may also be deduced from Article 14.3 of the 1989 Salvage Convention. Article 14.3 of the 1989 Salvage Convention defines "salvor's expenses" means out of pocket expenses reasonably incurred and a fair rate for equipment and personnel reasonably use in the *salvage operation*. Conversely speaking, salvor's expenses incurred not for the salvage operations (i.e. to the vessel and property as defined in the 1989 Salvage Convention, but not include to "damage to the environment") shall be excluded from claiming special compensation.[53] However, as mentioned, once the cost/expenses have been incurred in the salvage operation, it is not necessary to further consider whether or not the costs was incurred in relation to protect damage to the environment.

I have to admit that it is sometimes difficult to distinguish the measures adopted was for recovering the oil or clearing up the oil in a complex salvage service. On the other hand, my above opinion may be inconsistent with a) the viewpoint adopted by some existing textbooks and b) also perhaps against the preamble of the 1989 Salvage Convention to

[53] However, this expenses incurred, if met with the criteria in Article 13.1, may be enhanced for claiming the successful salvage reward.

encourage the protection of the environment.

d. *The salvor has failed to earn a reward under Article 13 at least equivalent to the special compensation assessable in accordance with this article (i.e. Article 14).*

The calculation of the reward under Article 13 and the special compensation under article 14 is not the subject of this section and will be discussed later.

It is interest to note that why Article 14.1 of the 1989 Salvage Convention uses the words "a reward under article 13". The real reward for salvage operations under the 1989 Salvage Convention shall be taken into account the whole provisions of the 1989 Salvage Convention, specially the whole chapter III of the 1989 Salvage Convention, but not on the Article 13 alone. Article 13 of the 1989 Salvage Convention only deals with the *positive* criteria for fixing the reward (Article 13.1) and its limitation not exceed the salved value (Article 13.2) as well as the treatment of interest and costs (Article 13.3). It is possible that it may exist a negative factor to reduce the reward, for example the effect of salvor's misconduct in accordance with Article 18 of the 1989 Salvage Convention. In other words, "a reward under Article 13" may be not the final real award to the salvor but is the possible highest reward before any deduction[54]. We presume in case Article 14 of the 1989 Salvage Convention adopts the "real reward" basis, the whole or part of the reward which the salvor may be deprived in accordance with Article 18 may be recovered through the back door of the Article 14 special compensation[55] in case the salvor has been negligent to salvage operation but not to prevent or minimize the environment. It represents that, for purpose of assessing the Article 14 compensation, the tribunal shall not only have to decide the "salvor's

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[54] By the Attachment I of the 1989 Salvage Convention "Common Understanding concerning the Interrelationship between Article 13 and 14", this possible highest reward may also not be limited to the maximum salved value.

[55] It may be suggested that this back door from special compensation is impossible to exist as the effect of salvor's misconduct under article 18 applies to the *payment* which includes special compensation itself. However, before adopting this suggestion, it has to conclude another issue that the relationship between Article 18 and Article 14.5. which will be discussed later.

expenses" but also have to assess the amount purely for Article 13 without any deduction to salvor's misconduct or possible fair share from life salvor.

In additional to provide the special compensation scheme to salvors who unsuccessfully attempt to salve a vessel and her cargo when these threaten environmental damage in Article 14, the 1989 Salvage Convention at the same time provides a further consideration relevant for the assessment of the traditional salvage reward by including the "skill and efforts of the salvors in preventing or minimizing damage to the environment" in Article 13.1(b) of the 1989 Salvage Convention. Unlike Article 14.1, Article 13.1(b) itself and the present published works provide very few sources for what circumstances the tribunal may take this criteria into account.

(a) *The issue of "success":*

Professor Gaskell, in interpreting the words "in preventing" used, opines that "papa.(b) is merely widening the notion of what might be considered as *success*".[56] According to this viewpoint, the tribunal may ignore the skill and effort of a successful property salvor to prevent the environmental damage if it has had no successful effort to the environment. In other words, this salvor:

a) will get nothing from the possible enhanced reward for his skill and efforts to prevent the environment if the reward under Article 13 is larger than Article 14; and or
b) this possible enhanced reward will therefore be transferred to the shipowner (and its P&I Club) in case Article 14 of the 1989 Salvage Convention is applied.

Namely that, under the above circumstances, it is difficult to say they are

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[56] Prof. Gaskell, before the citation says "It seems that an enhancement will not be appropriate where, in fact, there has been no prevention or minimisation of damage to the environment. The interpretation follows from the use of the words "in preventing" and not "to prevent" and is consistent with the distinction between Art. 14.1 and Art.2.. What Art.13 is rewarding is success, not simply effort.." [*Annotations on Merchant Shipping (Salvage and Pollution) Act 1994, Current Law Statutes 1994* vol. 2, at p. 28-55.]

not consistent with a) the common understanding of the 1989 Salvage Convention to encourage the salvor to take action to prevent damage to the environment and b) the balance achieved between property underwriters and P&I Clubs in the known Montreal Compromise 1981.

All collected documents, including C.M.I. Documents, I.M.O. Documents and A.I.D.E reports, provide no clear advice to the real meaning of the successful issue in Article 13.1(b) of the 1989 Salvage Convention. It is better to trace back to 1980/1981 to find the real intention of the present Article 13.1(b). The difference between enhanced reward in Article 13.1(b) and special compensation in Article 14 as we may see today was not so clear until 1981 C.M.I. Montreal Meeting. The C.M.I. 1980 draft included the conception of the so-called "liability salvage". However, the C.M.I. Working Group in 1980 finally accepted an alternative proposal submitted by the British Maritime Law Association (BMLA) which this proposal reflected from the idea of "safety net" of the LOF 1980. BMLA suggested that:

> The salvors would have a right, similarly as under the 1910 Convention, to a reward on the basis of "no cure no pay" for salvage of ship, cargo etc., but this reward would be enhanced by the consideration of the salvors' endeavours at the time when they were performing their duty to salve the property, to avoid or minimise damage to environment.[57]

The salvors under LOF 80 were placed under an additional obligation to prevent the escape of oil, and it is implicit that in the event of a successful salvage service to a laden tanker, the avoidance of spillage and potential pollution will be taken into account in the assessment of the salvage

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[57] A.Z. Soltys, *Revision of The Convention on Salvage of 1910*, A.I.D.E. Report 1981.

[58] N.G. Hudson, *Salvage - LOF 1980 and the CMI Draft Convention*, A.I.D.E. Report 1983, at p.6.

[59] Full contents of Funding Agreement, see Appendix 9.

[60] Peter Coulthard also opined that the entitlement to an award depends on the degree of success achieved in salving the imperilled property, but the right to an enhancement of that award does not require successful pollution prevention measures, *A New Cure for Salvors? - A Comparative Analysis of the LOF1980 and the C.M.I. Draft Salvage Convention*, JMLC, Vol. 14, No. 1, 1983, at p.56.

[61] N.G. Hudson, *C.M.I. Montreal Conference*, A.I.D.E. Report 1981, at p. 5.

[62] Supra, at pp. 1-3.

reward, and if, in the case of services to a laden tanker, the salvage is unsuccessful or only partially successful, so that the value of the salved property is insufficient to compensate the salvor, he will none the less be entitled to recover from the shipowner the expense he has incurred plus an increment of up to 15% (the "safety net").[58] For sorting out the liability issue of the enhanced reward and the "safety net" payment in the LOF 80, a series negotiation were proceeding during 1980 among London market underwriters, the International Group of P&I Clubs and the International Salvage Union. To salvors, P&I underwriters were prepared to meet the salvors' demand by undertaking to meet the cost of such "safety net". On the other hand, London market underwriters and the International Group of P&I Clubs issued a joint statement, which is referred to as the "Funding Agreement 1980". In accordance with this agreement, the underwriters promised "they will continue to accept that Salvage Award are recoverable by ship, cargo and freight under the existing forms of policies for those interests, notwithstanding that such Award may have been *enhanced to take account of measures taken to prevent the escape of oil form the ship*".[59] Subject to the wording of the Funding Agreement 1980, it implied no successful element in preventing the escape of oil, but only on whether the measures were taken to prevent the escape of oil.[60] In other words, the real intention of the LOF80 and the Funding Agreement 1980 were that, for the salvage service rendered to laden tanker, property salved shall at first stage pay salvor's reward (which the measures taken to prevent the escape of oil form the ship shall be took into account), however, in case that the salvor has been unsuccessful in saving laden tanker or if the laden tanker salved is insufficient to pay the amount of "safety net", the salvor may recover his insufficient amount from the shipowner. For short, "safety net" is not naturally fallen on shipowner alone but merely providing remuneration only when that is traditionally available is insufficient.

The circumstance became slightly difficult during the C.M.I. 1981 Montreal meeting. While the conference was moved to the amendment proposed by British delegation (BMLA) which as mentioned was clearly modelled upon the provisions of LOF80 but extending further the salvors' right not limit to laden tanker, some delegations (for example Netherlands) proposed differently that all reward for the salvors' skill and efforts in avoiding damage to the environment to a special section would be transferred to a special section whereby the salvor would be compensated

for his efforts in this regard, irrespective of success in the salvage of property.[61] After compromise, the C.M.I. finally adopted an alternative that an enhanced "safety net" funded by P&I liability underwriters, but involved two things to make it workable:

a. A clear separation of "property" rewards under Article 3-2 from cases of special compensation under Article 3-3, and
b. An undertaking from property underwriters world-wide that even though "property" reward under Article 3-2 may be enhanced by the element of avoidance of damage to the environment, the amount so awarded will be met by property underwriters.[62]

By reference to the legislation background of the 1989 Salvage Convention as above mentioned, except for the salvors' rights was extended and the "safety net" might be further enhanced, the present text of Article 13.1(b) and Article 14 of the 1989 Salvage Convention are clearly modelled upon the design of the LOF80. In other words, it existed no intention to limit the meaning of the present Article 13.1(b) to be involved in a success element, as the LOF80 did not require successful pollution prevention measures.

In generally, Article 13.1(b) is basically parallel with Article 14 in nature. They have their own calculation method but the parallel and balance position may be broken in case the Article 13.1(b) to be interpreted with successful element. In other words, no successful element is contained in Article 14.1, same as Article 13.1(b). Article 13.1(b) and Article 14 of the 1989 Salvage Convention were created to meet a common reason that it is expected to be a very important incentive to salvors when they are deciding whether to undertake salvage operations concerning casualties which threaten to damage the environment and deciding how the salvage operation should be carried out in such case[63]. It is suggested that the wording used in present Article 13.1(b) shall be properly amended to avoid any possible arguments; and the market either in practice or academic seem have to pay more intention on Article 13.1(b) rather than Article 14 of the 1989 Salvage Convention.

(b) *shall be the salvor who rendered salvage operation have had a useful result*

[63] CMI News Letter, Sept. 1984, at p. 5.

to the vessel and property as defined in Article 1 of the 1989 Salvage Convention:

Article 12 of the 1989 Salvage Convention declares the "no cure no pay" principle of rewarding a salvage operation which should have had a useful result. Since the subjects of "salvage operation" under the 1989 Salvage Convention are limited to the *vessel and any other property* as defined, the words "useful result" in Article 12 shall be interpreted as a useful result to the vessel and property as defined. In no event the words "useful result" can be interpreted to include a useful result to the *"life"* and *"damage to the environment"*.[64] The skill and efforts of the salvors in preventing the environment in Article 13.1(b) and saving the life in Article 13.1(e) are merely the criteria for fixing the reward. Whether there shall be a useful result in saving the "life" and "damage to the environment" is another problem, but not here.

(c) *the connection shall be existed between the salvage service rendered to the vessel/property and saving the environment:*

By reference to the wording "if the salvor *has carried out salvage operations* in respect of a vessel...." in Article 14.1 of the 1989 Salvage Convention, this paper has suggested that saving the environment under Article 14 shall be merely a sequence or parasitic outcome or benefit of the property salvage operation but not main purpose of the salvage operation as defined (see paragraph 3.1.3 -c). It may be a problem that whether this suggestion does also apply to Article 13.1(b)? The nature of Article 13.1(b) is merely a criteria in assessing the reward, but not forms an ingredient of giving right to a reward. This criteria which shall be taken into account is "with a view to *encouraging* salvage operation" but not related to the salvage operation. Namely that, the 1989 Salvage Convention actually contains no wording which may be implied that "only the skill and efforts of the salvors in preventing or minimizing damage to the environment, *which is directly*

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[64] Life salvage who is entitled to a fair share of the payment, in accordance with Article 16, shall have had successful result; and the environmental salvor under Article 13, as discussed in para 1, is not necessary to consider whether having a successful result in preventing or minimizing damage to the environment.

related the salvage operation, to be taken into account in assessing the reward". According to this suggestion, for example, escaped oil clearing up costs (which are not recoverable in Article 14 special compensation) incurred by a successful cargo salvor seems to be entitled to claim environmental enhanced reward under Article 13.1(b) of the 1989 Salvage Convention. Property salvees may argue, in fact this argument was existing for a long time at least began from LOF1980, they shall be not responsible for the damage to the environment and therefore not responsible for its environmental enhanced reward. However, since the 1989 Salvage Convention has accepted the environment protection factor shall be taken into account for fixing the reward on the property salved, this argument would be no longer a real argument. Damage to the environment now is standing on its special legal status like as salvage of life. Property salvees may argue they would be not responsible for the life, but the property reward is always enhanced by reason of life salvage and life salvor is still entitled to fair share of the reward.

My above suggestion shows, simply by reference to the wording and structure of the 1989 Salvage Convention, the applicable extent of Article 13.1(b) is more wider than Article 14. It may be a problem that the liable party of Article 14 special compensation may strongly challenge that the tribunal did not adopt this wider view to enhance the reward on the property at first stage.

3.2 The Salvors

"Salvor", as defined in section 255 of the M.S.A. 1995, means "in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, the person in command of the ship". Neither the 1910 Salvage and Assistance Convention nor the 1989 Salvage Convention provide firm definition on the word "salvor". Mr. Wildeboer said "There was obviously agreement about a certain provision and that the editorial committee could draw up the article. It does not appear from the reports why finally no articles dealing with these subjects were incorporated in Brussels Convention."[65] Mr. Wildeboer

[65] Ina H. Wildeboer, ibid., at p. 66.

assumed that it was decided during the 1910 Brussels Conference to leave this part of the salvage law unregulated.[66]

Everyone can be a salvor but without meaning unless he is entitled to a salvage payment according to the 1989 Salvage Convention. The owner, master and other persons on the salving object, either a vessel or not, who successfully saved a life, or salved a vessel or any other property as defined, or rendered a salvage service in respect of a vessel which by itself or its cargo threatened damage to the environment, may be a salvor who is entitled to a salvage payment.

The 1989 Salvage Convention retains its application to the salvage service: (a) rendered by state-owner vessels (Article 4); and (b) rendered by or under control of public authorities (Article 5). The 1989 Salvage Convention also provides that no payment is due while services is rendered under existing contracts (Article 17).

3.2.1 "State-owned Vessels" as Salvors

Article 4.1 of the 1989 Salvage Convention provides "without prejudice to article 5, this Convention shall not apply to warship or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operation, to sovereign immunity under generally recognised principles of international law unless that State decides otherwise." Article 4.2 further deals with the circumstance if a State decides to apply the 1989 Salvage Convention to its warships or other vessels described in paragraph 1.

By reason that the public authorities may use their own vessels to perform a salvage operation and avoid a disaster, in which case Article 5 (Article 3 of the final draft) of the 1989 Salvage Convention would apply, the Committee in the 1989 Diplomatic Conference accepted Spain's proposal of adding "without prejudice to the provision of Article 3" in order to avoid the doubt which may arise concerning the viability of Article 5.[67] The proposed wording were slightly amended to "without prejudice to Article 5" in the 1989 Diplomatic Conference.

The present text of Article 4 of the 1989 Salvage Convention does not distinguish between salvage services rendered to or rendered by a State-owned

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[66] Supra, at p. 67.

[67] IMO - LEG/CONF.7/CW/WP.10 - 18/April/1989.

vessel. Same interpretation was existed to the Article 14 of the 1910 Salvage and Assistance Convention.[68] In other words, in case a State Party decided not to apply the 1989 Salvage Convention to its warships or other state-owned vessels, unless the related provisions of the 1989 Salvage Convention were unconditionally incorporated in its national law, it will be difficult to say that its warship as a salvor is entitled to claim special compensation or imposed the duty to protect to environment while the salvage services rendered within its territorial water. Section 8 of the Crown Proceedings Act 1947 (as amended by Sched.2 para.3 of the M.S.A. 1994) allows salvage claims to be made *against and by* the Crown. Will it be a problem if this government did not perform the requirement under Article 4.2 of the 1989 Salvage Convention by giving notice to the Secretary- General ? Since the 1989 Salvage Convention was incorporated in the Merchant Shipping (Salvage and Pollution) Act 1994, Article 4 of the 1989 Salvage Convention was then given its force of law in this country. In other words, the Merchant Shipping (Salvage and Pollution) Act 1994 does not apply to warships or other no-commercial vessels owned or operated by U.K. It is difficult to say that the M.S.A. 1994 does apply to state-owned vessels by the effect of section 8 of the Crown Proceedings Act 1947. The Crown Proceedings Act 1947 itself represents not the substantial law of salvage for which the M.S.A. 1994 shall be prevail to apply. It does not mean that salvage claims can no longer be made against or by the warships or state-owned vessels if this government did not notify its application to the 1989 Salvage Convention, but only affects the part that the new salvage law deduced from the 1989 Salvage Convention.

Article 4 of the 1989 Salvage Convention merely states "the Convention shall not apply to *warships* or other non-commercial *vessels*". It may incur an application problem that does the 1989 Salvage Convention apply to, for example, the salvage services rendered to or rendered by a State-owned helicopter ? If we interpret Article 4 conversely (as it also forms the English statutory law), the 1989 Salvage Convention may apply to this State-owned helicopter. However, by reference to the international law, the said state-owned helicopter could be subject to sovereign immunity. What is the real extent of sovereign immunity ? The sovereign immunity may represent the state-owned helicopter may be exempted from paying salvage, but seems does not mean the state-owned helicopter is therefore exempted from its duty to carry out the

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[68] Ina H. Wildeboer, ibid., at pp. 26-33.

salvage operation with due care. This is an issue under international law which this paper intends not to further study. However, it is a real problem may frequently occur in today, as more and more aircraft are involving in today's salvage services, specially in saving life. In other words, unless the issue is settled that the state-owned vessel/aircraft who performs its public service is given no right to remuneration, it will be difficult to say the HM Coast-guard (for example HM Coast-guard helicopter[69] saved life from a tanker in danger) can exercise his right under Article 16 of the 1989 Salvage Convention to fair share the special compensation awarded to the property salvor.[70]

3.2.2 "Public Authorities" as Salvors

The 1989 Salvage Convention Article 5.1 provides "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". Article 5.1 was virtually unchanged from Article 13 of the 1910 Salvage and Assistance Convention. Mr. Wildeboer opined that the purpose of this article (i.e. Article 13 of 1910 Convention) was to prevent the Convention from trespassing in the sphere of public law.[71] Article 5.2 and Article 5.3 of the 1989 Salvage Convention were introduced to overcome the unclear situation of the wording "do not affect" used in the 1910 Salvage and Assistance Convention, which may be construed to mean that salvors are not entitled to avail themselves of the provisions of the Convention.[72]

Article 5.2 of the 1989 Salvage Convention makes it clear that a salvor has performed salvage operations under the control of a public authority shall not prevent him from exercising any right or remedy provided for by the Convention against the private interests to which salvage services are being rendered by him, and Article 5.3 was intended to preserve the existing that the present law varies from State to State as to whether for instance the coast guard or the fire

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[69] It may be a problem that if the Coast Guard is within the definition of "port authorities" in Article 5 of the 1989 Salvage Convention.

[70] Prof. Gaskell seems adopted affirmative answer. [*Annotations on Merchant Shipping (Salvage and Pollution) Act 1994, Current Law Statutes 1994* vol. 2, at p. 28-37.]

[71] Ina H. Wildeboer, ibid., at pp. 33.

[72] CMI News Letter, Dec. 1981, at p. 4

service may recover in salvage.[73]

It is not necessary to discuss in detail the extent and meaning of the words "public authorities" and "national law or any related international convention". The real problems to this article are: a) in what circumstance the public authorities are to be qualified as a salvor who is entitled to a salvage claim; b) whether the other provisions of the 1989 Salvage Convention, other than rights and remedies to salvor, also apply to the public authorities or the salvor who carrying out salvage operations under control by the public authorities?

The 1989 Salvage Convention Article 5 uses the words "shall not affect", but not for example "shall not apply", represent that, to any national law or any other international convention relating to salvage operation by or under the control of public authorities, whether these national law or other international convention is effected or will be effected, these national law or other international convention are given priority to apply. If there are no such national law or other conventions, the 1989 Salvage Convention does not prohibit its application to the public authorities or the salvor under control of said public authorities. On the other hand, by reference to wording "without prejudice to article 5" in Article 4, public authority stands its special position beyond the State-owned vessels to which the 1989 Salvage Convention shall not apply. However, the services to the property in peril are rendered voluntarily, that is without any pre-existing contractual or other legal duty, is an essential ingredient to a right to recover salvage.[74] In general, the services rendered by the public authorities in most cases were pursuant to their public duties who are not a volunteer in general. The real extent of the said "public duties" imposed on the port authorities is another problem. To remove a ship obstructing a passage clearly is a direct duty to the port authority.[75] However, it will be difficult if says that to protect the property, life and environment in peril is not a general duty of the port authorities, specially that the Article 11 of the 1989 Salvage Convention has imposed a wide co-operation duty to the State Party for purpose of saving life or property in danger as well as preventing damage to the environment. This co-operation duty consists of not only the co-operation between salvors, other interested parties and port authorities, but also that the contracting state shall provide prompt assistance to vessel in distress and take such measure as may

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[73] CMI News Letter, Sept. 1984, at p. 13

[74] Brice, ibid., at para 1-169.

[75] The *Gregerso* (1973) Q.B. 274.

be necessary for the preventing of damage to the environment.[76] In other words, in accordance with Article 11 of the 1989 Salvage Convention, the duty of the port (or public) authorities, as being a body of the State, is imposed not only for example to remove a ship obstructing a passage, but also owe a duty to co-operate the salvage operation as well as to provide necessary assistance for saving life, property and the environment. According to this suggestion, unless the law of the State have otherwise determined, it exists no circumstances that the public authorities are entitled to claim salvage under the 1989 Salvage Convention.

For the second question, either Article 5.2 or Article 5.3 of the 1989 Salvage Convention merely state the public authorities and the salvor under the control of public authorities shall (may) be entitled to avail themselves of the *rights and remedies provided for in this Convention*. Does other provisions of the 1989 Salvage Convention, specially the duties imposed on the salvors, also apply to them? The circumstance may be frequently encountered, for example a public authority may order the salvor to move an imperiled laden tanker to another location. In case the salvor has been negligent in failing to prevent damage to the environment, does this salvor be deprived of the whole or part of any special compensation in accordance with Article 14.5 of the 1989 Salvage Convention? The circumstance may be more difficult and complex while the said salvor is acting for or on behalf of the public authority. The salvor may claim his costs from the said public authority. On the other hand, the salvor can also claim salvage (include his costs for claiming special compensation) under the 1989 Salvage Convention. By reference to the wording used in Article 5.2 of the 1989 Salvage Convention that "nevertheless ..... shall be entitled", it represents the effort of Article 5.2 is prevail to Article 5.1 (i.e. the national law).[77] The public authority, subject to the national law or common law negligence principle, may have negligent defence to the salvor under his control who has been negligent. However, the property salvees and shipowner might not have similar defence under the plain wording of Article 5.2. My suggestion is the effect of Article 5.2 is only prevail to the rights and remedies provided by the 1989 Salvage Convention which differs from the national law or any international convention mentioned in Article 5.1, but nothing more. Namely that, even though the

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[76] LEG/CONF.7/CW/3, Annex at p. 7.

[77] Frank Wall also agree this suggestion. see *Overview - Improvements and Deficiencies from a Government Viewpoint,* Salvage -Conference paper LLP Feb. 1990, at p73.

property salvees and shipowner have no negligence defence under Article 5.2, they still may enjoy similar defence under national law or any other international convention as mentioned in Article 5.1. Furthermore, if no available defence is existed under the national law, the 1989 Salvage Convention is then resumed to apply.

Another question is the meaning of "shall be entitled to avail themselves of the rights and remedies provided for in this Convention" in Article 5.2 of the 1989 Salvage Convention. There are some different interpretations that:

1) the reward and special compensation shall be fixed in taking into account the whole salvage operations under control of the public authority; or
2) the reward and special compensation shall be fixed in accordance with the 1989 Salvage Convention as if there is no such control from the public authority.

Article 5 of the 1989 Salvage Convention is unclear to these interpretations. A further question is that who shall pay the insufficient amount to the salvor? Whether the shipowner and cargo owner still have to pay the presumed reward even if the vessel and cargo were total loss; or the public authority have to pay such presumed reward as the operation was under control by the public authority ? My suggestion is the salvor can only claim the reward or special compensation from the salvees or shipowner which is calculated in accordance with Articles 13 and 14 and other related provisions of the 1989 Salvage Convention. The salvees pay no reward if the salvage operation under control of port authority have had no useful result. The shipowner shall pay the salvor's expenses (special compensation) incurred in the salvage operation (includes any operations under control of the public authority) if the vessel or its cargo threatened damage to the environment. The public authority is basically not liable to any insufficient amount to the salvor, as the public authority does exercise its right and duty authorized by the national law or other international conventions.

3.2.3 Salvors "under Existing Contracts"

Article 17 of the 1989 Salvage Convention, restates the principle in the 1910 Salvage and Assistance Convention Article 4, provides that "No payment is due under the provision 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". This rule forms part of the important principle under which a salvage service must be voluntary to give right to the remedies of the Convention.[78]

Article 4 of the 1910 Salvage and Assistance Convention was more restrictive in that it only applied to "towage contracts". Article 17 of the 1989 Salvage Convention extends its application to any "pre-existing contractual duties". In accordance with the principle of contractual voluntariness, neither the crew nor pilot navigating the ship nor the owner or the crew of the tug towing it under a contract of towage nor ship's agent are ordinarily held entitled to obtain salvage reward in respect of the services rendered by them in the preservation of the ship herself or of the lives or the cargo which she carries; for all of these persons are under a pre-existing obligation to work in their respective ways for the benefit of the life and property at risk.[79] A like principle may also apply to the official duty rests upon government officials. However valuable their assistance may be, so long as they are acting only within the lines of their official duty.[80] However, the 1989 Salvage Convention does apply to the pre-contractual duty alone but not include any kind of non-contractual duties. Actually in fact that it is impossible to embrace any kind of pre-existing duties in an international legislation as it is not only difficult to define the kind of duties among States but also may trespass the convention in the sphere of public law, for example, the universal duty of all ship and seamen to render every possible assistance to the life or property in danger.

Prof. Gaskell, in interpreting Article 17 of the 1989 Salvage Convention, mentions some particular problems are caused by the use of sub-contractors to perform salvage operations,[81] specially arose from the *Texaco Southampton*

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[78] C.M.I. New Letter, Sept. 1984, at p. 26.

[79] Kennedy, ibid., at PP.26-27.

[80] Supra, at p.26.

[81] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes

case[82]. Subject to the plain wording used in Article 17, the "pre-existing contract" in Article 17 is not clearly confined to a contract which the salvee and putative salvor are the direct named contracting parties. In accordance with the 1989 Salvage Convention, the sub-contractor who rendered salvage operation as defined presumably is entitled to claim salvage payment if have had a useful result. However, the sub-contractor is not entitled to claim salvage from the property saved or shipowner for the service inside the scope of his contractual duty to the main contractor, as his performance is merged into the claim of the main contractor to the property saved and shall be settled in accordance with the term and condition of said towing sub-contract. The sub-contractor may be entitled to salvage payment to the services he rendered ***outside*** the scope of his contractual duty, assumed that his original contract was intervened or suspended. In other words, to the service rendered by the sub-contractor outside his contractual duty, he may be qualified as an intervening salvor independently of the main contractor (salvor). The sub-contractor who was not allowed to claim salvage in the *Texaco Southampton* case was the judge considered that the work performed by the sub-contract did not go outside the scope of their normal duties. The judge in the *Texaco Southampton* however accepted an exception circumstance and said that:

> they were not salvage services but towage services only, unless supervening events placed the service outside the scope of the contract and that exception was not fulfilled unless (I) the tow was in danger by reasons of circumstances which could not reasonably have been contemplated by the parties and (ii) risks were incurred or duties performed by the tug which could not reasonably be held to be within the scope of the contract and here no claim to salvage was maintainable unless such exceptions were established.[83]

The above deduction, simply to say, is to treat the sub-contractor, for the service outside his original contractual duty, as an intervening salvor, since in accordance with Article 8.1 of the 1989 Salvage Convention, the main salvor is owed a duty to seek or to accept the intervention of other salvor.

1994 vol. 2, at p. 28-73.

[82] The *Texaco Southampton* (1983) 1 Lloyd's Rep. 94, C.A. of New South Wales.

[83] Supra, at pp. 96-97.

3.3 The Obligation and duties

The universal duty of all ship to give succour to others in distress was the sole duty expressed in the 1910 Salvage and Assistance Convention. In addition to this universal duty, the 1989 Salvage Convention provides a whole new chapter (Chapter II - Performance of salvage operation) to deal with the duties imposed on the various private and public parties related. The majority of those duties apparently are intended to rescue the problems raised by the *Amoco Cadiz* disaster.

3.3.1 The duties on Salvor

The C.M.I.'s discussion to the problems raised by the *Amoco Cadiz* case considered the following duties for the salvor to be of primary importance: [84]

- the duty to use his best endeavours to salve the vessel and to avoid or minimize damage to the environment;
- the duty to accept the cooperation of other salvors when the circumstances reasonably require that.

These duties reflected Article 2-2 of the C.M.I. 1981 Draft by using a familiar expression as LOF80. The universal duty of all ship to give succour to others in distress in Article 11 of the 1910 Salvage and Assistance Convention was restated in Article 2-3 of the Draft (now is Article 10 of the 1989 Salvage Convention).

3.3.1.1 The duties imposed on salvor to owner

3.3.1.1.1 The development during the Drafts

There were some substantive changes, during the discussions in the IMO 56th session in April/1986 and 57th session in Oct/1986, to reduce or limit salvor's

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[84] C.M.I. News Letter, Dec. 1981, at p.2.

duties under Article 2-2 of the 1981/1983 Drafts.

The first charge was the words "best endeavours" were instead of "due care". Professor Gaskell opines "it is a reduction in the standard required as the due care is an objective one based on reasonableness taking into account of the general standards in the salvage industries, but the emphasis on "best" endeavours might indicate a more subjective test looking to the actual capabilities of the salvor in question".[85] In the IMO 56th session, it was mentioned that "it has to also consider the affect if such heavier standard of care (i.e. best endeavours) to be imposed on the occasional (not professional) salvor".[86]

The second change was to express the duties of the salvors are only limited to the salvage parties privately, as it was considered that the ambiguous wording used in the previous Drafts might involve the salvor into public liability.

The third change was to remove the circumstance which may possibly impose the duties on the salvors outside their performance in rendering the salvage operation. For examples, the words "obtain assistance" was instead of "seek assistance"; and also the duty to prevent damage to environment is clearly limited in performing the salvage operation.

The 1987 Draft and 1988 Final Draft set out five duties on the salvor. However the first duty - "to exercise due care to salve the vessel or other property in danger" was deleted in the 1989 Diplomatic Conference as it was considered duplicately to the second duty "to carry out the salvage operations with due care".

3.3.1.1.2 The prerequisites

There are some prerequisites apply to these salvor's duties. Firstly, the beginning wording of Article 8.1 of the 1989 Salvage Convention provides "the salvor shall owe a duty to the owner of the vessel or other property in danger". These wording represent the salvors do not owe the same duties to anyone or anything other than the "vessel or any other property" e.g. life of person or

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[85] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994, Current Law Statutes 1994* vol. 2, at p. 28-44.

[86] 原田一宏,1989 年海難救助條約之制定(1989 Salvage Convention -in Japanese),1993, Tokyo, at p.111.

damage to the environment or liability incurred. Whether a salvor shall be liable to the life or environmental victim caused by the salvor's negligence or misconduct is another issue. However, those victims can in no event maintain Article 8 as a cause of appeal against the said salvor. It also represents that those duties are statutorily which impose the minimum but compulsory duties on the salvors.[87] Those statutory duties can override any contractual terms which provide obligation less than the 1989 Salvage Convention. However, they do not prohibit any kinds of contractual duties impose a heavier obligation on the salvors than the 1989 Salvage Convention. It is suggested that, though Prof. Gaskell opines the standard of care by using "best endeavours" used in LOF is heavier than the "due care" used in the Convention,[88] it actually results in no conflict in applying the LOF and the 1989 Salvage Convention. Secondly, by using the word "or", it would be peculiar for there to be a duty of care to the ship but not simultaneously to the cargo.[89] The 1981 and 1983 Drafts used the word "and" but replaced by "or", proposed by U.K., in the IMO 57th session[90] with actual reason unknown[91]. Thirdly, the performance of those duties is merely attached to in rendering the salvage operation as defined. Namely that, the salvors owe no such duties 1) before or after the salvage operation; 2) to anyone or anything other than vessel or other property as mentioned above; 3) to the vessel or other property not in danger; and 4) to the service performed outside the geographical extent of the 1989 Salvage Convention.

3.3.1.1.3 The effect

The effect of breaching the duties is another issue. The 1989 Salvage

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[87] Further discussion, see paragraph 3.5.1 below.

[88] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-44.

[89] Supra.

[90] 原田一宏,1989 年海難救助條約之制定(1989 Salvage Convention -in Japanese),1993, Tokyo, at p.176.

[91] In IMO 57th session, most delegates agreed UK delegate's general proposal of not to expose or intervene the salvage law which mainly provide private law relationship between salvors and saving property to other public international law. Under this tendency, a series amendment mainly proposed by UK were agreed which included the change of "or".

Convention expresses nothing in relation to the effects in case the salvor failed to perform his duties with due care. The *Tojo Maru* (1972) held a salvor should be liable in damages to a salvee for negligent performing a salvage operation.[92] The *Tojo Maru* is a case on contractual salvage under the LOF based upon the "best endeavours" test. However, Prof. Gaskell opines that "on this reading the 1989 Salvage Convention the rule in The *Tojo Maru* survives through the Convention itself."[93] The duties imposed on the salvors under the 1989 Salvage Convention (and or LOFs 90/95) are not limited only to "carry out the salvage operation with due care or best endeavours". It also includes the duty to prevent or minimize damage to the environment (Article 8.1.b); the duty to seek assistance (Article 8.1.c) and the duty to accept intervention (Article 8.1.d). Does the *Tojo Maru* rule also apply to those three duties? Bearing in mind that, this is not a question whether or not the *Tojo Maru* rule shall apply to these duties. Since the 1989 Salvage Convention has expressed the salvor shall owe those duties, the remedy to the salvees' loss/damage which caused by the salvor's failure to perform such duties shall be oppositely existed. It is difficult to imagine that the 1989 Salvage Convention is merely intended to provide a *moral duty* on the salvor. Such remedy may be implied follows the duties themselves imposed by the 1989 Salvage Convention subject to the available national law or general law principle (for example the general contract law remedies for contractual salvage or negotiorum gestio remedies for non-contractual salvage),[94] but not limit to the *Tojo Maru* rule. The *Tojo Maru* may is still a good law but not the sole law applicable to Article 8.1 of the 1989 Salvage Convention.

A further question to the effect of the salvors breached those duties is the extent of damages recoverable and its way. The duties of the salvor applicable to Article 8.1 of the 1989 Salvage Convention is limited to "the *owner* of the vessel or other property". In other words, it may be assumed that only the owners of the vessel or other property are entitled to claim their loss or damage

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[92] The *Tojo Maru* (1972) A. C. 242.

[93] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994, Current Law Statutes 1994* vol. 2, at p. 28-45.

[94] It is unclear that, in this country, whether tort law remedies is applicable to non-contractual salvage case if the salvor is condemned. C.M.I. reported that "The Committee felt that public law matter should be taken up in the context of the 1973-1978 MARPOL Convention and that private law matters relating to third-party liability should be dealt with by the general law on negligence or other appropriate international Conventions" (C.M.I. News Letter, Autumn 1986 at p.7)

caused by the condemned salvor. The question is whether the recoverable damages shall include the "liability" incurred by the owner of the vessel or other property to any third parties ? For example, the liability claim from other environmental victim, crew or other collided vessel. It is difficult to deny that these liability claims, if actually incurred and paid, are not formed as the "damages" to the owner of the vessel or other property. The real intention during the Drafts appeared not to expose those salvor's duties to public. However, according to the above viewpoint, the salvor seems to be still liable to those third party liability claim through the back door from the owner of the vessel or other property. In other words, Article 8.1 can merely prevent the direct claim from the third party,[95] but can not reject the same claim indirectly from the owner of the vessel or other property (subject to any available defence or limitation which the owner of the vessel or other property is entitled to maintain). However, this indirect liability claim would be subject to the limitation of liability under the 1976 Limitation Convention.

3.3.1.1.4 Duty to carry out the salvage operation with due care

The first duty in Article 8.1 of the 1989 Salvage Convention is to carry out the salvage operations with due care. As mentioned, the 1989 Salvage Convention does not prohibit the salvage parties to agree a higher duty of care or any further duty to be imposed on the salvor. In the *Unique Mariner (No.2)* and the *Tojo Maru* cases, the courts opined that the salvor who rendered services under LOF to use best endeavours may be negligent if the salvors leave the salvage service part-way through, but a *pure salvor* is under no obligation to continue services which he has begun.[96] Does the above judges' opinion need to be revised since the 1989 Salvage Convention has imposed the express duty apply to any kinds of salvage operation (include pure salvage) to carry out the salvage operation with due care ? It seems that it existed no such express duty on the

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[95] It is difficult to say Article 8.1 has the effect enough to prevent any third party's claim by any other legal basis as in C.M.I. News Letter (Aug. 1986, at p.7) mentioned that private law matters relating to third- party liability should be dealt with by the general law on negligence or other appropriate international Conventions.

[96] The *Unique Mariner* (No.2) (1979) 1 Lloyd's Rep. 37 at p. 51; The *Tojo Maru* (1972) A. C. 242 at p. 292.

pure salvor before those two cases were submitted into the courts. Prof. Gaskell, bases on the minor "due care" duty imposed by the 1989 Salvage Convention, opines that "the salvors is perfectly entitled to leave a salvage job when it has become too difficult or expensive and there seems to be no concept that it is compulsory to continue a salvage service once started".[97] All related documents in the C.M.I. and I.M.O., provided no advice in relation to this issue. It exists no difference to the service rendered under LOF salvage contract which the "best endeavours" duty is imposed, but it will be a problem to pure salvage or other salvage contractual forms which provide less duty of care than LOF. I personally do not consider that merely bases on the "due care" test can decide the inference that "it is not compulsory to continue a salvage service once started." As discussed, the purpose of the Drafts in 56 and 57th I.M.O. sessions to replace "best endeavours" from the original Draft by "due care" was merely intended to protect salvors (specially to the non-professional salvors) without serious subjective concern in performing the operation. The change of duty of care contained no intention that the salvor is entitled to leave a salvage job when it has become too difficult or expensive. By reasons that 1) the initial intention of this duty provision was intended to follow the same line with the LOF; and 2) considering the background (1978 "*Amoco Cadiz*") which this duty clause being created, though it may be improperly if says "the salvor is compulsory to continue a salvage service once started", but may be properly if says "the salvor is not entitled to leave a salvage job when it has become too difficult or expensive". Another factor which has to consider to this issue is the change of the traditional "no cure no pay" salvage. A salvor discontinued his job would get nothing from ordinary reward for his unfinished (unsuccessful) service. However, the salvor may be still entitled to claim special compensation under Article 14 of the 1989 Salvage Convention for any services he has performed. Form the point of view to prevent damage to the environment declared in the preamble of the 1989 Salvage Convention and the new special compensation regime to induce salvors to take action, it is better that the salvors is not entitled to discontinue his job.

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[97] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-44.

3.3.1.1.5 Duty to prevent or minimize damage to the environment

Salvor's second duty in Article 8.1 of the 1989 Salvage Convention is "to exercise due care to prevent or minimize damage to the environment". The beginning words "in performing the duty specified in subparagraph (a)" obviously attempt not to expose salvor to public. It is interested to note that this sub-paragraph (b) uses the language "in performing the ***duty***..... ", but not for example "in performing the salvage operation..". It is suggested that, salvor's duty to prevent damage to the environment is existed only when he also owed the duty to carry out the salvage operation. The concept of "to carry out the salvage operation" is different from "the duty to carry out the salvage operation with due care". In accordance with the wording used in Article 8.1(b) of the 1989 Salvage Convention, the salvors do not naturally owe the duty to prevent damage to the environment while they are carrying out the salvage operation. This is not an independent duty follows the salvage operation but a parasitic duty followed and controlled by the duty to carry out the salvage operation with due care. Furthermore, in case the salvor owes no duty of Article 8.1(a) or to the salvage operation which imposed a duty heavier than the "due care" test, the salvors are also owed no duty of Article 8.1(b) to protect damage to the environment.

The salvor's duty in Article 8.1(b) of the 1989 Salvage Convention to prevent damage to the environment is parasitically to the "*duty* to carry out salvage operation with due care". However, the salvors' right to claim special compensation in Article 14 of the 1989 Salvage Convention is accrued in case the salvor "has carrier out salvage operation (in respect of a vessel which by itself or its cargo threatened damage to the environment)". In other words, the duty imposed on the salvor to prevent damage to the environment is not in keeping the same line with his right to claim the special compensation.

The prerequisite wording in present text of Article 8.1(b) can be traced back to the 1987 Draft but with reasons unknown.[98] By reference to the wording used in the 1981 and 1983 Drafts, the duty to prevent damage to the environment was connected with the salvage operation, but not *the duty* to carry out the salvage operation with due care. The present text may cause some problems and difficulties. For example, the tribunal, before he decides whether a salvor

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[98] The whole Article is based on a proposal submitted by UK delegate under the common understanding only to keep the private law matter between the salvor and the salving interests.

has properly performed his duty under Article 8.1(b), has to consider at first stage whether the said salvor has carried out the salvage operation with due care.

3.3.1.1.6 Duty to seek assistance

Salvor's third duty in Article 8.1 of the 1989 Salvage Convention is "to seek assistance from other salvors whenever circumstances reasonably require". In the 1987 Draft, the words "obtain assistance" was instead of a less compulsory wording -"seek assistance" in order to remove the circumstance which may possibly impose the duties on the salvors outside their performance in rendering the salvage operation. The said "other salvors" may include the principal salvor's sub-contractor who rendered service outside his contract duty. Unlike Article 8.1(a) & (b) and LOF, neither "due care" nor "best endeavours" are required in this sub-paragraph (c). It may be a problem to decide for what circumstance is reasonably required to seek assistance. it is suggested that whether the circumstance is reasonably required shall generally be referred to salvor's subjective judgment. Unless the test of "to seek assistance" and "the circumstance is reasonably required" stand on the same line (salvor's subjective judgment), salvor may be easily challenged by the salvees that he failed to properly exercise the duty to seek assistance. For example, for avoiding delay, the salvees may always expect more powerful tugs or equipment to be used in salvage operation. However, the salvor may consider his tug and equipment are sufficiently enough to render such service even if it may really take a little more time to finish. There are some questions: 1) whether the salvee is entitled to request salvor to seek assistance from other salvor; 2) whether the salvee can by himself, ignore the service rendering by the leading salvor, to seek (or obtain) assistance from other salvor; and 3) to further request the salvor to accept the other salvors' intervention. They are the problems beyond Article 8.1(c) of the 1989 Salvage Convention. The duty to seek assistance under Article 8.1(c) is existed only when a reasonable salvor has realized or should have realized the circumstance was required to seek assistance from other salvor.

3.3.1.1.7 Duty to accept intervention

Salvor's fourth duty in Article 8.1 of the 1989 Salvage Convention is "to accept the intervention of other salvors". One of the problems raised by the *Amoco Cadiz* disaster for the salvor was the duty to accept the cooperation of other salvors when the circumstances reasonably require that.[99] This problem reflected the 1981 Draft that "the salvor shall.. obtain assistance from other available salvor". The duty to "obtain assistance" in the 1981 Draft might be interpreted to include the duty to accept other salvors' assistance, otherwise it would make no senses for its following paragraph which read that "However, he may reject offers of assistance made by other salvors..". In the 1983 IMO Draft, the duty to accept other salvors' intervention was diverged from the duty to obtain assistance as an independent duty provision. In the 1987 Draft, this duty provision had three changes: 1) added the word "reasonably"; 2) added "or other property" and 3) "such intervention was not necessary" was replaced by "such a request was unreasonable".

The salvors do not naturally owe the duty under Article 8.1(d) of the 1989 Salvage Convention to accept other salvors' intervention unless he is (reasonably) requested to do so by the owner or master of the vessel or other property. However, the salvor has to accept the intervention once said request was (reasonably) submitted. An unreasonable request does not discharge salvor's duty to accept intervention but merely not prejudice the amount of his reward. In other words, in case the owner or master of the vessel or other property have submitted their intervention request, whether such request reasonable or not, the salvor shall in any event accept the other salvors' intervention. If this analysis is correct, the words "*reasonably*" and "reasonable" used in Article 8.1(d) of the 1989 Salvage Convention seems to be given different meaning. The former "reasonably" represents merely whether the owner or master have properly submitted their request to the salvor with some clear reason(s). The latter "reasonable" represents the submitted request should be proper and reasonable in comparison with the circumstance at the time the request being submitted.

The persons who are entitled to submit intervention request under Article 8.1(d) of the 1989 Salvage Convention are limited to "the owner or master of the vessel or the owner of other property". In other words, the salvors owe no duty to accept any intervention request from any other persons, for example the nearby competitive salvor. It may incur problems if the salvor received different request

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[99] C.M.I. New Letter, Dec. 1981, at p.2.

from the owner of the vessel, the master and or the owner of other property.[100]

Article 8.1(d) of the 1989 Salvage Convention provides also that "the amount of salvor's reward shall not be prejudiced should it be found that such a request was unreasonable". This proviso implies lots of questions unsettled. Two of them are 1) the relationship between Article 8.1(d) and Article 19 of the 1989 Salvage Convention; and 2) whether the special compensation shall be prejudiced if the request found unreasonable?

Article 19 of the 1989 Salvage Convention provides salvees a right to prohibit the salvage operation and no payment is given rise the salvees who gave the prohibition advise expressly and reasonably. To prohibit the salvage operation, strictly speaking, is not entirely same as the meaning of "to accept the intervention". To accept the intervention of other salvors under Article 8.1(d) of the 1989 Salvage Convention does not mean the first salvor is therefore wholly prohibited to continue his service. To accept the intervention may have some implications: a) the interventing salvor has priority to render or even take over the whole salvage service; and b) the first salvor shall cooperate with the intervening salvor if his work is not discontinued. It is a duty on salvor to accept other salvor's intervention if a reasonably request received from the salvees. Failed to perform this duty may be resulted in damages claim from the salvees. However, Article 19 of the 1989 Salvage Convention merely provides the salvees are entitled to reasonably prohibit the salvage operation. Article 19 basically does not impose a duty on the salvor to accept the salvees' prohibition request. In accordance with Article 19 of the 1989 Salvage Convention, the salvor may choose to ignore salvees' prohibition request and continue his work with an effect that the salvee shall not give rise to payment if the prohibition request was expressly and reasonably. Namely that, the salvor may get nothing to the reward even if his continuing works have had a useful result. It implies that the salvees shall give rise to payment if found their request was unreasonable. It is difficult to say, in accordance with the Article 19 of the 1989 Salvage Convention, the said salvor is therefore liable to the salvees' damages (if have) unless it existed fault or neglect on the salvor during the prohibited operation. The circumstance is slightly different from Article 8.1(d) of the 1989 Salvage Convention. The salvor breached the duty to accept intervention may give the salvees, who submitted the intervention request and whatsoever such request

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[100] See Prof. Gaskell's discussion (*Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-46.)

reasonable or not, an implied right to claim damages.

Article 19 of the 1989 Salvage Convention provides also that ".... the salvees shall not give rise to *payment* once they have submitted an express and reasonable prohibition to the salvor". The word "payment" as defined in Article 1(e) of the 1989 Salvage Convention includes the reward under Article 12, Article 13 and special compensation under Article 14 of the 1989 Salvage Convention. A problem is whether the meaning of the words "the salvees shall not give rise to payment" includes any payment wherever incurred in or before the prohibition was submitted or merely not give rise to payment may incur after the prohibition was submitted ? For example, the salvor might have saved part of property before he received the prohibition request. An equitable suggestion is the Article 19 of the 1989 Salvage Convention shall not affect the payment incurred before he received the prohibition request. Namely that, the salvor is still entitled to claim the reward (if have had a useful result under Article 12/13 of the 1989 Salvage Convention) and or the special compensation (under Article 14 of the 1989 Salvage Convention) incurred before he received the salvees' prohibition request. Furthermore, If the prohibition request was finally found unreasonable, the amount of salvor's payment shall not be prejudiced, either the payment was incurred or would have been incurred in/before/after the prohibition or whether the salvor has followed the prohibition or not.

The same analysis may also apply to Article 8.1(d) of the 1989 Salvage Convention. Namely that, the salvor's right to claim payment (reward and special compensation) incurred before he received the salvees' intervention request shall not be prejudiced. It may be a problem to the payment may incur or would have been incurred after he received the intervention request, as Article 8.1(d) of the 1989 Salvage Convention provides only "the amount of salvor's *reward* shall not be prejudiced", which the salvor's right on special compensation is not included. Can it be suggested that, if interprets Article 8.1(d) conversely, the amount of salvor's special compensation may be prejudiced should it be found such a request was unreasonable? The C.M.I. and I.M.O. Documents provided no advise why Article 8.1(d) of the 1989 Salvage Convention merely expresses the word "reward", but not "payment" likes as Article 19. It existed no signs that the 1989 Salvage Convention intended not to expose the salvees under this sub-paragraph to bear the anticipatory special compensation which may be properly incurred after the salvor accepted the intervention. Prof. Gaskell opines "a first salvor who has been unreasonably forced to accept an intervention which resulted in the sinking of the ship in distress might have a claim to recover its

expenses under Article14, provided that there was a threat to the environment".[101]This opinion is still unclear to the anticipated special compensation claim. My suggestion is the salvor who accepted an unreasonable intervention request is not entitled to claim the anticipated special compensation. This suggestion is not based the converse interpretation to Article 8.1(d), but on Article 14.3 of the 1989 Salvage Convention. Article 14 of the 1989 Salvage Convention merely provides safety net cover to the salvor's expenses reasonably incurred in the salvage operation. It may be well assumed that the first salvor will not incur further expenses if the salvor discontinued his work after accepted the salvees' intervention request. In other words, in case the first salvor has accepted intervention, whether such intervention was reasonable or not, the first salvor's right to claim special compensation is not prejudiced to the expenses incurred before he followed the request, but may be prejudiced to the anticipated expenses after the request.

The circumstance may be more complex if the salvor decided not to follow salvees' intervention request and keep on his work. There are four circumstances have to be settled that: 1) to the reward if found request reasonable; 2) to the special compensation if found request reasonable; 3) to the reward if found request unreasonable and 4) to the special compensation if found request unreasonable. Article 8.1(d) of the 1989 Salvage Convention deals with nothing about these circumstances. The salvor did not follow the salvees' intervention request may entitle the salvees to claim damages. However, the salvees' liability to pay salvage payment is not exempted unless the circumstance of Article 19 of the 1989 Salvage Convention was also satisfied. In other words, to the above circumstances, the salvees under Article 8.1(d) of the 1989 Salvage Convention shall still give rise to payment under the 1989 Salvage Convention (the *reward*- if have had useful result and or the *special compensation* if the vessel and or cargo threatened damage to the environment).

The below table shows the different application between Article 8.1(d) and Article 19 of the 1989 Salvage Convention:

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[101] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-46.

	Article 8.1(d) Accept intervention		Article 19 Prohibit the operation	
Duty on Salvor (?)	salvor's duty		not salvo's duty	
Right on Salvees(?)	salvees' implied right		salvees' right	
Salvees' request	*Reasonable*	*Unreasonable*	*Reasonable*	*Unreasonable*
If salvor followed	❒ no reward ❒ not prejudice to special compensation incurred before followed ❒ prejudice to the special compensation after followed as no expenses actually incurred.	❒ not prejudice to reward ❒ not prejudice to special compensation incurred before followed ❒ prejudice to the special compensation after followed as no expenses actually incurred.	❒ "not give rise to payment" ❒ basically no reward ❒ not prejudice the special compensation incurred before followed.	❒ "give rise to payment" ❒ not prejudice to reward as well as to special compensation
If salvor not followed	❒ breached the duty - damages (if have) ❒ not prejudice to reward as well as to special compensation	❒ also breached the duty - damages (if have) ❒ not prejudice to reward as well as to special compensation	❒ not breached the duty ❒ no reward even if have useful result ❒ not prejudice the special compensation incurred before followed.	❒ not breached the duty ❒ not prejudice to reward as well as to special compensation

According to the above discussions, as it exists some differences between Article 8.1(d) and Article 19, it is suggested that the salvees shall be requested to clarify their request in case there were any confusion for the salvees' request either "intervention" or "prohibition".

3.3.1.2 The duty on salvor to render assistance

Article 10 of the 1989 Salvage Convention reproduces Article 11 and 12 of the 1910 Salvage and Assistance Convention and its 1967 Protocol. This is a universal public duty of the all master to give succour to persons in distress. In accordance with the Merchant Shipping (Salvage and Pollution) Act 1994 Schedule 1 Pt. I para. 3, the master of a vessel fails to comply with this duty commits an offence and shall be liable to imprisonment for a term not exceeding six months or two years or a fine or both. However, neither the owner of the vessel shall incur liability for his condemned master who breached this duty (Article 10.3 of the 1989 Salvage Convention), nor the compliance by the master

with that duty shall affect his right or the right of any other person to a payment under the Convention or under any contract [Merchant Shipping (Salvage and Pollution) Act 1994 Schedule 1 Pt. I para. 3.2].

3.3.2 The duties on all Owner

3.3.2.1 General and the development during the Drafts

Within a salvage situation, the traditional rule was, the legal liability is not unilaterally burdened upon the salvor. The recipient, in so far as she is able, is also required to exercise care and skill and to do what is reasonably within her power to facilitate the successful completion of the salvor's efforts and the law assumes that there is a mutual interest in the ultimate success of the salvage operation and imposes reciprocal obligations in an attempt to secure the common desired goal.[102]

The C.M.I.'s discussion to the problems raised by the *Amoco Cadiz* case initially considered the following duties for the owner or master of the vessel in danger to be of primary importance:

- the duty to take timely action to arrange for salvage operations;
- the duty to cooperate with salvors;
- the duty to require or accept other salvors services when the first salvor cannot complete them alone[103]

The 1981 C.M.I. Draft did not express the above third duty (to require or accept other salvors service) but included two further duties that: the duty to prevent or minimize damage to the environment and the duty to accept redelivery. However, the above third duty was expressed in the 1983 I.M.O. Draft, but was removed again, together with the first duty (the duty to take timely action), in the 1987 and 1988 Drafts. In the 1987 Draft, the parties imposed were extended "to include "the owner of other property". The duties imposed on the salvees under Article

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[102] D. Rhidian Thomas, *Aspect of The Impact of Negligence Under Maritime Salvage in United Kingdom and Admiralty Law*, The Maritime Lawyer, Vol.2 No.2, 1977, at p.85.

[103] C.M.I. News Letter, Dec. 1981, at p.2.

8.2 of the 1989 Salvage Convention now are the duty: to cooperate with the salvor, to prevent or minimize damage to the environment and to accept redelivery. Except for the above duties in Article 8.2, the 1989 Salvage Convention also imposes two further duties on all owners. They are the duty to provide security and the duty not to remove the salved vessel and other property without the consent of the salvor.

3.3.2.2 The duties in Article 8.2

Article 8.2 of the 1989 Salvage Convention provides "the owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor." Those wording, same as Article 8.1 of the 1989 Salvage Convention, were created in the I.M.O. 57th session proposed by U.K. delegate to prevent the possibility of resulting in the salvage parties to be exposed to public liabilities under the 1989 Salvage Convention. Those wording represent an important change that the duties are imposed not only on the vessel but also upon cargo and other property as well. It also represents that the salvees do not owe such named duties to anything or anyone (including to other salvees) other than the salvor under the 1989 Salvage Convention. Whether a salvee shall be liable to other persons' damages caused by his breach of such duty is governed by other convention or national law or the related contract but not the 1989 Salvage Convention.

Again, by using the word "or" between the owner/master of the vessel and the owner of other property, it may be assumed that both of these salvees owe the duties (as well as liability) to the salvor separately not jointly. In other words, an endeavoured salvee is basically not liable to other salvee's failure. It means, in assessing the reward and special compensation, the tribunal shall be requested to separate the amount to the reward or special compensation enhanced by reason of a certain salvee failed to exercise his duty. Shall the shipowner be liable to the "enhanced" special compensation which results from the owner of other property failed to exercise his duty ? Though Article 14.6 provides "nothing in this article shall affect any right of recourse on the part of the owner of the vessel", it may be better that the shipowner may at first stage reject salvor's claim to the "enhanced" special compensation caused by other salvees in accordance with Article 8.2 of the 1989 Salvage Convention.

3.3.2.2.1 The effect of breaching the duties

The 1989 Salvage Convention expresses nothing about the effects in case the salvees failed to perform their duties. In the *Valsesia* (1927)[104], the attempts of two salving tugs to extricate a grounded vessel were frustrated by the negligent failure of the endangered vessel to slip her anchor at a critical moment in the salvage operation. The salvors were not entitled to a salvage reward for want of success. Nonetheless, they were held to be entitled to rely on the recipient vessel's breach of duty and recovered damages equal to the agreed salvage reward. In the *Valsesia* case, the obligation between the parties as implicit in the salvage agreement existing between the parties. In the *Glasgow* (1914)[105], there was no salvage agreement, the services were performed at the request of the endangered vessel. Neither the authorities nor reference to general principle suggest that the obligation is restricted to consensual situations. Presumably the obligation is a product not only of express or implied agreement, but also of general maritime law, thus securing for it an extra-contractual existence. If this be the case, then a salvor who is a pure volunteer may be the benefactor of such an obligation.[106]

Prof. Gaskell, in giving comments on Article 8.2(a) of the 1989 Salvage Convention, opines that "failure to co-operate may be taken into account by the tribunal assessing the reward under Art. 13. If the failure resulted in the loss of the vessel and cargo, the salvor may be entitled to its expenses under Art.14 where there was a threat to the environment. In other case, not involving such a threat, the salvor may have an action for breach of the 1989 Convention"[107] This opinion exists some difficulties to follow. For example, failure to co-operate may result in more difficult work on the salvor, the criteria which tribunal may take into account in assessing the reward is the said "more difficult work", but not "salvees' failure to co-operate".

An "enhanced" reward may be treated as a kind or part of salvor's damages caused by the salvees' failure, but not represents the whole remedy to

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[104] The *Valsesia* (1927) P. 115.

[105] The *Glasgow* (1914) 13 Asp. M.C. 33.

[106] Discussed in The *Valsesia* (1927) case.

[107] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-47.

the salvor. In other words, the effect of the salvees' failure is to make good the salvor's damages caused. The salvor's damages may include:

a) more difficult or heavier works to the salvor;
b) unable to claim the reward under Article 12/13 (special compensation ?) in case the failure resulted in no useful result and
c) results in that the salvor shall be liable to any third party.

For circumstance a, salvor's damages may be remedied from the enhanced reward in accordance with Article 13 of the 1989 Salvage Convention or its increased expenses actually incurred in accordance with Article 14 of the 1989 Salvage Convention and may recover the insufficiency from the condemned salvees beyond the reward.

For circumstance b, the salvor may be entitled to claim the "presumed reward" from the condemned salvee, or his incurred expenses in accordance with Article 14 of the 1989 Salvage Convention. However, the total presumed reward and special compensation shall not exceed the amount of the salvor's damages.

For circumstance c, salvor's liability incurred to third party may be took into account in assessing the reward in accordance with Article 13.1(g) of the 1989 Salvage Convention and may further recover the insufficiency from the condemned salvees beyond the reward.

It may be a problem that whether the salvor is entitled to claim the Article 14.2 augmentative special compensation by reason that the salvor lose the opportunity to successfully prevent or minimize damage to the environment? The loss of opportunity may be considered too remote. However, the real problem is Article 14 of the 1989 Salvage Convention merely provides a safety net cover to the expenses (and fair rate) actually and reasonably incurred by the salvor. If the salvor did not incur (or to incur continually) any further expenses, whether the salvees' breached the duty or not, the salvor seems still not to be entitled to claim any kind of presumed or anticipated special compensation. In other words, the salvor's damages claim may resort to Article 14 of the 1989 Salvage Convention, but restrict to the expenses he actually incurred.

3.3.2.2.2 Duty to co-operate fully with the salvor

Salvees' first duty in Article 8.2 of the 1989 Salvage Convention is "to co-operate fully with the salvor during the course of the salvage operation". The 1989 Salvage Convention expresses nothing about the real extent and degree of this "fully co-operate" duty. The purpose of this sub-paragraph (a) (as stated in the C.M.I. Documents) "to ensure the efficient carrying out of the salvage operation"[108] may be the best test to consider whether or not the salvees have performed their fully co-operate duty with the salvor. The words "to co-operate fully with him (the salvor)" represent not the act on salvees' own but to follow the direction or request from the salvor. Salvage contracts may express some more detailed requests, for example LOF 95 clause 3 provides not only the salvees' co-operate duty, but also further particularizes the duty to obtain entry to the safety place as well as allow the salvor to reasonably use the vessel's machinery gear equipment anchors chains stores and other appurtenances free of expenses.

Neither the 1989 Salvage Convention nor LOF mention about the standard of care on the salvees in performing this duty. Though the 1989 Salvage Convention imposes the "due care" duty (and "best endeavours" in LOF) on salvor to carry out the salvage operation, it does not mean the salvees owe the same standard care of duty to co-operate fully with salvor. This is not a compulsory or strict duty as this suggestion was rejected in the I.M.O. 56th session.[109] The "best endeavours" test may be ignored here as the wording "to co-operate fully with salvor" are implied less even no subjective test on the salvees in performing such duty. It is suggested to adopt the "due care" test, likes as Article 8.1 and Article 8.2(b) of the 1989 Salvage Convention, or the "prudent owner" test to decide whether the owners have co-operated fully with the salvor or not.

3.3.2.2.3 Duty to exercise due care to prevent damage to the environment

Salvees' second duty in Article 8.2 of the 1989 Salvage Convention is "to

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[108] C.M.I. New Letter, Sept. 1984, at p.15.

[109] C.M.I. New Letter, Spring. 1986, at p.10.

exercise due care to prevent or minimize damage to the environment while they were performing the duty to fully co-operate with the salvor during the course of the salvage operation". In the 1981 and 1983 Drafts, the salvees' duty to prevent or minimize damage to the environment was not only universal (not limit to the salvor and also not limit to the salvage operation) but also heavier (use their best endeavour). According to the common understanding in the I.M.O. 56th and 57th sessions "not to expose the salvage parties liabilities to public", the Draft was changed in 1987 to the text as we may see in the present 1989 Salvage Convention. This duty is merely a parasitic duty following the duty of "co-operate fully" under Article 8.2(a) of the 1989 Salvage Convention. It is basically also a kind of duty to "co-operate fully" with salvor, but highlighted by the 1989 Salvage Convention in order to stress the important of preventing and minimizing damage to the environment. It is therefore that the performance of this duty shall be governed by the Article 8.2(a) of the 1989 Salvage Convention. For example, the duty is exists only in the course of the salvage operation, not before or after even to the significant period between the casualty has arisen and the commence of the salvage operation. Though LOF clause 3 (owners cooperation) does not express this environmental duty on owners (salvees), but the owners under LOF still owe this duty either subject to the 1989 Salvage Convention or the contractual "co-operate" duty implied. The salvees do not naturally owe the duty under the 1989 Salvage Convention to prevent or minimize damage to the environment by themselves. The duty arose only when the salvees have received the salvor's express co-operate direction or request or subject to any express requests under a salvage contract. It may be read, if we connect both sub-paragraph (a) and (b), that the salvees owe a duty to co-operate fully with the salvor to exercise due care to prevent or minimize damage to the environment during the course of the salvage operation.

3.3.2.2.4 Duty to accept re-delivery

Salvees' third duty in Article 8.2 of the 1989 Salvage Convention is "to accept redelivery when the vessel or other property has been brought to a place of safety and reasonably requested by the salvor to do so". This is one of several new provisions introduced to facilitate the salvors' working condition to increase

the elements of encouragement.[110] Unlike Article 8.2 sub-paragraph (a) and (b), this duty will not incur until the slaved vessel or other property has been brought to a place of safety (i.e. after but not during the salvage operation). Breach this duty might will not have any affect in assessing the reward or special compensation under Article 12-14, but the salvor may be entitled to a restitutionary payment (The *Winson* case[111]). It is not a issue will be discussed here in relation to the meaning of "place of safety" even or the "completion of the salvage services". A general interpretation to the "place of safety" is that it does not mean a place which will remain safe at all time and in all conditions, services may be terminated at a place where the respondents (salvees) might, by giving reasonable co-operation, arrange for shifting to a discharge berth on ordinary commercial terms.[112] In the I.M.O. 54th session, I.S.U. ever proposed to add "Such request shall not be made by the salvor until the vessel or property has been preserved from the danger from which it was required to be salved and has been brought to a place where a prudent owner would reasonably be expected to be able to preserve such vessel or property on a non-salvage basis," but failed.

Furthermore, this duty will not incur until a reasonable redelivery request was submitted by the salvor. LOF 80 clause 2, which reflected the introduction of Article 8.2(c) of the 1989 Salvage Convention, existed no such advanced request. LOF 80 clause 2 states "The Owners shall promptly accept redelivery of the salved property at such place". However, since the above wording in LOF80 was removed from LOF90 and LOF95, by reference to the incorporation clause, LOF 90 and 95 is now basically standing on the same position with the 1989 Salvage Convention.

3.3.2.2.5 Duty to take timely action and to require or accept other services (?)

It is necessary to further discuss two duties which existed in the earlier Drafts but not included in the final 1989 Salvage Convention. They are the duty "to take timely action" and the duty "to require or accept other salvors services when the

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[110] C.M.I. New Letter, Sept. 1984, at p.16.

[111] The *Winson* (1982) A. C. 939.

[112] LOF Digest, 3rd Edition, 1994, at p. 16.

first salvor cannot complete them alone".

In the 1981 and 1983 Drafts Article 2-1.1, it stated that "the owner and master of a vessel in danger shall take timely and reasonable action to arrange for salvage operation". This particular duty was removed in the 1987 Draft, which based on the U.K. delegate's general proposal in the I.M.O. 57th session, to prevent the possibility of resulting in the salvage parties to be exposed to public liabilities under the 1989 Salvage Convention. At least two attempts at the 1989 Diplomatic Conference were proposed to reintroduced this duty[113] but were withdrawn through lack of support.

At the 1989 Diplomatic Conference, Hong Kong delegate opined that "It may exist a principle of traditional salvage law that the duty of a master whose ship has suffered damage is to take reasonable care to preserve the ship and its cargo and bring both to their destination as cheaply and efficiently as possible, and expressly impose a duty on the owner or master to take timely and reasonable action would correspond directly to the salvor's duty to exercise due care to salve the vessel or other property in danger"[114] The 1989 Salvage Convention expresses no such duty in no event does affect this duty existing in the traditional salvage law as alleged. However, once this duty was expressly provided in the 1989 Salvage Convention without any restriction, it may expose all salvees' liability (include the owner of other property) to public, but not limit to the salvor alone.

The 1983 Draft contained a sub-paragraph read "The owner and master of a vessel in danger shall require or accept other salvor's salvage services whenever it reasonably appears that the salvor already effecting salvage operations cannot complete them alone within a reasonable time or his capabilities are inadequate". The reason why this duty was not appeared in the later 1987 Draft was not clear. Bearing in mind that this duty is implied in the duty to take timely and reasonable action. Once the Legal Committee considered not to express the latter wider duty (to take timely action), the former seems would not be saved alone.

3.3.2.3 The duties in Article 21

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[113] They were Germany (LEG/CONF.7/CW/WP.15) and Hong Kong (LEG/CONF.7/CW/WP.29).

[114] LEG/CONF.7/CW/WP.29.

3.3.2.3.1 Duty to provide security

Article 21.1 of the 1989 Salvage Convention provides "Upon the request of the salvor a person liable for a payment under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor."

The duty to provide security arises only when the salvor submits such request. A salvor will be able to demand security even when the salved property is out of his possession as Article 21.1 does not impose a time limit in which the request can be made.[115] However, the salvor's right to request security without time limit under the 1989 Salvage Convention may be weaken by way of any express terms in the salvage contract. LOF 80/90 clause 4 (LOF95 clause 5) express the contractor (the salvor) shall *immediately after the termination of the services or sooner* notify the Council and where practicable the owners of the amount for which he demands salvage security. Though LOF does not express the effect if the salvor delay to submit the request, but it may be implied that the Council and or the owners may refuse to provide security without the effect of breaching the 1989 Salvage Convention if the salvor did not submit such request immediately. In such a case, the salvor could only exercise his right of maritime lien on the property salved for his payment.[116] Similarly, if a LOF was agreed, the salvees' duty to provide a satisfactory security would not be interpreted beyond the meaning of "reasonable security" in the light of the knowledge available to the salvor at the time when the demand is made (first introduced in LOF90).

Article 1(e) of the 1989 Salvage Convention defines "payment" means any reward, remuneration or compensation due under this Convention. The purpose of this definition, as reported by the C.M.I., was to introduce a general word covering payment in respect of *expenses* as well as payment in respect of a *property award.*[117] It may be well assumed that, subject to the definition of Article 1(e), Article 21 of the 1989 Salvage Convention was designed for a security to

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[115] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-76.

[116] It is another problem, which will be discussed later that whether a salvor who failed to immediately submit security request under the LOF still has a maritime lien on the vessel salved for his *special compensation*, as the LOF 80/90/95 (clause 5 or 6) mention "the contractor shall have a maritime lien on the property salved for his *remuneration*".

[117] C.M.I. News Letter, Sept. 1984, at p. 11.

be given for the salvor's claim for Article 13 (property award) and Article 14 (salvor's expenses) of the 1989 Salvage Convention, but not includes any other claims under the 1989 Salvage Convention, for example life salvage under Article 16.2 or salvor's damages claim under Article 8.1 of the 1989 Salvage Convention.

An attempt, as we may see in the 1981 C.M.I. Draft, to provide a right in the Convention against the insurers of the salved vessel or other property in cases of failure to meet the request to produce security was not succeeded.[118]Another attempt, proposed by I.S.U. in the 55th session, to impose the duty on the owner of the vessel to provide security for and on behalf of other property was also failed.

3.3.2.3.2 Duty of not to remove the salved property without the consent of the salvor

Article 21.3 of the 1989 Salvage Convention provides "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." This duty was introduced in the 1983 Draft proposed by I.S.U. by reference to the clause 5 of LOF 1980 (which first introduced in 1924 LOF).

The 1989 Salvage Convention merely states "the *salved vessel and other property (i.e. the salved subject)* shall not be removed". A problem may incur that who owes the duty not to remove the salved subject? Does it include the port authority or a removal order from the port authority? The purpose of this provision is to secure the salvor's right on payment by obtaining an advanced satisfactory security from the liable parties. The persons who owe the duty may

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[118] 1981 C.M.I. Draft Art.4-2.3 read "If satisfactory security has not been provided within a reasonable time after a request has been made, the salvor is entitled to bring any claim for payment due under this Convention directly against the insurer of the person liable. In such a case the insurer shall only be liable if and to the extent that he would be liable if the claim in respect of the payment had been brought against him under contract of insurance by the person liable. The insurer shall have all defences available under the contract of insurance as against the person liable for the payment".

be assumed the parties who are liable for a payment and their related agents, employees or servants. It is difficult to say that, under the 1989 Salvage Convention, the port authority is also imposed the duty not to remove the salved property. Furthermore, the salvees would not be condemned in breaching this duty if they obeyed a removal order from the port authority. However, in such a case, the duty under this provision will further be extended to such port or place the salved property was removed.

In some complex salvage operations, the port or place at which the vessel or other property first arrive might be not the same, and or the whole salvage operations have not yet completed but part of other property has brought to a place of safety. It is suggested that the words "port or place at which they first arrive after the completion of the salvage operations" in Article 21.3 of the 1989 Salvage Convention shall not be narrowly interpreted as the port or place which "the vessel *and* other property" first arrived (together) after the completion of the (whole) *salvage operations*.

3.3.3 The obligation particularly imposed on Shipowner

Article 13.2 of the 1989 Salvage Convention declares a basic salvage rule that each salved interest is only liable to the payment in proportion to their respective salved value. Again and in accordance with Article 21.1 of the 1989 Salvage Convention, each salved interest is only liable to provide security to the salvor for his liable payment. However, Article 21.2 of the 1989 Salvage Convention provides that "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." In the C.M.I. documents, it mentioned "this rule has special application in the jurisdiction where the owner of the ship involved in casualty is not liable for salvage remuneration due from the cargo."[119] The purpose of introducing this provision is to consider the difficulty in obtaining security from cargo owners particular in the case of general cargo, as the salvor may be in difficulties in even establishing the identities of the owners (or insurers) of the salved cargo.[120]

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[119] C.M.I. News Letter, Sept. 1984, at p. 29.

[120] Brice, ibid., at para. 6-62. However, Professor Gaskell opines "Article 21.2 is designed to deal

The owner of the salved vessel, under the Article 21.2 of the 1989 Salvage Convention, owes no duty to provide security for and on behalf of the salved cargo or to collect the security from salved cargo for the salvor,[121] but merely to use his best endeavours to ensure cargo owners provide satisfactory security. The use of the words "the *salved* vessel" may imply that the duty does not extend to the owner of the vessel with having had no useful result to the vessel in the salvage operation. The circumstance is slightly different from the LOF. LOF 80/90/95 state "the owner of *the vessel* their servants and agents" which imply the owner of the vessel, whether the vessel have had a useful result or not, shall still owe the duty to ensure cargo owners to provide security.

Article 21.1 of the 1989 Salvage Convention imposes a heavier standard of care "best endeavours" on the owner of the salved vessel rather than the "due care" test as used in Article 8 of the 1989 Salvage Convention. Article 21.2 of the 1989 Salvage Convention may imply a further duty that the owner of the salved vessel shall not release the salved cargo before a satisfactory security is affirmed having already provided. The owner of the salved vessel is neither the debtor to provide cargo security nor the creditor to accept such security. The owner of the salved vessel while performs this duty may have difficulty to know whether a satisfactory security (for the claims including interest and costs) has been provided by the cargo owner (or cargo insurer) and whether or not such security have been accepted by the salvor, unless he keeps closely advised of the salvor. It is therefore suggested that Article 21.2 of the 1989 Salvage Convention may also imply a duty on the salvor (or his appointed agent - for example average adjuster) to timely affirm whether a satisfactory security is provided and accepted.

3.3.4 The obligation on State Party

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with the particular problem of the shipowner who only has the obligation to put up security for its part of the reward and who, through indifference or collusion, allows the cargo owners to remove their cargo without them first having provided security to the salvor" (*Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-77).

[121] Of course, the shipowner may provide security, acceptable by the salvor, for and on behalf of the salved cargo at his own risk. And the shipowner may be appointed by the salvor to collect security from the cargo owner at salvor's expenses.

The 1989 Salvage Convention provides at least three different obligations on the State Party. They are the obligation to co-operation the salvage operation in Article 11; the obligation to encourage the publication of arbitral awards in Article 27 and the obligation to adopt the measure necessary to enforce the duty on master to render assistance in Article 10.2.

3.3.4.1 To co-operate the salvage operation

Article 11 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." The purpose of this obligation, as mentioned in the C.M.I. report, is that "co-operation from public authorities of coastal States would often be indispensable to the success of the salvage operations."[122]

There is a narrow suggestion that the obligation is only effectively placed on the Crown in the persons of the Secretary of State for Transport, since there is no reference to "public authorities", as in Art.5.[123]However and refers to the C.M.I. document as cited above, the 1989 Salvage Convention seems existed no intention not to include "public authorities" in the wider meaning of "State Party". On the other hand, public authorities (e.g. port authorities or coast guard) are always the most direct parties which may provide efficient co-operation to the timely savage operation. It is unable to imagine that only the Secretary of State for Transport is imposed the co-operation obligation to decide upon matters relating to every salvage operations incurred.

Bearing in mind that, Article 11 of the 1989 Salvage Convention merely imposes a soft obligation on the State Party, even though the 1989 Salvage Convention uses a compulsory wording "A State Party ***shall*** ....".[124] The difficulty

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[122] C.M.I. News Letter, Sept. 1984, at p. 17.

[123] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-51).

[124] C.M.I. also mentioned "it was recognized that the drafting of provisions on this subject was a

to conceive of the circumstance where this would not be an adequate remedy from a "State Party" is a reason to weaken the effect as result of failure of a State Party. Another important reason is that Article 5 of the 1989 Salvage Convention expresses that the 1989 salvage Convention shall not affect any provisions of national law or any international conventions relating to salvage operations by or under the control of public authorities. If a public authority is entitled to exercise or to control the salvage operation in accordance with any national law or other international conventions and not being affected by the 1989 Salvage Convention, the co-operation obligation under Article 11 of the 1989 Salvage Convention is merely providing a moral obligation on the public authorities while they are regulating or deciding upon matters relating to salvage operation. Furthermore, Article 9 of the 1989 Salvage Convention also provides the right of coastal states to take measures to protect its coastline or related interests from pollution.

3.3.4.2 To encourage the publication of arbitral awards

Article 27 of the 1989 Salvage Convention provides "States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases." The aim of this provision, as reported in the C.M.I. 1981 Document, was:

> ....recognizes the fact that most decisions on matters of salvage are arbitral awards. This means that in practice it is often difficult for the parties to ascertain in advance the actual legal position, and the extent to which international uniformity is in fact achieved, cannot be appreciated.[125]

The 1981 Draft initially provided a heavier obligation on the States that "the Contracting States shall take the measures necessary to make public arbitral awards made in salvage cases". However, this heavier obligation was moderated in the 1981 Montreal Conference as they considered that privacy is often an important part of the advantages of arbitration and that all commercial

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most delicate matter." Supra. Furthermore, it was also recorded that "some have suggested that the article should place stronger obligations on the states; however, no concrete proposals have been tabled. (C.M.I. News Letter, Winter, 1985, at p.2)

[125] C.M.I. Documents 1981 Montreal I, at p. 50.

parties involved felt it appropriate and reasonable to retain the right to keep decision private if they so wish.[126]

Again and similar to the obligation in Article 11 of the 1989 Salvage Convention, this provision merely imposes a soft obligation or properly say a moral obligation on the State Party even though the 1989 Salvage Convention uses a compulsory wording "A State Party ***shall*** encourage..", as it was admitted during the Drafts that this Article did not impose a firm obligation on contracting states but merely serve a practical purpose by encouraging the publication of arbitration awards.[127]

It is difficult to say the U.K. government deliberately left Article 27 of the 1989 Salvage Convention in the Schedule to the Merchant Shipping (Salvage and Pollution) Act 1994 can be deemed as a measure adopted by this government to well encourage the publication of arbitral awards (specially by the Lloyd's), as it still is of not much assistance to any interested parties claiming against this government.

3.3.4.3 To adopt the measure to enforce the duty on master to render assistance

In additional to Article 10.1 of the 1989 Salvage Convention declares the duty on every master to render assistance to any person in danger of being lost at sea, Article 10.2 of the 1989 Salvage Convention further imposes the States Parties an obligation to adopt the measures necessary to enforce the duty set out in paragraph 1. Article 10.2 of the 1989 Salvage Convention is originated from Article 12 of the 1967 Protocol corresponds in a modernized language. In accordance with the Merchant Shipping (Salvage and Pollution) Act 1994 Schedule 1 Pt. I para. 3, the master of a vessel fails to comply with this duty commits an offence and shall be liable to imprisonment for a term not exceeding six months or two years or a fine or both.

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[126] C.M.I. News Letter, Sept. 1984, at p. 32.

[127] C.M.I. News Letter, Autumn 1986, at pp. 4-5.

3.4 The Rights

3.4.1 Rights of Salvor

While at the same time it has been felt some duties, raised by the *Amoco Cadiz* disaster, should be specially on the salvor, it has also been felt that incentives should be envisaged in order to induce salvors to render salvage services in cases where there are very little prospects of success and also in order to induce salvors to take action with a view to take action with a view to preventing of minimizing damage to the environment.[128] These aims were achieved in different manners. For the right of salvor, the manners include: 1) by including more and clear criteria amongst the considerations relevant for the assessment of the salvage reward; 2) by providing special compensation scheme linking with the traditional reward; 3) by providing interim payment to the salvor and 4) by indirectly affirming salvor's right of maritime lien to the property salved.

3.4.1.1 On payment

The 1910 Salvage and Assistance Convention used the word "remuneration" to express any payment due under the 1910 Convention. Article 1(e) of the 1989 Salvage Convention uses a general word "payment" but confines its definition means any reward, remuneration or compensation due under the 1989 Salvage Convention, which not includes damages payable for breach of the 1989 Salvage Convention duties. The expression "payment" is used as a noun in Arts. 7(b), 12.2, 13.2, 16.2, 17, 18, 19, 21.1, 22.2, 23.1, 24 and Attachment 2. The purpose of this definition is to introduce a general word covering payment in respect of expenses as well as payment in respect of a property award[129] and to make sure that references are not limited to Article 13 rewards (the word is used on Arts. 8.1.d, 12, 13, 14, 15 and Attachment 2, but may include Article 14 special compensation (the words are also used in Attachment 2 and Article 16.1 remuneration for salvage of persons.[130]

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[128] C.M.I. News Letter, Sept. 1984, at p. 2.

[129] Supra., at p. 11.

[130] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-53.

3.4.1.1.1 Of reward on all property owners

3.4.1.1.1.1 Principle - no cure no pay

Article 12.1 of the 1989 Salvage Convention provides "Salvage operations which have had a useful result give right to a reward." This provision re-enacts Article 2 of the 1910 Salvage and Assistance Convention but using a less colourful language. The C.M.I. Document stated "The rules establish the important principle of "no cure no pay". ..and there is a strong conviction within the CMI that this principle should be retained as the main scheme of compensation in the law of salvage".[131] According to the no cure no pay principle, a salvage contract may be agreed either under a fixed rate or lump-sum or leaves it to be decided by the third party agreed. Whether the agreed fixed rate or lump-sum basis is in an excessive degree too large or too small for the services actually rendered is the problem under Article 7.2 of the 1989 Salvage Convention.

3.4.1.1.1.2 Exceptions of "no cure no pay"

Article 12.2 of the 1989 Salvage Convention provides "Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result." In accordance with this provision, exceptions to the no cure no pay principle have to be provided expressly in the 1989 Salvage Convention, otherwise no payment is due if the salvage operation have had no useful result.

In comparison with the texts, Article 12.2 of the 1989 Salvage Convention seems existed no huge difference from Article 2.2 of 1910 Salvage and Assistance Convention. However, Article 12.2 has actually in fact substantively changed the original deploy of Article 2.2 of the 1910 Salvage and Assistance Convention.

A confusion may arise from the beginning that it seemed unnecessary to regulate Article 2.2 of 1910 Salvage and Assistance Convention, by using a

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[131] C.M.I. News Letter, Sept. 1984, at p. 18.

negative way, to declare again the "useful result" principle, as Article 2.1 of the 1910 Convention had already positively declared it. Mr. Ira H. Wildeboer stated the reason why Article 2.2 to be created that:

> For it is reasonable in every respect to award a salvage remuneration also to the salvor who - although he did not complete the salvage and therefore was not in possession of the goods saved - definitely contributed to the salvage. It must have been in this way that the second rule came about: anybody making a beneficial contribution to the ultimate salvage without, however, completing it, is entitled to salvage remuneration."[132]

In other words, Article 2.2 of the 1910 Salvage and Assistance Convention declared not the pure "no cure no pay" principle, but expressed an *exception* to the "no cure no pay". Article 2.2 of the 1910 Salvage and Assistance Convention used the words "beneficial result" but not "useful result" used same as in Article 2.1 is another evidence to support above suggestion.

The initial C.M.I Draft seems ignored (or properly say "missed") the difference existed between Article 2.1 and Article 2.2 of the 1910 Salvage and Assistance Convention. The words "beneficial result" used in Article 2.2 of the 1910 Salvage and Assistance Convention was replaced by "useful result" in Article 12.2 of the 1989 Salvage Convention. It is not necessary to distinguish the meanings in detail between the words "beneficial result" and "useful result", as by reference to the C.M.I. documents, the C.M.I. actually made no difference among "useful result", "no cure no pay" and "successful". Furthermore, it also existed no objections to the drafted wording of the present Article 12.2 during the Drafts and in the 1989 Diplomatic Conference[133]. This change may effect the English existing salvage law "engaged services" principle to be invalid.

The "engaged services" principle, which derived from the case of *The Undaunted*[134], set out an exception to the "no cure no pay" that in the absence of an express agreement to the contrary, an engaged services to property in

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[132] Ira H. Wildeboer, ibid., at pp.101-102.

[133] Almost all discussions appeared in the official C.M.I. and I.M.O. documents during the Drafts and in the Diplomatic Conference were related to the present Article 12.3. However, there is an evidence shows the English "engaged services" principle were brought up for discussion during the preparatory work, but was rejected even should these services achieve a "beneficial result" (see Enrico Vincenzini, *International Salvage Law*, 1992, at p.63 fn. 161).

[134] The *Undanted* (1860) Lush 90.

danger give a title to reward even though they have no effected its ultimate preservation but only for the services which result in some actual benefit to that property in peril.[135]It is difficult to say the English "engaged services" principle affected the enactment of Article 2.2 of the 1910 Salvage and Assistance Convention.[136] However, Article 2.2 of 1910 Convention somehow did imply the English "engaged services" principle. For short, the English salvage law "engaged services" principle was survived (not wholly) in the 1910 Salvage and Assistance Convention.

However, the circumstance was different while the 1989 Salvage Convention, whether was intentionally or not, changed the original purpose of Article 2.2 of the 1910 Convention from a pure particular *exception provision* to a provision merely intends to provide an exception basis for the new special compensation regime. Except for Article 14 of the 1989 Salvage Convention, no other exceptions (include the "engaged services") are expressed in the 1989 Salvage Convention. Vincenzini suggests the "engaged services" can be qualify as a "useful result" if they are useful in any way.[137]The question is whether the words "useful result" can be interpreted so widely? As mentioned, the C.M.I. used the words "useful result" was clearly intended to declare and establish the *no cure no pay* principle with successful and extremely useful elements involved. It is difficult to say an "engaged service" can be qualify as a "useful result" if exists no causation to the extreme success. Article 8.1(d) of the 1989 Salvage Convention may be a case to support my above narrower view suggestion. If Vincenzini's wider suggests is correct, any services rendered by the salvor before he accepts other salvors' intervention might give the original salvor a right to a reward if the services rendered before intervention have had a useful result in any way. This interpretation apparently declines the original presumption of Article 8.1(d) proviso of the 1989 Salvage Convention. In conclusion, the English salvage law "engaged services" principle seems to be existed no room in the 1989 Salvage Convention and perhaps also contrary to principle declared by the 1989 Salvage Convention.

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[135] Kennedy, ibid., 1891, at pp. 37-38.

[136] The evidence shows the English "engaged services" principle were brought up for discussion during the discussions of Art.2 at the 1910 Brussels Conference. (see Ira H. Wildeboer, ibid., at p.115)

[137] Enrico Vincenzini, *International Salvage Law*, 1992, at p.63.

3.4.1.1.1.3 Sister ships provisions

Article 12.3 of the 1989 Salvage Convention provides "This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner. " The C.M.I. document stated "This rule corresponds to Art.5 of the 1910 Convention. It has importance, in particular on cases where under national law according to Art. 3-4.2 (now Article 15.2) apportionment of a reward shall be made between the owner, the master and other persons of the salving vessel. Further the rule makes it clear that the owner of the salving vessel is also in such cases entitled to receive payment of the cargo's share of the salvage reward and normally entitled to claim payment of the vessel's share from his own underwriters."[138]

This provision affects a change in English law deducted from the case of The *Caroline* (1861). Dr. Lushington in The *Caroline* held that:

> Where there are several part owners of the salving ship and only some of them are interested also in the salved ship, the other part owners of the salving ship are entitled to claim salvage reward against the salved ship; and the Court may compute the amount to be paid to them, by deducting from the reward which it deems the service to deserve so much as would have gone to the share of the part owners who are also interested in the salving vessel if they could have joined in the salvage proceedings. [139]

The applicable extent of Article 12.3 of the 1989 Convention is narrower than the 1910 Salvage and Assistance Convention and also the practical sister ship clause used in the Institute Clauses. Article 12.3 of the 1989 Salvage Convention only applies to the circumstance of the *salved vessel* and the *salving vessel* belong to the same owner. However, the wording used in Article 5 of 1910 Salvage and Assistance Convention did not limit application merely to the salving vessel and the salved vessel. Namely that, Article 5 of 1910 Convention may be also applicable if the owner of the salving vessel is at the same time owner of the cargo on board the vessel saved.[140]

In English law, the word "owner" may include the demise charterer (the

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[138] C.M.I. News Letter, Sept. 1984, at p. 18.

[139] The *Caroline* (1861) Lush. 334.

[140] Ira H. Wildeboer, ibid., at p.164.

owner *pro hac vice*).[141] But the circumstance is not clear in the 1989 Salvage Convention which may be subject to the law of forum.

It is noted that Institute Time Clauses -Hull 83 (or ITC 95) Clause 9 applies not only the vessel insured receive salvage services from another vessel *belonging wholly or in part to the same owners* but also to *under the same management*. Article 12.3 of the 1989 Salvage Convention does apparently not apply the "under same management" circumstance. In that case, nor are the master and crew of salving vessel bound by the sistership clause in respect of their independent right to salvage remuneration and nor cargo interests are bound by the sistership clause in the hull policy.[142]

Another issue is, since Article 12.3 of the 1989 Salvage Convention provides "*This chapter* shall apply...", whether the other chapters of the 1989 Salvage Convention may also apply to the salvage services rendered by the same shipowner? The purpose of Article 12.3 of the 1989 Salvage Convention (or Article 2.3 of 1910 Convention) is to remove the doubt and uncertainty existed in some countries that whether the crew of a salvage vessel was entitled to salvage reward or the owners of cargo salved were obligated to pay salvage to the circumstance the salving vessel and salved vessel were belonging to the same owner.[143] In other words, Article 12.3 of the 1989 Salvage Convention intends to treat the same shipowner circumstance as if the salving vessel would have were the other vessel entirely the property of owners not interested in the salved vessel. According to this assumption, other provisions not in the Chapter III of the 1989 Salvage Convention seems to be applied. On the other hand, Article 12.3 itself does not express other chapters shall not apply to sistership salvage.

3.4.1.1.1.4 Criteria for fixing the reward

Article 13.1 of the 1989 Salvage Convention provides".... the reward shall be fixed with a view to encouraging salvage operations...". The C.M.I. document stated "it was felt important to stress in the Convention itself that the encouragement of salvors is the basic consideration, which must always be in

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[141] Kennedy, ibid., at p. 67.

[142] Donald O'May, *Marine Insurance*, 1993, at p.486.

[143] Ira H. Wildeboer, ibid., at p.165.

the minds of the tribunals when savage rewards are fixed."[144]Prof. Gaskell opines that this is an overriding criterion, not specially mentioned in the 1910 Convention.[145] Article 8 of 1910 Salvage and Assistance Convention laid down rules with order. However, the C.M.I. considered it would be preferable to enumerate the relevant considerations without attempting to lay down rules as to when a particular consideration should be relevant or as to the weight to be given to it, particular in relation to other relevant considerations.[146] Furthermore, Article 13.1 of the 1989 Salvage Convention further expresses "the reward.... taking into account the following criteria *without regard to the order* in which they are presented below".

The criteria presented in Article 13.1 of the 1989 Salvage Convention repeat many of those from the 1910 Salvage and Assistance Convention but redrafted and introduced some new factors in order to take into account subsequent developments in practice. The new factors and revised factors include:

(1) the salved value of the vessel and other property (Article 13.1.a);

In the 1910 Salvage and Assistance Convention, salved value stood on the second place to the court in fixing the remuneration. However and in today, salved value is almost the most important and first measure to the tribunal in considering the level of payment. Again, the court in the 1910 Salvage and Assistance Convention had to consider another valuation factor "the value of the property exposed to such risks", which is not retained in the 1989 Salvage Convention. The Salvage 1989 Convention does not mention how to assess the salvage values. In English law, the principle disclosed in The *Norma* (1860)[147] is "the real value of the property, as salved, at the place (whether the port of destination or not) where, and at the time when, the salvage service terminates". Strictly speaking, it is not either the insured value or general average contribution value (the value at the end of common adventure). The salved value may be agreed between salvage

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[144] C.M.I. News Letter, Sept. 1984, at p. 5.

[145] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-54.

[146] C.M.I. News Letter, Sept. 1984, at p. 19.

[147] The *Norma* (1860) Lush 124.

parties or decided by the tribunal.

(2) the skill and efforts of the salvors in preventing or minimizing damage to the environment (Article 13.1.b);

This is the major change to the 1910 Salvage and Assistance Convention. The C.M.I. documents recorded "In the practice of many countries this consideration is already a factor, which normally produces a certain enhancement of the salvage reward. It is, however, felt very important in the new convention to draw attention specially to this consideration and to leave it to future practice to decide the particular weight to be given to it."[148] However, the CMI also proposed that this question should still be solved at national level and by agreement by two reasons:

> The first reason was the solution adopted in the various national law differ to such an extent tat the acceptability of the draft convention might be reduced if an attempt was now made to bring about international uniformity.
>
> The second reason was there was presently a general understanding between most of the world marine insurers that on he one hand the ship's liability insurers should fund the special compensation payable under the safety net rule of the LOF1980 while, on the other hand, the property underwriters, i.e. hull and cargo insurers, shall fund the total reward for property for preventing or minimizing oil pollution. It is envisaged that a similar compromise may be reached in relation to the distribution of payments according to the draft convention. This, in particular, as an important reason for following the safety net model of the LOF 1980.[149]

The present sub-paragraph (b) exists no major change from the 1981 C.M.I. Draft.[150] Prof. Gaskell opines "by using the words "in preventing" not "to prevent", what Art.13 is rewarding is success, not simply effort: para (b) is merely widening the notion of that might be considered as success."[151] As

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[148] C.M.I. News Letter, Sept. 1984, at p. 20.

[149] Supra, at pp. 20-21.

[150] Only in 1983 Draft, the word "avoiding" was replaced by "preventing".

[151] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994,* Current Law Statutes 1994 vol. 2, at p. 28-55.

discussed in paragraph 3.1.3, Article 13.1(b) itself does not contain "successful" element either from its background or bases on Article 12 of the 1989 Salvage Convention. The "no cure no pay" principle declared in Article 12.1 of the 1989 Salvage Convention merely applies to the defined "salvage operations" which not includes "successful salvage to the environment".

Article 8.1(b) of the 1989 Salvage Convention imposes a duty on the salvor to exercise due care to prevent or minimize damage to the environment. Prof. Gaskell opines the reward could also be decreased if the salvor has behaved irresponsibly towards the environment.[152]However, this paper adopt a different view that the reward could in no event be decreased for salvor's irresponsibility towards the environment, but entitle the salvees to claim damages (if any) in accordance with the Article 8.1(b) itself. Article 13.1 of the 1989 Salvage Convention merely provides positive criteria for assessing the reward. Theoretically speaking, salvor's irresponsibility of his duty toward the environment exists beyond his skill and effort in preventing damage to the environment. The tribunal, in fixing the reward, may takes into account the real and positive skill and efforts of salvor provided in preventing or minimizing damage to the environment.[153] A reward can be decreased or not is another problem beyond Article 13.1.

It may be a problem that, as unlike Article 8.1(b) of the 1989 Salvage Convention, this sub-paragraph (b) does not mention the skill and efforts of the salvors in preventing damage to the environment shall be limited to the performance of the salvage operations as defined.[154] It may incur an unfair circumstance that the owners of innocent cargoes or other innocent

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[152] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-55.

[153] There was a proposal, submitted by U.S. (LEG/CONG.7/22), to create a new paragraph, could be either a percentage increase or decrease based on the nature of a salvor's "skill and efforts...in preventing or minimizing damage to the environment" with a mean of both encouraging responsible conduct and discouraging irresponsible conduct with respect to the environment. However, this proposal did not obtain sufficient support.

[154] It is noted that the initial 1981 C.M.I. Draft existed no clear intention to limit the duty of the present Article 8.1(b) or the skill and effort of the present Article 13.1(b) only to in performing the salvage operations as defined. Article 13.1(b) did not be changed when Article 8.1(b) was limited to "in performing the salvage operation" in 1987 Draft (see discussion in paragraph 3.3.1.1.5).

property shall pay their share of the environmental enhancement. Such enhancement, it was argued, should be carried by the owners alone, if they would have been liable for the environmental damage which was avoided and/or by the guilty cargo[155] and this is the most important criticism to this sub-paragraph (b). There were some suggestions during the Drafts or in the 1989 Diplomatic Conference, for example U.S. proposed to separate the environmental enhancement from the traditional reward.[156] However, the majority countries preferred not to break the compromises achieved in Montreal.

(3) the skill and efforts of the salvors in salving the vessel, other property and life (Article 13.1.e);

The 1981 C.M.I. Draft repeated the wordings which merely referred only "the efforts of the salvors". During the I.M.O. 56th session, a delegate proposed the wording "in salving the vessel, property and life and" to be added in the present Article 13.1.(b) of the 1989 Salvage Convention, but rejected by other delegates in order to keep the entirety of environmental factor. During the 57th session, it was pointed out that the catalogue of sub-paragraph 1 does not contain a specific provision to the skill and efforts of the salvors "in saving the vessel, property and life", the Committee therefore agreed to insert these words in present sub-paragraph (e).[157] A theoretical distinction between the words "the efforts of salvors" and "the skill and efforts of the salvors" is the latter exists more emphasis on a professional salvor.[158]

(4) the time used and expenses and losses incurred by the salvors (Article 13.1.f);

Article 13.1(f) of the 1989 Salvage Convention repeats the wording in the 1910 Salvage and Assistance Convention. The C.M.I. document stated "By

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[155] C.M.I. News Letter. Winter, 1985, at p.3.

[156] LEG/CONF.7/22 (Alternative 1).

[157] C.M.I. News Letter, Autumn 1986, at p. 8.

[158] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994,* Current Law Statutes 1994 vol. 2, at p. 28-56.

virtue of the "no cure no pay" system the salvors run the risk that they may never recover their expenditure, and this is usually an important factor to be taken into account when the reward is fixed, in particular of the expenses have been substantial."[159]

The English practice is normally to include the expenses and losses incurred by the salvors within the overall Article 13 reward.[160]The salvees' failure to perform the duties under Article 8.2 of the 1989 Salvage Convention and therefore resulted in more difficult or heavier works to the salvor, the extra expenses and losses incurred may be included in assessing the reward.

Though the English practice is not to inquire into the salvor's insurance position to further consider the possibility of double recovery may be raised where the salvor is insured for losses,[161] the 1989 Salvage Convention seems can not well prevent the salvees to pay double of salvor's losses (if resulted from the salvees' fault) by the 1989 Salvage Convention reward and the subrogation claim from the salvor's insurer.

Article 14 of the 1989 Salvage Convention provides a safety net compensation to the "salvor's expenses" if the vessel and or its cargo threatens damage to the environment. Under this circumstance, the salvor does not run the risk of losing his expenses under the "no cure no pay" rule. In such a case, the C.M.I. document stated "it could be argued that the reward should be fixed at a lower level." However, it further stated that

> It is, however, *not the intention that the introduction of the rules of Art.3-3.1 shall have such an effect.* This must be kept in mind then fixing the general level of salvage rewards and in particular when considering the effect of sub-paragraph b) relating to prevention of damage to the environment.[162]

In other words, in such a case, the tribunal is recommended to fix the Article 13 reward purely in accordance with the criteria listed as if there exists no special compensation to the salvors. The tribunal, in fixing the Article 13 rewards, shall not be affected by Article 14 and also owes no duty to

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[159] C.M.I. News Letter, Sept. 1984, at p. 21.

[160] Brice, ibid., at para. 2-163.

[161] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-57.

[162] C.M.I. News Letter, Sept. 1984, at p. 21.

balance the payment between Article 13 and Article 14 of the 1989 Salvage Convention.

(5) *the risk of liability and other risks run by the salvors or their equipment. (Article 13.1.g);*

Article 13.1(g) of the 1989 Salvage Convention repeats the wording in the 1910 Salvage and Assistance Convention and further adds the words "or their equipment". The key word of this sub-paragraph (g) is the "risk" but not the liability or other losses. The liability actually incurred by the salvor is another assessment factor under sub-paragraph (f). The word "risk" same as the word "fortuity" means something which may happen but not something which must happen.[163] It would not include the liability incurred by the salvor who failed to perform the Convention duties as it is something must happen.[164]

(6) *the promptness of the services rendered (Article 13.1.h);*
the availability and use of vessels or other equipment intended for salvage operations(Article 13.1.i); and
the state of readiness and efficiency of the salvor's equipment and the value thereof(Article 13.1.j).

Article 13.1(h), (i) and (j) of the 1989 Salvage Convention are whole new factors introduced. These factors, as the C.M.I. document stated, are of particular important for professional salvors[165] and recognise the professional salvors may deserve extra rewards because they commit expensive equipment to await an emergency[166]. The present wording derived from the 1981 Draft without major change, except for the words "the availability and" was added in 1983 Draft to sub-paragraph (i). The C.M.I. Document mentioned that "the use of the word "availability" in this context

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[163] R. H. Brown, *Dictionary of Marine Insurance Terms*, 4th ed., 1973, at p. 343.

[164] Prof. Gaskell adopts different view. See Annotations on Merchant Shipping (Salvage and Pollution) Act 1994, Current Law Statutes 1994 vol. 2, at p. 28-57.

[165] C.M.I. News Letter, Sept. 1984, at p. 21.

[166] Prof. Gaskell adopted different view. See *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-58.

suggests that consideration is to be given to the salvage positioning of the salvage company, which involves keeping their tugs and other equipment available for savage work and consequently suffering the burden of all the expenses incurred throughout the time during which the tugs and other equipment are not usefully employed."[167]

3.4.1.1.1.5 Principle of contribution

Kennedy mentioned that "in practice the shipowner frequently pay the whole of the salvage, but the salvor must always bear in mind that, in the absence of a salvage agreement by which the shipowner is bound to pay all the salvage, and which will be considered presently, the interests in ship and in cargo are only severally liable, each for its proportionate share of the salvage remuneration.[168] The above English principle is affirmed in Article 13.2 of the 1989 Salvage Convention. Article 13.2 of the 1989 Salvage Convention provides "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."

No similar provisions was contained in the 1910 Salvage and Assistance Convention. During the 57th session, the Committee accepted a proposal by ICS to substitute the sub-paragraph 2 with the wording similar to the present text. At the 1989 Diplomatic Conference, Netherlands submitted an amended proposal[169] and basically accepted by the Conference with few wording amended. Article 13.2 of the 1989 Salvage Convention not only affirms the traditional salvage contribution principle but also admits a practice represents in the law of some countries that the shipowner is liable to the salvor for the whole of the salvage reward.

Netherlands, in its proposal, suggested it is necessary to expressly provide for a right of recourse in the given case (i.e. the shipowner may be ordered to

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[167] C.M.I. News Letter, Sept. 1984, at p. 21.

[168] Kennedy, ibid., at p. 186.

[169] LEG/CONF.7/CW/WP.5.

make initial payment), without prejudice to the apportionment of general average.[170] However, Netherlands's proposed wording "subject to a right of recourse of this interest against other interest for their share as determined in accordance with the first sentence" was revised by the Committee to the present third sentence "Nothing *in this article* shall prevent *any rights of defence*". According to the wording, the right of defence in this article may include not only shipowner who made the initial payment has a recourse right against the other property interests, but also any remedies or defences may be open against or to the party whose fault gave rise to salvage (or general average). It may also include the defence if the Article 13 reward is enhanced by reason of certain salvees who failed to perform the Convention duties. However, it may be a problem that whether the innocent cargoes or other innocent property have a right to defence the payment of environmental enhanced reward against the other guilty cargoes or shipowner.[171]

Not only Article 13.2 of the 1989 Salvage Convention but also the whole 1989 Salvage Convention do not define the parties who will be obligated to contribute the salvage reward, which this matter will be determined by national law. Article 13.2 of the 1989 Salvage Convention does not also specify the way to measure the salved value. As mentioned, the general rule is the real value of the property, as salved, at the place (whether the port of destination or not) where, and at the time when, the salvage service terminates. It is interested to note that Article 3-2.2 (i.e. present Article 13.3) of the 1981 and 1983 Drafts provided "The reward under paragraph 1 of this Article shall not exceed the value of the property salved *at the time of the completion of the salvage operation*". However, the italics wording were removed in the 1987 Draft.

3.4.1.1.1.6 Maximum reward

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

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[170] Supra.

[171] C.M.I. document stated the owner of "innocent cargo" retains any right he may have to recover his losses from the guilty party.(C.M.I. New Letter, Winter, 1985, at p. 5). However, it will be difficult to the said innocent cargoes to submit their loss if the tribunal does not separate the environmental enhanced reward.

exceed the salved value of the vessel and other property." Article 2 of the 1910 Salvage and Assistance Convention simply provided "In no case shall the sum to be paid exceed the value of the property salved." The words "exclusive of any interest and recoverable legal costs that may be payable thereon" was added in the 1987 Draft proposed by I.C.S.

3.4.1.1.1.7 Interest

The 1989 Salvage Convention leaves the matter of interest to the *lex fori* (law of place in which a case is heard). Article 24 of the 1989 Salvage Convention provides "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."

Interest normally accrues from the time the creditor is entitled to the payment or damages and end at the payment or damages amount being paid. The earlier LOF versions adopted a different way. The first interest clause introduced in the 1924 LOF which fixed the interest rate at 5% from the date of the publication of the Award until the day of payment. LOF abandoned the 5% fix rate in 1972 and gave the Arbitrator a complete discretion to decide. Interest commenced from the expiration of 14 days (in 1926 -1967 LOFs) or 21 days (in 1972-1980 LOFs) after the date of the publication of the Award. LOF 1990 and 1995 retains the previous LOF versions. However they also give the Arbitrator another discretion to include the interest commencing from the date of termination of the services until the date of publication of Award.

3.4.1.1.1.8 Principle of apportionment

Article 15.1 of the 1989 Salvage Convention provides "The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article." This provision restates the rules of the 1910 Salvage and Assistance Convention Article 6.2. The C.M.I. documents mentioned "this rule becomes more important under the regime of the new Convention",[172] as Article 8.1 and 8.2 of the 1989 Salvage Convention impose

[172] C.M.I. News Letter, Sept. 1984, at p. 25.

duty either on the salvees or the salvor to obtain assistance from other available salvors.

Article 15.2 of the 1989 Salvage Convention further provides "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." The C.M.I. did not consider that much could be gained by a unification of the rule concerning this subject, as the law concerning apportionment between the owners and the crew of a salvage reward varies from State to State.[173] The former part of this sub-paragraph restates the provision in Article 6.3 of the 1910 Salvage and Assistance Convention. The last part of the provision is new and takes into account the increasing number of cases where salvage is not carried out from a vessel.

Article 15.1 of the 1989 Salvage Convention merely deals with the apportionment of a *reward under article 13*, which not includes the special compensation under Article 14. Bearing in mind that, the apportionment of a reward may affects the amount recoverable under Article 14, but Article 14 itself actually exists less apportionment problem between salvors.

Article 15.2 of the 1989 Salvage Convention does not limit the apportionment between the owners and the crew to a reward under Article 13. Theoretically speaking, it may exist the apportionment problem between the owner and crew to the Article 14.2 augmentative special compensation, but not to Article 14.1 primitive special compensation. However, as Article 15.2 of the 1989 Salvage Convention expresses, the apportionment between the owner, master and other persons shall be determined by the law of the flag of that vessel.

3.4.1.1.2 Of special compensation particularly on shipowner

The problems raised by the *Amoco Cadiz* disaster included the incentives should be envisaged in order to induce salvors to render salvage services in cases where there are very little prospects of success and also in order to induce salvors to take action with a view to preventing of minimizing damage to

[173] Supra.

the environment. The manner to achieve this particular aim suggested by the C.M.I in 1981 were:

> By providing special compensation to salvors who unsuccessfully attempt to salve a vessel and her cargo when these threaten environment damage on the following basis:
>
> a) Such compensation covers the expenses and when damage to the environment is actually prevented or minimized may also include a reward;
> b) The expenses include out of pocket expenses reasonably incurred and a fair rate for the equipment, and the personnel reasonably used;
> c) The reward cannot exceed the expenses and may be discretionally decided by the court.
>
> And furthermore, by linking the special compensation to the traditional reward, in the sense that the special compensation is due only if the traditional reward is not earned or is below the special compensation.[174]

These suggestions, which formed the basis of the initial Montreal 1981 Draft, were originated from the concept of LOF1980 and based on the compromise reached by the commercial parties represented in the Montreal meeting. The record shows the negotiations in Montreal in particular were at that time held between the P&I Clubs and the salvors, but neither the representatives of the shipowners nor the property insurers made any reservation.[175]

3.4.1.1.2.1 Primitive special compensation

Article 14.1 of the 1989 Salvage Convention provides "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." Paragraph 3.1.3 have discussed some application issues of Article 14.1. Other issues may include:

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[174] C.M.I. News Letter, Dec. 1981, at pp. 2-3.

[175] C.M.I. News Letter, Winter, 1985, at p.3.

a. *the person liable - owner of the vessel*

Article 14.1 provides the salvor shall be entitled to special compensation from the owner of that vessel. Though some other conventions or national law impose pollution liability on the owner of carrying vessel, but it does not mean the shipowner shall therefore be further liable to the special compensation, specially that the earlier Drafts have decided not to introduce the concept of liability salvage into the Convention. By reference to the C.M.I. earlier documents[176], I will prefer to say that the owner of the vessel was *selected* (endorsed by P&I Clubs), but less related to their potential pollution liability, to pay the special compensation.

The 1989 Salvage Convention is quite specific in its reference to "owner". The 1981 initial C.M.I. Draft used the word "shipowner", but changed to "the owner of that vessel" in the 1983 Draft and afterward. It seems that the Drafts and the 1989 Salvage Convention intended to adopt the words with wider meaning to include not only the shipowner but also the beneficial owner of the vessel.

b. *when the salvor is entitled to special compensation - threaten damage to the environment*

In accordance to Article 14.1, it is sufficient that in case there exists a fact that "a vessel which by itself or its cargo threatened damage to the environment". "Threatened damage to the environment" or not is a matter of fact with involving nothing about the salvor's subjective judgement.[177]A salvor has no knowledge about whether there was a threat of damage to the environment or not will not lose his right to claim special compensation if it really existed such threat. On the contrary, a salvor who subjectively considers it might exist a threat of damage to the environment will be not naturally entitled the salvor to special compensation if the evidence finally

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[176] C.M.I. News Letter (Sept. 1984, at p. 22.) stated "In case, where these provisions apply and no or insufficient property has been salved so as to allow adequate recovery under Art. 3-2., it is important for the salvor that the person liable is one against *whom the claim is easily enforceable.* Therefore, it has been provided that the special compensation payable under Arts. 3-3.1 and 3-3.2 must be paid by the shipowner."

[177] See also discussion in paragraph 3.1.3.

show there actually existed no such threat. However, in case the salvor has the knowledge, either found by himself or advised by the salvees or some one else, with reasonable apprehension that the vessel or its cargo may threaten damage to the environment, then the duty on the salvor under Article 8.1(b) begins to run, i.e. the salvor shall exercise due care to prevent or minimize damage to the environment.

c. *Crew claim*

Prof. Gaskell opines the salvor's expenses may indirectly includes sums paid to the crew, but there is no crew claim for a share of Art. 14 payments made to a salvage company.[178] My suggestion is the crew may claim Article 14.2 augmentative special compensation, but not Article 14.1 primitive special compensation, as Article 15.2 of the 1989 Salvage Convention contains no wording to limit its application merely to the Article 13 reward.

d. *The amount:*

The words "failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article" are providing merely a comparative way but not a calculation method. According to the Article 14.1 of the 1989 Salvage Convention, in case the figure of "salvor's expenses" is larger than the Article 13 reward, the salvor is presumably entitled to recoverable *all* of his "salvor's expenses" as defined. The real and final recoverable amount is the calculation problem under Article 14.4 of the 1989 Salvage Convention.

3.4.1.1.2.2 Augmentative special compensation

Article 14.2 of the 1989 Salvage Convention provides "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

[178] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-62.

30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and hearing 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 l00% of the expenses incurred by the salvor." The C.M.I. documents stated:

> The special reward according Art.3-3.2 is only payable if a useful result has been obtained. The reward can not exceed a sum equivalent to the expenses. It is important to keep in mind that this is only an upper limit and that, even if damage to the environment has been prevented or minimized, the tribunal may decide that the salvor shall have no special compensation on top of the reimbursement of his costs, or that he shall only have as such special compensation a fraction of his costs. The tribunal is free to decide what it considers fair and just taking into account the same considerations as if the tribunal was fixing a traditional salvage reward under Art. 3-2. [179]

Article 14.2 of the 1989 Salvage Convention set up some strict prerequisites in claiming the augmentative special compensation. The words "in the circumstances set out in paragraph 1" represent:

a) the salvor shall be one of the property salvor who has carried out salvage operation as defined in Article 1(a) of the 1989 Salvage Convention;
b) the salvage operation carried out was in respect of a vessel which by itself or its cargo threatened damage to the environment;
c) saving the environment is not the main purpose of the salvage operation as defined; and
d) the salvor has failed to earn a reward under Article 13 at least equivalent to the special compensation assessable in accordance with Article 14.3 of the 1989 Salvage Convention.

Item d) forms the most important factor in claiming Article 14.2 special compensation. For instance, Article 13 reward at US$500,000, salvor's expenses at US$400,000. It is not necessary to further consider the Article 14.2 augmentative special compensation even the salvage operation has considerably prevented the environment. The tribunal can not ignore this prerequisite to further award the Article 14.2 increased special compensation (for example 60% i.e. US$240,000) and then apply Article 14.3 to decide the

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[179] C.M.I. News Letter, Sept. 1984, at p. 23.

shipowner's liability on total special compensation [i.e. US$400,000 (Article 14.1) + US$240,000 (Article 14.2) - US$500,000 (Article 13) = US$ 140,000]. The original arbitrator and appeal arbitrator in the "*Nagasaki Spirit*" case adopted the calculation method without considering the fact that the Article 14.1 figures were lower than Article 13 reward.[180] It did actually not exist any special compensation claim at all, as the Article 13 reward have well covered the whole salvor's expenses in the *Nagasaki Spirit* case. It is interested to note that the I.M.O. Legal Committee ever prepared two illustrations in the I.M.O. 54th session. The calculation method in its second illustrations[181] was same as the *Nagasaki Spirit* case. The question is when the 1983 Draft introduced the words "in the circumstances set out in paragraph 1", unless we strictly and narrowly interpret these wording "the circumstance" do not include "and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article" in Article 14.1, it is difficult to say the said illustration and the *Nagasaki Spirit* case did not deviate from the plain wording and interpretation of Article 14.2 of the 1989 Salvage Convention.

Again, the words "the salvor *by his salvage operation* has prevented or

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[180] The relevant figures in "Nagasaki Spirit" arbitrator and appeal arbitrator see paragraph 3.4.1.1.2.3. footnote.

[181] LEG54/WP.1 -Annex. The Second illustration was:

B. Salvage operations have had a useful result with respect to the salvage of property; at the same time damage to the environment has been prevented or minimized by the salvage operations:

3-2.1	reward for property salvage including enhancement for preventing or minimizing damage to the environment		
3-2.2	but not exceeding the valve of the property salved		$14,000
3-3.1	special compensation equivalent to the salvor's		
3-3.3	expenses	$10,000	
3-3.2	increased compensation	$ 5,000	
		$15,000	
3-3.4	reward recoverable under 3-2	$14,000	
		$ 1,000	$ 1,000
			$15,000

minimized damage to the environment" represent not only it should have had useful result to the environment but also the causation must be existed between the salvage operation and the successful environmental protection. Both of them are formed the basic diversity between Article 14.1 and Article 14.2 of the 1989 Salvage Convention. As discussed in paragraphs 3.1.3 and 3.4.1.1.2.1, in accordance with Article 14.1, it is sufficient that if it existed the fact "a vessel which by itself or its cargo threatened damage to the environment". It does not need any useful result to the environment and any salvors who carried out salvage operation in that threaten circumstance, whether his salvage operation related to "prevent or minimize damage to the environment" or not, will be entitled to claim Article 14.1 special compensation.

The figure of Article 14.2 maximum increment was an important issue in the 1989 Diplomatic Conference. The 1981, 1983 and 1987 Drafts provided "twice" or "double" of the salvor's expenses. The final 1988 Draft was left open to be decided by the 1989 Diplomatic Conference. The 1989 Diplomatic Conference finally adopted a two-tier maximum increments model. The tribunal may award an additional uplift of up to 30% of salvor's expenses. Furthermore, if it deems it fair and just, the tribunal may increase this uplift up to 100%. The words "if it deems it fair and just" represent the tribunal has to express more clear reason if he intends to increase the uplift exceed 30% of the expenses.

3.4.1.1.2.3 Salvor's expenses defined and "Nagasaki Spirit" case

Article 14.3 of the 1989 Salvage Convention defines "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)." The C.M.I. documents stated "This definition of the salvor's expenses is rather broad and in fact it comes very close to the definition proposed by salvors' representatives. It covers out of pocket expenses as well as compensation for the salvor's own equipment and personnel. The reference to the criteria set out in Art. 3-2.1 (g), (h) and (i) is important, in particular because it is thereby made clear that due account shall be taken of the salvor's standing costs, overheads,

etc. when determining what is a fair rate in the particular case."[182]

The known "*Nagasaki Spirit*" case[183] exploded the recent extensive discussions not only on the Article 14.3 but also on the whole special compensation system and the related environmental issues. In The *Nagasaki Spirit* case, the arbitrator and the appeal arbitrator adopted different views in fixing the Article 13 reward and in assessing the Article 14 special compensation.[184] Six issues appealed to the Commercial Court for decision.[185]

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[182] C.M.I. News Letter, Sept. 1984, at p. 23.

[183] The *Nagasaki Spirit* (1997) 1 All ER 502; (1996) 1 Lloyd's Law Rep. 449; (1995) 2 Lloyd's Law Rep. 44.

[184]

The Arbitrator Award:

Reward (Article 13)		Special Compensation (Article 14)	Shipowner pay	Cargo interest pay
vessel	cargo	Fair rate (5,967,671)	Reward:	Reward:
6,913,117	2,586,883	+ Out of pocket expenses (1,690,446)	6,913,117	2,586,883
		= primitive s. c. (7,658,117)	**Special**	
		+ Augmentative s. c. 65% (4,977,776)	**Compensation:**	
			3,135,893 (B2-A)	
9,500,000		Total special Compensation (12,635,893)	10,049,010	2,586,883
(A)		(B2)		

The Appeal Arbitrator's Award:

Reward (Article 13)		Special Compensation (Article 14)	Shipowner pay	Cargo interest pay
vessel	cargo	Fair rate (3,525,958)	Reward:	Reward:
7,822,737	2,927,263	+ Out of pocket expenses (1,690,446)	7,822,737	2,927,263
		= primitive s. c. (5,216,404)	**special**	
		+ augmentative s. c. 65% (3,390,663)	**Compensation:**	
			0 (B2 < A)	
10,750,000		Total special compensation (8,607,067)	7,822,737	2,927,263
(A)		(B2)		

[185] The six issues are : (1995) 2 Lloyd's Law Rep. 44 at p. 45.

1. What was the meaning of "fair rate" in art. 14.3 of the Convention?
2. In respect of what period was a salvor entitled to special compensation under art. 14.3?
3. Was the appeal arbitrator's assessment of the fair rate correct in principle?
4. Was the appeal arbitrator's assessment of the special compensation under art.14.2 excessive?
5. Should the appeal arbitrator's assessment of salvage remuneration under art.13 be set aside?

Three of them (issues no 1, 2 and 6) appealed to the Court of Appeal and two of them (issues no. 1 and 2) further appealed to the House of Lord. To the "whether a fair rate for special compensation includes a profit element" issue, Lord Mustill, affirmed the decision judged by Clarke J and Evans Lj, held:

> As to the words themselves, I feel little doubt that they support the narrower interpretation. The concept of 'expenses' permeates the first three paragraph of art 14. In its ordinary meaning this word denotes amounts either disbursed or borne, not earned as profits. Again, the computation prescribed by art 14.3 requires the fair rate to be added to the 'out-of-pocket' expenses, as clear an instance as one could find of a quantification which contains no element of profit; and it surely cannot have been intended that the 'salvors' expenses' should contain two disparate elements. It is moreover highly significant that art 14.2 twice makes use of the expression 'expenses incurred' by the salvor, for in ordinary speech the salvor would not 'incur' something which yields him a profit.[186]

To the question whether the expense comprise those incurred during the whole of the salvage operation, or only during the time when a threat to the environment, House of Lord affirmed the decisions of Clarke J and all members of the Court of Appeal that it covers the whole operation performed by the salvor from start to finish.

The *Nagasaki Spirit* case excluded the profit element from the meaning of "fair rate" and also clarified the period issue in assessing the salvor's expenses, but there are considerable practical problems in applying the mechanics of assessing special compensation as set out in Article 14.3.[187] The Courts excluded the profit element but did not give more detail guidance to the terms and extent which may be included or excluded in assessing the salvor's expenses.

3.4.1.1.2.4 Principle of insufficiency

Article 14.4 of the 1989 Salvage Convention provides "The total special compensation under this article shall be paid only if and to the extent that such

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6. Was the appeal arbitrator's decisions with regard to the costs of arbitration open to challenge?

[186] The *Nagasaki Spirit* (1997) 1 All ER 502, at p. 512.

[187] Archie Bishop, *Salvage Law needs the saving grace of simplification*, Lloyd's List, 23 December, 1997.

compensation is greater than any reward recoverable by the salvor under article 13."

The text is clear, which the recoverable special compensation is limited to the part of the incurred expenses (or any increased compensation) higher than the representative Article 13 reward. The words "any reward recoverable by the salvor under Article 13" represent the pure and positive reward fixed in accordance with Article 13 of the 1989 Salvage Convention. The said Article 13 reward shall not include any interest, recoverable legal costs, damages claim (for example Article 8). Any negative factors (for example Article 18) to decrease the Article 13 reward shall also be excluded. In other words, for a possible special compensation claim case, the tribunal has to decide at least three figures: 1) the pure reward under Article 13.1 (without considering any negative factors); 2) a real reward under the 1989 Salvage Convention (with considering any negative factors); and 3) the salvor's expenses for purpose of Article 14 of the 1989 Salvage Convention.

The wording "the total special compensation under this article" used in Article 14.4 of the 1989 Salvage Convention represent the said total special compensation shall be also taken into account the circumstance of Article 14.5. In case the circumstance mentioned in Article 14.5 is also formed as a negative factors in assessing the Article 13 reward, it may incur an interesting problem that, for calculating the Article 14.4 amount, said negative factor will decrease the "total special compensation" but shall not affect the Article 13 reward as mentioned. Namely that, in case there is the circumstance of Article 14.5, the figure of the total special compensation will be less than the circumstance of no Article 14.5, but the figure of Article 13 reward will be the same whether or not there exists such negative factor.

As discussed, the special compensation regime initially was created, originated from LOF 1980, merely to provide the salvor a second tier security for his expenses if and only when the traditional reward is not earned or is below the his expenses and the tribunal will be suggested to fix the Article 13 reward without considering or as if there exists no Article 14 special compensation.[188]

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[188] Clarke J in The *Nagasaki Spirit* case held " the proper assessment of special compensation under art. 14.2 was entirely independent of proper assessment of salvage remuneration in accordance with art.13; each should be assessed separately and special compensation only considered if it exceeded the salvage remuneration" (1995) 2 Lloyd's Law Rep. 44 at pp 45-46 (Com. Ct.).

However the U.S. delegate in the 1989 Diplomatic Conference exposed a balance problem between Article 13 reward and Article 14 special compensation by giving two alternatives.[189]The U.S. delegate's proposed alternatives were not accepted in the 1989 Diplomatic Conference, but resulted in the creation of the Common Understanding relating to the Article 13 and Article 14[190] (Attachment 1 of the 1989 Convention), which reads:

> 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.

As it may exist a circumstance that more than one salvor may claim special compensation, the words "total special compensation" do not mean the all special compensations which the owner of the vessel shall be paid, but represent the total special compensation which a particular salvor is entitled to claim. Similarly, the words "any reward recoverable by the salvor under article 13" also mean the rewards awarded to any particular salvor, but not the whole salvage reward. The following table shows the relationship and calculation between Article 13, 14.1 and 14.2.

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[189] LEG/CONF.7/22.

[190] Further detail see Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at pp. 28-66, 28-67

	Enhance Award Article 13	Special Compensation Article 14	Total Payment	Contribution by property salved on enhanced award	Pay by shipowner solely (special Compensation)
salvage not success and also not save th environment	non	(Article 14.1) 100% costs of salvage B1	B1	non	B1
salvage not success but saved the environment	non	(Article 14.2) 100%-200% costs of salvage B2 (presumed B1<A)	B2	non	B2
salvage success but not save th environment	A	B1	A ≥ B1 → A A < B1 → B1	A A	0 (B1-A)
salvage success and also saved the environment	A	B2 (presumed B1<A)	A ≥ B2 → A A < B2 → B2	A A	0 (B2-A)

3.4.1.1.2.5 The effect of the salvor's negligence

Article 14.5 of the 1989 Salvage Convention provides "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." The C.M.I. document stated "Negligence by the salvor in relation to damage to the environment has by this rule been given a rather strict effect. This is in contrast to the broad rule concerning salvor's misconduct in Art. 3-7. It is expected that Article 3-3.5. will increase the level of caution of the salvors in relations to damage to the environment."[191]

The right of the salvor to claim special compensation which may be deprived under Article 14.5 shall be subject to two circumstances that:

1) the salvor has been negligent (either on the salvage operations or on the measure taken to prevent or minimize damage to the environment) and
2) such salvor's negligence also resulted in the failure to prevent or minimize damage to the environment.

[191] C.M.I. News Letter, Sept. 1984, at p. 24.

The duty imposed on the salvor under Article 8.1(b) of the 1989 Salvage Convention to prevent or minimize damage to the environment is limited to the *performance of salvage operation.* On the other hand, the right to claim special compensation under Article 14.1 is also limited to the circumstance that the salvor *has carried out salvage operation.* However, Article 14.5 of the 1989 Salvage Convention does not mention about its relation with "salvage operation" or the duty under Article 8.1(b) of the 1989 Salvage Convention. However, the word "negligent" represents the salvor shall have owed some kind of duty. This duty is not limited to Article 8.1(b) to prevent the environmental damage but also includes other duties provided in Article 8.1 of the 1989 Salvage Convention. For example, the salvor has been negligent to seek assistance from other salvors and thereby failed to prevent damage to the environment. However, as discussed, the salvor fails to perform the duty of Article 8.1 may be entitled the salvees a right to claim damages.

Furthermore, there are some difficulties in interpreting the words "has thereby failed to prevent or minimize damage to the environment". The word "failed" embraces an element of successful.[192] It will not only result in conflict with Article 14.1 (as "successful prevent or minimize damage to the environment" is not the prerequisite to claim the primitive special compensation under Article 14.1), but also impose tribunal a heavy duty to consider 1) whether the salvor has been negligent in his duty; 2) whether the prevention and minimization of damage to the environment is unsuccessful and 3) the causation between 1 and 2. It is suggested that it is better to remove the successful factor from Article 14.5 and read for example that "If the salvor has been negligent in prevent or minimize damage to the environment....".

Article 14.5 of the 1989 Salvage Convention stands on a special and different status beyond Article 18. However, the circumstance that the special compensation may be deprived under Article 18 of the 1989 Salvage Convention is very limited than the reward (see discussion below in paragraph 3.4.2.2).

3.4.1.1.2.6 Shipowner's right of recourse

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[192] "Fail" in *Oxford Dictionary* (9thed, 1995 at p.484) means "not succeed" or "be unsuccessful in".

Article 14.6 of the 1989 Salvage Convention provides "Nothing in this article shall affect any right of recourse on the part of the owner of the vessel." The C.M.I. documents stated "while the shipowner has a duty towards the salvor to pay the compensation according to Arts. 3-3.1 and 3-3.2., under Art. 3-3.6, he is allowed to seek any recovery from other parties as appropriate, in particular cargo owners or charterers."[193]

Shipowner's right of recourse in salvage case, illustrating by Prof. Gaskell,[194] may include the right to 1) against third party in tort, e.g. who have negligently caused any accident which made salvage services necessary; 2) against the demise charterer under an express terms and conditions, e.g. cl.15 of the Barecon 89 charterparty ; 3) against the time charterer, for example main engine break down due to bad fuel provided by the charterer; 4) against the voyage charterer, for example bad stowage by the charterer; and 5) the shipper which supplied dangerous cargo in breach of the contract.

Special compensation is designed to be paid solely by the owner of the vessel. However, it may be a problem that special compensation is a kind of expenditure incurred by the parties to the adventure on account of salvage under Rule VI of The York-Antwerp Rules 1974. Attachment 2 of the 1989 Salvage Convention requested the Secretary - General of I.M.O. to take the appropriate steps in order to ensue speedy amendment of the York-Antwerp Rules, 1974, to ensure that special compensation paid under article 14 is not subject to general average and the Rule VI of the York-Antwerp Rules 1974 was therefore amended in 1990 (see discussion in the second chapter paragraph 2.2.3.).

3.4.1.2 Of interim payment

Article 22 of the 1989 Salvage Convention provides "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 (Article 22.1). In the event of an

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[193] C.M.I. News Letter, Sept. 1984, at p. 24.

[194] *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-68.

interim payment under this article the security provided under article 21 shall be reduced accordingly (Article 22.2)." The C.M.I. documents stated "This provision is new. It improves the salvor's cash flow and is considered to be of some importance. It is inspired by present arbitral practice."[195]This concept was coped from LOF 1980 clause 10 (which can be traced back to the first set of Lloyd's Open Form 1908 clause 9)[196]. Very few discussions appeared during the Drafts and in the 1989 Diplomatic Conference and the text remains unchanged from its first Draft.[197]

The power to make an Interim Award under LOF80 clause 10 is expressly applied to the "remuneration" which generally includes the "safety net" expenses and 15% increment but not includes the damages claim. The whole clause 10 of LOF80 was combined into clause 9 of LOF 90 (or cl.10 of LOF 95) with other conducts of the Arbitrator. Clause 10(a)(iv) of LOF 95 merely provides "make Interim Award(s) including payment(s) on account on such terms as may be fair and just". Though clause 8 of LOF 95 (or cl. 7 of LOF 90) provides the contractor's remuneration and or special compensation shall be fixed by the arbitrator appointed, but it is still not clear that whether or not the appointed arbitrator have power to make Interim Award(s), under clause 10(a)(iv), for the damages claim other than remuneration and special compensation. The circumstance to Article 22 of the 1989 Salvage Convention, by using the words "the claim of the salvor", is also not so clear. It is suggested that, unless the word "payment" in the heading of Article 22 of the 1989 Salvage Convention to be interpreted as the same meaning as the definition of "payment" in Article 1(e) and in case the tribunal having jurisdiction over the "damages claim" of the salvor, the tribunal may has the power under the 1989 Salvage Convention to order interim payment to the salvor for that damages claim.

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[195] C.M.I. News Letter, Sept. 1984, at p. 29.

[196] Lloyd's Open Form 1908 clause 9 stated "The Committee of Lloyd's may in their discretion out of the security (which they may realize or enforce for that purpose) pay to the Contractor on account before the publication of the Award such sum as they may think reasonable on account of any out-of-pocket expenses incurred by him in connection with the services."

[197] Some States, for example Germany, doubted whether it is advisable to introduce clause 10 of LOF80 into international legislation instead of leaving this question entirely to the contractual arbitration agreement.(LEG/CONF.7/10)

3.4.1.3 On maritime lien

It was stated that in most states the salvors will have a maritime lien or a similar right over the salved ship and its cargo.[198]This is provided for example in the International Conventions for the Unification of Certain Rules Relating to Maritime Lien and Mortgages 1926 Art.2.3 and 1967, Art. 4.1(v) (or the new Maritime Lien and Mortgages Convention 1993, Article 4.1.c) that a salvor may has a lien to the salved vessel. However, the 1989 Salvage Convention does not express salvor's right of maritime lien, but provides that "Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law" (Article 20.1). The C.M.I. documents stated "consideration was given to whether a rule providing for a maritime lien should be included in the new convention, but it was decided not to do so because these rules were felt to have their proper place in other conventions and because the advantage would be rather limited in view of the already widespread acceptance of such a right".[199] Article 20.2 further provides "The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided." There were very few discussions during the Drafts and in the 1989 Diplomatic Conference and the text remain unchanged from its first 1981 Draft.

The 1989 Salvage Convention leaves open to the question of whether certain of the other new obligation created by it will give rise to maritime lien, for example the special compensation under Article 14 and the damages claim for breach of the duties under Article 8.[200] As the1989 Convention specially leaves national law unaffected on this point the issue will therefore be one for national courts to decide.[201]

Article 21 of the 1989 Salvage Convention imposes a duty on the salvees, upon the request of the salvor, to provide satisfactory security. As discussed in

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[198] C.M.I. News Letter, Sept. 1984, at p. 27.

[199] Supra.

[200] LOF limits its contractual lien only to the remuneration (the reward) on the property salved but not to special compensation or other damages claim. LOF 95 clause 6(a) provides "Until security has been provided as aforesaid the Contractor shall have a maritime lien on the property salved for his remuneration".

[201] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-75.

paragraph 3.3.2.3.1, the duty to provide security under Article 21 merely applies to the claims for *payment* due under the 1989 Salvage Convention, i.e. the property reward and special compensation, but not includes any other convention claims (for example life salvage claim under Article 16.2 or salvor's damages claim under Article 8.1). As in the absence of express connection between Article 20.2 and Article 21, the word "claim" under Article 20.2 seems not to be restricted to the same *claim* under Article 21. In other words, even though the salvee under Article 21 has no duty to provide security for his breach of Article 8.2, the salvor may still enforce his maritime lien (presumed the salvor is entitled to a maritime lien for his damages claim) if the salvee did not provide satisfactory security for his damages claim. However, unlike LOF clause 6, Article 20.2 of the 1989 Salvage Convention merely provides a moral restriction on salvors exercising the lien once provision has been made for satisfactory security.

3.4.2 Rights of Owner

3.4.2.1 Prohibition of salvage operation

Article 19 of the 1989 Salvage Convention provides that "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." The C.M.I. 1984 Document stated "This is a restatement of the principle expressed in the 1910 Convention. The rule, however, however, must in the regime of the draft convention be read in conjunction with Art.2-1.1, under which the owner and master of the casualty shall take timely and reasonable action to arrange for salvage operation."[202] However, the initial design to connect with the duty to take timely and reasonable action was no longer existed while the 1987 Draft decided to remove this duty from Art.2-1.1 (now Article 8.2).[203]

The sole change during the Drafts was the persons who are entitled to prohibit the salvage operations. The below table shows the related changes:

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[202] C.M.I. News Letter, Sept. 1984, at p. 27.

[203] See discussion in paragraph 3.3.2.1. and 3.3.2.2.5.

1910 CONVENTION	1981 DRAFT	1983 DRAFT	1987 DRAFT	1988 DRAFT	1989 CONVENTION
❑ the vessel	❑ the owner ❑ the master ❑ public authority	❑ the owner ❑ the master	❑ the owner of the vessel ❑ the master	❑ the owner o the vessel ❑ the master of the vessel ❑ the owner of any other property which is not and has not been on board the vessel	❑ the owner of the vessel ❑ the master of the vessel ❑ the owner of any other property in danger which is not and has not been on board the vessel

The most important change, as we may see, was to add "the owner of any other property which is not and has not been on board the vessel" who also have the right to prohibit the salvage operation. During the I.M.O. 57th session, the Legal Committee considered that if the term of "salvage operations" to be defined broadly to include assistance to property which is not a vessel, then the owner of such property might be allowed to prohibit salvage hereof when such services are directed solely to his property and the property is not onboard the vessel.[204] Namely that, according to Article 19 of the 1989 Salvage Convention, the owner of other property on board the vessel is given no direct right to prohibit salvage operation, but allow the master and the owner of the vessel to prohibit (for and on behalf of them).

The relationship between Article 19 and Article 8.1(d), see discussion in paragraph 3.3.1.1.7.

3.4.2.2 Deprive of the payment because of fault or neglect of salvor

Article 18 of the 1989 Salvage Convention provides "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." A proposal to include expressly the effect if salvor has failed in his duty to avoid or minimize damage to the environment was failed in the

[204] C.M.I. News Letter, Autumn 1986, at p. 4.

1989 Diplomatic Conference.[205]

The applicable extent of Article 18 of the 1989 Salvage Convention is quite narrow than Article 8 of the 1910 Salvage Convention, even though the C.M.I. Document stated "this rule is based on the principle expressed in the 1910 Convention, Art.8, paragraph 3."[206] The key words are "to the extent that the salvage operations have become necessary or more difficult because.." used in the present Article 18 of the 1989 Salvage Convention. According to this wording, salvors' payment will not be deprived unless and only to the extent that the following circumstances are exists simultaneously that: a) salvor's misconduct (fault or neglect ..etc.); and b) this misconduct also caused the salvage operation become necessary and more difficult. In other words, even though salvor has had fault, neglect, fraud or dishonesty to the salvage operations, but in case his fault did not cause any necessity or more difficult to that operations, the payment would not be deprived. The extent of the payment may be deprived is limited to the part of "unnecessary" and "more difficult" salvage operations caused by the salvor. It implies that the payment to the salvage operation before it was become necessary or more difficult would not be prejudice.

Article 18 of the 1989 Salvage Convention applies not only to the reward but also to the special compensation. However, Article 14.5 of the 1989 Salvage Convention stands a special and different position beyond Article 18. Article 14.5 of the 1989 Salvage Convention provides "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." The C.M.I. documents stated "A special and more far-reaching rule concerning salvor's negligence with relation to damage to the environment is contained in the draft convention, Art. 3-3.5. (now Article 14.5 of the Convention) "[207] As discussed, the measure taken to "prevent or minimize

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[205] LEG/CONF.7/24 (by France); LEG/CONF.7/CW/RD/12. There was another proposal to this Article submitted by Australia to include "The taking of any action at the direction of a coastal State shall not of itself prejudice any payment that may be paid to a salvor pursuant to article 9-12 of this Convention". However, this proposal was ignored by the informal contact group while this group accept Australia's another proposal "rights of coastal States" (now Article 9). See also discussion in paragraph 3.4.3 below.

[206] C.M.I. News Letter, Sept. 1984, at p. 27.

[207] Supra.

damage to the environment" is not under the defined "salvage operations" in Article 1(a). It therefore exists a logical problem that it will be difficult to say the salvor has negligent failed to take measure to prevent or minimize damage to the environment will cause "the salvage operations have become necessary or more difficult"! My suggestion is the circumstance of the special compensation may be deprived under Article 18 of the 1989 Salvage Convention is that the salvor's misconduct caused *the salvage operations* have become necessary or more difficult, and that necessity and more difficulty also caused the increasing of salvor's expenses in claiming special compensation. In other words, the circumstance that the special compensation may be deprived under Article 18 is more limited than the reward. However, Article 14.5 of the 1989 Salvage Convention provides a remedy way trying to fill up this gap (but not enough). Article 14.5 of the 1989 Salvage Convention is mainly focus on the "prevent or minimize damage to the environment" with less relation to the "salvage operation". The right of the salvor to claim special compensation may be deprived under Article 14.5 only in case that: 1) the salvor has been negligent (either on the salvage operations or on the measure taken to prevent or minimize damage to the environment) and 2) his negligent also resulted in the failure to prevent or minimize damage to the environment. The prerequisite of "negligent" in Article 14.5 is similar to Article 18, but the request to the effect of that "negligent" is difficult (Article 14.5 has resulted in the failure to prevent or minimize damage to the environment, but Article 18 has caused *the salvage operations* have become necessary or more difficult). There are some problems unsettled between Article 14.5 and Article 18. For example, a salvor concealed his capability in preventing or minimize the environmental damage and this concealment did not cause "failure to prevent or minimize damage to the environment" and also not cause "*the salvage operations* have become necessary or more difficult". In this case, Article 14.5 and Article 18 seem not to be applied.[208]

Another issue is the relationship between Article 18 and Article 8.1. Article 8.1 of the 1989 Salvage Convention imposes duties on the salvor to carry out the salvage operations with due care, to prevent or minimize damage to the environment, to seek assistance and to accept the intervention. Though the 1989 Salvage Convention expresses no effects in case the salvor breached these duties, the salvees still own an implied right to claim damages arising from

[208] However, the general contract law may be applied if there is a salvage contract.

the salvor's failure.[209] In some cases, it is possible that both articles are in applied at the same time. I.e. the salvees not only own a right to claim damages from the salvor under Article 8.1 but also is entitled to deprive of the whole or part of the payment under Article 18. It is submitted that Article 18 is only relevant to the question of reducing rewards and does not preclude a claim under Article 8.[210] It is still unclear whether the salvees can exercise both of their rights simultaneously or alternatively. My suggestion is the salvees can exercise both of their rights simultaneously but can not overlap each other.

3.4.2.3 Two year time-barred defence

Article 23.1 of the 1989 Salvage Convention provides "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." This provision basically retains two year time-bar of Article 19 of the 1910 Salvage and Assistance Convention, but exists several differences.

In 1910 Salvage and Assistance Convention, two year time-bar applied to "salvage action" generally, but the application of the 1989 Salvage Convention is limited to "any action relating to payment". A salvage action may include an action in relation to the salvage reward, special compensation, life salvage fair share and damages claim arises from breaching the duty of the 1989 Salvage Convention. Since Article 1(e) of the 1989 Salvage Convention strictly defines "payment" means any reward, remuneration or compensation *due* under this Convention. Life salvage fair share (strictly speaking, life savage fair share belongs not to any reward, remuneration or compensation due under the 1989 Salvage Convention, but represent a fair share *right* on that payment) and damages claim seems not to be applied to this two year time-bar limitation under the 1989 Salvage Convention.[211] On the contrary, *any action* under the 1910

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[209] See discussion in paragraph 3.3.1.1.3.

[210] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-74.

[211] Prof. Gaskell opines differently that "It is submitted that it would also apply to a life saver's claim under Article 16.2. The Art.23 limit could be read as covering damages claims for breach of the obligations in Arts.8 or 21, if a wide definition is given to "payment" in At.1(e)" (*Annotations on*

Savage and Assistance Convention is barred after two years, but only *the action relating to payment* under the 1989 Salvage Convention is barred after two years. In other words, any other actions under the 1989 Salvage Convention, except for relating to payment, are not of course time-barred within 2 years and which shall be referred to the available national law. The other actions at least may include:

a) life salvage fair share in Article 16.2;
b) damages claim under Article 8.1 and Article 8.2 as mentioned, except Article 8.1(d);
c) dispute arising the authority of master or shipowner to conclude contracts of salvage under Article 6.2;
d) annulment and modification of an inequitable contract under Article 7(a);
e) apportionment between salvors under Article 15.

The action under the 1989 Salvage Convention relating to the payment, except Article 13 and Article 14, may also include:

a) payment to the salvage operations by or under the control of public authorities under Article 5.2 and 5.3;
b) the payment is in an excessive degree to large or too small under Article 7.2;
c) the deprivation of payment due to salvor's misconduct;
d) the dispute arising from the prohibition of salvage operations;
e) the payment /dispute arising from unreasonably intervention request under Article 8.1(d)

Another difference exists between the 1910 Salvage and Assistance Convention and the 1989 Salvage Convention is the commence of the limitation period. Salvage services may be rendered by a sole set of salvor(s) or by various sets of salvor(s) and the said salvor(s) may finish their services and the vessel or other property may be bought to a place of safety consecutively or simultaneously. To the wording used in the 1910 Salvage and Assistance Convention, Mr. Wildeboer commented that "if services are rendered by various sets of salvors consecutively the service of each set terminates at a different moment and the

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Merchant Shipping (Salvage and Pollution) Act 1994, Current Law Statutes 1994 vol. 2, at p. 28-49).

limitation period of the various actions would then commence at different times"[212] (i.e. the *different times approach* in the 1910 Salvage and Assistance Convention). The 1989 Savage Convention Article 23 uses the wording "the salvage operations are terminated" implies that the salvage operation must be viewed as a whole and there would be one time bar operating for the whole series of services[213](i.e. the *single time approach* in 1989 Convention !).

The purpose of shorter time limitation regime is aimed to stabilize and clarify legal relationship between parties concerned as soon as possible and to protect the debtor beyond more difficulty for example in collecting evidences by reason of the claimant's delay in submitting his claim. General speaking and subject to the circumstance, the commence of the limit period for each salvor is the time when his right is given to a payment from every particular salvees. Each individual salvees' two year time-bar defence right is better not to be effected by the operations rendered by other salvors. Neither the C.M.I. nor I.M.O. documents provided any intentions to adopt single time approach in the 1989 Salvage Convention. For short, it is better to adopt the different times approach in salvage matter but not single time approach.

Article 23.2 of the 1989 Salvage Convention provides "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" and Article 23.3 provides "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." The C.M.I. Document stated "these paragraphs are modelled in corresponding provisions in modern maritime law conventions, e.g. the 1968 Protocol to the 1924 Bills of Lading Convention".[214]

Some jurisdictions[215] do not allow any time extension by agreement but the debtor may abandon or "agree" not to exercise his right of time-barred defence. The 1968 Visby-Hague Rules Article III r.6 bis uses the words "... be extended if the parties so agree...", but the 1989 Salvage Convention uses "by a

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[212] Ina H. Wildeboer, ibid., at p.260.

[213] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-80.

[214] C.M.I. News Letter, Sept. 1984, at p. 30.

[215] For example Taiwan.

declaration to the claimant". It exists a slight difference between two provisions. The words "so agree" imply the claimant and the liable party may negotiate not only to the length of the period they agree to extend but also to anything to be applied in that extended period, for example the effect of the time extension shall only apply to certain jurisdictions or only apply to a limited amount or the direct parties (without effect to any third party or insurers). If the claimant does not agree such particular term, the only way to protect time limitation is to proceed the action. However, the words "a declaration" merely represent that the liable party can only declare his agreement or disagreement to the time extension and nothing more.

3.4.3 Rights of Coastal States

Under the 1969 International Convention Relating to Intervention on the High Sea in Cases of Oil Pollution Casualties, its 1973 Protocol and Article 221 of the United Nations Law of the Sea Convention 1982, it is recognized that a State may take and enforce measures beyond the territorial sea as may be necessary to prevent or eliminate their coastline or related interests from pollution or threat of pollution. However, the Australian Government considered, in its proposal to IMO in January 1989, these Conventions do not grand in specific terms the right to coastal States to intervene in salvage operations where their coastlines and endangered by a major pollution threat. Australian further proposed to introduce two provisions in the Salvage Convention to 1) allow for the participation of coastal states in salvage operation and at the same time 2) to ensure the salvor is not open to liability in respect of actions taken at the direction of the coastal State and that any such action does not detrimentally affect the amount of the salvor's rewards or compensation.[216] After discussion in an Informal Contact Group, the Australian's proposal was reworded but in the form of a statement preserving the existing coastal State rights to intervene according to recognised present, or future, principles of international law.[217]

Article 9 of the 1989 Salvage Convention provides "Nothing in this Convention shall affect the right of the coastal State concerned to take

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[216] LEG/CONF.7/9.

[217] LEG/CONF.7/CW/WP.30. See also Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-49.

measures in accordance with generally recognised 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."

What is and its extent of the "general recognised principles of international law" is not the issue which shall be discussed here. However, there are two questions relating to Article 9 of the 1989 Salvage Convention have to be considered that 1) the effect if the salvor followed the coastal States direction; 2) its relationship with Article 5 (Salvage operations controlled by the public authorities).

Article 9 itself exists no implication that the salvor who follows the direction would be entitled to avail themselves of the rights and remedies provided by the 1989 Salvage Convention. As mentioned, Australian's initial proposals included a provision to ensure that the salvor follows such action does not detrimentally affect the amount of the salvor's rewards or compensation.[218] However, this proposal was ignored by the Informal Contract Group with reasons unknown. It is then necessary to distinguish Article 9 from Article 5, as to the latter case, the salvor who carrying out the salvage operation under control of public authorities is remained to be entitled to avail themselves of the rights and remedies provided by the 1989 Salvage Convention.

The extent and available administrative levels of the "coastal state" is apparently larger than "public authorities". A public authority (e.g. port authority) normally exercises its designated rights and duties in a confined area inside territorial waters (port and it adjacent area). However, even though the Minister of this Country indicated that "directions" to foreigners could not be given outside the 12 mile limit because of lack of jurisdiction,[219] as well as it exists the right of innocent passage enjoyed by the ships of all States, but it seems that a coastal state is also entitled to have control on its registered ships on the high sea and even to give directions or prohibit some operations in exercising its statutory rights on the Contiguous Zone and Exclusive Economic Zone under United

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[218] The original proposal read: "The taking of any action at the direction of a coastal State shall not of itself prejudice any payment that may be paid to a salvor pursuant to Art.9-12 of this Convention" (LEG/CONF.7/9).

[219] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-49.

Nations Law of the Sea Convention 1982. Those rights may include impliedly the right to give directions or prohibit a salvage operation if that operation may endanger its natural resources, for example from pollution. Furthermore, the words "under control of " imply a more initiative attitude to direct an activity even participate in that activity (i.e. we may say the public authority under Article 5 is a participant or a supervisor to the salvage operation), but the words "to give direction" represents merely an order or instruction (i.e. the coastal state is exercising its sovereign rights). However and bearing in mind that, it is difficult to exactly define and distinguish the "salvage operation *under control* of *public authorities*" in Article 5 from "the *coastal state* to *give direction* in relation to salvage operation" in Article 9. It is sometimes also difficult to separate "public authorities" from the wider meaning of "state". In some cases, public authority mere gives direction but not control the salvage operation and or the coastal state may authorize a public authority to give direction. For short, the salvor follows coastal State's direction incurs no rights to avail themselves of the rights and remedies provided by the 1989 Salvage Convention, provided that the requirement in Article 5 is also met.

3.5 The Contracts

One of the subject to revise the rules on traditional salvage during pre-drafting was to give more detailed rules on the limits of contractual freedom, and moreover, without prejudice of the possibility of annullment or modification of an inequitable contract and under the circumstance that the rules relating to the prevention or minimization of damage to the environment should be compulsorily applicable, the application of the Convention may be excluded by the parties.[220]

3.5.1 The application and its limits

Article 6.1 of the 1989 Salvage Convention provides "This Convention shall apply to any salvage operations save to the extent that a contract otherwise

[220] C.M.I. News Letter, Dec. 1981, at pp. 4-5.

provides expressly or by implication". The question whether any of the rules of the Convention should be mandatory in nature has been thoroughly debated and considered during all the negotiations for the 1989 Salvage Convention. According to the wording used in the Article 6.1 of the 1989 Salvage Convention, it merely represents the salvage parties are allowed to contract out the 1989 Salvage Convention, but it does not mean the whole 1989 Salvage Convention exists not mandatory in nature.

The beginning wording of Article 6.1 clearly provide the Convention *shall* apply to any salvage operation. The words "save to the extent.." represent an exemption to the 1989 Salvage Convention that the salvage parties are permitted to contract out parts of rules even the whole rules of the 1989 Salvage Convention (subject to the limit of Article 6.3). In other words, the 1989 Salvage Convention is presumptively in applying to any salvage operations as defined and also to any contract forms for that salvage operations unless and to the extent of the contract of salvage provides otherwise. It can not be interpreted that the 1989 Salvage Convention is applied only when and to the extent the terms of contract expressly or impliedly incorporated it[221] even or the 1989 Salvage Convention is not applied in case a salvage contract was agreed.

The known Lloyd's Standard Salvage Contact Forms (LOF90 and LOF95) basically keeps in the same line with Article 6.1 of the 1989 Salvage Convention. Clause 1(g) of LOF90/95 read "The Agreement and Arbitration thereunder shall *except as otherwise expressly provided* be governed by and arbitration thereunder be in accordance with English law, including the English law of salvage". The effect of this clause is, except for the terms expressly (not include impliedly) provided otherwise, LOF is governed by the 1989 Salvage Convention which incorporated in as a part of English law of salvage. For example, LOF clause 1(a) imposes a heavier duty of care on the salvor (the contractor) than the 1989 Salvage Convention to salve the vessel and other property and to prevent or minimize damage to the environment. On the contrary, LOF does not expressly mentions the salvor's duty provided in the Article 8.1 (c) and (d) of the 1989 Salvage Convention to seek assistance and accept intervention. For the

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[221] In the *Unique Mariner* (No.2) 1979 case, the judge opined "the rights and obligations of parties to Lloyd's form were governed by the terms express and implied of that contract and the general maritime law of salvage only applied in so far as it was expressly or impliedly incorporated into such contract" (1979) 1 Lloyd's Rep. 37 at pp. 50-51. However, this opinion seems to be no longer satisfactory when the Convention become part of English salvage law.

former case, the heavier duty of care in the LOF prevails to apply. For the latter case, the salvor renders service under LOF will still owe the duty to seek assistance and accept intervention.

Theoretically speaking, the salvage parties are entitled, during even after the salvage operations, to contract out the whole rules or certain rules of the 1989 Salvage Convention. However, the freedom to contract out the 1989 Salvage Convention (or the English law of salvage) shall be subject to the limit expressed by Article 6.3 of the 1989 Salvage Convention, which provides that " Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment".

This provision was first introduced in the 1983 Draft but merely provided not to affect the application of the present Article 7. The 1987 Draft extended the mandatory effects to the duties to prevent or minimize damage to the environment as provided in the present Article 8.1(b) and 8.2(b) of the 1989 Salvage Convention. It only mentions not affect the *duties* to prevent or minimize damage to the environment, but not includes the *payment* to prevent or minimize damage to the environment. In other words, the salvage parties are still allowed to contact out any payment relating to the prevention of damage to the environment.

It is difficult to interpret what is and its extent of the words "*not to affect* the duties to prevent or minimize damage to the environment". A presumption is the salvage parties (or the master or the owner of the vessel) are not allowed to contract out of that duties and or they still owe that duties even they contracted out that duties. However, this presumption will exist no meaning if not to further consider the effect of breaching that duties. The duties, under the 1989 Salvage Convention, to prevent or minimize damage to the environment are owed and existed merely between the salvor and salvees. Failure to perform that duties may be entitled the other side to a damages claim. In other words, "not affect" seems to be interpreted not to affect the said damages claim. However, it exists a further question that, if the 1989 Salvage Convention allows the salvage parties to contract out the payment relates to the prevention of damage to the environment, why the same parties could not contract out their liability by way of not to perform that duties? In other words, nothing in this Article shall affect the duties to prevent or minimize damage to the environment. For short, Article 6.3 is merely having an effort to declare the important of that mandatory duties but existed no physical effort if the parties contract out that duties.

3.5.2 The authority to conclude salvage contract

Article 6.2 of the 1989 Salvage Convention provides "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." The first authority was introduced in the 1981 C.M.I. Draft. The C.M.I 1984 Document stated that:

> This rule is new. So far it has been left to national law to provide of the master has such authority, and in fact such authority is not always implied. That may in many cases have caused delay due to communication between owner and salvors or the master, and the proposed rule is considered important to prevent any such delay. Further, the rule improves the salvors' position and is in certain case expected to increase the element of encouragement. [222]

The second authority was not accepted until the I.M.O. 57th session in 1986 by a simple reason - "in the interest of greater clarity"[223].

a. the party authorized

Any interest parties to the vessel or other property in danger may conclude a salvage contract but not of course bind any other interest parties in danger. The statutory authority under the 1989 Salvage Convention to conclude salvage contract is particularly given to the master and the owner of the vessel on behalf of the owner of the vessel or other property. Any persons other than the master and the owner of the vessel, for example ship officers, crew member, cargo owner, insurer, charterer either demise or time/voyage, are presumably not grant this statutory authority unless the national law or other conventions otherwise provide. For example, section 742 of the Merchant Shipping Act 1894 defines "the master" includes every person (except the pilot) having command or charge of any ship. The salvage contract concluded by the officer who takes over the ship in the absence of the nominal master may bind the owner of the

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[222] C.M.I. News Letter, Sept. 1984, at p. 14.

[223] C.M.I. News Letter, Autumn 1986, at p. 6.

vessel or the owner of other property if he was acting as agent of necessary under the ordinary law.[224] It is submitted that Article 6.2 of the 1989 Salvage Convention does not override the existing principles which allow other persons to have authority to conclude contracts for salvage operations.[225]

An attempt failed to replace the word "owner" with "operator" proposed by France.[226] It represents the 1989 Salvage Convention intends not to expose the statutory authority to any related parties in managing or operating the vessel other than the registered shipowner. The legal basis why the shipowner has the authority to conclude contracts for salvage operations on behalf of the owner of the other property on board the vessel in the 1989 Salvage Convention is unclear. No reported cases affirmed the shipowner has this authority as "agency of necessity". On the other hand, the bailee's position seems also not strongly to entitle the shipowner the authority to conclude salvage contracts on behalf of the cargo owner. However, the shipowner is now grant this authority statutorily in accordance with the 1989 Salvage Convention.

Since Article 6.2 of the 1989 Salvage Convention expresses only the *master* and the *owner* of the vessel having the authority to conclude salvage contracts, it is therefore existed an implied obligation on the contracting salvor to check the qualification and authority of the master or the owner if the salvor intends to rely on the Article 6.2 of the 1989 Salvage Convention.

b. the parties presumably to be bound

An attempt proposed by Saudi Arabia to add "or operator" following the words "on behalf of the owner" failed in the 1989 Diplomatic Conference.[227]The parties would be bound by a contract of salvage concluded by the master (and or the owner of the vessel) are limited to the *owner* of the vessel and the *owner* of the property on board the vessel. That means the demise charterer or time charterer is not bound by the contract unless these charterers are also the owner of the property salved, for example cargo/container gears provided by demise charterer or time charterer's container. The 1989 Salvage Convention uses the word "owner" in some cases may cause difficulty in distinguishing the nominal

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[224] In this instance, The *Choko Star* rule [(1990) 1 Lloyd's Rep. 516] remains in applied.

[225] Brice, ibid., at para. 5-57.

[226] LEG/CONG.7/11.

[227] LEG/CONF.7/CW/WP.13

owner and the real interest party of the property who is liable to the salvage. LOF 90 clause 14 (LOF95 cl.16) adopts another expression that "The Master or other person signing this Agreement on behalf of the property to be salved enters into this Agreement *as agent for the vessel her cargo freight bunkers stores and any other property thereon* and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof."

It is suggested that "Article 6.2 does not say the property interest will be "bound" by any contract made by the master. It merely uses an existing principle of agency law to grant permission to contract where none had been given expressly or impliedly".[228] This suggest is so much difficult to follow as Article 6.2 of the 1989 Salvage Convention clearly states "....to conclude such contract is "on behalf of " the owner of the vessel or the owner of the property". On the other hand, the true intention of this Article was to ensure all salved interests are bound by any contract which is signed.

c. the extent of the authority and it effects

The general law either of salvage or the agency of necessity, the owner of property would be bound only by a reasonable salvage contract necessarily and honestly concluded.[229] However, Article 6.2 of the 1989 Salvage Convention contains no restriction on the power or extent of the authority of the master or the owner of vessel. It is submitted that "the 1989 Salvage Convention gives the master (and the owner of the vessel) full authority to conclude a salvage contract and the contract will, prima facie, be binding."[230]There are some circumstances have to considered: 1) the contract concluded by the master includes some particular terms apparently overstep his usual authority as being a master; 2) the contract concluded is unreasonable to every parties for whom the master signs on behalf of; 3) the contract concluded is apparently partial to a particular salvee, and 4) the contract is concluded against any express prohibition existed between the salvees.

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[228] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994,* Current Law Statutes 1994 vol. 2, at p. 28-40).

[229] The *Cargo ex Capella* (1873) L.R. 5 P.C. 134. The *Winson* (1979) 1 Lloyd's Rep. 167.

[230] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-40).

There are some suggestions. For example, to interpret "a contract" in Article 6.1 of the 1989 Salvage Convention is not limited to the salvage contract between salvor and salvee; or the1989 Salvage Convention does not prevent the authority of the master being expressly withdrawn in the carriage contract and that a salvor will not be able to insist that a charterer or cargo owner will be bound by a salvage contract signed contrary to the express prohibition; or the salvor may be protected against losses in that it will be to sue the shipowner for breach of the warranty of authority in a case where cl.14 of the LOF applies.[231] These suggestions are sometimes not so easy to follow and also exists lots of questions in dispute. It is difficult to imagine "a contract" in Article 6.1 might have implication that it may include a non-salvage contract. The heading of Article 6 of the 1989 Salvage Convention clearly shows "Salvage contract". On the other hand, the 1989 Salvage Convention seems existed no intentions to intervene other legal relationships rather than salvage into the Convention. My suggestion to those problems is simply referring to the general law of agency.

The master (or the owner of the vessel) become an agent for the owner of the vessel and the owner of other property to conclude contracts of salvage now because of the operation of law (the 1989 Salvage Convention which incorporated in the 1994 M.S.A.). The agent shall act in good faith and with due diligence in exercising his authority to conclude the contract. The principle (the owner of the vessel or other property - i.e. the salvees) is basically liable to the third party (i.e. the salvor) subject to the contract signed by the agent (the master or the owner of the vessel) unless the agent apparently short of the capacity to act as agent as well as to act as his principle. The agent may also be liable for breach of implied warranty of authority (good faith and with due diligence) and for other misrepresentation to the third party (the salvor) and the principle (the salvees).[232] It is therefore that 1) between the salvees and the salvor: the owner of the vessel or other property would be bound to the salvor of the contract concluded by the master (or the shipowner) even this contract is unreasonable, prejudice or existing any express prohibition, but not to any particular terms concluded by the master/shipowner which apparently overstep his usual authority or exists the inequitable circumstance in Article 7 of the 1989 Salvage Convention; 2) between the master and the owner of the vessel or

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[231] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994*, Current Law Statutes 1994 vol. 2, at p. 28-40).

[232] Treitel, *The Law of Contract*, 9th ed., 1995, chapter 17.

other property: the master (or the owner of the vessel) may be liable for breach his duty as being an agent. For example, whether or not the master in the M. *Vatan* (1990)[233]case expressed "cargo owners are not authorising us to give instructions regarding cargo salvage" in LOF would in no events effect the right of the salvor to claim salvage from the cargo interest. However, as the cargo interest was not the principle of the LOF signed by the master, the salvor could only rely on the general salvage law against the cargo interest but not entitled to rely on the LOF. The cargo interest may be entitled to claim damages (if any), rely on the charter party or other carriage contract, if the master did not express the express prohibition to the salvor.

3.5.3 Annulment and modification

Kennedy, in his first edition book, said:

> The agreement, though otherwise sufficient, may be avoided on any one of the following grounds:
>
> (a) That it is tainted with fraud;
>
> (b) That the salvors were induced to enter into it by the mis-statement or non-disclosure, even though not fraudulent, of a material fact;
>
> (c) That the terms of the agreement are inequitable;
>
> (d) That the agreement has been cancelled by consent of the parties.[234]

Article 7 of the 1910 Salvage and Assistance Convention consisted of the above items (a), (b) and (c). However, items (a) and (b) did not appear in the Drafts and left them to be subject to the national rules.[235] The wording in Article 7 of the 1989 Salvage Convention exists no extreme changes from its 1981 Draft. In the 1983 Draft, "undue influence or" were added in the first paragraph, and in the 1988 final Draft, the heading of this article was replaced from "Invalid contacts or contractual terms" to "Annulment and modification of contracts".

The begin wording of Article 7 of the 1989 Salvage Convention read "A contract or any terms thereof may be annulled or modified if...". It represents the

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[233] The *M. Vatan* (1990) 1 Lloyd's Law Reports. 336

[234] Kennedy, ibid. p.199.

[235] C.M.I. reported "This article does not prevent the application of national rules relating to the invalidity of contracts or contractual terms." (C.M.I. News Letter, Sept. 1984, at p. 14.)

contract can be annulled completely or partly, or it can be modified all or any of its terms. The 1910 Salvage and Assistance Convention expressed "an agreement may, *at the request of either party,* be annulled or modified by the ***court",*** but it is silent in the 1989 Salvage Convention. The question is that does an appointed arbitrator be given the power to annul or modify the contracts? All C.M.I. and I.M.O. Documents provided no advice in relation to this issue. However, whether an arbitrator is given the power shall be subject to the authority provision in the arbitration clause of the salvage contract (for example clause 10 and clause 14 of LOF 95) or the national law. Generally speaking, the arbitrator(s) under LOF salvage agreement seem have no such power to annul or modify the contract which they are appointed.

The first circumstance which a contract or any terms may be annulled or modified is "the contract has been entered into under undue influence or the influence of danger and its terms are inequitable"(Article 7.a). The contract has been entered into under "undue influence" or "the influence of danger" or not or its terms are "inequitable" or not is a matter of fact in considering the master in a position of peril and at the time of the contract to be agreed.

Article 7.a of the 1989 Salvage Convention uses the word "and". It represents the contract may be annulled or modified only when both situations ("undue influence or the influence of danger" and "its terms are inequitable") shall exist simultaneously. This requirement may incur some difficulties. For instances, the parties who may request to annul or modify the contract are basically the contracting parties to the salvage agreement, i.e. the salvor or the salvees (including cargo interest). The master (or the shipowner) might, with no "undue influence or the influence of danger" to them, enter into a salvage contract with salvor, but this contract exists inequitable terms to the cargo interest. In this case, the cargo interest seems not to be entitled to request the court to annul or modify this inequitable contract in accordance with Article 7 of the 1989 Salvage Convention.[236]

Another instance is, as Prof. Gaskell suggests, that a broad approach should be taken the words "undue influence", which may include in the expression cases involving fraud or misrepresentation, that any one of the contracting parties can not request the court to annul or modify a contract under

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[236] However, this presumption will not affect the right of cargo interest to claim damages from the master (or shipowner) who entered an inequitable contract/terms on behalf of him. See also discussion in para. 3.5.2.c.

the 1989 Salvage Convention, even which was entered into involving fraud or misrepresentation, but exists no inequitable terms. My suggestion is any situation not mention in Article 7 of the 1989 Salvage Convention is better referred back to the general contract law but not to widen the interpretation of Article 7 of the 1989 Salvage Convention. Since Article 7 of the 1989 Salvage Convention was incorporated as a part of English law, it is possible that the effect of Article 7 may be prevail to the English general contract law. The risk is a contracting party may annul the contract with fraud or concealment vitiated under the general contract law, but can not annul a salvage contract under Article 7 of the 1989 Salvage Convention.

The second circumstance which a contract or any terms may be annulled or modified is "the payment under the contract is in an excessive degree too large or too small for the services actually rendered" (Article 7.b). This article deals with the situation where a fixed price salvage contract is agreed and an excessive price can be reduced to a reasonable amount.[237] As mentioned, the 1989 Salvage Convention exists no intention to extend the meaning of "the contract" under Article 6 and 7 beyond the contracts of salvage between the salvor and salvees. It is therefore that Article 7 of the 1989 Salvage Convention does not apply to any towage contract, sub-contract and employment contract.

3.6 Short Conclusion

The 1989 Salvage Convention, likes as other international conventions, abounds in compromising colours between the Contracting States. More specially, the compromises exist in the 1989 Salvage Convention not only between the Contracting States but more importantly also between the salvage parties (salvors and salvees) and the insurance parties. The word "compromise" is always accompanying with defects and arguments. As discussed in this chapter, the questions disclosed in the *Nagasaki Spirit* case merely represent a small piece of a huge iceberg. So far as I knew, the Salvage 2000 and or LOF 1998 are still in preparation. By reference to the present reports,[238] the said

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[237] Prof. Gaskell, *Annotations on Merchant Shipping (Salvage and Pollution) Act 1994,* Current Law Statutes 1994 vol. 2, at p. 28-42.

[238]Lloyd's List, 12/1997, "Dilemma over new terms for salvage"

Salvage 2000 or LOF 1998 seem to be intended merely to overcome the problems in assessing the Article 14 special compensation. The *Nagasaki Spirit* case might really result in some difficulties in assessment, but we could not expect more and more Salvage 2001, 2002 or LOF 1999 or 2000 will be created to overcome any further problems concealed in the 1989 Salvage Convention, for example the narrow interpretation to the words "in the circumstances set out in paragraph 1" in Article 14.2 of the 1989 Salvage Convention. My suggestion is, before any revision are made to the 1989 Salvage Convention, an overall revision to the Lloyd's Open Form 1995 is needed in order to give more clarification and to reduce any potential arguments comes from the 1989 Salvage Convention.

Lloyd's List, 14/10/1997, "P&I clubs near salvage deal"

Lloyd's List, 23/10/1997, "Will salvage question bring another annus horribilis?"

Lloyd's List, 23/10/1997, "Good progress in London contract talks"

Lloyd's List, 31/1/1998, "Lloyd's Agents - Department Optimistic on LOF revisions"

Lloyd's List, 23-24/12/1997, "Salvage law needs the saving grace of simplification"

CHAPTER 4

Chapter 4

The Impacts of the 1989 Salvage Convention on Marine Insurance in Law and Practice

The 1989 Salvage Convention, as discussed in the third chapter, introduces some new schemes or provisions unseen and differ from the 1910 Salvage and Assistance Convention and the traditional salvage law. It implies the risks covered for preventing a loss against under the 1906 Marine Insurance Act and the practical policies/rules will be sequentially affected by these new schemes.

The 1989 Salvage Convention directly results in the amendment of Rule VI of the 1974 York-Antwerp Rules in 1990. The 1974 York-Antwerp Rules as amended 1990 Rule VI merely deals with the allowance as to the 1989 Salvage Convention Article 13.1(b) environmental enhanced reward and Article 14 special compensation in respect of a general average matter, but nothing more. This chapter will discuss the impacts of the new schemes or provisions of the 1989 Salvage Convention on the marine insurance law and practice and will also try to discover any possible conflicts and problems resulting from these new schemes may contain in the 1906 Marine Insurance Act and the practical policies and rules.

4.1 Salvage under Maritime Law

Section 65(2) of the 1906 Marine Insurance Act defines "salvage charges" means the charges recoverable under *maritime law* by a slavor independently of contract. The 1989 Salvage Convention introduces some provisions did not exist in the traditional law of salvage. A simple question is whether the 1989 Salvage Convention can be deemed as the "maritime law" defined under the 1906 Marine Insurance Act section 65(2) ?

Section 65(2), as discussed in paragraph 1.2.1.4, may originate from the

judgement of Lord Blackburn in the *Aitchison v. Lohre* (1879) case[1]. It is generally accepted that the English salvage law in maritime has evolved in two ways: it has grown under the maritime law based on the *Rules of d'Oleron* 960 A. D. (or called *narrow maritime law salvage*) and it was also created by statute (or called *board maritime law salvage*). Whether the words "maritime law" in the Lord Blackburn's decision and section 65(2) of the 1906 Marine Insurance Act merely represented the narrow meaning of maritime law salvage or also include its board meaning ? The *Aitchison v. Lohre* 1879 case provided no clear advise on this question. In The *Gaetano* and The *Maria* (1882) case, it was generally stated that the English maritime law:

> .....is not the ordinary municipal law of the country, but it is the law which the English Court if Admiralty either by Act of Parliament or by reiterated decisions and traditions and principles has adopted as the English maritime law.[2]

To examine the pre-M.I.A. life salvage cases may be important since life salvage was basically created by statute. The *Nourse v. Liverpool Sailing Ship Owners' Mutual Protection and Indemnity Association* (1896) might be the sole case which dealt with the life salvage and marine insurance in the 19th century. In that case, the vessel *Normannia* rescued the master and crews of the *Arno* in danger and later, quite independently of that operation, the *Arno* was picked up by another vessel. The owner of the *Normannia* recovered against the ship an award for true life salvage under the Merchant Shipping Act 1894. Mr. Justice Mathew held that such true life salvage award was not payable under a Lloyd's policy in the usual form, on the ground that the award in that case was not a true maritime salvage award but was a special award under the terms of the M.S.A. 1894. However, Justice Mathew also said that:

> There is nothing to shew that the statutes were intended to impart any new meaning to the policy of marine insurance, which existed long before the legislation in favour of salvors of life.[3]

Justice McNair in the *Bosworth (No.3)* commented the above J. Mathew's opinion that:

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[1] *Aitchison v. Lohre* (1879) 4 App. Cas. 755.

[2] The *Gaetano* and The *Maria* (1882) 7 P. D. 137 at p. 143

[3] *Nourse v. Liverpool Sailing Ship Owners' Mutual Protection and Indemnity Association* (1896) 2 Q.B. 16 at p. 19.

> I think it is clearly implicit in his judgement (i.e. Justice Mathew's judgement) that if the award in that case had been, like the *Wolverhampton Wanderers*' award in this case, a true maritime salvage award for saving ship and cargo, enhanced by consideration of life salvage, he would have held that that was recoverable under a Lloyd's policy.[4]

These cases may be concluded that 1) statutory life salvage under the M.S.A. 1854 or 1894 may be a source of English maritime law of salvage and also within the meaning of the "maritime law" under section 65 of the 1906 Marine Insurance Act, but 2) it is not recoverable unless it is incurred in preventing or as an ancillary part in preventing a loss by perils assured or subject to any express provision in the policy. Same deduction may also apply to the 1989 Salvage Convention since it was incorporated in the 1994 Merchant Shipping (Salvage and Pollution) Act as a part of the English law. Section 1(1) of the 1994 Merchant Shipping (Salvage and Pollution) Act provides:

> The provisions of the International Convention on Salvage, 1989 as set out in Part I of Schedule 1 to this Act (in this section and in Part II of that Schedule referred to as "the Convention") shall have the force of law in the United Kingdom.

For short, the 1989 Salvage Convention can be deemed as the "maritime law" under the definition of the salvage charges in section 65(2) of the 1906 Marine Insurance Act.

4.2 Life Salvage

4.2.1 The changes of salvage law in brief

The changes of life salvage in the 1989 Salvage Convention, as discussed in the third chapter, can be summarized that:

1. Article 16.2: life salvor is entitled to fair share of the *payment* awarded to the salvor, which includes not only the Article 13 property reward but also the Article 14 special compensation.
2. Article 13.1(e): expresses the skill and efforts of the salvors in salving

[4] The *Bosworth (No.3)* (1962) 1 Lloyd's List Law Reports 483, at p. 491.

life is one of the criteria in fixing the reward, though a well accepted practice does always enhance it in awarding the reward.

3. Article 23: two years limitation of action does only apply to the "payment" action which the life salvage action is not included.
4. Article 11: the State Party is imposed a duty to co-operation the salvage operations for the purpose of saving life as well as property and preventing damage to the environment.

Furthermore, two principles expressed in section 544 of the 1894 M.S.A. were repealed while the 1989 Salvage Convention was inescapably incorporated in the 1994 Merchant Shipping Act:

1. the owner of the property liable for life salvage (section 544.1 of the 1894 M.S.A.), but not the salvor;
2. life salvage was given priority over other claims (section 544.2 of the 1894 M.S.A.).

4.2.2 The impacts on the Marine Insurance Act 1906

The legal status of life salvage under the 1906 Marine insurance Act is very unsettled. Except for the liability incurred to the death or injury of a life, a life itself basically is not an insurable property under the 1906 Marine Insurance Act. Section 65(1) of the 1906 Marine Insurance Act provides "...salvage charges *incurred in preventing a loss by perils insured against* may be recovered as a loss by those perils". Unless we interpret these language so widely, the life salvage remuneration, either awards to pure life salvor or is enhanced in the reward to the property salvor, is not the "salvage charges" as defined. McNair J in the *Bosworth (No.3)* said:

> it needs possible a little stretching of the language to say that a salvage award in so far as it reflects an element of life salvage gives rise to a charge incurred in preventing a loss by perils insured against. I think the answer to that is that by the practice of the Admiralty Court an award made in these circumstance is treated as being and is in fact, an award for services rendered to the ship and cargo." [5]

[5] The *Bosworth (No.3)* (1962) 1 Lloyd's List Law Reports 483 at p. 490.

It may be a problem while the 1994 M.S.A repealed Section 544.1 of the 1894 Merchant Shipping Act. Section 544.1 of the 1894 M.S.A., as mentioned, expressed *the owner of the property salved* (the vessel, cargo or apparel) shall be liable for life salvage. The "salvage charges" as defined in section 65.1 and section 65.2 of the 1906 Marine Insurance Act are the charges recoverable by a salvor falls upon *the owner (the assured) of the subject matter insured.* The 1989 Salvage Convention expresses the subject which the life salvor is entitled to fair share is "the payment" awarded to the salvor (property or environmental), but not the owner of the property salved or shipowner. In other words, the "fair share to the payment awarded to the salvor" is not the salvage charges as defined in section 65.2 of the 1906 Marine Insurance Act, since the object who has to pay the "fair share payment" is now *the salvor,* but not *the salvee (the assured).* If this suggestion is correct, the insurers either property or P&I shall be not liable to any fair share payment claim. Furthermore, in case the tribunal enhanced the salvage reward (Article 13 the 1989 Salvage Convention) in taking into account of the possible fair share from other life salvor,[6] the insurers will be also not liable to the said enhancement. For short, since the 1989 Salvage Convention was incorporated in the M.S.A. 1994, section 65 of the 1906 Marine Insurance Act does no longer apply to the said salvage fair share claim from the other salvor who successfully saved the life.

4.2.3 The impacts on the insurance practice

Property insurers are still liable to the life salvage enhanced in the property reward but only to the circumstance that the reward is enhanced in accordance with Article 13.1(e) of the 1989 Salvage Convention (i.e. the salvor salved the subject-matter insured who also saved the life). In accordance with the 1989 Savage Convention Article 16 (or the 1994 M.S.A.), the property owners are not liable to the fair share payment claimed by the salvor (life salvor) who was not also the salvor rendered service to the subject matter insured. In such a case, the owner (assured) of the property will probably face with no insurance cover on the "fair share payment" under the present Institute policies in case that the

[6] As discussed in Chapter 3 para 3.1.2, this paper basically do not accept the suggestion which the tribunal shall enhance the Article 13 reward in considering the effort of saving the life by other salvor. But it is possible that the tribunal may take into account the "equitable part" which may be claimed for the preservation of life, as suggested by Mr. Ina. Wildeboer and Prof. Gaskell.

tribunal wrongly enhanced the Article 13 reward in taking into account of the other salvor's efforts in salving the life.

The circumstance may be more complex to P&I insurance. Since the 1989 Salvage Convention is accepted as the new "maritime law" under section 65(2) of the 1906 Marine Insurance Act, special compensation recoverable by the salvor may be deemed as the "salvage charges" as defined in section 65 of the 1906 M.I.A. The 1989 Salvage Convention Article 14.1 special compensation as the salvor's expenses means the out-of-pocket expenses and a fair rate reasonably and actually incurred in the salvage operation. In accordance with Article 14.3 and Article 1(a) of the 1989 Salvage Convention, the said salvor's expenses should not include any expenses incurred for saving the life, since the "life" is not the express subject of the "salvage operations" as defined. On the other hand, The 1989 Salvage Convention Article 14.3 provides "Salvor's expenses.....taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (h)", in which the Article 13.1(e) is also not included. Namely that, the tribunal shall not take into account the "skill and efforts of the environmental salvor in salving the life" in assessing the Article 14 special compensation (or salvor's expenses). For short, the 1989 Salvage Convention Article 14 special compensation basically contains no "life salvage enhancement" factor. Furthermore, as discussed, the P&I insurers shall be not liable to any life salvor's fair share claim on the special compensation awarded to the *salvor.*

As discussed in paragraph 2.5.3 in the second chapter, the P&I clubs invariably cover life salvage but only to the extent that such life salvage payment are not recoverable under the hull policy. For instance, Rule 20.10 of the Standard P&I Club 97/98 Rules states:

> Life salvage shall be recoverable to the extent only that the same is not recoverable from hull underwriter on the entered ship.

According to this rule, it may be assumed that the shipowner member seems to be entitled to claim from his P&I Club for the "life salvage fair share claim" (if incurred) unrecoverable from the hull insurance in case that the tribunal wrongly enhanced the Article 13 reward in taking into account of the other salvor's efforts in salving the life.

4.2.4 The suggestion

The fact is the timely life salvage operation in today is always rendered by a salvor (or saver) other than the property salvors. In general, the substantive impact of the "life salvage" regime under the 1989 Salvage Convention on the 1906 Marine Insurance Act is that the insurers, either property or P&I insurers, are no longer liable to any *salvage charges* originated or enhanced by the other (life) salvors' "payment fair share" in accordance with Article 16 of the 1989 Salvage Convention. However, an academic viewpoint suggested by some scholars that "the other life salvors' payment fair share may be equitably taken into account in assessing the Article 13 reward" (see discussion in paragraph 3.1.2) may cause some difficulties in applying Article 13 of the 1989 Salvage Convention as well as the recoverable "salvage charges" in section 65 of the 1906 Marine Insurance Act.

It is not only a policy issue whether the English insurers shall be resumed to cover the gap arising from the 1989 Salvage Convention (or the 1994 M.S.A.), but also is a technical problem how to resume this coverage. The legal relationship between the salvage parties is different from the insurance parties. Even though an insurer in an insurance policy expresses to cover the said life salvage "fair share payment", the insurer still involves no liability to indemnify it since the assured incurred no legal liability to pay such life salvage "fair share payment" in accordance with Article 16 of the 199 Salvage Convention.

The law is clear that the subject of the life salvor's fair share is the "*payment awarded to the property and environmental salvor*", but not the owner (i.e. the assured) of the vessel or other property. Unless the assured is legally imposed the liability to pay such "payment fair share", the insurer in any event involves no liability to this "payment fair share claim" to the assured. Another problem is that any intentions to transfer the property/environmental salvors' "payment fair share" liability to the owner of the vessel or other property will endanger the legal position of life salvage and the balance achieved in the 1989 Salvage Convention. On the other hand, though the 1989 Salvage Convention does not prohibit the salvage parties may mutually conclude an agreement, for example by inserting an occasional clause in the LOF, to agree that the salvees (the owners) agree to compensate the salvor's (the contractor) liability to pay other life salvor's "fair share payment", but the problem is this particular agreement does not naturally bind the insurers, as it has to always keep in mind that the assured is always imposed an implied duty not to endanger the insurers' right and interest.

For short, unless the law is changed, it seems that it is difficult to find a way

to resume the insurers' liability on the said other life salvor's "payment fair share" either the insurer expresses to cover it in the policy or by inserting an occasional indemnity clause in the salvage agreement. However, P&I Clubs shall be reminded that, subject to the present wording used in their Rule Book, they may be further liable to the "payment fair share" not covered by the vessel hull underwriters.

4.3 The Article 8 Duties

4.3.1 The changes of salvage law in brief

The traditional salvage law exists a principle that a master whose ship has suffered damage owes a duty to take reasonably care to preserve the ship and it cargo and bring to their destination as cheaply and efficiently as possible. This principle represents the master is owed an implied duty to take timely and reasonable to salve the vessel and other property in danger. As discussed in paragraph 3.3 in the third chapter, the 1989 Diplomatic Conference decided not to include this duty in the 1989 Savage Convention. The 1989 Salvage Convention Article 8.1 expresses four different duties on the salvor and Article 8.2 provides three duties on the owner and master of the vessel and the owner of other property.

4.3.2 The impacts on the Marine Insurance Act 1906

It seems existed no such duties either on the salvors or on the salvees (the owner or master of the vessel and the owner of other property) contained in Article 8 of the 1989 Salvage Convention before the enactment of the 1906 Marine Insurance Act. The performance of these duties may incur expenses or result in loss or damage to the property. On the other hand, any salvage parties failed to exercise due care to perform these duties may be entitled the other salvage parties to claim damages. It needs to examine the relationship between these expenses, loss or damage and damages claim under the 1989 Salvage Convention and the various kind of expenses or charges (salvage charges, general average, particular charges and suing and labouring expenses) incurred

in preventing a loss by perils insured under the 1906 Marine Insurance Act as well as the duty to sue and labour.

4.3.2.1 The recoverable salvage charges in section 65 of the 1906 M.I.A.

The expenses incurred by the salvor in performing the Article 8.1 duties is a criteria for assessing the salvage reward under Article 13.1 of the 1989 Salvage Convention. It is the salvage charges as defined in the section 65.2 of the 1906 M.I.A. On the other hand, breach the Article 8 duties may result in damages claim from the other salvage party who suffers loss or damage. It is still unsettled that whether or not the said damages claim may affect the assessment of the reward or special compensation payable to the salvor. However, any damages claim will absolutely affect the final payment between the salvage parties. What is the "*charges recoverable* under maritime law....." in the 1906 M.I.A. section 65.2 ? The 1906 M.I.A. section 65.2 defines "salvage charges" means the charges recoverable under maritime law by a *salvor* independently of contract. According to the wording, the charges recoverable may include the original salvage payment and the salvor's damages claim (by reason of the salvee breached the Article 8.2 duties), but not include any salvee's damages claim (by reason of the salvor breached the Article 8.1 duties) or salvee's expenses incurred in performing Article 8.2 duties. In other words, whether the salvage payment to be taken into account the salvor's damages claim or not, the salvee's failure in performing his convention duties is covered under the section 65(2) of the 1906 Marine Insurance Act. This deduction may surprise the underwriter who intends not to accept this unexpected risk. A better suggestion is to further examine:

1) whether the "salvor's damages claim" is incurred in preventing a loss by the perils insured against (section 65.1 of the 1906 M.I.A.) ? and
2) whether the salvee fails to perform the convention duties is deemed also as the breach of the duty to sue and labour ?

4.3.2.2 The relationship with section 55 of the 1906 M.I.A.

For the first question, the nature of "salvor's damages", which results from the

salvee failed to perform his duties under Article 8.2 of the 1989 Salvage Convention, may include following circumstances: a) more difficult or heavier works have to be done by the salvor; or b) unable to claim the reward as the salvee's failure resulted in no useful result; or c) salvor's liability to any third party (see also discussion in paragraph 3.3.2.2.1). It is sometimes difficult to judge in what circumstance the salvor's damages is incurred for preventing a loss by peril insured. This is a "proximate cause" problem under section 55 of the 1906 Marine Insurance Act.

Section 55.1 of the 1906 M.I.A. provides the insurer is liable for any loss proximately caused by a peril insured against. Section 55.2(a) of the 1906 M.I.A. further states the insurer is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew. In accordance with these provisions, it is suggested that the recoverable salvor's damages claim under section 65.1 of the 1906 M.I.A. is the damages incurred only when the master of the vessel, with negligence or misconduct, failed to perform the Article 8.2 duty, but not include the negligence or misconduct of the owner of vessel or other property failed to perform the same duties.

4.3.2.3 The relationship with section 78 of the 1906 M.I.A. - suing and labouring

4.3.2.3.1 The duty of suing and labouring

For the second question, section 78.4 of the 1906 M.I.A. provides "It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss." The duty to co-operate with the salvor under Article 8.2(a) of the 1989 Salvage Convention is apparently satisfied the elements of the duty to sue and labour, since failed to co-operate might cause more difficult or heavier salvage works or even resulted in no useful results. The duty to accept redelivery under Article 8.2(c) of the 1989 Salvage Convention seems unable to be deemed as the duty to sue and labour, as bearing in mind that the subject-matter insured is presumed in a safe position and incurs no problems to further avert or minimize a loss.

It is a problem that whether the statutory duty to prevent or minimize damage to the environment under Article 8.2(b) of the 1989 Salvage Convention

is also a duty to sue and labour under the 1906 Marine Insurance Act. The duty to sue and labour is to avert or minimize a *loss covered by the policy*. It may be argued that the "damage to the environment" is not a kind of *loss* at least under the property insurance. A better suggestion is to consider whether or not the owner or master who performs this duty will minimize the *salvage charges* (a kind of "Partial Loss"). The skill and efforts of the salvors in preventing or minimizing damage to the environment now is one of the express criteria for assessing the reward in Article 13.1(b) of the 1989 Salvage Convention. As discussed in paragraph 3.3.2.2.3, the salvee basically owes no direct duty to exercise due care to prevent or minimize damage to the environment. The words "in so doing" in Article 8.2(b) of the 1989 Savage Convention represent this environment protection duty is attached merely in performing the Article 8.2(a) duty. The salvee failed to co-operate with the salvor in preventing or minimizing damage to the environment may cause more difficult or heavier environmental protection works have to be done by the salvor. These difficult and heavier works represent more Article 13.1(b) environmental reward may be enhanced to the salvor. According to this deduction, it may be assumed that the statutory duty of the owner and the master to prevent or minimize damage to the environment under Article 8.2(b) of the 1989 Salvage Convention may be considered as also a duty to sue and labour under marine insurance, as in performing this duty may also minimize the *salvage charges* might have been incurred.

Breach the suing and labouring duty imposed by section 78.4 of the 1906 M.I.A., as discussed in paragraph 1.4.2.3, may be entitled the insurer to set off or counterclaim damages. In other words, the insurer is not liable to any part of salvage charges which arose from or enhanced by reason of the salvee (assured) failed to perform such duty. The conflict exists between section 78.4 and section 55.2(a) of the 1906 M.I.A. in the *Gold Sky* case may also happen in a salvage case. My suggestion is, as discussed in paragraph 1.4.2.4, the insurers still have to pay the "salvor's damages claim" resulted from the master of the vessel failed to perform his convention duties (i.e. the sue and labour duty), but not to the same claim which resulted from the owner of the vessel or the owner of other property failed to perform the convention duties.

4.3.2.3.2 The indemnity of the suing and labouring expenses

The salvee (the assured) may incur some expenses or cause some loss or damage while in performing such suing and labouring duty (i.e. also the Article 8.2(a) and Article 8.2(b) of the 1989 Salvage Convention). Theoretically, the expenses and loss or damage incurred by the salvee is not *salvage charges* as defined in section 65 of the 1906 M.I.A. It may be a general average loss or general average expenditure if incurred for the purpose of preserving the property imperilled in the common adventure. It is noted that general average losses and contributions and salvage charges as defined in the 1906 Marine Insurance Act are not recoverable under the suing and labouring clause. These expenses may be a particular charges or suing and labouring expenses if incurred solely in connection with one particular interest.

4.3.2.4 The relationship with section 66 of the 1906 M.I.A. - general average

Salvage charges and general average are different recoverable partial loss under the 1906 Marine Insurance Act.[7] However and as discussed, the owner or master for performing the duties of the Article 8.2(a) and Article 8.2 (b) of the 1989 Salvage Convention may incur some expenses or suffer some loss or damage, and these expenses and loss/damage incurred are not *salvage charges* as defined in section 65 of the 1906 M.I.A. In other words, it is possible that the expenses and loss/damage may be incurred for the common adventure. Section 66.2 of the 1906 M.I.A. defines a general average act means where any extraordinary sacrifice or expenditure is voluntary and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure. It is noted that this definition expresses any sacrifice or expenditure is incurred for purpose of preserving the ***property*** imperilled. Reviewing the nature of the convention duties in Article 8.2 of the 1989 Salvage Convention, the sacrifice or expenditure incurred in performing the duty to co-operate with the salvor may be considered is for preserving the property imperilled. However, it will be difficult to say that the sacrifice or expenditure incurred in performing the duty the prevent or minimize damage to the environment is also for preserving the *property* imperilled. Again, it involves no general average problem to perform the duty to accept redelivery under Article

[7] Their similarity and difference see paragraphs 1.3.3.1 an 1.3.3.2.

8.2(c) of the 1989 Salvage Convention, since it is not incurred in time of peril. For short, only the sacrifice or expenditure incurred in performing the Article 8.2 (a) duty to co-operate with the salvor may be considered as a general average loss or general average expenditure under the present 1906 Marine Insurance Act,

4.3.2.5 The salvor's duties

Four different duties are imposed on the salvors to the owner of the vessel and other property in accordance with Article 8.1 of the 1989 Salvage Convention. The salvor fails to perform these duties may be entitled the salvee to claim damages.

4.3.2.5.1 The status of the salvor under the 1906 Marine Insurance Act

To examine the real status of the salvor under marine insurance is quite important before further considering his duties and the salvees damages claim. Whether a salvor can be deemed as the "assured's agent" or "any person employed for hire by the assured" under section 65.2 or section 78.4 of the 1906 M.I.A. will effect the related insurance claims or counterclaims.

Lord Blackburn in the *Aitchison v. Lohre* (1879), as discussed in paragraph 1.2.1.4, have drawn a line that a maritime law salvor do not exist the characters of the labour is by the assured, their agents or by the person whom have hired. In other words, the salvor can not be deemed as the "assured's agent" or "any person employed for hire by the assured" under section 65.2 of 1906 M.I.A. Furthermore, a maritime law voluntary salvor is not also the "assured's agent" under the section 78.4 of the 1906 M.I.A. as a salvor acts voluntarily but not being instructed by the assured to take steps to preserve the property or acts as agents by necessity.[8]

4.3.2.5.2 salvees' damages claim

Since the salvor can not be deemed as the "assured's agent" under section 78.4 of the 1906 M.I.A., the insurer is therefore not entitled to set-off or

[8] Further discussion, see paragraph 1.4.2.4.

counterclaim damages based on a wrong presumption that the salvor as the assured's agent who failed to perform Article 8.1 duties is to be deemed also fails to perform the suing and labouring duty under the section 78.4 of the 1906 Marine Insurance Act. However, it does not mean the insurer is therefore lost his right and interest to the consequent effect of the salvor failed to perform the convention duties. The salvor failed to perform the convention duties may result in two circumstances: a) the whole or part of the payment due to the salvor may be deprived if the circumstance in Article 18 of the 1989 Salvage Convention or other provisions which may also affect the amount of salvage reward are applied; or b) a damages claim by the owner of the vessel or other property who suffers loss or damage arising from the salvor's failure.[9] In accordance with the right of subrogation expressed under section 79 of the 1906 Marine Insurance Act, the insurer may be entitled to take over the interest of the assured and or is subrogated to all rights and remedies of the assured in and in respect of the subject-matter. The said rights and remedies may include the salvee's right of damages claim against the condemned salvor.

4.3.2.5.3 Unreasonable intervention request

Article 8.1(d) of the 1989 Salvage Convention provides the salvor owes a duty to the owner of the vessel or other property 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. On the other hand, it further provides that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable. As discussed in paragraph 3.3.1.1.7, this provision conceals lots of questions unsettled. With regard to the marine insurance, specially in considering the suing and labouring duty, Article 8.1(d) of the 1989 Salvage Convention contains an implication that the assured and its agents (e.g. the owner or master of the vessel or the owner of other property) owe a duty not to submit an unreasonable intervention request to the salvor. In case the assured breached this implied duty, the insurer may be not liable to "the salvor's unprejudiced reward" since the assured has taken an unreasonable suing and labouring measure. In other words, the 1989 Salvage Convention seemingly empowers the salvees an implied right to request the salvor to accept intervention, but actually in fact that, under the marine insurance, the salvees

[9] Further discussion, see paragraph 3.4.2.2

are imposed a more heavier duty not to submit an unreasonable request. For avoiding any disputes, it is suggested that it is better for the salvees (e.g. the assured or his master) to consult with even or obtain the insurer's agreement before they submit any intervention requests to the salvor.

4.3.3 The impacts on the marine insurance practice

The circumstances of the 1989 Salvage Convention Article 8 duties apply to the marine insurance practice are more complex than apply to the 1906 Marine Insurance Act. The marine insurance policies (e.g. Institute Clauses) practically incorporate the York-Antwerp Rules in the general average and salvage clause may be the most important reason which results in such complexion.[10]

The first paragraph of Rule VI (a) of the 1994 York-Antwerp Rule provides "Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or not, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure." The question is whether any expenses incurred for performing Article 8 duties or any damages claims arising from the other salvage party failed to perform his duties are allowed as general average ?

4.3.3.1 Salvor's expenses incurred in performing Article 8.1 duties

In accordance with Article 13 [specially refers to Article 13.1(f)] of the 1989 Salvage Convention, any expenses incurred by the salvor in carrying out the salvage operations (including in performing the Article 8.1(a), 8.1(b) and may be 8.1(c) duties) will be taken into account in assessing the reward. In other words, the expenses incurred in performing the Article 8.1(a), 8.1(b) and 8.1(c) duties, if incurred for the purpose of preserving from peril the property involved in the common maritime adventure, will be allowed as general average. An argument may arise while the salvor is in performing the Article 8.1(d) duty to accept the intervention of other salvor. The key issue is the word "*reasonableness*" of the

[10] The full detailed discussion on the subject of York-Antwerp Rules, see paragraph 2.2.

intervention request submitted by the owner or the master. The reasonable test is also used in deciding whether any sacrifice or expenditure incurred can be considered as a general average (Rule A of the York-Antwerp Rules). However, the purposes of these two "reasonable" are different. An intervention request to salvor might be found unreasonable but it does not mean or may be deemed that it is not a general average act. The words "should it be found" used in Article 8.1 (d) of the 1989 Salvage Convention may represent that the owner or master while he submits an "intervention request" not only have to consider whether his request is reasonable by reference to the salvage circumstance and the knowledge at that time while he submits such request, but also, even the owner or the master have exhausted his knowledge and judgement to submit the intervention request, such request may still be later challenged as unreasonable. However, a general average act reasonable or not under the general average law can not take into consider the later circumstance. Namely that, unless the owner or master has been fault in submitting such request (Rule D), it was a general average act in case such request was reasonably submitted subject to the circumstance and the knowledge at the time of the request being submitted. It is suggested that the other general average parties could not challenge such reasonable request by reference to any later evidences or circumstance unforeseen by the owner or the master while he submitted his request. For short, it is possible that an unreasonable intervention request may still be considered as a general average act. Namely that, the "salvor's unprejudiced reward" may be allowed as general average. This deduction shows the insurer may be liable to the 1989 Salvage Convention Article 8.1(d) "salvor's unprejudiced reward" though the back door of general average. However, as discussed in paragraph 4.3.2.5.3, the insurer seems not liable to such unprejudiced reward under the 1906 Marine Insurance Act.

4.3.3.2 Salvee's expenses incurred in performing Article 8.2 duties

According to section 65 of the 1906 M.I.A., the salvee's expenses incurred in performing Article 8.2 duties apparently are not the "salvage charges" as defined in section 65 of the 1906 M.I.A. The expenses incurred in performing the Article 8.2(a) and 8.2(b) duties for the purposes of averting a peril insured may be

considered as particular charges or suing and labouring expenses if incurred solely in connection with one particular interest. It may be a general average if was incurred for the common adventure. As discussed in paragraph 4.3.2.4, the expenses incurred in performing the Article 8.2 (a) duty may be considered as the general average expenditures under the 1906 M.I.A. if incurred for the common adventure; the expenses incurred for purpose of Article 8.2 (b) is not general average as it is incurred not for preserving the *property* imperilled; and it exists no general average issue while in performing the Article 8.2(c) duty as it is not incurred in time of peril. The most important difference between the 1906 M.I.A. and the practical policies (with the York-Antwerp Rules 1994 incorporated) is the salvee's expenses incurred in performing the Article 8.2(b) duty to prevent or minimize damage to the environment. Rule XI(d) of the 1994 York-Antwerp Rules provides some costs of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average[11].

4.3.3.3 Salvee's damages claim by reason the salvor fails to perform the Article 8.1 duties

Salvee's damages claim, as discussed in paragraph 3.3.1.1.3, may include the following circumstances: 1) a parallel right to deprive of the salvage payment under Article 18 of the 1989 Salvage Convention; 2) physical loss or damage suffered or expenses incurred by the salvees; and 3) third parties liability claim against the salvee. It may be better to discuss this issue under the insurer's right of subrogation. The principle is, to the loss, damage, expenses or liability expressly covered by the insurer, the assured is entitled to submit his alternative claim against his insurer (subject to the policy) or the condemned salvor (subject to the 1989 Salvage Convention or the salvage contract). However, the circumstance becomes more complex while the practical policies incorporate the 1994 York-Antwerp Rules. As mentioned, while the York-Antwerp Rules 1994 is applied, some kinds of loss, damage or expenses will be put into the general average melting pot.

4.3.3.4 Salvor's damages claim by reason the salvee fails to

[11] See also discussion in paragraph 2.2.6.

perform the Article 8.2 duties

As discussed in paragraph 4.3.2, the salvor's damages claim resulted from the salvee failed to perform the Article 8.2(a) and (b) duties may be included in the "salvage charges" claim under section 65.2 of the 1906 M.I.A. However, since these two convention duties may also be treated as the assured's duty to sue and labour, the recoverable salvor's damages claim by way of "salvage charges" shall be limited to the circumstance that the damages claim is resulted from the master's failure in performing the Article 8.2(a) and 8.2(b) duties, but not includes the owner's failure.

It is arguable that whether "salvor's damages claim" can be allowed as general average or not ? It is difficult to say the damages results from the "salvee's failure in performing the Convention duties" is a expenditure intentional and reasonably incurred for the common safety. In other words, "salvee's failure" in any events can not be treated as a general average act under Rule A of the 1994 York-Antwerp Rules. The problem arises while the Rule VI (salvage remuneration) stands its priority position than the Rule A. That means the said "salvor's damages claim" may be treated as the savage remuneration under the Rule VI of the 1994 York-Antwerp Rules. However, this assumption will be not prejudice any remedies or defences which may be open against or to the party whose fault gave rise to the expenditure.

Salvor's damages claim (if have) which resulted from the salvees failed to perform the Article 8.2(c) duty to accept redelivery, unlike the failure to perform Article 8.2(a) and 8.2(b) duties, is neither the salvage charges as defined, nor general average nor particular charges or suing and labouring expenses, as bearing in mind that such damages was not incurred in a time of peril and or was not incurred for averting a loss by perils insured.

4.3.4 Short conclusion and suggestion

The following table shows the expenses and damages claim incurred in performing or fails to perform the convention duties and the relationship with various charges under the 1906 M.I.A. and the differential application in the practical policies:

	The Convention duties in performing or fails to perform	1906 Marine Insurance Act	Practical policies (presumed 1994 Y. A. Rules in applied)
Salvor's expenses	Article 8.1(a) - incurred in carrying out salvage operation	❒ salvage charges (s.65) ❒ not general average or particular charges ❒ not suing and labouring expenses	⇨ general average if incurred for common adventure (special compensation excluded)
	Article 8.1(b) - incurred in preventing damage to the environment	❒ salvage charges (s.65) ❒ not general average or particular charges ❒ not suing and labouring expenses	⇨ general average if incurred for common adventure (special compensation excluded)
	Article 8.1(c) - incurred to seek assistance	❒ salvage charges (s.65) ❒ not general average or particular charges ❒ not suing and labouring expenses	⇨ general average if incurred for common adventure (special compensation excluded)
	Article 8.1(d) - incurred before accepting intervention (reasonable request)	❒ salvage charges if have had any useful result before accepting intervention ❒ not general average or particular charges ❒ not suing and labouring expenses	⇨ general average if have had any useful result for common adventure before accepting intervention (special compensation excluded)
Salvee's expenses	Article 8.2(a) - incurred to fully co-operate	❒ not salvage charges as not a charges recoverable by a salvor ❒ may be general average if incurred for common adventure ❒ may be particular charges if incurred for sole interest ❒ is also salvee's sue and labour duty	⇨ sue and labour expenses
	Article 8.2(b) - incurred in preventing damage to the environment	❒ not salvage charges as not a charges recoverable by a salvor ❒ not general average as not for preserving the *property* imperilled ❒ is also salvee's sue and labour duty	⇨ some expenses are allowable as general average under Rule XI(d) of 1994 Y.A. Rules
	Article 8.2(c) - incurred to accept redelivery	❒ not salvage charges as not incurred in preventing a loss by insured against ❒ not general average as not incurred in time of peril ❒ not particular charges as not averting a peril insured against ❒ not sue and labour duty as not in peril	
Salvor's damages claim	Article 8.2(a) - salvee failed to fully co-operate	❒ salvage charges (s.65) (only applies to the master's failure but not to the owner's failure) ❒ not general average or particular charges ❒ also salvee's sue and labour duty	⇨ general average if incurred for common adventure (special compensation excluded) but shall be without prejudice to Rule D.
	Article 8.2(b) - salvee failed to prevent damage to the environment	❒ salvage charges (s.65) (only applies to the master's failure but not to the owner's failure) ❒ not general average or particular charges ❒ also salvee's sue and labour duty	⇨ general average if incurred for common adventure (special compensation excluded) but shall be without prejudice to Rule D.
	Article 8.2(c) - salvee failed to accept redelivery	❒ not salvage charges as not incurred for purposes of preventing a loss (salvage charges) by perils insured ❒ not general average as not incurred in time of peril ❒ not particular charges as not averting a peril insured against ❒ not salvee's sue and labour duty ❒ not sue and labour expenses as is not incurred for averting or diminishing a loss covered.	
	Article 8.1(d) - incurred to accept intervention (for unreasonable request)	❒ it is arguable that whether the salvee owes a sue and labour duty to submit a reasonable intervention request. ❒ may be general average if for common adventure and the request was reasonable under that circumstance of submitting. ❒ may be salvage charges if the request was reasonable under that circumstance of submitting.	⇨ general average if incurred for common adventure (special compensation excluded)
Salvee's damages claim	Article 8.1(a) - salvor failed to carry out salvage operation	❒ may be deprived of the salvage payment (salvage charges) ❒ or subrogation right	⇨ some kinds of loss, damage or expenses may be put into the general average melting pot.
	Article 8.1(b) - salvor failed to prevent damage to the environment	❒ may be deprived of the salvage payment (salvage charges) ❒ or subrogation right	⇨ some kinds of loss, damage or expenses may be put into the general average melting pot.
	Article 8.1(c) - salvor failed to seek assistance	❒ may be deprived of the salvage payment (salvage charges) ❒ or subrogation right	⇨ some kinds of loss, damage or expenses may be put into the general average melting pot.
	Article 8.1(d) - failed to accept intervention	❒ may be deprived of the salvage payment (salvage charges) ❒ or subrogation right	⇨ some kinds of loss, damage or expenses may be put into the general average melting pot.

Generally speaking, the 90 years old Marine Insurance Act 1906 can adapt itself well to these new convention duties. The major problems of the new convention duties which may affect the 1906 Marine Insurance Act as discussed include:

1. whether or not the "salvage charges" as defined in section 65.2 of the 1906 Marine Insurance Act can be widely interpreted to include the "salvor's damages claim" resulted from the salvee failed to perform his convention duties?
2. whether the duties imposed on the salvee under the 1989 Salvage Convention are also to be deemed as the duty to sue and labour ?
3. whether a salvor, either pure or contractual, can be deemed as the assured's agents or servant under the suing and labouring clause ?
4. whether to submit a reasonable intervention request by the salvee (the assured) is also a kind of duty to sue and labour ?

This paper, as discussed previously, has given some comments and suggestions on these issues. My further suggestion is that any consequences of the breach of the convention duties are better to be distinguished from the assessment of the salvage payment, unless the 1989 Salvage Convention provides clearly that the payment may be deprived of or enhanced in taking such consequence into account. In other words, as suggested in the third chapter, the tribunal shall be suggested not to mix them together to achieve a single salvage payment figure.

The major problem which further affects the practical policies is the incorporation of the 1994 York-Antwerp Rules.

4.4 The York-Antwerp Rules 1994

A resolution was made in the 1989 Diplomatic Conference to request the amendment of the York-Antwerp 1974 to ensure the Article 14 special compensation is not subject to general average, which as we may see is the Attachment 2 of the 1989 Salvage Convention. Following this resolution, the 1974 York-Antwerp Rules - Rule VI was amended in 1990. On the other hand, the 1994 York-Antwerp Rules further introduces some new rules which may relate to the 1989 Salvage Convention and other environmental factors.

4.4.1 Rule VI - salvage remuneration

Paragraph 2.2 of the second chapter has examined the background, its applicable scope of the Rule VI of the 1994 York-Antwerp Rules and its relationship between general average and traditional salvage law. This section intends merely to discuss the potential impacts and disputes of the 1989 Salvage Convention on the 1994 York-Antwerp Rules.

4.4.1.1 Rule VI (a) first paragraph

The wording "expenditure incurred by the parties to the adventure in nature of salvage" used in Rule VI (a) first paragraph of the 1994 York-Antwerp Rules may contain two implications that

1) it represents *the allowable expenditure* incurred by the parties to the common adventure, but not *the recoverable reward* awarded to the salvor;
2) the allowable expenditure applies only to the direct expenditure for the salvage services or strictly incidental thereto.

These wording and its implications provide no affirmative answer to the real extent of the allowable "expenditure" incurred. The circumstance became more difficult since 1) the 1990 Rules -Rule VI used the words "provided that" instead of the "to the extent that" used in the 1974 Rules[12] and 2) the 1989 Salvage Convention contains some factors which may increase or decrease the recoverable salvage reward. For instance, the salvor's damages claims which resulted from the salvee failed to perform the 1989 Salvage Convention duties. It may be a problem that whether such damages claim can be treated as the "expenditure incurred" if the condemned salvee has paid it ? According to the wording "to the extent that" used in the 1974 York-Antwerp Rules, said damages claim could not be treated as the expenditure, since it was not incurred relatively in carrying out a salvage operation for purpose of preserving the property in the common adventure from peril. However, according to the present

[12] See also discussion in paragraph 2.2.3.

wording "provided that" used in the 1990 / 1994 York-Antwerp Rules, once the salvage operation was carrying out for purpose of preserving the property to the common adventure from peril, any expenditures incurred by the parties, either the salvage reward contribution or the salvor' damages claim, may be allowed as general average. In other words, the present Rule VI of the 1994 York-Antwerp Rules could not prohibit the salvor's damages claim which resulted from the salvee's failure in claiming general average. The other innocent salvees (other interested parties in the common adventure) shall bear onus of proof if they intend to exercise their right of remedies or defences in accordance with Rule D of the York-Antwerp Rules.

4.4.1.2 Rule VI (a) second paragraph

As discussed, according to the wording "provided that" used in the first paragraph of Rule VI(a) of the 1994 York-Antwerp Rules, in case the salvage operation was carrying out for purpose of preserving the property to the common adventure from peril, any expenditures incurred by the parties, either the environmental enhanced reward paid by all salved property interests or the special compensation solely paid by the shipowner, may be all allowed as general average. For clarify reason, in addition to expressly exclude the special compensation from general average in paragraph (b) of Rule VI of the 1994 York-Antwerp Rules, this second paragraph was created in the 1990 amended Rules to express the inclusion of the 1989 Salvage Convention Article 13.1(b) environmental enhance factor.

The problem may incur while interpreting the wording "the skill and efforts of the salvors in preventing or minimising damage to the environment" in Article 13.1(b) of the 1989 Salvage Convention. As discussed in paragraphs 3.1.3 and 3.4.1.1.1.4, these wording used in Article 13.1(b) of the 1989 Salvage Convention contains no successful element. Namely that, any skill and efforts of the salvor in preventing or minimising damage to the environment, whether successful to save the environment or not, will be taken into account in assessing the 1989 Salvage Convention Article 13 reward.

A further difficulty arises from the lack of connection between salvage operation rendered to the property and saving the environment.[13] Namely that,

[13] See discussion in paragraph 3.1.3.

the skill and efforts of the salvors in preventing or minimizing damage to the environment, whether it is directly related to the salvage operation or not, will be taken into account in assessing the 1989 Salvage Convention Article 13 reward. For example, the expenses incurred by the salvor to clean up the escaped oil. The present 1994 York-Antwerp Rules seems could not provide an efficient fire wall to against such clean-up costs to be allowed as general average through the back door of the numbered Rule VI. Rule VI of the 1994 York-Antwerp Rules stands its priority position against the lettered Rule C, which the latter provides the expenses incurred in consequence of the escape of pollutant substances shall not be allowed in general average. Furthermore, according to the wording "provided that" used in the first paragraph of Rule VI (a), in case the salvage operations were carried out for the purpose of preserving the property to the common adventure from peril, any expenditures incurred by the parties, including the salvor's environmental enhanced reward which took into account of "the spilled oil clean- up costs", shall be allowed as general average.

4.4.1.3 Rule VI (b)

As discussed, Rule VI(b) was created in 1990 following the resolution in the Attachment II of the 1989 Salvage Convention that the payments made under Article 14 are not intended to be allowed in general average. The 1994 York-Antwerp Rules - Rule VI paragraph (b) forms an exception to the paragraph (a), since according to the wording of paragraph (a), special compensation may be considered as the expenditure incurred by the parties to the common adventure in the nature of salvage.

This exception was created not subject to the general average principle of the community of interest or equity, but come from the known 1981 Montreal Compromise achieved by the London insurance market. The shipowner may argue, since he was merely enforced or selected by the 1989 Salvage Convention to pay the special compensation in advance, why this special compensation could not be allowed as general average if the salvage operation in question was really rendered for the common adventure from peril ! The special compensation scheme was designed to provide a safety net security to indemnify the salvor's expenses who rendered salvage operation to a vessel or its cargoes threatened damage to the environment. This scheme may change the traditional no cure no pay salvage law and represents as a kind of new

salvage law. However, it does not mean this change in the law of salvage shall also affect the law of general average. General average deals with not the balance between the insurance market but the equity among general average parties. It is difficult to say the introduction of the Rule VI in the 1974 York-Antwerp Rules was a mistake, but it actually provides an improper scheme to link and complicate the two wholly independent systems under the maritime law.

Rule VI (b) of the 1994 York-Antwerp Rules excludes the special compensation to the extent specified in Article 14.4 of the 1989 Salvage Convention from allowing general average. The problems discussed in paragraph 3.4.1.1.2.4 may also apply to this Rule VI (b).

4.4.2 Rule C - general exceptions on environmental damage

The 1994 York-Antwerp Rules - Rule C new second paragraph reads "In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure." This Rule C new second paragraph forms as a part of "pollution compromise" in the 1994 Sydney Conference. It may originate from the ideas of environmental salvage appeared in the 1989 Salvage Convention,[14] but represents not a rule only relates to the environmental salvage. The exclusion appears under this rule applies not only to any physical loss or damage to the environment as well as its clean-up costs but also to the liabilities incurred to third parties in respect of the environmental damage.

The new salvage law implied in the Rule VI stands on its priority position than the lettered Rule C. This priority position represents the following circumstances appeared either expressly or impliedly under the 1989 Convention may be considered as an exception to the Rule C of the 1994 York-Antwerp Rules:

a. the reward recoverable by the salvor under Article 13 of the 1989 Salvage Convention. it includes the skill and efforts of the salvors in preventing or minimizing damage to the environment and may also

[14] See discussion in paragraph 2.2.6.

include the time used and expenses and losses incurred by the salvor and the risk of liability and other risks run by the salvor in performing its duty to exercise due care to prevent or minimize damage to the environment.

b. salvor's damages claim which may or may not be included in the Article 13 reward, by reason of the salvee failed to perform the 1989 Salvage Convention Article 8.2 duties which include the duty to prevent damage to the environment.

These exceptions imply that the initial intention of the 1994 York-Antwerp Rules Rule C second paragraph not to apply any physical loss or damage to the environment, its clean-up costs but also to the liabilities incurred to third parties in respect of the environmental damage may be weaken through the back door of Rule VI - salvage remuneration of the 1994 York-Antwerp Rules.

4.4.3 Rule XI(d) - treatment of environmental damage prevention measures

Another exception to the Rule C is the new Rule XI (d) introduced in 1994 York-Antwerp Rules. As discussed in paragraph 2.2.6.2, it is hardly to imagine the Rule XI(d) was created merely to cope with the 1989 Salvage Convention. The effects of the Rule XI(d) is that some kinds of the salvee's expenses incurred in performing the 1989 Salvage Convention Article 8.2(b) duty may be allowed as general average. According to the 1906 Marine Insurance Act, the expenses incurred by the salvee are not salvage charges as they are not a charges recoverable by a salvor under the 1906 M.I.A. section 65.2. They are not the general average since the expenses incurred is not for preserving from peril the *property* for the common adventure under section 66 of the 1906 M.I.A. It may be also not the particular charges or suing and labouring expenses since the expenses incurred are not for purpose of averting or diminishing a loss covered.

4.4.4 Short conclusion and suggestion

The York-Antwerp Rules 1990 or 1994 were amended after the enactment of the 1989 Salvage Convention. Irrespective of the basic issue of whether the salvage

may or may not be introduced in the general average system, most problems and issues as discussed previously come from the defects of the 1989 Salvage Convention but not the York-Antwerp Rules. The key issue under the present 1994 York-Antwerp Rules is the words "provided that" used in Rule VI (a) first paragraph. It is suggested that the words "to the extent that" used in 1974 York-Antwerp Rules is better than the present wording "provided that" in order to provide an efficient fire wall against the defects come from the 1989 Salvage Convention.

4.5 Insurers and Practical Insurance Policies

4.5.1 Hull insurance

Paragraph 2.4.1 of the second chapter have dealt with the related clauses under the 1983 Institute Time Clauses - Hull (ITC). The new ITC 1995 introduces some amendments on those related clauses reflect the 1989 Salvage Convention and the 1994 York-Antwerp Rules.

4.5.1.1 Clause 10 - general average and salvage

Clause 10 of ITC 95 (clause 11 of ITC 83) introduced two whole new sub-clauses (clause 10.5 and 10.6) and also added "Rule XI(d)" of the 1994 York-Antwerp Rules in the exclusion of the clause 10.3.

4.5.1.1.1 Clause 10.3

The clause, so-called as a policy G.A., allows the shipowner, whose ship sails in ballast not under charter, to claim any kind of expenses, disbursement or sacrifice, mainly are wage and maintenance at port of refuge and during the prolongation of the voyage, which as may be claimable in a real general average case. However, this policy G.A. clause in ITC 83 disallowed the Rule XX (2% commission) and Rule XXI (5% interest) of the York-Antwerp Rules and now in the ITC95 further disallows the Rule XI(d) of the 1994 York-Antwerp Rules from the policy G.A. clause.

Rule XI(d) of the 1994 York-Antwerp Rules, as discussed in paragraph 4.4.3, specially provides some kinds of costs for the measure undertaken to prevent or minimise damage to the environment may be allowed in general average. However, the hull insurer under 1995 ITC will not reimburse these costs under the "policy G.A." clause.

The choice of the adjust Rules under the 95 ITC is the 1994 York-Antwerp Rules. It represents any defects come from the 1989 Salvage Convention through the back door of the 1994 York-Antwerp Rules as discussed in paragraph 4.4 may also affect this "policy G.A." clause.

4.5.1.1.2 Clause 10.5 and 10.6

The new clause 10.5 and clause 10.6 read:

10.5 No claim under this clause 10 shall in any case be allowed for or in respect of

10.5.1 special compensation payable to a salvor under Article 14 of the International Convention on Salvage, 1989 or under any other provision in any statute, rule, law or contract which is similar in substance.

10.5.2 expenses or liabilities incurred in respect of damage to the environment, or the threat of such damage, or as a consequence of the escape or release of pollutant substances from the Vessel, or the treat of such escape or release

10.6 Clause 10.5 shall not however exclude any sum which the Assured shall pay to salvors for or in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken in to account.

These provisions apparently originate from the known "Montreal Compromise" in 1981 C.M.I. Montreal Conference and the "Pollution Compromise" in 1994 C.M.I. Sydney Conference, which these compromises have been all incorporated in the 1994 York-Antwerp Rules. However, the following table shows only 3 out of 4 conclusions achieved in those compromises are included in the ITC 95:

Compromises		contents of compromise	1994 York-Antwerp Rules	ITC - 1995
1981 Montreal Compromise	a.	property underwriters shall fund the total award for property salvage including any enhancement for preventing or minimizing damage to the environment	Rule VI (a) second paragraph	clause 10.6
	b.	ship's liability insurers (P&I Clubs) should fund the special compensation	Rule VI (b)	clause 10.5.1
1994 Sydney Pollution Compromise	a.	any expenses and pollution liabilities resulting from a general average act should themselves be excluded from general average	Rule C	clause 10.5.2
	b.	but, the costs incurred by the parties to the adventure to prevent or minimise such liability should in certain circumstance be allowable	Rule XI(d)	x

The effect of the ITC 95 does not include the second leg of the pollution compromise (i.e. the Rule XI(d) of the 1994 York-Antwerp Rules) is that any costs incurred by the parties to the common adventure to prevent or minimise such liability shall not be allowed in general average claim under the ITC 95. This exclusions represent a significant reduction in cover when compared to the ITC 83.[15] However, hull underwriters offer a partial buy-back provision in respect of this exclusion and the related clause is named "Institute General Average - Pollution Expenditure Clause Hull":

Institute General Average - Pollution Expenditure Clause Hull

(for use only with the Institute Time Clauses 1/11/95)

In consideration of an additional premium to be agreed, where the contract of affreightment provides for adjustment according to the York-Antwerp Rules 1994 this insurance is extended to cover vessel's proportion of General Average expenditure, reduced in respect of any under-insurance, which is allowable under Rule XI(d) of the York-Antwerp Rules 1994 and which would be recoverable under Clause 10 of the Institute Time Clauses - Hulls 1/11/95 but for Clause 10.5.2 therein.

[15] C. J. Barstow, ITC Hulls 1/11/95 Comparison with ITC Hulls 1/10/83 and analysis of changes, Richard Hog Limited at p.23.

This clause is subject to English law and practice

The buy-back clause -"Institute General Average - Pollution Expenditure Clause Hull" apparently is designed to fill up the gap of the second leg of the pollution compromise not covered by the ITC 95. But the question is that whether the gap is really filled up ? and whether or not this clause if bought back is therefore keep the ITC 95 with the same line as the York-Antwerp Rules 1994?

It has to note that the first leg of the pollution compromise was placed on the lettered Rule C of the 1994 York-Antwerp Rules. According to the Rule of Interpretation of the 1994 York-Antwerp Rules, the numbered Rule VI and Rule XI(d) take precedence over the lettered Rule C. However, the circumstance is different in the ITC 95. Clause 10.5 of the ITC 95, as an exception clause, stands its superior position than any other sub-clauses (except for clause 10.6) of clause 10. The latter (clause 10.5 of ITC95) will not cause difference in covering the Rule XI(d) costs in case the "Institute General Average - Pollution Expenditure Clause Hull" clause was bought back. However, it may exclude the claim comes from the possible grey area (of any expenses or liabilities incurred in respect of damage to the environment...etc.) between the Rule XI(d) (or clause 10.1) and Rule VI(a) (or clause 10.2 & 10.6).

An example may illustrate this possible gap. A salvor, while rendering service in salvaging property or in preventing or minimizing damage to the environment, may inevitably result in the escape of oil or other pollutant to the environment. According to the 1974 York-Antwerp Rules or its earlier versions, not only the oil escaped but also the direct consequence of the escaping, e.g. liability to nearby fish-farm owners and other environmental damage will be allowed as general average.[16] In this case, the salvor may run a risk of environmental liability claim from the pollution victims. According to the York-Antwerp Rules 1994, the pollution risk run by the salvor if paid may be the expenditure incurred under Rule VI(a) first paragraph (in accordance with Article 13.1(g) of the 1989 Salvage Convention) of the 1994 York-Antwerp Rules. Theoretically, this salvor's pollution liability damages however involves nothing about the criteria as stated in Article 13.1(***b***) of the 1989 Salvage Convention. However, according to the ITC 95 clause 10.5.2, since the said pollution liability relates nothing with clause 10.6, it will be inescapably excluded from claiming general average and salvage in his hull policy, even though the salvor may

[16] This illustration is similar to the first example in the Mr. C. J. Barstow's booklet (supra, at p.21.)

recover his damages in accordance with the 1989 Salvage Convention; or the York-Antwerp Rules 1994 Rule VI may allow such damages in general average.

Except for the second leg of the pollution compromise, ITC 95 clause 10 seemingly incorporates the other three conclusions achieved in the 1981 Montreal Compromise and 1994 Sydney Pollution Compromise, which as we may see in the 1994 York-Antwerp Rules. However, the fact is, according to the structure of clause 10 by using exception provision, the ITC 95 not only exhaustively rules out any expenses/liability incurred in respect of damage to the environment (except for Article 13.1(b) of the York-Antwerp Rules 1994), but also furthermore extends its exclusion to include the circumstance of "treat". For short, the ITC 95 has substantively changed the original design of the 1994 York-Antwerp Rules.

4.5.1.2 Clause 11 - duty of assured (sue and labour)

The ITC 95 clause 11.2 and clause 11.5 (clause 13.2 and 13.5 of the 83 ITC) are amended to further exclude special compensation and expenses referred in clause 10.5. Clause 11.2 and 11.5 read, with changes underlined, as follows:

> 11.2 Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 11.5), special compensation and expenses as referred to in Clause 10.5 and collision defence or attack costs are not recoverable under this Clause 11.
>
> 11.5 When a claim for total loss of the Vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regards as having been incurred in respect of the Vessel, excluding all special compensation and expenses referred to in Clause 10.5; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.

The intention of these amendments, as said by Mr. C. J. Barstow, is to put Clause 10 and 11 on the same footing.[17] It is another evidence that the hull underwriters intend to exhaustively rule out any expenses/liability incurred in respect of damage to the environment. As discussed in paragraph 4.2.2.3, according to the 1906 Marine Insurance Act, the expenses incurred by the salvee (the shipowner) in performing the 1989 Salvage Convention Article 8.2(b) duty to prevent or minimize damage to the environment may claim general average if incurred for the common adventure or claim particular charges or suing and labouring expenses if incurred solely in connection with one particular interest. ITC 95 clause 10.5.2 excludes such expenses from claiming general average. Now clause 11.2 and clause 11.5 further exclude such expenses from claiming suing and labouring expenses. These exclusions represent the perhaps final channel for the assured to claim the expenses incurred for preventing for minimizing damage to the environment is blocked by the ITC 95 new clause 11. For example, the assured will be unable to claim, subject to this suing and labouring clause, any expenses incurred by the assured in performing the 1989 Salvage Convention Article 8.2(b) duty even though such expenses significantly reduced the probable 1989 Salvage Convention Article 13.1(b) environmental enhanced reward. We can not deny that such expenses was incurred for purpose of averting or diminishing a loss (i.e. the salvage charges which the 1989 Salvage Convention Article 13.1(b) reward included) covered by the policy. The said expenses may be not the allowable general average under Rule XI(d) of the 1994 York-Antwerp Rules as not as part of a salvage operation rendering for the common adventure. It is not salvage charges as it is not the charges recoverable by a salvor as defined in section 65 of the 1906 M.I.A. It may be the "particular charges" under section 65(2) of the 1906 Marine Insurance Act, but the circumstance is not so clear in this country in claiming the item of "particular charges" under the shadow of the suing and labouring clause.[18] Under these circumstances, the assured, while in performing the duty under the 1989 Salvage Convention Article 8.2(b) to prevent or minimize damage to the environment, may prefer not to incur expenses by himself but by the salvor, since the environmental costs incurred by the assured are not covered by the ITC 95, but are covered if the same costs are incurred by the salvor.

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[17] Supra, at p.25.

[18] See discussion in paragraph 1.5.

4.5.1.3 Clause 8 - 3/4ths collision liability

Same as clause 11.2 and clause 11.5, the ITC 95 clause 8 was amended to further exclude the pollution expenses from collision liability claim. Clause 8.4.5 reads, with changes underlined, that:

> 8.4.5 pollution or contamination, or threats thereof of any real or personal property or thing whatsoever (except other vessels with which the insured Vessel is in collision or property on such other vessels) or damage to the environment, or threat thereof, save that this exclusion shall not extend to any sum which the Assured shall pay for in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

Clause 8.4.5 makes it clear that the assured's liability for pollution or contamination to the environment is not embraced by this collision liability clause. This exclusion does also apply to the possible special compensation to the owner of the insured vessel. However, the exclusion does not apply to the assured's liability for loss/damage to the other ship or to property thereon caused by pollution or contamination and its consequential upon the collision is embraced by this collision liability clause.

Clause 8.4.5 only expresses the exclusion not extends to Article 13.1(b) environmental enhanced reward, but not mentions about the special compensation incurred to the owner of the other vessel. The intention of clause 8.4.5 by adding the words "or damage to the environment, or threat thereof" is clear enough to exclude any loss, damage, expenses and liability incurred and arose in relation to damage to the environment or threat thereof. The 1989 Salvage Convention Article 13.1(b) stands its exemption to this exclusion but not to special compensation. In other words, ITC 95 covers the Article 13.1(b) environmental enhanced reward incurred both to the other collided vessel and the insured vessel, but not covers Article 14 special compensation incurred to the owner of the other collided vessel and the owner of the insured vessel.

4.5.1.4 Clause 7 - pollution hazard

Though the hull underwriters, by incorporating clause 8, 10 and 11 in the ITC 95, exclude almost all expenses and pollution liabilities from hull insurance claim, but on the other hand, they further extend the pollution hazard coverage by adding the words "or damage to the environment or threat thereof" in clause 7 (pollution hazard), for the loss of or damage to the vessel caused by to any governmental authority to prevent or mitigate the "damage to the environment or threat thereof". ITC 95 clause 7 reads, with changes underlined, that:

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

This clause was introduced to hull insurance practice following grounding of the oil tanker "*Torrey Canyon*", off the Isles of Scilly, which resulted in the British Government ordering the RAF to drop incendiary bombs to destroy the ship's cargo by fire; in an attempt to prevent or mitigate the threat of oil pollution.[19] This clause was incorporated in 1983 ITC and today it appears as clause 7 in the ITC 95.

The clause is limited to loss of or damage to the insured ship directly caused by the governmental authorities. It does not extend to embrace any legal liability the assured might incur as a result of pollution or damage to the environment. The said "any legal liability" may include the "salvor's unprejudiced rights and remedies" under Article 5.2 of the 1989 Salvage Convention.

The proviso of this clause seemingly contains an implied duty on the assured, owners or managers to prevent or mitigate such hazard or threat thereof with due diligence. The nature of this duty is very peculiar, as the "preventing or mitigating such pollution hazard or threat thereof" itself in any events is not a risk covered by the hull insurance. It may be argued that whether 1) this implied duty is also the duty to sue and labour, and 2) the expenses

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[19] R.H. Brown, The Institute Time Clause Hulls 1995, Part one - p.34.

incurred in performing this duty is recoverable as suing and labouring expenses or not. The "loss" under the section 78 of the 1906 M.I.A. and clause 11 of ITC 95 in respect to this pollution hazard clause is the loss of or damage to the vessel proximately caused by "any governmental authorities" but not remotely caused by "the pollution hazard or damage to the environment". In other words, it is not a duty to sue and labour unless to prevent or mitigate such pollution hazard or threat thereof is also to avoid or obey the pollution prevention order from any governmental authorities.

This implied duty may also cause conflict with the convention duty to prevent or minimize damage to the environment under Article 8.2(b) of the 1989 Salvage Convention. The related issues in respect of Article 8.2(b) duty see discussion in paragraph 4.3.

4.5.2 Other hull insurance related clauses

4.5.2.1 Institute Time Clauses - Freight 95

Clause 9.2.3.3 (Freight collision clause) and clause 11 (General average and salvage) of the Institute Time Clauses - Freight 1/11/95 were amended similar to related clauses in Institute Time Clauses -Hull 1/11/95. The problem which as discussed in paragraph 2.4.3.2 is the ITC-Freight contains no suing and labouring clause. It is therefore presumed that the problems discussed in paragraph 4.5.1.2 will not apply the ITC-Freight 95.

4.5.2.2 Institute Clause - War and Strikes - Hull and Freight 95

The choice of clauses under the Clause 2 (Incorporation clause) of the Institute War and Strikes Clause -Hull and or Freight 1/11/95 now is the "Institute Time Clauses -Hulls 1/11/95". According to this clause, ITC-Hull 95 clause 8 (3/4ths collision liability), clause 10 (general average and salvage) and clause 11 (duty of assured -sue and labour) and their related problems as discussed in paragraph 4.5.1 will be therefore applied to the Institute War and Strikes Clause 95.

4.5.3 Cargo clauses

So far as I know, the new cargo policy form is still in preparation. This section will only deal with the impact of the 1989 Salvage Convention on the Institute Cargo Clause 1982.

4.5.3.1 Clause 2 - general average clause

Paragraph 2.4.2.1 has discussed some difficulties or problems which may incur under the present text of the ICC 82 clause 2. The most important problem is whether this clause covers the 1989 Salvage Convention Article 13.1(b) environmental enhanced reward and or Article 14 special compensation ?

To a salvage but non - G. A. case[20], the cargo insurer under present text of the ICC 82 shall be liable to the 1989 Salvage Convention Article 13.1(b) environmental enhanced reward. This suggestion is not based on the known Funding Agreement which the property underwriters promised to accept salvage reward which may have been enhanced to take account of measures taken to prevent damage to the environment, but base on the text of clause 2 itself and the 1989 Salvage Convention. ICC clause 2 provides "This insurance covers general average and salvage charges .....incurred to avoid or in connection with the avoidance of loss from ***any cause*** except those excluded in Clauses 4, 5, 6, and 7 or elsewhere in this insurance." On the other hand, the 1989 Salvage Convention, which was incorporated in the 1994 M.S.A. as a part of English law, has accepted the environmental protection factor shall be taken into account for fixing the reward on the property salved.

The circumstance may be different to a case which salvage and general average matters are simultaneously existed. ICC 82 clause merely states "general average and salvage charges adjusted or determined according to the contract of affreightment and /or the governing law and practice..". The clause expresses nothing about the application of the York-Antwerp Rules. In most

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[20] It is sometimes difficult to image there exists a case that a salvage operation to the cargo is rendered but is not a general average matter. It is possible in practice for example the shipowner decides not to declare general average.

cases, 1994 York-Antwerp Rules are almost incorporated in the contracts of the affreightment, which as discussed, the cargo insurer shall be liable to the general average which the 1989 Salvage Convention Article 13.1(b) environmental enhanced reward was taken into account. However, it may be a problem that if the contract of affreightment did not stipulate the application of the York-Antwerp Rules 1994 version or the York-Antwerp Rules 1990 or the said Rules were amended, limited or even exempted. As discussed in paragraph 2.4.2.1, the ICC basically covers these situations. However, the real question is, for example, in case the 1974 York-Antwerp Rules but not 1990 or 1994 Rules is adopted by the contract of affreightment, whether or not the cargo insurer shall pay any cargo's general average contribution which the 1989 Salvage Convention Article 13.1(b) environmental enhanced reward was included ? The 1989 Salvage Convention Article 13.1(b) environmental enhanced reward might have stand its statutory position under the salvage law, but it does not mean it also stands on the same position under the general average law. In other words, whether 1989 Salvage Convention Article 13.1(b) can be allowed as general average or not shall be subject to whether the occurrence of this enhanced reward is incurred by a general average act as defined (unless the law or rules governing the general average adjustment expresses such enhanced reward can be specially included in claiming general average). This is the most basic argument whether the expenses incurred in salvage can be treated as general average as discussed in paragraph 2.2.5. Irrespective of this argument, the 1989 Salvage Convention Article 13.1(b) environmental enhanced reward seems in no event can be considered as the general average expenditures as it is not incurred for the purpose of preserving from peril the *property* involved in a common adventure as defined in Rule A of the York-Antwerp Rules. Namely that, the 1989 Salvage Convention Article 13.1(b) enhanced reward can not be treated as the general average expenditure under the 1974 York-Antwerp Rules or its earlier versions. In that case, the cargo insurer is not liable to the 1989 Salvage Convention Article 13.1(b) enhance reward incurred.

The duty to prevent or minimize damage to the environment under the Article 8.2(b) of the 1989 Salvage Convention does not only apply to the owner and master of the vessel but also the owner of other property (of course include the owner of the cargo). In accordance with clause 2 and clause 4.1 of ICC 82, in case the assured have had wilful misconduct in performing the said convention duty and hence resulted in the occurrence or increase of the 1989 Salvage Convention Article 13.1(b) enhanced reward to the salvor, the insurer

may reject or reduce the 1989 Salvage Convention Article 13.1(b) claim.

4.5.3.2 Clause 16 and 17 - minimising losses

Paragraph 2.4.2.2 has discussed some difficulties or problems which may incur under the present text of ICC 82 clause 16 and 17. The 1989 Salvage Convention Article 6.2 (the authority to conclude contracts for salvage operations) and Article 8.2 duties may be the most two important provisions which affect the ICC 82 clause 16.

The 1989 Salvage Convention Article 6.2 expresses *the master and the owner of the vessel* shall have authority to conclude contracts on behalf of the owner of the property on board the vessel. It may arise a question that whether the assured's "servants and agents" in the ICC clause 16 is therefore extended to the master and the owner of the vessel ? In other words, could the cargo insurer reject a salvage claim by reason that the assured's "servants and agents (i.e. the master and or shipowner)" failed to perform to the duty to sue and labour ! As discussed in paragraph 1.4.3.3, the master of the ship is normally to be deemed as the cargo owners' "agent". The expenses of measures taken by the master to avoid and minimise the loss covered may be treated as suing and labouring expenses. However, the law and reported cases keep silent to the real extent of the duty on the master who as the agents of the cargo owner to sue and labour. The poor circumstance may become more difficult since the owner of the vessel is also entitled to conclude salvage contracts on behalf of the owner of the cargo carried on board. My suggestion is the effect of Article 6.2 of the 1989 Salvage Convention is merely granting the master and owner of the vessel the position as an agent of the cargo owner for purpose to conclude a salvage contract but nothing more. The master or the owner of the vessel failed to perform the 1989 Salvage Convention Article 8.2 duties can not be presumed as to be also the cargo owner's failure. Unless we adopt this narrow interpretation view, the cargo assured may partly lose his submission by relying on the section 55(2)(a) of the 1906 M.I.A. since section 55(2)(a) of the 1906 M.I.A. only applies to the misconduct or negligence of the master or crew, which the owner of the vessel is not included.[21]

As to the second problem. The duties under Article 8.2 of the 1989

[21] See discussion in paragraph 1.4.2.2.

Salvage Convention impose not only on the master and the owner of the vessel but also on the owner of the other property (of course include the owner of the cargo on board). As discussed in paragraph 4.2.2.3, the duty to co-operate under Article 8.2(a) and the duty to prevent and minimize damage to the environment under Article 8.2(b) of the 1989 Salvage Convention may be deemed as the same duty to sue and labour, but not for the duty to accept redelivery under Article 8.2(c) of the 1989 Salvage Convention.

4.5.4 Other cargo insurance related clauses

Institute War Clauses - Cargo 1/1/82 and Institute Clauses - Strikes -Cargo 1/1/82 express coverage on general average and salvage charges in clause 2 and duty of assured clause in clause 11 with the same wording as the ICC -82. See also discussion in paragraph 4.5.3.

4.5.5 P&I insurance

4.5.5.1 Life salvage

Paragraph 4.2.3 has discussed some impacts of life salvage under the 1989 Salvage Convention on the insurance practice. General speaking, according to the 1906 Marine Insurance Act, the property underwriter is only liable to the life salvage to the extent that the said life salvage is enhanced in assessing the property salvage reward. Neither property underwriter nor P&I Club under the 1906 M.I.A. shall be liable to any life saver's salvage fair share claim. A direct life salvage claim on the P&I Club may be very rare as the Clubs inescapably cover the life salvage which is not covered by the hull insurance. The Club may cover life salvage claim which transfers from the other risks covered. For example, the club is liable to the unrecoverable general average contribution or ship's proportion of general average or salvage which may contain the life salvage element.

Though the Clubs offer life salvage cover, but it may be a problem because of the different wording used between the Clubs. As discussed in paragraph 4.2.3 and 4.2.4, the wording used in some P&I Clubs seems could not exempt their liability from possible "life salvor's payment fair share" which is not covered

by vessel hull insurance.

4.5.5.2 Collision with other ships

P&I Clubs normally cover the collision liability unrecoverable under the standard hull policy (i.e. ITC 83 or 95). As discussed in paragraph 4.5.1.3, clause 8.4.5 of ITC 95 was amended to exclude any pollution or containment or threats there of any real or personal property or thing (except other vessel with which the insured vessel is in collision) or damage to the environment or threat thereof. This amended clause 8.4.5 only provide the coverage to any environmental enhanced reward under the 1989 Salvage Convention Article 13.1(b) to the other collided vessel or property thereon, but not cover the special compensation under the 1989 Salvage Convention Article 14 incurred to the owner of the other collided vessel. In other words, according to the present P&I Clubs' Rules, the Club is liable to the said special compensation incurred to the owner of the other collided vessel not covered by the hull insurance.

4.5.5.3 Unrecoverable general average contribution and ship's proportion of general average

P&I Club, as a kind of liability insurer, is basically not directly liable to any general average or salvage contribution incurred for preventing loss or damage to the *property* concerned. Paragraphs 2.5.4 and 2.5.5 have discussed the related coverage normally provided by the P&I Clubs regarding to the both subjects mentioned. The coverage provided under the present P&I Clubs' Rules represent any provisions which may affect the general average contribution and salvage reward will also affect the P&I insurance. These provisions may include for example the life salvage enhanced reward under Article 13.1(e) and the environmental enhanced reward under Article 13.1(b) of the 1989 Salvage Convention.

4.5.5.4 Special compensation

The insurance market in the known 1981 Montreal Comprises agreed that the property underwriters shall fund the total award for property salvage including any enhancement for preventing or minimizing damage to the environment, and on the other hands, the ship's liability insurers (P&I Clubs) should fund the special compensation. The P&I Club Rules normally provides:

> Liability of an Owner to pay special compensation to a salvor of an entered ship, but only to the extent that such liability:
>
> i. is imposed on the Owner pursuant to Article 14 of the International Convention on Salvage, 1989, or is assumed by the Owner under the terms of a standard form of salvage agreement approved by the Directors, and
> ii. is not payable by those interested in the salved property.[22]

The liability of an owner to pay special compensation pursuant to the 1989 Salvage Convention Article 14 is limited to the extent that such compensation is greater than any reward recoverable by the salvor under 1989 Salvage Convention Article 13 (see Article 14.4). For purpose of this coverage, the P&I Clubs normally approve Lloyd's Open Form (1980, 1990 or 1995) as one of the required standard form of salvage agreement.

The 1989 Salvage Convention provides the owner of the vessel is the sole party to pay special compensation. It looks strange that why the above Club's Rule sub- paragraph (ii) provide "is not payable by those interested in the salved property" since it is assumed there are no circumstances that "the parties interested in the salved property" will be a party who is liable to the special compensation. This sentence, however, may contain an implication that the P&I Club incurs no liability to pay her member owner's special compensation unless her member has properly exercised his right of recourse in accordance with the 1989 Salvage Convention Article 14.6 against any other interests in the salved property.

4.5.6 The Conflict and balance between insurers

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[22] Section 21 0f the U.K. P&I Club Rules 1995/1996.

Most conflicts exist between the insurers in relation to the 1989 Salvage Convention are centralized in the interrelationship between Article 13.1(b) environmental enhance reward and Article 14 special compensation of the 1989 Salvage Convention. These conflicts may be tracked back at a Lloyd's meeting in January of the year 1980 which dealt with the necessity of a rapid agreement to encourage the salvor in salving the tanker.

4.5.6.1 The effects of the Funding Agreement 1980 and 1990

In that Lloyd's meeting in January 1980, one of the Lloyd's Working Party's proposal suggested to create a special additional clause to award salvors in case of a stricken tanker laden with oil. Subject to this proposal, the owners have to set up a pollution fund in additional to the salved property fund out of which the salvor ought to be remunerated for his extra services.[23] According to this proposal, a laden tanker the pollution risk is automatically admitted and the salvor can benefit from a special pollution fund, in addition to the property fund, being rewarded for extra services performed to preserve cargo and to protect shipowner from exposure to claims from third parties. This proposal may be called "*separate pollution fund*" proposal.

Strictly speaking, the above Lloyd's Working Party's proposal contained an element of liability salvage and might change the arbitration practice. For these reasons, the ICS and P&I Clubs produced an alternative offer which based on the principle of a *safety net* whereby salvors would never go unrewarded in case of a laden oil tanker in distress, which may be called "*safety net*" proposal.

On the other hand, hull and cargo underwriters were worried about the principle of enhanced awards proposed by ICS and P&I Clubs, as the arbitrator did always not separate the pollution element and they had therefore to pay these extra awards. Their suggestion was to change the Lloyd's Open Form by agreeing to enhanced awards, separately paid by P&I Clubs, for it was these clubs who really benefited from the prevention of oil pollution,[24] which may be called "*separate enhanced award*" proposal.

At another and final meeting in February 1980 at Lloyd's, the parties

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[23] M.L.J. Brocker, *1910 Salvage Convention and Lloyd's Open Form under pressure*, P.27.

[24] Supra, at p.28.

resolved the differences which basically adopted the P&I Clubs' safety net proposal. This is the known "Funding Agreement 1980"[25]. In that February meeting, some solutions were also achieved in respect of the safety net proposal. They were:

a) the salvor's endeavours to prevent the oil escape from the vessel should be seen as an ancillary part of the services to save ship and cargo;
b) the term expenses was agreed to include overheads and a profit element and not be restricted to out of pocket expenses;
c) the contractor (the salvor) would have to use his best endeavours to prevent the escape of oil from the vessel.

Few months later, the LOF 80 was published on 21/5/1980 based on the said Funding Agreement and related solutions.

The war zone sequentially moved on the 1981 CMI meetings in preparing the draft of the new salvage convention. As discussed in paragraph 3.1.3, the C.M.I. initial draft contained the conception of the so-called "liability salvage" but the C.M.I. working group finally accepted an alternative draft proposed by British Maritime Law Association. This proposal as we know reflected from the idea of "safety net" concept of the LOF 1980.

Substantially to say, the special compensation scheme appeared in known 1981 Montreal Compromise apparently existed no major difference from the 1980 Funding Agreement. On the other hands, the C.M.I. 1985 Document recorded:

> ....These rules formed the heart of the compromise reached by the commercial parties represented in Montreal. The negotiations in particular were at that time held between the P&I Clubs and the salvors, but neither the representative of the shipowners nor the property insurers made any reservations. [26]

The question arose while the LOF 80 gave the appearance of trying to restrict so far as possible the area of the safety net in merely applying to the salvage operation rendering on the laden tanker but the C.M.I. 1981 wanted to make the safety net embrace all risks of pollution. Though the property underwriters did

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[25] Full text of the Funding Agreement 1980 see Appendix 9.

[26] C.M.I. News Letter, Winter 1985, at p.3.

not withdraw their support from the compromise, but few criticism or objections to the 1981 Montreal Compromise were received in the coming I.M.O. conferences not only from the delegates but also from the insurers of "innocent cargo".

The 1989 Salvage Convention, which the general principle of the 1981 Montreal Compromise is built in, is a convention to decide the relationship between the related parties in the salvage operation, which the insurance party is presumed not directly involved. Namely that, even it actually existed a compromise among the insurance and salvage parties, the insurers are not certainly and legally bound by that compromise to their assureds or shipowner members under the 1989 Salvage Convention, provided that the insurers express their coverage in the policy or rules.

In 1990, LOF was revised in order to incorporate the 1989 Salvage Convention in the LOF contract form. Since the 1989 Salvage Convention extends the application of safety net not merely applying to the salvage operation rendering on the laden tanker, the London market insurers sequentially declared a similar agreement named the Funding Agreement 1990.[27]

The said 1980 and 1990 Funding Agreements basically result in no substantive legal effects on the insurance parties concerned. They were agreements between the property underwriters and the P&I Clubs, but not an agreement between the insurer and the assured. It represents merely a single-side declaration which the P&I Clubs agree to indemnify the shipowner against the 1989 Salvage Convention Article 14 special compensation on one side, and the underwriters agree to accept the salvage reward made under the 1989 Salvage Convention Article 13.1(b) on the other side. We may say these Funding Agreements represent the endorsement from the London insurance market to support the 1980 and 1990 versions of LOF. It is difficult to say the other insurance market or non- International P&I Group members would have to be bound by these London insurance market agreement. The insurers' liabilities on the 1989 Salvage Convention Article 13.1(b) and Article 14 are not subject to these Funding Agreements but the law of the 1906 Marine Insurance Act and the terms and conditions of the relevant policy or rules.

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[27] Full text of the Funding Agreement 1990 see Appendix 10.

4.5.6.2 The effects of the Pollution Compromise 1994

"No-one, however, seemed particularly happy which shows the fine balance of the solution (i.e. the 1981 Montreal Compromise)....if the basic elements of the compromise were made part of the final convention, it would find a widespread support, which again possible would facilitate the life of the final convention and the prospects of its speedy and wider international implementation" said by Mr. Bent Nielsen in the 1985 C.M.I. News Letter[28]. Though the 1989 Salvage Convention was finally agreed by 66 attended states in 1989, but the unbalance circumstance implied in the 1989 Montreal Compromise was still exiting, specially came from the property underwriters. The 1994 C.M.I. Sydney Conference for rectifying the York-Antwerp Rules 1974 (and as amended 1990) was an opportunity for the property insurers to improve their unfair position as alleged. The context of the known "Pollution Compromise" have been discussed in the paragraph 4.5.1.1.2. The Pollution Compromise, as appeared in Rule C and Rule XI(d) of the 1994 York-Antwerp Rules, arose form the vehemently expressed determination of the insurers of ships and cargoes that they should not be liable for pollution "though the back door" of general average.[29] Same as the 1981 Montreal Compromise, the Pollution Compromise itself basically results in no direct legal effects on the insurance parties concerned, but merely on the related property involved in the common maritime adventure by applying the York-Antwerp Rules 1994.

The problem arose while the hull underwriters introduced the principle of the 1981 Montreal Compromise and the first leg of the 1994 Pollution Compromise in the new Institute Time Clauses - Hull 1995. However, the ITC 95 further applies the Montreal Compromise and the Pollution Compromise not only to clause 10 (general average and salvage) but also to other clauses for example clause 8 (3/4ths collision liability) and clause 11 (duty of assured).[30] These new exclusion clauses more or less shake the balance between P&I insurer and property insurers.

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[28] C.M.I. News Letter, Winter 1985, at p.4.

[29] Charles S. Hebditch and John A. Macdonald, York-Antwerp Rules 1994 - An Analysis, 1994, at p. 11.

[30] See discussions in paragraph 4.5.1.

4.5.6.3 The practical difficulties in achieving the balance

The difficulties exist not only from the defects and uncertainties of the 1989 Salvage Convention but also from the salvage arbitration system. According to the present 1989 Salvage Convention Article 13 and Article 14, the tribunal is given an almost absolute discretion to decide the reward and or the special compensation, but on the contrary, the tribunal seems to be imposed a responsibility heavier than before not only has to decide different figures for Article 14 calculation purpose, but also to consider whether the required circumstances is met or not. For example and as discussed in paragraph 3.4.1.1.2.4, for deciding whether a special compensation claim is met or not, the tribunal has to decide at least three different figures: 1) the pure reward under Article 13 (without considering any negative factors); 2) a real reward under the 1989 Salvage Convention (with considering all positive and negative factors) and 3) the salvor's expenses for purpose of Article 14. Average adjusters may also face with the same even more worse difficulty than the salvage tribunal in case a general average matter is also involved.

Furthermore, the same problem may also incur between the salvage parties concerned. For example, in the Lloyd's salvage arbitration, there is usually one party representing the ship, one party representing the salvor. Except bulk cargo, very few cases the cargo will send a representative to attend the arbitration. For the point of the 1989 Salvage Convention Article 13, it is clearly desirable for ship interests that the value of the ship be kept as low as possible and on the contrary the value of cargo be pushed as high as possible so as to ensure that cargo bears the larger proportion of any Article 13 rewards. But from the point of the1989 Salvage Convention Article 14, it is desirable that ship and cargo value be maximised in order to ensure that as much as possible of the salvor's expenses is covered by the Article 13 reward, thereby minimising the payment of the Article 14 special compensation, where the Article 13 reward is not sufficient. In such cases, the cargo and or other property's interests seems not well be protected.

4.6 Other provisions

4.6.1 The salvor's unprejudiced remedies in Article 5.2

The salvor who carried out the salvage operation under the control of public authorities shall be entitled to avail themselves of the rights and remedies provides for in the 1989 Salvage Convention in respect of the salvage operation (Article 5.2 of the 1989 Salvage Convention and see also discussion in paragraph 3.2.2). Though how to exercise this unprejudiced remedies is still an unsettled issue, but it may be a problem if we presume the owner of the vessel and other property are bound to pay the said unprejudiced remedies. For instance, a salvor rendered a salvage operation incurred lots of costs and expenses but the salving vessel and other property were totally destroyed ordered by the public authority.

According to the 1906 Marine Insurance Act, it (the salvor's unprejudiced remedies) is not general average as no property preserved. It may be the salvage charges recoverable by a salvor under maritime law, but the insurer will pay nothing on it if the insurer has paid total loss. It is arguable that whether it may be recoverable under the suing and labouring clause ? This paper adopts negative view. A voluntary salvor under maritime law is not the assured's agents under the suing and labouring clause. In other words, it is not the expenses incurred by *the assured or his agents* under the suing and labouring clause. Furthermore, the nature of that unprejudiced remedies basically is classified to the salvage charges under section 65 of the 1906 M.I.A. However, salvage charges is not recoverable under the suing and labouring clause (section 78.2 of the 1906 M.I.A.)

The same unrecoverable circumstance may also incur to the property insurance. No provisions, under the present Institute Clauses either for hull, cargo or freight, provide coverage on the salvor's unprejudiced remedies claim. The pollution hazard covered by ITC 95 clause 7 is limited to the "loss of or damage to the Vessel" but not extends to any legal liability incurred (see also discussed in paragraph 4.5.1.4). However, hull insurers under ITC 95 may be liable to the salvage (which the salvor's unprejudiced remedies included) incurred any other vessel or property thereon in accordance with ITC 95 clause 8 (3/4ths collision liability), but this coverage shall not include the special compensation claim which the salvor's unprejudiced remedies is contained.

The P&I Clubs always provide coverage for the costs or liability incurred as

a result of compliance with any order or direct given by any government or authority. For example, U.K. P&I Club Rule section 12 -Pollution risks paragraph E provides:

> The costs or liability incurred as a result of compliance with any order or direct given by any government or authority, for the purpose of preventing or reducing pollution or the risk of pollution, provided always that:
> a. such compliance is not a requirement for the normal operation or salvage or repair of the entered ship; and
> b. such costs or liabilities are not recoverable under the Hull policies of the entered ship.

However, it is still unclear that whether the "salvor carried out salvage operation under the control of the public authority" is in compliance with the above proviso (a) or not ? For this purpose, shipowner is suggested to consult with her P&I club for clarifying this point.

For short, the salvor's unprejudiced remedies claim under Article 5.2 of the 1989 Salvage Convention is not covered by the present Institute Clauses, but ship's proportion may be covered by the shipowner's P&I insurance.

4.6.2 Sister ships provision in Article 12.3

Paragraph 3.4.1.1.1.3 has discussed the sister ship provision in Article 12.3 of the 1989 Salvage Convention and its affects to change the English law. Its impact on the marine insurance is very limited. The reason is this provision is only applied to the circumstance that the salved *vessel* and the *vessel* undertaking the salvage operations belong to the same owner and the Hull practice (e.g. ITC 95 clause 9) have provided this coverage for a long time.[31] This provision however does not extend to the circumstance other than the sister ship salvage. For instance, the owner of the property on board in danger is salved by a salvor belongs to the same cargo-owner.

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[31] The record shows the sister ship clause was introduced in the first set of Institute Time Clauses for 1901.

CHAPTER 5

Chapter 5

Conclusion

The law of 1906 Marine Insurance Act complicatedly classifies the costs incurred for preventing a loss by perils insured into four headings: salvage charges, general average, particular charges and suing and labouring expenses. These charges/expenses contain their own particular ingredients and stand on their own application and legal effects differ from each other under the Marine Insurance Act 1906. The first chapter generally, by adopting *travaux preparatoires* method, discuss their individual features under the related provisions of the 1906 Marie Insurance Act, some legal disputes and effects and also in comparison with their similarities and differences, in particular -

Salvage charges

a. most of the present text books include Arnould interpret the words "independent of contract" under section 65.2 of the 1906 Marine Insurance Act as "without a contract being made" or "without a contract of any kind". This interpretation results in the legal status of the LOF world-wide used strictly unsettled under marine insurance. This paper, after comprehensively survey the related cases, adopts a different interpretation to the words "independently of contract " as "the right to an award of salvage is independently of *whether there was a contract or not*". [Paragraph 1.2.1.1]
b. adopts a view differs from Arnould book to interpret the decision held by Lord Blackburn in the *Aitchison v. Lohre* case. Lord Blackburn in that case actually gave no firm answer to the question that "whether successful or not" contract can be treated as a hiring within suing and labouring clause. [Paragraph 1.2.1.4. c]

General average

a. reviews the basis of the insurers' liability on general average before the 1906 Marine Insurance Act which arose from the insurance contract affirmed by the common law and since the Act of 1906 by statute. [Paragraph 1.3.1.3]
b. clarifies the mis-use of the causation theory (i.e. success) in interpreting the duty of the property saved to contribute general average. The causation theory may apply between the general average act and general average loss under English law, but the survival theory applies between general average act and the property saved. [Paragraph 1.3.2.4.F]
c. adopts a different view from Arnould book in interpreting the relationship between the case *Kemp v. Halliday* and section 60(2) of the 1906 Marine Insurance Act. My suggestion is the principle declared in the *Kemp v. Halliday* was clearly incorporated in section 60(1) of the 1906 Marine Insurance Act, but the 1906 Act section 60(2) creates an exception from the general principle contained in section 60(1) of the 1906 Marine Insurance Act and the *Kemp v. Halliday* case. [Paragraph 1.3.2.4.I]

Suing and labouring expenses

a. comments the relationship of the *mitigation of damage principle* under the general contract law and the *suing and labouring clause* under marine insurance; and also suggests the former principle may be introduced in filling up the defect or gap appears in the suing and labouring clause. [Paragraph 1.4.1.1]
b. introduces a concept unseen in other works that the duty on the assured to sue and labour is strictly different from the liability of the insurer for paying the suing and labouring expenses under the 1906 Marine Insurance Act. [Paragraph 1.4.1.3]
c. affirms that it is now a statutory duty to sue and labour under the 1906 Marine Insurance Act. The assured and his agents are always owed the duty to sue and labour irrespective of the policy or insurance contract contains a suing and labouring clause or not. [Paragraph 1.4.2.1]

d. introduces the "supplementary contract" theory to resolve the dispute exists between section 78(4) and section 55(2)(a) of the 1906 Marine Insurance Act arose from the *Gold Sky* case. [Paragraph 1.4.2.4]
e. recommends that, to the circumstance that suing and labouring expenses actually incurred by the assured but exists no suing and labouring indemnity clause in the policy, it may recover from the insurer by the "particular charges" or may be treated as the third rule of mitigation of damage under the general contract law. [Paragraph 1.4.3.1]
f. introduces a concept that, according to the 1906 Marine Insurance Act, the persons who are authorized to sue and labour is different from the persons who are imposed the duty to sue and labour. This paper further suggests that, subject to the circumstance, the persons who are authorized to sue and labour shall be interpreted as widely as possible, but the duty imposed on the person to sue and labour shall be interpreted as narrowly as possible. [Paragraph 1.4.3.3.c]
g. introduces the "accessorium non ducit, sed sequitur suum" rule to resolve the problem of the policy contains no provisions to the maximum claimable amount under the suing and labouring clause. [Paragraph 1.4.3.3.e]

Particular charges

a. examines the origin, legal position and the ingredients of the particular charges which rarely discussed by the present textbooks. [Paragraph 1.5.1]
b. examines and to distinguish the relationship between particular charges and suing and labouring expenses. [Paragraph 1.5.2]
c. strongly criticises the opinion suggested by Arnould that "the terms particular charges and suing and labouring expenses are both used to refer to expenses recoverable under the suing and labouring clause". [Paragraph 1.5.3]

The Marine Insurance Act 1906 gives a less compulsory application on the insurance contract mutually agreed by the insurance parties. As discussed in the second chapter, the Institute Clauses themselves do not enormously deviate the

original deploy of the 1906 Marine Insurance Act, except for the introduction of the York-Antwerp Rules through the known foreign general average clause.

The York-Antwerp Rules

Paragraph 2.2 examines in detail the practical approach, development, application and criticisms on the Rule VI (salvage remuneration) and other related rules of the York-Antwerp Rules 1974 (and its sequential versions), in particular to the following issues:

a. criticises the Rule No. C.1 of the Rules of Practice of Average Adjusters Association and the legal opinion prepared by Mr. A.J. Hodgson in 1941. [Paragraph 2.2.1]
b. comments that by introducing the words "provided that" in Rule VI (a) of the 1990 York-Antwerp Rules, the 1990 or 1994 York-Antwerp Rules create a black hole circumstance that, once the prerequisite or condition of the salvage operation for the common adventure is satisfied, any expenditures, except for special compensation, incurred whether relate directly or indirectly to the property in the common adventure or not will be allowed as general average. [Paragraph 2.2.3]
c. comments that the Rule VI of the York-Antwerp Rules 1990/1994 incorporates the salvage law into the general average system will not only pollute the ideological purity of general average declared in its lettered rules, but also result in some potential conflicts between its numbered rules. [Paragraph 2.2.3]
d. declares a general principle that if the parties in general average are also the same parties in salvage, no reasons that the said parties could not, subject to any express agreement, mutually treat salvage remuneration as a kind of general average, but provide always that such agreement in any event can not cause any reduction to the rights or interest of the salvor under maritime law. [Paragraph 2.2.5.1]
e. discloses the problems, in case the York-Antwerp Rules is applied, which may affect the other provisions of the 1906 Marine Insurance Act. [Paragraph 2.2.5.2]

The Institute Clauses

As mentioned, the Institute Clauses themselves do not enormously deviate the original deploy of the 1906 Marine Insurance Act, but the following points are still worth in noting:

a. the General Average and Salvage Clause used in present various Institute Clauses is no longer a pure Foreign General Average Clause, but an express "risk covered" clause particularly on general average, salvage and salvage charges. [Paragraph 2.4.1.1] & [Paragraph 2.4.2.2]
b. comments that the Suing and Labouring Clause (or the Duty of the Assured Clause) presently used may considerably deviate from the original design under section 78 of the 1906 Marine Insurance Act [Paragraph 2.4.1.2]
c. discloses a potential conflict exists in applying the clause 13.4, 13.5 and 13.6 of the Institute Time Clauses -Hull 83. [Paragraph 2.4.1.2]
d. comments some difficulties appear in the present clause 2 (General Average Clause) of Institute Cargo Clauses apply to the 1906 Marine Insurance Act. [Paragraph 2.4.2.1]

The 1989 Salvage Convention

The 1989 Salvage Convention represents a new generation of the law of salvage. The third chapter comprehensively examines the changes of substantive law of salvage appeared in the 1989 Salvage Convention as well as the defects and arguments concealed therein, in particular:

a. the methods in calculating the 1989 Salvage Convention Article 14 special compensation adopted by the original arbitrator and appeal arbitrator in the "*Nagasaki Spirit*" case might be wrong and against the wording under the Article 14.2 of the 1989 Salvage Convention.

[Paragraph 3.4.1.1.2.2]

b. "life" and "damage to the environment" are not the express subject of the defined "salvage operation" of the 1989 Salvage Convention, but they stand on their special positions in claiming the fair share reward or special compensation. [Paragraph 3.1.2] & [Paragraph 3.1.3]

c. for *life salvage:*

  c.1. discloses the applicable geographical extent to the life salvage under the 1994 M.S.A. Schedule 11 Part II is blind. [Paragraph 3.1.2]

  c.2. opines that, under the present statutes (section 552,1 of 1894 M.S.A. and the Supreme Court Act 1981), the life salvors still have a maritime lien on the salved property, though the Article 16.1 of the 1989 Salvage Convention implies no such right. [Paragraph 3.1.2]

d. for *environmental salvage:*

  d.1. examines the ingredients for claiming special compensation under Article 14 of the 1989 Salvage Convention. [Paragraph 3.1.3]

  d.2. comments that, according to the 1989 Salvage Convention Article 14.1 wording, any property salvors, who rendered salvage service to the vessel or its cargo threat damage to the environment, may be entitled to claim special compensation, even the property saved or operation rendered really contribute nothing to the protect the environment. It is suggested to amend the 1989 Salvage Convention to rectify this unreasonable circumstance. [Paragraph 3.1.3.b]

  d.3. opines that saving the environment is merely a sequence or parasitic outcome or benefit of the property salvage operation, but not the main purpose of the salvage operation as defined in Article 1 of the1989 Salvage Convention. [Paragraph 3.1.3.c]

  d.4. suggests that the words "failed to earn a reward under Article 13" in Article 14.1 of the 1989 Salvage Convention shall be interpreted as the initial or original Article 13 reward without any deduction for any negative factors. [Paragraph 3.1.3.d] & [Paragraph 3.4.1.1.2.4]

  d.5. comments that the 1989 Salvage Convention Article 13.1(b) environmental enhanced reward involves no successful consideration. [Paragraph 3.1.3.(a)]

d.6. opines that the 1989 Salvage Convention Article 13.1(b) contains no implications that the skill and efforts in preventing damage to the environment shall be directly related with the salvage operation. [Paragraph 3.1.3.(c)]

d.7. opines that the applicable extent of the 1989 Salvage Convention Article 13.1(b) is more larger than Article 14 and also suggest that the 1989 Salvage Convention shall provide more clarification to Article 13.1(b). [Paragraph 3.1.3.(c)]

e. a suggestion is made to the effect of the 1989 Salvage Convention Article 5.2 wording "shall be entitled to avail themselves of the rights and remedies provided for in this convention". [Paragraph 3.2.2]

f. suggests that the sub-contractor may be entitled to the salvage payment to the services rendered outside the scope of his original contractual duty. [Paragraph 3.2.3]

g. suggests that fails to perform the convention duties under Article 8 of the 1989 Salvage Convention may result in a damages claim independently of the assessment of the salvage reward or special compensation. [Paragraph 3.3.1.1.3]

h. opines that the condemned salvors shall be liable to the liability incurred by the salvees to third party resulting from the salvor failed to perform convention duties with due care. [Paragraph 3.3.1.1.3]

i. opines that, the wording "in performing the duty.." under Article 8.1(b) of the 1989 Salvage Convention may cause some difficulties. For example the tribunal, before he decides whether a salvor has properly performed his Article 8.1(b) duty, he has to first consider whether said salvor has carried out the salvage operation with due care. [Paragraph 3.3.1.1.5]

j. a comparison is made between Article 8.1(d) (to accept intervention) and Article 19 (prohibit the operation) of the 1989 Salvage Convention and further suggest that the salvees shall be requested to clearly submit their request of either intervention or prohibition. [Paragraph 3.3.1.1.7]

k. opines that Article 12.2 of the 1989 Salvage Convention may result in the English salvage law "engaged services" principle invalid. [Paragraph 3.4.1.1.1.2]

l. a suggestion is made to remove the successful factor from Article 14.5 of the 1989 Salvage Convention. [Paragraph 3.4.1.1.2.5]

m. a comparison is made between Article 18 and Article 14.5 of the 1989 Salvage Convention. [Paragraph 3.4.2.2]
n. opines that, subject to the present wording used in Article 23.1 of the 1989 Salvage Convention, two years time-barred defence under the 1989 Salvage Convention is now limited to the "any action relating to payment" which apparently is much more narrower than the 1910 Salvage and Assistance Convention. [Paragraph 3.4.2.3]

The Impacts

The impacts of the new schemes contained in the 1989 Salvage Convention on the marine insurance law and practice are discussed in the fourth chapter. The impacts may be summarized that:

a. the 1989 Salvage Convention which incorporated in the 1994 Merchants Shipping (Salvage and Pollution) Act can be deemed as the "maritime law" under the definition of the salvage charges in section 65(2) of the 1906 Marine Insurance Act. [Paragraph 4.1]
b. life salvor's fair share payment claim under Article 16 of the 1989 Salvage Convention is now in any event not covered either under the section 65 of the 1906 Marine Insurance Act, or the Institute Clauses or P&I Club. [Paragraph 4.2]
c. the salvor's damages claim resulting from the salvee (the assured) failed to perform the convention duties may be included in the claim of "salvage charges" under section 65.2 of the 1906 Marine Insurance Act. [Paragraph 4.3.2.1]
d. the salvor in no event can be considered as the assured's agent (salvee's agent) under the section 78.4 of the 1906 Marine Insurance Act and the sue and labour clause for purpose of claiming suing and labouring expenses. [Paragraph 4.3.2.5.1]
e. the duties imposed on the master and the owner of the vessel and or the owner of other property under Article 8.2(a) and 8.2(b) of the 1989 Salvage Convention may be considered as also a duty under marine insurance to sue and labour. [Paragraph 4.3.2.3]
f. only the sacrifice or expenditure incurred in performing the 1989 Salvage Convention Article 8.2(a) duty and incurred for purpose of preventing the

common adventure may be considered as a general average loss or expenditure under the 1906 Marine Insurance Act.

g. the assured and his agents, subject to the 1989 Salvage Convention Article 8.1(d), is now owed an implied duty under the marine insurance not to submit an unreasonable intervention request to the salvor. [Paragraph 4.3.2.5.3]

h. the salvor's unprejudiced reward under the 1989 Salvage Convention Article 8.1(d) may be allowed as general average in case of the Rule VI of the York-Antwerp Rules 1974 or as amended 1990 or 1994 is in applied, even though the insurer is not liable to such unprejudiced reward under the 1906 Marine Insurance Act. [Paragraph 4.3.3.1]

i. for York-Antwerp Rules 1994 Rule VI:

  i.1. by reason of the words "provided that", salvage reward contribution which the salvor's damages claim will be put into the general average melt pot. [Paragraph 4.4.1.1]

  i.2. as in the absence of connection between salvage operation rendered to the property and the saving of the environment, any skill and efforts of the salvor in preventing or minimizing damage to the environment whether it is directly related to the salvage operations or not will be taken into account in assessing the 1989 Salvage Convention Article 13 reward and also is allowed as general average. [Paragraph 4.4.1.2]

  i.3. opines that the York-Antwerp Rule 1974 as amended 1990 or 1994 - Rule VI (b) excludes special compensation from general average is an improper scheme which further endanger the equity among the general average parties or community interest. [Paragraph 4.4.1.3]

j. opines that, according to the structure of the ITC 95, the buy-back clause "Institute General Average - Pollution Expenditure Clause" does not really fill up the gap appeared in the ITC 95 for covering the pollution expenditure incurred by the assured. [Paragraph 4.5.1.1.2]

k. suggests that, for overcoming the conflict may exist between Article 6.2 of the 1989 Salvage Convention and the ICC clause 16, the effect of Article 6.2 of the 1989 Salvage Convention shall be interpreted that it merely grants the master and shipowner a right as agents for the cargo owner to conclude a salvage contract but nothing more. [Paragraph 4.5.3.2]

l. suggests that, for avoiding dispute, the wording under the present P&I Club's Rules book shall be clearly drafted to include or not include the possible life salvor's fair share claim. [Paragraph 4.5.5.1]

m. opines that the 1980 and 1990 Funding Agreements basically result in no substantive legal effects either on the law of marine insurance or the insurance parties concerned. [Paragraph 4.5.6.1]
n. opines that the salvor's unprejudiced remedies claim under Article 5.2 of the 1989 Salvage Convention is not covered by property insurance, but ship's proportion may be covered by the shipowner's P&I Club. [Paragraph 4.6.1]
o. affirms that the sister ships provision (Article 12.3 of the 1989 Salvage Convention) will not result in any effects to the circumstance the owner of the salvor is the same as the owner of other property (other than the owner of the salved vessel) [Paragraph 4.4.1.1]

Conclusion

The law of marine insurance and the law of salvage and general average under maritime exist independently of each other. The 1989 Salvage Convention introduces a great deal of new schemes in the traditional law of salvage. The new schemes themselves, irrespective of containing considerable disputes and unsettled questions, basically do not result in significant impacts on the ninety years old Marine Insurance Act 1906. However, the circumstances became more uncertainty, difficulty and inequity while the salvage (remuneration) was introduced in the Rule C1 of Rules of Practice of A.A.A. and further accepted in the York-Antwerp Rules 1974, 1990 as amended and 1994, which the latter Rules is always incorporated in the practical policies and the contact of affreightment. In other words, most impacts of the 1989 Salvage Convention on the marine insurance do not come from the 1989 Salvage Convention itself but though the York-Antwerp Rules.

The disputes and problems existed or concealed in the 1989 Salvage Convention have to be examined again in deciding whether a general average is allowable. In order to sort out the uncertainty, the works of a salvage tribunal are not only to assess the salvage reward and special compensation, but also have to clarify some argued and unsettled points before he made the award. For example, the tribunal shall not only decide the fair rate and out of pocket for assessing salvor's expenses for purpose of the 1989 Salvage Convention Article 14, but also have to exclude any part of the salvor's expenses incurred directly for preventing damage to the environment which contain no relation with the

salvage operations as defined. More heavier and difficult works are also imposed on the average adjuster. For example, in order to calculate hull underwriters' liability for general average, it will be necessary to recalculate the adjustment so as to exclude items which fall within clause 10.5.2 of the ITC 95.[1] However, the most important problem is the equity principle, which forms as fundamental core of the general average system, was spoiled again and again by introducing salvage of any kinds into the general average.

The research provides lots of suggestions for various issues and problems disclosed, in which the following three suggestions are strongly recommended:

1. for avoiding the possible disputes arising between the insurance parties, the assured is suggested to inform his insurers (underwriters and or P&I Club) of any salvage accident and also keep in regular and closely contract and consult with his insurer in every stages of salvage (as well as general average matter).
2. though the York-Antwerp Rules 1994 is recommended to adopt continually by the shipping parties, but this paper strongly suggests that Rule VI is better to be excluded from the adoption of the 1994 York-Antwerp Rules.
3. an overall revision to the Lloyd's Open Form 1995 is suggested in order to give more clarification, specially the conduct of the arbitration and appeal, and to reduce any potential arguments resulting from the 1989 Salvage Convention.

[1] C. J. Barstow, *ITC Hulls 1/11/95 Comparison with ITC Hulls 1.10/83 and analysis of changes*, p. 23.

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APPENDIX LIST

Appendix 1 Showing the amendments of **General Average Clause** introduced to the I.T.C.- Hulls Clauses

1888	1904	10.4. 1908	6.1. 1925	1.1. 1936	1.10. 1952	22.7. 1959	1.10. 1983	1.11. 1995
General Average and Salvage Charges payable according to foreign statement, or per York-Antwerp Rules if in accordance with the contract of affreightment.	General average and salvage charges to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms relating to General average and salvage charges, except that, where the contract of affreightment provides for the application of York-Antwerp Rules or, in case of Wood cargoes, York-Antwerp Rules omitting the first word of Rule 1 ("No"), Underwriters shall pay in accordance with such provisions.	General average and salvage to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; or if the contract of affreightment so provides, according to York-Antwerp Rules, or in the case of Wood cargoes, York-Antwerp Rules omitting the first word of Rule 1 ("No"), but in all matters not specifically referred to in York-Antwerp Rules 1 to XVII, inclusive, the adjustment shall be in accordance with the law and practice obtaining at the place where the adventure ends and as if the contract of affreightment contained no special terms upon the subject.	General average and salvage to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to York-Antwerp Rules 1890 (omitting in the case of wood cargoes the first word, "No", of Rule 1) or York-Antwerp Rules 1924.	General average and salvage to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to York-Antwerp Rules 1890 (omitting in the case of wood cargoes the first word, "No", of Rule 1) or York-Antwerp Rules 1924. When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1924 (excluding Rules XXI and XXII) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.	General average and salvage to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to York-Antwerp Rules 1890 (omitting in the case of wood cargoes the first word, "No", of Rule 1) or York-Antwerp Rules 1924. When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1950 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.	8 General average and salvage to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to York-Antwerp Rules. When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1950 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.	11 General Average and Salvage 11.1 This insurance covers the Vessel's proportion of salvage, salvage charges and/or general average, reduced in respect of any under-insurance, but in case of general average sacrifice of the Vessle the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties. 11.2 Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreight contained no special terms upon the subject; but where the contract of affrightment so provides the adjustment shall be according to the York-Antwerp Rules. 11.3 When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated 11.4 No claim under this Clause 11 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.	10 General Average and Salvage 10.1 This insurance covers the Vessel's proportion of salvage, salvage charges and/or general average, reduced in respect of any under-insurance, but in case of general average sacrifice of the Vessle the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties. 10.2 Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreight contained no special terms upon the subject; but where the contract of affrightment so provides the adjustment shall be according to the York-Antwerp Rules. 10.3 When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1994 (excluding Rules XI(d), XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated 10.4 No claim under this Clause 11 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against 10.5 No claim under this Clause 10 shall in any case be allowed for or in respect of 10.5.1 special compensation payable to a salvor under Article 14 of the International Convention on Salvage, 1989 or under any other provision in any statute, rule, law or contract which is similar in substance. 10.5.2 expenses or liabilities incurred in respect of damage to the environment, or the threat of such damage, or as a consequence of the escape or releae of pollutant substances from the Vessel, or the threat of such escape or release. 10.6 Clause 10.5 shall not however exclude any sum which the Assured shall pay to salvors for or in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

Appendix 2 Showing the amendments of the **Suing and Labouring Clause** introduced to the I.T.C. Hulls Clauses

1888	1.11. 1918	1.10. 1952	22.7. 1959	1.10. 1983	1.11. 1995
S G form ...in case of any loss or misfortunes it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safequards, and recovery of the said goods and merchandises, and ship, & c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured.	S G form ...in case of any loss or misfortunes it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safequards, and recovery of the said goods and merchandises, and ship, & c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. In the event of expenditure for Salvage, Salvage charges, or under the Sue and Labour Clause, this Policy shall only be liable for its share of such proportion of the amount chargeable to the property hereby insured as the insured value, less loss and/or damage, if any, for which the insurer is liable bears to the value of the salved property. Provided that where there are no proceeds or there are expenses in excess of the expenses, as the case may be, shall be apportioned upon the basis of the sound value of the property at the time of the accident and this policy without any deduction for loss and/or damage shall bear its pro rata share of such expenses or excess of expenses accordingly.	S G form ...in case of any loss or misfortunes it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safequards, and recovery of the said goods and merchandises, and ship, & c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. In the event of expenditure being incurred pursuant to the Sue and Labour Clause, this Policy shall only be liable for its share of such proportion of the amount chargeable to the property hereby insured as the insured value, less loss and/or damage, if any, for which the insurer is liable bears to the value of the salved property. Provided that where there are no proceeds or there are expenses in excess of the expenses, as the case may be, shall be apportioned upon the basis of the sound value of the property at the time of the accident and this policy without any deduction for loss and/or damage shall bear its pro rata share of such expenses or excess of expenses accordingly.	S G form ...in case of any loss or misfortunes it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safequards, and recovery of the said goods and merchandises, and ship, & c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. 9. (a) In the event of expenses being incurred pursuant to the Suing and Labouring Clause, the liability under this Policy shall not exceed the proportion of such expenses that amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where Underwriters have admitted a claim for total loss and property insured by the Policy is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value. (b) Where a claim for total loss of the Vessel is admitted under this Policy and expenses have been reasonably incurred in salving or attempting to salve the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this Policy shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regards as having been incurred in respect of the Vessel; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.	13 Duty of Assured (Sue and Labour) 13.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance. 13.2 Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 13.5) and collision defence or attack costs are not recoverable under this Clause 13. 13.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the Subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the right of either party. 13.4 When expenses are incurred pursuant to this Clause 13, the liability under this insurance shall not exceed the proportion of such expenses that amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where Underwriters have admitted a claim for total loss and property insured by the insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value. 13.5 When a claim for total loss of the Vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regards as having been incurred in respect of the Vessel; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be redueed in proportion to the under-insurance. 13.6 The sum recoverable under this Clause 13 shall be in addition to the loss otherwise under this insurance but shall in no circumstances exceed the amount insured under this	11 Duty of Assured (Sue and Labour) 11.1 In case of any loss or misfortune it is the duty if the Assured and their servants and agents to ta take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance. 11.2 Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 11.5), special compensation and expenses as referred to in Clause 10.5 and collision defence or attack costs are not recoverable under this Clause 11. 11.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the Subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the right of either party. 11.4 When expenses are incurred pursuant to this Clause 11, the liability under this insurance shall not exceed the proportion of such expenses that amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where Underwriters have admitted a claim for total loss and property insured by the insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value. 11.5 When a claim for total loss of the Vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regards as having been incurred in respect of the Vessel, excluding all special compensation and expenses referred to in Clause 10.5; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance. 11.6 The sum recoverable under this Clause 11 shall be in addition to the loss otherwise under this insurance but shall

Appendix 3 Showing the amendments of **3/4ths Collision Liability Clause** introduced to the I.T.C. - Hulls Clauses

1888	1890	1894	1.11.1918	1.10.1952	1.10.1970	1.10. 1971 amended	1.10. 1983	1.11. 1995
And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, this Company will pay the assured such proportion of three-fourths of such sum or sums so paid as its subscription hereto bears to the value of the ship hereby insured, and in case in which the liability of the ship has been contested with the consent in writing of this Company, the Company will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur or be compelled to pay.	And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, this Company will pay the assured such proportion of three-fourths of such sum or sums so paid as its subscription hereto bears to the value of the ship hereby insured, and in case in which the liability of the ship has been contested with the consent in writing of this Company, the Company will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur or be compelled to pay, but when both vessels are to blame, then unless the laibility of the owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision..	And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, this Company will pay the assured such proportion of three-fourths of such sum or sums so paid as its subscription hereto bears to the value of the ship hereby insured, and in case in which the liability of the ship has been contested or proceedings have been taken to limit liability with the consent in writing of this Company, the Company will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur or be compelled to pay, but when both vessels are to blame, then unless the liability of the owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision..	And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision the undersigned will pay the assured such proportion of three-fourths of such sum or sums so paid as its subscription hereto bears to the value of the ship hereby insured, provided always that their liabilitiy in respect of any one such collision shall not exceed their proportionate part of three-forths of the value of the ship hereby insured, and in case in which the liability of the ship has been contested or proceedings have been taken to limit liability with the consent in writing of the Underwriters, they will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur, or be compelled to pay, but when both vessels are to blame, then unless the liability of the owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision..	It is further agreed that if the Vessel hereby insured shall come into collision with any other vessel, and the assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision the Underwriters will pay the assured such proportion of three-fourths of such sum or sums so paid as its subscription hereto bears to the value of the Vessel hereby insured, provided always that their liability in respect of any one such collision shall not exceed their proportionate part of three-forths of the value of the Vessel hereby insured, and in case in which the liability of the Vessel has been contested or proceedings have been taken to limit liability with the consent in writing of the undersigned, they will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur, or be compelled to pay, but when both vessels are to blame, then unless the liability of the owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision..	It is further agreed that if the Vessel hereby insured shall come into collision with any other vessel and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision for (i) loss of or damage to any other vessel or property on any other vessel, (ii) delay to or loss of use of any such other vessel or property thereon, or (iii) general average of, salvage of, or salvage under contract of, any such other vessel or property thereon. the Underwriters will pay the Assured such proportion of three-fourths of such sum or sums so paid as its respective subscription hereto bears to the value of the Vessel hereby insured, provided always that their liability in respect of any one such collision shall not exceed their proportionate part of three-forths of the value of the Vessel hereby insured, and in case in which, with the consent in writing of the Underwriters, the liability of the Vessel has been contested or proceedings have been taken to limit liability, they will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur or be compelled to pay, but when both vessels are to blame, then unless the liability of the Owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels sheu one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision..	It is further agreed that if the Vessel hereby insured shall come into collision with any other vessel and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision for (i) loss of or damage to any other vessel or property on any other vessel, (ii) delay to or loss of use of any such other vessel or property thereon, or (iii) general average of, salvage of, or salvage under contract of, any such other vessel or property thereon. the Underwriters will pay the Assured such proportion of three-fourths of such sum or sums so paid as its respective subscription hereto bears to the value of the Vessel hereby insured, provided always that their liabilitiy in respect of any one such collision shall not exceed their proportionate part of three-forths of the value of the Vessel hereby insured, and in case in which, with the consent in writing of the Underwriters, the liability of the Vessel has been contested or proceedings have been taken to limit liability, they will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur or be compelled to pay, but when both vessels are to blame, then unless the liability of the Owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision..	8. 3/4Ths Collision Liability 8.1 The Underwriters agree to indemnity the Assured for three-fourths of any sum or sums paid by the Assured to any other person or persons by reason of the Assured becaming legally liable by way of damages for 8.1.1 loss of or damage to any other vessel or property on any other vessel 8.1.2 delay to or loss of use of any such other vessel or property thereon 8.1.3 general average of, salvage of, or salvage under contract of, any such other vessel or property thereon. where such payment by the Assured is in consequence of the Vessel hereby insured coming into collision with any other vessel. 8.2 The indemnity provided by this Clause 8 shall be in addition to the indemnity provided by the other terms and conditions of this insurance and shall be subject to the following provisions: 8.2.1 Where the insured Vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 8 shall be calculated on the principle of cross-liabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision. 8.2.2 In no case shall the Underwriters' total liability under Clauses 8.1 and 8.2 exceed their proportionate part of three-fourths of the insured value of the Vessel hereby insured in respect of any one collision. 8.3 The Underwriters will also pay three-forths of the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability, with the prior written concent of the Underwriters.	8. 3/4Ths Collision Liability 8.1 The Underwriters agree to indemnity the Assured for three-fourths of any sum or sums paid by the Assured to any other person or persons by reason of the Assured becaming legally liable by way of damages for 8.1.1 loss of or damage to any other vessel or property on any other vessel 8.1.2 delay to or loss of use of any such other vessel or property thereon 8.1.3 general average of, salvage of, or salvage under contract of, any such other vessel or property thereon. where such payment by the Assured is in consequence of the Vessel hereby insured coming into collision with any other vessel. 8.2 The indemnity provided by this Clause 8 shall be in addition to the indemnity provided by the other terms and conditions of this insurance and shall be subject to the following provisions. 8.2.1 Where the insured Vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 8 shall be calculated on the principle of cross-liabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision. 8.2.2 In no case shall the Underwriters' total liability under Clauses 8.1 and 8.2 exceed their proportionate part of three-fourths of the insured value of the Vessel hereby insured in respect of any one collision. 8.3 The Underwriters will also pay three-forths of the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability, with the prior written consent of the Underwriters.
Provided always that this Clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harboursm wharvesm piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.	Provided always that this Clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harboursm wharvesm piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.	Provided always that this Clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harboursm wharvesm piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.	Provided always that this Clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harboursm wharvesm piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.	Provided always that this Clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures or to goods or propery on land, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.	Provided always that this Clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for or in respect of: (a) removal or disposal, under statutory powers or otherwise, of obstructions, wrecks, cargoes or any other thing whatsoever, (b) any real or personal property or thing whatsoever except other vessels or property on other vessels, (c) the cargo or other property on or the engagements of the insured Vessel, (d) loss or life, personal injury or illness.	Provided always that this Clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for or in respect of: (a) removal or disposal, under statutory powers or otherwise, of obstructions, wrecks, cargoes or any other thing whatsoever, (b) any real or personal property or thing whatsoever except other vessels or property on other vessels, (c) pollution or contamination of any real or prosonal property or thing whatsoever (except other vessels with whcih the insured Vessel is in collision or property on such other vessels) (d) the cargo or other property on or the engagements of the insured Vessel, (e) loss or life, personal injury or illness.	Exclusions 8.4 Provided always that this Clause 8 shall in no case extend to any sum which the Assured shall pay for or on respect of 8.4.1 removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever 8.4.2 any real or personal property or thing whatsoever except other vessels or property on other vessels 8.4.3 the cargo or other property on, or the engagements of, the insured Vessel 8.4.4 loss of life, personal injury or illness 8.4.5 pollution or contamination of any real or personal property or thing whatsoever (except other vessels with which the insured Vessel is in collision or property on such vessels).	Exclusions 8.4 Provided always that this Clause 8 shall in no case extend to any sum which the Assured shall pay for or on respect of 8.4.1 removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever 8.4.2 any real or personal property or thing whatsoever except other vessels or property on other vessels 8.4.3 the cargo or other property on, or the engagements of, the insured Vessel 8.4.4 loss of life, personal injury or illness 8.4.5 pollution or contamination, or threats thereof, of any real or personal property or thing whatsoever (except other vessels with which the insured Vessel is in collision or property on such vessels) or damage to the environment, or threat thereof, save that this exclusion shall not extend to any sum which the Assured shall pay for in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

Appendix 4 Showing the amendments of **Duty of Assured Clause** introduced to the ICC

7.4.1925	1.1.1934	1.1.1958	1.1.1963	1.1.1982
S.G. form: .....in case of any loss or misfortunes it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, & c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. Bailee Clause Warranted free from liability for loss of or damage to merchandise whilst in the custody or care of any carrier or other bailee who may be liable for such loss or damage thereto but only to the extent of such bailee's liability. Warranted free from any claim in respect to merchandise shipped under a Bill of Lading stipulated that the carrier or other bailee shall have the benefit of any insurance on such merchandise, but this warranty shall apply only to claims for which the carrier or other bailee is liable under the Bill of Lading or contract of carriage.	S.G. form: .....in case of any loss or misfortunes it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, & c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. Bailee Clause Warranted free from liability for loss of or damage to goods whilst in the custody or care of any carrier or other bailee who may be liable for such loss or damage thereto but only to the extent of such bailee's liability. Warranted free from any claim in respect to goods shipped under a Bill of Lading stipulated that the carrier or other bailee shall have the benefit of any insurance on such goods, but this warranty shall apply only to claims for which the carrier or other bailee is liable under the Bill of Lading or contract of carriage. Not withstanding the warranties contained in this clause it is agreed that in the event of loss of or damage to the goods by a peril or perils insured against by this policy for which the carrier or bailee denies or fails to meet his liability the Underwriters shall advance to the assured as a loan without interest a sum equal to the amount they would have been liable to pay under this policy but for the above warranties the repayment thereof to be conditional upon and only to the extent of any recovery which the assured may receive from the carrier or bailee. It is further agreed that the assured shall with all diligence bring and prosecute under the direction and control of the Underwriters such suit or other proceedings to enforce the liability of the carrier or bailee as the Underwriters agree to pay such proportion of the costs and expenses of any such suit or proceedings as attach to the amount advanced under the policy.	S.G. form: .....in case of any loss or misfortunes it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, & c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. Bailee Clause 10. In case of loss or damage which may result in a claim being made hereunder, the Assured undertake to cause appropriate measures to be taken to prevent any remedy against any carrier or other bailee becoming barred by reason of non-compliance with terms and conditions governing the liability of such carrier or other bailee. Should expenses be incurred thereby Underwriters will reimburse the Assured for such expenditure the loss or damage falls within the provisions of this insurance.	S.G. form: .....in case of any loss or misfortunes it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, & c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. Bailee Clause 9. It is the duty of the Assured and their Agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss and to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised.	**Minimising Losses** **16. Duty of Assured Clause** It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder 16.2 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and 16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.
S.G. Form And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment.	S.G. Form And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment.	S.G. Form And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment.	S.G. Form And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment.	**17. Waiver Clause** Measure taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

Appendix 5 Showing the Exclusions Clauses in ITC-Hulls 1983 in comparison with the Perils Covered and Exclusions clauses in Institute War and Strikes Clauses (IWSC) -Hulls 1983

Exclusions by ITC-Hulls-83	Perils Covered by IWSC-83	Exclusions by IWSC-83
War Exclusion: 23.1 war civil war revolution rebellion insurrection civil strife arising therefrom any hostile act by or against a belligerent power 23.2 capture seizure arrest restraint detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat 23.3 derelict mines torpedoes bombs or other derelict weapons of war	Perils Covered 1.1 war civil war revolution rebellion insurrection civil strife arising therefrom any hostile act by or against a belligerent power 1.2 capture seizure arrest restraint detainment and the consequences thereof or any attempt thereat 1.3 derelict mines torpedoes bombs or other derelict weapons of war	Exclusions 5.1.6 piracy
Strikes Exclusion: 24.1 strikes, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions 24.2 any terrorist or any person acting from a political motive	14 strikes, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions 1.5 any terrorist or any person acting from a political motive 1.6 confiscation or expropriation	
		5.1.1 outbreak of war between five powers 5.1.2 requisition, either for title or use, or pre-emption 5.1.3 capture seizure arrest restraint detainment confiscation or expropriation by or under the order of the government or any public or local authority of the country in which the Vessel is owned or registered 5.1.4 arrest restraint detainment confiscation or expropriation under quarantine regulations or by reason of infringement of any customs or trading regulation 5.1.5 the operation of ordinary juridical process, failure to provide security or to pay any fine or penalty or any financial cause
Malicious Acts Exclusion 25.1 the detonation of an explosive 25.2 any weapon of war		
Nuclear Exclusion any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter		5.2.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel 5.2.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof. 5.2.3 any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

Appendix 6 Showing the Exclusion Clauses in Institute Cargo Clauses (ICC) -1982 in comparison with the Risks Covered Clause and Exclusion Clauses in Institute War Clauses (Cargo) -IWCC 82 and Institute Strikes Clauses (Cargo) - ISCC 82.

Exclusions in ICC -82	Cover and Exclusions in IWCC 82	Cover and Exclusions in ISCC 82
War Exclusion: 6.1 war civil war revolution rebellion insurrection civil strife arising therefrom any hostile act by or against a belligerent power 6.2 capture seizure arrest restraint detainment (piracy excepted) and the consequences thereof or any attempt thereat 6.3 derelict mines torpedoes bombs or other derelict weapons of war	Risks Covered 1.1 war civil war revolution rebellion insurrection civil strife arising therefrom any hostile act by or against a belligerent power 1.2 capture seizure arrest restraint detainment arising from risks covered under 1.1 above and the consequences thereof or any attempt thereat 1.3 derelict mines torpedoes bombs or other derelict weapons of war	
Strikes Exclusion: 7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions 7.2 resulting from strikes, lock-outs, labour disturbances, riot or civil commotions 7.3 caused by any terrorist or any person acting from a political motive		Risks Covered 1.1 caused by strikes, lock-outs, labour disturbances, riot or civil commotions 1.2 caused by any terrorist or any person acting from a political motive
General Exclusions 4.1 loss damage or expense attributable to willful misconduct of the Assured 4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured 4.3 loss damage or expense causes by insufficiency or unsuitability of packing or preparation of the subject-matter insured 4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured 4.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under general average Clause) 4.6 loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel 4.7 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.	General Exclusions 3.1 loss damage or expense attributable to willful misconduct of the Assured 3.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured 3.3 loss damage or expense causes by insufficiency or unsuitability of packing or preparation of the subject-matter insured 3.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured 3.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under general average Clause) 3.6 loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel 3.7 any claim based upon loss of or frustration of the voyage or adventure 3.8 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.	General Exclusions 3.1 loss damage or expense attributable to willful misconduct of the Assured 3.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured 3.3 loss damage or expense causes by insufficiency or unsuitability of packing or preparation of the subject-matter insured 3.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured 3.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under general average Clause) 3.6 loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel 3.7 loss damage or expense arising from the absence shortage or withholding of labour of any description whatsoever resulting from any strike, lockout, labour disturbance, riot or civil commotion. 3.8 any claim based upon loss of or frustration of the voyage or adventure 3.9 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
Unseaworthiness and Unfitness Exclusion: 5.1 ..loss damage or expense arising from unseaworthiness of vessel or craft; unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured.	Unseaworthiness and Unfitness Exclusion: 4.1 ..loss damage or expense arising from unseaworthiness of vessel or craft; unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured.	Unseaworthiness and Unfitness Exclusion: 4.1 ..loss damage or expense arising from unseaworthiness of vessel or craft; unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured.

1910 ASSISTANCE AND SALVAGE CONVENTION
1989 SALVAGE CONVENTION
&
ITS 81/83/87/88 DRAFT

by Y.K.Huang 15/1/1998

1910 CONVENTION	1981 C.M.I. DRAFT	1983 I.M.O. DRAFT	1987 I.M.O. DRAFT	1988 I.M.O. FINAL DRAFT	1989 CONVENTION
His Majesty the German Emperor, King of Prussia, in the name of the German Empire, the President of the Argentine Republic . . . etc. Having recognized the desirability of determining by agreement certain uniform rules of law respecting to assistance and salvage at sea, have decided to conclude a convention to that end, and have appointed as their Plenipotentiaries, namely: (Follow the list of Plenipotentiaries) Who, having been duly authorized to that effect, have agreed as follows:					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:

Article 1	Chapter I. - GENERAL PROVISIONS Art. 1-1. Definition	Chapter I. - GENERAL PROVISIONS Art. 1-1. Definition	CHAPTER I - GENERAL PROVISIONS Article 1. Definitions	CHAPTER I - GENERAL PROVISIONS Article 1. Definitions	CHAPTER I - GENERAL PROVISIONS Article 1. Definitions
Assistance and salvage of sea-going vessels in danger, of any things on board, of freight and passage money, and also services of the same nature rendered by sea-going vessels to vessels of inland navigation or vice-versa, are subject to the following provisions, without any distinction being drawn between these two kinds of service (viz., assistance and salvage), and in whatever waters the services have been rendered.	1-1.1. Salvage operations means any act or activity undertaken to assist a vessel or any property in danger in whatever waters the act or activity takes place. 1-1.2. Vessel means any ship, craft or structure capable of navigation, including any vessel which is stranded, left by its crew or sunk. 1-1.3. Property means any property in danger in whatever waters the salvage operations take place, but including freight for the carriage of the cargo, whether such freight be at the risk of the owner of the goods, the shipowner or the charterer. 1-1.4. Damage to the environment means substantial physical damage caused by pollution, explosion, contamination, fire or similar major incidents in coastal or inland waters areas. 1-1.5. Payment means any reward, remuneration, or reimbursement due under the provisions of this Convention. 1-1.6. Owner of the goods means the person entitled to the goods.	1-1.1. Salvage operations means any act or activity undertaken to assist a vessel or any property in danger in whatever waters the act or activity takes place. 1-1.2. Vessel means any ship, craft or structure capable of navigation, including any vessel which is stranded, left by its crew or sunk. 1-1.3. Property includes freight for the carriage of the cargo, whether such freight be at the risk of the owner of the goods, the shipowner or the charterer. 1-1.4. 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, explosion, contamination, fire or similar major incidents. 1-1.5. Payment means any reward, remuneration, compensation or reimbursement due under the provisions of this Convention.	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 for the carriage of the cargo, whether such freight be at risk of the owner of the goods, the shipowner or the charterer. (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, compensation or reimbursement due under this Convention.	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 for the carriage of the cargo, whether such freight be at risk of the owner of the goods, the shipowner or the charterer. (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, compensation or reimbursement due under this Convention.	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 15

The provisions of this Convention shall he applied as regards all persons interested when either the assisting or salving vessel or the vessel assisted or salved belongs to a State of the High Contracting Parties, as well as in any other cases for which the national laws provide.
Provided always that
1. As regards persons interested who belong to a non-contracting State the application of the above provisions may he made by each of the contracting States conditional upon reciprocity.
2. Where all the persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the Convention are applicable.
3. Without prejudice to any wider provisions of any national laws, Article 11 only applies as between vessels belonging to the States of the High Contracting Parties.

Art. 1-2. Scope of application

1-2.1. This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a contracting State, as well as when the salvor belongs to, or the salving vessel or the vessel salved is registered in a contracting State.

1-2.2. However, the Convention does not apply:
(a) when all vessels involved are vessels of inland navigation,
(b) when all interested parties are nationals of the State where the proceedings are brought,
(c) to warships or to other vessels owned or operated by a State and being used at the time of the salvage operations exclusively on governmental non-commercial services,
(d) to removal of wrecks.

Art. 1-2. Scope of application

1-2.1. This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a contracting State, as well as when the salvor belongs to, or the salving vessel or the vessel salved is registered in a contracting State.

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(a) when all vessels involved are vessels of inland navigation,
(b) when all interested parties are nationals of the State where the proceedings are brought,
(c) to warships or to other vessels owned or operated by a State and being used at the time of the salvage operations exclusively on governmental non-commercial services,
(d) to removal of wrecks.

Article 2. Scope of application

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

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 Contracting State.

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 14
This convention does not apply to ships of war or to Government ships appropriated exclusively to a public service.

1967 Protocol, Article 1

Article 14 of the Convention for the unification of certain rules of law relating to assistance and salvage at sea, signed at Brussels on 23rd September 1910, shall be replaced by the following:
We provisions of this Convention shall also apply to assistance or salvage services rendered by or to a ship of war or any other ship owned, operated or chartered by a State or Public Authority.
A claim against a State for assistance or salvage services rendered to a ship of war or other ship which is, either at the time of the event or when the claim is brought, appropriated exclusively to public non commercial service, shall be brought only before the Courts of such State.

Article 13

This Convention does not affect the provisions of national laws or international treaties as regards the organization of services of assistance and salvage by or under the control of public authorities, nor, in particular, does it affect such laws or treaties on the subject of the salvage of fishing gear.

Art. 1-3. Salvage operations controlled by Public Authorities

1-3.1. This Convention shall not affect any provisions of national law or international convention relating to salvage operations by or under the control of public authorities.

1-3.2. 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.

1-3.3. 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.

Art. 1-3. Salvage operations controlled by Public Authorities

1-3.1. This Convention shall not affect any provisions of national law or international convention relating to salvage operations by or under the control of public authorities.

1-3.2. 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.

1-3.3. 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 3. 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 25. State-owned vessels

(1) This Convention shall not apply to warships or to other vessels owned or operated by a State Party and being used at the time of the salvage operations exclusively on governmental non-commercial services unless that State Party decides otherwise.

(2) Where a State Party decides to apply the Convention to its warships or other vessels owned or operated by a State Party and being used at the time of the salvage operations exclusively on governmental non-commercial services, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

Article 3. 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 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.

Art. 1-4. Salvage contracts	Art. 1-4. Salvage contracts	Article 4. Salvage contracts	Article 4. Salvage contracts	Article 6. Salvage contracts
1-4.1. This Convention shall apply to any salvage operations unless the contract otherwise provides expressly or by implication.	1-4.1. This Convention shall apply to any salvage operations save to the extent that the contract otherwise provides expressly or by implication.	(1) This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.	(1) This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.	(1) This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.
1-4.2. The master shall have authority to conclude contracts for salvage operations on behalf of the owner of the vessel and of property thereon.	1-4.2. The master shall have authority to conclude contracts for salvage operations on behalf of the owner of the vessel and of property thereon.	(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.	(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.	(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.
	1-4.3. Nothing in this article shall affect the application of the provisions of Article 1-5.	(3) Nothing in this article shall affect the application of article 5 nor duties to prevent or minimize damage to the environment.	(3) Nothing in this article shall affect the application of article 5 nor duties to prevent or minimize damage to the environment.	(3) Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment.
Article 7	Art. 1-5. Invalid contracts or contractual terms	Article 5. [Validity of contracts] [Invalid contracts]	Article 5. Annulment and modification of contracts	Article 7. Annulment and modification of contracts
Every agreement as to assistance or salvage entered into at the moment and under the influence of danger may, at the request of either party, be annulled, or modified by the court, if it considers that the conditions agreed upon are not equitable. In all cases, when it is proved that the consent of one of the parties is vitiated by fraud or concealment, or when the remuneration is, in proportion to the services rendered in an excessive degree too large or too small, the agreement may he annulled or modified by the court at the request of the party affected.	A contract or any terms thereof may be annulled or modified if: a) the contract has been entered into under 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.	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.	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.	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

Art.2-2. Duties of the salvor

2-2.1. The salvor shall use his best endeavours to salve the vessel and property and shall carry out the salvage operations with due care. The salvor shall also use his best endeavours to prevent or minimize damage to the environment.

2-2.2 The salvor shall, whenever the circumstances reasonably require, obtain assistance from other available salvors. However, he may reject offers of assistance made by other salvors when he can reasonably expect to complete unassisted the salvage operation successfully within a reasonable time or the capabilities of the other salvors are inadequate.

Art. 2-1. Duty of the owner and master

2-1.2 The owner and master of a vessel in danger shall take timely and reasonable action to arrange for salvage operations during which they shall co-operate fully with the salvor and shall use their best endeavour to prevent or minimize danger to the environment.

2-1.3 The owners of vessel or property salved and brought to a place of safety shall accept redelivery when reasonably requested by the salvors.

Chapter II. - PERFORMANCE OF SALVAGE OPERATIONS

Art.2-2. Duties of the salvor

2-2.1. The salvor shall use his best endeavours to salve the vessel and property and shall carry out the salvage operations with due care. In so doing the salvor shall also use his best endeavours to prevent or minimize damage to the environment.

2-2.2 The salvor shall, whenever the circumstances reasonably require, obtain assistance from other available salvors and shall accept the intervention of other salvors when requested so to do by the owner or master pursuant to paragraph 2 of Article 2-1; provided, however, that the amount of his reward shall not be prejudiced should it be found that such intervention was not necessary.

Art. 2-1. Duty of the owner and master

2-1.1. The owner and master of a vessel in danger shall take timely and reasonable action to arrange for salvage operations during which they shall co-operate fully with the salvor and shall use their best endeavour to prevent or minimize danger to the environment.

2-1.2 The owner and master of a vessel in danger shall require or accept other salvor's salvage services whenever it reasonably appears that the salvor already effecting salvage operations cannot complete them alone within a reasonable time or his capabilities are inadequate.

2-1.3 The owners of vessel or property salved and brought to a place of safety shall accept redelivery when reasonably requested by the salvors.

CHAPTER II- PERFORMANCE OF SALVAGE OPERATIONS

Article 6. Duties and of the owner and master and duties of the salvor

(1) The salvor shall owe a duty to the owner of the vessel or other property in danger:
- (a) to exercise due care to salve the vessel or other property in danger;
- (b) to carry out the salvage operations with due care;
- (c) in performing the duty specified in subparagraph (a) and (b), to exercise due care to prevent or minimize damage to the environment;
- (d) whenever circumstances reasonably require, to seek assistance from other salvors; and
- (e) 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.

CHAPTER II- PERFORMANCE OF SALVAGE OPERATIONS

Article 6. Duties and of the owner and master and duties of the salvor

(1) The salvor shall owe a duty to the owner of the vessel or other property in danger:
- (a) to exercise due care to salve the vessel or other property in danger;
- (b) to carry out the salvage operations with due care;
- (c) in performing the duty specified in subparagraph (a) and (b), to exercise due care to prevent or minimize damage to the environment;
- (d) whenever circumstances reasonably require, to seek assistance from other salvors; and
- (e) 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.

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 11

Every master is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost.

Article 14 (as inserted by the 1967 Protocol)

'Any High Contracting Party shall have the right to determine whether and to what extent Article 11 shall apply to ships coming within the terms of the second paragraph of this "
Article 1 2
The High Contracting Parties, whose legislation does not forbid infringements of the preceding Article, bind themselves to take or to propose to their respective legislatures the measures necessary for the prevention of such infringements.
The High Contracting Parties will communicate to one another as soon as possible the laws or regulations which have already been or may be hereafter promulgated in their States for giving effect to the above provision.

Article 11

The owner of a vessel incurs no liability by reason of contravention of the above provision.

Article 15

3. Without prejudice to any wider provisions of any national laws, Article 11 only applies as between vessels belonging to the States of the High Contracting Parties.

Art. 2-3. Duty to render assistance

2-3.1. 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.

2-3.2. The contracting States shall adopt the measures necessary to enforce the duty set out in the preceding paragraph.

Art. 2-3. Duty to render assistance

2-3.1. 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.

2-3.2. The contracting States shall adopt the measures necessary to enforce the duty set out in the preceding paragraph.

2-3.3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

Article 8. 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 Contracting States 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 7. 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 Contracting States 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 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.

Art. 2-4. Co-operation of contracting States	Art. 2-4. Co-operation of contracting States	Article 9. Co-operation of Contracting States	Article 8. Co-operation of Contracting States	Article 11. Co-operation
A contracting State 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 and public authorities in order to ensure the efficient and successful performance of salvage operations as preventing damage to the environment in general.	A contracting State 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.	A Contracting State 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.	A Contracting State 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.	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	Chapter III. - RIGHTS OF SALVORS	Chapter III- RIGHTS OF SALVORS	Chapter III- RIGHTS OF SALVORS	Chapter III- RIGHTS OF SALVORS
Article 2	Art. 3-1. Conditions for reward	Article 10. Conditions for reward	Article 9. Conditions for reward	Article 12. Conditions for reward
Every act of assistance or salvage of which has had a useful result gives a right to equitable remuneration. No remuneration is due if the services rendered have no beneficial result.	3-1.1. Salvage operations which have had a useful result give right to a reward.	(1) Salvage operations which have had a useful result give right to a reward.	(1) Salvage operations which have had a useful result give right to a reward.	(1) Salvage operations which have had a useful result give right to a reward.
Article 5	3-1.2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have no useful result.	(2) Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.	(2) Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.	(2) Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
Remuneration is due notwithstanding that the salvage services have been rendered by or to vessels belonging to the same owner.	3-1.3. This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owners.	(3) This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner.	(3) This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner.	(3) This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner.

Article 8

The remuneration is fixed by the court according to the circumstances of each case, on the basis of the following considerations: (a) firstly, the measure of success obtained, the efforts and deserts of the salvors, the danger run by the salved vessel, by her passengers, crew and cargo, by the salvors, and by the salving vessel, the time expended, the expenses incurred and losses suffered, and the risks of liability and other risks run by the salvors, and also the value of the property exposed to such risks, due regard being had to the special appropriation (if any) of the salvors' vessel for salvages purposes; b) secondly, the value of the property salved.
The same provisions apply for the purpose of fixing the apportionment provided for the second paragraph of Article 6.

Article 2
In no case shall the sum to he paid exceed the value of the property salved.

Art. 3-2. The amount of the reward

3-2.1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following considerations without regard to the order presented below:

a) the value of the property salved,
b) the skill and efforts of the salvors in avoiding 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 efforts of the salvors, including the time used and expenses and losses incurred by the salvors,
f) the risk of liability and other risks run by the salvors or their equipment,
g) the promptness of the service rendered ,
h) the use of vessels or other equipment intended for salvage operations.,
i) the state of readiness and efficiency of the salvor's equipment and the value thereof.

3-2.2. The reward under paragraph 1 of this Article shall not exceed the value of the property salved at the time of the completion of the salvage operations.

Art. 3-2. The amount of the reward

3-2.1. The reward shall he fixed with a view to encouraging salvage operations, taking into account the following considerations without regard to the order in which presented below:

a) the value of the property salved,
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 efforts of the salvors, including the time used and expenses and losses incurred by the salvors,
f) the risk of liability and other risks run by the salvors or their equipment,
g) the promptness of the service rendered ,
h) the availability and use of vessels or other equipment intended for salvage operations.,
i) the State of readiness and efficiency of the salvor's equipment and the value thereof.

3-2.2. The reward under paragraph 1 of this Article shall not exceed the value of the property salved at the time of the completion of the salvage operations.

Article 11. Criteria for assessing the reward

(1) The reward shall be fixed with a view to encouraging salvage operations, taking into account the following considerations without regard to the order in which presented below:

(a) the value of the property salved;
(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 ;
the skill and efforts of the salvors in salving the vessel, property and life, including the time used and expenses and losses incurred by the salvors;
(e) the risk of liability and other risks run by the salvors or their equipment;
(f) the promptness of the services rendered;
(g) the availability and use of vessels or other equipment intended for salvage operations ;
(h) the state of readiness and efficiency of the salvor's equipment and the value thereof.

(2) Notwithstanding that a court having jurisdiction may, under national law, order payments under paragraph 1 to be made initially by any of the property interests, these amount shall be brone by the property interests in proportion to their value.

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

Article 10. Criteria for assessing the reward

(1) The reward shall be fixed with a view to encouraging salvage operations, taking into account the following considerations without regard to the order in which presented below:

(a) the value of the property salved;
(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) including 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) Notwithstanding that a court having jurisdiction may, under national law, order payments under paragraph 1 to be made initially by any of the property interests, these amount shall be brone by the property interests in proportion to their value. Nothing in this article shall prevent any right of defence.

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

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 he 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.

Art. 3.3. Reimbursement of Salvor's Expenses and Entitlement to a Special Reward	Art. 3.3. Special compensation	Article 12. Special compensation	Article 11. Special compensation	Article I4. Special compensation
3-3.1. If the salvor has carried out salvage operations also in order to prevent that as a result of the danger to the vessel and any cargo on board, damage to the environment may occur, or to minimize such damage, the salvor is entitled to compensation payable by the shipowner equivalent to the salvor's expenses as herein defined.	3-3.1. 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 failed to earn a reward under Article 3-2. at least equivalent to the compensation assessable in accordance with Article 3-3., he shall be entitled to compensation from the owner of that vessel equivalent to his expenses as herein defined.	(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 failed to earn a reward under article 11 at least equivalent to the compensation assessable in accordance with this article, he shall be entitled to compensation from the owner of that vessel equivalent to his expenses as herein defined.	(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 failed to earn a reward under article 10 at least equivalent to the compensation assessable in accordance with this article, he shall be entitled to compensation from the owner of that vessel equivalent to his expenses as herein defined.	(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.
3-3.2. If the salvor's endeavours have actually avoided or minimized such damage, he is , in addition, entitled to a special reward, taking into account as applicable the criteria in paragraph 1 of Art.3.2., not exceeding [twice] the salvor's expenses.	3-3.2. If, in the circumstances set out in paragraph 1 of Article 3-3. hereof, the salvor by his salvage operations has prevented or minimized damage to the environment, the compensation payable by the owner to the salvor thereunder may be increased, If and to the extent that the tribunal considers it fair and just to do so, bearing in mind the relevant criteria set out in paragraph 1 of Article 3-2 above, but in no event shall it be more than doubled.	(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 compensation payable by the owner to the salvor under paragraph 1 may be increased , if and to the extent that tribunal considers it fair and just to do so, bearing in mind the relevant criteria set out in article 11.1, but in no event shall it be more than [doubled].	(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 compensation payable by the owner to the salvor under paragraph 1 may be increased , if and to the extent that tribunal considers it fair and just to do so, bearing in mind the relevant criteria set out in article 10.1, but in no event shall it be [more than....].	(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 hearing 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 lOO% of the expenses incurred by the salvor.
3-3.3. "Salvor's expenses" for the purpose of 1) and 2) above means a fair rate for equipment and personnel actually used in the salvage operation together with the expenses reasonably incurred by the salvors in the salvage operations.	3-3.3. "Salvor's expenses" for the purpose of paragraphs 1 and 2 of this Article 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 operations, taking into consideration the criteria set out in paragraph 1 (g), (h) and (i) of Article 3-2.	(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 10.1 (g), (h) and (i).	(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 10.1 (g), (h) and (i).	(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).
3-3.4. Provided always that any recovery under this Article 3-3 shall be paid only to the extent that it exceeds any sums payable under Article 3-2.	3-3.4. Provided always that the total 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 3-2.	(4) Provided always that the total 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 11.	(4) Provided always that the total 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 10.	(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.
3-3.5. If the salvor has been negligent and has thereby failed to avoid or minimize damage to the environment, he may be deprived of the whole or part of any payment due under this Article.	3-3.5. 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 payment due under this Article.	(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 payment due under this article.	(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 payment due under this article.	(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.
	3-3.6. Nothing in this Article shall affect any rights of recourse on the part of the owner of the vessel.	(6) Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.	(6) Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.	(6) Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

Article 6	Art. 3-4. Apportionment between salvors	Art. 3-4. Apportionment between salvors	Article 13. Apportionment between salvors	Article 12. Apportionment between salvors	Article 15. Apportionment between salvors
The amount of remuneration is fixed by agreement between the parties, and, failing agreement, by the court. The proportion in which the remuneration is to be distributed amongst the salvors is fixed in the same manner. The apportionment of the remuneration amongst the owner, master and other persons in the service of each salving vessel shall be determined by the law of the vessel's flag.	3-4.1. The apportionment of a reward between salvors shall be made on the basis of the criteria contained in Article 3-2. 3-4.2. 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 employees.	3-4.1. The apportionment of a reward between salvors shall be made on the basis of the criteria contained in Article 3-2. 3-4.2. 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 employees.	(1) The apportionment of a reward between salvors shall be made on the basis of the criteria contained in article 11. (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 employees.	(1) The apportionment of a reward between salvors shall be made on the basis of the criteria contained in article 10. (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 employees.	(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 9	Art. 3-5. Salvage of persons	Art. 3-5. Salvage of persons	Article 14. Salvage of persons	Article 13. Salvage of persons	Article 16. Salvage of persons
No remuneration is due from the persons whose lives are saved, but nothing in this Article shall affect the provisions of the national laws on this subject. Salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage or assistance, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo, and accessories.	3-5.1. A salvor of human life, who has taken part in the salvage operations, is entitled to a fair share of any payment under this Convention. 3-5.2. In any event, a salvor who at the request of any party concerned or a public authority has salved or undertaken to save any persons from a vessel in danger, shall be entitled to compensation equivalent to his expenses as defined in paragraph 3 of Article 3-3. 3-5.3. [If the salvor has actually salved any person from the vessel, he is, in addition, entitled to a special reward, taking into account as applicable the criteria in paragraph 1. of Article 3-2 but not exceeding [twice] the salvor's expenses.] 3-5.4. Provided always that any recovery under paragraph 2 and 3 of this Article shall be paid only to the extent that it exceeds any sum payable under paragraph 1 of this Article. 3-5.5. The payment due under paragraph 2 and 3 of this Article shall be payable by the owner of the vessel in danger or the state in which that vessel is registered as provided in the law of that state.	3-5.1. No remuneration is due from the person whose lives are saved. but nothing in this Article shall affect the provisions of national law on this subject. 3-5.2. 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 remuneration awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.	(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 remuneration awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.	(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 remuneration awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.	(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 4

A tug has no right to remuneration for assistance to or salvage of the vessel she is towing or of the vessel's cargo, except where she has rendered exceptional services which cannot be considered as rendered in fulfillment of the contract of towage

Article 8

The court may deprive the salvors of all remuneration, or may award a reduced remuneration, if it appears that the salvors have by their fault rendered the salvage or assistance necessary or have been guilty of theft, fraudulent concealment, or other acts of fraud.

Article 3

Persons who have taken part in salvage operations notwithstanding the express and reasonable prohibition on the part of the vessel to which the services were rendered, have no right to any remuneration.

Art. 3-6. 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.

Art. 3-7. The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under the provisions of 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.

Art. 3-8. Prohibition by the owners or public authorities

Services rendered notwithstanding the express and reasonable prohibition of the owner, the master, or an appropriate public authority shall not give rise to payment under the provisions of this Convention.

Chapter IV. - CLAIMS AND ACTIONS

Art. 4-1. Maritime lien

4-1.1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.

4-1.2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

Art. 3-6. 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.

Art. 3-7. The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under the provisions of 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.

Art. 3-8. Prohibition by the owners or master

Services rendered notwithstanding the express and reasonable prohibition of the owner or the master shall not give rise to payment under the provisions of this Convention.

Chapter IV. - CLAIMS AND ACTIONS

Art. 4-1. Maritime lien

4-1.1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.

4-1.2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

4-1.3. The salved property shall not without the consent of the salvor be removed from the port or place at which the property first arrives after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim.

Article 15. 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 16. 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 17. Prohibition by the owner or master of the vessel

Services rendered notwithstanding the express and reasonable prohibition of the owner [of the vessel] or the master shall not give rise to payment under this Convention.

CHAPTER IV - CLAIMS AND ACTIONS

Article 18. 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.

(3) The salved property shall not without the consent of the salvor be removed from the port or place at which the property first arrives after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim.

Article 14. 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 15. 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 16. Prohibition by the owner or master of the vessel

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property 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 17. 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 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.

Art. 4-2. Duty to provide security	Art. 4-2. Duty to provide security	Article 19. Duty to provide security	Article 18. Duty to provide security	Article 21. Duty to provide security
4-2.1. Upon the request of the salvor a *person liable for a payment* due under the provisions of this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.	4-2.1. Upon the request of the salvor a person liable for a payment due under the provisions of this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.	(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.	(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.	(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.
4-2.2. Without prejudice to paragraph 1 of this Article, the owner of the salved vessel shall use his best endeavors 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.	4-2.2. Without prejudice to paragraph 1 of this Article, the owner of the salved vessel shall use his best endeavors 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.	(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.	(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 property shall not without the consent of the salvor be removed from the port or place at which the property first arrives after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim.	(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.
4-2.3. [If satisfactory security has not been provided within a reasonable time after a request has been made, the salvor is entitled to bring any claim for payment due under this Convention directly against the insurer of the person liable. In such a case the insurer shall only be liable if and to the extent that he would be liable if the claim in respect of the payment had been brought against him under contract of insurance by the person liable. The insurer shall have all defences available under the contract of insurance as against the person liable for the payment.]				
Art. 4-3. Interim payment	Art. 4-3. Interim payment	Article 20. Interim payment	Article 19. Interim payment	Article 22. Interim payment
The court or arbitral tribunal having jurisdiction over the claim of the salvor may by interim decision order that the salvor shall be paid such amount on account 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. In the event of an interim payment the security provided under Article 4-2 shall be reduced accordingly,	The court or arbitral tribunal having jurisdiction over the claim of the salvor may by interim decision order that the salvor shall be paid such amount on account 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. In the event of an interim payment the security provided under Article 4-2, shall be reduced accordingly,	(1) The court or arbitral tribunal having jurisdiction over the claim of the salvor may by interim decision order that the salvor shall be paid such amount on account 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. In the event of an interim payment under this article the security provided under article 19 shall be reduced accordingly.	(1) The court or arbitral tribunal having jurisdiction over the claim of the salvor may by interim decision order that the salvor shall be paid such amount on account 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. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.	(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 10	Art. 4-4. Limitation of actions	Art. 4-4. Limitation of actions	Article 21. Limitation of actions	Article 20. Limitation of actions	Article 23. Limitation of actions
A salvage action is barred after an interval of two years from the day on which the operations of assistance or salvage terminate. The grounds upon which the said period of limitation may be suspended or interrupted are determined by the law of the court where the case is tried. The High Contracting Parties reserve to themselves the right to provide, by legislation in their respective countries, that the said period shall be extended in cases where it has not been possible to arrest the vessel assisted or salved in the territorial waters of the State in which the plaintiff has his domicile or principal place of business.	4-4.1. Any action relating to payment under the provisions of 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. 4-4.2. 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. 4-4.3. 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. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been first adjudged liable in the action against himself. 4-4.4. Without prejudice to the preceding paragraphs all matters relating to limitation of action under this Article are governed by the law of the State where the action is brought.	4-4.1. Any action relating to payment under the provisions of 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. 4-4.2. 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. 4-4.3. 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. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been first adjudged liable in the action against himself. 4-4.4. Without prejudice to the preceding paragraphs all matters relating to limitation of action under this Article are governed by the law of the State where the action is brought.	(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 he 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.	(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 he 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.	(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 he 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.
	Art. 4-6. Interest	Art. 4-6. Interest	Article 23. Interest	Article 21. Interest	Article 24. Interest
	4-6.1. 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 court or arbitral tribunal seized of the case is situated. 4-6.2. Interest shall in any event commence to run when the request referred to in paragraph 1 of Art. 4-2 has been made.	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 court or arbitral tribunal seized of the case is situated.	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 court or arbitral tribunal seized of the case is situated.	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 court or arbitral tribunal seized of the case is situated.	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.

Art. 4-7 . Publication of arbitral awards

Contracting States shall take the measures necessary to make public arbitral awards made in salvage cases.

Art. 4-7 . Publication of arbitral awards

4-7.1. Contracting States shall encourage, as far as possible and if need be with the consent of the parties the publication of arbitral awards made in salvage cases.

Article 24. Publication of arbitral awards

[Contracting States shall encourage, as far as possible and if need be with the consent of the parties, the publication of arbitral awards made in salvage cases.]

Article 23. 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.

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.

Art. 4-5. Jurisdiction

4-5.1. Unless otherwise agreed, an action for payment under the provisions of this Convention may, at the option of the plaintiff, be brought in a court which, according to the law of the State where the court is competent and within the jurisdiction of which is situated one of the following places:

a) the principal place of business of the defendant
b) the port to which the property salved has been brought,
c) the place where the property salved has been arrested,
d) the place where security for the payment has been given,
e) the place where the salvage operations took place.

4-5.2. With respect to vessels owned by a contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdiction set forth in the preceding paragraph and shall waive all defences based on its status as a sovereign State. In the case of a vessel owned by a State and operated by a company which in that State is registered as the ship's operator, owner shall for the purpose of this paragraph mean such company.

4-5.3. Nothing in this article constitutes an obstacle to the jurisdiction of a contracting State for provisional or protective measures.

Art. 4-5. Jurisdiction

4-5.1. Unless the parties have agreed to the jurisdiction of another court or to arbitration, an action for payment under the provisions of this Convention may, at the option of the plaintiff , be brought in a court which, according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:

a) the principal place of business of the defendant
b) the port to which the property salved has been brought,
c) the place where the property salved has been arrested,
d) the place where security for the payment has been given,
e) the place where the salvage operations took place.

4-5.2. With respect to vessels owned by a contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdiction set forth in paragraph 1 of this article and shall waive all defences based on its status as a sovereign State. In the case of a vessel owned by a State and operated by a company which in that State is registered as the ship's operator, owner shall for the purpose of this paragraph mean such company.

4-5.3. Nothing in this Article constitutes an obstacle to the jurisdiction of a contracting State for provisional or protective measures. The exercise by the salvor of his maritime lien whether by arrest or otherwise against the property salved shall not be treated as a waiver by the salvor of his rights, including the right to have his claim for salvage remuneration adjudicated by court or arbitral proceedings in another jurisdiction.

Article 22 Jurisdiction

4-5.1. Unless the parties have agreed to the jurisdiction of another court or to arbitration, an action for payment under the provisions of this Convention may, at the option of the plaintiff , be brought in a court which is competent, according to the law of the State where the court is situated, and within the jurisdiction of which is situated one of the following places:

a) the principal place of business of the defendant
b) the port to which the property salved has been brought,
c) the place where the property salved has been arrested,
d) the place where security for the payment has been given,
e) the place where the salvage operations took place.

4-5.2. With respect to vessels owned by a contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdiction set forth in paragraph 1 of this article and shall waive all defences based on its status as a sovereign State. In the case of a vessel owned by a State and operated by a company which in that State is registered as the ship's operator, owner shall for the purpose of this paragraph mean such company.

Nothing in this Article constitutes an obstacle to the jurisdiction of a Contracting State for provisional or protective measures. The exercise by the salvor of his maritime lien whether by arrest or otherwise against the property salved shall not be treated as a waiver by the salvor of his rights, including the right to have his claim for salvage remuneration adjudicated by court or arbitral proceedings in another jurisdiction.

Article 21 Jurisdiction

4-5.1. Unless the parties have agreed to the jurisdiction of another court or to arbitration, an action for payment under the provisions of this Convention may, at the option of the plaintiff , be brought in a court which, according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:

a) the principal place of business of the defendant
b) the port to which the property salved has been brought,
c) the place where the property salved has been arrested,
d) the place where security for the payment has been given,
e) the place where the salvage operations took place.

Nothing in this Article constitutes an obstacle to the jurisdiction of a contracting State for provisional or protective measures. The exercise by the salvor of his maritime lien whether by arrest or otherwise against the property salved shall not be treated as a waiver by the salvor of his rights, including the right to have his claim for salvage remuneration adjudicated by court or arbitral proceedings in another jurisdiction.

Chapter V. - LIABILITY OF SALVORS

Art. 5-1. Limitation of liability

A contracting State may give salvors a right of limitation equivalent in manner and extent to the right provided for by the 1976 Convention on the Limitation of Liability for Maritime Claims.

Article 5-2 Damage caused during salvage operations

A Contracting State shall adopt the legislation necessary to relieve the salvors of all liability for damage caused [during the salvage operations] and for which the shipowner or other person in whose interest the salvage operations are carried out is liable.

Chapter V. - LIABILITY OF SALVORS

Art. 5-1. Limitation of liability

A contracting State may give salvors a right of limitation equivalent in manner and extent to the right provided for by the 1976 Convention on the Limitation of Liability for Maritime Claims.

CHAPTER V - FINAL CLAUSES

Article 28. Signature, codification, acceptance, approval and accession

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

(2) States may express their consent to be bound by this Convention by:
   (a) signature without reservation as to ratification, acceptance or approval; or
   (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
   (c) accession.

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

Article 29. Entry into force

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

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

Article 2.2 Scope of application

(1) However, this Convention does not apply:
  (a) when all vessels involved are of inland navigation;
  (b) when all interested parties are nationals of the State where the proceedings are brought;
    1. to warships or to other vessel owned or operated by a State and being used at the time of the salvage operations exclusively on governmental non-commercial services;
    2. when the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation.
    3. Nothing in this article shall affect the application of article 5 nor duties to prevent or minimize damage to the environment..

Article 24. 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 all vessels involved are of inland navigation;
  (b) when all interested parties are nationals of that State;
  (c) when the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation.

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

1. 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 data specified therein, and such data is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

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 in 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.

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 data specified therein, and such data is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

Article 31. Denunciation

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

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

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

Article 32. Revision and amendment

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

(2) Be 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 hound 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. Depository

(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 Depository to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 34. Languages

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

In witness whereof the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

Done at London this twenty-eighth day of April one thousand nine hundred and eighty-nine.

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 ensue speedy amendment of the York-Antwerp Rules, 1974, to ensure that special compensation paid under article 14 is not subject to general average.

LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

1908 - 1924 - 1926 - 1950 - 1953 - 1967 - 1972 - 1980 - 1990 - 1995

CHRONOLOGY

on Amendments introduced

by *Y.K.Huang* 黃裕凱 20/10/1997

15.1.1908	3.12.1924	13.10.1926	12.4.1950	10.6.1953	20.12.1967	23.2.1972	21.5.1980	5.9.1990	1.1.1995
Notes: The Contractor's name must always be inserted in Line 2 of this Form; and when-ever the Agreement is signed by the Master of the Salving Vessel, he must describe himself as such and add to his signature the words "For and on behalf of the Contractor".	Notes: The Contractor's name must always be inserted in Line 2 of this Form; and when-ever the Agreement is signed by the Master of the Salving Vessel, he must describe himself as such and add to his signature the words "For and on behalf of the Contractor".	Notes: The Contractor's name must always be inserted in Line 2 of this Form; and when-ever the Agreement is signed by the Master of the Salving Vessel, he must describe himself as such and add to his signature the words "For and on behalf of the Contractor".	Notes: 1. Insert name of person signing on behalf of Owners of property to be salved. The Master should sign wherever possible. 2. The Contractor's name should always be inserted in line 3 and whenever the Agreement is signed by the Master of the Salving vessel or other person on behalf of the Contractor the name of the Master or other person must also be inserted in line 3 before the words "for and on behalf of". The words "for and on behalf of" should be deleted where a Contractor signs personally. 3. If at the time of the signing of this Agreement it is not possible to decide upon the figure to be inserted in Clause 1 the space may be left blank as the question of security is dealt with in Clause4 and the Form provides for the amount of remuneration, if any, to be decided either by agreement or by Arbitration.	Notes: 1. Insert name of person signing on behalf of Owners of property to be salved. The Master should sign wherever possible. 2. The Contractor's name should always be inserted in line 3 and whenever the Agreement is signed by the Master of the Salving vessel or other person on behalf of the Contractor the name of the Master or other person must also be inserted in line 3 before the words "for and on behalf of". The words "for and on behalf of" should be deleted where a Contractor signs personally. 3. If at the time of the signing of this Agreement it is not possible to decide upon the figure to be inserted in Clause 1 the space may be left blank as the question of security is dealt with in Clause4 and the Form provides for the amount of remuneration, if any, to be decided either by agreement or by Arbitration.	Notes: 1. Insert name of person signing on behalf of Owners of property to be salved. The Master should sign wherever possible. 2. The Contractor's name should always be inserted in line 3 and whenever the Agreement is signed by the Master of the Salving vessel or other person on behalf of the Contractor the name of the Master or other person must also be inserted in line 3 before the words "for and on behalf of". The words "for and on behalf of" should be deleted where a Contractor signs personally. 3. If at the time of the signing of this Agreement it is not possible to decide upon the figure to be inserted in Clause 1 the space may be left blank as the question of security is dealt with in Clause4 and the Form provides for the amount of remuneration, if any, to be decided either by agreement or by Arbitration.	Notes: 1. Insert name of person signing on behalf of Owners of property to be salved. The Master should sign wherever possible. 2. The Contractor's name should always be inserted in line 3 and whenever the Agreement is signed by the Master of the Salving vessel or other person on behalf of the Contractor the name of the Master or other person must also be inserted in line 3 before the words "for and on behalf of". The words "for and on behalf of" should be deleted where a Contractor signs personally.	Notes: 1. Insert name of person signing on behalf of Owners of property to be salved. The Master should sign wherever possible. 2. The Contractor's name should always be inserted in line 3 and whenever the Agreement is signed by the Master of the Salving vessel or other person on behalf of the Contractor the name of the Master or other person must also be inserted in line 3 before the words "for and on behalf of". The words "for and on behalf of" should be deleted where a Contractor signs personally.	Notes: 1. Insert name of person signing on behalf of Owners of property to be salved. The Master should sign wherever possible. 2. The Contractor's name should always be inserted in line 4 and whenever the Agreement is signed by the Master of the Salving vessel or other person on behalf of the Contractor the name of the Master or other person must also be inserted in line 4 before the words "for and on behalf of". The words "for and on behalf of" should be deleted where a Contractor signs personally. 3. Insert place if agreed in clause 1(a)(i) and currency if agreed in clause 1(e).	Notes: 1. Insert name of person signing on behalf of Owners of property to be salved. The Master should sign wherever possible. 2. The Contractor's name should always be inserted in line 4 and whenever the Agreement is signed by the Master of the Salving vessel or other person on behalf of the Contractor the name of the Master or other person must also be inserted in line 4 before the words "for and on behalf of". The words "for and on behalf of" should be deleted where a Contractor signs personally. 3. Insert place if agreed in clause 1(a)(i) and currency if agreed in clause 1(e).
On board the dated 19	On board the dated 19	On board the dated 19	On board the dated 19	On board the dated 19	On board the dated 19	On board the dated 19	On board the dated 19	On board the dated 19	On board the dated
IT IS HEREBY AGREED between Captain of the (afterwards called "the Master") and (afterwards called "the Contractor") as follows:-	IT IS HEREBY AGREED between Captain of the (afterwards called "the Master") and (afterwards called "the Contractor") as follows:-	IT IS HEREBY AGREED between Captain of the (afterwards called "the Master") and (afterwards called "the Contractor") as follows:-	IT IS HEREBY AGREED between Captain for and on behalf of the Owner of the " " her Cargo and Freight and for and on behalf of (hereinafter called "the Contractor"):-	IT IS HEREBY AGREED between Captain for and on behalf of the Owner of the " " her Cargo and Freight and for and on behalf of (hereinafter called "the Contractor"):-	IT IS HEREBY AGREED between Captain for and on behalf of the Owner of the " " her Cargo and Freight and for and on behalf of (hereinafter called "the Contractor"):-	IT IS HEREBY AGREED between Captain for and on behalf of the Owner of the " " her cargo and freight and for and on behalf of (hereinafter called "the Contractor"):-	IT IS HEREBY AGREED between Captain for and on behalf of the Owner of the " " her cargo and freight bunkers and stores and for and on behalf of (hereinafter called "the Contractor"):-	IT IS HEREBY AGREED between Captain for and on behalf of the Owner of the " " her cargo freight bunkers stores and any other property thereon (hereinafter collectively called "the Owners") and for and on behalf of (hereinafter called "the Contractor") that :-	IT IS HEREBY AGREED between Captain for and on behalf of the Owner of the " " her cargo freight bunkers stores and any other property thereon (hereinafter collectively called "the Owners") and for and on behalf of (hereinafter called "the Contractor") that :-
1. The Contractor agrees to use his best endeavours to salve the and her cargo and take her into or other place to be hereafter agreed with the Master, providing at his own risk all proper steam and other assistance and labour.	1. The Contractor agrees to use his best endeavours to salve the and her cargo and take them into or other place to be hereafter agreed with the Master, providing at his own risk all proper steam and other assistance and labour.	1. The Contractor agrees to use his best endeavours to salve the and her cargo and take them into or other place to be hereafter agreed with the Master, providing at his own risk all proper steam and other assistance and labour.	1. The Contractor agrees to use his best endeavours to salve the and her cargo and take them into or other place to be hereafter agreed with the Master, providing at his own risk all proper steam and other assistance and labour.	1. The Contractor agrees to use his best endeavours to salve the and her cargo and take them into or other place to be hereafter agreed with the Master, providing at his own risk all proper steam and other assistance and labour.	1. The Contractor agrees to use his best endeavours to salve the and her cargo and take them into or other place to be hereafter agreed with the Master, providing at his own risk all proper steam and other assistance and labour.	1. The Contractor agrees to use his best endeavours to salve the and her cargo and take them into or other place to be hereafter agreed.	1. (a) The Contractor agrees to use his best endeavours to salve the" "and/or her cargo bunkers and stores and take them into or other place to be hereafter agreed or if no place is named or agreed to a place of safety. The Contractor further agrees to use his best endeavours to prevent the escape of oil from the vessel while performing the services of salving the subject vessel and/or her cargo bunkers and stores.	1. (a) The Contractor agrees to use his best endeavours: (i) to salve the " "and/or her cargo freight bunkers stores and any other property thereon and take them into or to such other place as may hereafter be agreed either place to be deemed a place of safety or if no such place is named or agreed to a place of safety and (ii) while performing the salvage services to prevent or minimize damage to the environment.	1. (a) The Contractor agrees to use his best endeavours: (i) to salve the " "and/or her cargo freight bunkers stores and any other property thereon and take them into or to such other place as may hereafter be agreed either place to be deemed a place of safety or if no such place is named or agreed to a place of safety and (ii) while performing the salvage services to prevent or minimize damage to the environment.

The services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay"	The services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay"	The services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay"	The services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay"	The services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay"	The services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay"	The services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay".	The services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay" except that where the property being salved is a tanker laden or partly laden with a cargo of oil and without negligence on the part of the Contractor and/or his Servants and/or Agents (1) the services are not successful or (2) are only partially successful or (3) the Contractor is prevented from completing the services the Contractor shall nevertheless be awarded solely against the Owner 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.	(b) Subject to clause 2 incorporating Convention Article 14 the services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay".	(b) Subject to the statutory provisions relating to special compensation the services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay".
and the Contractor's remuneration in the event of success shall be £ , unless this sum shall afterwards be objected to as hereinafter mentioned in which case the remuneration for the services rendered shall be fixed by Arbitration in London in the manner hereinafter prescribed: and any other difference arising out of this Agreement or the operations thereunder shall be referred to Arbitration in the same way.	and the Contractor's remuneration in the event of success shall be £ , unless this sum shall afterwards be objected to as hereinafter mentioned in which case the remuneration for the services rendered shall be fixed by Arbitration in London in the manner hereinafter prescribed: and any other difference arising out of this Agreement or the operations thereunder shall be referred to Arbitration in the same way.	and the Contractor's remuneration in the event of success shall be £ , unless this sum shall afterwards be objected to as hereinafter mentioned in which case the remuneration for the services rendered shall be fixed by Arbitration in London in the manner hereinafter prescribed: and any other difference arising out of this Agreement or the operations thereunder shall be referred to Arbitration in the same way.	and the Contractor's remuneration in the event of success shall be £ , unless this sum shall afterwards be objected to as hereinafter mentioned in which case the remuneration for the services rendered shall be fixed by Arbitration in London in the manner hereinafter prescribed: and any other difference arising out of this Agreement or the operations thereunder shall be referred to Arbitration in the same way.	and the Contractor's remuneration in the event of success shall be £ , unless this sum shall afterwards be objected to as hereinafter mentioned in which case the remuneration for the services rendered shall be fixed by Arbitration in London in the manner hereinafter prescribed: and any other difference arising out of this Agreement or the operations thereunder shall be referred to Arbitration in the same way.	and the Contractor's remuneration in the event of success shall be £ , unless this sum shall afterwards be objected to as hereinafter mentioned in which case the remuneration for the services rendered shall be fixed by Arbitration in London in the manner hereinafter prescribed: and any other difference arising out of this Agreement or the operations thereunder shall be referred to Arbitration in the same way.	In case of arbitration being claimed the Contractor's remuneration in the event of success shall be fixed by arbitration in London in the manner hereinafter prescribed: and any difference arising out of this Agreement or the operations thereunder shall be referred to arbitration in the same way.	(b) The Contractor's remuneration shall be fixed by arbitration in London in the manner hereinafter prescribed and any difference arising out of this Agreement or the operations thereunder shall be referred to arbitration in the same way.	(c) The Contractor's remuneration shall be fixed by arbitration in London in the manner hereinafter prescribed and any difference arising out of this Agreement or the operations thereunder shall be referred to arbitration in the same way.	(c) The Contractor's remuneration shall be fixed by arbitration in London in the manner hereinafter prescribed and any difference arising out of this Agreement or the operations thereunder shall be referred to arbitration in the same way.
	In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel or her cargo it is agreed that the provisions of this Agreement shall mutatis mutandis apply to such services.	In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel or her cargo it is agreed that the provisions of this Agreement shall mutatis mutandis apply to such services.	In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel or her cargo it is agreed that the provisions of this Agreement shall mutatis mutandis apply to such services.	In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel or her cargo it is agreed that the provisions of this Agreement shall mutatis mutandis apply to such services.	In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel or her cargo it is agreed that the provisions of this Agreement shall mutatis mutandis apply to such services.	In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel or her cargo it is agreed that the provisions of this Agreement shall apply to such services.	In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel and/or her cargo bunkers and stores the provisions of this Agreement shall apply to such services.	(d) In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel and/or her cargo freight bunkers stores and any other property thereon the provisions of this Agreement shall apply to such services.	(d) In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel and/or her cargo freight bunkers stores and any other property thereon the provisions of this Agreement shall apply to such services.
							(c) It is hereby further agreed that the security to be provided to the Committee of Lloyd's the Salved Values the Award and/or Interim Award and/or Award on Appeal of the Arbitrator and/or Arbitrator(s) on Appeal shall be in " "Currency.	(e) The security to be provided to the Council of Lloyd's (hereinafter called "the Council") the Salved Value(s) the Award and/or Interim Award(s) and/or Award on Appeal of the Arbitrator and/or Arbitrator(s) on Appeal shall be in " "Currency.	(e) The security to be provided to the Council of Lloyd's (hereinafter called "the Council") the Salved Value(s) the Award and/or Interim Award(s) and/or Award on Appeal of the Arbitrator and/or Arbitrator(s) on Appeal shall be in" "Currency.

							If this Clause is not completed then the security to be provided and the Salved Values the Award and/or Interim Award and/or Award on Appeal of the Arbitrator and/or Arbitrator(s) on Appeal shall be in Pounds Sterling.	(f) If clause 1(e) is not completed then the security to be provided and the Salved Value(s) the Award and/or Interim Award(s) and/or Award on Appeal of the Arbitrator and/or Arbitrator(s) on Appeal shall be in Pounds Sterling.	(f) If clause 1(e) is not completed then the security to be provided and the Salved Value(s) the Award and/or Interim Award(s) and/or Award on Appeal of the Arbitrator and/or Arbitrator(s) on Appeal shall be in Pounds Sterling.
11. Any dispute between any of the parties interested in the property salved as to the proportions in which they are to contribute to the sum awarded or provide the security or as to any other matter concerning them shall be referred to and determined by the Committee of Lloyd's whose decision shall be final and is to be complied with forthwith.	11 Any dispute between any of the parties interested in the property salved as to the proportions in which they are to contribute to the sum awarded or provide the security or as to any other matter concerning them shall be referred to and determined by the Committee of Lloyd's whose decision shall be final and is to be complied with forthwith.	12 Any dispute between any of the parties interested in the property salved as to the proportions in which they are to contribute to the sum awarded or provide the security or as to any other matter concerning them shall be referred to and determined by the Committee of Lloyd's whose decision shall be final and is to be complied with forthwith.	12. Any dispute between any of the parties interested in the property salved as to the proportions in which they are to contribute to the sum awarded or provide the security or as to any other such matter shall be referred to and determined by the Committee of Lloyd's or by some other person or persons appointed by the Committee whose decision shall be final and is to be complied with forthwith.	12 Any dispute between any of the parties interested in the property salved as to the proportions in which they are to contribute to the sum awarded or provide the security or as to any other such matter shall be referred to and determined by the Committee of Lloyd's or by some other person or persons appointed by the Committee whose decision shall be final and is to be complied with forthwith.	12. Any dispute between any of the parties interested in the property salved as to the proportions in which they are to contribute to the sum awarded or provide the security or as to any other such matter shall be referred to and determined by the Committee of Lloyd's or by some other person or persons appointed by the Committee whose decision shall be final and is to be complied with forthwith.	10. In case of arbitration being claimed the remuneration for the services shall be fixed by an Arbitrator to be appointed by the Committee of Lloyd's. The Arbitration shall (subject to the next succeeding Clause) be held in accordance with English law and shall be held in London.	(d) The Agreement shall be governed by and arbitration thereunder shall be in accordance with English law.	(g) The Agreement and Arbitration thereunder shall except as otherwise expressly provided be governed by and arbitration thereunder be in accordance with English law, including the English law of salvage.	(g) The Agreement and Arbitration thereunder shall except as otherwise expressly provided be governed by and arbitration thereunder be in accordance with English law, including the English law of salvage.
								PROVISIONS AS TO THE SERVICES 2. Article 1(a) to (e), 8, 13.1, 13.2 first sentence, 13.3 and 14 of the International Convention on Salvage 1989 ("the Convention Articles") set out hereafter are hereby incorporated into this Agreement. The terms "Contractor" and "services"/"salvage services" in this Agreement shall have the same meaning as the terms "salvor(s)" and "salvage operation(s)" in the Convention Articles.	PROVISIONS AS TO THE SERVICES 2. Definitions: In this Agreement any reference to "Convention" is a reference to the International Convention on Salvage 1989 as incorporated in the Merchant Shipping (Salvage and Pollution) Act 1994 (any amendment thereto). The terms "Contractor" and "services"/"salvage services" in this Agreement shall have the same meaning as the terms "salvor(s)" and "salvage operation(s)" in the Convention.
2.	2.	2.	2.	2.	2.	2.	2. The Owners their Servants and Agents shall co-operate fully with the Contractor in and about the salvage including obtaining entry to the place named in Clause 1 of this Agreement or such other place as may be agreed or if applicable the place of safety to which the salved property is taken. The Owners shall promptly accept redelivery of the salved property at such place.	4. The Owners their Servants and Agents shall co-operate fully with the Contractor in and about the salvage including obtaining entry to the place named or the place of safety as defined in Clause 1.	3. Owners Cooperation: The Owners their Servants and Agents shall co-operate fully with the Contractor in and about the salvage including obtaining entry to the place named or the place of safety as defined in Clause 1.
The Contractor may make reasonable use of the vessel's gear anchors chains and other appurtenances during and for the purpose of the operations free of costs but shall not unnecessarily damage abandon or sacrifice the same or any other of the property.	The Contractor may make reasonable use of the vessel's gear anchors chains and other appurtenances during and for the purpose of the operations free of costs but shall not unnecessarily damage abandon or sacrifice the same or any other of the property.	The Contractor may make reasonable use of the vessel's gear anchors chains and other appurtenances during and for the purpose of the operations free of costs but shall not unnecessarily damage abandon or sacrifice the same or any other of the property.	The Contractor may make reasonable use of the vessel's gear anchors chains and other appurtenances during and for the purpose of the operations free of costs but shall not unnecessarily damage abandon or sacrifice the same or any other of the property.	The Contractor may make reasonable use of the vessel's gear anchors chains and other appurtenances during and for the purpose of the operations free of costs but shall not unnecessarily damage abandon or sacrifice the same or any other of the property.	The Contractor may make reasonable use of the vessel's gear anchors chains and other appurtenances during and for the purpose of the operations free of costs but shall not unnecessarily damage abandon or sacrifice the same or any other of the property.	The Contractor may make reasonable use of the vessel's gear anchors chains and other appurtenances during and for the purpose of the operations free of costs but shall not unnecessarily damage abandon or sacrifice the same or any other of the property the subject of this Agreement.	The Contractor may make reasonable use of the vessel's machinery gear equipment anchors chains stores and other appurtenances during and for the purpose of the operations free of expense but shall not unnecessarily damage abandon or sacrifice the same or any property the subject of this Agreement.	The Contractor may make reasonable use of the vessel's machinery gear equipment anchors chains stores and other appurtenances during and for the purpose of the operations free of expense but shall not unnecessarily damage abandon or sacrifice the same or any property the subject of this Agreement.	The Contractor may make reasonable use of the vessel's machinery gear equipment anchors chains stores and other appurtenances during and for the purpose of the operations free of expense but shall not unnecessarily damage abandon or sacrifice the same or any property the subject of this Agreement.
3 Notwithstanding anything hereinbefore contained should the operations be only partially successful without any	3 Notwithstanding anything hereinbefore contained should the operations be only partially successful without any	3 Notwithstanding anything hereinbefore contained should the operations be only partially successful without any	3 Notwithstanding anything hereinbefore contained should the operations be only partially successful without any	3 Notwithstanding anything hereinbefore contained should the operations be only partially successful without any	3 Notwithstanding anything hereinbefore contained should the operations be only partially successful without any	15 Notwithstanding anything hereinbefore contained should the operations be only partially successful without any	16 Notwithstanding anything hereinbefore contained should the operations be only partially successful without any		

negligence or want of ordinary skill and care on the part of the Contractor or of any person by him employed in the operations, and any portion of the Vessel's Cargo or Stores be salved by the Contractor, he shall be entitled to reasonable remuneration not exceeding a sum equal to per cent of the estimated value of the property salved at or if the property salved shall be sold there then not exceeding the like percentage of the net proceeds of such sale after deducting all expenses and customs duties or other imposts paid or incurred thereon but he shall not be entitled to any further remuneration reimbursement or compensation whatsoever and such reasonable remuneration shall be fixed in case of difference by Arbitration in manner hereinafter prescribed.	negligence or want of ordinary skill and care on the part of the Contractor or of any person by him employed in the operations, and any portion of the Vessel's Cargo or Stores be salved by the Contractor, he shall be entitled to reasonable remuneration not exceeding a sum equal to per cent. of the estimated value of the property salved at or if the property salved shall be sold there then not exceeding the like percentage of the net proceeds of such sale after deducting all expenses and customs duties or other imposts paid or incurred thereon but he shall not be entitled to any further remuneration reimbursement or compensation whatsoever and such reasonable remuneration shall be fixed in case of difference by Arbitration in manner hereinafter prescribed.	negligence or want of ordinary skill and care on the part of the Contractor or of any person by him employed in the operations, and any portion of the Vessel's Cargo or Stores be salved by the Contractor, he shall be entitled to reasonable remuneration not exceeding a sum equal to per cent. of the estimated value of the property salved at or if the property salved shall be sold there then not exceeding the like percentage of the net proceeds of such sale after deducting all expenses and customs duties or other imposts paid or incurred thereon but he shall not be entitled to any further remuneration reimbursement or compensation whatsoever and such reasonable remuneration shall be fixed in case of difference by Arbitration in manner hereinafter prescribed.	negligence or want of ordinary skill and care on the part of the Contractor or of any person by him employed in the operations, and any portion of the Vessel's Cargo or Stores be salved by the Contractor, he shall be entitled to reasonable remuneration not exceeding a sum equal to per cent. of the estimated value of the property salved at or if the property salved shall be sold there then not exceeding the like percentage of the net proceeds of such sale after deducting all expenses and customs duties or other imposts paid or incurred thereon but he shall not be entitled to any further remuneration reimbursement or compensation whatsoever and such reasonable remuneration shall be fixed in case of difference by Arbitration in manner hereinafter prescribed.	negligence or want of ordinary skill and care on the part of the Contractor or of any person by him employed in the operations, and any portion of the Vessel's Cargo or Stores be salved by the Contractor, he shall be entitled to reasonable remuneration not exceeding a sum equal to per cent. of the estimated value of the property salved at or if the property salved shall be sold there then not exceeding the like percentage of the net proceeds of such sale after deducting all expenses and customs duties or other imposts paid or incurred thereon but he shall not be entitled to any further remuneration reimbursement or compensation whatsoever and such reasonable remuneration shall be fixed in case of difference by Arbitration in manner hereinafter prescribed.	negligence or want of ordinary skill and care on the part of the Contractor or of any person by him employed in the operations, and any portion of the Vessel's Cargo or Stores be salved by the Contractor, he shall be entitled to reasonable remuneration not exceeding a sum equal to per cent. of the estimated value of the property salved at or if the property salved shall be sold there then not exceeding the like percentage of the net proceeds of such sale after deducting all expenses and customs duties or other imposts paid or incurred thereon but he shall not be entitled to any further remuneration reimbursement or compensation whatsoever and such reasonable remuneration shall be fixed in case of difference by Arbitration in manner hereinafter prescribed.	negligence or want of ordinary skill and care on the part of the Contractor or of any person by him employed in the operations, and any portion of the vessel or her appurtenances or her stores or the cargo be salved by the Contractor, he shall be entitled to reasonable remuneration and such remuneration shall be fixed in case of difference by arbitration in manner hereinbefore prescribed.	negligence or want of ordinary skill and care on the part of the Contractor his Servants or Agents and any portion of the vessel her appurtenances bunkers stores and cargo be salved by the Contractor he shall be entitled to reasonable remuneration and such remuneration shall be fixed in case of difference by arbitration in manner hereinbefore prescribed		
								18. When there is no longer any reasonable prospect of useful result leading to a salvage reward in accordance with Convention 13 the owners of the vessel shall be entitled to terminate the services of the Contractor by giving notice to the Contract in writing.	4. Vessel Owners Right to Terminate: When there is no longer any reasonable prospect of useful result leading to a salvage reward in accordance with Convention 13 the owners of the vessel shall be entitled to terminate the services of the Contractor by giving notice to the Contract in writing.
						PROVISION AS TO SECURITY	PROVISION AS TO SECURITY	PROVISION AS TO SECURITY	PROVISION AS TO SECURITY
4. The Contractor shall immediately after the termination of the services notify the Secretary of Lloyd's of the amount for which he requires security to be given: and failing any such notification by him within 48 hours (exclusive of Sundays or other days observed as general holidays at Lloyd's) after the termination of the services, he shall be deemed to require security to be given for the sum named in Clause 1, or if no sum be named in Clause 1, then for such sum as the Committee of Lloyd's in their absolute discretion shall consider sufficient.	4. The Contractor shall immediately after the termination of the services or sooner notify the Committee of Lloyd's of the amount for which he requires security to be given: and failing any such notification by him not later than 48 hours (exclusive of Sundays or other days observed as general holidays at Lloyd's) after the termination of the services, he shall be deemed to require security to be given for the sum named in Clause 1, or if no sum be named in Clause 1, then for such sum as the Committee of Lloyd's in their absolute discretion shall consider sufficient.	4. The Contractor shall immediately after the termination of the services or sooner notify the Committee of Lloyd's of the amount for which he requires security to be given: and failing any such notification by him not later than 48 hours (exclusive of Sundays or other days observed as general holidays at Lloyd's) after the termination of the services, he shall be deemed to require security to be given for the sum named in Clause 1, or if no sum be named in Clause 1, then for such sum as the Committee of Lloyd's in their absolute discretion shall consider sufficient.	4. The Contractor shall immediately after the termination of the services or sooner notify the Committee of Lloyd's of the amount for which he requires security to be given: and failing any such notification by him not later than 48 hours (exclusive of Sundays or other days observed as general holidays at Lloyd's) after the termination of the services, he shall be deemed to require security to be given for the sum named in Clause 1, or if no sum be named in Clause 1, then for such sum as the Committee of Lloyd's in their absolute discretion shall consider sufficient.	4. The Contractor shall immediately after the termination of the services or sooner notify the Committee of Lloyd's of the amount for which he requires security to be given: and failing any such notification by him not later than 48 hours (exclusive of Sundays or other days observed as general holidays at Lloyd's) after the termination of the services, he shall be deemed to require security to be given for the sum named in Clause 1, or if no sum be named in Clause 1, then for such sum as the Committee of Lloyd's in their absolute discretion shall consider sufficient.	4. The Contractor shall immediately after the termination of the services or sooner notify the Committee of Lloyd's of the amount for which he requires security to be given: and failing any such notification by him not later than 48 hours (exclusive of Sundays or other days observed as general holidays at Lloyd's) after the termination of the services, he shall be deemed to require security to be given for the sum named in Clause 1, or if no sum be named in Clause 1, then for such sum as the Committee of Lloyd's in their absolute discretion shall consider sufficient.	4. The Contractor shall immediately after the termination of the services or sooner notify the Committee of Lloyd's of the amount for which he requires security (inclusive of costs, expenses and interest) to be given.	4. The Contractor shall immediately after the termination of the services or sooner in a appropriate case notify the Committee of Lloyd's and where practicable the Owners of the amount for which he requires security (inclusive of costs, expenses and interest).	4.(a) The Contractor shall immediately after the termination of the services or sooner notify the Council and where practicable the Owners of the amount for which he demands security (inclusive of costs, expenses and interest) from each of the respective Owners.	5.(a) The Contractor shall immediately after the termination of the services or sooner notify the Council and where practicable the Owners of the amount for which he demands salvage security (inclusive of costs, expenses and interest) from each of the respective Owners.
								(b) Where the except to the principle of "no cure-no pay" under Convention Article 14 becomes likely to be applicable the owners of the vessel shall on the demand of the Contractor provide security for the Contractor's special compensation.	(b) Where a claim is made or may be made for special compensation, the owners of the vessel shall on the demand of the Contractor whenever made provide security for the Contractor's claim for special compensation provided always that such demand is made within two years of the date of termination of the services.
	Such security shall be given in such manner and from as the Committee of Lloyd's in their absolute discretion may consider sufficient but the Committee of Lloyd's shall not be in any way	Such security shall be given in such manner and from as the Committee of Lloyd's in their absolute discretion may consider sufficient but the Committee of Lloyd's shall not be in any way	Such security shall be given in such manner and from as the Committee of Lloyd's in their absolute discretion may consider sufficient but the Committee of Lloyd's shall not be in any way	Such security shall be given in such manner and from as the Committee of Lloyd's in their absolute discretion may consider sufficient but the Committee of Lloyd's shall not be in any way	Such security shall be given in such manner and from as the Committee of Lloyd's in their absolute discretion may consider sufficient but the Committee of Lloyd's shall not be in any way	Unless otherwise agreed by the parties such security shall be given to the Committee of Lloyd's, and security so given shall be in a form approved by the Committee and shall be given by person	Unless otherwise agreed by the parties such security shall be given to the Committee of Lloyd's, and security so given shall be in a form approved by the Committee and shall be given by person	(c) The amount of any such security shall be reasonable in the light of the knowledge available to the Contractor at the time when the demand is made. Unless otherwise agreed such	(c) The amount of any such security shall be reasonable in the light of the knowledge available to the Contractor at the time when the demand is made. Unless otherwise agreed such

	responsible for the sufficiency (whether in amount or otherwise) of any security accepted by them nor for the default or insolvency of any firm or corporation giving the same.	responsible for the sufficiency (whether in amount or otherwise) of any security accepted by them nor for the default or insolvency of any firm or corporation giving the same.	responsible for the sufficiency (whether in amount or otherwise) of any security accepted by them nor for the default or insolvency of any firm or corporation giving the same.	responsible for the sufficiency (whether in amount or otherwise) of any security accepted by them nor for the default or insolvency of any firm or corporation giving the same.	responsible for the sufficiency (whether in amount or otherwise) of any security accepted by them nor for the default or insolvency of any firm or corporation giving the same.	firms or corporations resident in the United Kingdom either satisfactory to the Committee of Lloyd's or agreed by the Contractor. The Committee of Lloyd's shall not be in any way responsible for the sufficiency (whether in amount or otherwise) of any security which shall be given nor for the default or insolvency of any firm or corporation giving the same.	firms or corporations resident in the United Kingdom either satisfactory to the Committee of Lloyd's or agreed by the Contractor. The Committee of Lloyd's shall not be responsible for the sufficiency (whether in amount or otherwise) of any security which shall be given nor for the default or insolvency of any firm or corporation giving the same.	security shall be provided (i) to the Council (ii) in a form approved by the Council and (iii) by person firms or corporations either acceptable to the Contractor 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 for the default or insolvency of any firm or corporation providing the same.	security shall be provided (i) to the Council (ii) in a form approved by the Council and (iii) by person firms or corporations either acceptable to the Contractor 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 for the default or insolvency of any firm or corporation providing the same.
								(d) The owners of the vessel their Servants and Agents shall use their best endeavours to ensure that the cargo owners provide their proportion of security before the cargo is released.	(d) The owners of the vessel their Servants and Agents shall use their best endeavours to ensure that the cargo owners provide their proportion of salvage security before the cargo is released.
5.	5. Pending the completion of the security as aforesaid the Contractor shall have a maritime lien on the property salved for his remuneration.	5. Pending the completion of the security as aforesaid the Contractor shall have a maritime lien on the property salved for his remuneration.	5. Pending the completion of the security as aforesaid the Contractor shall have a maritime lien on the property salved for his remuneration.	5. Pending the completion of the security as aforesaid the Contractor shall have a maritime lien on the property salved for his remuneration.	5. Pending the completion of the security as aforesaid the Contractor shall have a maritime lien on the property salved for his remuneration.	5. Pending the completion of the security as aforesaid the Contractor shall have a maritime lien on the property salved for his remuneration.	5. Pending the completion of the security as aforesaid the Contractor shall have a maritime lien on the property salved for his remuneration.	5 (a) Until security has been provided as aforesaid the Contractor shall have a maritime lien on the property salved for his remuneration.	6 (a) Until security has been provided as aforesaid the Contractor shall have a maritime lien on the property salved for his remuneration.
	The salved property shall not without the consent in writing of the Contractor be removed from or the place of safety to which the property is taken by the Contractor on the completion of the salvage services until security has been given to the Committee of Lloyd's as aforesaid.	The salved property shall not without the consent in writing of the Contractor be removed from or the place of safety to which the property is taken by the Contractor on the completion of the salvage services until security has been given to the Committee of Lloyd's as aforesaid.	The salved property shall not without the consent in writing of the Contractor be removed from or the place of safety to which the property is taken by the Contractor on the completion of the salvage services until security has been given to the Committee of Lloyd's as aforesaid.	The salved property shall not without the consent in writing of the Contractor be removed from or the place of safety to which the property is taken by the Contractor on the completion of the salvage services until security has been given to the Committee of Lloyd's as aforesaid.	The salved property shall not without the consent in writing of the Contractor be removed from or the place of safety to which the property is taken by the Contractor on the completion of the salvage services until security has been given to the Committee of Lloyd's as aforesaid.	The salved property shall not without the consent in writing of the Contractor be removed from the place of safety to which the property is taken by the Contractor on the completion of the salvage services until security has been given as aforesaid.	Where the aforementioned exception to the principle of "no cure - no pay" becomes likely to be applicable the Owner of the vessel shall on demand of the Contractor provide security for the Contractor's remuneration under the aforementioned exception in accordance with Clause 4 hereof. The salved property shall not without the consent in writing of the Contractor be removed from the place (within the terms of Clause 1) to which the property is taken by the Contractor on the completion of the salvage services until security has been given as aforesaid. The Owners of the vessel their Servants and Agents shall use their best endeavours to ensure that the Cargo Owners provide security in accordance with the provisions of Clause 4 of this Agreement before the cargo is released.	The property salved shall not without the consent in writing of the Contractor (which shall not be unreasonable withheld) be removed from the place to which it has been taken by the Contractor under clause 1(a).	(b) The property salved shall not without the consent in writing of the Contractor (which shall not be unreasonable withheld) be removed from the place to which it has been taken by the Contractor under clause 1(a). Where such consent is given by the Contractor on condition that the Contractor is provided with temporary security pending completion of the voyage the Contractor's maritime lien on the property salved shall remain in force to the extent necessary to enable the Contractor to compel the provision of security in accordance with 5(c).
5. The Contractor engages not to arrest or detain the property salved except in the event of any attempt being made to remove the same from without his consent before security as aforesaid has been given to the Committee of Lloyd's in such manner and form as the Committee of Lloyd's in their absolute discretion may consider sufficient; but the Committee of Lloyd's shall not be in any way responsible for the sufficiency (whether in amount or otherwise) of any security accepted by them	The Contractor agrees not to arrest or detain the property salved unless the security be not given within 14 days (exclusion of Sunday or other days observed as general holidays at Lloyd's) of the termination of the services (the Committee of Lloyd's not being responsible for the failure of the parties concerned to provide the required security within the said 14 days) or the Contractor has reason to believe that the removal of the property salved is contemplated contrary to the above agreement. In the	The Contractor agrees not to arrest or detain the property salved unless the security be not given within 14 days (exclusion of Sunday or other days observed as general holidays at Lloyd's) of the termination of the services (the Committee of Lloyd's not being responsible for the failure of the parties concerned to provide the required security within the said 14 days) or the Contractor has reason to believe that the removal of the property salved is contemplated contrary to the above agreement. In the	The Contractor agrees not to arrest or detain the property salved unless the security be not given within 14 days (exclusion of Sunday or other days observed as general holidays at Lloyd's) of the termination of the services (the Committee of Lloyd's not being responsible for the failure of the parties concerned to provide the required security within the said 14 days) or the Contractor has reason to believe that the removal of the property salved is contemplated contrary to the above agreement. In the	The Contractor agrees not to arrest or detain the property salved unless the security be not given within 14 days (exclusion of Sunday or other days observed as general holidays at Lloyd's) of the termination of the services (the Committee of Lloyd's not being responsible for the failure of the parties concerned to provide the required security within the said 14 days) or the Contractor has reason to believe that the removal of the property salved is contemplated contrary to the above agreement. In the	The Contractor agrees not to arrest or detain the property salved unless the security be not given within 14 days (exclusion of Sunday or other days observed as general holidays at Lloyd's) of the termination of the services (the Committee of Lloyd's not being responsible for the failure of the parties concerned to provide the required security within the said 14 days) or the Contractor has reason to believe that the removal of the property salved is contemplated contrary to the above agreement. In the	The Contractor agrees not to arrest or detain the property salved unless the security be not given within 14 days (exclusion of Saturdays and Sunday or other days observed as general holidays at Lloyd's) of the termination of the services (the Committee of Lloyd's not being responsible for the failure of the parties concerned to provide the required security within the said 14 days) or the Contractor has reason to believe that the removal of the property salved is contemplated contrary to the	The Contractor agrees not to arrest or detain the property salved unless (a) the security be not given within 14 days (exclusion of Saturdays and Sunday or other days observed as general holidays at Lloyd's) after the date of the termination of the services (the Committee of Lloyd's not being responsible for the failure of the parties concerned to provide the required security within the said 14 days) or (b) the Contractor has reason to believe that the removal of the property salved is contemplated contrary to the	(b) The Contractor shall not arrest or detain the property salved unless: (i) security is not provided within 14 days (exclusion of Saturdays and Sunday or other days observed as general holidays at Lloyd's) after the date of the termination of the services or (ii) he has reason to believe that the removal of the property salved is contemplated contrary to clause 5(a) or (iii) any attempt is made to remove the property salved contrary to clause 5(a). (b) The Contractor shall	(c) The Contractor shall not arrest or detain the property salved unless: (i) security is not provided within 14 days (exclusion of Saturdays and Sunday or other days observed as general holidays at Lloyd's) after the date of the termination of the services or (ii) he has reason to believe that the removal of the property salved is contemplated contrary to clause 6(a) or (iii) any attempt is made to remove the property salved contrary to clause 6(a).

nor for the default or insolvency of any person giving the same. Pending the completion of the security the Contractor shall have a lien on the property salved for his remuneration.	event of security not being provided as aforesaid or in the event of any attempt being made to remove the property salved contrary to this agreement the Contractor may take steps to enforce his aforesaid lien.	event of security not being provided as aforesaid or in the event of any attempt being made to remove the property salved contrary to this agreement the Contractor may take steps to enforce his aforesaid lien.	event of security not being provided as aforesaid or in the event of any attempt being made to remove the property salved contrary to this agreement the Contractor may take steps to enforce his aforesaid lien.	event of security not being provided as aforesaid or in the event of any attempt being made to remove the property salved contrary to this agreement the Contractor may take steps to enforce his aforesaid lien.	event of security not being provided as aforesaid or in the event of any attempt being made to remove the property salved contrary to this agreement the Contractor may take steps to enforce his aforesaid lien.	above agreement. In the event of security not being provided as aforesaid or in the event of any attempt being made to remove the property salved contrary to this agreement or of the Contractor having reasonable grounds to suppose that such an attempt will be made the Contractor may take steps to enforce his aforesaid lien.	above agreement. In the event of security not being provided as aforesaid or in the event of (1) any attempt being made to remove the property salved contrary to this agreement or (2) the Contractor having reasonable grounds to suppose that such an attempt will be made the Contractor may take steps to enforce his aforesaid lien.	not arrest or detain the property salved unless: (i) security is not provided within 14 days (exclusion of Saturdays and Sunday or other days observed as general holidays at Lloyd's) after the date of the termination of the services or (ii) he has reason to believe that the removal of the property salved is contemplated contrary to clause 5(a) or (iii) any attempt is made to remove the property salved contrary to clause 5(a)	
	The Arbitrator Arbitrator or Umpire (including the Committee of Lloyd's if they act it either capacity) appointed under clause 8 hereof shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or such part of the expenses incurred by the Contractor in enforcing his lien as they shall think fit.	The Arbitrator Arbitrator or Umpire (including the Committee of Lloyd's if they act it either capacity) appointed under clause 7 or 8 hereof shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or such part of the expenses incurred by the Contractor in enforcing his lien as they shall think fit.	The Arbitrator Arbitrator or Umpire (including the Committee of Lloyd's if they act it either capacity) appointed under clause 7 or 8 hereof shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or such part of the expenses incurred by the Contractor in enforcing his lien as they shall think fit.	The Arbitrator Arbitrator or Umpire (including the Committee of Lloyd's if they act it either capacity) appointed under clause 7 or 8 hereof shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or such part of the expenses incurred by the Contractor in enforcing his lien as they shall think fit.	The Arbitrator Arbitrators or Umpire (including the Committee of Lloyd's if they act it either capacity) appointed under clause 7 or 8 hereof shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or such part of the expenses incurred by the Contractor in enforcing his lien as they shall think fit.	The Arbitrator appointed under Clause 10 or the person or persons appointed under Clause 12 hereof shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or such part of the expenses incurred by the Contractor in enforcing his lien as they shall think fit.	The Arbitrator appointed under Clause 6 or the person(s) appointed under Clause 13 hereof shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or such part of the expenses incurred by the Contractor in enforcing his lien as they shall think fit.	(c) The Arbitrator appointed under Clause 6 or the Appeal Arbitrator(s) appointed under Clause 11(d) shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or part of any expenses incurred by the Contractor in: (i) ascertaining, demanding and obtaining the amount of security reasonably required in accordance with clause 4. (ii) enforcing and/or protecting by insurance or otherwise or taking reasonable steps to enforce and/or protect his lien.	(d) The Arbitrator appointed under Clause 7 or the Appeal Arbitrator(s) appointed under Clause 13(d) shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or part of any expenses incurred by the Contractor in: (i) ascertaining, demanding and obtaining the amount of security reasonably required in accordance with clause 5. (ii) enforcing and/or protecting by insurance or otherwise or taking reasonable steps to enforce and/or protect his lien.
						PROVISION AS TO ARBITRATION	PROVISION AS TO ARBITRATION		PROVISIONS AS TO ARBITRATION
6. After the expiry of 42 days from the date of the completion of the security the Committee of Lloyd's shall realize or enforce the same and pay over the amount thereof to the Contractor unless they shall meanwhile have received written notice of objection and a claim for Arbitration from any of the parties entitled and authorized to make such objection and claim or unless they shall themselves think fit to object and demand Arbitration. The receipt of the Contractor shall be a good discharge to the Committee of Lloyd's for any monies so paid and they shall incur no responsibility to any of the parties concerned by making such payment and no objection or claim for Arbitration shall be entertained or acted upon unless received by the Committee of Lloyd's within the 42 days above mentioned.	6. After the expiry of 42 days from the date of the completion of the security the Committee of Lloyd's shall realize or enforce the same and pay over the amount thereof to the Contractor unless they shall meanwhile have received written notice of objection and a claim for Arbitration from any of the parties entitled and authorized to make such objection and claim or unless they shall themselves think fit to object and demand Arbitration. The receipt of the Contractor shall be a good discharge to the Committee of Lloyd's for any monies so paid and they shall incur no responsibility to any of the parties concerned by making such payment and no objection or claim for Arbitration shall be entertained or acted upon unless received by the Committee of Lloyd's within the 42 days above mentioned.	6. After the expiry of 42 days from the date of the completion of the security the Committee of Lloyd's shall realize or enforce the same and pay over the amount thereof to the Contractor unless they shall meanwhile have received written notice of objection and a claim for Arbitration from any of the parties entitled and authorized to make such objection and claim or unless they shall themselves think fit to object and demand Arbitration. The receipt of the Contractor shall be a good discharge to the Committee of Lloyd's for any monies so paid and they shall incur no responsibility to any of the parties concerned by making such payment and no objection or claim for Arbitration shall be entertained or acted upon unless received by the Committee of Lloyd's within the 42 days above mentioned.	6. After the expiry of 42 days from the date of the completion of the security the Committee of Lloyd's shall call upon the party or parties concerned to pay the amount thereof and in the event of non-payment shall realize or enforce the security and pay over the amount thereof to the Contractor unless they shall meanwhile have received written notice of objection and a claim for Arbitration from any of the parties entitled and authorized to make such objection and claim or unless they shall themselves think fit to object and demand Arbitration. The receipt of the Contractor shall be a good discharge to the Committee of Lloyd's for any monies so paid and they shall incur no responsibility to any of the parties concerned by making such payment and no objection or claim for Arbitration shall be entertained or acted upon unless received by the Committee of Lloyd's within the 42 days above mentioned.	6. After the expiry of 42 days from the date of the completion of the security the Committee of Lloyd's shall call upon the party or parties concerned to pay the amount thereof and in the event of non-payment shall realize or enforce the security and pay over the amount thereof to the Contractor unless they shall meanwhile have received written notice of objection and a claim for Arbitration from any of the parties entitled and authorized to make such objection and claim or unless they shall themselves think fit to object and demand Arbitration. The receipt of the Contractor shall be a good discharge to the Committee of Lloyd's for any monies so paid and they shall incur no responsibility to any of the parties concerned by making such payment and no objection or claim for Arbitration shall be entertained or acted upon unless received by the Committee of Lloyd's within the 42 days above mentioned.	6. After the expiry of 42 days from the date of the completion of the security the Committee of Lloyd's shall call upon the party or parties concerned to pay the amount thereof and in the event of non-payment shall realize or enforce the security and pay over the amount thereof to the Contractor unless they shall meanwhile have received written notice of objection and a claim for Arbitration from any of the parties entitled and authorized to make such objection and claim or unless they shall themselves think fit to object and demand Arbitration. The receipt of the Contractor shall be a good discharge to the Committee of Lloyd's for any monies so paid and they shall incur no responsibility to any of the parties concerned by making such payment and no objection or claim for Arbitration shall be entertained or acted upon unless received by the Committee of Lloyd's within the 42 days above mentioned.	6. Where security is given to the Committee of Lloyd's any claim for arbitration must be made in writing or by telegram or by telex and must be received by the Committee of Lloyd's within 42 days from the date of completion of such security. If such a claim is not made by any of the parties entitled or authorised to make a claim for arbitration in respect of the salved property on behalf of which security has been given, the Committee of Lloyd's shall after the expiry of said 42 days call upon the party or parties concerned to pay the amount thereof and in the event of non-payment shall realize or enforce the security and pay over the amount thereof to the Contractor. The receipt of the Contractor shall be a good discharge to the Committee of Lloyd's for any monies so paid and it shall incur no responsibility to any of the parties concerned for making such payment. No claim for arbitration shall be entertained or acted upon unless received by the	6. (a) Where security within the provisions of this Agreement is given to the Committee of Lloyd's in whole or in part the said Committee shall appoint an Arbitrator in respect of the interests covered by such security. (b) Whether security has been given or not the Committee of Lloyd's shall appoint an Arbitrator upon receipt of a written or telex or telegraphic notice of a claim for arbitration from any of the parties entitled or authorised to make such a claim.	6. (a) Where security is provided to the Council of Lloyd's in whole or in part the Council shall appoint an Arbitrator in respect of the interests covered by such security. (b) Whether security has been provided or not the Council shall appoint an Arbitrator upon receipt of a written request made by letter, telex, facsimile or in any other permanent form provided that any party requesting such appointment shall if required by the Council undertake to pay reasonable fees and expenses of the Council and/or any Arbitrator or Appeal Arbitrator(s).	7. (a) Whether security has been provided or not the Council shall appoint an Arbitrator upon receipt of a written request made by letter, telex, facsimile or in any other permanent form provided that any party requesting such appointment shall if required by the Council undertake to pay reasonable fees and expenses of the Council and/or any Arbitrator or Appeal Arbitrator(s).

						Committee of Lloyd's within 42 days from the date of completion of the security.			
						7. Upon receipt of a written or telegraphic or telex notice of a claim for arbitration from any of the parties entitled or authorised to make such a claim the Committee of Lloyd's shall appoint an Arbitrator whether security has been given or not.	7. Where an Arbitrator has been appointed by the Committee of Lloyd's and the parties do not wish to proceed to arbitration the parties shall jointly notify the said Committee in writing or by telex or by telegram and the said Committee may thereupon terminate the appointment of such Arbitrator as they may have appointed in accordance with Clause 6 of this Agreement.	(c) Where an Arbitrator has been appointed and the parties do not proceed to arbitration the Council may recover any fees costs and/or expenses which are outstanding and thereup terminate the appointment of such Arbitrator	(b) Where an Arbitrator has been appointed and the parties do not proceed to arbitration the Council may recover any fees costs and/or expenses which are outstanding.
7. In case of Arbitration the Committee of Lloyd's shall, upon the publication of the Award, realize or enforce the security and pay to the Contractor the amount awarded to him, and his receipt shall be a good discharges to them for the same. If the Award increase the remuneration the parties mentioned in Clause 12 shall pay the difference to the Contractor.	7. In case of Arbitration the Committee of Lloyd's shall, upon the publication of the Award, realize or enforce the security and pay to the Contractor the amount awarded to him, together with interest as hereifafter provided and his receipt shall be a good discharges to them for the same. If the Award increase the remuneration the parties mentioned in Clause 12 shall pay the difference to the Contractor.								
13. Any of the following parties may object to the sum named in Clause 1 as excessive or insufficient having regard to the services which proved to be necessary in performing the Agreement or to the value of the property salved at the completion of the operation and may claim Arbitration viz.: -(1) The owners of the ship (2) Such other persons together interested as Owners and/or Underwriters of any part not being less than one-fourth of the estimated value of the property salved as the Committee of Lloyd's in their absolute discretion may by reason of the substantial character of their interest or otherwise authorise to object (3) The Contractor (4) The Committee of Lloyd's - Any such objection and the Award upon the Arbitration following thereon shall be binding not only upon the objectors but upon all concerned, provided always that the Arbitrators or Arbitrator or Umpire may in case of objection by some only of the parties interested order the costs to be paid by the objectors only, provided also that if the Committee of Lloyd's be objectors they shall not themselves act as Arbitrators or Umpires.	13. Any of the following parties may object to the sum named in Clause 1 as excessive or insufficient having regard to the services which proved to be necessary in performing the Agreement or to the value of the property salved at the completion of the operation and may claim Arbitration viz.: -(1) The owners of the ship (2) Such other persons together interested as Owners and/or Underwriters of any part not being less than one-fourth of the estimated value of the property salved as the Committee of Lloyd's in their absolute discretion may by reason of the substantial character of their interest or otherwise authorise to object (3) The Contractor (4) The Committee of Lloyd's - Any such objection and the Award upon the Arbitration following thereon shall be binding not only upon the objectors but upon all concerned, provided always that the Arbitrators or Arbitrator or Umpire may in case of objection by some only of the parties interested order the costs to be paid by the objectors only, provided also that if the Committee of Lloyd's be objectors they shall not themselves act as Arbitrators or Umpires.	14. Any of the following parties may object to the sum named in Clause 1 as excessive or insufficient having regard to the services which proved to be necessary in performing the Agreement or to the value of the property salved at the completion of the operation and may claim Arbitration viz.: -(1) The owners of the ship (2) Such other persons together interested as Owners and/or Underwriters of any part not being less than one-fourth of the estimated value of the property salved as the Committee of Lloyd's in their absolute discretion may by reason of the substantial character of their interest or otherwise authorise to object (3) The Contractor (4) The Committee of Lloyd's - Any such objection and the original Award upon the Arbitration following thereon shall (subject to appeal as provided in this Agreement) be binding not only upon the objectors but upon all concerned, provided always that the Arbitrators or Arbitrator or Umpire may in case of objection by some only of the parties interested order the costs to be paid by the objectors only, provided also that if the Committee of Lloyd's be objectors they shall not themselves act as Arbitrators or Umpires.	14. 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Any of the following parties may object to the sum named in Clause 1 as excessive or insufficient having regard to the services which proved to be necessary in performing the Agreement or to the value of the property salved at the completion of the operation and may claim Arbitration viz.: -(1) The owners of the ship (2) Such other persons together interested as Owners and/or Underwriters of any part not being less than one-fourth of the estimated value of the property salved as the Committee of Lloyd's in their absolute discretion may by reason of the substantial character of their interest or otherwise authorise to object (3) The Contractor (4) The Committee of Lloyd's - Any such objection and the original Award upon the Arbitration following thereon shall (subject to appeal as provided in this Agreement) be binding not only upon the objectors but upon all concerned, provided always that the Arbitrators or Arbitrator or Umpire may in case of objection by some only of the parties interested order the costs to be paid by the objectors only, provided also that if the Committee of Lloyd's be objectors they shall not themselves act as Arbitrators or Umpires.	8. Any of the following parties may make a claim for arbitration viz: (1) The Owners of the ship. (2) The Owners of the cargo or any part thereof. (3) The Owners of any freight separately at risk or any part thereof. (4) The Contractor. (5) Any other person who is a party to this Agreement.	8. Any of the following parties may make a claim for arbitration viz: (1) The Owners of the ship. (2) The Owners of the cargo or any part thereof. (3) The Owners of any freight separately at risk or any part thereof. (4) The Contractor. (5) The Owners of the bunkers and/or stores. (6) Any other person who is a party to this Agreement.		

								7. The Contractor's remuneration shall be fixed by the Arbitrator appointed under clause 6. Such remuneration shall not be diminished by reason of exception to the principle of "no cure - no pay" under Convention Article 14.	8. The Contractor's remuneration and/or special compensation shall be fixed by the Arbitrator appointed under clause 7. Such remuneration shall not be diminished by reason of exception to the principle of "no cure - no pay" in the form of special compensation.
								REPRESENTATION	REPRESENTATION
14. If the parties to any such Arbitration or either of them desire to be hear or to adduce evidence at the Arbitration they shall give notice to that effect to the Secretary of Lloyd's and shall respectively nominate a person in London to represent them for all the purpose of the Arbitration and failing such notice and nomination being given within 14 days or such longer period as the Committee of Lloyd's may allow after notice of objection the Arbitrators or Arbitrator or Umpire may proceed as if the parties failing to give the same had renounced their right to be heard or adduce evidence.	14. If the parties to any such Arbitration or either of them desire to be hear or to adduce evidence at the Arbitration they shall give notice to that effect to the Secretary of Lloyd's and shall respectively nominate a person in London to represent them for all the purpose of the Arbitration and failing such notice and nomination being given within 14 days or such longer period as the Committee of Lloyd's may allow after notice of objection the Arbitrators or Arbitrator or Umpire may proceed as if the parties failing to give the same had renounced their right to be heard or adduce evidence.	15. If the parties to any such Arbitration or either of them desire to be hear or to adduce evidence at the original Arbitration they shall give notice to that effect to the Secretary of Lloyd's and shall respectively nominate a person in London to represent them for all the purpose of the Arbitration and failing such notice and nomination being given within 14 days or such longer period as the Committee of Lloyd's may allow after notice of objection the Arbitrators or Arbitrator or Umpire may proceed as if the parties failing to give the same had renounced their right to be heard or adduce evidence.	15. If the parties to any such Arbitration or any of them desire to be hear or to adduce evidence at the original Arbitration they shall give notice to that effect to the Secretary of Lloyd's and shall respectively nominate a person in the United Kingdom to represent them for all the purpose of the Arbitration and failing such notice and nomination being given the Arbitrators or Arbitrator or Umpire may proceed as if the parties failing to give the same had renounced their right to be heard or adduce evidence.	15. If the parties to any such Arbitration or any of them desire to be hear or to adduce evidence at the original Arbitration they shall give notice to that effect to the Secretary of Lloyd's and shall respectively nominate a person in the United Kingdom to represent them for all the purpose of the Arbitration and failing such notice and nomination being given the Arbitrators or Arbitrator or Umpire may proceed as if the parties failing to give the same had renounced their right to be heard or adduce evidence.	9. If the parties to any such Arbitration or any of them desire to be hear or to adduce evidence at the Arbitration they shall give notice to that effect to the Committee of Lloyd's and shall respectively nominate a person in the United Kingdom to represent them for all the purpose of the Arbitration and failing such notice and nomination being given the Arbitrator may proceed as if the parties failing to give the same had renounced their right to be heard or adduce evidence.	9. If the parties to any such Arbitration or any of them desire to be hear or to adduce evidence at the Arbitration they shall give notice to that effect to the Committee of Lloyd's and shall respectively nominate a person in the United Kingdom to represent them for all the purpose of the Arbitration and failing such notice and nomination being given the Arbitrator or Arbitrator(s) on Appeal may proceed as if the parties failing to give the same had renounced their right to be heard or adduce evidence.	8 Any party to this Agreement who wishes to be heard or to adduce evidence nominate a person in the United Kingdom to represent him failing which the Arbitrator or Arbitrator(s) on Appeal may proceed as if such party had renounced their right to be heard or adduce evidence.	9. Any party to this Agreement who wishes to be heard or to adduce evidence nominate a person in the United Kingdom to represent him failing which the Arbitrator or Arbitrator(s) on Appeal may proceed as if such party had renounced their right to be heard or adduce evidence.
						CONDUCT OF THE ARBITRATION	CONDUCT OF THE ARBITRATION	CONDUCT OF THE ARBITRATION	CONDUCT OF THE ARBITRATION
8. In case of objection being made and Arbitration demanded the remuneration for the services shall be fixed by the Committee of Lloyd's as Arbitrators or at their option by an Arbitrator to be appointed by them unless they shall within 30 days from the date of this Agreement receive from the Contractor a written or telegraphic notice appointing an Arbitrator on his own behalf in which case such notice shall be communicated by them to the Managing Owner of the vessel and he shall within 15 days from the receipt thereof give a written notice to the Committee of Lloyd's appointing another Arbitrator on behalf of all the parties interested in the property salved; and if the Managing Owner shall fail to appoint an Arbitrator as aforesaid the Committee of Lloyd's shall appoint an Arbitrator on behalf of all the parties interested in the property salved or they may if they think fit direct that the Contractor's nominee shall act as sole Arbitrator; and	8. In case of objection being made and Arbitration demanded the remuneration for the services shall be fixed by the Committee of Lloyd's as Arbitrators or at their option by an Arbitrator to be appointed by them unless they shall within 30 days from the date of this Agreement receive from the Contractor a written or telegraphic notice appointing an Arbitrator on his own behalf in which case such notice shall be communicated by them to the Managing Owner of the vessel and he shall within 15 days from the receipt thereof give a written notice to the Committee of Lloyd's appointing another Arbitrator on behalf of all the parties interested in the property salved; and if the Managing Owner shall fail to appoint an Arbitrator as aforesaid the Committee of Lloyd's shall appoint an Arbitrator on behalf of all the parties interested in the property salved or they may if they think fit direct that the Contractor's nominee shall act as sole Arbitrator; and	7. 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The Arbitrator shall have power to obtain call for receive and act upon any such oral or documentary evidence or information (whether the same be strictly admissible as evidence or not) as he may think fit, and to conduct the Arbitration in such manner in all respects as he may think fit and shall if in his opinion the amount of the security demanded is excessive have power in his absolute discretion to condemn the Contractor in the whole or part of the expense of providing such security and to deduct the amount in which the Contractor is so condemned from the salvage remuneration. Unless the Arbitrator shall otherwise direct the parties shall be at liberty to adduce expert evidence at the Arbitration. Any Award of the Arbitrator shall (subject to appeal as provided in this Agreement) be final and binding on all the parties concerned. The Arbitrator and the Committee of Lloyd's may charge reasonable fees for their services in connection	11. 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The Arbitrator and the Committee of Lloyd's may charge reasonable fees and expenses for their services in	9.(a) The Arbitrator shall have power to : (I) admit such oral or documentary evidence or information as he may think fit (ii) conduct the Arbitration in such manner in all respects as he may think fit subject to such procedural rules as the Council may approve (iii) condemn the Contractor in his absolute discretion in the whole or part of the expense of providing excessive security and deduct the amount in which the Contractor is so condemned from the salvage remuneration and/or special compensation (iv) make Interim Award(s) on such terms as may be fair and just (v) make such orders as to costs, fees and expenses including those of the Council charged under clause 9(b) and 12(b) as may be fair and just. (b) The Arbitrator and the Council may charge	10.(a) The Arbitrator shall have power to : (I) admit such oral or documentary evidence or information as he may think fit (ii) conduct the Arbitration in such manner in all respects as he may think fit subject to such procedural rules as the Council may approve (iii) order the Contractor in his absolute discretion to pay the whole or part of the expense of providing excessive security or security which has been unreasonably demanded under Clause 5(b) and to deduct the such sum from the remuneration and/or special compensation (iv) make Interim Award(s) including payment(s) on account on such terms as may be fair and just (v) make such orders as to costs, fees and expenses including those of the Council charged under clause 10(b) and 14(b) as may be fair and just. (b) The Arbitrator and the Council may charge reasonable fees and expenses

thereupon the Arbitration shall be held in London by the Arbitrators or Arbitrator so appointed. If the Arbitrators cannot agree they shall forthwith notify the Committee of Lloyd's who shall thereupon either themselves act as Umpires or shall appoint some person as Umpire. Any award of the Arbitrators or Arbitrator or Umpire shall be final and binding on all the parties concerned and they or he shall have power to obtain call for receive and act upon any such oral or documentary evidence or information (whether the same be strictly admissible as evidence or not) as they or he may think fit, and to conduct the Arbitration in such manner in all respects as they or he may think fit, and to maintain reduce or increase the sum, if any, named in Clause 1. Unless the Arbitrators or Arbitrator or Umpire shall otherwise direct the parties shall be at liberty to adduce expert evidence on the Arbitration. The Arbitrators or Arbitrator or Umpire (including the Committee of Lloyd's if they act in either capacity) may charge such fees as they may think reasonable, and the Committee of Lloyd's may in any event charge a reasonable fee for their services in connection with the Arbitration, and all such fees shall be treats as part of the costs the Arbitration and Award and shall be paid by such of the parties as the Award may direct.

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connection with the Arbitration whether it proceeds to a hearing or not and all such fees and expenses shall be treats as part of the costs of the Arbitration. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply

reasonable fees and expenses for their services whether the Arbitration proceeds to a hearing or not and all such fees and expenses shall be treats as part of the costs of the Arbitration.

(c) Any Award shall (subject to appeal as provided in this Agreement) be final and binding on all the parties concerned whether they were represented at the Arbitration or not.

for their services whether the Arbitration proceeds to a hearing or not and all such fees and expenses shall be treats as part of the costs of the Arbitration.

(c) Any Award shall (subject to appeal as provided in this Agreement) be final and binding on all the parties concerned whether they were represented at the Arbitration or not.

Interest at the rate of 5 per cent. per annum from the date of the publication of the Award by the Committee of Lloyd's until the date of payment to the Committee of Lloyd's shall be payable to the Contractor upon the amount of any sum awarded after deduction of any sums paid on account under Clause

Interest at the rate of 5 per cent. per annum from the expiration of 14 days after the date of the publication of the Award by the Committee of Lloyd's until the date of payment to the Committee of Lloyd's shall (subject to appeal as provided in this Agreement) be payable to the Contractor upon the amount

Interest at the rate of 5 per cent. per annum from the expiration of 14 days after the date of the publication of the Award by the Committee of Lloyd's until the date of payment to the Committee of Lloyd's shall (subject to appeal as provided in this Agreement) be payable to the Contractor upon the amount

Interest at the rate of 5 per cent. Per annum from the expiration of 14 days (exclusion of Sundays or other days observed as general holidays at Lloyd's) after the date of the publication of the Award by the Committee of Lloyd's until the date of payment to the Committee of Lloyd's

Interest at the rate of 5 per cent. per annum from the expiration of 14 days (exclusion of Sundays or other days observed as general holidays at Lloyd's) after the date of the publication of the Award by the Committee of Lloyd's until the date of payment to the Committee of Lloyd's

Interest at a rate per annum to be fixed by the Arbitrator from the expiration of 21 days (exclusion of Saturdays and Sundays or other days observed as general holidays at Lloyd's) from the date of the publication of the Award by the Committee of Lloyd's until the date of payment to the Committee of Lloyd's

12. Interest at a rate per annum to be fixed by the Arbitrator from the expiration of 21 days (exclusion of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the publication of the Award and/or Interim Award by the Committee of Lloyd's until

INTEREST

10. Interest at a rate per annum to be fixed by the Arbitrator shall (subject to Appeal as provided in this Agreement) be payable on any sum awarded taking into account any sums already paid:

(i) from the date of termination of the services unless the Arbitrator shall in

INTEREST & RATES OF EXCHANGE

11. Interest: Interest at a rate per annum to be fixed by the Arbitrator shall (subject to Appeal as provided in this Agreement) be payable on any sum awarded taking into account any sums already paid:

(i) from the date of termination of the services unless the Arbitrator shall in

Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	9 hereof. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	of any sum awarded after deduction of any sums paid on account under Clause 10 hereof. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	of any sum awarded after deduction of any sums paid on account. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	shall (subject to appeal as provided in this Agreement) be payable to the Contractor upon the amount of any sum awarded after deduction of any sums paid on account. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	shall (subject to appeal as provided in this Agreement) be payable to the Contractor upon the amount of any sum awarded after deduction of any sums paid on account. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	shall (subject to appeal as provided in this Agreement) be payable to the Contractor upon the amount of any sum awarded after deduction of any sums paid on account. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	the date of payment is received by the Committee of Lloyd's both dates inclusive shall (subject to appeal as provided in this Agreement) be payable to the Contractor upon any sum awarded after deduction of any sums paid on account.	his absolute discretion otherwise decide until the date of publication by the Council of the Award and/or Interim Award(s) and (ii) from the expiration of 21 days (exclusion of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the publication by the Council of the Award and/or Interim Award(s) until the date payment is received by the Contractor or the Council both dates inclusive	his absolute discretion otherwise decide until the date of publication by the Council of the Award and/or Interim Award(s) and (ii) from the expiration of 21 days (exclusion of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the publication by the Council of the Award and/or Interim Award(s) until the date payment is received by the Contractor or the Council both dates inclusive For the purpose of sub-clause (ii) the express "sum awarded" shall include the fees and expenses referred to in clause 10(b)
		The said Arbitration is hereinafter in this Agreement referred to as "the original Arbitration" and the Arbitrator or Arbitrators or Umpire thereat as "the original Arbitrator" or "the original Arbitrators" or "the Umpire" and the Award of such Arbitrator or Arbitrators or Umpire as "the original Award".	The said Arbitration is hereinafter in this Agreement referred to as "the original Arbitration" and the Arbitrator or Arbitrators or Umpire thereat as "the original Arbitrator" or "the original Arbitrators" or "the Umpire" and the Award of such Arbitrator or Arbitrators or Umpire as "the original Award".	The said Arbitration is hereinafter in this Agreement referred to as "the original Arbitration" and the Arbitrator or Arbitrators or Umpire thereat as "the original Arbitrator" or "the original Arbitrators" or "the Umpire" and the Award of such Arbitrator or Arbitrators or Umpire as "the original Award".	The said Arbitration is hereinafter in this Agreement referred to as "the original Arbitration" and the Arbitrator or Arbitrators or Umpire thereat as "the original Arbitrator" or "the original Arbitrators" or "the Umpire" and the Award of such Arbitrator or Arbitrators or Umpire as "the original Award".				
						17. In considering what sums of money have been expended by the Contractor in rendering the services and/or in fixing the amount of the Award or Award on Appeal the Arbitrator or Arbitrators on Appeal shall to such an extent and in so far as it may be fair and just in all the circumstances give effect to any change or changes in the value of money or rates of exchange which may have occurred between the completion of the services and the date on which the Award or Award on Appeal is made.	18. In considering what sums of money have been expended by the Contractor in rendering the services and/or in fixing the amount of the Award and/or Interim Award and/or Award on Appeal the Arbitrator or Arbitrator(s) on Appeal shall to such an extent and in so far as it may be fair and just in all the circumstances give effect to any change or changes in the value of money or rates of exchange which may have occurred between the completion of the services and the date on which the Award and/or Interim Award and/or Award on Appeal is made.	15. In considering what sums of money have been expended by the Contractor in rendering the services and/or in fixing the amount of the Award and/or Interim Award(s) and/or Award on Appeal the Arbitrator or Appeal Arbitrator(s) shall to such an extent and in so far 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 and/or Interim Award and/or Award on Appeal is made.	12. Currency Correction: In considering what sums of money have been expended by the Contractor in rendering the services and/or in fixing the amount of the Award and/or Interim Award(s) and/or Award on Appeal the Arbitrator or Appeal Arbitrator(s) shall to such an extent and in so far 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 and/or Interim Award and/or Award on Appeal is made.
						PROVISIONS AS TO APPEAL	PROVISIONS AS TO APPEAL	PROVISIONS AS TO APPEAL	PROVISIONS AS TO APPEAL
		8. Any of the persons entitled under Clause 14 to be objectors may appeal from the original Award by giving to the Committee of Lloyd's within 14 days from the publication by the Committee of Lloyd's of the original Award written notice of Appeal. As soon as practical after receipt of such notice the Committee of Lloyd's shall themselves alone or jointly with another person or other persons	8. Any of the persons named under Clause 14 may appeal from the original Award by giving written Notice of Appeal to the Committee of Lloyd's within 14 days (exclusive of Sundays or other days observed as general holidays at Lloyd's) from the publication by the Committee of Lloyd's of the original Award; and any of the other persons named under Clause 14 may	8. Any of the persons named under Clause 14, except the Committee of Lloyd's, may appeal from the original Award by giving written Notice of Appeal to the Committee of Lloyd's within 14 days (exclusive of Sundays or other days observed as general holidays at Lloyd's) from the publication by the Committee of Lloyd's of the original Award; and any of the other persons named	8. Any of the persons named under Clause 14, except the Committee of Lloyd's, may appeal from the original Award by giving written Notice of Appeal to the Committee of Lloyd's within 14 days (exclusive of Sundays or other days observed as general holidays at Lloyd's) from the publication by the Committee of Lloyd's of the original Award; and any of the other persons named	12. Any of the persons named under Clause 8 may appeal from the Award by giving written or telegraphic or telex Notice of Appeal to the Committee of Lloyd's within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) from the publication by the Committee of Lloyd's of the Award; and may (without prejudice to their right of appeal under the first part of	12. Any of the persons named under Clause 8 may appeal from the Award but not without leave of the Arbitrator(s) on Appeal from an Interim Award made pursuant to the provision of Clause 10 hereof by giving written or telegraphic or telex Notice of Appeal to the Committee of Lloyd's within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's)	11. (a) Notice of Appeal if any shall be given to the Council within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the publication by the Council of the Award and/or Interim Award(s). (b) Notice of Cross-Appeal if any shall be given to the Council within 14 days (exclusive of Saturdays and Sundays or other days	13. (a) Notice of Appeal if any shall be given to the Council within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the publication by the Council of the Award and/or Interim Award(s) (b) Notice of Cross-Appeal if any shall be given to the Council within 14 days (exclusive of Saturdays and Sundays or other days

appointed by them (unless they be the objectors) hear and determine the Appeal or if they shall see fit to do so or if they be the objectors they shall refer to the Appeal to the hearing and determination of a person or persons selected by them. Any Award on Appeal shall be final and binding on all the parties concerned.

(without prejudice to their right of appeal under the first part of this clause) give written Notice of Cross-appeal to the Committee within 7 days after receipt by them of notice of such appeal. As soon as practical after receipt of such notice or notices the Committee of Lloyd's shall themselves alone or jointly with another person or other persons appointed by them (unless they be the objectors) hear and determine the Appeal or if they shall see fit to do so or if they be the objectors they shall refer to the Appeal to the hearing and determination of a person or persons selected by them. Any Award on Appeal shall be final and binding on all the parties concerned.

under Clause 14, except the Committee of Lloyd's, may (without prejudice to their right of appeal under the first part of this clause) within 7 days (exclusive of Sundays or other days observed as general holidays at Lloyd's) after receipt by them of notice of such appeal (such notice if sent by post to be deemed to be received on the day following that on which the said notice was posted) give written Notice of Cross-Appeal to the Committee of Lloyd's. As soon as practical after receipt of such notice or notices the Committee of Lloyd's shall themselves alone or jointly with another person or other persons appointed by them (unless they be the objectors) hear and determine the Appeal or if they shall see fit to do so or if they be the objectors they shall refer to the Appeal to the hearing and determination of a person or persons selected by them. Any Award on Appeal shall be final and binding on all the parties concerned.

under Clause 14, except the Committee of Lloyd's, may (without prejudice to their right of appeal under the first part of this clause) within 7 days (exclusive of Sundays or other days observed as general holidays at Lloyd's) after receipt by them of notice of such appeal (such notice if sent by post to be deemed to be received on the day following that on which the said notice was posted) give written Notice of Cross-Appeal to the Committee of Lloyd's. As soon as practical after receipt of such notice or notices the Committee of Lloyd's shall themselves alone or jointly with another person or other persons appointed by them (unless they be the objectors) hear and determine the Appeal or if they shall see fit to do so or if they be the objectors they shall refer to the Appeal to the hearing and determination of a person or persons selected by them. Any Award on Appeal shall be final and binding on all the parties concerned.

this Clause) within 7 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after receipt by them of notice of such appeal (such notice if sent by post to be deemed to be received on the day following that on which the said notice was posted) give written or telegraphic or telex Notice of Cross-Appeal to the Committee of Lloyd's. As soon as practicable after receipt of such notice or notices the Committee of Lloyd's shall refer the Appeal to the hearing and determination of a person or persons selected by them. Any Award on Appeal shall be final and binding on all the parties concerned.

after the date of the publication by the Committee of Lloyd's of the Award and may (without prejudice to their right of appeal under the first part of this Clause) within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after receipt by them from the Committee of Lloyd's of notice of such appeal (such notice if sent by post to be deemed to be received on the day following that on which the said notice was posted) give written or telegraphic or telex Notice of Cross-Appeal to the Committee of Lloyd's. As soon as practicable after receipt of such notice or notices the Committee of Lloyd's shall refer the Appeal to the hearing and determination of a person or persons selected by them. In the event of an Appellant or Cross-Appellant withdrawing his Notice of Appeal or Cross-Appeal the hearing shall nevertheless proceed in respect of such Notice of Appeal or Cross-Appeal as may remain. Any Award on Appeal shall be final and binding on all the parties concerned whether such parties were represented or not at either the Arbitration or at the Arbitration on Appeal.

observed as general holidays at Lloyd's) after notification by the Council to the parties of any Notice of Appeal. Such notification if sent by post shall be deemed received on the working day following the day of posting.
(c) Notice of Appeal and Cross-Appeal shall be given to the Council by letter, telex Facsimile or in any other permanent form.
(d) Upon receipt of Notice of Appeal the Council shall refer the Appeal to the hearing and determination of the Appeal Arbitrator(s) selected by it.
(e) If any Notice of Appeal or Cross-Appeal is withdrawn the Appeal hearing shall nevertheless proceed in respect of such Notice of Appeal or Cross-Appeal as may remain.
(f) Any Award on Appeal shall be final and binding on all the parties to that Appeal Arbitration whether they were represented either at the Arbitration or at the Appeal Arbitration or not.

observed as general holidays at Lloyd's) after notification by the Council to the parties of any Notice of Appeal. Such notification if sent by post shall be deemed received on the working day following the day of posting.
(c) Notice of Appeal and Cross-Appeal shall be given to the Council by letter, telex Facsimile or in any other permanent form.
(d) Upon receipt of Notice of Appeal the Council shall refer the Appeal to the hearing and determination of the Appeal Arbitrator(s) selected by it.
(e) If any Notice of Appeal or Cross-Appeal is withdrawn the Appeal hearing shall nevertheless proceed in respect of such Notice of Appeal or Cross-Appeal as may remain.
(f) Any Award on Appeal shall be final and binding on all the parties to that Appeal Arbitration whether they were represented either at the Arbitration or at the Appeal Arbitration or not.

No evidence other than the documents put in on the original Arbitration and the original Arbitrators's or original Arbitrators' and or Umpire's notes and/or shorthand notes if any of the proceedings and oral evidence if any at the original Arbitration shall be used on the Appeal unless the Arbitrator or Arbitrators on the Appeal may conduct the Arbitration on Appeal in such manner in all respects as he or they may think fit and may maintain increase or reduce the sum awarded by the original Award with the like power as is conferred by Clause 7 on the original Arbitrator or Arbitrators or Umpire to condemn the Contractor in the whole or part of the expense of providing security and to deduct the amount disallowed from the salvage remuneration. And they may also make such order as they may think fit as to the payment of interest (at the rate of 5 per cent. Per

No evidence other than the documents put in on the original Arbitration and the original Arbitrators's or original Arbitrators' and or Umpire's notes and/or shorthand notes if any of the proceedings and oral evidence if any at the original Arbitration shall be used on the Appeal unless the Arbitrator or Arbitrators on the Appeal may conduct the Arbitration on Appeal in such manner in all respects as he or they may think fit and may maintain increase or reduce the sum awarded by the original Award with the like power as is conferred by Clause 7 on the original Arbitrator or Arbitrators or Umpire to condemn the Contractor in the whole or part of the expense of providing security and to deduct the amount disallowed from the salvage remuneration. And he or they shall also make such order as they may think fit as to the payment of interest (at the rate of 5 per cent. Per

No evidence other than the documents put in on the original Arbitration and the original Arbitrators's or original Arbitrators' and or Umpire's notes and/or shorthand notes if any of the proceedings and oral evidence if any at the original Arbitration shall be used on the Appeal umless the Arbitrator or Arbitrators on the Appeal may conduct the Arbitration on Appeal in such manner in all respects as he or they may think fit and may maintain increase or reduce the sum awarded by the original Award with the like power as is conferred by Clause 7 on the original Arbitrator or Arbitrators or Umpire to condemn the Contractor in the whole or part of the expense of providing security and to deduct the amount disallowed from the salvage remuneration. And he or they shall also make such order as they may think fit as to the payment of interest (at the rate of 5 per cent. Per

No evidence other than the documents put in on the original Arbitration and the original Arbitrator's or original Arbitrators' and or Umpire's notes and/or shorthand notes if any of the proceedings and oral evidence if any at the original Arbitration shall be used on the Appeal unless the Arbitrator or Arbitrators on the Appeal may conduct the Arbitration on Appeal in such manner in all respects as he or they may think fit and may maintain increase or reduce the sum awarded by the original Award with the like power as is conferred by Clause 7 on the original Arbitrator or Arbitrators or Umpire to condemn the Contractor in the whole or part of the expense of providing security and to deduct the amount disallowed from the salvage remuneration. And he or they shall also make such order as they may think fit as to the payment of interest (at the rate of 5 per cent. Per

CONDUCT OF APPEAL

13. No evidence other than the documents put in on the Arbitration and the Arbitrator's notes of the proceedings and oral evidence, if any, at the Arbitration and the Arbitrator's Reasons for his Award and the transcript, if any, of any evidence given at the Arbitration shall be used on the Appeal unless the Arbitrator or Arbitrators on the Appeal shall in his or their discretion call for or allow other evidence. The Arbitrator or Arbitrators on the Appeal may conduct the Arbitration on Appeal in such manner in all respects as he or they may think fit and may act upon such evidence or information (whether the same be strictly admissible as evidence or not) as he or they may think fit and may maintain increase or reduce the sum awarded by the Arbitrator with the like power as is conferred by Clause 11 on the Arbitrator to condemn the Contractor in the whole or part of the

CONDUCT OF APPEAL

13. No evidence other than the documents put in on the Arbitration and the Arbitrator's notes of the proceedings and oral evidence if any at the Arbitration and the Arbitrator's Reasons for his Award and Interim Award if any and the transcript if any of any evidence given at the Arbitration shall be used on the Appeal unless the Arbitrator(s) on the Appeal shall in his or their discretion call for or allow other evidence. The Arbitrator(s) on Appeal may conduct the Arbitration on Appeal in such manner in all respects as he or they may think fit and may act upon such evidence or information (whether the same be strictly admissible as evidence or not) as he or they may think fit and may maintain increase or reduce the sum awarded by the Arbitrator with the like power as is conferred by Clause 11 on the Arbitrator to condemn the Contractor in the whole or part of the

CONDUCT OF APPEAL

12. (a) The Appeal Arbitrator(s) in addition to the powers of the Arbitrator under clause 9(a) and 10 shall have power to:
(i) admit the evidence which was before the Arbitrator together with the Arbitrator's notes and reasons for his Award and/or Interim Award(s) and any transcript of evidence and such additional evidence as he or they may think fir.
(ii) confirm increase or reduce the sum awarded by the Arbitrator and to make such order as to the payment of interest on such sum as he or they may think fit.
(iii) confirm, revoke or vary any order and/or Declaratory Award made by the Arbitrator.

CONDUCT OF APPEAL

(a) The Appeal Arbitrator(s) in addition to the powers of the Arbitrator under clause 10(a) and 11 shall have power to:
(i) admit the evidence which was before the Arbitrator together with the Arbitrator's notes and reasons for his Award and/or Interim Award(s) and any transcript of evidence and such additional evidence as he or they may think fir.
(ii) confirm increase or reduce the sum awarded by the Arbitrator and to make such order as to the payment of interest on such sum as he or they 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 paragraph (b) of this clause from the expiration of 21 days (exclusive of Saturdays and Sundays or other days observed a general holidays at Lloyd's) after the date of publication

annum) on the sum awarded to the Contractor. The Arbitrator or Arbitrators on Appeal (including the Committee of Lloyd's if they act in that capacity) may direct in what manner the costs of the original Arbitration and of the Arbitration on Appeal shall be borne and paid and may charges such fee as they or he may think reasonable and the Committee of Lloyd's may in any event charge a reasonable fee for their services in connection with the Arbitration on Appeal and all such fees shall be treated as part of the costs of the Arbitration and Award on Appeal and shall be paid by such of the parties as the Award on Appeal shall direct. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	annum) on the sum awarded to the Contractor. The Arbitrator or Arbitrators on Appeal (including the Committee of Lloyd's if they act in that capacity) may direct in what manner the costs of the original Arbitration and of the Arbitration on Appeal shall be borne and paid and may charges such fee as they or he may think reasonable	annum) on the sum awarded to the Contractor. The Arbitrator or Arbitrators on Appeal (including the Committee of Lloyd's if they act in that capacity) may direct in what manner the costs of the original Arbitration and of the Arbitration on Appeal shall be borne and paid and may charges such fee as they or he may think reasonable	annum) on the sum awarded to the Contractor. The Arbitrator or Arbitrators on Appeal (including the Committee of Lloyd's if they act in that capacity) may direct in what manner the costs of the original Arbitration and of the Arbitration on Appeal shall be borne and paid and may charges such fee as they or he may think reasonable	expense of providing security and to deduct the amount disallowed from the salvage remuneration. And he or they shall also make such order as they may think fit as to the payment of interest on the sum awarded to the Contractor. The Arbitrator or Arbitrators on the Appeal may direct in what manner the costs of the Arbitration and of the Arbitration on Appeal shall be borne and paid	expense of providing security and to deduct the amount disallowed from the salvage remuneration. And he or they shall also make such order as they may think fit as to the payment of interest on the sum awarded to the Contractor. The Arbitrator(s) on the Appeal may direct in what manner the costs of the Arbitration and of the Arbitration on Appeal shall be borne and paid		by the Council of the Award on Appeal and/or Interim Award(s) on Appeal until the date payment is received by the Council both dates inclusive.
	and the Committee of Lloyd's may in any event charge a reasonable fee for their services in connection with the Arbitration on Appeal and all such fees shall be treated as part of the costs of the Arbitration and Award on Appeal and shall be paid by such of the parties as the Award on Appeal shall direct. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	and the Committee of Lloyd's may in any event charge a reasonable fee for their services in connection with the Arbitration on Appeal and all such fees shall be treated as part of the costs of the Arbitration and Award on Appeal and shall be paid by such of the parties as the Award on Appeal shall direct. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	and the Committee of Lloyd's may in any event charge a reasonable fee for their services in connection with the Arbitration on Appeal and all such fees shall be treated as part of the costs of the Arbitration and Award on Appeal and shall be paid by such of the parties as the Award on Appeal shall direct. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	and he or they and the Committee of Lloyd's may charge reasonable fees for their services in connection with the Arbitration on Appeal whether it proceeds to a hearing or not and all such fees shall be treated as part of the costs of the Arbitration on Appeal. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	and he or they and the Committee of Lloyd's may charge reasonable fees for their services in connection with the Arbitration on Appeal whether it proceeds to a hearing or not and all such fees shall be treated as part of the costs of the Arbitration on Appeal. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.	(b) The Appeal Arbitrator(s) 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.	(b) The Appeal Arbitrator(s) 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.
				PROVISIONS AS TO PAYMENT	PROVISIONS AS TO PAYMENT	PROVISIONS AS TO PAYMENT	PROVISIONS AS TO PAYMENT
9. In case of Arbitration the Committee of Lloyd's shall realize or enforce the security and pay to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest as hereinafter provided in accordance with the provisions hereinafter contained. (a) If no notice of Appeal be received by the Committee of Lloyd's within 14 days after the publication by the Committee of Lloyd's of the original Award the Committee of Lloyd's shall realize or enforce the security and pay to the Contractor the amount awarded to him together with interest as provided in Clause 7.	9. (a) In case of Arbitration if no notice of Appeal be received by the Committee of Lloyd's within 14 days after the publication by the Committee of Lloyd's of the original Award the Committee shall call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest as provided in Clause 7.	9. (a) In case of Arbitration if no notice of Appeal be received by the Committee of Lloyd's within 14 days after the publication by the Committee of Lloyd's of the original Award the Committee shall call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest as provided in Clause 7.	9. (a) In case of Arbitration if no notice of Appeal be received by the Committee of Lloyd's within 14 days after the publication by the Committee of Lloyd's of the original Award the Committee shall call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest as provided in Clause 7.	14. (a) In case of Arbitration if no Notice of Appeal be received by the Committee of Lloyd's within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the publication by the Committee of Lloyd's of the Award the Committee shall call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount awarded to him together with interest as provided.	15. (a) In case of Arbitration if no Notice of Appeal be received by the Committee of Lloyd's within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the publication by the Committee of Lloyd's of the Award and/or Interim Award the Committee shall call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount awarded to him together with interest as provided but the Contractor shall reimburse the parties concerned to such extent as the final Award is less than the Interim Award.	13.(a) In case of Arbitration if no Notice of Appeal be received by the Council in accordance with clause 11(a) the Council shall call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount awarded to him together with interest if any. The Contractor shall reimburse the parties concerned to such extent as the final Award is less than any sum paid on account or in respect of Interim Award(s).	15. (a) In case of Arbitration if no Notice of Appeal be received by the Council in accordance with clause 13(a) the Council shall call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount awarded to him together with interest if any. The Contractor shall reimburse the parties concerned to such extent as the final Award is less than any sum paid on account or in respect of Interim Award(s).

(b) If notice of Appeal be received by the Committee of Lloyd's in accordance with the provision of Clause 8 hereof they shall as soon as but not until the Award on Appeal has been published realize or enforce the security and pay to the Contractor the amount awarded to him with interest if any in such manner as shall comply with the provisions of the Award on Appeal.	(b) If notice of Appeal be received by the Committee of Lloyd's in accordance with the provision of Clause 8 hereof they shall as soon as but not until the Award on Appeal has been published by them, call upon the party or parties concerned to pay the amount awarded and in the event of non-payment realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest if any in such manner as shall comply with the provisions of the Award on Appeal.	(b) If notice of Appeal be received by the Committee of Lloyd's in accordance with the provision of Clause 8 hereof they shall as soon as but not until the Award on Appeal has been published by them, call upon the party or parties concerned to pay the amount awarded and in the event of non-payment realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest if any in such manner as shall comply with the provisions of the Award on Appeal.	(b) If notice of Appeal be received by the Committee of Lloyd's in accordance with the provision of Clause 8 hereof they shall as soon as but not until the Award on Appeal has been published by them, call upon the party or parties concerned to pay the amount awarded and in the event of non-payment realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest if any in such manner as shall comply with the provisions of the Award on Appeal.	(b) If Notice of Appeal be received by the Committee of Lloyd's in accordance with the provision of Clause 12 hereof it shall as soon as but not until the Award on Appeal has been published by it, call upon the party or parties concerned to pay the amount awarded and in the event of non-payment realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest if any in such manner as shall comply with the provisions of the Award on Appeal.	(b) If Notice of Appeal be received by the Committee of Lloyd's in accordance with the provision of Clause 13 hereof it shall as soon as but not until the Award on Appeal has been published by it, call upon the party or parties concerned to pay the amount awarded and in the event of non-payment realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest if any in such manner as shall comply with the provisions of the Award on Appeal.	(b) If Notice of Appeal be received by the Council in accordance with Clause 11 it shall as soon as the Award on Appeal has been published by it call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest if any. The Contract shall reimburse the parties concerned to such extent as the Award on Appeal is less than any sums paid on account or in respect of the Award or Interim Award(s).	(b) If Notice of Appeal be received by the Council in accordance with Clause 13 it shall as soon as the Award on Appeal has been published by it call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to them) the amount awarded to him together with interest if any. The Contract shall reimburse the parties concerned to such extent as the Award on Appeal is less than any sums paid on account or in respect of the Award or Interim Award(s).
				(d) If any sum shall become payable to the Contractor as remuneration for his services and/or interest and/or costs as the result of an agreement made between the Contractor and the parties interested in the property salved or any of them the Committee of Lloyd's in the event of non-payment shall realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount agreed upon between the parties.	(d) If any sum shall become payable to the Contractor as remuneration for his services and/or interest and/or costs as the result of an agreement made between the Contractor and the parties interested in the property salved or any of them the Committee of Lloyd's in the event of non-payment shall realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount agreed upon between the parties.	(c) If any sum shall become payable to the Contractor as remuneration for his services and/or interest and/or costs as the result of an agreement made between the Contractor and the Owners or any of them the Council in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the said sum.	(c) If any sum shall become payable to the Contractor as remuneration for his services and/or interest and/or costs as the result of an agreement made between the Contractor and the Owners or any of them the Council in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the said sum.
(c) If the Award on Appeal provides that the costs of the original Arbitration or of the Arbitration on Appeal or any part of such costs shall be borne by the Contractor, such costs may be deducted from the amount awarded before payment is made to the Contractor by the Committee of Lloyd's, unless satisfactory security is provided by the Contractor for the payment of such costs.	(c) If the Award on Appeal provides that the costs of the original Arbitration or of the Arbitration on Appeal or any part of such costs shall be borne by the Contractor, such costs may be deducted from the amount awarded before payment is made to the Contractor by the Committee of Lloyd's, unless satisfactory security is provided by the Contractor for the payment of such costs.	(c) If the Award on Appeal provides that the costs of the original Arbitration or of the Arbitration on Appeal or any part of such costs shall be borne by the Contractor, such costs may be deducted from the amount awarded before payment is made to the Contractor by the Committee of Lloyd's, unless satisfactory security is provided by the Contractor for the payment of such costs.	(c) If the Award on Appeal provides that the costs of the original Arbitration or of the Arbitration on Appeal or any part of such costs shall be borne by the Contractor, such costs may be deducted from the amount awarded before payment is made to the Contractor by the Committee of Lloyd's, unless satisfactory security is provided by the Contractor for the payment of such costs.	(c) If the Award or Award on Appeal provides that the costs of the Arbitration or of the Arbitration on Appeal or any part of such costs shall be borne by the Contractor, such costs may be deducted from the amount awarded before payment is made to the Contractor by the Committee of Lloyd's, unless satisfactory security is provided by the Contractor for the payment of such costs.	(c) If the Award and/or Interim Award and/or Award on Appeal provides or provide that the costs of the Arbitration and/or of the Arbitration on Appeal or any part of such costs shall be borne by the Contractor such costs may be deducted from the amount awarded before payment is made to the Contractor by the Committee of Lloyd's unless satisfactory security is provided by the Contractor for the payment of such costs.	(d) If the Award and/or Interim Award(s) and/or Award on Appeal provides or provide that the costs of the Arbitration and/or of the Arbitration on Appeal or any part of such costs shall be borne by the Contractor such costs may be deducted from the amount awarded before payment is made to the Contractor unless satisfactory security is provided by the Contractor for the payment of such costs.	(d) If the Award and/or Interim Award(s) and/or Award on Appeal provides or provide that the costs of the Arbitration and/or of the Arbitration on Appeal or any part of such costs shall be borne by the Contractor such costs may be deducted from the amount awarded before payment is made to the Contractor unless satisfactory security is provided by the Contractor for the payment of such costs.
	(d) Without prejudice to the provisions of Clause 4 hereof, the liability of the Committee of Lloyd's shall be limited in any event to the amount of security held by them.	(d) Without prejudice to the provisions of Clause 4 hereof, the liability of the Committee of Lloyd's shall be limited in any event to the amount of security held by them.	(d) Without prejudice to the provisions of Clause 4 hereof, the liability of the Committee of Lloyd's shall be limited in any event to the amount of security held by them.	(e) Without prejudice to the provisions of Clause 4 hereof, the liability of the Committee of Lloyd's shall be limited in any event to the amount of security held by it.	(e) Without prejudice to the provisions of Clause 4 hereof, the liability of the Committee of Lloyd's shall be limited in any event to the amount of security held by it.	(e) Without prejudice to the provisions of Clause 4 (c) hereof, the liability of the Council shall be limited in any event to the amount of security held by it.	(e) Without prejudice to the provisions of Clause 5 (c) hereof, the liability of the Council shall be limited in any event to the amount of security held by it.
(d) If the original Award or the Award on Appeal as the case may be increase the remuneration the parties mentioned in Clause 13 shall pay the difference to the Contractor.							

9 The Committee of 9. The Committee of 10. The Committee of 10. The Committee of 10 The Committee of 10. The Committee of 10. The remuneration for

Lloyd's may in their discretion out of the security (which they may realize or enforce for that purpose) pay to the Contractor on account before the publication of the Award such sum as they may think reasonable on account of any out-of-pocket expenses incurred by him in connection with the services	Lloyd's may in their discretion out of the security (which they may realize or enforce for that purpose) pay to the Contractor on account before the publication of the Award such sum as they may think reasonable on account of any out-of-pocket expenses incurred by him in connection with the services.	Lloyd's may in their discretion out of the security (which they may realize or enforce for that purpose) pay to the Contractor on account before the publication of the original Award and/or of the Award on Appeal such sum as they may think reasonable on account of any out-of-pocket expenses incurred by him in connection with the services.	Lloyd's may in their discretion out of the security (which they may realize or enforce for that purpose) pay to the Contractor on account before the publication of the original Award and/or of the Award on Appeal such sum as they may think reasonable on account of any out-of-pocket expenses incurred by him in connection with the services.	Lloyd's may in their discretion out of the security (which they may realize or enforce for that purpose) pay to the Contractor on account before the publication of the original Award and/or of the Award on Appeal such sum as they may think reasonable on account of any out-of-pocket expenses incurred by him in connection with the services.	Lloyd's may in their discretion out of the security (which they may realize or enforce for that purpose) pay to the Contractor on account before the publication of the original Award and/or of the Award on Appeal such sum as they may think reasonable on account of any out-of-pocket expenses incurred by him in connection with the services.		the services within the meaning of this Agreement shall be fixed by an Arbitrator to be appointed by the Committee of Lloyd's and he shall have power to make an Interim Award ordering such payment on account as may seem fair and just and on such terms as may be fair and just.		
						GENERAL PROVISIONS	GENERAL PROVISIONS	GENERAL PROVISIONS	GENERAL PROVISIONS
10. The Master is not authorized to make or give and the Contractor shall not demand or take any payment draft or order for or on account of the remuneration.	10. The Master is not authorized to make or give and the Contractor shall not demand or take any payment draft or order for or on account of the remuneration.	11. The Master is not authorized to make or give and the Contractor shall not demand or take any payment draft or order for or on account of the remuneration.	11. The Master or other person signing this Agreement on behalf of the property to be salved is not authorized to make or give and the Contractor shall not demand or take any payment draft or order for or on account of the remuneration.	11. The Master or other person signing this Agreement on behalf of the property to be salved is not authorized to make or give and the Contractor shall not demand or take any payment draft or order for or on account of the remuneration.	11. The Master or other person signing this Agreement on behalf of the property to be salved is not authorized to make or give and the Contractor shall not demand or take any payment draft or order for or on account of the remuneration.	3. The Master or other person signing this Agreement on behalf of the property to be salved is not authorized to make or give and the Contractor shall not demand or take any payment draft or order for or on account of the remuneration.	3. The Master or other person signing this Agreement on behalf of the property to be salved is not authorized to make or give and the Contractor shall not demand or take any payment draft or order as inducement to or remuneration for entering into this Agreement.	14. The Master or other person signing this Agreement on behalf of the property to be salved enters into this Agreement as agent for the vessel her cargo freight bunkers stores and any other property thereon and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.	16. Scope of Authority: The Master or other person signing this Agreement on behalf of the property to be salved enters into this Agreement as agent for the vessel her cargo freight bunkers stores and any other property thereon and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.
15. Any Award, notice, authority, order, or other document signed by the Chairman or Secretary of Lloyd's on behalf of the Committee of Lloyd's shall be deemed to have been duly made or given by the Committee of Lloyd's and shall have the same force and effect in all respects as if it had been signed by every member of the Committee of Lloyd's.	15. Any Award, notice, authority, order, or other document signed by the Chairman of Lloyd's or a Clerk to the Committee of Lloyd's on behalf of the Committee of Lloyd's shall be deemed to have been duly made or given by the Committee of Lloyd's and shall have the same force and effect in all respects as if it had been signed by every member of the Committee of Lloyd's.	16. Any Award, notice, authority, order, or other document signed by the Chairman of Lloyd's or a Clerk to the Committee of Lloyd's on behalf of the Committee of Lloyd's shall be deemed to have been duly made or given by the Committee of Lloyd's and shall have the same force and effect in all respects as if it had been signed by every member of the Committee of Lloyd's.	16. Any Award, notice, authority, order, or other document signed by the Chairman of Lloyd's or a Clerk to the Committee of Lloyd's on behalf of the Committee of Lloyd's shall be deemed to have been duly made or given by the Committee of Lloyd's and shall have the same force and effect in all respects as if it had been signed by every member of the Committee of Lloyd's.	16. Any Award, notice, authority, order, or other document signed by the Chairman of Lloyd's or a Clerk to the Committee of Lloyd's on behalf of the Committee of Lloyd's shall be deemed to have been duly made or given by the Committee of Lloyd's and shall have the same force and effect in all respects as if it had been signed by every member of the Committee of Lloyd's.	16. Any Award, notice, authority, order, or other document signed by the Chairman of Lloyd's or a Clerk to the Committee of Lloyd's on behalf of the Committee of Lloyd's shall be deemed to have been duly made or given by the Committee of Lloyd's and shall have the same force and effect in all respects as if it had been signed by every member of the Committee of Lloyd's.	18. Any Award, notice, authority, order, or other document signed by the Chairman of Lloyd's or any person authorised by the Committee of Lloyd's for the purpose shall be deemed to have been duly made or given by the Committee of Lloyd's and shall have the same force and effect in all respects as if it had been signed by every member of the Committee of Lloyd's.	19. Any Award notice authority order or other document signed by the Chairman of Lloyd's or any person authorised by the Committee of Lloyd's for the purpose shall be deemed to have been duly made or given by the Committee of Lloyd's and shall have the same force and effect in all respects as if it had been signed by every member of the Committee of Lloyd's.	16. 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.	17. Notices: 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.
							20. The Contractor may claim salvage and enforce any Award or agreement made between the Contractor and the parties interested in the property salved against security provided under this Agreement if any in the name and on behalf of any Sub-Contractors Servants or Agents including Masters and members of the Crews of vessels employed by him in the services rendered hereunder provided that the first indemnities and holds harmless the Owners of the property salved against all claims by or liabilities incurred to the said persons. Any such indemnity shall be provided in a form satisfactory to such Owners.	17. The Contractor may claim salvage and enforce any Award or agreement made between the Contractor and the Owner against security provided under clause 4 if any in the name and on behalf of any Sub-Contractors Servants or Agents including Masters and members of the Crews of vessels employed by him or by any Sub-Contractors in the services provided that he first provides a reasonably satisfactory indemnity to the Owners against all claims by or liabilities incurred to the said persons.	18. Sub-Contractor(s): The Contractor may claim salvage and enforce any Award or agreement made between the Contractor and the Owner against security provided under clause 5 or otherwise if any on behalf of any Sub-Contractors his or their Servants or Agents including Masters and members of the Crews of vessels employed by him or by any Sub-Contractors in the services provided that he first provides a reasonably satisfactory indemnity to the Owners against all claims by or liabilities incurred to the said persons.
12. The Master enters into this Agreement as Agent for	12. The Master enters into this Agreement as Agent for	13. The Master enters into this Agreement as Agent for	13. The Master or other person signing this	13. The Master or other person signing this	13. The Master or other person signing this	16. The Master or other person signing this	17. The Master or other person signing this	19. No person signing this Agreement or any party on	19. Inducement prohibited: No person signing this

the Vessel and Cargo and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.	the Vessel and Cargo and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.	the Vessel and Cargo and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.	Agreement on behalf of the property to be salved enters into this Agreement as Agent for the Vessel her Cargo and freight and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.	Agreement on behalf of the property to be salved enters into this Agreement as Agent for the Vessel her Cargo and freight and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.	Agreement on behalf of the property to be salved enters into this Agreement as Agent for the Vessel her Cargo and freight and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof	Agreement on behalf of the property to be salved enters into this Agreement as Agent for the Vessel her cargo and freight and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.	Agreement on behalf of the property to be salved enters into this Agreement as Agent for the vessel her cargo freight bunkers and stores and the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.	whose behalf it is signed shall at any time or in any manner whatsoever offer, provide, make, give or promise to demand or take any form of inducement for entering into this Agreement.	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 demand or take any form of inducement for entering into this Agreement.
							21. The Contractors shall be entitled to limit any liability to the Owners of the subject vessel and/or her cargo bunkers and stores which he and/or his Servants and/or Agents may incur in and about the services in the manner and to the extent provided by English law and as if the provisions of the Convention on Limitation of Liability for Maritime Claims 1976 were part of the law of England.		
			For and on behalf of the Contractor	For and on behalf of the Contractor	For and on behalf of the Contractor	For and on behalf of the Contractor	For and on behalf of the Contractor	For and on behalf of the Contractor	For and on behalf of the Contractor
			(To be signed either by the Contractor personally or by the Master of the Salving vessel or other person whose name is inserted in line 3 of this Agreement)	(To be signed either by the Contractor personally or by the Master of the Salving vessel or other person whose name is inserted in line 3 of this Agreement)	(To be signed either by the Contractor personally or by the Master of the Salving vessel or other person whose name is inserted in line 3 of this Agreement)	(To be signed either by the Contractor personally or by the Master of the Salving vessel or other person whose name is inserted in line 3 of this Agreement)	(To be signed either by the Contractor personally or by the Master of the Salving vessel or other person whose name is inserted in line 3 of this Agreement)	(To be signed either by the Contractor personally or by the Master of the salving vessel or other person whose name is inserted in line 4 of this Agreement)	(To be signed either by the Contractor personally or by the Master of the salving vessel or other person whose name is inserted in line 4 of this Agreement)
			For and on behalf of the Owners of property to be salved	For and on behalf of the Owners of property to be salved	For and on behalf of the Owners of property to be salved	For and on behalf of the Owners of property to be salved	For and on behalf of the Owners of property to be salved	For and on behalf of the Owners of property to be salved	For and on behalf of the Owners of property to be salved
			(To be signed by the Master or other person whose name is inserted in line 1 of this Agreement)	(To be signed by the Master or other person whose name is inserted in line 1 of this Agreement)	(To be signed by the Master or other person whose name is inserted in line 1 of this Agreement)	(To be signed by the Master or other person whose name is inserted in line 1 of this Agreement)	(To be signed by the Master or other person whose name is inserted in line 1 of this Agreement)	(To be signed by the Master or other person whose name is inserted in line 1 of this Agreement)	(To be signed by the Master or other person whose name is inserted in line 1 of this Agreement)
								THE CONVENTION ARTICLES Article 1. Definitions Article 8. Duties of the Salvor and of the Owner and Master Article 13. Criteria for fixing the reward Article 14. Special compensation	INTERNATIONAL CONVENTION ON SALVAGE 1989 Article 1. Definitions Article 8. Duties of the Salvor and of the Owner and Master Article 13. Criteria for fixing the reward Article 14. Special compensation

Appendix 9

LOF 80

FUNDING AGREEMENT

In order that the revision of the Lloyd's Open Form can proceed as quickly as possible, the International Group of P&I Clubs for their part and The Institute of London Underwriters and Lloyd's Underwriters' Association for their part confirm the following:

(1) the clubs, as shipowners' pollution liability Underwriters, will provide security for and bear the full cost of the 'safety net' provisions in Clause 1 of the new L.O.F. for tankers laden or partly laden with a cargo of oil.

(2) the underwriters will continue to accept that Salvage Awards are recoverable by ship, cargo and freight under the existing forms of policies for those interests, notwithstanding that such Awards may have been enhanced to take account of measures taken to prevent the escape of oil from the Ship.

The foregoing undertaking are given subject to usual policy terms and applicable deductibles and shall continue until either party gives reasonable notice to the other that there has been a material change in circumstances.

Appendix 10

LOF 90

FUNDING AGREEMENT

The adoption by the Diplomatic Conferences of the International Maritime Organisation in April 1989 of the International Convention on Salvage 1989 has led all interested parties to review the terms of Lloyd's Open Form of Salvage Agreement 1980 in order to incorporate the terms of the 1989 Salvage Convention.

The funding agreement 1980 concluded between the International Group of P and I Clubs, the Institute of London Underwriters, and Lloyd's Underwriters' Association has Likewise been reviewed and it has been agreed as follows:

1. The P and I Clubs will provide security for, and will indemnity the shipowner against any award of special compensation under Article 14 of the Salvage Convention.

2. The underwriters will accept that salvage awards made under Article 13 of the Salvage Convention are recoverable from them by ship, cargo and freight interests under the forms of policy insuring those interests notwithstanding that such awards have been determined after taking into account, inter-alia, the skill and efforts of the salvor in preventing or minimising damage to the environment in accordance with Article 13.1(b).

The foregoing general agreements are made subject to the terms of the relevant policy/terms of entry, and to any applicable deductible, and shall continue until any party shall give reasonable notice to the others that there has been a material change in circumstances.