

THE HISTORICAL CONCEPT OF SALVAGE

1. THE TRADITIONAL VIEW

1910 CONVENTION

Art. 1 «Assistance and salvage of sea-going **vessels in danger**, of **anything on board** ... which has had a useful result gives right to equitable remuneration»

Art. 8 «The remuneration is fixed by the Court according to the circumstances of each case, on the basis of the following considerations: (a) first, the measure of success obtained, the efforts and deserts of the salvors, the danger run by the salvaged vessel, by her passengers, crew and cargo, by the salvors and by the salvaging 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 salvage purposes; (b) secondly, the value of the property salvaged».

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2. CASE LAW

The «Port Caledonia» and the «Anna» the «Overe» and the «Conde de Zubiria»:
«salvage awarded against two vessels saved from appreciable danger of collision»

The «Whippingham»:
«The mere saving of a vessel from [causing] damage to other ships [which] might result in a claim in a [salvage] services».

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The Scholars' view: BRICE: *«It is submitted that it is right for a court or tribunal to enhance salvage remuneration where the salvage services, in addition to removing the salvaged property itself from danger, prevent or minimize the risk of claims against the owner of the salvaged property by third parties for damage to their property ... Whether the conferring of such a benefit alone is sufficient to found a claim for salvage as appears to be suggested or implied in The Whippingham is at the very least open to question»*

(similarly KENNEDY & ROSE) and US case law

Westar Marine Services v. Heerema Marine Contractors S.A.: *“if it were not for the salvage services the ship owner might find himself liable in damages to others, that fact should have some bearing upon the amount of the salvage award because it makes the service of greater benefit to the ship owner ... that the benefit to the ship owner is not currently one of the independent factors of which the (Brussels Convention 1910) allows consideration in making an award”*

PROTECTING THE ENVIRONMENT

UNCLOS 1982

MARPOL 1973/78

CLC 1969/92

FUND 1971/92

HNS 1996

BUNKER 2001

EU LEGISLATION

Directives 2005/35 CE – 2008/99 CE – 2009/123 CE

THE EVOLUTION OF THE CONCEPT OF SALVAGE

The SELVIG's Report to CMI:

«Nevertheless, the concept of salvage should be extended so as to take account of the fact that the damage to third party interests has been prevented. Since the ship which created the danger, will have a duty to take preventive measures in order to avoid such damage, this will mean that salvage should refer not to ship and cargo, but also to the ship's interest in avoiding third party liabilities (liability – salvage). Thus, the ship's liability insurers should be involved in the salvage settlement and pay for benefits obtained by the salvage operation.

*In the long run the law of salvage cannot neglect to recognize that **compensation for salvage** is nearly always **actually paid by insurers**. Moreover, insurers of ship and cargo cannot reasonably be required to cover fully the expenses for salvage operations from which another group of insurers – the liability insurers – regularly benefit.*

***Inclusion of the liability interest within the concept of salvage will undoubtedly provide a more equitable distribution** of the overall cost of salvage. It may also provide a beneficial encouragement to salvors to engage in salvage operations when third party interests outside the ship are in danger, particularly in cases where the chance of saving ship and cargo is rather remote. Finally, contribution from new sources may enable the international salvage capacity to remain at an adequate level” (emphasis added).*

THE EVOLUTION OF THE CONCEPT OF SALVAGE

SALVAGE AND THE ENVIRONMENT

LOF 1980: «*The services shall be rendered and accepted as salvage services upon the principle of “no cure no pay” except that where the property being salvaged 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 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 are greater than any amount otherwise recoverable under this Agreement”*»

SALVAGE AND ENVIRONMENT

The Montreal compromise
(Property Underwriters – P&I Clubs)

The 1989 Salvage Convention

ART. 13 CRITERIA FOR FIXING THE REWARD:

“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;

d) The nature and degree of the danger;

e) The skill and efforts of the salvors in salvaging 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...

SALVAGE AND ENVIRONMENT

The 1989 Salvage Convention

ART. 14 SPECIAL COMPENSATION

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

*2. If the circumstances 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 seems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than **100%** of the expenses incurred by the salvor”*

SALVAGE AND ENVIRONMENT

The 1989 Salvage Convention

ART. 14 SPECIAL COMPENSATION

«3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the **out-of-pocket expenses** rasonably 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»

SALVAGE AND ENVIRONMENT

SPECIAL COMPENSATION (ART. 14, 1989 CONVENTION)

The “Nagasaki Spirit”:

The fair rate is a fair rate of expenditure and not of remuneration and there is no profit element in the assessment.

“Fair rate means a rate of expense, which is to be comprehensive of indirect or overhead expenses and takes into account the additional cost of having resources instantly available ... Beyond that, what is a fair rate is a matter of judgment for the tribunal(s) of fact. It is not necessarily the result of any exact mathematical calculation. Arbitrators must make the best they can of that” (Staughton L.J.)

SALVAGE AND ENVIRONMENT

SCOPIC

Addendum to LOF

Not subject to threat to the environment

Replaces art. 14

Subject to being invoked

Shipowner to provide US\$ 3 m security

Remuneration on basis tariff plus 25% bonus

Remuneration due from Shipowner

If remuneration exceeds SCOPIC remuneration reduced by 25% of difference

Right of Termination