THE TRAVAUX PRÉPARATOIRES OF THE CONVENTION ON SALVAGE 1989
## CONTENTS

**FOREWORD**  
Page IX

**Preface and Acknowledgement**  
Page XI

### Part I

**THE TRAVAUX PRÉPARATOIRES OF THE CONVENTION ON SALVAGE, 1989**

#### INTRODUCTION
- **Annex 1**  
  Page 2
- **Annex 2**  
  Page 4
- **Annex 3**  
  Page 9
- **Annex 4**  
  Page 10
- **Annex 5**  
  Page 14
- **Annex 6**  
  Page 27
- **Annex 7**  
  Page 33
- **PREAMBLE**  
  Page 37
- **TITLE**  
  Page 40

#### ARTICLE 1 – DEFINITIONS
- (a) **Salvage operations**  
  Page 44
- (b) **Vessel**  
  Page 68
- (c) **Property**  
  Page 90
- (d) **Damage to the environment**  
  Page 109
- (e) **Payment**  
  Page 122
- (f) **Organization**  
  Page 124
- (g) **Secretary General**  
  Page 124

#### ARTICLE 2 – APPLICATION OF THE CONVENTION

Page 125

#### ARTICLE 3 – PLATFORMS AND DRILLING UNITS

Page 136
<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>State-owned vessels</td>
<td>154</td>
</tr>
<tr>
<td>5</td>
<td>Salvage operations controlled by public authorities</td>
<td>173</td>
</tr>
<tr>
<td>6</td>
<td>Salvage contracts</td>
<td>180</td>
</tr>
<tr>
<td>Paragraph 1</td>
<td></td>
<td>180</td>
</tr>
<tr>
<td>Paragraph 2</td>
<td></td>
<td>189</td>
</tr>
<tr>
<td>Paragraph 3</td>
<td></td>
<td>206</td>
</tr>
<tr>
<td>7</td>
<td>Annulment and modification of contracts</td>
<td>209</td>
</tr>
<tr>
<td>8</td>
<td>Duties of the salvor and of the owner and master</td>
<td>218</td>
</tr>
<tr>
<td>9</td>
<td>Rights of coastal States</td>
<td>254</td>
</tr>
<tr>
<td>10</td>
<td>Duty to render assistance</td>
<td>270</td>
</tr>
<tr>
<td>11</td>
<td>Co-operation</td>
<td>282</td>
</tr>
<tr>
<td>12</td>
<td>Conditions for reward</td>
<td>288</td>
</tr>
<tr>
<td>Articles 13 and 14 and Common Understanding</td>
<td>294</td>
<td></td>
</tr>
<tr>
<td>Article 13 - Paragraph 1(a) and (c) to (j) and paragraph 3</td>
<td>296</td>
<td></td>
</tr>
<tr>
<td>Article 13 - Paragraph 2</td>
<td>310</td>
<td></td>
</tr>
<tr>
<td>Article 13 - Paragraph 1(b) and Article 14</td>
<td>316</td>
<td></td>
</tr>
<tr>
<td>Common Understanding concerning Articles 13 and 14</td>
<td>401</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Apportionment between salvors</td>
<td>416</td>
</tr>
<tr>
<td>16</td>
<td>Salvage of persons</td>
<td>423</td>
</tr>
<tr>
<td>17</td>
<td>Services rendered under existing contracts</td>
<td>430</td>
</tr>
<tr>
<td>18</td>
<td>The effect of salvor’s misconduct</td>
<td>433</td>
</tr>
<tr>
<td>19</td>
<td>Prohibition of salvage operations</td>
<td>444</td>
</tr>
<tr>
<td>20</td>
<td>Maritime lien</td>
<td>460</td>
</tr>
<tr>
<td>21</td>
<td>Duty to provide security</td>
<td>464</td>
</tr>
<tr>
<td>22</td>
<td>Interim payment</td>
<td>473</td>
</tr>
<tr>
<td>23</td>
<td>Limitation of actions</td>
<td>477</td>
</tr>
<tr>
<td>24</td>
<td>Interest</td>
<td>484</td>
</tr>
<tr>
<td>25</td>
<td>State-owned cargoes</td>
<td>486</td>
</tr>
<tr>
<td>26</td>
<td>Humanitarian cargoes</td>
<td>495</td>
</tr>
<tr>
<td>27</td>
<td>Publication of arbitral awards</td>
<td>499</td>
</tr>
<tr>
<td>28</td>
<td>Signature, ratification, acceptance, approval and accession</td>
<td>514</td>
</tr>
<tr>
<td>29</td>
<td>Entry into force</td>
<td>521</td>
</tr>
<tr>
<td>30</td>
<td>Reservations</td>
<td>540</td>
</tr>
<tr>
<td>Paragraph 1(a) and 1(b)</td>
<td>540</td>
<td></td>
</tr>
<tr>
<td>Paragraph 1(c)</td>
<td>546</td>
<td></td>
</tr>
<tr>
<td>Paragraph 1(d)</td>
<td>546</td>
<td></td>
</tr>
<tr>
<td>Paragraphs 2 and 3</td>
<td>551</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>Denunciation</td>
<td>553</td>
</tr>
</tbody>
</table>
PART II
TEXTS

Draft prepared by the CMI Working Group
Document Salvage-12/IX-80, Annex I

Draft submitted to the Montreal Conference
Document Salvage-18/II-81

Montreal Draft – Document LEG 52/4-Annex 1

Draft Articles for a Convention on Salvage
Document LEG 57/3-Annex 1

Draft Articles agreed by the Committee of the Whole
Documents LEG/CONF.7/CW.4 and 7/CW.5

Final Act of the International Conference on Salvage, 1989

Attachment 1 – Common Understanding concerning Articles 13 and 14 of the International Convention on Salvage, 1989

Attachment 2 – Resolution requesting the amendment of the York-Antwerp Rules, 1974

Attachment 3 – Resolution on international co-operation for the implementation of the International Convention on Salvage, 1989

APPENDICES

Appendix 1 Articles non adopted
Jurisdiction
Limitation of liability

Appendix 2 Public law aspects

Index
The International Convention on Salvage, 1989 (Salvage Convention) came into force on 14 July 1996. As of 31 May 2003, 43 States, representing approximately 33.5% of the tonnage of the world's fleet, have expressed their consent to be bound by this convention. The essential purpose of the Salvage Convention was to bring the traditional rules of salvage, which had been codified in the Convention for the Unification of Certain Rules of Law relating to Salvage at Sea, adopted in Brussels in 1910, up to date with modern practice and jurisdictional principles and, most particularly, to take account of mounting international concerns relating to the protection of the marine environment.

To achieve this objective, the CMI, at the request of the IMO Legal Committee, undertook a review of the private law principles of salvage and submitted a draft text which was thereafter extensively considered by the Committee. Apart from updating the general rules relating to salvage, the text introduced new provisions to encourage salvors to take the marine environment into account whenever undertaking salvage operations by ensuring that salvors receive adequate financial compensation in respect of their efforts to protect the environment. The Salvage Convention was adopted at an International Conference on Salvage convened by IMO at IMO Headquarters in London from 17 to 28 April 1989.

Soon after the Conference, the CMI and IMO began a project to assemble the background documents and transcripts from the International Conference on Salvage (1989) into a consolidated and permanent record of the travaux préparatoires for the Salvage Convention. The momentum for this project was in no small measure carried forward by Professor Francesco Berlingieri and the resulting collection of the travaux préparatoires in this book is a worthy tribute to his dedication, enthusiasm and tireless hard work.

The publication of this material will undoubtedly be of assistance to legal practitioners, courts and maritime law academics in the interpretation of the Salvage Convention and will hopefully lead to its more uniform application in practice. The publication of the travaux préparatoires is also particularly timely in the context of the ongoing discussions taking place in IMO relating to providing ships in distress with a place of refuge. The availability of a convenient reference to the background record to the Salvage Convention, 1989, should help to provide a balanced perspective to those involved in these ongoing deliberations.
It is therefore with gratitude that I recognize the efforts of Professor Berlingieri and the support of the CMI in producing this publication, which will certainly be invaluable to students of the Salvage Convention and maritime administrators, as well as to those in the salvage industry who will be living with the practical consequences of the Convention when responding to ship incidents at sea which pose a risk to those on board and to the marine environment.

MR. WILLIAM A. O’NEILL
Secretary-General
International Maritime Organization
Preface and Acknowledgment

My suggestion to continue collecting the travaux préparatoires of maritime conventions has been approved by the Executive Council of the CMI. The Convention in respect of which the travaux préparatoires appeared to be more useful was, in my opinion, the Convention on Salvage, 1989 because of its importance and its success (there are now 42 States Parties).

I therefore made a research in the archives of the CMI in order to identify all the documents of the CMI Working Group and of the CMI International Sub-Committee, chaired by Professor Erling Selvig, by which the draft that subsequently constituted the basis of the work of the IMO Legal Committee had been prepared.

I then asked the assistance of the IMO Secretariat and obtained copies of all the relevant Reports of the Legal Committee and of all Conference documents. The records of the sessions of the Committee of the Whole, of the Committee on Final Clauses, of the Drafting Committee and of the Plenary had fortunately been typed and preserved. They were identified by the date and the symbol “LEG/CONF.7/VR” followed by a successive number. All such documents have been scanned and reviewed.

The name of the delegations participating to the debates in most cases was not indicated in the records of the sessions, but it was possible to identify it in the context of the transcripts.

In order to facilitate the identification of the changes in the various articles decided first by the CMI and then by the Legal Committee and by the Conference all such changes are marked: the words deleted are crossed out and those added appear in bold type.

As for the LLMC Convention (and, before that, for the Hague-Visby Rules, the 1910 Collision Convention and the 1952 Arrest Convention), the travaux préparatoires have been arranged under each article of the Convention and, for some articles (such as article 1), under each paragraph.

Mention is made as follows of the source from which the statements are taken:
- for CMI documents the CMI symbol is used (e.g. SALVAGE-12/IX-80);
- for the documents of the IMO Legal Committee the IMO symbol is used (e.g. LEG 55/3, in case of an annex followed by the number of the annex);
- for the Conference documents the symbols appearing on each document is used;
- finally, for the records of the debates the symbols appearing in the transcripts are used.
In order to provide a complete picture, I have annexed to the travaux préparatoires relating to the articles of the Convention the records relating to the articles of the CMI Montreal Draft that have not been adopted either by the Legal Committee or the Conference (such articles being those on jurisdiction and limitation of liability) as well as those relating to the discussion that took place in the Legal Committee on the public law aspects of salvage.

I wish to express my gratitude to the IMO Secretariat and personally to Dr. Rosalie Balkin, Mr. Augustin Blanco Bazan and Mr. Gaetano Librando for their invaluable assistance in locating and making available all relevant IMO documents.

The cost of publication of this book has been defrayed by the CMI Charitable Trust and the proceeds of its sale will be used by the Charitable Trust for the advancement and promotion of its charitable objects.

FRANCESCO BERLINGIERI
PART I

THE TRAVAUX PRÉPARATOIRES
OF
THE CONVENTION ON SALVAGE, 1989
Introduction

“In March 1978 the “Amoco Cadiz” carrying approx. 220,000 tons of crude oil was wrecked on the coast of France and caused the hitherto largest oil pollution accident.

“At its 35th session the Legal Committee of IMO requested its secretariat to prepare a report on the legal questions arising out of the “Amoco Cadiz” incident. In its report of September 1978 various aspects of salvage are extensively dealt with. The report raises the questions whether the existing international law of salvage contained in the 1910 Brussels Convention should be revised, and whether a new salvage convention to supersede the 1910 Convention should be prepared.

“Following consideration of the subject of salvage at the CMI Assembly in March 1979, where it was concluded that the matter required immediate attention, CMI offered IMO its cooperation for the study of the subject of salvage and in particular to explore whether new rules should be prepared in order to cover those casualties which may cause a threat of pollution, thereby creating a direct and primary interest of the coastal State in the salvage operations.

“Having again considered the subject of salvage and the offer for cooperation made by the CMI, the Legal Committee of IMO at its 40th session in June 1979 decided that the CMI should be requested to review the private law principles of salvage.

“Informed of this decision, the CMI in September 1979 decided to set up an international Sub-Committee under the chairmanship of Professor Erling Chr. Selvig (Norway) to study the subject of salvage and to prepare a report for the consideration of the XXXII International Conference of the CMI to be held in Montreal on May 24th-29th 1981.

“During 1980-81 the Sub-Committee had three meetings with considerable attendance including representatives of IMO and organisations for shipowners, salvors, insurers and P&I clubs, as well as Sub-Committee members from the maritime law associations of more than 20 countries. At the meetings reports and drafts prepared by the Chairman and a working group set up by the Sub-Committee were...
considered, and in February 1981 a draft convention was approved for submission to the Montreal Conference. This draft, together with the Chairman’s final report to the Conference, has been printed in CMI Documentation 1981, Montreal I.

“At the Conference the subject was first dealt with by a commission under the chairmanship of the Chairman of the international Sub-Committee. The recommendations of the commission were then put before the plenary session of the Conference, and the final draft, which is now submitted for the consideration of IMO, was adopted by the votes of 31 out of 32 national Maritime Law Association; there were no votes against and only one delegation abstained”.

At its 50th Session, held in March 1983, the IMO Legal Committee unanimously agreed that the question of salvage should be the priority item in the 1984-1985 biennium and that its work on this subject should be based on the draft convention prepared by the CMI. Following this decision, endorsed by the Council and the Assembly, the subject of salvage was placed on the agenda of the 52nd Session at which, after a general discussion, the Legal Committee commenced the consideration of the CMI draft convention article by article.

The first reading of the draft continued during the 53rd Session when the second reading started, continuing during the 54th and 55th Sessions, held respectively in April and October 1985.

A third reading followed during the 56th and 57th Session. The items that remaining outstanding were then considered during the 58th session of the Legal Committee and the draft articles, as agreed by the Committee, were annexed to the report on the work of that session as Annex 2.

The International Conference on Salvage convened by the Council of IMO for the purpose of considering the adoption of a new convention on the law of salvage was held in London from 17 to 28 April 1989.
Legal Committee
Report on the Work of the 35th session
Document LEG XXXV/4 of 7th June 1978

Any other business: matters referred to the Legal Committee by the Council at its fortieth session (Agenda item 3)

(a) Consideration of legal questions arising from the “Amoco Cadiz” disaster

40. The Legal Committee considered under this Agenda item decisions taken at the fortieth session of the Council, on the basis of various proposals by the Government of France as a result of the “Amoco Cadiz” disaster. These decisions concerned the need to study certain legal questions referred to in reports of the Maritime Safety Committee and the Marine Environment Protection Committee at their thirty-eighth and ninth sessions, respectively. The Council requested the Legal Committee to consider with urgency, early in its forthcoming session, the questions set out in paragraphs 5, 7 and 9 of document C XL/25/Add.1, to determine the order of priority to be accorded to the various questions, and to report back to the Council.

41. At the outset of a general debate on the legal measures to be adopted to prevent the recurrence of disasters such as that of the “Amoco Cadiz”, numerous delegations expressed their sympathies to the French delegation.

42. The Committee had before it documents prepared by the French delegation and by the Secretariat (LEG XXXV/3, LEG XXXV/3/Add.1, LEG XXXV/3/1, and LEG XXXV/3/2) on which to base its work.

43. In presenting document LEG XXXV/3, the French delegation indicated that the measures adopted internationally had proven insufficient to prevent the disaster of the “Amoco Cadiz” and that new legal measures were called for. The French delegation described a wide catalogue of measures proposed to the Organization for consideration and possible adoption in one form or another. Among those measures were legal matters under the following general rubrics:

(i) the existing regime of assistance and salvage, with reference to the Brussels Convention of 23 September 1910 for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea;

(ii) the legal framework for a system which would make it mandatory for any ship to report to the authorities of the flag and coastal States and to any classification society concerned the circumstances in which the safe and efficient navigation of the ship is impaired by reasons of damage;

(iii) the limits of compensation available for the victims of disastrous pollution incidents.

44. On the question of assistance and salvage, the delegation of France considered the Convention of 1910 on the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, which dealt principally with the private relations between the shipowner and the party rendering assistance, inadequate to protect the
interests of the State as a potential victim of a maritime casualty involving pollution. Nevertheless, the Convention of 1910 might still prove useful, even if an answer to the problems resulting from a disaster such as the “Amoco Cadiz” could not be found along the lines of such a convention. Similarly, the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, while useful for the purpose for which it was developed, was inadequate. It entitled a coastal State to intervene, for example, only in predetermined conditions of grave and imminent danger. The “Amoco Cadiz” disaster had proved that some rights should be accorded to coastal States to deal with situations in which the threat of pollution, although imminent, was not sufficient to meet the conditions of the 1969 Convention.

45. The coastal State, in this delegation’s opinion, should have the power to impose on ships in distress compulsory measures of assistance and salvage, and such ships would be obliged at an early stage to inform the coastal State as well as the flag State of the conditions of distress. A new convention might be based on principles agreed by the Third Conference on the Law of the Sea. Such a convention would be neither a revision of the 1910 Convention on Assistance and Salvage, nor of the 1969 Intervention Convention, and it would permit contracting States to apply such measures to all ships whether or not flying the flag of a contracting State to the new instrument. In this connexion, it was observed that prior to the 1969 Convention international customary law recognized intervention by the coastal State, but the 1969 Convention had established the precise conditions in which the right of intervention might be legally exercised.

46. On the question of the compensation regime, the French delegation thought that it was insufficient to cover damage such as that caused by the “Amoco Cadiz” disaster. For this reason, the French Government thought it would be advisable to double the amounts established by the 1971 Fund Convention, which could be done as soon as the Convention entered into force, by the first Assembly of the Fund. A review of the shipowner’s limitation established by the Civil Liability Convention of 1969 might also be made, since an increase of the amounts available from the Fund would lessen the burden on the shipowner and the latter might then be expected to assume higher amounts of limitation. A collateral question might be studied relating to the adequacy of the present system of maritime insurance, represented by the structure and functioning of Protection and Indemnity Clubs. The P and I Clubs performed a very useful function in the field of maritime insurance, but their character as mutual insurance associations and the system of contributions might be seen to diminish the incentives towards the application of safety rules which in other branches of insurance play a large role in determining the amount of the premium to be paid by the insured. Another aspect of industry insurance cover was that “good” shipowners might actually be contributing to the “bad” shipowners’ operations.

47. The delegate of France clarified his Government’s views on sub-standard ships. The implementation of the IMCO and ILO conventions was a necessity in this regard, just as urgent implementation of the recently adopted Protocols on Ship Safety and pollution Prevention was essential. The French Government also wished that some aspects of open registry systems of ships should be considered such as the relation between the shipowner, the master and the maritime administration of the flag State. An Ad Hoc Working Group had been created by the IMCO Council to study whether, and to what extent, these matters are linked to the registration of ships.

48. It was suggested by the French delegation that the priorities of the Legal Committee might be as follows:
(a) the preparation of a new convention relating to the rights of coastal States to appropriate measures in respect of assistance to ships in distress, and the obligations of such ships to report circumstances of distress to flag and coastal States;

(b) the conclusion of the work of the Committee on a new convention on liability and compensation in connexion with the carriage of noxious and hazardous substances by sea;

(c) consideration of the question of compensation in the relevant conventions, together with the question of the adequacy of the present practice of marine insurance.

49. In considering the various proposals of the French delegation, several delegations pointed out that they lacked instructions from their governments on these questions, mainly because the issues were not those originally foreseen for the agenda of the present session of the Committee. Some delegations stated that full consideration of the issues raised could not take place before the findings of the various enquiries on the “Amoco Cadiz” were made available, and that in any case the Committee would need substantial information about the various proposals. Some delegations suggested as a practical approach that these matters might eventually be dealt with by working groups, although the Legal Committee at this stage had not taken any decision to this effect.

50. The observer for OCIMF informed the Committee that his organization had decided to review its concepts of contingency planning, and that in this connexion a series of meetings had already taken place and were scheduled in the near future. He also stated that IMCO would be kept fully informed of developments, and that a first series of measures aimed at improving the system of voluntary compensation had already been adopted under the TOVALOP and CRISTAL Agreements, which had been amended.

51. The Committee requested information on the terms of reference of the Ad Hoc Working Group mentioned in paragraph 46 above and this was given in document LEG XXXV/WP.4/Rev.1. Information was also given to the Committee on the current work of the seventh session of the Third Conference on the Law of the Sea (LEG XXXV/INF.2). The Acting Chairman recalled that Section III of the Comprehensive Anti-Pollution Manual - prepared by IMCO - dealt with legal aspects of salvage, but was not yet in final form. This work would call for co-ordination between other organs of IMCO and the Legal Committee on any new undertakings of the Committee on matters of assistance and salvage.

52. With regard to matters being discussed by the Third Committee of the United Nations Conference on the Law of the Sea, one delegation observed that Article 222 of the Informal Composite Negotiating Text (ICNT) is a statement merely that the prospective treaty would not limit the rights of a State to intervene with measures of self-protection in cases of threatened pollution. It does not establish any right and the proposal for widening its scope which had been put at the seventh session did not alter this; this amendment was not a matter which had reached consensus, although widely supported. Some delegations proposed that any future work of the Legal Committee on this subject should take into account the work of the broader forum of the Third Committee of the United Nations Conference on the Law of the Sea.

53. The Committee considered the question whether a new legal instrument should be devised to cover the proposed new rules on reporting and assistance or whether it would be preferable to amend the 1969 Convention on Intervention. On this matter, the Secretary-General of IMCO observed that the 1969 Convention represented an existing regime that might be amended or revised. A new instrument...
might give rise to duplicated legal regimes substantially on the same matter, whereas amendment of the 1969 Convention could prove a more rapid solution than that which would be required by the preparation of an entirely new convention. IMCO was occasionally criticized unfairly for slowness in meeting demands for environmental legislation, but it might avoid this criticism by taking the more expeditious course of amending existing treaties. For these reasons a number of delegations, endorsed the view that the most advisable course of action would be to proceed to the amendment of the 1969 Intervention Convention.

54. Other delegations considered, however, that a new instrument would require no more time than amendment or revision of an existing one and that the proposed new instrument would have a different ambit than that of either the 1910 or the 1969 Conventions. It would, for example, clearly define the right of a coastal State to replace, in certain circumstances, the professional salvor and to impose specific measures on a ship in distress or a salvor. For these reasons and also to encourage ratifications by governments which could not accept the restrictions of the 1969 Convention; those delegations considered that a new convention was needed: the new convention would have its own role and the existing treaties could remain as they are.

55. One delegation suggested that in case it was decided to proceed to amend or revise the 1969 Convention, coastal States not parties to that Convention should participate fully in any deliberations in view of their interest in the subject.

56. The Committee felt that at the present stage, and before identifying the measures thought to be necessary, it would be premature to decide whether a new instrument was really needed, or what existing conventions, as for instance the 1969 Convention, should be amended. It was argued that perhaps it would be better at this time to identify the main issues, find some basic solution to them and then decide on the nature of the instrument to be adopted.

57. With regard to the task of isolating the essential issues, a number delegations pointed to the need for substantial research by the Secretariat and supporting documentation to be made available.

58. Some delegations preferred to look upon the immediate and initial task of the Committee as one of organizing its work and not addressing the basic issues. There were questions still to be answered about widening the scope of various international regimes to deal with cargoes other than oil. The current work of the Committee on liability and compensation for other noxious and hazardous, substances should be continued without diminution.

59. In the view of some delegations consideration of compensation questions for oil pollution damage could await the future. It was observed, in particular that the Assembly of the 1971 Fund Convention, (which was expected to enter into force in the current year) would have primary institutional responsibilities for the implementation of that treaty and the Article 4, paragraph 6, of the Fund Convention allowed the Assembly to increase the amounts to be paid under this Convention. They felt that the Legal Committee, should await decisions by the Assembly of the Fund before deciding if it should recommend any measures to alter the 1969 Liability Convention; in any case the latter would not affect the total amount of compensation available to victims. Another reason for postponing a study of compensation matters would be that the cost of the “Amoco Cadiz” disaster would only be known in the future.

60. While one delegation saw no legal problem in the question of compensation and considered that it could be dealt with quickly as a matter of increasing the
monetary limits, the general opinion was that the compensation question had several aspects which needed careful consideration.

61. With reference to insurance questions including those relating to P and I Clubs, raised by the French delegation, in conjunction with their possible effect on safety incentives, those who spoke on the subject expressed the view that it would not be appropriate for the Legal Committee to take up these matters for study.

62. One delegation recalled that the Committee was still expected to deal with wreck removal and related issues, and that developing countries were sometimes confronted with situations of salvage or wreck removal which exceeded their technical capabilities. According to that delegation, the “no cure no pay” system of salvage had drawbacks from several vantage points, including safety at sea.

63. The representative of the International Chamber of Shipping reiterated his organization’s willingness to assist IMCO in its work and observed that there were extensive provisions in the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) on notification by ships of incidents involving discharge or probability of discharge of harmful substances. These could be rapidly augmented with new provisions by the same means that were used to establish a Protocol to that treaty in 1978, at the International Conference on Tanker Safety and Pollution Prevention. This view was endorsed by one delegation.

64. On the question of the form of instrument or instruments, which might contain any new international standards, some delegations suggested that the draft protocol to the International Convention on Civil Liability for Oil Pollution Damage, under study in the Committee with a view to extending it to other “oils” might be the vehicle for a more comprehensive revision of the 1969 Convention, notably to increase its limitation figures.

65. The view was also expressed that there was no immediate need to decide on the form which particular provisions might ultimately take, but that such provisions could be drafted without regard to that question.

66. It was suggested by some delegations that the opinions of the many IMCO Members not normally taking part in the Legal Committee’s work would have value to the Committee in embarking on these new projects.

67. The Committee was of the general opinion that the legal work arising from the “Amoco Cadiz” disaster was of the same level of priority as work on a new convention on liability and compensation for damage by other noxious and hazardous substances. It therefore determined that the new issues before it might also be examined on their merits at the thirty-seventh session without sacrifice of the necessary attention to the topic already foreseen for the Agenda of that session. If possible some decisions might also be taken at that time on the form of international action appropriate to the problems and their solutions.

68. In order to assist the Committee in its urgent work, the Secretariat was requested to undertake a study of the legal ramifications of the problems raised. Guidelines for the Secretariat on this work were adopted by the Committee, and appear as Annex IV to the present Report. The Secretariat will prepare the study for circulation to members in advance of the thirty-seventh session and in any case, no later than 15 September 1978.
The President

The Secretary General
IMCO
101-104 Piccadilly
London W1V OAE

Dear Sir,

Legal Questions Arising from the “Amoco Cadiz” Disaster

The CMI has given due consideration to the work programme of IMCO’s Legal Committee with a view to ascertaining if it could again offer IMCO its cooperation in the study of some of the subjects included in this work programme.

The CMI has focused its attention on one of the priority subjects recommended by the Legal Committee, that is, the effects of the “Amoco Cadiz” disaster on the present law of salvage and believes that this subject deserves immediate attention.

The CMI would therefore be willing to offer IMCO its cooperation for the study of this subject and to explore whether the 1910 Salvage Convention should be revised or a separate convention should be prepared in order to cover those casualties which may cause a threat of pollution, thereby creating a direct and primary interest of the coastal states in the salvage operations. The CMI would appoint immediately an international sub-committee which would carefully consider the study prepared on this subject by the IMCO Secretariat together with all other documents published thereafter and then during its work keep in close contact with IMCO informing IMCO of the progress of its work so to coordinate, whenever necessary, such work with the requirements of IMCO.

I wish to mention that also amongst the subjects considered for inclusion in the Long-Term Work Programme of the Legal Committee there are many to which the CMI has already turned its attention and would therefore be willing to give IMCO in due time its cooperation.

I wish to assure you, Mr. Secretary General, that the CMI considers a great privilege to achieve its object of unification of maritime law through the cooperation with IMCO and I sincerely hope that this cooperation, which has proved so fruitful in the past, may continue in the future.

If, as I do hope, there will be a favourable response to the proposal I have the honour to make with this letter, I will immediately take the necessary action in order to ensure that work be commenced immediately.

Yours faithfully,

Francesco Berlingieri

Genoa, 24th May 1979
22 June 1979

Dear Professor Berlingieri,

Legal questions arising from the “Amoco Cadiz” Disaster

Thank you very much for your letter of 24 May with which you informed me of the decision of the CMI to offer IMCO its co-operation for the study of “the effects of the “Amoco Cadiz” disaster on the present law of salvage”.

This generous offer of renewed co-operation from the CMI was communicated to the Legal Committee at its fortieth session held from 4 to 8 June. In particular, the Committee was informed that the CMI would be prepared to appoint immediately an international Sub-Committee to study the subject and “explore whether the 1910 Salvage Convention should be revised or a separate convention should be prepared in order to cover those casualties which may cause a threat of pollution, thereby creating a direct and primary interest of the coastal states in the salvage operations”.

I reproduce below the pertinent excerpts from the Report of the Committee’s fortieth session relating to the offer of the CMI:

“65 The Committee held a wide-ranging exchange of views on the generous offer of the CMI to assist IMCO, particularly in a study of the question of salvage. The Committee expressed its approval and gratitude for the proposal.

“66. It considered that the CMI should be requested to review the private law principles of salvage, centring its examination of the matter on the 1910 Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, with Protocol of 1967. Such a review would not encompass questions of coastal State intervention or the control of salvage operations by public authorities in the context of intervention.

“67. The Committee would be grateful for all the facilities of co-operative effort which have characterized the collaboration between IMCO and the CMI in the past. It would be desirable for the international sub-committee established by the CMI to be guided entirely by its own expertise, with the understanding that among the purposes of the two Organizations undertaking this study were the need to induce and accelerate effective salvage operations in particular cases and generally to encourage the salvage industry in its beneficial activities.”

I also attach herewith other extracts from the Committee’s Report, dealing with the discussions on the subject of Salvage, which I think you will find useful.

The Committee expressly requested me to express its appreciation to the CMI for its offer of assistance. I am pleased to add my own gratitude to you and to the CMI for this further demonstration of co-operation. I am sure that, as in the past, collaboration between our two Organizations will contribute to the solution of what is clearly one of the important problems arising from the lamentable “Amoco Cadiz” disaster.

Yours sincerely,

C.P. SRIVASTAVA
Secretary-General
31. The topic of salvage as a legal question arising from the “Amoco Cadiz” incident was discussed in the context of both public law and private law. The former aspect of the matter included salvage operations under the control of the coastal State and the remuneration of the salvor in respect of them, whilst the latter aspect was concerned with the incentive and reward for salvage and matters associated with the 1910 Brussels Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, as well as the form of the private contract of salvage.

32. The Committee agreed that it would itself deal with matters of public law, including the relations between the ship and the salvor, and between the intervening State and the salvor, and not refer them to the CMI.

33. The Committee generally considered that a clearer concept of the powers of the coastal State to intervene in cases of casualties like the “Amoco Cadiz” would have to emerge from the work on public law questions before the subject of salvage could properly be taken up.

35. With regard to the private law aspects of salvage, the Legal Committee was informed that negotiations were underway in OCIMF and other areas of the private sector and it wished to record its satisfaction with this information and to encourage these negotiations. Furthermore, the Legal Committee decided that it would not at this stage take up matters concerned with the content of the private contract of salvage, although it would be grateful to be informed of the progress of negotiations concerned with that subject.

36. The representative of the International Salvage Union, representing the salvage industry, remarked that the extension of powers of the coastal State to intervene in the salvage operation should be accompanied by remuneration of the salvor, as well as provisions to relieve the salvor of liability for acts which he was compelled to undertake. It would benefit the salvor if new provisions of international law should compel a ship to accept salvage and assistance, but it could be a disincentive to the individual salvor if salvage operations could be pre-empted by the coastal State.

37. One of the delegations sponsoring working paper LEG XL/2/1 explained its intentions and replied to questions regarding the proposals, as follows:

(a) Any salvage vessel proceeding to salve or assist a ship in distress would be obliged to inform the coastal State of its intentions and allow that State to decide what measures it might take. The coastal State would then inform the interested parties involved, including the ship in distress, the salvor and the flag State, of its intention to intervene. If a salvage contract had not been negotiated, the coastal State’s intervention—commencing immediately upon the announcement of intention to intervene—would render this contract unnecessary; but if a coastal State took charge of a salvage operation (by issuing detailed instructions), the contract would be nullified and the salvor would be remunerated on an equitable basis. If necessary the coastal State would be reimbursed part or all of the costs of salvage and in situations where the coastal State was in charge there would be no application of the rule “No Cure - No Pay”. The proper elements of equitable remuneration would, however, be worked out in greater precision and embodied in an international instrument and decided upon by the courts in the case of salvage awards determined judicially.
(b) A number of provisions would have to be considered, either in terms of uniform law or by the courts in individual instances, with regard to the remuneration of salvors, the recovery of costs of activities directed by the coastal State, the reimbursement for preventive measures and other financial questions.

(c) Under this proposed system, the liabilities of the shipowner and salvor to the coastal State and vice-versa would be governed by appropriate international conventions and resolved either judicially or through arbitration and conciliation procedures provided in such conventions.

(d) With regard to the question whether the effectiveness of salvage operations and the incentives to undertake them would be impaired by the proposed system, it was explained that remuneration on an equitable basis and without the requirement for successful outcome of the salvage would provide both reward and incentive for salvage operations, rather than impairing them.

38. In the context of these general explanations, as provided by the delegation mentioned in paragraph 37, a number of points were raised.

39. It was observed that the right of intervention conferred upon a coastal State was a right to defend the interests of that State against pollution from a vessel in distress. An intervention was therefore addressed to the ship suffering the casualty. Under the proposals for mandatory salvage operations, the intervention would not be addressed to the source of the pollution but to the salvage operator. Such measures appeared to one delegation to fall outside the scope of the 1969 Intervention Convention and its concept of proportionality. These circumstances, in the view of another delegation, warranted a change in the 1969 Convention. One delegation which considered that measures of intervention for the protection of a coastal State should be its last resort, pointed out that States do not generally compel private persons to perform functions of public enforcement unless the public authorities themselves were powerless to act. In the view of this delegation salvage companies required safeguards and the involvement of the flag State in situations of the kind proposed would be essential, as well as a system for compulsory settlement of disputes.

40. It was pointed out that public authorities are not always in a position to act swiftly or to inform themselves properly of situations involving emergencies.

41. In the course of the discussions it was suggested that there would be a need to preserve a commercially attractive environment for salvage operations and scope for the application of traditional contracts.

42. Some delegations drew attention to Article 13 of the 1910 Assistance and Salvage Convention dealing with salvage which is carried out “by or under the control of public authorities”. In addition, the 1910 Convention did not deal with the interests of third parties. Some delegations considered there was no need to amend the 1910 Convention. The work of OCIMF and other interested private groups would provide solutions to the contractual problems of salvage in its relation to State intervention.

43. Some delegations considered that even the definition of “salvor” in this context (i.e. whether it should be limited to professional salvors) might require examination. It would also be open to question whether a measure of intervention would impinge solely on the salvage vessel and her master, or on the whole salvage firm and all the units involved in an operation. Such operations were often of quasi-military character, involving a variety of equipment.

44. One delegation pointed out that the United Nations Conference on the Law of the Sea had elaborated certain principles of State responsibility in matters of
pollution. One result of this might be that a State would find itself under an obligation to intervene in respect of a casualty threatening its coastline and that of other States. If it did not, it might be liable to other States.

45. In this connexion, it was suggested by one delegation that a new international instrument on the subject might include a provision analogous to Article 11 of the 1910 Assistance and Salvage Convention, providing an obligation to protect the environment and co-operate with coastal States to that end.

46. The discussions within the Legal Committee on its initial consideration of document LEG XL/2/1 gave rise to a number of criticisms and comments. The Committee at this stage reached no conclusions on the subject.
**ANNEX 4**

**REPORT ON THE REVISION OF THE LAW OF SALVAGE**

by

Professor dr. juris Erling Chr. Selvig,
Chairman of the CMI Sub-Committee.

April, 1980

Headquarters: Firma Henry Voet-Genicot
Siège: 17, Borzestraat - B-2000 Antwerpen – tel 031/32 24 71 –
telex 31.653 VOET B
Cable: COMMARINT, Antwerpen.
I. INTRODUCTION.

1. In March 1978 the Amoco Cadiz carrying ca. 220 000 tons of crude oil was wrecked at the coast of France and caused the hitherto largest oil pollution accident. The incident initiated a wide-ranging discussion of both public and private law aspects of salvage.

At its 35th session the Legal Committee of IMCO requested the secretariat to prepare a report on the legal questions arising out of the Amoco Cadiz incident. In this report (Doc. LEG XXXVIII/2, dated September 22 1978) various aspects of salvage are extensively dealt with at pp. 27-32, 40-47 and 55-56. The report p. 40 raises the questions whether the existing international law of salvage contained in the 1910 Brussels Convention should be revised, and whether a new salvage convention to supersede the 1910 Convention should be prepared.

The report by the IMCO secretariat was considered by the Legal Committee at its 37th session (Doc. LEG XXXVII/7 containing the report thereof), and the subject has been included as one of the priority items on the work programme of the committee.

2. Following consideration of the subject of salvage at the CMI Assembly in March 1979, where it was concluded that the matter required immediate attention, CMI offered IMCO its cooperation for the study of the subject of salvage and “to explore whether the 1910 Salvage Convention should be revised or a separate convention should be prepared in order to cover those casualties which may cause a threat of pollution, thereby creating a direct and primary interest of the coastal state in the salvage operations.”

Having again considered the subject of salvage and the offer for cooperation made by the CMI, the Legal Committee of IMCO at its 40th session June 1979) decided as follows (see the Report of the 40th session, loc. LEG XL/5 §§ 62-64):

“62 It considered that the CMI should be requested to review the private law principles of salvage, centering its examination of the matter on the 1910 Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, with Protocol of 1967. Such a review would not encompass questions of coastal State intervention or the control of salvage operations by public authorities in the context of intervention.

63. The Committee would be grateful for all the facilities for co-operative effort which have characterized the collaboration between IMCO and the CMI in the past. It would be desirable for the international sub-committee established by the CMI to be guided entirely by its own expertise, with the understanding that among the purposes of the two Organizations undertaking this study were the need to induce and accelerate effective salvage operations in particular cases and generally to encourage the salvage industry in its beneficial activities.

64. The CMI would be aware that the question of the content of the salvage contract was being dealt with elsewhere and, like the public law matters mentioned above, need not be a concern of the CMI.”

Informed of this decision the Executive Council of CMI at its meeting September 19, 1979 decided to set up an International Sub-committee under the chairmanship of professor Erling Chr. Selvig of the Norwegian Maritime Law Association to prepare a report on the subject of salvage. The report should be ready for consideration by the CMI Conference at Montreal in May 1981 and the appropriate decisions on any proposals to IMCO to be taken immediately thereafter by the CMI Assembly.

3. As chairman of the Sub-Committee I was requested by the President of the
CMI to prepare an initial report on the subject of salvage which could serve as a basis for discussions at the CMI Assembly March 28-29, 1980, the understanding being that the report, revised as appropriate in light of the general exchange of views in the Assembly, be submitted for consideration by the Sub-Committee. The Sub-Committee will meet June 9-10 and, on the basis of a discussion of the report and a review of the text of the 1910 Convention, consider the appropriate course of actions. This report is based on the assumption that the mandate of the Sub-Committee corresponds to what appears from the decision by the IMCO Legal Committee at its 40th session quoted above. This means that public law matters will not be directly dealt with. Furthermore, the report attempts to deal with issues which, taking into account the Amoco Cadiz report by the IMCO secretariat and the discussions in the Legal Committee at its 37th and 40th sessions, appear to be of particular interest to IMCO. Extracts of the relevant documents are annexed to the initial report. The preparation of this report has been greatly facilitated by a recent article by professor Sjur Braekhus, Bergningsinstitutte i fare? Noen tanker post Amoco Cadiz (transl.: Salvage Doctrines in Danger? Some observations after Amoco Cadiz), published in MarIus No 46 (1979).

4. The international law of salvage is in need of a thorough revision.
   a) One reason is to be found in the technical and economic developments in international shipping.
      First, the dangers to ship and cargo have been reduced while the dangers which ship and cargo represent vis-à-vis environment and other third party interests have been substantially increased. One consequence is that salvage has become of direct concern also to various third parties and public authorities.
      Second, the values of ship and cargo have increased substantially with the result of a heavy concentration of risks on fewer keels. For the professional salvors this means fewer, but more valuable opportunities. This, together with improvements of world-wide communications, also produces competition among salvors with possible detrimental effects to the salvage industry as a whole.
      Third, the salvage techniques have substantially improved, but they have become by far more capital intensive. Even this has important implications for the professional salvors.
      Fourth, new and important economic interests have been attached to ship and cargo so as to be affected by the dangers in a salvage situation. One is the risk of liabilities from marine casualties, another is a consequence of the added importance in shipping of the time factor. Salvage of ship and cargo may also mean salvage of such economic interests, which may also derive benefit from a salvage operation although ship and cargo do not.
      Fifth, from a practical and economic point of view salvage creates a paramount and direct link between the salvors and the marine insurers of the interests in danger. In a salvage situation, generally speaking, it is not the owners of such interests, but the insurers who bear the risk of economic loss and who derive the economic benefits from successful salvage operations. In accordance with the insurance conditions insurers actually exercise control over or otherwise have a decisive influence on the salvage operations, approve salvage contracts, etc. Settlements with the salvors are also a matter for the insurers since it is for them to make the necessary payments to the salvors.
   b) Another reason is the several changes in the international legal environment of which the law of salvage is an integrated part. Important changes in the law of
liability for marine causalities have taken place by virtue of the 1969 Oil Pollution Liability Convention and the related 1971 Fund Convention as well as of the 1976 Limitation Convention. Further changes of similar implications for the law of salvage have been contemplated by the new convention on the liability for noxious and hazardous substances currently under preparation by the IMCO Legal Committee (see Doc. LEG XLII/2).

c) These developments suggest that the 1910 Convention is not meeting present-day needs, nor those of a foreseeable future. Accordingly, new provisions amending or amplifying existing rules should be adopted internationally in order that an appropriate long-term basis for the law of salvage be established.

It is the conclusion of this report that revision of existing standard salvage contracts is not an adequate answer, and that the remedy needed is a new international treaty on salvage. The form of this treaty must eventually be determined in light of the nature and the scope of the law revision actually undertaken. I submit that, having regard to the wide range of problems involved and the need for a coherent legal system, the reconsideration of the international law of salvage can best be undertaken within the framework of the preparation of a new convention.

See infra VIII.

II. REVIEW OF THE LAW OF SALVAGE – SOME POINTS OF DEPARTURE.

1. Public interests.
   a) In the interest of the international community there should exist a well organized machinery ready to meet the needs for salvage operations resulting from international shipping.

   b) Several public interests are involved in any salvage operation. One is the shipping and trading interests of the States concerned. States have also an interest in avoiding that marine accidents result in damage to persons, property or other third party interests outside the ship, such as damage to the environment.

   c) The public interest in avoiding damage to third party interests is not limited to pollution damage caused by oil escaping from laden tankers. It extends to other types of damage caused by tankers or their cargoes as well as to pollution or other damage caused by ships carrying noxious, hazardous or otherwise dangerous goods. Relevant is actually any risk to third party interests created by international shipping.

   d) Coastal states will usually give higher priority to the prevention of damage to third party interests than to the salvage of the ship itself, including cargo on board.

2. The salvage operations.
   a) States can be expected to seek powers necessary to supervise or direct private salvage operations and as a last resort to organize such operations in particular cases. One must distinguish between state-guaranteed operations, where the state undertakes to remunerate the salvors, and state-organized operations carried out with resources provided by the State, either ad hoc or by means of a machinery established nationally.

   b) In the overall context of international shipping state-organized machineries established at the national level, cannot be regarded as a viable alternative to an
internationally active private salvage industry. National machineries will probably be tailor-made to the needs of the coastal State concerned and primarily for use in the waters adjacent to that State. However, most States will not be in a position to establish or maintain on its own or on a regional level a salvage machinery with the overall capacity required. Consequently, the role of national machineries can be expected to be only a supplementary one, mainly limited to the area within their respective jurisdictions.

c) The overall cost of such a combined system under which the private salvage industry retains a main role will probably be less than a system based only on state-organized salvage. The capital intensive character of modern salvage techniques suggests that at a given cost level the combined system will make available to international shipping and States affected thereby a higher and permanent overall salvage capacity.

3. The role of the law of salvage

a) A modern law of salvage should allow compensation for salvage service to the extent needed to support an adequate and viable international salvage industry, and should also encourage as far as possible efficient performance of particular salvage operations.

b) The income of the salvage industry must be sufficient to maintain an internationally adequate salvage capacity. It is probably required that total compensations reach a higher level than at present. Moreover, the risk of incurring expenses without compensation or of incurring liabilities in connection with salvage operations should not be such that salvors are discouraged from intervening in particular cases.

c) The law of salvage should provide an equitable system for the distribution of the economic burdens inherent in maintaining an adequate and viable international salvage industry. The burdens will have to be shared among the interests connected with international shipping and sea carriage of goods. If the concept of salvage is to retain its vitality in the future, all such economic interests benefiting from salvage operations will have to assume proportionate shares. This means that the various groups of marine insurers will be the major contributors.

d) The law of salvage should provide a basis for full and effective cooperation in particular cases between the salvors, the owner, insurers and other interested parties, as well as between several salvors available. This is particularly important in cases where there exists a risk that by a marine accident damage will be caused to third party interests.

e) When revising the law of salvage one should probably distinguish between cases where only the ship and her cargo is at risk and cases where by the marine accident there is created a risk of damage to third party interests. The need for revision is particularly clear with respect to the latter cases. However, the need for a coherent legal framework for salvage must also be kept in mind.

f) The international law of salvage should provide adequate answers to all questions of significance likely to arise out of a salvage operation. This will ensure international uniformity to the extent possible and provide the basis for giving salvage contracts an appropriate supplementary role in determining the rights and duties of the parties concerned. A basis for simplification of standard forms for salvage contract will also be provided. See infra VI.
4. **Liabilities arising out of salvage (the concept of salvage).**

   a) The 1910 Convention art. 1 means, generally speaking, that it is salvage of the property value of ship, cargo and other things onboard which creates the liability to pay compensation for the services rendered.

   Compensation due under the law of salvage should continue to be payable by the owners of ship and cargo and their respective insurers. This should apply also where the measures taken by the salvors have prevented damage to third party interests outside the ship since it is difficult to envisage that a duty to pay for salvage should be extended to such third parties.

   b) Nevertheless, the concept of salvage should be extended so as to take account of the fact that 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 only 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 operations.

   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 benefits.

   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 where third party interests outside the ship are in danger, particularly in cases where the chance of saving ship and cargo is rather remote. Finally, contributions from new sources may enable the international salvage capacity to remain at an adequate level.

   c) Salvage of persons onboard the ship raises a similar problem. The rules of the 1910 Convention art. 9 do not appear to be entirely satisfactory. Another special problem is whether the time factor or other interest incidental to the commercial operation of the ship shall be taken into account, but as regards these interests insurance practices differ substantially. A third special problem is whether the concept of salvage operation should be aligned with the provisions of the 1976 Limitation Convention art. 1(3) 2nd sentence

   d) States having incurred cost in connection with state-guaranteed or state-organized salvage operations can be expected to seek indemnity from the ship or the shipping industry, if necessary by imposing duties or liabilities subject to new or no limits.

   The relationships between the State concerned and the shipowner as well as between the State and the salvors arising in these cases fall outside the scope of the work of the Sub-Committee. However, even in such cases remedies under the law of salvage applicable in the relation between the salvors and the ship, cargo and other interest subject to salvage, should remain applicable. This is not the approach of the 1910 Convention art. 13, as it has usually been interpreted. However, the degree and form of state involvement may vary considerably, and borderline cases or unwarranted differences in law may otherwise arise. Moreover, any compensation due to the salvors will reduce his claim against the State and thereby the need for a particular recourse from the State to the commercial interests having been in danger.
5. **The main implications for a revision of the law of salvage.**

The above considerations suggest that legislative measures be adopted in the following areas:

a) The duties of the parties in a salvage situation to take **preventive measures** (infra III)

b) The modification of the “no cure no pay” principle by the introduction of a new remedy for the recovery of the **cost of preventive measures** (infra IV).

c) The review of the rules relating to the **salvage rewards**, particularly with the view of determining compensation for liability-salvage (infra V).

d) Measures affecting the role and scope of **salvage contracts** (infra VI).

e) The **liability of salvors** for damage caused during salvage operations (infra VII).

### III. Preventive Measures

1. **Duties of shipowners**

   a) Where a ship in danger represents a risk that damage be caused to persons or property outside the ship (third parties), the shipowner shall have a duty to take reasonable measures to avoid the danger or otherwise to prevent or minimize the damage to third parties (preventive measures). In particular cases this duty will arise whenever the third party interest can be considered to be in danger in a sense analogous to the meaning of this term as used in the 1910 Convention art. 1.

   b) The shipowner may reject an offer of salvage or prohibit the performance of salvage operations if there is no risk of damage to third parties or if the capability of the salvor is inadequate.

   c) These principles should apply mutatis mutandis to the master of the ship.

2. **Duties of the cargo owners.**

   Where the cargo of a ship in danger represents a risk that damage be caused to persons or property outside the ship, a subsidiary duty to take preventive measures may be imposed on the cargo owner.

3. **The salvage operations.**

   a) The salvor shall use his best endeavours to carry out the salvage operations successfully and whenever reasonably required, arrange for assistance from other salvors.

   b) During the salvage operation an offer of assistance from another salvor may not be rejected unless the first salvor is able to complete the salvage operation within a reasonable time or the capabilities of the second salvor is inadequate. However, when several salvors have joined the salvage operation successively, the circumstances in which this was done should be taken into account when distributing a salvage reward among each of the salvors.

   c) The salvors are entitled to the full cooperation of the shipowner and the cargo-owners.
4. The relation to public duties.
   a) The principles in paras. 1-3 above shall be subject to any measures in respect of the salvage operation imposed by an appropriate public authority within its powers to supervise or direct such operations.
   b) Where a salvor has carried out salvage operations under a public duty to do so, he shall nevertheless be entitled to avail himself of any remedy under the salvage convention in order to recover compensation for his services.
   c) Salvage services rendered notwithstanding the express and reasonable prohibition by an appropriate public authority or the shipowner, shall not give rise to claim under the salvage convention, comp. the 1910 Convention art. 3.

IV. The cost of preventive measures.

1. A new remedy
   a) The principles of “no cure no pay” (1910 Convention art. 2) should be modified by the introduction of a new remedy by which the salvor may recover the cost of preventive measures (cf. supra III.1.a). This remedy must be distinguished from the salvor’s right to a salvage reward, which should remain subject to the principles of “no cure no pay” (infra V).
   b) For this purpose cost of preventive measures shall include further loss or damage caused by such measures, but the right of recovery extends only to the cost of measures reasonable under the circumstances, cf. the language contained in the 1969 Oil Pollution Liability Convention art. 1(6) and (7).
   c) The new remedy should be so defined that to the extent possible one exploits in the first place any right of recovery for cost of preventive measures under the existing law. Rights of recovery specifically allowed under the salvage convention should have a supplementary role, see infra paras. 2-5.

2. Preventive measures in respect of oil pollution.
   a) The liability system for oil pollution contained in the 1969 and 1971 Conventions allows recovery of the cost of preventive measures. Since the 1969 Convention does not specify who may be entitled to claim under the Convention, it is left to national law to determine who may act as claimant.
      In some countries public authorities or even other third parties are considered to be proper claimants for cost of preventive measures incurred, and salvors are considered to be such third party. In other countries the position of salvors may not be equally certain. In order to remove any doubt existing, the right of the salvors to recover the cost of preventive measures under the 1969 and 1971 Conventions, can be recognized in the new salvare convention in the form of a provision by which the contracting parties to the salvage convention undertake to give the salvors the status of claimants.
   b) This solution may also be used vis-à-vis other systems for compensation in cases of oil pollution.
   c) In a salvage situation preventive measures as defined supra III.1.a cover in the first place measures taken to avoid the danger before damage resulting therefrom has been caused to ship, cargo or third party interests. At first glance, the term “preventive measures” of the 1969 Convention art. 1(7) seems to be narrower, referring to
measures taken after an incident has occurred. However, this is not so. In art. 1(8) “incident” is defined as an occurrence causing pollution damage, thereby suggesting that a spill of oil must have taken place. However, the term “pollution damage” as defined in art. 1(6) includes not only damage caused by the spill of oil, but also the cost of preventive measures. This means that there is also an “incident” when an occurrence has caused preventive measures to be taken. It is submitted that the salvage situation itself is such an occurrence, viz. the fact that the ship has come in danger and that measures taken subsequently in order to prevent spill of oil are within the meaning of art. l(6)-(8) of the 1969 Convention.

3. Hazardous substances other than oil.

The new salvage convention should foresee that a new convention dealing with hazardous substances other than oil may be adopted. To the extent that this convention will impose liabilities for cost of preventive measures beyond the liability of shipowners under the 1976 Limitation Convention, the solution suggested above para. 2 may be used also with respect to such future convention.

4. The remaining cases.

a) For cases which may not be covered by any other regime the salvage convention should provide that the salvors are entitled to recover the cost of preventive measures from the shipowner.

b) This claim may be subject to global limitation under the 1976 Convention (or other rules), cf. art. 2(1)f, cf. also art. 1(3) 2nd sentence. However, this does not apply if the claim is for remuneration under a contract, cf. art. 2(2) in fine, e.g. a salvage contract not based on the principles of “no cure no pay”.

In this context it should also be noted that “claims for salvage” are excluded by art. 3(a), but it may be argued that this provision applies only to salvage rewards.

5. Excess fund.

a) Cost of preventive measures may be incurred in cases where the marine accident has also caused extensive damage to persons or property. The right of recovery under regimes contemplating limitation of liability may in such cases be only partial. To ensure that this does not affect the willingness of salvors to engage in the salvage operation and take the measures required, the salvage convention should determine an amount to be available for recovery of the unpaid portion of cost of preventive measures (excess fund).

b) In order to ensure speedy recovery the salvors may be given the right to claim immediately against the excess fund, leaving it to a recourse in e.g. the global fund, cf. the 1976 Convention art. 12(2) and (3).

c) Such an excess fund may be insured by shipowners, for instance in connection with other liability insurance.

6. Direct action.

a) Under the 1969 and 1971 Conventions direct action against the insurer is available to the salvors.

b) With respect to other cases, the salvage convention should provide for direct action in cases where the shipowner does not on demand put up adequate security for the salvors claim for cost of preventive measures.
V. Salvage Rewards

1. The “no cure no pay” principles of the 1910 Convention art. 2 should continue to govern the right to salvage rewards. Rewards should be liberally fixed in accordance with the principle of encouragement.

2. Salvage rewards for ship or cargo may remain subject to the rules of art. 8 of the 1910 Convention. However there seems to be a need to review the enumerated factors. Avoidance of delay may be taken into account. Consideration should be given to giving added weight to the insured values instead of market values. Some of the interests attached to ship or cargo may thereby be indirectly taken into account (e.g. a charterparty interest as insured under an interest-policy).

3. The salvors should be entitled to a reward on the ground that liability for damage to third party interests outside the ship has been prevented or minimized. This should be considered to be “a useful result” within the meaning of the principles of “no cure and no pay” of the 1910 Convention art. 2. The reasons for this appear supra II.4.b.

Some particular rules may be required to determine how the reward for liability-salvage shall be fixed. The values in danger as well as the salvaged values will as a rule have to be determined with regard to applicable limits of liability. In a case of oil pollution, for instance, depending upon the circumstances, both the 1969 and the 1971 units may be relevant, also with the consequence that the liability insurer and the fund each will have to cover a proportionate part of the reward.

In cases where the salvors have prevented damage for which the shipowner would not have been liable, the salvors may only recover the cost of preventive measures, cf. supra IV.

4. In cases of liability-salvage as well as salvage of ship and/or cargo, the reward may be fixed in two stages, first the total amount and subsequently the apportionment determining for which amount each of the respective interests shall be responsible.

5. The points of view expressed supra III.1 and 3 are intended to encourage cooperation between several salvors available in a particular situation. As mentioned supra III.3.b this may require some particular rules relating to the apportionment of the rewards among the several salvors having participated, cf. the 1910 Convention arts. 6(2) and 8(2).

VI. The Role of Salvage Contracts.

1. The approach.

Salvage contracts should only have a supplementary role in determining the rights and duties of parties concerned.

a) Standard form contracts are likely to be prepared on a commercial level without adequate representation of the public and third party interests affected by salvage operations. Standard forms are also likely to be prepared with reference to a particular national legal system or a particular dispute-settlement procedure and may consequently not obtain such general and world wide use as is required from the point of view of international uniformity.

b) In particular salvage situations contract negotiations prior to the commencement of the salvage operation should be avoided to the extent possible.
Salvage situations do not represent the kind of environment envisaged by general principles of contract law as appropriate for negotiating contracts. Such negotiations may also delay the salvage operations to the detriment even of third party interests threatened by the ship in danger, but not parties to the negotiations.

2. **The accommodation of the purposes of salvage contracts through revision of the international law of salvage.**

The international law of salvage should attempt to deal in a generally acceptable manner with the matters presently covered by standard form contracts for salvage.

a) One purpose, relevant only in some of the difficult salvage cases, is to modify the principles of “no cure no pay” or otherwise to fix in advance the remuneration payable to the salvors. The proposed new remedy for the cost of preventive measures (supra IV) will probably remove to a great extent the need for such modifications.

b) A salvage contract reserves for the salvor a first opportunity to perform the salvage operation, thereby protecting him against competing salvors. However, this idea conflicts with the need for cooperation between salvors in order to accomplish speedy and efficient salvage. The interests of the “first” salvor may be adequately protected in a more flexible manner within the framework of the rules of the apportionment of awards among several salvors, supra III (1) and (3).

c) A salvage contract may remove any doubt as to whether there exists a salvage situation. However, whether the services rendered amount to salvage is not a question to be settled in advance, but only after all the facts are known.

A salvage contract usually determines the court or arbitral tribunal competent to decide questions relating to the remuneration payable to the salvors. A salvage convention cannot meet the need of parties wishing to resort to an exclusive forum or to arbitration at a particular place. It may, however, adopt the more limited measure of making available to the parties a balanced choice of jurisdictions, such as the first port of call, the shipowner’s domicile, the place where guarantee has been provided, the place where damage to third party interests has occurred or would have occurred, etc.

e) A salvage contract usually provides that the salvor is entitled to demand a guarantee to secure his claims. This may also be provided for in a salvage convention, for instance in the form that if a guarantee has not been provided on demand, the salvor may exercise a direct action against the respective insurers.

If the salvor is recognized as a claimant under the 1969 and 1971 Conventions relating to oil pollution, he will be able to benefit from the insurance system and the direct action provided for in these conventions.

The position is the same if the concept of “liability salvage” is recognized.

f) Standard form contracts may deal with various other matters. For instance, in the Lloyd’s open form, providing for “Lloyd’s arbitration” the bulk of the provisions are rules governing the arbitral procedure, and many other provisions restate what is already accepted law. These matters do not have to be dealt with in a salvage convention. Nor does there seem to be necessary or desirable to burden a standard form contract with such matters.

In case of institutionalized arbitration, such as Lloyd’s, ICC or ICC-CMI Arbitration, a general clause in the contract should be sufficient, the procedural rules being set out in some sort of regulation.

g) The above observations suggest that most purposes of salvage contracts may and should be met by provisions in a salvage convention.
3. **Simplification of standard form contracts.**
   a) Simplification of standard forms for salvage contracts and reduction in terms of items covered will reduce the risk of detrimental delays resulting from negotiation of salvage contracts in particular cases.
   
   b) A revised and amplified international law of salvage will provide a good basis for considerable simplifications.
   
   c) Simplified standard form contracts suited for international use may be prepared by commercial organizations or by non-interested organizations such as CMI or IMCO.

4. **The validity of contracts.**
   a) Salvage contracts should as a rule remain valid subject to provisions on the invalidity of unreasonable terms or contracts (compare the 1910 Convention art. 7)
   
   b) In cases where third party interests outside the ship are in danger the principle should be that contracts concluded in advance of or during the salvage operations should not be enforceable. However, the parties should be free to determine in advance the place for settlement of disputes by courts or by arbitration as well as to refer disputes to an institutionalized arbitral forum.

VII. **LIABILITY OF SALVORS**

1. The liability rules must be such that the salvor is not discouraged from carrying out salvage operations because of liability risks.

2. The 1976 Limitation Convention is thought to provide an adequate system for the limitation of the liability of salvors, cf. art. 1 § 3. Claim arising in connection with salvage operations are subject to limitation (art. 2 § 1), and the salvor operating from a ship is entitled to limit liability on the basis of the ship’s tonnage. For other salvors a special limit has been fixed (art. 6 § 4).

   In order to ensure the widest possible application of this system the salvor’s right to limit liability as provided in the 1976 Convention should be confirmed in a new salvage convention.

3. As mentioned supra IV.1.b any remedy for the recovery of the cost of preventive measures also allows recovery of compensation for further loss or damage caused by the preventive measures.

   The liability for such loss or damage may be channelled to the shipowner or other person liable in order that the salvor may be protected from claims from third parties. However, a provision like the 1969 Convention art. III (4) does this only where the salvor may be considered as an agent of the owner, and in practice it may not be of great help to the salvor. Likewise, art. III(5) of this Convention preserves any recourse action the owner may have against the salvor.

   In Scandinavian legislation implementing the 1969 Convention the salvor is given added protection. He is liable towards a third party or the owner only if he has acted wilfully or with gross negligence.

   Consideration should be given to the question whether a salvage convention should contain similar provisions, channeling the liability for loss or damage subject to a regime of strict liability such as the 1969 Convention or the future convention on other hazardous substances to the person liable under the regime concerned.
4. With respect to other cases the question arises whether the liability of salvors vis-à-vis third parties or the ship and cargo should be determined by ordinary tort law or modified, for instance so as to be based on some serious fault. A special problem is whether the salver should be liable for damage caused during salvage operations directed by government authorities.

VIII. A NEW CONVENTION

The Salvage Convention 1910 needs revision in light of subsequent experience and practice. The need for revision is particularly relevant with respect to cases where a marine accident creates risks of damage to third party interests. For reasons given above II.2.f and VI.1, revision of existing standard contracts is not considered to be an appropriate remedy. The revision of the international law of salvage should be accomplished by the adoption of a new international treaty.

The alternatives seem to be
(i) to adopt a protocol to the 1910 Convention,
(ii) to leave the cases where only ship and cargo are in danger to be governed by the 1910 Convention and to draft a separate new convention for cases where the ship, cargo and third party interests are in danger and
(iii) to draft a new comprehensive convention on salvage, while recognizing that the need for law revision varies with the particular salvage situations.

The need to elaborate a coherent and consistent legal regime for salvage, suited to modern conditions, suggests that a new comprehensive convention to replace the 1910 Convention be drafted. Experience has shown that protocols or other additional instruments to existing conventions are likely to create difficulties in practice, particularly as a result of their adverse effect on the uniformity of law.
I. INTRODUCTION

1. In September 1979, following a discussion in the IMCO Legal Committee of the problems raised by the Amoco Cadiz event, and in response to a request to review the private law principles of salvage, the CMI decided to establish an International Sub-Committee under the chairmanship of professor Erling Selvig (Norway) to study the subject of salvage and prepare a report for consideration at the Montreal Conference, 1981. In view of the short time available, the President of the CMI requested the chairman to prepare immediately an initial report for consideration by the Sub-Committee (issued as Doc. Salvage -5).

The Sub-Committee met in Brussels June 9-10 1980. Having considered the initial report and being informed of the Revised Lloyd’s Open Form (LOF 1980), the Sub-Committee set up a working Group to prepare draft texts, if appropriate in the form of a new convention. The members of the Working Group were, in addition to the chairman,

- Professor N. Balestra (Italy)
- M. Edward C. K alaidjian (USA )
- M. B . Nielsen (Denmark)
- M. D . O’M ay (UK )
- M. J . Villeneau (France)
- M. L . Watkins (UK )

Having met in Copenhagen and Paris the Working Group submitted a draft convention for consideration by the Sub-Committee at a meeting in London October 27-28, 1980. Before the meeting was also a draft prepared by the British MLA. Both drafts appear in Doc. Salvage -12.

In order to produce a compromise capable of wide support and on the basis of a proposal by the chairman, the Sub-Committee instructed the Working Group to meet again in London to prepare a single compromise text for consideration by the Sub-Committee at its meeting in Brussels February 2-3, 1981. On the basis of this draft (Doc. Salvage -15), the Sub-Committee approved a Draft Convention for submission to the Montreal Conference.

The Draft Convention has been issued in Doc. Salvage-18. The text contains some bracketed language or provisions to show areas where no consensus has yet been reached within the Sub-Committee. In the course of the deliberations certain proposals were put forward which did not receive sufficient support to be included in the text.
2. When preparing the Draft Convention the Sub-Committee recognized the desirability of preserving as much as possible of the principles of the existing law of salvage as well as the need for reform suggested by technical and economic developments in the international shipping, salvage and marine insurance industries. The main objective has been to prepare a set of rules that, on the one hand, would encourage adequate provisions of salvage services and the efficient carrying out of salvage operations and, on the other hand, would be capable of wide international implementation. In this context it was recognized that salvage is no longer only the concern of the salvors and the commercial parties directly interested in ship and cargo. There are also marine disasters which may cause damage to persons or property of the kind described in the draft by the term “damage to the environment”.

The main differences of views in the Sub-Committee related to the question whether salvors should be entitled to payments on the ground that salvage operations have been carried out also in order to prevent damage to the environment or that by the endeavours of the salvors such damage has actually been avoided. One approach to these problems was suggested in the Chairman’s initial report, another in the LOF 1980 and the draft prepared by the British MLA. The compromise, now contained in the Draft Convention arts. 3-2 and 3-3, reflects the “safety net” idea of the LOF 1980 as well as certain other notions having emerged during the discussion, and assumes that, in accordance with the Draft Convention art. 1-5, these articles may be departed from by contract.

In other respects the Draft Convention, compared with the 1910 Convention, contains new rules mainly in Chapter II relating to the performance of salvage operations, in art. 3-5 relating to salvage of persons and in Chapters IV and V relating to the claims and liabilities of salvors. Thus, the Draft Convention deals with many matters which have not been provided for in the 1910 Convention. Nevertheless, the Draft Convention is not intended to set out the law of salvage in any exhaustive manner. The Sub-Committee considers that as regards certain questions the solutions adopted in the various national laws on salvage differ to such an extent that the acceptability of the Draft Convention might be reduced if an attempt was now made to bring about international uniformity by provisions even of such matters. One such matter is the question who is liable for salvage rewards, a question which must also be viewed in the light of practices relating to general average.

3. In the deliberations of the Sub-Committee the representatives of 25 national associations have participated together with observers from IMCO, IOPCF and international shipping, salvage insurance and average adjusters’ organizations.

Comments to the provisions of the Draft Convention*

4. General provisions. The definitions contained in art. 1-1 (1)-(3) mean that the scope of the international law salvage has been extended so as to include not only ships but also any other structure capable of navigation as well as property in danger in navigable and other waters. In this context note was taken of the proposal in respect of salvage relating to off-shore mobile crafts adopted at the CMI Rio-Conference 1977. The reference to freight in art. 1-1(3) does not include charter hire unless in the particular case the freight for the actual carriage of the goods has in fact been stipulated in the form of a charter hire.

A key concept in the Draft Convention, Damage to the environment, has been...
defined in art. 1-1(4). This term refers to physical damage to persons or property, not to the economic consequences thereof. It points to damage outside the ship and covers cases of pollution, contamination and the like damage to air, land or waters in or inland waterways areas as well as other types of substantial damage in such areas caused by fire, explosion or similar major incidents. This concept is used in art. 3-2(1) b and art. 3-3, where the relevant considerations are the endeavours of the salvors to avoid or minimize such damage or the extent to which this has been done. Damage to the environment can in a sense be described as a generic term since, as a rule, it does not refer to damage to any particular person, property or interest, but rather to damage in the area concerned. Relevant in salvage law is not the damage itself, but that there exists a risk of damage emanating from a ship in danger.

The Sub-Committee was of the view that the Draft Convention should be given as a wide scope of application as possible, cf. art. 1-2(1). This provision is a combination of the principles expressed in the 1976 Limitation Convention art. 15(1) and the 1910 Convention art. 13. It was felt that the problems relating to warships and the like should be left for separate regulation.

The provision relating to wreck removal in art. 1-2(2)d is intended to prevent that the definition of vessel in art. 1-1(2) is given too wide a meaning. Removal of wrecks is left for regulation at the national level.

The Draft Convention does not deal directly with questions relating to salvage operations by or under the control of public authorities, nor with the right of salvors in such cases to payment from the authority concerned, cf. art. 1-3 and the 1910 Convention art. 13. However, the fact that a salvor has performed salvage operations under the control of a public authority shall not prevent him from exercising any remedy provided for by the Draft Convention against the private interests to which salvage services are thereby being rendered, whether the salvor is entitled to recover from such private interests depends, or whether, according to the facts, the conditions for recovery set out in the provisions of the Draft Convention have been met.

Definitions of salvage often contain a reference to the voluntary character of the service rendered. The Sub Committee has dealt specifically with the problems to be solved thereby, cf. art. 1-3(3) relating to services rendered by a public authority under a duty to do so, and art. 3-6 relating to services rendered in performance of a contract entered into before the danger arose.

According to art. 1-4 the Draft Convention shall apply to any salvage operations except to the extent that the contract otherwise provides expressly or by implication. In the Sub-Committee some national association put forward proposals relating to the mandatory character of one or more of the articles in the Draft Convention, but these proposals did not receive the support necessary for inclusion in the text.

Art. 1-4(2) relating to the statutory authority of the master to conclude salvage contracts, is one of several measures intended to facilitate efficient carrying out of salvage operations.

Art. 1-5 is mainly reflecting the principle of the 1910 Convention art. 7. This article does not prevent the application of national rules relating to the invalidity of contracts or terms thereof.

5. Performance of salvage operations. The provisions of Chapter II are new, except art. 2-3 which is a concise restatement of the principles of the 1910 Convention art. 11-12. The Draft Convention arts. 2-1, 2-2 and 2-4 deal with the duties imposed on the various private and public parties concerned for the purpose of ensuring the efficient carrying out of salvage operations, also with the view that damage to the environment be avoided. The need for co-operation between the parties is a recurrent theme.
The case where several salvors may be available is dealt with in art. 2-2(2). The first salvor may then have a duty to obtain assistance from such other salvors. These provisions are based on the idea that the law should encourage co-operation between the several salvors available rather than consider them as competitors. It is envisaged that, when assessing the payment due to each of them (cf. arts. 3-2 and 3-4), the court may take due account of the fact that one of the salvors may have commenced the operation before others arrived to take part.

The discussions in the Sub-Committee revealed that co-operation from public authorities of costal states would often be indispensable to the success of the salvage operations. On the other hand, it was recognized that the drafting of provisions on this subject was a most delicate matter. Art. 2-4 should be read in light of this.

6. Rights of salvors. The content of this chapter should be considered in light of the observations supra 2.

In art. 3-1 are contained provisions emanating from the 1910 Convention art. 2(1) and (2) and art. 5.

Art. 3-2(1) deals with the considerations relevant when fixing salvage rewards. Essentially this provision is in accordance with art. 8(1) of the 1910 Convention and the practices followed in the application thereof. The Sub-Committee felt that it would be better simply 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, particularly in relation to other relevant considerations. It is explicitly stated that the order in which the particulars are enumerated is not intended to provide guidance on such matters.

Compared with the 1910 Convention some redrafting has taken place, particularly in order to take account of subsequent developments in practice. Thus, it is now explicitly stated that a reward shall be fixed with the view of encouraging salvage operations, and that consideration should be given to matters such as those dealt with in sub-para. (g) and (i). Moreover, in sub-para. (b) reference is made to the skill and efforts of the salvors in avoiding or minimizing damage to the environment. This provision is part of the compromise referred to supra 2.

The provisions of art. 3-2(1) must be considered in the light of the provision contained in art. 3-2(2), providing that the recovery of the salvor under this article may not exceed the value of the property salved. A provision to that effect is also contained in the 1910 Convention art. 2(3);

As mentioned supra 2 the Draft Convention – like the 1910 Convention – refrains from dealing with the question of the person(s) liable to pay rewards due under art. 3-2.

7. Art. 3-3 gives the salvors new remedies for cases where salvage operations in respect of ship and cargo are carried out also in order to prevent that damage to the environment may occur. In such cases the salvor is entitled to recover from the shipowner, firstly, the expenses involved (as defined in art. 3-3(3)), and secondly, contingent upon actual avoidance of such damage in addition a special reward. This reward is to be fixed taking into account as applicable the criteria enumerated in art. 3-2(1), but shall not exceed (twice) the salvors’ expenses.

These provisions must be read in conjunction with art. 3-2 (1)b and (2). While the salvor in many cases may be adequately remunerated under art. 3-2 also for his skill and efforts in avoiding damage to the environment, the provision of art. 3-2(2) may in other cases prevent sufficient recovery under that article. As appears from art. 3-3(4), the remedies in art. 3-3 are intended for the later cases. Recovery may be had only to the extent that the amount due under art. 3-3 exceeds what may be recovered under art. 3-2.
The salvor’s right to recover his expenses is not conditioned upon any measure of success; he is to be compensated for his endeavours to avoid damage to the environment. The definition of “Salvor’s expenses” in art. 3-3(3) was much debated. The observer of the International Salvage Union considered it to be too narrow or imprecise and proposed the following alternative (which was not accepted by the Sub-Committee):

““salvor’s expenses” for the purpose of 1) and 2) above means a fair rate for equipment and personnel actually used in the salvage operations taking into consideration the following factors:

a) the use and availability of vessels and other equipment intended for salvage operations and their standing costs.

b) the time expended by the salvor and the out of pocket expenses reasonably incurred by the salvor in the services.

c) the state of readiness and efficiency of the salvors vessels and equipment intended for salvage operations.

d) the level of investment and professionalism of the salvor.”

The differences mainly relate, in the first place, to drafting and, in the second place, to the manner in which to take account of the salvor’s standing costs, overheads etc., when determining what is a “fair rate” in the particular case. Art. 3-3(3) leaves this to the court’s discretion. The alternative proposal apparently gives specific guidance, but at the same time it leaves open the manner in which the various considerations shall be taken into account.

The special reward in art. 3-3(2) is also payable by the shipowner. In the cases in which this provision will apply no or insufficient property has been salved so as to allow adequate recovery under art. 3-2, and it is important for the salvors that the person liable is one against whom the claim is easily enforceable. It is consequently for the shipowner to seek recourse as appropriate from the cargo owners/charterer. The fact that the actual limit of the special reward is left in square brackets must be considered in light of this. Observers representing shipowners interests suggested that there was a clear connection between the questions of the limit and of the liable person. As may be expected various preferences were expressed on the question of the limit. Hence, the word twice has been left bracketed, both because it provides some indication of the level, generally speaking, within which this special reward should be kept, and because it reflected a kind of an intermediary position and as such appeared as part of the compromise proposal referred to supra 2.

8. Art. 3-4 restates the provisions of the 1910 Convention art. 6(2) and (3) and art. 8(2). Art. 3-6 is a general restatement of the principle in the 1910 Convention art. 4, and arts. 3-7 and 3-8 are based on the 1910 Convention arts. 8(3) and 3 respectively. Art. 3-5 deals with salvage of persons. Paragraph 1 is in accordance with the 1910 Convention art. 9(2), the first paragraph of that article having been deleted as superfluous. The Sub-Committee felt that salvage of persons was not satisfactorily dealt with in the 1910 Convention, and that most principles on which the new remedies in art. 3-3 are based, appeared to be suitable for corresponding application to cases of salvage of persons. However, as appears from art. 3-5(3), there was no consensus on the question whether salvage of persons should entitle the salvor to a special reward. Finally, it was felt that the liability for payments due on account of salvage of persons should be imposed on the shipowner or the State of registry of the vessel, as determined by the law of that State. It was noted that the law of some countries already had rules on this subject.
9. Claims and actions. The provisions of this chapter are intended to facilitate the enforcement by the salvors of the rights under the Draft Convention. Art. 4-1 assumes that the claims of the salvors will be secured by maritime liens, but from a practical point of view, security efficiently provided by the person(s) liable or the insurer(s) is of greater importance. Hence, Art. 4-2(1) imposes a duty on the person liable to provide security upon request, and also a duty on the shipowner, in cases where he has no liability for payments by cargo interests, to use his best endeavours to ensure adequate security from cargo owners.

In order to provide a sanction against breach of the duties to provide security, it has been suggested in art. 4-2(3) that, in cases of failure to meet the request, the salvors may bring an action directly against the insurer of the person liable. This remedy may be of importance for the salver in cases where his right to payment exceed the value of the property salved and thus sufficient security may not be obtained by arrest of the property salved. Art. 4-2(3) makes clear that the direct action is only an enforcement remedy. The claim of the salver is materially in exactly the same position as if brought by the insured person. The brackets around art. 4-2(3) show that consensus was not reached on this provision.

Art. 4-3 on interim payment is inspired by present arbitral practice.

Art. 4-4 retains the two-year time bar of the 1910 Convention art. 10. Paragraphs 2-4 are modelled on corresponding provisions e.g. in the 1968 Visby Protocol to the 1924 Brussels Bill of Lading Convention.

Art. 4-5 on jurisdiction show that no consensus was reached on the need for provisions on this subject. Paragraph 2 retains the language of the 1969 Convention on civil liability for oil pollution arts XI(2) and 1(3).

Art. 4-6 on interests leaves the matter to lex fori with the provision that interest shall commence to run upon the request for security according to art. 4-2.

Art. 4-7, on which consensus has not yet been reached, 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. The need for adequate information on arbitral practice was recognized by the Sub-Committee, but there were different views as to whether the appropriate remedy was the one proposed in art. 4-7.

10. Liability of salvors. It was generally recognized that salvors ought to be able to engage fully in difficult salvage operation without fears of being subsequently held liable without limitation. The system of the 1976 London Limitation Convention was considered to provide an adequate solution to this problem. States not becoming parties to the 1976 Convention should consequently establish an equivalent right of limitation for salvors.

The Sub-Committee also touched the question whether salvors should be subject to ordinary negligence liability or only to liability for qualified fault or neglect. The answer to this question may depend upon whether, e.g. as is the case with respect to oil pollution, the shipowner will be liable for the damage caused during the salvage operation. In such cases the possibility of channelling the liability to the shipowner should be kept in mind, and art. 5-2 is based on such thoughts. The Sub-Committee, however, never discussed these problems in any depth.

Oslo, March 1981
Erling Selvig
ANNEX 6

LEGG 52/4

ANNEX 2
COMITE MARITIME INTERNATIONAL
REPORT
to
the INTERNATIONAL MARITIME ORGANIZATION – IMO
on
the draft international convention on salvage
approved by the XXXII International Conference of the CMI
held in Montreal, May 1981
and designed to replace
the International Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea made in Brussels on 23 September 1910

This report has been prepared by Mr. Bent Nielsen upon instructions of the Executive Council of the CMI and has been approved by the General Assembly of the CMI on 6 April 1984

INTRODUCTION

In March 1978 the “Amoco Cadiz” carrying approx. 220,000 tons of crude oil was wrecked on the coast of France and caused the hitherto largest oil pollution accident.

At its 35th session the Legal Committee of IMO requested its secretariat to prepare a report on the legal questions arising out of the “Amoco Cadiz” incident. In this report of September 1978 various aspects of salvage are extensively dealt with. The report raises the questions whether the existing international law of salvage contained in the 1910 Brussels Convention should be revised, and whether a new salvage convention to supersede the 1910 Convention should be prepared.

Following consideration of the subject of salvage at the CMI Assembly in March 1979, where it was concluded that the matter required immediate attention, CMI offered IMO its cooperation for the study of the subject of salvage and in particular to explore whether new rules should be prepared in order to cover those casualties which may cause a threat of pollution, thereby creating a direct and primary interest of the coastal State in the salvage operations.

Having again considered the subject of salvage and the offer for cooperation made by the CMI, the Legal Committee of IMO at its 40th session in June 1979 decided that the CMI should be requested to review the private law principles of salvage.

Informed of this decision, the CMI in September 1979 decided to set up an international Sub-Committee under the chairmanship of Professor Erling Chr. Selvig
(Norway) to study the subject of salvage and to prepare a report for the consideration of the XXXII International Conference of the CMI to be held in Montreal on May 24th-29th 1981.

During 1980-81 the Sub-Committee had three meetings with considerable attendance including representatives of IMO and organisations for shipowners, salvors, insurers and P&I clubs, as well as Sub-Committee members from the maritime law associations of more than 20 countries. At the meetings reports and drafts prepared by the Chairman and a working group set up by the Sub-Committee were considered, and in February 1981 a draft convention was approved for submission to the Montreal Conference. This draft, together with the Chairman’s final report to the Conference, has been printed in CMI Documentation 1981, Montreal I.

At the Conference the subject was first dealt with by a commission under the chairmanship of the Chairman of the international Sub-Committee. The recommendations of the commission were then put before the plenary session of the Conference, and the final draft, which is now submitted for the consideration of IMO, was adopted by the votes of 31 out of 32 national Maritime Law Association; there were no votes against and only one delegation abstained.

EXPLANATORY NOTES

GENERAL COMMENTS

The current international law of salvage is based on the Brussels Convention for the Unification of Certain rules of Law Relating to Assistance and Salvage at Sea, 1910. This Convention (together with the Collision Convention) was the first international convention in the field of maritime law. It has been almost universally accepted, and unlike most other maritime law conventions it has not so far been subject to any substantial revisions.

The basic rules of the 1910 Convention provide that a service undertaken to save property in danger at sea gives a right to equitable remuneration if, and only if, it has had a beneficial result.

Such remuneration is not fixed as a compensation for the labour expended, but is usually more generous; however, it must not exceed the value of the property saved.

Since the 1910 Convention was formulated the technical and economic development in international shipping has, of course, been very significant. The dangers to ship and cargo have been reduced while the dangers which ship and cargo represent vis-à-vis third party interests, in particular relating to the environment, have substantially increased.

The values of ship and cargo have increased drastically resulting in a heavy concentration of risks on fewer keels. To the professional salvors this means fewer, but more valuable opportunities.

Salvage techniques have improved substantially, but have become far more capital intensive. This has had a certain adverse effect on the ready availability of adequate salvage equipment along the sea routes of the world.

The “Amoco Cadiz” incident demonstrates the need for rules prescribing the duties on the owners and the master of the vessel in danger as well as on the salvor, in similar situations.

It also became clear that the existing rules on salvage did not offer sufficient incentives to induce the salvor to render salvage services in cases where there is very
little prospect of succeeding in saving the property while, on the other hand, major salvage operations might be urgently needed to prevent or minimize damage to the environment.

A general revision of the traditional rules of salvage as contained in the 1910 Convention was also needed in the light of the age of these rules and the substantial developments since they were formulated.

The most important new rules proposed in the draft convention are the following:

1. Art. 3-2.1. provides that the reward shall be fixed with a view to encouraging salvage operations. Although this principle has often been followed under the regime of the 1910 Convention, it was felt important to stress in the Convention itself that the encouragement of salvors is the basic consideration, which must always be in the minds of the tribunals when salvage rewards are fixed. Further, in Art 3-2.1. (b) it is provided that the successful salvor of property is entitled to an enhancement for his skill and efforts in preventing or minimizing damage to the environment. This is a new consideration, which 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 operations should be carried out in such cases.

2. Art. 3-3. provides special compensation to salvors, who without success attempt to save a vessel and her cargo, when these threaten environmental damage. Such compensation covers the salvors’ expenses and may, when damage to the environment is actually prevented or minimized, also include an additional special remuneration fixed according to the circumstances of each case, but never to exceed the expenses. This special compensation is linked 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.

3. Chapter II provides rules concerning the duties in salvage situations of the owner and the master, the salvor and public authorities. The owners and the master of the vessel in danger shall take timely action to arrange for salvage operations, and the salvor shall use his best endeavours to save the vessel. It is also specifically prescribed that these parties have a duty to use their best endeavours to prevent or minimize damage to the environment. Certain rules are proposed concerning cooperation of public authorities in such cases.

4. A number of new rules have been introduced to improve the position of the salvors, in particular professional salvors, and thereby increase the incentives to undertake salvage operations. Thus, in Art. 2-1.3 it is made a duty for owners to accept redelivery when the salved property is brought to a place of safety. In Art. 4-1.3 the salvor is given the right to prevent removal of the salved property from the port or place of safety until security has been provided. In Art. 4-2 certain rules are introduced facilitating the provision of security for the salvage reward. In Art. 4-3 the salvor is given the right to claim an interim decision under which he is paid an amount on account of the salvage reward. This will improve the salvor’s cash flow situation while he is awaiting the final decision of the tribunal concerning his remuneration. In Art. 4-5 certain rules on jurisdiction are given to facilitate recovery of salvage rewards, and in Art. 5-1 contracting States are recommended to give the salvors the right of limitation of liability provided for in the 1976 Convention on the limitation for maritime claims.

The draft convention deals with many matters which have not been provided for
in the 1910 Convention. Nevertheless, the draft convention is not intended to set out the law of salvage in any exhaustive manner. The CMI considers that as regards certain questions the solution adopted in the various national laws on salvage differ to such an extent that the acceptability of the draft convention might be reduced if an attempt were made now to bring about international uniformity by provisions which also deal with such matters. One such matter is the question: who is liable for salvage rewards?

The question whether any of the rules of the Convention should be mandatory has been thoroughly debated and considered. Rules on the limits of contractual, freedom have been proposed in Art. 1-5, but in Art. 1-4 it has been provided in general that the application of the rules of the Convention may be excluded by agreement between the parties.

It has been pointed out from some quarters that at least the rules relating to the prevention or minimization of damage to the environment should be compulsorily applicable, particularly to avoid haggling and the resulting delay when urgent action is required of the kind illustrated by the “Amoco Cadiz” incident.

However, it was strongly felt within the CMI that such limits should not be put on contractual freedom. In support of this it was in particular pointed out that other rights or methods of compensation provided for by contracts in given cases might be better incentives or instruments to avoid damage to the environment. For example, a salvor may in some cases for instance prefer an agreement under which he is secured the immediate payment of an agreed daily rate to the much later payment of the more uncertain sum fixed under the rules in Art. 3-3. Further, it was feared that the introduction of mandatory rules would severely jeopardize the prospects for the fast and wide international implementation of the Convention.

It is estimated that more than 80% of all salvage operations at sea are carried out under a salvage contract. Lloyd’s standard form of Salvage Agreement (LOF) is by far the most frequently used standard contract.

In 1979-80 the LOF was thoroughly revised with special regard to the problems caused by oil pollution. The CMI has taken due note of the innovations of the new LOF 1980 and important parts of the draft convention are harmonized with LOF 1980.12

One of the most important problems, viz. how to compensate salvors for avoidance of environmental damage if no property is salved, was solved in the LOF 1980 by the introduction of the so-called “safety net” provision, on the basis of which the draft convention, Art. 3-3, is modelled.

Other solutions were considered during the work of the CMI, but it became obvious that the “safety net” model should be preferred mainly on the grounds that it expresses a compromise among all the interested parties. Thus the compromise is a balanced solution which is not dominated by any of the interests involved, and works in the general interest of the public.

SPECIAL COMMENTS13


(13) The “Special Comments” relate to the individual provisions of the Montreal Draft and, therefore, have been moved thereunder.
Legal Committee
Report on the Work of the 52nd session
Document LEG 52/9 of 21 September 1984

D. Consideration of the question of salvage, in particular the revision of the 1910 Convention on Salvage and Assistance at Sea, and related issues (Agenda item 4)

10. In accordance with a decision of the IMO Council and the Legal Committee’s decisions at its fifty-first session, the subject of salvage and related issues was the principal item on the agenda of the session.

11. The Committee based its deliberations on the text of a draft convention prepared by the Comité Maritime International (CMI) at the request of the Legal Committee with the approval of the Council.

12. The draft convention prepared by the CMI was submitted to the Committee in document LEG 52/4 and its corrigendum.

13. In respect of public law issues, the Committee had before it a document (LEG 52/4/1) containing proposals previously submitted to the Committee at its fortieth and forty-fourth sessions by several delegations. The first proposal had been submitted to the fortieth session by the delegations of France, Mexico and Uruguay, and the second was a draft protocol to the 1969 Intervention Convention submitted to the forty-fourth session by the delegation of the Federal Republic of Germany.

14. The Committee also considered written submissions by the European Tugowners Association and the International Salvage Union, in documents LEG 52/4/2 and LEG 52/4/3.

15. Prior to undertaking an article-by-article reading of the CMI text, the Committee heard an oral presentation by the President of the CMI, Professor Francesco Berlingieri, of the CMI draft convention who described the work of CMI on the subject of salvage and related issues.

General discussion

16. Professor Berlingieri observed that the CMI had undertaken a threefold task of, first, identifying major problems and needs for change in the 1910 Convention, second, deliberating and arriving at solutions to those problems and, finally, canvassing the opinions of all sides of the shipping industry represented in its membership. He stated that the CMI draft was based on a well-balanced compromise with some novel provisions included in the revision. The draft convention had been approved by the thirty second International Conference of the CMI at Montreal in 1981 as a replacement for the 1910 Convention on the subject. A report on its text was prepared by Mr. Bent Nielsen at the request of the Executive Council of the CMI and was approved by its General Assembly in April 1984. This report was annexed to document LEG 52/4 as Annex 2 and Mr. Nielsen was present to explain the evolution of the text and reply to questions thereon.

17. In further elaboration of the provisions of the CMI draft, Mr. Nielsen stated...
that the CMI recognized that since the 1910 Convention was formulated the dangers which ship and cargo represented to certain third party interests had substantially increased. This was particularly true in respect of dangers to the environment. The Amoco Cadiz incident had demonstrated in particular that more precise international dispositions were needed to prescribe the duties of salvors and of owners and masters of vessels in danger.

18. Under the draft convention, the parties involved in a salvage operation would be obliged to use their best endeavours to prevent or minimize damage to the environment. New incentives were included in the draft to encourage salvors to undertake operations where a casualty threatened to damage the environment. The Convention incorporated a means of compensation adapted from the “safety net” provisions of the 1980 Lloyd’s Open Form (LOF 1980), and would provide compensation to a salver who renders assistance to a vessel which threatens damage to the environment even if no property is salved, and would provide an additional award if the salver successfully prevents or minimizes damage to the environment. The compromise on which the draft provisions on compensation had been based was explained by the CMI representative, Mr. Nielsen. Owing to the current operation of LOF 1980, it had been possible to experience three years of application of that compromise and this aspect of the Montreal draft had the continuing support of the industry. The text of Mr. Nielsen’s explanatory statement is reproduced in the Annex to this report.

19. The Legal Committee took note of the new draft which was aimed to provide appropriate inducement to the salver to render salvage services in cases where there might be little prospect of realizing reward from salved property but, on the other hand, an urgent need existed to protect the marine environment by means of the same salvage operation. There was general acceptance of the view that the protection of the environment was of general and acknowledged importance and that such incentives should be given. It was agreed that salvage which prevented pollution of the marine environment deserved remuneration, although it was recognized that the means by which that goal would be achieved were complex.

20. Some delegations considered that the provisions benefiting the salver might require more careful consideration. Particular reference was made in this regard to the unlimited contractual freedom which appeared to be accorded by Article 1-4 of the draft. It was pointed out that one of the lessons of the Amoco Cadiz incident was that there might be situations in which the coastal States endangered by pollution should be entitled to exercise a measure of control over the negotiations and procedures in respect of salvage operations. The delegations which favoured such coastal State control felt that there was a need to go beyond a limited private law revision of the 1910 Convention.

21. Some delegations queried the limitation of the concept of “damage to the environment” to damage in coastal and inland waters and pointed to the substantial interest of some coastal States in the environmental health of areas of the high seas. In this connection, it was recalled that pollution damage in the exclusive economic zone could be compensated under the 1984 CLC Protocol and it was felt, therefore, that it was fair to envisage new provisions for salvage operations to be applied beyond coastal and inland waters.

22. Some delegations considered it important to examine whether the existing system needed improvement. In particular, they asked whether the 1910 Convention coupled with LOF 1980 was not adequate for the present. If that was found to be the
case, then a new convention would represent no gain. Some delegations felt that the changes needed could be effected by means of a Protocol to the 1910 Convention, rather than the adoption of a new convention.

23. To many delegations the crucial question respecting the content of a new instrument was whether such an instrument would embrace both the private and public law aspects of salvage, by including provisions which regulated the contractual relations between shipowners and salvors and also regulated the right of coastal States to exercise appropriate control over salvage operations which involved environmental hazard.

24. The Committee decided to consider first the CMI draft convention and then deal with other aspects.

25. One delegation considered that the draft convention left unanswered a number of questions. In particular, it did not make clear who would finally pay the bill and how the amount of the salvage award was to be determined. Moreover, it was not sufficiently clear as to situations in which the salvor would be entitled to remuneration for preventing environmental damage even when there had been no salvage operation for the preservation of a ship or property. Another delegation found difficulties in respect of the immunity of State-owned merchant ships, as set forth in the draft. Another delegation felt that the convention should not endeavour to deal with damage to the marine environment caused by fire or explosion.

26. It was observed by some delegations that the adjustments achieved in LOF 1980 have largely solved problems of private law nature, but that the draft convention did not go far enough in protecting the environment or recognizing the rights of the coastal State in respect of salvage operations. In particular, it was pointed out that casualties like the “Mont Louis” demonstrated the need both for some form of States intervention and also for the coastal States to have advance information on potentially dangerous cargoes aboard particular ships which may be in difficulties within their jurisdiction.

27. In response to doubts about the usefulness of a convention which was not fully mandatory, the representative of the CMI explained that the draft convention contained a number of mandatory provisions or provisions which could not be set aside by private agreement. Articles 1, 4 and 5, for example, contained provisions which did not permit opting-out or a modified application. However, it was considered necessary to allow the parties to depart from a few provisions if they so desired. In particular, it was suggested that the limit for the recovery of the salvage operation should be no higher than the limits of shipowner’s liability for damage prevented by the salvor’s operations.

28. At the end of the general discussion, the Committee considered the CMI draft convention article by article, taking account of the commentary provided in Annex 2 to LEG 52/4 and the explanations of the representative of the CMI.
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:

International Conference
Plenary Session 28 April 1989
Document LEG/CONF.7/VR.225

Preamble

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:

The President. What follows was the preamble that is submitted for your attention. If there are no remarks, approved.
INTERNATIONAL CONVENTION ON SALVAGE, 1989

CMI Report to IMO
Document LEG52/4 - Annex 1

The words “in whatever waters” are in particular incorporated to bring in the Great Lakes. However, the words make it clear that salvage operations in all inland waters are covered by the Convention. This should be kept in mind when choosing the title of the Convention, which should not, as the title of the 1910 Convention did, include any reference to “assistance et sauvetage maritimes” (the words “en mer” were inserted also, it is assumed unintentionally, in the title of the French text of the Montreal draft).

International Conference
Committee of the Whole 17 April 1989
Document LEG/CONF.7/VR.15-16

Argentina. Thank you, Mr. Chairman. The Delegation of Argentina would go along with other delegations who congratulated the election of the officers of this Committee and would like to endorse in general this project subject to other comments which will be made when we come to the examination of this draft article by article. I will just make a general reference to the title and the definitions, and I am referring to article 1, the scope of application, and my reference is to the fact that in the two official texts of the 1910 Convention, the English text and the French text, the English text referred to salvage. The French text referred to “assistance et sauvetage” and for all the countries of the Latin world, the traditional term was “assistance and salvage as being equivalent when the 1910 Convention was adopted”. We therefore believe that it might be helpful to take into consideration in the Drafting Committee the possibility of including the terms “assistance and salvage” as being equivalent but being two institutions of the Latin world which are usually considered as being equivalent to the 1910 Convention. This is just a very general comment. An indication for the work of the Drafting Committee and nothing further.

The Chairman. The 1910 Convention was only drafted in the French language and later unofficially translated to English. The unofficial translation to English contains also the word “assistance”, that means in both versions the word “assistance” is included in the title of the Convention. If you are agreed and yourself have proposed that we can submit this question to the drafting committee, I do not believe that any substantive point is involved in this question, so we have the first submission to the drafting committee.

Document LEG/CONF.7/VR.21

The Chairman. The next speaker on my list would be Saudi Arabia. Saudi Arabia has submitted also a proposal on article 1(a). That proposal is to a certain extent to the same effect as the proposal of the United Kingdom and France but goes even further in narrowing the scope of application. May I ask Saudi Arabia in making the intervention to introduce document WP No. 1. You should have received this document. Saudi Arabia, Sir you have the floor.
Saudi Arabia. Thank you very much Sir. The working paper submitted by the delegation of Saudi Arabia\(^{14}\) refers to three paragraphs. The first two paragraphs refer to article 1 of chapter 1 that is definitions. The delegation of Saudi Arabia propose an amendment to the title of the convention, so that it speaks of “salvage at sea” and not simply “salvage”. So we should add the words “at sea”.

25 April 1989
Document LEG/CONF.7/V.R.171-172

The Chairman. What is left is the question of the title. We have received a proposal where at least some delegations have mentioned the possibility to amend the title, I think we have received a formal proposal by Saudi Arabia in working paper 1 to amend the title and to add “Convention on salvage and assistance”. Is that correct, Saudi Arabia? O K. We have to decide on this proposal. The whole text is “Salvage and assistance at sea”, working paper 1, page 1. Since we have not had a full debate on this problem I can give the floor to one speaker in favour and one against, and then we shall immediately proceed to a vote. Is that acceptable? Saudi Arabia, would you accept this procedure? Yes? I thank you. Who wants to speak in favour of that addition to the title? Is there a delegation which seconds the proposal made by Saudi Arabia. France, you are seconding it.

France. Yes, Chairman. We do believe that it is necessary to refer to salvage and assistance in the title, which is the same title as the 1910 Convention. Despite what we are introducing in this convention which is new with a view to protecting the environment and the extension to property other than vessels and property on board the vessels, we have the same scope of application. Indeed, in the case of vessels, the term used is “assistance” one vessel assists another - but if you are salvaging property it is the term “salvage of property” which should be used. You do not really assist a container, you salve the container or any property therein, and in the case of human life at sea this is also salvaged. You do not assist a person who is about to drown; you try to save him. So the substance of the convention on this point is identical, even if the scope of application is enlarged with respect to the 1910 Convention and, this being the case, for reasons of vocabulary and terminology we should adopt the second term too; that is to say, “assistance” in addition to “salvage”, because in French at least it would be inappropriate only to refer to assistance and not use the word “salvage”. This change, I think, would certainly give rise to difficulties for the interpreters, so we would prefer the full title “Salvage and Assistance”. Thank you, Chairman.

The Chairman. Egypt, you are on my list.

Egypt. Thank you, Mr. Chairman. My delegation supports the proposal submitted by Saudi Arabia because in Arabic we should use the two terms “salvage” and “assistance”, and furthermore “assistance” means that after the salvage of persons, the master should provide assistance to those people salvaged. Therefore, we support the proposal submitted by Saudi Arabia. Thank you.

---

(14) Document LEG/CONF.7/CW/WP.1
Submission by the delegation of Saudi Arabia.
1. Change of title of the Convention to “Salvage at sea”.
2. Article 1(a) Definitions to be amended as follows:
   Salvage operation means; any act or activity undertaken for salvaging a vessel or other property in danger at sea.
The purpose of these alterations is...to exclude the salvage operations in inland waters and in rivers from the convention and to leave it to the local law of the State according to local circumstances of each State.
The Chairman. Federal Republic of Germany, you have the floor.

Federal Republic of Germany. Thank you, Mr. Chairman. My delegation has very strong feelings against the proposal put forward in WP/1 to change the present title of the convention. We frankly think that the present title “Convention on Salvage” perfectly reflects the development of international law since 1910. It has been the great step forward already made by the 1910 Convention to adopt a unitary concept of salvage and not to make a distinction between salvage being one concept and assistance being another, which was at that time true for some countries – not for Great Britain and other English-speaking countries, but for some continental countries – so one overcame this division between salvage and assistance and it set out in article 1 of the 1910 Convention explicitly that there should not be any distinction drawn between these two kinds of service. At that time, in 1910, it was necessary to say that because it was something new, it was the adoption of a new unitary concept of salvage. Now, I think, since 1910 one should have learned the lesson that we now have a unitary concept of salvage and I think what we have learned now is very well reflected in the present heading, at least so far as the English text is concerned. I do not have a good command of the other languages so I just refer to the English text, and I think the heading should be as it stands in the present draft. Thank you.

The Chairman. Thank you. Well, we have had one speaker in favour and one against. Is that on procedure or would you only speak on substance?

The Chairman. I said at the beginning that I would allow one speaker in favour and one against and we would come to a vote. It is already some minutes after 12.30 and I must say the title is not worth all this excitement and discussion. I would like to propose that we proceed to a formal vote on the title. We have heard one speaker in favour and one against, and we should now start voting. The proposal submitted by Saudi Arabia is to add in the title the following words: “and Assistance at Sea”. Who is in favour of that amendment? Please raise your cards. Who is against? Please raise your cards. Abstentions? The result of the vote is 12 delegations in favour, 28 against and 10 abstentions. That means the proposal has not been adopted. Well, thank you ladies and gentlemen.

Plenary Session 28 April 1989
Document LEG/CONF.7/VR.225

Title of instrument

International Convention on Salvage, 1989

The President. Starting with the title, we have deleted the word “preamble” and then we go on to article 1 and so on. Any objections to the title of the instrument? Approved.

(15) The title of the Convention in the French and Arabic language has been the subject of a debate in connection with the title of the Final Act. The title in French approved by the Drafting Committee, “Convention Internationale sur l’assistance et le Sauvetage”, had been changed to “Convention Internationale sur l’Assistance”. This change gave rise to objections but was ultimately accepted in consideration of the addition of the following paragraph in the Final Act:

18. As a result of its deliberations based on the reports of the Committee of the Whole, the Committee on Final Clauses and other committees, the Conference adopted the:

International Convention on Salvage, 1989

As far as the French text of this Final Act and of the above-mentioned Convention is concerned, the Conference decided that the term “assistance” means “l’assistance aux navires et le sauvetage des personnes et des biens”.
ARTICLE 1
Definitions

FOR THE PURPOSE OF THIS CONVENTION:

(A) SALVAGE OPERATION MEANS ANY ACT OR ACTIVITY UNDERTAKEN TO ASSIST A VESSEL OR ANY OTHER PROPERTY IN DANGER IN NAVIGABLE WATERS OR IN ANY OTHER WATERS WHATSOEVER.

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I
Article 1.1 - Definitions
1. Salvage operations means any act or activity undertaken to assist a vessel or other property in danger in navigable waters.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81
Article 1.1 - Definitions
1. Salvage operations means any act or activity undertaken to assist a vessel or property in danger in navigable waters whatever waters the act or activity takes place.

Montreal Draft
Document LEG 52/4-Annex 1
Art. 1-1. - Definitions
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.

CMI Report to IMO
Document LEG 52/4-Annex 2
This definition means that the scope of international salvage has been extended so as to include not only ships, but also any other structure capable of navigation as well as any other property in danger in navigable and other waters, such as oil rigs, floating docks, buoys, and fishing gear. In this context note was taken of the proposal in respect of salvage relating to off-shore mobile craft adopted at the CMI Rio Conference of 1977.

(16) The full title of this report, prepared by Mr. Bent Nielsen upon instructions of the Executive Council of the CMI and approved by the General Assembly of the CMI on 6 April 1984, is “Report to the International Maritime Organization – IMO on the draft international convention on salvage approved by the XXXII International Conference of the CMI held in Montreal, May 1981 and designed to replace the International Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea made in Brussels on 23 September 1910”.
The substitution of the words “assistance and salvage” in Art. 1 of the 1910 Convention with “any act or activity undertaken to assist” is to be considered only as a redrafting of the principle, also applicable under the 1910 Convention, that any act or activity can give rise to a salvage reward if it contributes to the saving of property in danger at sea.

The definition includes salvage operations relating to vessels engaging in inland navigation, but according to Art. 1-2.2.(a) the Convention is not applicable if all the vessels involved are engaged in inland navigation.

The words “in whatever waters” are in particular incorporated to bring in the Great Lakes. However, the words make it clear that salvage operations in all inland waters are covered by the Convention. This should be kept in mind when choosing the title of the Convention, which should not, as the title of the 1910 Convention did, include any reference to “assistance et sauvetage maritimes” (the words “en mer” were inserted also, it is assumed unintentionally, in the title of the French text of the Montreal draft).

It is worth noting that the words “in whatever waters” are not referring to the assistance, but to the vessel or property in danger. Therefore, salvage operations conducted from land are also covered by the definition.

It is generally felt to be an important element of salvage that it must be voluntary, but this term may be ambiguous and, therefore, it has not been included in the definition itself. The cases where salvage operations are carried out on the basis of a pre-existing duty are dealt with in Art. 1-3 which contains provisions for salvage operations controlled by public authorities and in Art. 3-6, in which it is made clear that services which are rendered in due performance of a contract entered into before the danger arose shall not be compensated under the rules of the Convention.

IMO
Legal Committee
Report on the Work of the 52nd Session (Document LEG 52/9)

29. One delegation asked whether the definition of “salvage operations” was such as to limit the application of the convention to operations in certain geographical areas only. The CMI representative replied that the salvage operations under the convention could take place anywhere: inland waters, the territorial sea, the exclusive economic zone and the high seas.

30. Another delegation felt that the definition should be such as to cover salvage of “floating craft” but should not extend to “any property in danger”. This delegation considered that a sunken or abandoned vessel or a wreck would not be subject to salvage, nor would freight or transport cost. In this connection, another delegation pointed out that the definition of “property” was linked to “salvage operations” hence if the definition of “salvage operations” were changed, a consequential change in the definition of “property” would be necessary. Some delegations also queried the application of the definition of “property” to piers, pipelines, quays, lights and other aids to navigation.

31. With regard to floating craft, some delegations considered that the definition of “salvage operations” was in no need of change since the word “vessel”, used therein was carefully defined; a sunken vessel was not necessarily incapable of navigation and could be deemed a vessel under the definition. The delegations felt that “property” should not be excluded from the scope of “salvage operations”. It was also remarked...
that property from a vessel (cargo, etc.) should also be within the scope of salvage. In this connection a distinction was drawn between a wreck and a sunken vessel which could be retrieved and made seaworthy. While wrecks should be excluded, sunken vessels might be covered. In this regard the suggestion was made that the definition of “wreck” should be left to national law.

**Report on the Work of the 53rd Session (Document LEG 53/8)**

17. The President of the Comité Maritime International (CMI), Professor Berlingieri, explained that the 1910 concept of “salvage operations” was not greatly modified in the new draft. However, the new draft recognized that the modern concept of salvage could not be limited to services rendered from vessels only. The draft also made it clear that the new convention would apply to operations regardless of “whatever waters” in which they were undertaken. This followed the position in the 1910 Convention (Article 1) which all concerned had agreed should be maintained. He suggested, however, that the meaning of the definition might be made clearer if the word “other” were inserted before “property”, since obviously a vessel was itself a “property”.

18. Several delegations noted that the scope of salvage operations as foreseen in the 1910 Convention had been widened in the draft text. Specifically reference was made to the possibility of salvage operations from helicopters. It was also noted that salvage operations might be undertaken in respect of oil rigs - both movable and fixed. The 1910 Convention had conceived of salvage as involving “vessels”, and the proposed extension could give rise to some difficulty, particularly with regard to the application to fixed platforms of the provisions of the new convention.

19. Some delegations considered that the definition was not clear enough, even taking into account the definition of “property” in Article 1-1.3. It was stated that the purpose of the latter definition was solely to clarify that freight was also included in the concept of “property”, but the definition of “salvage operations” and of “property” did not make it clear as to whether the convention would apply to operations in respect of piers and jetties, for example. The observer from the ISU proposed that the words “not permanently or intentionally attached to the shore-line” might be inserted after the word “property” in order to exclude piers or other shore installations.

20. One delegation observed that the widening of “salvage operations” to cover salvage effected by helicopters alone might extend the proposed convention to matters within the competence of another United Nations specialized agency (ICAO). Some delegations noted that an essential objective of the new convention was to extend the law to operations to avert danger to the environment. It was therefore suggested that this element might expressly be included in the definition of “salvage operations”.

21. Most delegations expressed strong doubts about the suggestion that protection of the marine environment might be included as an independent element of the definition. They recognized and accepted that an important objective of any revision of salvage law should be the promotion of greater protection of the marine environment, but they considered it essential that a “salvage operation” should retain the essential and primary objective of assisting vessels and other property in danger. The element of environmental protection should be incidental to the main purpose of salvage and should not constitute a separate and independent objective of a salvage operation.
22. Many delegations were of the view that no limitation should be placed where a “salvage operation” could be undertaken. Some delegations, however, felt that it was necessary to limit salvage to operations undertaken at sea or in estuaries and not to extend it to operations in inland waters, on land, artificial islands or in the air. It was however emphasized that such a limitation should not apply to the modalities of salvage operations which could be effected by many kinds of salving units—tugs, helicopters, divers, etc.—provided that operations were in respect of vessels or similar mobile craft operating or located offshore.

23. Many delegations were in favour of the retention of the words “in whatever waters the act or activity takes place”, as in the 1910 Convention. They noted that this would not prevent the application of the convention to salvage operations effected from land or airborne devices.

24. It was agreed by many delegations that the objects of salvage operations could include not only vessels but also their cargoes and any property on board (whether still aboard the ship or not) which might be in danger. However, it was stressed that it would be necessary to give careful consideration to the possible extension of the convention to salvage operations in respect of platforms, drilling rigs, jack-up rigs, semi-submersibles and mobile as well as fixed offshore units. It was also emphasized that it would be desirable to have a clear definition of “property” which would be susceptible of salvage. It was also suggested that property which would normally be fixed to land might, in some conditions, become detached and in those circumstances become a proper object of salvage. The observer from the International Salvage Union (ISU) noted that fixed platforms could require salvage assistance in the same way as ships. The Oil Industry International Exploration and Production Forum (E and P Forum) disagreed with this view but acknowledged that certain categories of offshore units may become objects of salvage. In this connection, the observer of the E and P Forum offered to provide to the Committee, at its fifty-fourth session, information on the subject of platforms, rigs and other offshore units, in order to assist the Committee to determine whether and to what extent it would be necessary or possible to extend the convention to such objects.

Report on the Work of the 55th Session (Document LEG 55/11)
Article 1 - Definitions (a)\(^{17}\)

69. The Legal Committee commenced a further re-reading of the draft convention beginning with article 1.

70. The delegation of the Federal Republic of Germany proposed the following text for paragraph (a) of this article:
(a) Salvage operations means any act or activity undertaken to assist a vessel or any other property in danger in navigable or any other waters whatsoever.

71. The representative of the Federal Republic of Germany stated that the present drafting of this definition was misleading. As drafted, the definition provided that the act or activity, rather than the endangered vessel or property, must take place on water. Accordingly, land-based devices used for salvage activities would not be

---

\(^{17}\) Article 1-1,1 of the CMI Draft was renumbered Article 1(a) in the consolidated text prepared by the IMO Secretariat.
covered by the definition. The delegation therefore proposed that the definition should be reworded to make clear that it was the property in danger which would be found “in navigable or any other waters whatsoever”. In addition, the delegation pointed out that the existing definition was very broad in its reference to property which could be located anywhere and not solely aboard ship, as provided in the 1910 Convention. The proposal of the delegation would cover such property only if in danger on navigable and other waters.

72. The representative of the CMI expressed agreement with the proposal of the Federal Republic of Germany as being a clear expression of the intention of the original drafters. The CMI, too, had intended that the definition would cover salvage originating on land but carried out on water.

73. One delegation had doubts about the words “any other property” and observed that the Committee had not yet settled the question whether fixed platforms would be covered by the prospective convention. Another delegation felt that the definition appeared to be too wide, and could cover property which might not necessarily be in a sea-going vessel or even at sea, but possibly on a lake or river. This delegation accepted that salvage could be carried out in respect of any property whatever at sea and that salvage might be carried out for a sea-going vessel in other waters, but it had reservations about the very wide geographical scope of the present draft definition, since they could extend the scope of the convention to inland waters, rivers and lakes.

74. Reference was made to a proposal by the delegation of France which read: “Salvage operations means any act or activity undertaken by a vessel or by any other means to assist a vessel or any floating craft in danger and everything on board, including freight and passage money, in whatever waters the act or activity takes place”.

The French delegation explained that the proposal retained the concept of the 1910 Convention that the property must be on board the vessel which was subject to salvage.

75. The Committee noted that the issues to be resolved in this context were whether salvage operations under the convention would be limited to operation by or to sea-going vessels, and to property which is or was on board the salved vessel.

82. One delegation raised the question at which point in time the vessel should be considered in danger for the purpose of the definition of salvage operations, particularly in cases where, after the salvor started to proceed to a casualty but before arrival at the place of the casualty, the situation changed and preservation of ship and cargo became impossible. In such cases the only thing to do for a salvor might be to take preventive measures. In the opinion of this delegation, the decisive moment for judgement whether a vessel was in danger according to the definition of salvage operations should not be the moment of arrival on the spot of the casualty but the moment the salvor started to proceed to the casualty. The delegation stressed that in order to provide for sufficient incentive for the salvor to render assistance and take preventive measures in such cases, it was important to create certainty about the application of the new convention. It questioned whether the words “undertaken to assist” in the definition could be clarified in this respect.

83. The representative of the CMI stated that it was the intention of the drafters that the salvor who responded to a radio call would be entitled to the special compensation from that time until the end of the operation. However, if the salvor
arrived at the scene and found no possibility of salvage, any measures he might take to
prevent or minimize damage to the environment would not be covered by the special
compensation provision.

84. Although the existence of a contract of salvage might benefit the salvor in
such a situation, some delegations felt that the incentive to take preventive measures
to prevent or minimize pollution by oil or chemicals should not be diminished by the
definition in article 1(a).

85. Many delegations sympathized with the principle that the salvor should not
be deprived of incentive, or lose the right to special compensation, but it was
recognized that the problem was not easy to solve by the alteration of a definition in
article 1.

86. One delegation observed that, in practice, a number of occasions arose where
small cargo vessels or fishing vessels were not covered by other treaties, such as the
1969 Civil Liability Convention or the 1971 Fund Convention. The result was that
measures taken to prevent or minimize damage to the environment in cases involving
such vessels would stand to recover no compensation at all for such measures.

87. In this connection, the Director of the International Oil Pollution
Compensation Fund informed the Legal Committee that the Executive Committee of
the IOPC Fund had, at its 14th session, discussed the relationship between salvage
operations and preventive measures as defined in the Civil Liability Convention. This
question had become of great importance in respect of the Patmos incident which
occurred in the Messina Strait in Italy in March 1985. In his opinion the question as to
whether, and if so to what extent, salvage operations should be considered as falling
within the definition of preventive measures would have to be solved in the light of the
particular circumstances of each individual case. The Executive Committee took the
position that it would not be possible at this stage to take any firm decision as regards
the interpretation of the definition of preventive measures in relation to salvage
operations. The Director referred to the following documents of the IOPC Fund:
FUND/EXC.14/4, paragraph 9, FUND/EXC.14/4/Add.1, paragraph 3, and
FUND/EXC.14/7, paragraphs 3.3.4-33.3.9.

Report on the Work of the 57th Session (Document LEG 57/12)

79. The Committee decided to insert in the basic text the following definition of
salvage operations, which had been proposed by the delegation of the Federal
Republic of Germany:

“Salvage operations means any act or activity undertaken to assist a vessel or any
other property in danger in navigable or in any other waters whatsoever.”

80. One delegation questioned the need for the term “navigable”.

Document LEG 58/12-Annex 2

Article 1 - Definitions

For the purpose of this Convention:

(a) Salvage operations means any act or activity undertaken to assist a vessel or any
other property in danger in whatever waters the act or activity takes place.

navigable
(a) Salvage operations

12 It was explained that the purpose of this definition was to extend the scope of salvage operations to include, not only ships, but also any other structure capable of navigation as well as any other property in danger in navigable waters, such as oil rigs, floating docks, buoys and fishing gear. The words “in whatever waters” were not referred to the assistance but to the vessel or property in danger. Therefore, salvage operations conducted from land should be also considered as covered by the definition. It was noted that this definition also widened the scope of salvage operations foreseen in the 1910 Convention by not restricting the concept of salvage operations to services undertaken from other kinds of salving units, such as helicopters. The representative of the CMI explained that under the new definition, salvage operations could take place everywhere: inland waters, territorial sea, exclusive economic zone or high seas. In this connection, it was felt that there was no need to restrict salvage operations to any particular “waters”, as long as the object of salvage were covered by the definition of vessel or property (LEG 54/4, annex 2. LEG 52/9 paragraph 29).

13 In connection with the point of time when the vessel should be considered in danger for the purpose of the definition of salvage operations, it was explained that the intention of the drafter had been that this point in time be determined from the time the salvor responds to a radio call until the end of the operation (LEG 55/11, paragraphs 82-83).
concerned about the location, the width of the location which is proposed for the purpose of salvage operations. If you would be kind enough to look at what we proposed, the reason I say this is because we would like to make a small linguistic change in it, we suggest any act or activity undertaken to assist the vessel or any other property in danger and that should be at sea, at any rate as a matter of English and any act or activity undertaken in any other waters whatsoever by a sea going vessel to assist another vessel in danger or by any vessel to assist a sea-going vessel in danger. This proposed amendment echoes what the delegation of Spain has already indicated this morning, we submit that salvage is traditionally associated with operations either at sea or performed by or to sea-going vessels, if that is not maintained a vital part of the concept of maritime salvage appears to us to be lost. One can think of, if I may say so, almost absurd examples which would result if the present width of the present definition were to be adopted. I recognize, Mr. Chairman, one can always give absurd illustrations of anything but the result of the present draft would be for instance that if a fire on a barge lying peacefully in a canal is extinguished, that would be an act of salvage because that would be within navigable waters, whereas extinguishing a fire on land in a house or a car would not be. Dropping a diamond ring, which is lost in a lake and finding it and restoring it would be salvage, but if it is lost in other circumstances in a field it would not be, and one could continue a list of illustrations of this kind. We therefore suggest the wording which we have proposed which distinguishes on the one hand between location of being at sea and on the other hand involves, in other water, sea-going ships whether as the subject or the object of the services which are rendered. If it were thought desirable to widen the reference to “at sea” then we could see justification for a phrase such as “or in tidal waters”, but in balance we would strongly suggest that some restriction of the location on these lines should be accepted and we would greatly favour this in preference to any reservation under article 24. Thank you very much Mr. Chairman.

**Documents LEG/CONF.7/VR.17-19**

**Poland.** Thank you, Mr. Chairman. According to our delegation the meaning of salvage operations in the definition contained in the Draft Convention is too broad and I would not like to waste your time and we may say that we fully appreciate and support the argument presented by the distinguished delegate of the United Kingdom. We think that some restrictions must be imposed either restrictions concerning property even if it is only maritime property or restrictions concerning waters. Now the delegation of the United Kingdom has presented a new definition of salvage operations and we would support this definition with one small amendment in line 2 from the bottom of this definition as contained in LEG/CONF.14. We would suggest to say instead of “any vessel” to say “anyone”. It would mean that anyone can assist a seagoing vessel in danger and earn a salvage remuneration. We would not restrict it...
only to assistance by a vessel, but it may be assisted by anyone. Thank you, Mr. Chairman.

The Chairman. Thank you, delegate of Poland. May I take it that it is your intention to amend the British proposal and would you then give the formulation which you would like to propose in that respect.

Poland. So I would read you now the second sentence in the British proposal: “And any act or activity undertaken in any other waters whatsoever by a seagoing vessel to assist another vessel in danger or by anyone to assist a seagoing vessel in danger”.

The Chairman. This is a short proposal and we can take it into account without a written submission. Is that acceptable? We will read it again. I will read the second sentence so that anybody can see what has been proposed by the Polish delegation. The second sentence would read: “And any act or activity” – that is the same text as in the British proposal – “undertaken in any other waters whatsoever by a seagoing vessel to assist another vessel in danger or by anyone to assist” – this is a change, there is a change from “vessel” to “anyone” at this point – “a seagoing vessel in danger”. Has anybody taken that very short amendment? Yes? Then we can take it into account in our discussion I think.

Sweden. Thank you, Mr. Chairman. Before being able to make any comments on the proposals just presented, I would like, with your permission, to seek some clarification on the proposal presented by the distinguished representative of the United Kingdom. I really can’t see whether this proposal narrows down the scope of application as laid down in Article 1 of the 1910 Convention or not. If I look at the corresponding provision, that is, Article 1 in the 1910 Convention, it talks about not only assistance to vessels in danger but also to anything on board - freight and passage money and so on - while the proposal put forward in LEG/CONF.7/14 only refers to assistance to vessels, while in the text it is said that the United Kingdom believes that the new Convention should cover salvage at sea and should extend to inland waters only so far as and no further than the 1910 Convention. And this is where my confusion appears, Mr. Chairman. I am not certain what is the intention of the United Kingdom delegation. So, with your permission, I would be much grateful if I could get some clarification on this point. Thank you.

The Chairman. Thank you. I ask the delegation of the United Kingdom whether that delegation is ready to answer that question.

United Kingdom. I think I can give a short and, hopefully, accurate answer. If you look at document 14, you will see that we suggest that the definition should include any act or activity undertaken to assist a vessel or any other property in danger at sea. I think, with respect, that that covers the point made on behalf of the Swedish delegation.

The Chairman. Thank you. Sweden?

Sweden. Thank you, Mr. Chairman. I apologise for not being clear in my intervention. My problem stems from the later part of the proposal – that is, the assistance not at sea but in other waters, and that is where I was not quite sure whether the proposal would mean that the scope of application would be narrower than the scope of application in the 1910 Convention. Of course, even there, reference is made not only to vessels but also things on board, while in the proposal the reference is only made to assistance to vessels. Thank you.
The Chairman. The United Kingdom. And then we will stop that bilateral discussion.

United Kingdom. We now see the point, and we take it, if I may say so, on board. We suggest that it should be discussed in the drafting committee.

The Chairman. Fine. Is that acceptable to you?

Sweden. I thank you.

The Chairman. We have a second submission for the drafting committee.

France. Mr. Chairman, thank you very much. What I want to do is to give the view of my delegation regarding the proposal of the United Kingdom in respect of the definition of salvage operations. Could I say straight away to my United Kingdom colleagues that we entirely agree with them. The problem is not really in the 1910 Convention, and there I do understand the concerns of Sweden. In the 1910 Convention, salvage is offered by a ship to another ship or to other inland waterway boats irrespective of the waters involved. With the draft convention we are discussing here, the scope of application is much more extended, I would say, because what we are aiming at is not only ships – seagoing ships – but any other property at sea; any structure or any thing capable of navigating at sea, which does not really cover an inland waterway boat. I therefore understand the United Kingdom’s problem, and I share it. The United Kingdom proposes to solve the problem by adding two sentences in the definition of salvage operations. The first is salvage operations at sea – at sea means anything you like. The second sentence, on the other hand, implies other waters than sea waters, but it requires the presence of a seagoing ship to be covered by this provision because if this condition was not attached to the provision that at least one seagoing ship should be involved in the salvage operations in non-sea waters then the salvage regime could even cover a river or even a lake, which I think would be considered as somewhat extraordinary that maritime law would cover lakes or rivers. I think, therefore, that the United Kingdom is quite correct; we agree with them. However, I think the same result could be arrived at by a different way which I think would satisfy Poland which has proposed that we replace “ship” by “any vessel”. The proposal, therefore, is this. We would retain the text of the draft as it now stands. We would add a second sentence, which we find simpler and more correct to meet the objective aimed at by the United Kingdom, which we share, as I said, which would say “in non-maritime waters the vessel helping in salvage or being assisted in salvage” would replace the problem. To simplify matters, the final result would be not to replace the present text but in the second sentence we would add a restriction if we are not at sea in navigable waters we would need a vessel being assisted or assisting. I hope that satisfies the United Kingdom; we want the same thing, which I repeat for the final time and then I will stop. We add to the present definition of property which is in the draft, the following: “In non-navigable waters, the vessel assisting or the vessel being assisted should be a sea-going vessel.” What I think we are really seeking is what the United Kingdom said, and we agree, if there is any salvage operation at all you need at least one sea-going vessel. Thank you.

The Chairman. Mr. Douay, could you, for my benefit and that of the committee, clarify your amendment. Which part of the text do you want to amend? Is it the British proposal? Would you then give the new wording you would like to propose? Mr. Douay, France, please.

France. Thank you, sir, yes. Obviously you are very interested in my proposal. It
was quite simple, I thought. I am not taking the United Kingdom text. I am taking the original text. I am not changing it. I have retained the text of the draft, but I have added a sentence which says: “In non-navigable waters, the vessel assisting or being assisted should be a sea-going ship.” This is entirely the idea of the United Kingdom, and the advantage of it is not to affect the present text - it is just to make things clear. Thank you.

The Chairman. I thank you, Mr. Douay. I understand that you refer in that last sentence which you have just proposed only to vessels which assist another vessel, not to vessels which are or have been assisted by a non-seagoing vessel. Is that correct?

France. I am very sorry. May I repeat it yet again. In non-navigable waters the vessel offering assistance or the vessel being assisted, the vessel the subject of salvage, when not at sea, whatever vessel is being assisted in whatever capacity, there must be one seagoing vessel at least in presence so that maritime law may apply. Otherwise, it would imply that maritime law would apply to the Lake of Geneva or any small boat plying its trade or for pleasure purposes even on that said small lake; that is my precision. Thank you.

The Chairman. I thank you, Sir, for your explanation and clarification. Is that text clear to everybody. Well we will then try to read it out. Mr. Zimmerli will read the text in English.

Mr. Zimmerli. Thank you Mr. Chairman. In the basic proposal the sub-paragraph (a) of article 1 there will be a sentence added saying: “In non-maritime waters the vessel assisting or the vessel being assisted must be a sea-going vessel”.

The Chairman. I thank you. I think that this is a very short proposal and we have not to wait for a written submission, and if you agree we can take it to card or discussion this proposal of the French delegation. Is it agreed that we can take it to a card without a written submission.

18 April 1989
Documents LEG/C/0N/F.7/V.R.21-29

The Chairman. Yesterday we started discussion on article 1, sub-paragraph (a), (b) and (c) and some proposals have been submitted on sub-paragraph (a). One proposal by the United Kingdom, and another proposal by the French delegation. And there was a small amendment to the U.K. proposal by Poland. I have asked all delegations, the French delegation, and the U.K. delegation to try to combine their proposals. Because both proposals have the same aims and follow the same approach and it would simplify the procedure when we would have to deal only with one proposal. May I ask the delegation of the United Kingdom whether these efforts have been successful.

United Kingdom. Mr. Chairman, we have made an approach to the French but we have not yet had time to get the report. It is really a presentation problem, as you point out, and we would rather wait and hear what other delegations are going to say about (a) but we foresee no difficulty at the end of the day. We have an alternative text but it is going to be difficult to combine two drafting proposals, so may be leave it for the moment.

Netherlands. Thank you, Mr. Chairman. Mr. Chairman, in continuation of the discussions we had yesterday on article 1, and in particular, about the definition of
salvage operations, my delegation could agree to the British amendments with one proviso and I remember that proviso has already been made yesterday by the Swedish delegation; it is that with respect to operations which do not take place on the high seas but in other navigable waters, what should be taken into account is that not only salvage operations will be rendered to the ship itself but also probably alone to cargo on board the ship and that we would like to see included in the text as proposed by the UK delegation. I think that could be dealt with by the Drafting Committee once the Committee of the Whole has agreed specifically to this inclusion. I think that would provide altogether an acceptable and much better scope of application of the draft convention than in the present text.

Saudi Arabia. In article 1, sub-paragraph (a), salvage operations, we feel that the definition should be amended to read as follows: “Salvage operations means any act or activity undertaken for salvage of a vessel or other property in danger at sea”. Therefore, as a consequence, we should delete the rest of the sentence, covering inland waters in rivers and any other waters. The purpose of these alterations is to exclude from the scope of application of the convention salvage operations in inland waters and rivers and to leave it to the local legislation of each State to deal with such matters. This is stipulated in Article 24, there are reservations there, (a), (b) and (d) to be more specific. Therefore, salvage operations should only take place at sea and with our modifications there would be no need for reservations because every country would be free to promulgate legislation on a local basis, permitting it to render assistance to ships at risk in their inland waters. As regards the safeguarding of the marine environment and international law in these areas, we have the United Nations Law of the Sea Convention and MARPOL already covering those aspects of the problem. Thank you.

The Chairman. Would you agree that your proposal comes very close to the proposals of the United Kingdom and France? That is my question. If you could agree to that, could you join the delegations in an effort to draft a combined proposal?

Saudi Arabia. Yesterday, as I was saying, we started off our deliberations very well. Thank you, Sir. Yesterday we had the pleasure of receiving proposals from the United Kingdom and other countries concerning the definition of salvage operations. Mexico made comments; the delegation of Spain also made comments on this question of salvage at sea. I think that our definition is more practical for the purposes of this convention. Of course, obviously we have no objection or difficulty with contributing to the development of the text, which will meet with everyone’s approval. Thank you.

Federal Republic of Germany. Thank you, Mr. Chairman. If I may speak on (a), (b) and (c), with your permission, probably I could start just with the letter (a) and then proceed to (b), introducing the working paper, and then give a short comment on letter (c). Now, Article 1(a) and the corresponding reservation clause in Article 24(a) of the present draft convention are called in question by some delegations because of the wide scope of application which results from the present wording of the draft. There seems to be, in fact, little support for the text as it stands, a text which had met
with wide support in the Legal Committee of IMO in October 1987. Now the present draft reflects a joint proposal which had been made at that time by the German Democratic Republic, Greece and the Federal Republic of Germany after the issue had been discussed for some time. Therefore, I would like, if I may, Mr. Chairman, to highlight just one advantageous aspect of the draft as it stands, which in our opinion merits special consideration. The scope of application which results from the present text is, in fact, wider than the scope of application of the 1910 Convention, since any property outside the vessel which is not intentionally and permanently attached to the shoreline can be a separate object of salvage, so it can be a diamond, a car or a helicopter plunging into the water. The basic decision not to confine the convention to vessels and their cargo has in principle not been challenged. There seems to be a unanimous desire to go beyond the scope of application of the 1910 Convention in this respect. The new element which has been introduced is the difference between sea and any other waters whatsoever which are not covered by the term "sea" that is waters being called by the distinguished French delegation "non-maritime waters". Now we believe the draft as it stands is based on a sound and pragmatic approach since it allows avoiding to solve the highly difficult question of where the sea ends geographically and where non-maritime waters are to begin. It may be easy to draw the line by national legislation individually, it is the administrative law of the country which does so if there are any rivers in the country, for administrative purposes, but this legislation is not based on a clearcut notion or an internationally accepted definition of what is sea and what is not sea. There is very much uncertainty as to the question where a State logically should draw a line. National legislators are free to draw it anywhere they want and therefore we believe that the difference should be avoided as a criterion in international legislation where this is possible, because it seems to be impossible to reach a common understanding on an international scale how private law should deal with this geographic phenomenon and so from a pure pragmatic point of view, we think that there is no need to have the scope of application based on such a difficult differentiation. Salvage operations where cars, diamonds or helicopters constitute a separate object of salvage tend to be rather exceptional anyway and there is, we think, only one area however where some States have special legislation for the more frequent case, but all vessels involved in salvage operations are vessels of inland navigation in the sense of Article 15, paragraph 2 of the 1976 Convention on Limitation of Liability for Maritime Claims. This is also true for the Federal Republic of Germany and therefore we appreciate that Article 24, paragraph 1(a), provides for a reservation clause which allows States parties not to apply the convention when all vessels involved are vessels of inland navigation. We would not oppose if this reservation clause were to be transformed to become an outright exclusion in a new paragraph 2 of Article 2, for instance, but somewhat we prefer the more simple text of the present draft convention as it stands to avoid difficulties of definition which we fear are not really fruitful in the present context. Nevertheless, if the conference should decide to put up a working group which is coming up with a proposal which makes the amendments so far proposed by the other delegations more clear we would, of course, be open probably to join such proposals but our starting point would still be the present text as it stands.

Denmark. Concerning article 1, we have some remarks first of all to (a) salvage operations where we have the UK proposal. We have a little problem there. It is one of the items we have been discussing for hours, I suppose, and that is normal for definitions. Everyone is able to define a bicycle and everyone has some word to say here. My problem is that when you are making an international instrument, a
Canada. Thank you Chairman. I should try to be as brief as possible in view of the very lengthy debates that we have already had on the subject. If you will permit me however, if I make one general observation and that is that is certainly as far as I am concerned I have listened to the debate that has taken place so far with substantial misgivings because it seems to me that we are embarking on a redrafting of the definitions of this Convention which was already the subject of careful debate in the Legal Committee and I think many of the arguments that have been made yesterday afternoon and this morning have already been heard in the Legal Committee and for various reasons the very carefully worked out balance that is reflected in the draft articles was worked out and we are somewhat appalled at the idea that we are now trying to reinvent some of these definitions, and I fear that this is going to take a very long time and will put us under pressure. Having said that, Mr. Chairman, turning specifically to the definition of salvage operations, I have to say that we had hoped that we could stay with the definition that is currently in the draft articles. It seems to us that the way that that definition appears in the draft articles, read together with article 24, provided the necessary flexibility to ensure that the scope of application of the convention only went as far as it should go. The fear that I have is that if we accept the British and the French proposals then clearly, as far as Canada is concerned, we would be excluding vast areas of inland waters where we have substantial traffic and where certainly under current law, we apply the law of salvage. The problem is, of course, perhaps partially ameliorated by the fact that it would still apply where seagoing vessels are involved; however, where there is no seagoing vessel, then, if I have understood the British and French proposals correctly, it would not apply in inland waters and therefore it appeared to us that the draft text, as presently before the Conference, was a preferable proposal in the sense that it would allow a reservation if a State decided to exclude vessels of inland navigation, and therefore we would seriously plead for a retention of the present definition. It seems to me that there could be another argument in favour of that, in the sense that this Convention is also intended to achieve another objective, that is environmental protection and it seems to us that we would want to extend that advantage also to our inland waters, so that would be another reason why we, for our part, would certainly like to see this Convention extended to the substantial inland waters. I might point out also that in those inland waters – the Great Lakes – there is also substantial international traffic.

China. The Chinese delegation has listened carefully to the opinions expressed by different delegations concerning the revision of this article 1, the definitions, especially the detailed discussions on paragraphs a, b and c. First of all, I would like to say a few words on article 1. We realise that some of the opinions expressed have already been discussed in the Legal Committee. Some are new. Some of the opinions are quite reasonable; however, we believe that as an international convention, it should only stipulate some general universal standards which could be accepted all over the world. Some specific questions could be solved by other methods. This is the principle the Chinese delegation wishes to express on the following opinions of revision. We believe that the definition for salvage operations should not be too wide. We agree that this Convention should only be applicable to maritime salvage, or salvage operations in...
other water areas, but one of the vessels involved in the salvage operation should be a seagoing vessel.

**Italy.** Thank you, Mr. Chairman. So far as Article 1(a) is concerned, the Italian delegation shares the views expressed by the French delegation, which consist in adding a new paragraph and we believe that this does clarify the definition of salvage operations.

**United States.** Thank you, Mr. Chairman. Regarding the issue of where salvage operations must take place, to be covered by the convention, we agree in large part with the observations made by the distinguished delegate of Canada, and we would note that the original paper 52/4 in the choice of its words and in the explanation for that specified that it was the intention that that language would apply to the Great Lakes. We have similar concerns expressed about large bays and rivers, we think that the environmental incentives that are built in ought to apply to those bodies of waters as well as those which are “at sea”. So we find the reservation system currently in Article 24 an acceptable compromise.

**Democratic Yemen.** Thank you, Mr. Chairman, I will go straight to the various items of Article 1 and starting with item a), we believe that the wording presented by the United Kingdom delegation is so far the clearest and unless a compromised draft can be presented by the French delegation, then we support at this moment item a) of article 1 as proposed by the United Kingdom.

**USSR.** Thank you Sir. Mr. Chairman, our delegation did make a general statement yesterday. I don’t intend to do that now. I merely want to say that I entirely share the points of view expressed this morning by the Canadian delegation to the effect that the draft before us has been basically quite well balanced. This is particularly true of article 1. Obviously a private legal convention has been set up only because the drafters of the convention at some stage understood that only by compromise and ruling out any other phenomenon could anything be created. If we now try to envisage in an international private legal convention, every possible situation then it is going to be very difficult to have a convention at all. Having said that could I draw your attention to (a), (b) and (c) of article 1 and say that, although each of its definitions have their drawbacks, we would be prepared to accept them by way of a compromise which has been worked out and we feel greater and greater support for this compromise in our Committee. As regards (a), salvage operations, of course we have some sympathy with the proposal of the United Kingdom. We would be prepared obviously with certain amount of drafting improvement to accept this proposal if it would later become clear that the majority of our Committee is in favour of that proposal. It is closer to our legislation and to our approach than what is contained in the basic (a). But as a compromise I repeat specially since you take it together with article 24, we could accept (a) as it stands.

**Zaire.** As for small (b), I think the point of agreement or disagreement is relating to the type of vessel this means that it can only navigate at sea or in navigable waters and these navigable waters could cover lakes and navigable rivers. So my delegation while keeping the wording of the draft text of the Legal Committee in its original form, would merely like to delete the last part of the sentence. Several observations were made in respect of any act or activity undertaken to assist a vessel or any other property in danger at sea, or in navigable waters. Whatever expression you use navigable waters or navigable maritime waters or whatever you like, but a ship can only navigate where it can and not in small rivers and even if it is to be stranded it can’t be stranded where
a body of water is not navigable. So in the views of my delegation, Mr Chairman we believe that by maintaining the form of words of the draft submitted by the Legal Committee, by deleting a couple of words here and adding a couple of words there, we can certainly manage to achieve a compromise which hopefully could be accepted by all. Thank you Mr Chairman.

The Chairman. Thank you. May I ask the delegate of Zaire whether he could join Saudi Arabia or the proposal of Saudi Arabia. It seems to me that the text which you just have proposed is nearly the same as proposed by Saudi Arabia in working paper No. 1 and if you could join that proposal that would simplify the situation. Could you please take that proposal of Saudi Arabia and give your view on that. Thank you.

Zaire. Mr Chairman if you believe that the Zaire proposal is close to that of Saudi Arabia and that the Conference could accept that compromise I would certainly go along with it. Thank you Mr Chairman.

The Chairman. If the Conference can accept that compromise it is only an attempt to simplify the situation and to reduce the number of proposals and if two proposals are very similar or nearly identical in this case it would be very helpful if the delegations could say OK we join in as a delegation and support that proposal and withdraw our own proposal and that is my question. Zaire you have the floor.

Zaire. I could go along with that proposal Mr Chairman. I go along with the Saudi Arabia's proposal. I have not got it before me but I will find it. Thank you.

Documents LEG/CONF.7/VR.31-34

Japan. Thank you Mr Chairman. Mr Chairman, this delegation would like to express some comments on the issues of definitions previously discussed. This delegation would like to associate itself with the view relating to the general principles on the situation of the draft text expressed by the distinguished delegates from Canada and supported by the delegation from USSR and Zaire. Therefore I will regard the definition of salvage operation. This delegation still considers that the definition in the draft text is not so unclear in general principle. Of course, this delegation would welcome any elaboration of the definition if it is done in a correct manner from this viewpoint. This delegation would like to support in general principle the UK amendment in this regard with some slight amendment already pointed out by several delegations. Therefore this delegation would like to wait for some clear and beautiful single text made by the joint work of these delegates from the United Kingdom and France. However, I would regard the amendment proposal to the definition of salvage operation in working paper 1 submitted by the delegates from Saudi Arabia. This delegation could not support such absolute exclusion of the salvage operation done in a river or as a navigable water from the definition of salvage operation because this convention should be applicable to the salvage operation for instance done on the Thames or the St Lawrence seaway by or to the seagoing ship as pointed out by the distinguished delegation from Canada.

Saudi Arabia. Thank you, Mr Chairman. My delegation would simply like to refer to indent of paragraph 1. Salvage and assistance means any activity undertaken to assist a vessel or any other property in danger at sea. The assistance and salvage operations are two different things. An assistance is one thing, salvage is another. Here it is not a matter of assistance but here the salvor will be remunerated for his services and there is another convention which covers this form of salvage. This is why we believe that the term “assistance” is not adequate and we would like to ask you to ask the
Secretary to clarify this term. In the working paper presented by the United Kingdom, and I am referring to document 7/14, there is a reference to assistance. I do not agree with that term. As to the statement made by the delegation of Japan, when we refer to salvage at sea, that means “sea” as defined in international conventions. As for internal waterways or internal waters or rivers, the State directly concerned should deal with these. This is something which comes under the responsibilities of the country concerned. These are waters within a country.

**United Kingdom.** Mr. Chairman, may I just add that we now have, we think, an agreed Anglo-French, or should I say franco-britannique, text for (a) and that might help a lot of delegations. It supports what the Japanese delegation has said and it also meets the point made yesterday by the Swedish delegation and others. Thank you, Mr. Chairman.

**The Chairman.** Have you submitted or handed in to the Secretariat that document?

**United Kingdom.** I believe M. Douay is holding it in his hands (laughter).

**The Chairman.** Well, in that case I would have M. Douay immediately to submit that document to the Secretariat.

**Brazil.** Thank you, Mr. Chairman, first we should like to salute you for the election as the Chairman of this Committee. The Brazilian delegation would like to add its voice to the previous speakers in support of the draft of Article 1(a) as it is in the present text.

**CMI.** Thank you, M r. Chairman. The CMI has been speaking in the Committee a number of times, trying to give explanatory remarks only and I have felt, listening to the debate today, that perhaps such an intervention might be helpful here. I will only deal with the proposals for amending article 1(a), the definition of salvage operations and would certainly like to associate my views with those of Canada, the USSR and others. One should be very careful, at this stage, to try to redraft this article which has given rise to so much debate already, first within the CMI and then the Legal Committee. Each time we have tried to take care of what I would call the hard cases and making some redrafting and narrowing the concept of salvage operations proposed there. We have found that we have been opening what I would term the Pandora’s box on new problems and we have given up. I had comments on the previous English draft, but now I understand we will have a new one with that kind of comment. Just to give you an example of the problems we had with the previous draft was that in that draft the United Kingdom introduced to take care of what I would call “hard cases”, a proposal that we should limit the broad application of the Convention’s rule only to salvage operations at sea, and that in other waters we should only apply the Convention in cases where the assistance was to a seagoing vessel. So we introduced sea vessels in other waters as a new distinction. That caused a number of problems we heard and suddenly we found that we had gone along with that. It excluded the waters in North America where most salvage services take place, I believe, which are Mississippi, the St. Lawrence Seaway and, first and foremost, the Great Lakes and that can certainly not, I believe, be in keeping with what was our aim at the start. We also introduced another distinction which was between seagoing vessels and all other property capable of navigation under the draft Convention. By doing that, for instance it excluded salvage services to inland vessels which was, even within this we excluded many other cases and I feel it is very difficult at this late stage to overlook what happens if you introduce restrictions to this definition. I think that
in the light of our experience now through all those ten years of work with this provision and others, I would warn against, in this last moment, to introduce proposals which are no doubt appropriate and well considered but nevertheless we might find that if they go in, we made a mistake. We cannot, I believe, overlook at this short time, such an amendment on the definition provision in 1(a). Time has shown it, in my opinion and I think this is perhaps an example where you can say hard cases make bad law. I think we have this risk. Thank you, Mr. Chairman.

Documents LEG/CONF.7/VR.44-47

Chairman. Well, we come then first to the proposal submitted by the United Kingdom and France, Working Paper No. 1122 and I would like the delegation of the United Kingdom to introduce that document.

United Kingdom. Thank you Mr. Chairman, may I begin by craving the indulgence of the Committee, I’m not quite sure how that will be translated so I substitute “apologize” for three verbal corrections in the text proposed for article 1(a) in Working Paper No. 11. First the first words should be “any act or activity” the word “any” unfortunately has dropped out and if you look at the French text you will see that “any” corresponds to “tout”. Secondly, and I am indebted to you, Sir, for this, the word “her” in the fourth line, first word in the fourth line and again in the last line towards the end, is unnecessary and should be deleted. Then coming to the substance the wording speaks for itself and we have already spent much time on it, this joint proposal by the United Kingdom and French delegations is intended to respond to of course what we think to be right, but also to a number of other delegations who have spoken. Could I just refer to the remarks of Mr. B. Nielsen, on behalf of the CMI and others who have spoken in favour of the present text; I should make it clear that our proposal is in no way designed to cover hard cases or to cover all events, its purpose is to narrow to an acceptable extent the present text, which appears to us with all due respect far too wide and yet to meet the legitimate points made by the delegations from the USSR, Canada and the United States and in agreement, as far as I recollect, with the observations by the distinguished delegation from China. Obviously our proposal is in direct opposition to the Saudi Arabian proposal which would only comprise the open sea. May I only say, as regards the present text, that we believe that it is far too wide for the reasons which have already been explained. In particular we find the addition of the words “any waters whatsoever” sorry “in any other waters whatsoever” really almost impossible to follow because they would appear to refer to waters which are not navigable. I would also remind you of the illustrations which have been given of the bizarre cases to which it would lead if all inland waters and property on them were covered. As to the Canadian and United States points, which have been raised, we would say that the present proposed text goes a very long way to meet their legitimate observations and if they wish to go further inland or in relation to inland

(22) Document LEG/CONF.7/CW/WP.11
Joint proposal by the delegations of the United Kingdom and France
Salvage operations means
Article 1
a) any act or activity undertaken to assist a vessel or any other property in danger at sea or undertaken in any other waters to assist a sea-going vessel or any property on board her in danger or by a sea-going vessel to assist a vessel of inland navigation or any property on board her in danger.
waterways, then we would submit that they can use their national laws for this purpose. Accordingly on behalf of our two delegations, the English and French, we would commend this text as a compromise to the conference and I would only finally add that we have had a suggestion from the USSR to add the words “or any other property” in the last line before the words “in danger” and as at present advised we would have no objection to that. Thank you Mr. Chairman.

The Chairman. Well, I thank you. May I ask you. You want to amend your proposal now, is that correct, Sir Michael?

United Kingdom. Yes. By the addition of the word “any” and the deletion of the two words “her”.

The Chairman. Yes, I understood that but the addition which you have just mentioned does not include the amendment which you have just mentioned and which was proposed by the USSR.

United Kingdom. Mr. Chairman, because we have only received it a very short time ago, while seeing at present no visible objection to it, we would prefer that you should call on the USSR to move that as an amendment to our amendment if they wish to do so.

The Chairman. Well, if it is an amendment to an amendment then I would have to call the USSR, but I see. Is that a point of order Denmark? No, Yes, then you have the preference.

Denmark. No, it was just a little question to clear up when we are in the amendments phase. It was just stated by the distinguished delegate from the United Kingdom that we have to put “any” in the beginning of the first sentence. May I ask myself if we are still, I hope, in the definition paragraph.

The Chairman. Yes.

Denmark. And it starts by little (a) and there I think it would be nice to have at least two words or three words “salvage operation means” thank you Mr. Chairman.

The Chairman. Is that acceptable? That would mean the first three words .... Mr. Zimmerli has anticipated your statement Mr Bredholt.

Mr. Zimmerli. At the very beginning the proposal of the text would read: “Salvage operation means any act or activity...” and so on. Is that clear Mr. Chairman.

Denmark. That was intended, but it dropped out in the drafting.

The Chairman. I see. It was dropped out in the drafting. May I call on the delegation of the USSR to speak on the proposed amendment.

USSR. Mr. Chairman, thank you very much. This proposal for the moment has not been officially accepted. We produced it during the coffee break and we consulted certain delegations and now it might be considered if you agree as an official Soviet proposal. To begin with may I clarify the entire thrust of this proposal. In the document WP.11, the joint Franco-British proposal, we are looking at the last line. After inland navigation we would propose to put a comma and we would delete “or” and then after any “property on board” we would like to add the following four words: “or any other property”. We think that in such a case when the salvor in internal waters would have a seagoing vessel it would not matter what would be the subject of salvage. It could be an internal navigation vessel. The cargo would be on board that vessel. We could also consider cargo lost by another vessel. It could be a car o because of natural
disasters has been washed onto shore or basically anything else, any other property. We feel therefore this proposal is justified and logical. Thank you, Sir.

The Chairman. May I ask whether there is a delegation which wants to support the amendment. Mr. Berthold.

Denmark. Thank you, Mr. Chairman. I am sorry for coming again but now I am really in problems. I was listening carefully before to the distinguished delegate from the United Kingdom who told us that he could support that proposal from the Soviet Union, and then I ask myself what about the diamond ring on the bottom which we heard so much about yesterday, is that back here? That is all my question. Thank you.

The Chairman. Well to a certain extent but here the USSR proposal has the purpose only to amend the last part and to say that any property can be the subject of salvage. To certain extent we come closer to the original draft by including this wording, but it is up to delegations to decide that. You would not support that amendment. Is there any delegation which wants to support that amendment? That is the Netherlands. Mr. Clayton would you.

Netherlands. We would like to support the further amendment that has been proposed by the delegation of the USSR. We are of course in favour of some restriction as far as this is concerned, because as has been explained earlier this is a Maritime Convention and I do not think that you should extend the scope of this Maritime Convention to salvage cases where there is no link with any seagoing vessel or the sea. But I do not see with the delegation of the USSR any reason that when a salvor using a seagoing vessel should not fall within the Convention when he is salvaging any property which he finds in the river, which is often, as in my country, being used by inland navigation traffic. I know that this will complicate perhaps the drafting of this Article 1, subparagraph (a), but I think it is a reasonable proposal. There are often cases where you find cargo which is lost by a seagoing vessel and which has to be salvaged, and which has been swept overboard, from a container, for instance, and which you would find somewhere near the high seas, but just in the inland navigation waters. For instance, we have many cases where there is a lot of seagoing traffic coming in from the sea and going to Antwerp by the Skalt, or to Rotterdam or other ports, and which do navigate in the navigation waters. But they could lose cargo as well. That could be so, and I do not see why this should be outside the scope of this Convention. Thank you very much, Mr. Chairman.

The Chairman. The Federal Republic of Germany or is that, no. We are now in a very difficult position. It is very late and normally it was our intention to proceed immediately to a vote on the various proposals which we have. Now we have an amendment. We have not the time for a full debate of this amendment. To clarify the situation, I would like to propose that we vote first on the amendment of the USSR to the UK proposal, and then we have a clear result and we can ask for preferences. Is that acceptable? O.K. Who is in favour of the amendment just proposed? O.K.

France. Thank you, Sir. As a co-sponsor of this proposal, may I be allowed to give my views, not only on the proposal but on the amendment proposed? Well, of course, I am always brief. My British colleague has spoken before me. May I say, therefore, I agree on the small amendments pointed out in the English text, the addition of “her”, which does not really affect the French text. I also agree with what has been proposed by Mr. Berthold of Denmark to say what we have in the French text already. “Salvage operations means any act or activity”, but on the other hand we do not entirely agree
with the Soviet proposal, which very significantly changes the sense of the text and almost permits that if we do not use the seagoing vessel concept. To go back to the basic text as the Netherlands points out we talk of cargo lost by a seagoing ship that is at the end of the text. “Any other property on board”, however, if we add what the USSR proposes, which sums up itself by saying “any other property”, it means that if we have a seagoing vessel acting as a salvor, then this could really mean a seagoing vessel could go and salvage a lorry which fell off a bridge in a river. I think we are going rather too far, Sir. This is not really maritime salvage or salvage at sea as somebody has suggested. If the lorry falls into the sea, that is one thing, we are under the scope of application, but it is still at sea. As soon as it is at sea, then maritime salvage comes into force and we have in our text a coverage of that. It covers wrecks capable of navigation, abandoned ships, etc. But the restriction proposed by the United Kingdom and which we want to introduce also has the purpose of introducing a limitation on other waters, that is, in rivers and in internal waterways. This restriction basically means that, in this case, in order to apply a maritime convention to an operation which will take place in a river or even on a lake, what we need after all is a link with the maritime environment. The text proposed jeopardises the concept because we must have a seagoing vessel either as a vessel being salvaged or a seagoing vessel helping in the process of salvage. But the salving vessel, if we introduce anti-harbour property, means that anything on the Rhine, on the Seine or any other river, the salvor, as Capt. Clayton said, under cover of the Salvage Convention could carry out an operation in a river or even on a lake if a seagoing vessel can get that far, could make an operation which has nothing to do with maritime salvage. It can salvage anything which has fallen off a bridge, I repeat. But if it is a seagoing vessel which has picked up whatever has fallen off the bridge, then it is the maritime salvage regime which applies. That’s excessive. If we are talking about waters which are not the sea, maritime waters, as the present 1910 Convention states, salvage at sea shall only apply as long as there is only one seagoing vessel involved in the salvage process, and this regime shall only apply under the 1910 Convention when salvage or assistance is being offered to another vessel of a seagoing type perhaps in an estuary or on a river, then certainly the salvage provisions should apply. But if we take the other situation – I take my famous example of, for instance, a lorry falling off a bridge or a train falling off a bridge, it’s not because a seagoing ship does the salvage that the maritime salvage convention should apply. We invite you therefore, in the light of these explanations, to adopt the joint Franco-British proposal and we are very firmly against the proposal of the USSR. Thank you.

The Chairman. We proceed then with our vote. Who is in favour of the amendment just proposed by the USSR to the British – Sir? Is that a point of order?

Denmark. I am terribly sorry, Mr. Chairman. I myself hate when people interrupt you just before a vote, but I am in a little difficulty here and maybe I am not the only one because you asked me before if I was in favour or against the Soviet proposal and I was a little bit quick in my answer. My problem is that we would prefer to stick to the text as it stands and it means that we have the French and the United Kingdom proposal which changed the original text. Then we have an amendment to the French/United Kingdom proposal from the Soviet Union which makes it a little bit closer to the original text. So therefore I think with due respect that the best way would be first to have the vote about the French-United Kingdom proposal and if there is a majority there then we could go on and see if we even want to have the Soviet Union amendments.

The Chairman. That would be a possibility, but then, in accordance with the rules
of procedure, we have first of all an amendment to an amendment and that would be
we would have to vote on the USSR proposal, but I will not apply all these formal rules
now, because I have the intention not to vote on the various alternatives which we
have. I will only ask for preferences. I will ask after we have clarified what the wording
of the British proposal is. Who has a preference for the British proposal, for the
proposal of Saudi Arabia, for the proposal in the basic text, and so on. That is not a
voting which is going on. I would like only to vote on the amendment in order to make
it clear what the wording of the UK-French proposal is. Could you accept that? OK.
Fine. Now I hope that nobody will interrupt the procedure. Islamic Republic of Iran.
Is it on procedure?

Iran. Thank you, Mr. Chairman. I wanted only to point out something about the
Franco-British joint proposal.

The Chairman. I’m sorry. We can have no debate on that proposal now. We
closed the debate before the lunch break and we decided that in the afternoon we will
only vote on these proposals. I cannot reopen the debate on the substance of the
proposal unless you have, like the USSR, to make a concrete amendment which can be
handled or treated very quickly by a negative vote. Is that acceptable? The debate is
closed.

Iran. I’m sorry, would you repeat?

The Chairman. OK, I said the debate was closed before the lunch break. We
cannot reopen the debate. We decided before the lunch break that we should proceed
this afternoon only to a vote on the various alternatives which we have before us on
Article 1 and if you are going to speak on this proposal that would mean I have to
reopen the debate. I was obliged to give the floor to the two co-sponsors of that
proposal. They have the right to introduce their proposal, but I cannot give the floor
to other delegations to speak on the substance of their proposal. Is that acceptable?
Because we closed the debate.

Iran. But I think it is something of importance.

The Chairman. Well, are you going to make a proposal or just to make a
comment?

Iran. A comment.

The Chairman. Well, I’m afraid that I cannot allow that. I’m very sorry. It’s
already five minutes past five and I had hoped that we could start today with the
introduction of all proposals in respect of Articles 10 and 11. We have a considerable
delay now and if we start to make comments that would mean we open the debate
again and I’m terribly sorry I cannot do that. Could you accept that? I thank you very
much for your co-operation. Well, we come then to the vote on the USSR amendment
to the UK British proposal. The wording is clear, that means, to add in the last line
after the words “property on board” “or any other property”. Is that clear? Who is in
favour of that amendment? Please raise your cards. Thank you. Who is against that
amendment? Please raise your cards a little bit higher. The Secretariat is finding it
difficult to count the cards. The result is, to give you the figures, 7 in favour, 10 against.
That means that the amendment has been rejected. We come now to the second stage
of our voting and I have explained already to Mr. Bredholt, this is not a real vote, I will
only ask for preferences of the delegation. We start first with the basic text. Which
delegations would prefer the basic text, the text that is contained in document 7/3,
please raise your cards. Twenty-two in favour of the basic text. Who is in favour of the
proposal of the United Kingdom and France please raise your cards. Twenty-one in favour of that proposal, you see we have to take a formal vote at the very end. Who is in favour of the proposal of Saudi Arabia contained in document No. W.P.J, who is in favour of that proposal. It is under paragraph 2 there, have you found that wording. Working paper No.1 and in that document paragraph 2. You will find the proposal of Saudi Arabia. No, No, I have even not asked who was in favour I just made it clear which text it is you are a little bit too quick. Who is in favour of that text, please raise your cards. Two. There was also a proposal of Zaire, is Zaire in the room, may I ask Zaire whether he wants a vote on an indication of preference on this proposal. Zaire please you have the floor.

Zaire. Thank you for giving me the floor Mr. Chairman at this stage. But I already voted for the joint UK/French proposal except that I don’t entirely agree with the wording. I would like the drafting committee to have another look at it. Thank you Mr. Chairman.

The Chairman. The proposal has been withdrawn. I thank you for your cooperation. Well I would say that the final decision has to be made between the basic text and the British proposals, and we will come back to that problem and then to vote formally on both proposals and we will see what happens on that occasion.

27 April 1989
Documents LEG/CONF.7/VR.110-111

The Chairman. Good morning, Ladies and Gentlemen, I hope you are well prepared for our decisions this morning. We will take up the proposals article by article, and we will start with article 1, paragraph 1, subparagraph (a). You know we have there in working paper 11 a proposal submitted by the United Kingdom and France. I would like to propose that we at first, before we come to a formal vote, put another indicative vote on this proposal and both delegations have, after that indicative vote, the possibility to consider the situation and to make appropriate decisions. Is that acceptable? O.K. Yes, the delegation of the United Kingdom.

United Kingdom. Mr. Chairman, if it could just be indicated that we have the fall-back position of article 24(a)23 to come later, it matters greatly to us to get one or the other, but thank you, we agree with the procedure you have indicated. I only wanted to mention article 24(a) in the same context. Thank you, Mr. Chairman.

The Chairman. Thank you, yes, we will then come to article 24(a) and you have made a proposal there with two alternatives, we can take up that immediately after this vote just to have in mind the link which exists between these two proposals. First an indicative vote on working paper 11, a proposal submitted by the United Kingdom and France on article 1, paragraph 1(a). Who is in favour of that proposal? Please raise your cards. Thank you. Who is against that proposal? Abstentions? I thank you. May I ask the United Kingdom.

United Kingdom. Mr. Chairman, we didn’t count.

The Chairman. The result of the vote is 15 in favour and 27 against, with one abstention.

(23) See infra, p. 545 and 546.
The Chairman. May I now ask the delegation of the United Kingdom whether they took a decision on the question of subparagraph (a)?

United Kingdom. Mr. Chairman, I don’t know what France will do, we think that we should withdraw our proposal for 1(a), reluctantly and unhappily, but we do so. Thank you, Mr. Chairman.

The Chairman. May I ask France – the proposal and WP/11 have been withdrawn. That means we have to come back to the basic text of article 1, subparagraph (a) and to vote on that basic text without any amendment. Formal vote on article 1, subparagraph (a). Who is in favour of the text as it stands in the basic draft without any amendment? Please raise your cards. Thank you. Who is against? Please raise your cards. Thank you. Abstentions? Thank you. The result of the vote is 37 in favour, 5 against, 3 abstentions. The text of article 1, subparagraph (a) has been adopted.

Draft Articles agreed by the Committee of the Whole
(Document LEG/CONF.7/CW/4)

Article 1 - Definitions
For the purpose of this Convention:
(a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or any other waters whatsoever.

Text examined and approved by the Drafting Committee
(Document LEG/CONF.7/D C/1)

Article 1 - Definitions
For the purpose of this Convention:
(a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.

Plenary Session 28 April 1989
Document LEG/CONF.7/VR.225

FOR THE PURPOSE OF THIS CONVENTION:

(b) VESSEL MEANS ANY SHIP OR CRAFT, OR ANY STRUCTURE CAPABLE OF NAVIGATION.

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I
Article 1.1 - Definitions
3. Vessel means any ship, craft, or other structure capable of navigation [including any ship, vessel, or such structure which is stranded, left by the crew, or sunk].

Draft submitted to the Montreal Conference
Document Salvage-18/II-81
Article 1.1 - Definitions
3. Vessel means any ship, craft, or structure capable of navigation, including any vessel which is stranded, left by its crew, or sunk.

Montreal Draft
Document LEG 52/4-Annex 1
Article 1.1 - Definitions
2. Vessel means any ship, craft or structure capable of navigation, including any vessel which is stranded, left by its crew or sunk.

CMI Report to IMO
Document LEG 52/4-Annex 2

The last part of this paragraph makes it clear that assistance to abandoned vessels will be governed by the Convention. It should be noted, however, that Att.1-2.2.(d) provides that removal of wrecks is not governed by the Convention and is thus left for regulation at national level. The distinction between removal of wreck which is not governed by the Convention and salvage services to “stranded” and “sunk” ships, to which the Convention applies, may depend upon the particular facts of each case. However, the criterion may often be that there is some initiative from a public authority.

IMO
Legal Committee
Report on the Work of the 52nd Session (Document LEG 52/9)

32. It was generally agreed that a craft which was “capable of navigation”, whether floating or not, should be included but the suggestion was made that the words quoted above might be moved to the end of the definition of “vessel” in order clearly to refer to all the preceding words in the definition. The need for clarity was emphasized, for it would be undesirable for a salvor to be hampered by the need to single out what was a proper object of salvage and what was not, in advance of an urgent operation. One delegation pointed out that even liquid cargo, such as oil, would be “property”.
33. The Committee noted that three major questions of principle raised in the definitions deserved further consideration. These were:

(a) whether the definition of “salvage operations” should include a determination of the location in which such operations have to be undertaken in order to come within the scope of the draft convention;

(b) whether the draft convention should exclude salvage of property which was incapable of “navigation” at any time (such as oil on water);

(c) whether a “wreck” properly so called should be an object of salvage in the terms of the draft convention.

34. The representative of the CMI, referring to the questions raised in respect of the definitions, observed that “salvage” was differently defined in many jurisdictions; he cited as an example refloating of a sunken vessel which was deemed to be “salvage” in one State and not salvage in another. The CMI considered it necessary to take account of abandoned or sunken vessels. As to the definition of “vessel”, the criterion of navigability of the vessel related to the vessel as it was before the casualty occurred. The salvor therefore would not be expected to decide if the sunken vessel would be capable of navigation after refloating. With regard to a “wreck”, it was envisaged that Article 1-1.2 might allow a salvage contract in respect of a wreck. In the view of the CMI, salvors should not be burdened with too strict requirements as to what would constitute a proper object of salvage. Whilst a pier might be excluded, the salvage of fishing gear and floating oil should be included. (…)

41. It was suggested that the exclusion of the removal of wrecks in Article 1-2.2(d)²⁴ should be clarified to mean removal prescribed by a public authority rather than under a salvage contract.

---

(24) Article 1.2(d) of the Montreal Draft excluded removal of wreck from the scope of application of the Convention.
CMI draft. Other delegations, however, did not want the term to include sunken vessels. One delegation observed that it would be difficult if not impossible in many salvage operations to determine in advance whether a vessel which had sunk could be reinstated as a navigable craft or not. Another delegation suggested that the question of wreck removal might be left to the discretion of Contracting States which could declare that they would apply the provisions of the new convention to operations covered by their domestic law.

28. The observer of the International Salvage Union (ISU) stated that, in the view of the salvage industry a “wreck” was an object of no value which could not be the subject of salvage. Therefore the industry preferred to have a definition of vessel which reflected the situation as in the 1910 Convention or the new CMI draft text. This view was endorsed by one delegation which noted that the 1910 Convention had been implemented by salvors without difficulty in this regard. Another delegation stressed that failure to answer these pertinent questions about wrecks could lead to serious problems in the future. In its view the provisions of Article 1-3 “salvage operations controlled by public authorities” made it necessary to delete Article 1-1.2(d), since it might in some cases be difficult to differentiate “salvage” in the above-mentioned provision from “wreck removal”.

29. One delegation considered that the principal feature in salvage was assistance to a vessel in danger. Where a vessel had sunk there would be no danger to that vessel, although the vessel might pose a danger to other vessels or to the environment. In such a situation action taken in respect of the sunken vessel could not be considered as “salvage”. Other delegations however noted that sunken vessels could themselves continue to be in danger as well as presenting risks by reason of their cargoes, and the raising of such vessels could therefore be a matter of great urgency. The delegation referred to above which was in favour of limiting salvage specifically to assistance to the vessel in danger, pointed out that a distinction should be made between the case of a vessel which was itself in danger while afloat and the danger which such a vessel might present after it had been sunk and become a wreck. (...)

48. The Committee considered the provision to exclude wreck removal from the application of the convention. It was noted that the question was also related to the definition of “vessel” in Article 1-1.

49. Some delegations stated that no application of the convention to wrecks should be permitted whether by way of definition or in substantive provisions. One delegation wanted this exclusion to be effected by modifying the definition of “vessel”. Other delegations preferred to delete subparagraph (d). Some delegations considered that sunken vessels (although not necessarily “wrecks”) could still be subject to salvage services since they might be in danger and still have value. In such cases they should be covered by the convention.

Report on the Work of the 55th Session (Document LEG 55/11)

76. With regard to the vessel, the restriction to sea-going vessels was discussed as a possible alternative. It was pointed out that the draft text had no wider scope of application than the 1910 Convention since article 2, paragraph 2(a) of the draft convention excluded from its application salvage operations in which only vessels in inland navigation were involved. It was felt that there would in any case be no need to restrict salvage to any particular “waters” so long as the vessels involved were those covered by the definition of “vessel”.

COMITE MARITIME INTERNATIONAL

Article 1 - Definitions
77. One delegation suggested that the reference to “whatever waters” should be replaced by a reference to “all waters beyond the low water mark”.

88. Several delegations expressed the view that a clear distinction would have to be drawn between salvage and wreck removal. These delegations would delete “or sunk” from the provision.

89. Another delegation which favoured deletion of these words stated that the distinction could be drawn in terms of immediate risk and avoidance of danger. If there was no risk there was no salvage. One delegation considered that the criteria would be whether the vessel could float or not, and whether it had been abandoned.

90. The delegations opposing the deletion of the words “or sunk” felt that a contract for salvage could be entered in respect of a sunken vessel and that the element of risk could not be entirely ruled out.

91. One delegation also observed that the problem of whether a sunken vessel could be a “vessel” in terms of salvage was a problem which would persist whether the definition expressly included the concept or not.

92. Another delegation stated that a decision to undertake salvage might be taken in terms of the situation in which the vessel was found and the decisions of its owner or insurer. This delegation favoured retention of the words “or sunk”. Another pointed out that many sunken vessels retained some value and were subject to salvage, whereas wrecks were normally removed only where they constituted a hazard to navigation, and the removal was usually done by or at the request of public authorities.

93. In view of the division of opinion on the point, the Committee decided to leave the matter open for discussion at a later stage.

94. In this connection, one delegation pointed out that, however undesirable a convention which operated with some vessels in and some out of its scope, the fact was that a sunken ship was “property” even if it was not a “vessel” under the existing draft definitions. These definitions did not determine the convention’s scope. The determining definition was that of “salvage operations”. A definition of “vessel” was for convenience - a means of identifying a particular form of property normally subject to salvage. In the view of this delegation salvage should be decided simply on the basis of whether property could be recovered. It was immaterial whether the property was under water, abandoned or incapable of floating at the time of salvage.

95. The representative of the International Association of Port and Harbors (IAPH) stated that ports, and the waters thereof, were not immune from maritime casualties which posed difficult legal and technical problems.

96. Port authorities, therefore, wished to have as clear and uniform a regime as possible for salvage operations. Such a regime should apply at the national and international levels. Accordingly, the draft salvage convention should establish a clear distinction between the case where a vessel was in danger but could be preserved as a ship, and the case where the ship was a wreck for which the hope of preservation had been abandoned.

97. It was observed that the definition in which such clear distinction could be made would be the definition of “salvage operations”.

98. One delegation suggested that the definition of “vessel” might be broadened to read: “vessel means any ship, craft or structure capable of navigation”.

Definition of “Vessel”
99. Another delegation observed that if the words “or sunk” were deleted it would be impossible to know whether the salvage convention applied or not in given jurisdictions, since the States which wished to apply it to sunken ships would do so under the heading of “property” and those which did not so wish would not apply it. This delegation suggested that the words be retained and that a reservation be allowed with respect to the application of the convention to sunken ships. This matter might be examined in connection with article 2,2.

100. One delegation proposed that the word “mobile” be inserted before “structure” in the opening words of this definition. This proposal was connected with the possible inclusion of oil rigs within the scope of “vessel”. Since some of these oil rigs could float, the question would be whether they were “vessels” of other “property”. The delegation also proposed the deletion of the words “capable of navigation”. These suggestions were intended to make certain that all mobile structures could be treated as vessels. Delegations which favoured retention of the words “capable of navigation” considered that it was unnecessary to add the word “mobile” if the ship, craft, or structure was “capable of navigation”. Some delegations, however, considered the term “capable of navigation” unclear and preferred the word “mobile”. They noted that a structure might be mobile but not capable of navigation.

101. Some delegations noted that there was a connection between this provision and article 2,2(e). They therefore wished to know whether the proposal to replace the words “capable of navigation” with “mobile” was not catered for by article 2,2(e). The delegation proposing the addition of the word “mobile” did not favour the inclusion of article 2,2(e). It observed that drilling rigs fixed to the sea-bed by legs would be excluded from the definition of “vessel”, but that other structures which float and were mobile would be included.

102. The representative of the CMI observed that many rigs operated in a manner similar to vessels, and the CMI considered that such rigs should be included if they were capable of navigation even though they could also be fixed by legs to the sea-bed. The CMI representative acknowledged that these might not be “mobile” structures.

103. One delegation considered that if the words “capable of navigation” were included, it should be acknowledged that this capability was determined before rather than after an incident which deprived the vessel of navigability.

104. Similarly, the delegation proposing the addition of the word “mobile” considered that a drilling rig on legs, although capable of navigation to a site above the sea-bed would not be a “vessel” unless at the time of the incident it was mobile.

105. It was agreed that discussion would be resumed on this matter, in particular in connection with article 2,2(e), and that a decision should be taken in due time as to whether salvage would apply to fixed drilling rigs. The definition in (b) was therefore left unchanged for further consideration.

Report on the Work of the 56th Session (Document LEG 56/9)
Sub-paragraph (d)\(^{25}\)

19. It was noted that the application of the convention to the removal of wrecks

\(^{25}\) Reference is made to article 1.2(d) of the Montreal Draft.
was related to the definition of “vessel” in article 1, subparagraph (b). It was pointed out that the definition contained words which would include sunken vessel in the concept of “vessel”. The words “or sunk”, however, remained in brackets in the definition.

20 In discussing the application or otherwise of the convention to the removal of wrecks the Committee also dealt with the question whether sunken vessels should be excluded from its application, either by definition in article 1(b) or in article 2, paragraph 2(d).

21 Some delegations suggested that paragraph 2(d) be deleted. Some other delegations could not agree to the inclusion of operations for wreck removal in the convention’s terms. In their view, a wreck, even if it had value, could not be considered as being in immediate peril. This distinguished wrecks from other property which could be the object of salvage.

22 One delegation which favoured the deletion of subparagraph (d) stated that it was unnecessary, since national law would apply to the removal of wrecks in the absence of any provision in the convention.

23 A group of delegations worked out a proposal for a revised text for the definition of “vessel”. The text reads:

“(b) ‘vessel’ means any ship, craft or structure capable of navigation,

and subparagraph (d) of article 2.2 would be deleted.

The Legal Committee agreed to discuss this text at the next session.

24 Some delegations on the other hand felt that subparagraph (d) clarified the scope of the convention and should therefore be retained. A number of delegations expressed interest in the suggestion to leave to States the right to apply the convention to sunken vessels, if they so wished, in their national legislation.

25 The Committee agreed to consider the matter again at the next session, particularly in the context of the definition of “vessel”.

**Document LEG 57/3-Annex 1**

**Article 1 - Definitions**

(b) Vessel means any ship, craft or structure capable of navigation, including any vessel which is stranded, left by its crew [or sunk]

**Report on the Work of the 57th Session (Document LEG 57/12)**

81. In the context of the examination of the definition of “vessel”, the Committee considered a proposal by the delegation of France to insert the following definition:

“(b) Vessel means any sea-going ship, floating craft or structure which is capable of navigation and which is in danger, as well as any property on board and 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.”

82. The French delegation explained that if this proposal was adopted a separate definition of “property” would become unnecessary, and a new paragraph 3 would be inserted in article 2 as follows:

“3 A State may apply this Convention:

(a) to any salvage operation involving any property in danger other than a vessel;
(b) to any vessel which is stranded, left by its crew, or sunk;
(c) to any property not permanently and intentionally attached to the shoreline
and which is in danger.

A State which decides to apply the Convention in the cases mentioned in (a),
(b) and (c) of this paragraph shall notify the depositary, specifying the forms and
conditions of such application.”

83. In the opinion of the French delegation, this approach would make the
convention more acceptable for many States. The proposal had been conceived as a
compromise and it was therefore important to submit it, if necessary in brackets, to the
diplomatic conference.

84. Many delegations expressed strong objection to the proposal. Some of these
stated that the suggestion contained a number of completely novel features which
would again put in question many matters that had already been settled. Moreover,
some delegations stated that they were not in a position to take a definitive position on
a proposal which had been tabled at such a late stage.

85. The observer of the CMI suggested that if the French proposal were adopted,
a large number of unusual craft and of property capable of salvage might be excluded
from the application of the convention because they were not attached to a vessel. Among
them would be: floating cargo (e.g. containers), sunken cargo with a
commercial value, tanks in sunken vessel, long-term storage vessels or tanks, light
vessels, single mooring buoys (SBM), hovercraft and air cushion vehicles, aircraft,
pipe-laying barges, exploration oil rigs, exploration submarines, submersible diving
craft, accommodation vessels or rigs, offshore exploration and operating equipment,
floating cranes, fishing nets, floating docks etc.

86. The French delegation did not agree with this viewpoint and pointed out that
most items mentioned would, in fact, also be covered by the definition as proposed by
the delegation due to the fact that they constituted floating craft.

87. It was noted that this divergence of views might be partly attributable to a
divergence in the English and French terminology of the definition of vessel, in
particular as the English term “craft” might have a more restrictive meaning than the
French term “engin”.

88. Although some delegations expressed support for the basic proposal
submitted by France, it was not accepted.

89. After considering the various proposals for the definition of “vessel” the
Committee adopted the following definition of vessel:
“Vessel means any ship, craft or structure capable of navigation”.

90. The Committee also agreed to delete paragraph 2(d) of article 2.

91. The French delegation also suggested that another solution might be to retain
the basic text and to add a new paragraph 3 in article 2 which would read as follows:
“3 Any State may decide to limit the application of this Convention solely to
salvage operations concerning the ship, including freight, or any floating craft or
structure capable of navigation, to the exclusion of any other property covered by
its law relating to wrecks.

Any State utilizing this provision shall notify the fact to the depositary
specifying the terms and conditions for such application.”

However, this text was not considered by the Committee.
Report on the Work of the 58th Session (Document LEG 58/12)

Paragraph 1(b)

Document LEG 58/12-Annex 2

Article 1 - Definitions

For the purpose of this Convention:

(b) Vessel means any ship, craft or structure capable of navigation including any vessel which is stranded, left by its crew [or sunk].

12. The observer of the CMI drew attention to a paper by Professor Berlingieri entitled “The Draft of a New Salvage Convention and the Salvage of Wrecks” (document LEG 58/INF.2)26 and suggested that, in the light of the conclusions contained in this paper, the Committee might wish to reconsider its decision regarding the deletion of the phrase “including any vessel which is stranded, left by its crew or sunk” in article 1(b).

13. The Committee noted that it had already taken a decision on this issue.

Consideration of the Draft Convention on Salvage

Note by the Secretariat

(b) Vessel

14 The Committee gave extensive consideration to the question of whether the definition of “vessel” should extend to a vessel which had sunk or which would be incapable of navigation. In this regard attention was drawn to the part of the definition contained in the CMI draft which referred to vessels which were abandoned or sunken, and the question was raised as to the distinction between “salvage” and “wreck removal” in such cases. Several delegations expressed the view that a clear distinction would have to be drawn between salvage and wreck removal. These delegations were in favour of deleting any reference to sunken ships. Some other delegations preferred a more flexible approach which would include the raising of a sunken ship without having to determine whether or not it was capable of navigation thereafter. (LEG 53/8, paragraph 25).

15 Although it was suggested that a definition of “wreck removal” might be included in the draft, it was equally pointed out that a “wreck” was an object of no value which could not be the subject of salvage and therefore should be left outside the scope of the convention. It was also pointed out that the principal feature in salvage was the assistance to a vessel in danger. Where a vessel had sunk there would be no danger to that vessel, although the vessel might pose a danger to other vessels or to the environment. In such a situation, action taken in respect of the sunken vessel could not be considered as “salvage”. (LEG 53/8, paragraphs 26, 28, 29).

16 It was noted that, even if a sunken ship were not to be included in the definition of vessel, it could nevertheless be included in the concept of “any property” under the draft definition if it had any value to be rescued. In this case, salvage should be decided simply on the basis of whether property could be recovered. It would be

(26) Document LEG 58/INF.2 follows.
immaterial whether the property was under water, abandoned or incapable of floating at the time of salvage. (LEG 55/11, paragraph 94).

17 Some delegations favoured the substitution of the expression “capable of navigation” by “mobile”. However, it was pointed out that this expression would exclude drilling rigs which even if fixed by legs to the sea-bed, and as such likely to be considered as not mobile, could nevertheless be considered as “capable of navigation” (LEG /55/11, 101-102).

18 After considering the various proposals for the definition of vessels, the Committee decided to adopt the following definition of vessel:

“Vessel means any ship, craft or structure capable of navigation”. (LEG 57/12, paragraph 89).

Document LEG 58/INF.2

Consideration of the Question of Salvage and Related Issues

Note by the Secretariat

Professor F. Berlingieri, President of the Comité Maritime International (CMI), has made available to the Secretariat the attached paper on the salvage of wrecks. The article will appear in the Liber Amicorum Lionel Tricot. With the kind agreement of Professor Berlingieri, the article is being circulated to delegations to the fifty-eight session of the Legal Committee. Copies of the paper are available in English and French only.

***

Annex

The Draft of a New Salvage Convention and the Salvage of Wrecks

Francesco Berlingieri

The draft salvage convention adopted by the CMI at Montreal gives in its Article 1-1 a very wide definition of vessel, with a view to better indicating the scope of application of the Convention. Pursuant to Article 1-1(a):

Vessel means any ship, craft or structure capable of navigation, including any vessel which is stranded, left by its crew, or sunk.

This provision has been the object of a debate at the IMO Legal Committee. The CMI text has been criticized, in particular, by the French Delegation, who pointed out that in French law there is a very clear cut distinction between assistance and salvage of vessels and salvage of wrecks. At the 57th Session of the IMO’s Legal Committee it was decided to delete in Article 1-1 (now Article 1-b) the words “including any vessel which is stranded, left by its crew, or sunk” and paragraph 2(d) of Article 1-2 (now paragraph 2-d of Article 2), whereby removal of wrecks was excluded from the scope of application of the new Convention.

Such deletion, however, does not eliminate the problem and the question must, therefore, be asked whether – and to what extent – the Montreal draft modified the uniform rules established by the 1910 Convention and, in the affirmative, whether such modification was advisable.

When the work for the unification of the law of salvage started, in France and in several other civil law countries the rules on assistance and those on salvage differed substantially. In France, only salvage, which included services rendered to a ship which is stranded, abandoned by its crew or sunk, was governed by statute: the provisions applicable were those of the Ordonnance of 1681 and of the Déclaration du Roi of 15th June 1735. Services rendered to vessels in danger, which were not covered by the aforesaid statutory provisions, were qualified as assistance. The situation was similar in Italy, where the Code of Merchant Marine of 1865 had provisions based on those of the Ordonnance and of the Déclaration du Roi of 1735.

When the work of the CMI for the preparation of the 1910 Salvage Convention started, a questionnaire was distributed to National Associations. Among others, the following questions were asked:

I. Is it advisable to draw a distinction between salvage and assistance?
II. On what basis must remuneration be assessed? It is advisable to provide that in certain cases the Court must award a fixed percentage of (the value of) the things salved?

The reply of the majority of the National Associations was negative. The French Association, in its replies to the Questionnaire, approved by a resolution of the Association on 11th April 1900 and drawn up by Autran, provided the following explanations:

Furthermore, the Association thought that it was useless and even dangerous to maintain the old distinction between salvage and assistance, and that it was preferable to adopt the principles followed in England, where the same word “salvage” designates both operations. The theoretical distinction between salvage and assistance, which lies on the fact of the abandonment of the vessel by its crew, brings today, with respect to the remuneration, to results that may be unfair (...). It has not, therefore, been deemed proper to maintain the distinction between salvage and assistance, and it has been thought preferable to leave to the Courts the power to assess the remuneration for the services rendered according to the circumstances.

The Hungarian Association shared this view and states as follows:

In France, the Ordonnance of 1681 awarded to the salvor one third of the value of the vessel salved at sea. Other countries, such as England, rejected the system of awarding a fixed percentage of the things salved. The abolition of the distinction between salvage and assistance carries with it the abolition of the system of awarding a fixed percentage of the value of the things salved.

The abolition of the distinction between salvage and assistance was approved by the Paris Conference of the CMI in October 1900 and the working group appointed by the Conference proposed the following formula:

All statutory distinctions between salvage and assistance are abolished.

In order to establish the scope of application of the 1910 Convention it is firstly necessary to see what was the notion of salvage in French and English law, the CMI having abolished the distinction between them and adopted the global concept prevailing in English law.

In France, pursuant to Articles 26 and 27 of title IX book IV of the Ordonnance of 1681 and the Déclaration du Roi of 1735, the following things could be the subject matter of salvage:

a) vessels and things stranded or found on the beach (Article 26 of the Ordonnance): for such services the salvor was only entitled to the reimbursement of his costs;

b) things wrecked, including vessels found on the open sea or lifted from the bottom of the sea (Article 27 of the Ordonnance): for such services the salvor was entitled to one third of the things salved.

(27) CMI Bulletin No. 9 – Compte-rendu de la Conférence de Paris, October 1900, p. 42.
(28) CMI Bulletin No. 9, supra, p. 89.
(29) CMI Bulletin No. 10, Hamburg Conference of 1904, p. XXXII.
(31) Valin, supra, p. 589 explained the distinction as follows (translation):

“In both cases, those who have thus saved some things, are equally required to make the declaration within 24 hours to the Officers of the Admiralty, in compliance with Article 19, under the penalties set out therein, relating to those of Article 5; but their position will be different in that in the first case, one third of the things will belong to those who have saved them, in conformity with the provisions of this article; and in the second case, in lieu of the third, they will have only their expenses of salvage, following the taxation which will have been made, regard being paid to the nature of the work. The reason is, that in this latter case, there is not a thing which is lost or deemed to have been abandoned as in the first case, since reference is made to a shipwreck of which the remains and debris have been collected.
c) vessels, goods and effects sunk without any permanent trace thereof remaining on the surface of the sea (Déclaration du Roi); for such services the salvor was entitled to eight tenths of the things salved.

Thus salvage was either the service rendered to a stranded vessel, or that rendered to a vessel “wrecked” and found on the open sea but still afloat or that rendered to a vessel which had sunk and was totally or partially submerged. The distinction between salvage and assistance was thus necessary in respect of services rendered to vessels in danger on the open sea and still afloat. The basis of the distinction was the fact whether or not the vessel had been left by its crew. The Tribunal de Commerce of Brest on 17th June 1905 rendered a judgment in the case of the “Oviedo”, whose reasons were approved by the Court of Appeal of Rennes in its judgment of 23rd July 1906. The following statement was made by the Court of Appeal:

Whereas, in fact, in order to benefit from the provisions of Article 27 of the Ordonnance of 1681, i.e. in order that the services in question be treated as salvage, it is necessary that all conditions set out in the Ordonnance be met; that, consequently, it is necessary:
1. that the vessel has been left by its crew without intention of return;
2. that the vessel has been found by accident;
3. that the vessel has been found on the open sea;
4. that the vessel has been brought to a safe place.

In England, all services rendered to a vessel in danger, whether or not left by its crew, either afloat or sunk, was called salvage and gave right to an award. In the treatise of Abbott salvage is defined as “the compensation that is to be made to other persons, by whose assistance a ship or its lading may be saved from impending peril, or recovered after actual loss”. However, a distinction was made between salvage of a vessel and salvage of a derelict due to the fact that in more ancient times, the Court of Admiralty granted to the salvor of a derelict one half of its value. The following statement is made in Abbott:

As to derelict, which, if no owner appears, becomes the property of the Crown, it was formerly the settled practice of the Court of Admiralty to give a moiety to the finders as salvors, but in later times the reward has become discretionary.

In order to constitute a derelict it is sufficient that there has been an abandonment at sea by the master and crew without hope of recovery. A mere quitting of the ship, as by jumping, from the sense of imminent danger, on board another in collision with her, or for the purpose of procuring assistance from the shore, or with the intention of returning to her again, is not an abandonment.

In the United States the situation was the same. Thus a sunken vessel could be the object of salvage and the award was not any more, as in the case of salvage of a derelict, a fixed percentage.

In Parsons the following definition of derelict is given:

As to what is “derelict” there is no certain and accepted definition; and perhaps none better than a vessel which is abandoned and deserted by her crew without any purpose on their part of returning to the ship, or any hope of saving or recovering it by their own exertions. So a ship or goods sunk under the waters are generally derelict, but would not be so if the owner had not lost the hope and purpose of recovering his property, nor ceased his efforts for that purpose.

The same distinction between salvage of a vessel and salvage of a derelict is also adopted in France in order to establish whether services rendered to a vessel on the open sea are assistance or salvage. Ripert so stated in the second edition of his Traité de droit maritime:

---

... it must be remembered that salvage implies a wreck, i.e. a vessel which has been abandoned...
Since what is important above all is the intention not to abandon the vessel, there is no salvage, but assistance when the crew has left the vessel, but only momentarily for the purpose of seeking assistance, after having anchored the vessel, or watching the vessel from another vessel or from the shore.
The conclusion which may be drawn from the above survey is that the Convention of 1910 applies also to salvage of vessels which are stranded or sunk.
Two objections may, however, be raised against so wide a notion of salvage: the first is that in the Convention reference is made to salvage of vessels38 and not of wrecks; the second is that reference is made to salvage of vessels in danger.
The first objection would have no merit since a floating vessel abandoned by its crew is a wreck (épave) in French law and a derelict in English law, but is certainly covered by the Convention. The argument supporting the second objection is that there is no further danger if the vessel is sunk, since the loss cannot be avoided anymore39. But if in the Convention of 1910, reference is made to salvage of vessels in danger, that is with the view to limiting the right to a reward to services rendered to vessels who are in peril and are not able any further to remove the danger by themselves any further. A vessel is not in danger when, even with difficulty, can proceed in its voyage by its own means.

The most serious danger is that of total definitive loss of the vessel. If such loss may be avoided, even after the vessel is sunk, by refloating the vessel, it is still possible to say that the danger has been avoided. It is in this sense that in England and in the United States services rendered to a vessel which is sunk are still called salvage.
The Convention of 1910 was promulgated in France by means of a decree of the 12th March 1913, pursuant to law 2nd August 1912. At the same time, a bill was prepared with the view to adapting the domestic law to the Convention.
Ripert stated in the second edition of his Traité de Droit Maritime in respect of the scope of application of the domestic law40:
The bill of 29th July 1913 (Article 1) reproduces this provision, but the conclusion must not be drawn that the law relating to salvage is abrogated. The Ordonnance of 1681 will continue to apply; however, it will apply solely to wrecks which have lost the aspect of vessels and which are not claimed any further by their owners. In certain situations the identity of the wreck may create some difficulties.
The words in Article 1 of the Convention, “without any distinction being drawn between these two kinds of service”, which had been reproduced in Article 1 of the bill of 1913, did not appear any further in Article 1 of the law of 29th April 1916. Such omission, together with the fact that the proposal to abrogate Article 27 of the Ordonnance of 1961 had been rejected, has given rise to various views of jurists and courts with respect to the scope of application of the law of 1916 and of Article 27 of the Ordonnance, based on the concept of wreck (épave). A complete and acute analysis of all such views has been made by Du Pontavice41. The fact that Du Pontavice has written a book on the concept of wrecks is the best possible proof of the difficulty of the subject.

In Italy the Code of Merchant Marine of 1865 adopted, though with some modifications, the provisions of the Ordonnance of 1681 and of the Déclaration du Roi of 1735 and regulated also other kinds of services, however without drawing a precise distinction between them. Furthermore, the terminology was widened, since in Chapter XII, entitled “Dei Naufragi e dei Ricuperi” (Of shipwrecks and raising of wrecks) various expressions are used, i.e. assistance to vessels in danger (Art. 120), assistance to persons (Art. 122), salvage (Art. 124), salvation (Art. 126), recuperation (Art. 125, 129) and jointly assistance and salvage (Art. 127)42.

---
The Convention of 1910 was implemented in Italy by a law of 12th June 1913, and Italian domestic law was adapted to the uniform rules by a law of 24th June 1925. This latter law, however, did not repeal the articles of the Code of Merchant Marine which regulate salvage of vessels left by their crew and salvage of wrecks.

The Code of Navigation of 1942 draws a distinction between assistance and salvage and “ricupero” (raising from the bottom of the sea). The subject matter of assistance and salvage is a vessel in danger, whilst that of “ricupero” is a vessel or aircraft that has been wrecked or floatsam of jetsam. The considerations on the basis of which the reward is fixed are almost the same for assistance and salvage and for “ricupero” save that for the latter, no reference is made to the danger run by the things salved. The difference between salvage and assistance on the one hand and recuperation on the other hand has been based by the majority of the writers on the conditions of the things salved: the subject matter of salvage and assistance are vessels that still preserve their original physical characters; the subject matter of “ricupero” are vessels that have been wrecked, and that as a consequence of the shipwreck, do not have any more their original physical characteristics.

In France, the provisions of the Ordonnance of 1681 and of the Déclaration du Roi of 1735 have been replaced by Decree No. 61-1547 of 26th December 1961 and those of the law of 1916 by law No. 67-545 of 7th July 1967.

It is thus very likely that a uniform interpretation of the provisions on the scope of application of the 1910 Convention is not possible since the countries of common law consider the word “sauvetage” in the Convention equivalent to “salvage”, whilst certain civil law countries give to it a more restricted meaning.

Ripert stated, with reference to the French law of 1916, that such law “applied only to a seagoing vessel in danger, i.e. to a vessel liable to get lost if not assisted, be it stranded on the coast, or afloat at sea”. That law, continued Ripert, “cannot apply when the loss of a vessel has taken place, for example when the vessel is stranded on the coast and cannot be refloated anymore, or when a vessel is completely submerged or when it has become a floating wreck”.

The law of 1916 applied to refloating operations of a stranded vessel and to a vessel afloat; it did not apply to a wreck stranded or afloat, nor to a totally submerged vessel. The problem, however, was to find the basis of the distinction between a vessel and a wreck. The laws of 1961 and 1967 have not provided a satisfactory solution to this problem. According to Rodière, assistance, governed by the law of 1967, related to both vessels and wrecks still afloat; whilst salvage, regulated by the law of 1961, applied to wrecks that are not floating any longer except stranded vessels who are subject to the law of 1967, if still seaworthy. In respect of stranded vessels, the distinction is, therefore, based on the condition in which such vessels will be after having been refloated. Consequently, a salvor, when commencing salvage operations of a stranded vessel, does not know which rules will apply to the services he is about to render. In addition, in what sense reference is made to the seaworthiness of the vessel is not clear. Stranding, in fact, is likely to cause damage to the hull that must be repaired after the vessel is refloated. It is almost certain that any vessel that has been refloated after stranding will be drydocked and surveyed by a surveyor of the classification society, and that its class will normally be suspended until completion of repairs. It follows that a vessel that has been refloated is not normally seaworthy and that, consequently, the concept of seaworthiness in respect of a stranded vessel has been used in a sense different from the ordinary one.

It is the view of the author of this paper that there are two distinct reasons for the inclusion of vessels that are stranded or sunk in the scope of application of the Convention. The first reason is that refloating operations of stranded vessels may acquire a considerable importance in order to avoid or limit damage to the environment since such damage can be caused by stranded or sunken vessels. It is, therefore, very important that salvage of such vessels be subject to the provisions of the new Convention.

The second reason is of a different nature. It is essential to clearly define the scope of

(44) English translation of the author of this paper.
application of the new Convention and to avoid the uncertainties that exist for the Convention of 1910.

As it has been said at the beginning of this paper, the Legal Committee of IMO has now decided to delete the words “including any vessel which is stranded, left by its crew, or sunk”. It is, however, questionable whether that decision was sound. In fact, such words would have assured both a clear interpretation of the provisions on the scope of application of the new Convention and widened such scope. Their deletion will not favour uniformity of interpretation of the new Convention, insofar as its scope of application is concerned, since there will certainly be Courts which apply the uniform rules to salvage of stranded vessels and to wrecks.

International Conference
Committee of the Whole 17 April 1989
Document LEG/C ON F.7/V R.16

Document LEG/C ON F.7/3
Article 1 - Definitions 46

Friends of the Earth International. Thank you, Mr. Chairman. In the paper submitted by Friends of the Earth International, which is paper 7/2147, we point at the definition of a vessel in draft Article 1(b) and in our opinion the actual wording of this provision does not include sunken vessels and we are of the opinion that if an express reference to sunken vessels would be made in this particular part of the draft, this would certainly be an incentive to go into salvage operations relating to sunken vessels which have a hazardous cargo on board. Thank you very much.

The Chairman. I thank you. Can I take it that this is a formal proposal. It was very difficult to identify whether it was your intention to make a proposal in that regard or not. May I take it that you now have made the proposal to amend the provision of vessel according to your paper? I had the impression that you made a comment on that sub-paragraph.

Friends of the Earth International. Excuse me, Mr. Chairman, but this is the proposal as is laid down in our submission.

Document LEG/C ON F.7/V R.19

Czechoslovakia. Thank you Mr. Chairman. I would like to refer to article 1(b). I feel that the wording “capable of navigation” sounds rather vague especially in the light of the fact that the incapability of the vessel can be taken in two ways, first, the vessel can be incapable for good or second the vessel can be incapable just for a limited period of time and does it mean that in the second case this definition does not apply

(46) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
(47) Document LEG/CONF.7/21
Note submitted by Friends of the Earth International (FOEI)
Draft Article 1(b)
The definition of “vessel” should preferably include an express reference to “sunken” ships, rather than leaving coverage of the latter to national law (as was proposed in document LEG 56/W P.14). Obviously, it should be possible to conduct salvage under the terms of the new convention in respect of cargoes which may be released (whether suddenly or gradually) from a sunken vessel at a future date.
to vessel. Furthermore I would like to point out that the sunken vessel or the vessel otherwise left by the crew is also not covered by (b) so therefore in my opinion the definition does not fully cover all cases which can occur. Thank you Mr. Chairman.

18 April 1989
Document LEG/CONF.7/VR.21

Netherlands. The other question which was raised, I think, was whether sunken ships should be covered by the convention or are already covered. We are with the delegation of Spain of the opinion that sunken ships already fall under the concept of property and are covered by the convention. We had long discussions on this item in the Legal Committee, I remember. I am afraid that it is no problem because when vessel is sunken, and it is not the cultural property then it is up to the salvors whether they see any benefits of investing a lot of money in the salvage operations to raise the sunken vessel. If they wish to do so they can do so. In many cases when ships are becoming wrecks or sunken in the waters of a State then that State in most cases has the necessary legislation on direct removal to give certain directives and to take perhaps the initiatives but I think that is a matter which traditionally falls out of this convention and is taken care by national legislation. I think that is what we would like to cover in the present definition. We will come back, I think, to the subject in the definition of damage to the environment. I think that is a separate issue.

Documents LEG/CONF.7/VR.23-30

Federal Republic of Germany. Now I may come to (b) of article 1 introducing conference paper LEG/CONF.7/CW/WP.2. In introducing this paper I think I can be rather brief because the proposal included in this paper is not new; in this respect I would like to draw your attention to the extremely valuable synopsis of proposed amendments and observations in document LEG/CONF.7/CW/2. There in the column of observations you find the citation of conference paper 7/10, where the present proposal has been explained. This proposal reflects the disappointment of my Government that almost 90 years after the first salvage convention there is still no guidance in international unified law as to the question whether sunken ships are in any way included in the general concept of salvage even though the problem as such has existed in 1910 as it exists today. There might have been some justification that the delegates of the 1910 conference did not touch on the problem because in the old days, at least in some parts of the world, the subject of remuneration for salvage operations had its origin in two different forms of salvage-assistance or, in French, assitance, where the reward was based on the circumstances and the services rendered to the ship, and salvage or, in French, sauvetage, in the case of an abandoned vessel which was determined on the basis of an application of a set ratio to the value of the salved property. But it was the progress made already in 1910 that this dual system had been
abolished and international law, following the model of English maritime law, adopted a unitary concept of salvage. This unitary concept is the reason why the present draft convention does not make any difference between salvage and assistance, and having abolished this difference between salvage and assistance our delegation does not see any reason why sunken ships should be totally excluded from the salvage concept. But to make it very clear, we do not rely on an attempt to define whether a sunken ship can be still regarded being a ship and thus an object of salvage, and whether a sunken vessel has to be regarded as a wreck and subject to reclamation. We do not believe that salvage situations which call for a salvage contract and situations of a sunken vessel which is an obstacle and calls for a contract of wreck removal can be successfully divided by a clear cut definition of ship and wreck. It is the situation and the aim of the operation which makes the difference, whereas the difference between the terms ship and wreck seem to be of minor importance. If a sunken ship is regarded by the parties involved as an object which is worthwhile to be salvaged, why should there not be a salvage contract, and if a sunken ship is just removed as an obstacle without salving it, would it not be appropriate to deal with this case as wreck removal? Now, I have the feeling that our proposal and working paper too are basically closer to what the distinguished delegation of The Netherlands have just said, only with the difference that the Dutch delegation thinks that the problem is already covered by the definition of property. Well, if this would be generally accepted the problem might in fact be a non-problem, but from the structure of the present draft convention where vessels are defined in one letter and property in another letter, I doubt whether it is possible to deal with vessels in both letters, in (b) as “vessel” and (c) as property; I think a ship, whether sunken or not yet sunken, tends to be covered by the scope of application of (b) and property seems to be something else, but if there is a common understanding that the present draft convention does not exclude totally sunken ships from the concept of salvage, probably that might be sufficient but it would nevertheless be somewhat clearer if one would include expressly in (b) that “vessel” includes sunken ships save to the extent that the vessel is subject to wreck removal.

The Chairman. Yesterday the observer organization of The Friends of the Earth has proposed to include sunken vessels. Can I take it that that Organization would also be satisfied by the proposal of the Federal Republic of Germany so that we have before us only one proposal on sunken vessels? The Organization of the Friends of the Earth International.

Friends of the Earth International. Thank you, Mr. Chairman. We can find ourselves in the proposal of the Federal Republic of Germany, of course, but also in the more general statement that if there is a general consensus that sunken ships would fall in the scope of the salvage convention, and that that would be expressed in one way or another in the records of the conference, we would be satisfied also. Thank you.

Denmark. Next we come to the question in little (b) concerning vessels and here again we have had a lengthy discussion concerning some vessels. We agree completely with our Dutch colleagues that it is covered by property in (c) and we will have no problem. Of course, that is as many other things a question of compromise.

Canada. I will not say very much about sunken vessels because, once again, I believe this subject was fully debated in the Legal Committee and I doubt whether it makes much sense to recommence the debate at this Conference given the time constraints under which we are operating. I would simply take on board the observation that has been made by the delegation of the Netherlands that it appears
that “sunken vessels” is already contained in the definition of property, and for that reason, I believe that we should not re-open this debate.

Italy. As for (b), the Italian delegation deems it preferable to use the text of the draft convention because it is aligned with principles of Italian law. It should indeed be noted that in our legislation we make a difference between assistance and salvage and the removal of wrecks, in other words, between a ship which can navigate and a ship which is sunk.

United States. With regard to the French proposal, it is our view that ships that have sunk, especially those which are recently sunk, should be subject to the convention and we agree with those who have said that the current definitions would provide for that. We also recognize that wreck removal would be subject to national law and could be undertaken outside this convention and we note that Article 3(1) may have some application here, because it recognizes that a national law scheme can apply.

Democratic Yemen. Regarding the definition of “vessel” in item b) of article 1, the Federal Republic of Germany has raised a question regarding the position of sunken, abandoned and stranded vessels in their paper LEG/CONF.7/10, and later presented their working paper No. 2 which dealt with sunken ships only. This delegation believes that abandoned, and particularly stranded vessels, pose as great a risk to the environment as sunken ships, and therefore this delegation would like to propose an addition to the proposal submitted by the Federal Republic of Germany in their Working Paper No. 2, to deal with stranded and abandoned vessels so that I can agree with these as follows. “A vessel means any ship, craft or structure capable of navigation, including any sunken, stranded or abandoned ships, save to the extent that the vessel is subject to wreck removal”. However, Mr. Chairman, this delegation would be grateful if the Chairman or the delegation of the Federal Republic of Germany could explain the situation of the stranded and abandoned vessels, if only sunken vessels are dealt with in this item. If an acceptable explanation can be presented, then we can accept the proposal as presented by the Federal Republic of Germany in their Working Paper No. 2.

The Chairman. May I ask the delegation of Democratic Yemen, if it was the intention of that delegation to amend the proposal of the Federal Republic of Germany, while that was only simply an idea. Democratic Yemen.

Democratic Yemen. Thank you very much, Mr. Chairman. I would point out that this delegation gives much concern regarding stranded and abandoned vessels and sunken ships and these two types of ships have been pointed out and dealt with on the same level by the Federal Republic of Germany in their original paper. However, in their Working Paper No. 2 in their proposal to amend the definition of “vessel”, they have dealt with sunken ships only and not with stranded or abandoned vessels. This delegation has asked for a clarification, even from yourself, Mr. Chairman, or from the delegation of the Federal Republic of Germany, regarding the stranded and abandoned vessels. There is no clear reason why they should be excluded and this delegation would propose an addition to item b), as proposed in Working Paper No. 2, to include stranded and abandoned vessels. Thank you, Mr. Chairman.

The Chairman. It is not my responsibility to answer a question regarding a proposal of a delegation and I had better ask the delegation of the Federal Republic of Germany to answer that question.
Federal Republic of Germany. Thank you, Mr. Chairman, it is true that there might be a discrepancy as to the wording of our paper CON.F.7/10 and the proposed wording of article 1, item b); however by not mentioning a vessel which is stranded or left by its crew it was not intended to exclude such vessels from the scope of the application. We only thought that in drafting the text of the Convention, the case where a ship has sunk is the case where most discussions and doubts might arise, whereas stranded vessels, vessels left by their crews, may be covered already by the term of “ship” and anyway the addition which we proposed to be made to article 1(d) means “including also”; of course even if this part of the sentence were not there, we are of the opinion that it should be included and we just picked out one very dubious point that a sunken ship should be mentioned and that goes without saying that, of course, stranded ships and ships left by their crews should also be covered by the provision. Thank you.

The Chairman. You are of the opinion that “a sunken vessel” would cover ships abandoned or stranded? Is that your opinion? That was the question of the delegation of Democratic Yemen and that is the reason why I gave you the floor just to answer that question. You have the floor sir.

Federal Republic of Germany. I would say that a ship which is left by its crew is just a ship capable of navigation if it is not yet sunken, so it is covered by the first part of the sentence and we do not feel any need to have it covered by the second part. That is why stranded ships are concerned, but anyway we would not press for having the two situations covered by the express language of the provision, even though we would like to have them covered. Thank you.

The Chairman. Thank you. This discussion shows clearly that it is nearly impossible to cover every situation. A an abandoned ship can be a sunken ship it can be stranded ship, stranded ship can be a sunken ship, and so on, and that demonstrates the reason behind the action or the decision of the Legal Committee to delete “sunken ships” and all the other qualification which followed after sunken ships. As a Chairman, I went very far in saying that but this is an attempt to shorten the debate on all the definitions. It is obvious that we cannot cover every situation and we have to rely on the ability of courts to interpret the convention. May I ask the delegation of Democratic Republic of Germany whether that delegation is now satisfied after that explanation.

Democratic Republic of Germany. Thank you very much, Mr. Chairman. I am quite satisfied with the explanation of the Federal Republic of Germany that they meant to include stranded and abandoned vessels but somehow they did not see the need to actually spell it out. This delegation believes that for the sake of clarity it would be much more beneficial to actually spell them out because we cannot imagine any other situations than a ship which is capable of navigation or sunk or abandoned or stranded and therefore having heard this explanation we would propose that the definition of vessel should be amended to include the three types of vessels or the four types of vessels capable of navigation including any sunken, stranded, or abandoned ships. Thank you, Sir.

The Chairman. I understand that this is now a form of proposal of your delegation. Well, this is a very short amendment. It has not been submitted in writing. Is the Committee ready to consider this amendment in the context with article 1(b)? O.K. if it is accepted the text should be clear after “sunken ship” its intention to include “stranded or abandoned”. Thank you.
USSR. As regards the definition in (b) we could say the same thing about this, we could talk for a long time about sunken ships, and abandoned ships etc. But I think what we have got in (b) is accurate, and if there are some misgivings about it I do share your views, Mr. Chairman. The parties in courts will be capable of happily solving the problems using national legislation and experience.

Zaire. As for small (b), I think the point of agreement or disagreement relating to the type of vessel this means that it can only navigate at sea or in navigable waters and these navigable waters could cover lakes and navigable rivers. So my delegation while keeping the wording of the draft text of the Legal Committee in its original form, would merely like to delete the last part of the sentence. Several observations were made in respect of any act or activity undertaken to assist a vessel or any other property in danger at sea, or in navigable waters. Whatever expression you use navigable waters or navigable maritime waters or whatever you like, but a ship can only navigate where it can and not in small rivers and even if it is to be stranded it can’t be stranded where a body of water is not navigable. So in the views of my delegation, Mr Chairman we believe that by maintaining the form of words of the draft submitted by the Legal Committee, by deleting a couple of words here and adding a couple of words there, we can certainly manage to achieve a compromise which hopefully could be accepted by all. Thank you Mr Chairman.

The Chairman. Thank you. May I ask the delegate of Zaire whether he could join Saudi Arabia or the proposal of Saudi Arabia. It seems to me that the text which you just have proposed is nearly the same as proposed by Saudi Arabia in working paper No. 1 and if you could join that proposal that would simplify the situation. Could you please take that proposal of Saudi Arabia and give your view on that. Thank you.

Zaire. Mr Chairman if you believe that the Zaire proposal is close to that of Saudi Arabia and that the Conference could accept that compromise I would certainly go along with it. Thank you Mr Chairman.

The Chairman. If the Conference can accept that compromise it is only an attempt to simplify the situation and to reduce the number of proposals and if two proposals are very similar or nearly identical in this case it would be very helpful if the delegations could say OK we join in as a delegation and support that proposal and withdraw our own proposal and that is my question. Zaire you have the floor.

Zaire. I could go along with that proposal Mr Chairman. I go along with the Saudi Arabia’s proposal. I have not got it before me but I will find it. Thank you.

The Chairman. Working paper number one. I thank you. Then you have made a very short amendment to article 1(b) to add two words: “vessel means any ship, craft or structure capable or not of navigation”. I think we can consider this short amendment inspite of the fact that this amendment has not been submitted in writing. OK can consider it.

Zaire. I think that the point of agreement or disagreement is the fact that the ship is capable of navigating or not. Because a ship stranded, abandoned or sunk is a ship which is not moving so we are dealing with a ship which is moving or a ship which is not moving. Now which needs salvage and which does not? In the view of my delegation we consider the ship as a person who is drowning. If while he is still alive but drowning you can still save him, then I think that salvage or assistance should be granted to this person even when he is about to become a body, that is to say, he can no longer swim, so my delegation by way of compromise bearing in mind the proposal
put forward by the Federal Republic of Germany would like to maintain the existing draft of (b) as it is but adding a couple of words and this could be determined by the Drafting Committee exactly where these words should be and I re-read the text. The definition of vessel in the view of my delegation should be the following: “vessel means any ship, craft or structure capable or not of navigating” and by adding “or not” this would clear up any further doubt which might remain. So in other words this article means that assistance can be given to a ship which is moving or which is not moving. As for (a) bearing in mind the definition we have given under (b), the compromise my delegation wishes to suggest refers to the area of navigation.

Federal Republic of Germany. Thank you Mr Chairman. I would like to be very brief. My delegation has very carefully followed the discussions and especially the valuable remarks for instance, to quote only some, of the distinguished delegation of Canada and the distinguished delegation of the USSR and with respect to our proposal in working paper number two, we did in fact get the impression that the time might still not be right to solve this difficult question if it can be solved any way. So having regard to the difficulty of reaching a consensus on this problem and having regard to the valuable work which had been carried out by the Legal Committee of the IMO to make this diplomatic conference possible, we consider in the spirit of compromise to withdraw our proposal so that no indicative vote on it would be necessary but I would mention one point that is the language of paragraph (b) and would like to ask the chair whether it would be possible to transfer this question to the Drafting Committee. We think that probably some of the confusion which is created by the question of ships stranded or abandoned ships might be due to the fact that in letter (b) the three last words read “capable of navigation” and if you read the sentence it reads “vessel means any ship, craft or structure capable of navigation” so that you could think that capable of navigation refer not only to structure and craft but also to ships. Probably it would be possible to make the language a little bit clearer to ensure that capable of navigation is related only to the two terms craft and structure, because then the term “ship” is a broad term might cover the situations with which we were concerned. So if one could at least make this effort in the framework of the Drafting Committee, we would be pleased to withdraw our proposal because we see that the time of the diplomatic conference is limited and we should not insist too much on points like this because there are other problems in this Convention and I hope that probably our attitude might be an incentive for other delegations as well to think about compromises. Thank you Mr Chairman.

The Chairman. I thank you, Sir. I have the same hope. Perhaps there is another delegation who wants to withdraw proposals, please indicate. In any event thank you for your co-operation. I think that simplifies the situation. As to your drafting amendment, I believe the problem could be easily solved by including “any” before structure. Then the sentence would read “Vessel means any ship, craft or any structure capable of navigation”. Would that cover your point? Well that is a pure drafting point. Can the committee agree of the inclusion of the word “any” before structure. It seems to be the case. Fine, then we took the decision that we include “any” before structure in paragraph 1, subparagraph (b).

Democratic Yemen. Thank you very much, Mr Chairman. I asked for the floor on your request for any withdrawal of proposals, and bearing in mind the very learned remarks which have just been made by our distinguished friend from the Federal Republic of Germany, I think that the language as it is would make perfectly clear. Thank you, Mr Chairman.
Republic of Germany, I would like to address the item (b) which is the definition of “vessel” and, if you remember, I made a proposal to include sunken, stranded and abandoned vessels. Now, my proposal was originated from my fear that any ship which is incapable of navigation will not be able to be assisted by a salvor, and indeed the definition of “vessel” as it existed in the original text gave me that impression. However, the proposal of the Federal Republic of Germany delegation that the introduction of the word “any” and after you have inserted it after the words “craft or” gives this delegation the clear impression that when you are dealing with a ship or a craft then, whether it is abandoned, stranded or sunken, this is obligatory to it. On that understanding there will be no need for the revision which I have proposed and I would withdraw that proposal. Thank you, Mr. Chairman.

The Chairman. I thank you for your co-operation, that simplifies the situation further.

Document LEG/CONF.7/VR.35

The Chairman. We have not to vote on 1(b) because all proposals have been withdrawn. The proposal of the Federal Republic of Germany, and I have been informed by the observer delegation of Friends of the Earth International that that organisation would also withdraw its proposal and I have been informed by Zaire that the proposal of Zaire to include in (b) the words “were not” after capable, has also been withdrawn. So we have no proposal on (b).

21 April 1989

Document LEG/CONF.7/VR.110

The Chairman. We can proceed first with article 1.1(b). We come back to that. The next decision is a final decision which has to be taken on article 1 subparagraph (b). Here we have only the basic text, but we have first to decide on the inclusion of the word “any”. Can I take it that all delegations are able to accept the inclusion of the word “any” after the word “or”? The text will read “vessel means any ship, craft or any structure capable of navigation”. Is that small amendment adopted by consensus? I thank you. Can I then take it that the whole text of subparagraph (b) is adopted by consensus or is there a delegation which insists on a vote? Spain, you are insisting? You have the floor.

Spain. Thank you, Mr. Chairman, we would like to know what happened to the text after this correction. We do not have a working paper which reflects the text as it is now and as it will be in the convention, we would like to know what the actual text will be, how will the paragraph read? If you could explain that we would be most grateful. Thank you very much.

The Chairman. Yesterday we were not issued a document with a single word, that was my indication, and we have during the indicative vote by consensus adopted the inclusion of one single word “any”, that comes under “or”, and it seems to me not necessary to issue a document for the inclusion of that word. I can read the text if you wish. Spain, you have the floor.

Spain. What we would like to know is, once we have had a vote, you will put to the vote the whole of the text, because once you have introduced a word which may change the meaning of one sentence, you have to re-vote on the whole thing in order to see if it is still meaningful. Thank you.
The Chairman. We voted already on the inclusion of the word “any”, that has been included by consensus and I asked now the Committee whether the Committee is ready to adopt subparagraph (b) also by consensus and I asked whether there is a delegation which insists on a vote. My question is do you insist on a vote? Spain.

Spain. Yes, we would be interested in a vote, thank you.

The Chairman. We have to vote. Who is in favour of the text of the basic draft on article 1, subparagraph (b) as amended? Please raise your cards. I thank you. Who is against that text? Please raise your cards. One. Abstentions? No abstentions. The result of the vote is 47 in favour, one against, no abstentions. The text of article 1, subparagraph (b), has been adopted.

Draft Articles agreed by the Committee of the Whole
(Document LEG/CONF.7/CW/4)

Article 1 - Definitions
For the purpose of this Convention:

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

Text examined and approved by the Drafting Committee
(Document LEG/CONF.7/D C/1)

Article 1 - Definitions
For the purpose of this Convention:

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

Plenary Session 28 April 1989
Document LEG/CONF.7/VR.225

For the purpose of this Convention:

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

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Article 1.1 - Definitions
4. Property means any property in danger in navigable waters [including, however, the freight for the cargo of the vessel].

Draft submitted to the Montreal Conference
Document Salvage-18/II-81

Article 1.1 - Definitions
3. Property means any property in danger in whatever waters the salvage operations take place, but including freight for the carriage of the cargo of the vessel, whether such freight be at the risk of the owner of the goods, the shipowner or the charterer.

Report by the Chairman of the International Sub-Committee
Document Salvage-19/III-81

4. General provisions. The definitions contained in art. 1-1(1)-(3) mean that the scope of the international law on salvage has been extended so as to include not only ships but also any other structure capable of navigation as well as property in danger in navigable and other waters. In this context note was taken of the proposal in respect of salvage relating to off-shore mobile crafts adopted at the CMI Rio-Conference 1977.

Montreal Draft
Document LEG 52/4-Annex 1

Article 1.1 - Definitions
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.

CMI Report to IMO
Document LEG 52/4-Annex 2

The corresponding provision of the draft convention submitted by the Subcommittee to the Montreal Conference contained the following general definition of property: “any property in danger in whatever waters the salvage operations take place”. In Montreal, however, this was felt to be superfluous as it was only a repetition of the provision in Art. 1-1.1. The general definition of property, therefore, must be found in Art. 1-1.1., and Art.1-1.3. is only retained to make it clear how freight should be dealt with. Freight does not include charter hire unless in the particular case the provision on the freight for the actual carriage of the goods is contained in the charter party.
IMO
Legal Committee
Report on the Work of the 55th Session (Document LEG 55/11)

78. With regard to the words “not permanently and intentionally attached to the shoreline”, the representative of ISU explained that they had been proposed for inclusion in the definition of “property”. It was, therefore, agreed by the Committee that these words should be removed to article 1(c).

79. Some delegations expressed the view that “property”, as envisaged in the definition of “salvage operations”, should be restricted to vessels, platforms and floating structures which were mobile and not attached to the sea-bed, or property on board the ship being salvaged, including freight. It was asked whether property which was no longer aboard a ship and not in its vicinity, such as property which had been jettisoned in an accident, could be subject to salvage under the convention. It was also queried whether the convention would cover salvage of property which had never been on a ship, such as objects swept out to sea from rivers and estuaries.

80. One delegation saw no reason why the new convention should not extend the meaning of property, as part of a deliberate policy to provide incentive for the removal of all risk posed by such property at sea. Other delegations considered that the removal of such property would be more appropriately dealt with under a regime for wreck removal. One delegation agreed with the CMI’s intention that oil rigs, floating docks, buoys and fishing gear should be included in the concept of property, but it felt that a definition which extended the convention to all the flotsam and jetsam which might be afloat on the seas would be far too wide.

81. The Committee agreed to examine the matter further at its next session, in the light of proposals from interested Governments or organizations. (…)

106. It was agreed that the phrase originally introduced in article 1(a) (“not permanently and intentionally attached to the shoreline”) would be introduced into the definition of “property” in article 1(c). This definition would then read:

(c) “Property” means any property not permanently and intentionally attached to the shoreline which is in danger and includes freight for the carriage of the cargo, whether such freight be at risk of the owner of the goods, the shipowner or the charterer.

107. In the opinion of the delegation of France, the proposed substitution for article 1(a) reproduced above would make it unnecessary to include any definition of “property”, since the French proposal included the words “everything on board including freight and passage money”.

108. With regard to “passage money” one delegation suggested that it might be added to the present definition of “property” in article 1(c). Another delegation, observed that the provision of article 1(c) was not, properly speaking, a definition or intended as such, but merely clarified the concept in article 1(a).

109. In reply to a question as to whether “passage money” had been omitted from the definition of “property” for some reason, the representative of the CMI stated that the reason may have been that passage money was very often not at risk during the voyage, as it had been paid in advance. It was agreed that the matter would be given further examination.
Report on the Work of the 57th Session (Document LEG 57/12)

92. The Committee had before it proposals from Australia and OCIMF (document LEG 57/3/Add.1, annex, page 2) in respect of this subparagraph.

93. In the light of an earlier decision taken in respect of the definition of salvage operation, the Australian delegation withdrew its proposal.

94. The Committee decided to retain the definition of “property,” with the deletion of the brackets and of the words “which is in danger”.

Document LEG 58/12-Annex 2
Article 1 - Definitions

(c) Property means any property not permanently and intentionally attached to the shoreline and includes freight for the carriage of the cargo, whether such freight be at risk of the owner of the goods, the shipowner or the charterer.

Consideration of the Draft Convention on Salvage
Note by the Secretariat

(c) Property

19 A number of delegations observed that this paragraph was not really a definition but a statement that the concept of property included a particular item. The representative of the CMI explained that the main purpose of the inclusion of this paragraph was to make clear how freight should be dealt with in the convention. Specifically, it was intended that freight would not include “charter hire” unless, in the particular place, the provision on the freight for the actual carriage of the goods were contained in the charter party. In order to exclude piers or other shore installations, the Committee agreed to insert the specification that property means “any property not permanently attached to the shoreline”. (LEG 53/8-30), LEG 53/8-19 and LEG 55/11-106).

International Conference
Committee of the Whole 17 April 1989
Document LEG/CONF.7/V R.14-16

United Kingdom. On the word “property” which is (c) you will find that we suggest I think in agreement with the proposals from the United States that property should include structures fastened to the seabed, but as you see from the definition not permanently or intentionally attached to the shoreline and freight at risk. We have three points on the present text of (c). The first is purely technical and if you like legalistic. You will find in the present text, a reference to freight at risk of the owner of the goods. As we see it only a shipowner or operator which is one suggestion before this conference to be added to shipowner, or a charterer, can have freight at risk as a separate element. The cargo owner’s liability to salvage is limited to the value of the

(49) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
salved goods at the place to which they are taken and that value should, we submit, include or reflect freight in the sense of the cost of getting the goods there. Accordingly, we submit, but it is only a question of language – or little more – that there should be no reference to freight at risk to the owner of the goods. Secondly, and I say this by way of introduction, we would want to support the French proposal to exclude what they have referred to as cultural maritime property subject to being satisfied about the definition. I say no more than that save to indicate that that would have our support. Thirdly, as I have already mentioned, in the same way as the delegation of the United States, we would wish to exclude drilling rigs and oil platforms; that is to say, structures fastened to the sea bed (I may have said that wrongly when I first mentioned it). We would wish to exclude those because any fires, for instance, on such structures would require expert assistance and are not in the same category, it seems to us, as vessels. But vessels used in connection with such structures, say lying alongside for any purposes, we would want to see included. It is for those reasons that we have submitted the definition which you see in paper 14\textsuperscript{50}. I am sorry I have spoken so long, Mr. Chairman.

**France.** Thank you Mr. Chairman. As you are asking me, Mr. Chairman, we briefly present our proposal but we would have preferred that this be done in a more orderly manner and that first of all we could adopt a decision on the British proposal. However, as regards the French proposal in Article 1(c) this to use with the word “property” which is also covered by a proposal by the United Kingdom Delegation. The purpose of the United Kingdom Delegation is that in this definition of property only the cargo at risk is referred to. Whereas we believe that we should maintain the text of the Draft Convention as it is and refer to the freight at risk of the owner of the goods, or the shipowner, or the charterer of the ship. We believe that this goes further and this means that on this point we do not entirely agree with the views of the United Kingdom Delegation as regards their definition of the word “property”.

**IADC.** Mr. Chairman, as a worldwide Organization that represents possibly the broadest possible spectrum of experience in off-shore drilling activities we support the view of the United Kingdom delegation that drilling rigs and oil platforms be excluded from the definition of property in article 1(c). We do so on the grounds of safety fearing that an unauthorized intervention by an unplanned volunteer, as the Secretary General said this morning might create greater hazard than the use of the established dedicated and specialized emergency services which are co-ordinated through arrangements made by the coastal State and applied and practiced in the repeated manner to encounter contingencies that may occur. We also believe that the coastal State’s jurisdiction under Article 5, paragraph 3 of the 1958 Geneva Convention on the Continental Shelf and the similar provision in the 1982 Law of the Sea Convention

\textsuperscript{50} Document LEG/CONF.7/14

Property. The United Kingdom proposes that the definition of “property” in subparagraph (c) should be amended to read as follows:

““Property” means any property not permanently and intentionally attached to the shore line and includes freight at risk.”

For salvage purposes the value of the cargo is assessed at its sound arrived value. The only freight which could constitute an additional salvaged value would be freight which the shipowner would earn on arrival of the cargo at the port of destination and which he would have lost had the cargo not been salved.
precludes a general admission of salvor vessels in the recognized safety zones. We will revert to this matter in connection with the United States proposal for an amendment to Article 2. Thank you, Mr. Chairman.

Document LEG/CONF.7/VR.19

Spain. As for the freight as part of the property definition, we also believe that the United Kingdom proposal is a good one, indeed freight is at risk and nothing is added with a more complex definition in the present text of the Convention and with a view to extending the concept of property along these lines we would suggest extending the wording suggested by the United Kingdom so as to say that instead of “freight at risk” to say “any freight at risk”, this would cover time charter freight which in the present wording would not be included because it is only freight for the carriage of a cargo and not time charter freight. Finally, Chairman, in relation to the proposal put forward by Friends of the Earth International and so that we can be sure that we have a clear idea as to the principles they are trying to get at, we would like them to confirm that the concept of sunken ship is already within the concept of property as defined in paragraph (c) of article 1; we believe that this is the case, that sunken ships are property and that therefore it was agreed in the drafting of the text that there was no need to refer specifically thereto, and, in relation to the 1910 text the price of a passage is a very serious omission; the price of the passage would however fall within the general scope of paragraph (c) or article 1. But in any case I would like an explanation on this in order to be able to know exactly where we are and where we stand as precisely as possible.

18 April 1989
Document LEG/CONF.7/VR.21

Netherlands. With regard to the question of the definition of property with respect to freight, we have no strong feelings with regard to the UK proposals. I think we can accept it and we consider it as a more legal technical matter.

Document LEG/CONF.7/VR.23

Federal Republic of Germany. Now I would just say something regarding (d), so with respect to the second proposal put forward by the United Kingdom in conference paper 7/14, I would like to congratulate the distinguished British delegation for having proposed a simplified version of article 1(c). The definition of property as proposed by the distinguished delegation of the United Kingdom fully serves its purpose and therefore the delegation of the Federal Republic of Germany fully supports this British proposal. Thank you, Mr. Chairman.

Documents LEG/CONF.7/VR.25-28

Canada. With respect to the United Kingdom proposal on property, also contained in document 14, I would like to reserve the position of my delegation with respect to that particular definition until we have had our debate on the United States proposal contained in document 16, which proposes an outright exclusion for fixed and floating platforms and drilling vessels. We would be in support of that particular proposal and therefore we would not like to make any comments at this point on the proposed amended definition of the term “property”.
Italy. As for (c), the text contained in the draft convention seems sufficiently balanced. Nevertheless, it would be important to define the expression “any property” which could give rise to misinterpretation.

United States. Lastly, with regard to paragraph 1(c), we can agree with the proposal made by the U.K., of course noting that we do have a proposal regarding the exclusion of platforms and certain vessels which we have currently suggested should be included in Article 2, and of course we will talk about that when we get to that particular article. Thank you, Mr. Chairman.

The Chairman. I thank you, Sir. Your intervention prompts me to ask a question to the delegation of the United Kingdom. Several delegations have mentioned that the United Kingdom have proposed the exclusion of platforms, but I understand that you have taken in your proposal on Article 1(b), the present draft, and you have only changed the last part with regard to the freight. Is that correct? 1(c), I am sorry. The United Kingdom, please. I believe the first part of your proposal is the same as in the basic draft, so you have not proposed in addition the exclusion of platforms, that is already in the basic draft.

United Kingdom. Mr. Chairman, if I may say so, you are quite right and we noticed this yesterday when we noticed that “attached to the shoreline” would not be sufficient and we had it in mind for some time to add the words “or seabed”. As a matter of policy we entirely share the view of the United States and other distinguished delegations who have supported the exclusion of platforms. It could be done by adding the words “or seabed” to (c).

The Chairman. Are you going to make that proposal now, shall we add that wording now to your proposal? Just to clarify the situation, because it is a little bit confusing. Your present version does not contain this part which you have just mentioned – the seabed.

United Kingdom. You are quite right, Mr. Chairman, we would add that to our proposal without feeling strongly about how it is done.

The Chairman. Just to give an indication what you have in mind, we would add it for the purpose of our discussion.

China. The third point concerns the opinion put forward by the French delegation, that is whether this convention should be applicable to cultural properties. We believe that there might be some cultural properties carried on board a ship as a kind of cargo. If this convention could not be applicable to such cargo, then this would affect the salvor’s decision whether to provide assistance to such kind of ship. From the viewpoint of protecting the historical cultural relics of mankind, we think we should not exclude cultural property from the definition of property in this convention. That is my opinion, and thank you, Mr. Chairman.

Democratic Yemen. Regarding item 3, may I first of all draw your attention to a spelling mistake in document LEG/CONF.7/CW/2, was the word “intentionally” spelt “internationally”. As to the content, we believe that the original draft is quite sound, but we understand the French concern for a property with cultural value and would, in principle, support the amendment proposed by them. Having said that, I must mention that I was quite impressed by the statement of the Chinese delegation regarding properties with cultural value which are carried on board, and we believe that this statement should be given further thought.
USSR. And finally (c), the definition of property, I understand Mr. Douay’s proposal but I am not quite sure that we are at a stage whereby today we could adopt a decision as he proposes. Attention has been drawn in this room already by China, for example, to the fact that if we are transporting archaeological property that is one thing but if it is sunken property or wreck then they will not be covered by us anyway. If we try to deal with this question in the reservations in article 24, as was proposed by France, then we are going to have a further definition of what is sunken maritime property. And this by itself would require a quite careful consideration. So having settled that, Sir, I think at this stage I would prefer not to support the French proposal, although I do understand the intent of Mr. Douay explaining what he is trying out but of course we must be sympathetic to his views. And finally, as regards the UK proposal, regarding the final sentence, well, you could do it if you want to do it, although we don’t see any problem at the moment, and we find it better to keep what we have in the existing initial draft. Thank you.

Zaire. First of all, we entirely support the statement made by Canada acknowledging the efforts made by the Legal Committee when defining this draft text. My delegation, however, would also like to take into consideration the remarks made by various Member States to the extent in which these remarks may indeed bring some clarity to the various articles of our Convention. Within this framework that is to say to respect the draft text prepared by the Legal Committee, my delegation entirely wishes to maintain small (c).

Documents LEG/CONF.7/VR.31-32

Japan. As regards the definition of property this delegation would like to support the amendment proposed by UK delegation in the LEG/CONF.7/14.

Saudi Arabia. As for paragraph (c) in the document submitted by the United Kingdom, and I am still referring to LEG/CONF.7/14, a definition is given of property. We agree with that definition but with a few modifications; in the second line I believe that we should add “for the carriage of cargo at risk”. So after “freight” in English we should have a comma and say “for the carriage of cargo at risk”. Thank you, Mr. Chairman.

The Chairman. I thank you. The Secretariat has, of course, not the competence to explain the proposal of the delegation. I would like to ask, therefore, the delegation of the United Kingdom to take up this point and to answer the question of Saudi Arabia on the word “assistance”. And you may also Sir Michael, you may also refer to the proposal just made on “cargo at risk” if you want to do that. I leave it up to you.

United Kingdom. Mr. Chairman, off the cuff we do maintain our view that the word “assist” is correct and it is liberally to be found in the 1910 Convention.

The Chairman. Well, the remark of the delegate of Saudi Arabia with regard to the definition of “property” has also been answered by the British delegation. We ask Saudi Arabia whether he is satisfied by this explanation. Yes Sir, you have the floor.

Saudi Arabia. Thank you very much, Mr. Chairman. Obviously my country’s delegation does not object to that we see and the proposal of the United Kingdom, but our intention was to clarify the definition to a greater extent and therefore I made my proposal, i.e. to add “carriage of cargo at risk”. This would only clarify the situation further. Thank you very much, Mr. Chairman.

The Chairman. I am not sure whether this would clarify the situation. Normally the definition of property as such covers of course, cargo; cargo is a property and, in addition
the definition mentioned “freight” so it means the payment which is made for the carriage of the cargo because freight is not covered by the word “property” in the normal sense and we have to do it by definition, so if we would add the words “carriage of cargo at risk” we would confuse the whole definition, because then people could ask, what does it mean “property”? Cargo is a property and it is understood that it comes under the word “property”. That is the situation. If we add that, I am afraid we would even more confuse the situation than clarify it.

Saudi Arabia. Yes, I agree Mr. Chairman. Yes, I am totally convinced by the explanation you have just given us, and thank you very much.

Documents LEG/CONF.7/VR.47-49

The Chairman. Well now the proposals on article 1 subparagraph (c). First I will ask you who is in favour of the text of the basic draft as it stands unamended in document 7/3; who has a preference for the basic draft, please raise your cards, subparagraph (c). Twelve or is that thirteen; is it a point of order, Spain, OK you have the floor.

Spain. Thank you very much Mr. Chairman. May I take the floor in order to consider the possibility of taking now a vote so promptly. As you will remember this morning indeed you said that you would give me the possibility of explaining, at least the reason which had suggested that my delegation present this new proposal contained in working paper No. 1251, so I can’t really agree on having a vote on the basic text when we still haven’t even introduced the amendment put forward by my delegation with respect to the basic text. This morning we had agreed that we would follow a shortened procedure. We would present the proposal and other delegations could comment on it, so.

The Chairman. Sorry, I overlooked that, it is not necessary to speak long on that point, I accept it immediately. I overlooked that, I was a little bit too quick and I had to proceed more speedily. I promised you that you could introduce your paper and promised you also that I would then ask one speaker in favour and one other speaker against and then proceed to a vote or ask for preferences. I am sorry, Sir that I overlooked that, we will come back to the voting and first I would like to give Spain the floor to make the introduction. If it is possible make it short, we have only some minutes left for this procedure.

Spain. You are very kind Mr. Chairman, to give me the possibility of explaining this proposal and will try to be as brief as possible. In actual fact the proposal has only two lines but it covers three separate matters so I will explain the three separately and I would also ask you when we have the indicative vote to vote separately on the three aspects thereof. Starting with the most simple, first of all the problem of the freight. As you see in our text we refer to any freight at risk, this only means we are following the simplified proposal which had been put forward by the UK, but by adding the word “any” we want to broaden the scope so as to be able to include time charter freight as

(51) Document LEG/CONF.7/CW/WP.12
Proposal by the delegation of Spain
Amend article 1(c) as follows:
“… and includes vessels incapable of navigation as well as passage money and any freight at risk”.
we have explained yesterday. So that is the first part of our proposal. The second aspect of our proposal is also very brief, that is to say, a reference to the passage money which was referred to in the 1910 Convention and which has disappeared in the discussions of the Legal Committee. We would ask passage money to be specifically included in order to clear up any possible doubt thereon. And the third aspect in our proposal is somewhat more complicated. This would be indicating that we consider as property vessels which are not suitable for navigation. Why at this point of the debate do we want such an inclusion of vessels incapable of navigation, well its because for our delegation it was not at all clear from the discussions we have had so far in this committee, nor was it clear from the discussions in the Legal Committee to what extent the term “property” as now drafted covers those vessels which are not in paragraph (b). Paragraph (b) refers to ships capable of navigation, and our question is: does paragraph (c) cover other vessels or not? You must remember that, in practice, vessels cover a whole range: vessels which are afloat abandoned by their crews, other vessels which have run aground with the crew on board or not, ships which are damaged, ships which are completely sunk, even in shallow waters, vessels which are only partially sunk; there is the possibility of vessels lying intact on the bottom, other vessels lying on the shore bed but broken in two, or other vessels buried in the shore bed. So the whole range of possibilities is very wide, and this morning and yesterday we were able to see it in the various proposals submitted, withdrawn and so on. Mr. Chairman, our delegation does not understand to what extent the word “property” covers those vessels which are not included under paragraph (b) of article 1. The two legal systems on this matter have moved from two different approaches – the Mediterranean Latin approach which has understood that anything that is sunk should not be the object of salvage but should be covered by another type of arrangement; and the Anglo-German systems which considers the salvage of property and vessels afloat and which have been sunk. We have tried to reconcile these two systems in the text we have here, but the result is a rather hybrid solution which does not entirely reflect logical considerations. The hybrid system would appear to be that any property which is not a ship which is afloat or which is in the water or below the water can be salved, and falls within the scope of this convention, whereas only vessels capable of navigation would be covered by the convention. Other vessels would not be covered or considered at all. In the hybrid system we have before us here, only one type of property, that is to say, vessels which have been sunk or broken or which are damaged, are included, and the others are excluded. We believe that a decision should be taken in this committee, and the conference should take a decision in order to indicate clearly which vessels are covered by the scope of application and which vessels are not covered. We see two logical possibilities: either you exclude from the scope anything which is sunk, not only vessels but everything, or else you include everything whether sunk or not as we favour the latter solution, particularly with a view to protecting the environment, and in order to avoid any misunderstanding, vessels, bins containing all which might pollute the water, we would like to include under paragraph (b) vessels capable of navigation and vessels incapable of navigation. The courts will decide on a case by case basis which type of vessel should be included or under which category or another. I am sorry that I have spoken at some length, but it is a very essential part of this convention and we would like the text to be clear, even if our proposal is not accepted. We should understand clearly what happens with all these different types of vessels. I would conclude by saying that you might consider the possibility of voting on these three elements separately. One, the problem of the freight, two the passage money, and three the vessels incapable of navigation because these are three different matters condensed into two lines. Thank you, Mr. Chairman.
The Chairman. This is not the normal voting. I shall ask the delegation to express preferences and of course it is very difficult to split one proposal. It was my intention to ask the delegations whether they had a preference for your text or for the other alternatives. I do not now see such a possibility. I find no problem with the freight at risk because that is already in the British proposal, and there only remains the substantive amendments which you have made, which are the passage money and vessels incapable of navigation. I could put different questions on these two items. Would that be acceptable? It seems to me that the question of freight at risk is not the point because that is accepted more or less and is already included in the British proposal. Spain?

Spain. Thank you. We can go along with that, but I would point out that the United Kingdom proposal is not exactly the same as ours. We add “any freight at risk” whereas the United Kingdom proposal only refers to “freight at risk” – the word “any” is not included. Ours goes a little further in order to include time charter freight so it is not exactly the same, but if a separate vote is not wanted, we could take a vote on the two and may be in the drafting committee we could look at this freight business. Thank you.

The Chairman. It is not sure that a court would follow your interpretation on whether you would cover the time charter money by the word “any”. Greece has a point of order.

Greece. Mr. Chairman, at this stage I know that I am not going to comment on the Spanish proposal. However, I have to add that I have a consequential point of order. If the Spanish text is accepted as it is, then this delegation will reserve the right to submit a proposal for the inclusion of that case in the reservations of article 24 in so far as ships incapable of navigation. I make this statement now in order that tomorrow I shall not be rebuffed by saying that this statement comes rather latish; it has to be latish because it has only just been born. Thank you.

The Chairman. I take note of that statement. I allow now one speaker in favour.

Is there a delegation which is in favour of the Spanish text or both elements; passage money or vessels incapable of navigation? Mexico, please take the floor.

Mexico. We could accept the Spanish proposal because it follows the Mexican law which is very similar to the Mediterranean law referred to by the Spanish delegation. The inclusion now of vessels incapable of navigation is due to the fact that this term should have been included in regard to vessels which have been sunk or abandoned and such like. So have been included in regard to vessels which have been sunk or abandoned. This in Spanish is referred to “recuperation of the sunken ship”. The sunken ship thus becomes a wreck and is no longer a vessel and is not covered by the definition of a vessel. So the proposal put forward by Spain is correct in this sense. This is why we would agree that in view of the fact that as suggested by Spain the sunken ship – if it is not included in (b) it should be included in (c). The reference to passage money is correct because it follows the original version of the 1910 Convention and we do not know why it was dropped. And finally as regards any freight at risk, there again we would agree with the Spanish proposal because it is clearer and more precise. And as we follow Mediterranean law, we agree with the Spanish proposal for the reasons explained. Unless the other proposal which refers to abandoned or sunken vessels is not withdrawn, and if that is not the case, we would have to follow the Spanish delegation in order to avoid any problem. Thank you.

The Chairman. The proposal of the Federal of Germany on sunken vessels has been withdrawn. I allow now the speaker against. Italy, is that against the proposal of Spain? You have raised your card. Do you want to speak against? You have the floor.
Italy. Thank you, Mr. Chairman. The entire delegation is in the same position as the Greek delegation. Thank you, Mr. Chairman.

The Chairman. Well I think if there is no-one – the Democratic Yemen. Is that against the proposal? Then I give you the floor.

Democratic Yemen. Thank you, Mr. Chairman. I think it is a very important point of clarification and if necessary you can take it as a point of order. But to us it has been pointed out, first by the Spanish delegation, and again by the Mexican delegation that the definition of “vessel” is not clear. Now we have not taken any indicative vote on item (b) and I did not raise any objection to that because I took it that item (b) has been agreed after the introduction of the word “any”. If you would remember, Mr. Chairman, that I withdrew my proposal with regard to abandoned and stranded ships after it has been clarified that the definition as introduced in item (b) includes all ships whether they are stranded, sunken or abandoned. Now this question has been raised again and it gives the impression that the point has not yet been decided. My understanding is that the point has been decided. Thank you, Mr. Chairman.

The Chairman. It has been decided and was very clearly changed. All delegations have withdrawn their amendments, and we added the word “any”. And so far we have a very clear situation. Well, if there is no speaker – I see it is 5.30 p.m. I am terribly sorry that we have prolonged this debate. Could you ask the interpreters if we can go on for five minutes. Five minutes, yes. Yes, for the vote. O.K. I am sorry that we have to come back to the vote on the basic text. We have been interrupted during voting and I would like to ask you again, who was in favour of the basic text that means Article 1, subparagraph (c). Please raise your cards. Well the result is 14 have the preference for the basic text. Then we come to the French proposal to include into (c) the wording “other than maritime cultural property” and that would mean also that delegations who have a preference for that text would have a preference for the definition of “maritime cultural property”. Both texts are contained in document 7/2422. Who has a preference for this amendment proposed by the delegation of France? Please raise your card. I thank you. Ten have a preference for that text. Then we have a proposal of the United Kingdom for a new text. This is contained in document 7/14 on page 2. Who has a preference for the proposal of the United Kingdom? Please raise your card. 19 delegations have a preference for this text. And we can come then to the Spanish proposal. I will ask for preferences regard to the two elements. First, the first element – “vessels incapable of navigation”. Who has a preference for the inclusion of these words? Please raise your cards. Four delegations have a preference for the inclusion of this wording and we come then the “passage money”. Who has a preference for the inclusion of “passage money” in article 1, subparagraph (c). Please raise your card. Five. Well I thank you.

19 April 1989
Documents LEG/CONF.7/VR.65A-67A

The Chairman. Spain you have the floor Sir.

Spain. Thank you Mr. Chairman, yes I would like to refer to the strike because we have to travel to come here but seriously its just on a point of order. I’d like to know

(52) Infra, page 109 note 54
what your intentions are for the discussion now. You said that we would be making
general statements on article 25 is that it? And once we have finished with article 25 I
understand that we have finished the first package to which you were referring, article
1, 24 and 25. Now could we then come back and have an overview on the articles
because my delegation would like to go back to article 24 whenever you think this is
possible. We did have a working paper on article 24 and we would like to know when
we can introduce that. Thank you Chairman.

The Chairman. That has already been distributed. That’s working paper No. 1953
for your information. It is up to you I said that we would leave aside article 24 for the
time being because I thought that every point has been already discussed and that only
the points which are under negotiations between some delegations are open. We have
overlooked here your working paper which I have just received. H as anybody received
that working paper No. 19 already. Yes, we can discuss that now in order to finish 24,
its not my intention to go back to 24 and have another debate. Tomorrow afternoon
we will only make decisions. So I give you now the possibility to introduce your
document. You have the floor Sir.

Spain. Thank you very much Mr. Chairman. Unfortunately for my delegation we
have not got very clear ideas as to what the objective scope of the Convention is. I would
like to inform you that in several unofficial consultations which we had with our
colleagues we wondered what the meaning of the draft of article 1(a) and (b) is, as it
appears in the text. And the answer we received were very different from these various
debates, and we reached the conclusion that indeed the assembly has very different
views as to the scope. Some said in a very convinced way that the term “property” does
not cover sunken ships. Others say that it does but it doesn’t cover wrecks. Others said
that it includes everything, that some vessels are covered by (a) and the other vessels are
covered under (b). So we are now convinced that there is no clear view as to the scope
of application, or at least many delegations don’t have the same idea on the problem.
And I don’t think that it is very good to continue discussing the Convention without
having cleared up this point. I won’t speak at great length because I don’t wish to repeat
what I said yesterday. But the new element in working paper No. 19 is possibly that of
trying to find a form of words which would make it possible to reconcile the various

(53) Document LEG/CONF.7/CW/WP.19
Proposal by the delegation of Spain
Article 1 and article 24 (LEG/CONF.7/3)
1 Leave article 1(b) as in the basic text.
2 Amend article 1(c) in accordance with LEG/CONF.7/CW/WP.12.
3 Add the following new subparagraph (d) to article 24(1):

“(d) to sunken vessels and property or to sunken vessels and property in its internal waters
or in its territorial sea”.

With this “package” two important objectives would be achieved:

(a) It would eliminate the difficulty of distinguishing, for the purpose of determining the
scope of application of the Convention, between the various situations in which a vessel might
find itself, since all vessels would be covered, either as “vessels” or as “property”.

(b) It would provide a flexible and practical solution for States under whose legal systems
the recovery or sunken objects is considered as “recovery” or “extraction” and not as
“salvage”. It would thus unable States to choose between the two proposed reservation
formulas and select the one whose “territorial” scope best meets the requirements of its
domestic law and legislative policy.
legal systems which do not consider salvage as the recovery of property which is at the bottom of the sea. Our delegation believes that it is proper that the scope be as broad as possible, and we support this in general terms, so as to cover all types of property and all types of vessels wherever they are, sailing on the sea or at the bottom. But this is difficult to accept for some States where the internal legislation is clearly of a different nature. What we are trying to do is to provide flexibility so that all Member States can accept the Convention in its broad meaning but with the possibility of adapting it to their domestic requirements, and to their legislation. So as we explained according to our proposal we would include the possibility that States at the time of ratifying could enter a reservation in order not to cover vessels which are sunk with the two-fold possibility, either to include them in the area covered by their sovereignty, that is to say the internal waters or territorial sea, or in any waters. So a two-fold possibility but with the purpose of achieving the desirable flexibility which would in the final analysis allow a very broad international acceptance of the text which we are here discussing. So I would like you to take our proposal into consideration and we would like to know what the various delegations think of it. Thank you Chairman.

The Chairman. I thank you. Well you have heard the introduction of the delegation of Spain; the floor is open for comments on that proposal on working paper No. 19 under paragraph 3. First speaker is Mexico.

Mexico. Thank you Mr. Chairman. We clearly agree with the Spanish proposal because it covers the problem which my delegation explained yesterday as to the sunken vessels. Clearly the lack in legislations and Latin American ones in particular, to distinguish very carefully between the vessel as a property and sunken vessels, in nearly all our legislations, in our various countries, the sunken vessel is no longer a vessel legally and becomes a wreck. So the explanation given by Spain should be accepted from a Latin viewpoint which is why we clearly and firmly support the proposal put forward by Spain. Because it would solve our particular problem which would become a very serious one in our legislations. Thank you Mr. Chairman.

The Chairman. I thank you. Yugoslavia.

Yugoslavia. Our delegation is seconding this Spanish suggestion and proposal. We have the same case in Yugoslav legislation and I think this proposal would not do much harm and will open the door to the flexibility of the new act. Thank you Sir.

The Chairman. Thank you. The next speaker is Ecuador.

Ecuador. Thank you Mr. Chairman. My delegation views also with sympathy the Spanish proposal to include as a reservation the reference to wrecks. Than you.

The Chairman. Any other delegate who wants to take the floor. Venezuela.

Venezuela. Thank you Mr. Chairman, the delegation of Venezuela would go along with the proposal by Spain. Thank you very much.

The Chairman. Thank you Madame. We can find out very simply by an indicative vote whether there is general agreement. Up to now no delegation has spoken against that proposal and perhaps we can confirm. Ireland, yes.

Ireland. Thank you, Mr. Chairman. I think our position is against this proposal for the reason that it would introduce an absence of uniformity in approach into this Convention. It would be our belief that the definitions at present take care of the problem and that to now introduce this into the Convention instead of producing clarity would do the opposite, and we would lose uniformity. I don’t know if this is
what the indicative vote will show, but I hope it doesn't show that there is a difference in interpretation. Thank you, Mr. Chairman.

The Chairman. The floor is still open. United Kingdom.

United Kingdom. Mr. Chairman, we have always taken the view that sunken vessels and wrecks are included in the term “property”. If I understand what has been said by the Spanish delegation and its supporters correctly, I’m not quite sure why the same would not apply there. As I understood what was clearly said on behalf of the Spanish delegation, a sunken vessel is no longer a vessel. But does it not then follow that it would be included in the property which is certainly what we had assumed was the general consensus. Thank you, Sir.

The Chairman. Thank you. As long as that property is in danger of course – that is the necessary qualification which has to be added. My feeling is that it is more or less the fear of the delegation of Spain that property would include sunken vessels, and for that reason he would like to give the power to States to make a reservation in order to exclude at least in their national territories - that means, internal waters and in the territorial sea - the application of the Convention to these objects. Is my interpretation correct, Spain?

Spain. Yes, Chairman. Indeed, we also believe that property covers sunken vessels and all those not covered by (a), and we were trying to go along with what you have just explained – that is to say, to give the possibility to those States to exclude them, thanks to a reservation. Thank you, Chairman.

The Chairman. Thank you. I believe we have understood well the intention of your proposal. Are there any other comments? Sweden.

Sweden. Thank you, Mr. Chairman. When I raised my card I didn’t do so in order to add anything to the discussion in substance, but now that I have the floor I might just associate myself with what the distinguished representative of the United Kingdom just said. We also consider that the property mentioned here in subparagraph (d) of the Spanish proposal is already covered in the definition in article 1. But why I raised my card was to seek some clarification on whether there is some misprint or mistranslation or if I don’t understand the text correctly. The English version says that should not apply “to sunken vessels and property or to sunken vessels and property”, etc. I wonder whether the first part or the second part of vessels and property should be deleted, or whether there is something more sophisticated that I cannot fully understand.

The Chairman. I’m afraid that the phrase has been included, it’s the same – in my opinion, at least. We will check the English version and see whether there is an error of translation or something like that. You are right, Mr. Göransson. There must be a mistake, but in any event we can discuss that... Or is there no mistake? Spain? You have the floor, Sir.

Spain. Thank you for giving me the floor. To explain this matter. I think that the Spanish version is correct and to the extent to which I understand English, the English translation does also appear to be correct. It says “to sunken vessels and property or to sunken vessels and property”... In other words, you have a twofold possibility. There are some States which only exclude from salvage property of vessels which are sunken in its waters, in its territorial sea, whereas other States consider that anything which is sunken, wherever it is, is excluded from salvage. This is a flexible form of words which enables two types of reservations.
The Chairman. Correct. I see it now. I overlooked that you had included two alternatives. So far, my interpretation has covered only half of your proposal. I thought your intention was to give the competence to coastal States to make the reservation in respect of their internal waters and their territorial seas but your intention is to give the power also to States to make this reservation in general. That goes of course very far. The next speaker is Japan.

Japan. Thank you, Mr. Chairman. As you know, not all sunken vessels are wrecks. The notion of a sunken vessel usually includes a vessel to be salved. If my understanding or interpretation of the Spanish text is correct, if this kind of reservation is adopted, many cases of salvage might fall outside the application of this Convention by reservation. Therefore this delegation cannot support this proposal.

The Chairman. The Netherlands.

Netherlands. Thank you, Mr. Chairman. We’re amongst those who cannot accept the proposal by the delegation of Spain. In the first place, and I think I can agree fully with the Professor Tanikawa that to refer merely to sunken vessels would go too far because not all sunken vessels are wrecks. Furthermore, we now understand that the exception would not only deal with sunken vessels and property sunken in the internal waters or in the territorial sea of a State making that reservation but would have more a general meaning and I think that would come into conflict with the international harmonisation we are trying to reach here, because then, according to the lex fori, in some countries – and we are dealing with salvage cases on the high seas – the Convention would not apply, while in other countries for the same case, it would apply. I have some problems with that. In the third place, we are buying with this proposal also WP. 12. There were yesterday, I remember, considerable objections also with regard to that proposal. We do not feel that we should include the words “and includes vessels incapable of navigation” and we would also buy the passage money, which I think many delegations could not accept. So this whole package is not acceptable to my delegation. Thank you very much.

The Chairman. Thank you. The next speaker is Italy.

Italy. As we said yesterday, Sir, we have similar problems to those expressed by the Spanish delegation. Consequently, we feel that amongst the reservations which are covered by article 24, there should be a reservation which would make it possible for States to exclude from the scope of application of the Convention wrecks, as indeed was proposed by Spain.

The Chairman. The Republic of Korea.

Republic of Korea. This delegation could not support the proposal of the distinguished delegation of Spain because if a sunken vessel is incapable of navigation, it is the subject of a salvage operation. If the sunken vessel is just a wreck and according to the definition the wreck can be the subject of a salvage operation, it can be regarded as property is. Therefore, this delegation thinks that there is no problem at all because the definition is quite clear.

The Chairman. I call on the delegation of France.

France. Mr. Chairman, thank you very much. Sir, I want to make a brief comment if I may on the proposals made by the Spanish delegation. They are proposing, quite rightly in our view, the exclusion of sunken vessels and property and they propose this only for territorial waters and internal waters. We understand entirely the concern of
the Spanish delegation because we feel that anything sunken, property or vessels, are not a matter of salvage, because they are basically wrecks. This is a matter of different legislation. Unfortunately we have one small point of disagreement with the Spanish delegation, which is the following: if national legislation on wrecks applies in territorial waters, then as is the case with the French legislation, this could apply to sunken vessels, property or anything dragged up from the seabed, being found on coasts or in territorial waters. It is quite simple really. If a wreck is taken off the high sea onto a coast of a national State, what applies. There is nothing international applying at high seas for wrecks and certainly there must be some national legislation applicable. What will apply one might ask oneself? What would our Spanish colleagues say? Take the example, what happens if a wreck is taken from the high seas to their own national waters, onto their own coasts indeed. What is applicable in terms of law? What really happens? What is the difference between a wreck refloated in territorial waters and brought into a Spanish port or a wreck, which is 100 metres let us say, considered on the high seas and brought into a Spanish port. What does Spanish law say? Does Spanish law apply or not? This is an assumption, I agree. If what I have said does not apply, what does apply? It seems to me, therefore, absolutely imprudent and really out of the question to limit the application of our Convention to internal waters or territorial waters because the idea underlying the whole thrust is to have national legislation on wrecks applicable rather than maritime salvage convention law. The wreck legislation which is certainly the case in France, applies not only to wrecks found in territorial waters but also applies to wrecks which are brought to the coast of the country involved and within territorial waters. So if Spain would agree to delete internal waters or territorial sea, I would agree. If not, I am sorry it is a good idea but I do not think it solves the problem. I would hope Spain would agree to my idea. I would prefer if Spain could agree to accept that subparagraph (a) says to “sunken vessels and property” or “to sunken vessels and property”. Right.

The Chairman. Spain you have asked for the floor. Is it to reply to the French question?

Spain. Thank you very much. Replying to my distinguished French colleague, I would say that indeed taking into consideration the concern he has just expressed, that is why we worded this reservation as the possible alternative so that for a country like France who apply the legislation on recovered property outside the territorial waters, they could make a reservation on the basis of the first part of the paragraph, and on the second case, for those countries who like Spain who only apply the legislation on removal to wrecks in the territorial waters, they would enter the reservation in a more restricted and specific manner as covered by the second part of the reservation paragraph. As I said, Mr. Chairman, you have two reservations or two possibilities for making a reservation. In replying specifically to the French question, I would say that in Spain the removal legislation on wrecks or on sunken property only refers to the territorial waters. Beyond that another legislation would apply, salvage or other. But I do not think there is any need to explain in detail what the Spanish legislation is. However, I would draw attention to the fact that the two possibilities are covered. We are trying to give satisfaction to his legislation and to ours. Thank you, Chairman.

The Chairman. Yes, I thank you. France.

France. Thank you, Sir. Very briefly, I promise you. The present text in French does not give an alternative. That is the way the French text reads. If you want an alternative it should be drafted differently. What we should say “when it is a matter of sunken
vessels and property” or “in territorial waters” I have a text in French which would put me right in the boat, if I may say so. The whole idea of a perspective, Spain says, the drafting should be changed. The French does not offer an alternative. Thank you.

**The Chairman.** Mr. Douay, in the English text it is “or” but of course it is not properly formulated as an alternative. An alternative should have been formulated in two stages or in two subparagraphs, that state “making a reservation” could refer to a specific subparagraph, that would be the proper way to introduce an alternative but I was informed that in the French text there is a grammatical problem and in English it is “or” in any event, but nevertheless it is not drafted as clear alternative. Spain, did you ask for the floor.

**Spain.** Thank you, Mr. Chairman. Just in order to say that this appears to be a grammatical problem. But what we are discussing here is the substance. We can certainly solve the grammatical problem later on in the drafting committee in order to reflect the concerns expressed by France and to clearly reflect the actual meaning of our proposal which is just what I have explained. Thank you, Mr. Chairman.

**The Chairman.** The next speaker is Greece.

**Greece.** Thank you. Well I am sure I have prepared myself in such a way as to take off the earpieces, and then could not hear you at all. This intervention would have been entirely useless but is dictated by a sense of loyalty only. You will recall, Mr. Chairman, that yesterday I made a proposal which sounded remarkably similar to the Spanish paper, which I think in order to be properly understood in the English text lacks one word, the word “generally”. You can say “to sunken vessels and property generally” or “to sunken vessels and property in the external waters or in the territorial sea”. If you add the word “generally” you have solved your problem. What I meant to say, is much to our regret, first of all I have to say something else. Yesterday during the debate we had on the substance of WP.12 it was said to us that the overall view was that this was not receiving, shall I say, the support of the majority, let alone of the overwhelming majority. However, our view was that if we had to add a reservation, this would have to be the possibility, that would have been phrased with just “to sunken vessels and property” or “generally to sunken vessels and property” and stop. That is to say that if we want to be compatible with our own legislation, otherwise we prefer to have the present text, and leave to the judiciary and to proper laws to decide whether the notion of property would include sunken vessels. In our view of legislation it is nonsense. Now one more thing I want to say to all distinguished participants is this. It is all very well to say uniformity, uniformity should be aimed in all points internationally and I do not want any prerogative of any State to be attacked. It is the prerogative of the State to consider whether a sunken vessel should not be property, should not be property, that is subject to salvage and that is that. We cannot attack that. What I would like is to add something else which has been hinted at by the distinguished representative of the United Kingdom in a different context is this, that salvage by its terminology applies only to something that is in danger, at risk and that if you look at any policy of insurance you will see what is at risk. A sunken vessel is no more at risk. It is at risk - but so are we all, including humans. But it is not at risk from some outside danger. Therefore to conclude, if there is an overwhelming support to include the drafting of WP.12, then I shall be insisting to include something on the lines of (d) but not that text. Thank you.

**The Chairman.** I thank you. I can give you figures on voting of yesterday. Four delegations have supported the idea to include the text proposed by Spain in WP.12. I would like to say that I hope you will not start a debate on the question whether a
sunken vessel can be in danger or not. It would take days to clarify that. I give the floor to the United Kingdom.

United Kingdom. Sir, without starting a debate, it does surprise us very much to hear that a vessel which may sink in shallow waters in one piece, whether in territorial waters or on a reef at sea, which is easily raised is not the proper subject matter for a salvage award. We have always, as I understand the law, so considered it and thought as you yourself said, Mr. Chairman, earlier on, that would be the subject matter of an award because she would break up unless she was raised and brought to safety, so we are astonished to hear it suggested that something in that condition which is not a wreck should be excluded from this Convention.

The Chairman. I thank you. Well I believe it is time to come to an indicative vote on this proposal. To a certain extent this also depends on the adoption of the proposal that Spain made yesterday by submitting the document WP. 12. But now we have received this proposal, we have to vote separately on that, and I would like to propose that we proceed to an indicative vote on the proposal of Spain contained in WP. 19 under paragraph 3. Is that acceptable? O.K. Who is in favour of the Spanish proposal in working paper no. 19 under paragraph 3, that means to add a subparagraph (d) to article 24, paragraph 1. Who is in favour please raise your cards. Thank you. Who is against that proposal? Please raise your cards. Well, thank you. The result is 14 in favour, 25 against. That means by the indicative vote, the proposal has been rejected. We will come back to that proposal when we formally vote on all provisions which belong to package no. I, unless Spain withdraws its proposals. Well that is up to Spain. You do not have to explain that now, you can do that later. Fine, we have now, I hope, concluded the debate on Article 24 and we will come to a discussion on Article 25.

21 April 1989

Document LEG/CONF.7/VR.111

The Chairman. We come now to article 1, subparagraph (c). Here we have several proposals. One proposal, submitted by the delegation of France in document 7/24, you will find the text on page 1, the definition of property. You will first vote on this amendment and we will, at the same time, vote on the consequential amendment in the text. Is that what you are going to say, M. Douay? You have the floor.

France. Mr. Chairman, I would like to enable us to gain time in view of the indicative vote which took place previously on this French proposal, and also bearing in mind another French proposal which is made in article 24, we would withdraw this amendment. Thank you.

The Chairman. I understand that you have withdrawn all amendments proposed in document 7/2454, both amendments, one proposal with regard to property and the other

---

(54) Document LEG/CONF.7/24
Additional observations submitted by the French Government
1 Article 1(c)
In the opinion of the French Government it is desirable to make a distinction between wrecks under ordinary law and wrecks of cultural interest. The protection of cultural, historical or archeological property demands a respect for the integrity of sites which makes it necessary to exclude maritime cultural property from the scope of the Convention.
with regard to maritime cultural property, the definition. Have you withdrawn both?

**France.** Mr. Chairman. We withdraw the French proposal in document 7/24 which refers to 1(c) and 1(d), the definitions of damage. Thank you.

**The Chairman.** M. Douay, on page 1 you have also proposed the definition of maritime cultural property. I understand that has also been withdrawn, not only (b) but all that definition. Fine, O.K. That document is no longer relevant and we come to a proposal submitted by the United Kingdom in document 7/14. On page 2 of that document you will find a new definition of property which is proposed by the delegation of the United Kingdom. You will first vote on that amendment. Who is in favour of the British proposal contained in document 7/14 for a new definition of property? Please raise your cards. Thank you. Who is against that proposal? Please raise your cards. Abstentions? No abstentions. The result of the vote is: 28 in favour, 10 against, no abstentions. That means the proposal of the United Kingdom has been adopted; at the same time, that text will replace the text in the basic draft of article 1, subparagraph (c). We have now a new subparagraph (c).

DRAFT ARTICLES AGREED BY THE COMMITTEE OF THE WHOLE
(Document LEG/CONF.7/CONF.7/CONF.7/DW/4)

Article 1 - Definitions

For the purpose of this Convention:

(c) Property means any property not permanently and intentionally attached to the shoreline and includes freight for the carriage of the cargo, whether such freight be at risk of the owner of the goods, the shipowner or the charterer.

TEXT EXAMINED AND APPROVED BY THE DRAFTING COMMITTEE
(Document LEG/CONF.7/CONF.7/CONF.7/DW/1)

No change.

Plenary Session 28 April 1989
Document LEG/CONF.7/CONF.7/VR.225


The definition of “property” in article 1(c) should therefore be worded as follows:

“Property means any property, other than maritime cultural property, not permanently and intentionally attached to the shoreline and includes freight for the carriage of the cargo, whether such freight be at risk of the owner of the goods, the shipowner or the charterer.”

If it is considered necessary to clarify the concept of “maritime cultural property”, the following definition might be adopted:

Maritime cultural property means any site, wreck, remains or, generally, any property of prehistorical, archeological or historical interest”.

(55) Supra, p.52 note 20.
FOR THE PURPOSE OF THIS CONVENTION:

(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.

CMI
Report by the Chairman of the International Sub-Committee
Document Salvage 5/IV-80

4. Liabilities arising out of salvage (the concept of salvage).

   a) The 1910 Convention art. 1 means, generally speaking, that it is salvage of the property value of ship, cargo and other things onboard which creates the liability to pay compensation for the services rendered.

   Compensation due under the law of salvage should continue to be payable by the owners of ship and cargo and their respective insurers. This should apply also where the measures taken by the salvors have prevented damage to third party interests outside the ship since it is difficult to envisage that a duty to pay for salvage should be extended to such third parties.

   b) Nevertheless, the concept of salvage should be extended so as to take account of the fact that 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 only 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 operations.

   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 benefits.

   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 where third party interests outside the ship are in danger, particularly in cases where the chance of saving ship and cargo is rather remote. Finally, contributions from new sources may enable the international salvage capacity to remain at an adequate level.

CMI Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Article 1.1 - Definitions

6. Damage to the environment means damage by pollution or contamination to coastal areas, or to air, land or waters adjacent thereto, or to life therein.

   [5. Salvage of Liability means:

   alt. 1. Salvage operations which prevent the escape of [oil], [oil, chemical; gaseous, or other hazardous cargos] which may cause damage to the environment and thereby [demonstrably] have the effect of avoiding or minimizing liability for such damage.
alt. 2. Salvage operations which prevent oil, chemical, gaseous, or other hazardous cargos causing damage to the environment [third Parties] and thereby [demonstrably] have the effect of avoiding or minimizing liability for such damage.

alt. 3. Salvage operations which prevent damage to person or property being caused to third parties, and thereby, [demonstrably] have the effect of avoiding or minimizing liability for such damage.

Draft submitted to the CMI Montreal Conference
Document Salvage-18/II-81

Article 1.1 - Definitions

4. Damage to the environment means substantial physical damage by pollution, explosion, contamination, fire or similar major incidents in coastal or inland waterways areas or to air, land or waters adjacent thereto, or to life therein.

alt. 1. Salvage operations which prevent the escape of [oil], [oil, chemical; gaseous, or other hazardous cargos] which may cause damage to the environment and thereby [demonstrably] have the effect of avoiding or minimizing liability for such damage.

alt. 2. Salvage operations which prevent oil, chemical, gaseous, or other hazardous cargos causing damage to the environment [third Parties] and thereby [demonstrably] have the effect of avoiding or minimizing liability for such damage.

alt. 3. Salvage operations which prevent damage to person or property being caused to third parties, and thereby, [demonstrably] have the effect of avoiding or minimizing liability for such damage.

Report by the Chairman of the International Sub-C Committee
Document Salvage-19/III-81

A key concept in the Draft Convention, Damage to the environment, has been defined in art. 1-1(4). This term refers to physical damage to persons or property, not to the economic consequences thereof. It points to damage outside the ship and covers cases of pollution, contamination and the like damage to air, land or waters in or inland waterways areas as well as other types of substantial damage in such areas caused by fire, explosion or similar major incidents. This concept is used in art. 3-2(1) b and art. 3-3, where the relevant considerations are the endeavours of the salvors to avoid or minimize such damage or the extent to which this has been done. Damage to the environment can in a sense be described as a generic term since, as a rule, it does not refer to damage to any particular person, property or interest, but rather to damage in the area concerned. Relevant in salvage law is not the damage itself, but that there exists a risk of damage emanating from a ship in danger.

Montreal Draft
Document LEG 52/4-Annex 1

Article 1.1 - Definitions

4. Damage to the environment means substantial physical damage by pollution, explosion, contamination, fire or similar major incidents to human health or to marine life or resources in coastal or inland waterways areas or areas adjacent thereto, caused by pollution, explosion, contamination, fire or similar major incidents.
This is a key concept in the draft convention. It is used in Art.3-2.1. (b) and Art.3-3. where the relevant considerations are the endeavours of the salvors to prevent or minimize such damage or the extent to which this has been done. In these provisions is not the damage itself which is relevant, but the fact that a risk of such damage exists emanating from a ship in danger.

Art.1-1.4. refers to physical damage to persons or property, not to the economic consequences thereof.

By using the words “substantial” and “major” as well as the reference to “pollution, explosion, contamination, fire” it is intended to make it clear that the definition does not include damage to any particular person or installation. There must be a risk of damage of a more general nature in the area concerned, and it must be a risk of substantial damage.

During the Montreal Conference the words “to human health or to marine life or resources” were added to exclude further from the concept cases where there may only be a risk of substantial physical damage to other property, e.g. warehouses or other buildings ashore.

The use of the words “coastal or inland waters” serves to make it clear that cases where there is only a risk of damage to the environment on the high seas are excluded. This is felt to be important since there would often be a possibility of speculative and inflated claims based on loose assertions that general environment damage to fishing or other ecology was involved. It must be stressed, however, that damage in coastal waters emanating from a ship in danger on the high seas is not excluded.

As can easily be seen, the definition includes much more than pollution. It is not limited to risk of damage caused by oil or other specific cargoes. The use of the words “explosion” and “fire” in particular shows that it is the intention to cover all major incidents comprehensively.

35. Some delegations questioned the inclusion of “fire” and “explosion” among the elements in “damage to the environment” on the grounds that the shipowner should not be responsible under a private law convention for remunerating the salvor for avoidance of such risks, since he was not responsible directly for damage by fire or explosion to the marine environment. Other delegations questioned the inclusion of these elements in the definition because the shipowner was not strictly liable for such damage and he could, in any case, limit his liability within internationally accepted limits. Some other delegations could not accept the exclusion of risk of damage to the environment on the high seas, despite the CMI’s reason that this would avoid speculative and inflated claims. They felt that some areas of the high seas were highly vulnerable to damage. They felt that it was desirable to encourage salvage in all areas where coastal States exercised any rights. In this context it was pointed out that both the United Nations Convention on the Law of the Sea, 1982, and the 1984 CLC and Fund Protocols recognized the principle of compensation for damage or costs of restoration in the exclusive economic zone.
Report on the Work of the 53rd Session (Document LEG 53/8)

31. One delegation pointed out that the inclusion of damage by fire and explosion suggested that the shipowner had unlimited liability in respect of those types of damage. This was not in fact the case. There was no international scheme of strict liability for damage from fire and explosion and, therefore, a provision to make the shipowner liable for the amount contemplated by the draft to a salvor for preventing such damage would not be acceptable. Some delegations pointed out that the purpose of the salvage convention was not to establish liability for damage, but to establish the right of the salvor for remuneration for measures to protect the environment. It was noted that the relation between the shipowner and salvor was not necessarily dependent upon the regime of liability which governed the relationship of the shipowner to third parties.

32. One delegation pointed to the various provisions in international treaty law defining pollution damage. Those adopted in some UNEP regional arrangements included such concepts as damage to amenities. It would seem appropriate for a salvor to be rewarded, for example, if he prevented or abated serious damage to such amenities. Some other delegations saw no need to limit the concept as proposed by the CMI to damage to coastal or inland waters.

33. The representative of the CMI explained that this definition was addressed primarily to the risk posed by a ship in danger. The risk involved would have to be of a general and substantial nature. He added that the words “human health or marine life and resources” were intended to exclude from the scope of the definition physical damage to property only. The definition was also intended to restrict the coverage of the convention to salvage to avert damage in coastal or inland waters. This would exclude speculative or inflated claims for ecological damage or damage to other areas. However, the definition covered all major risks including fire and explosion.

34. The general opinion was that there should be an incentive to protect the marine environment and indeed that this was a central objective of the intended revision of salvage law. It was, however, agreed that efforts should be made to improve the definition and to harmonize it with the provisions of existing treaty provisions in the field of environmental protection.

35. Some delegations asked which areas would fall within the expression “coastal or inland waters or areas adjacent thereto”. They contrasted Article 1-1,1 (which speaks of “whatever waters”) with Article 1-1,4, which seemed to have a more restricted geographical scope of application. The representative of the CMI explained that the use of the words “coastal waters or inland waters” served to make clear that cases involving only a risk of environmental damage on the high seas were excluded. The CMI had decided to avoid specific geographical references such as to the territorial sea and the exclusive economic zone, and had intentionally chosen the more vague expression “coastal waters or inland waters or areas adjacent thereto”.

Report on the Work of the 55th Session (Document LEG 55/11)

Article 1 - Definitions(d)

110. One delegation observed that this definition might be altered to include...
areas on the high seas which needed protection against physical damage to marine life or resources. The same delegation suggested that the definition should also extend to all marine areas in which coastal States exercise valid jurisdiction under customary international law. A nother delegation considered that the definition should include the exclusive economic zone, as in the 1984 Protocols to the CLC and Fund Conventions.

111. The inclusion of the words “explosion” and “fire” were queried by one delegation which preferred that they be deleted or put in brackets.

112. The Committee agreed to put in brackets the words “explosion” and “fire”. Delegations which wished the definition extended in geographical terms were invited to submit specific recommendations and texts to the Committee at its next session.

113. The representative of the CMI observed that the present definition contained a geographical limitation because of the fear that extension into the exclusive economic zone or high seas might encourage speculative claims. It had been agreed to limit the concept of environmental damage to damage in areas adjacent to coastal States.

114. One delegation took the view that there was no need to distinguish between different kinds of damage. All types of danger of substantial physical damage could be included in this definition. With regard to geographical scope this delegation did not feel that it was necessary to include any reference to marine areas in the definition; it was not in favour of speculative claims, but the proof of any claim would be a matter of evidence in a court or tribunal.

Article 1 - Definitions
For the purpose of this Convention:

(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.

Report on the Work of the 57th Session (Document LEG 57/12)

95. The Committee considered a proposal by the delegation of Australia for a new definition of the term “damage to the environment” the text of which was in the annex to document LEG 57/3/Add.1.

96. Some delegations expressed a preference for the Australian proposal. On the other hand, some other delegations felt that the Australian proposal was too broad, in particular by referring to “living or non-living resources”. It was also suggested that the references to the “sovereign rights” of States outside their territorial sea appeared to go beyond the relevant provisions of the 1982 United Nations Convention on the Law of the Sea. One delegation supported the principle contained in the Australian proposal, but suggested that the definition should use the terminology contained in the 1984 CLC and Fund Protocols.

97. There was not sufficient support for the Australian proposal.

98. The Committee agreed to retain the text of the definition unchanged but to remove the square brackets around the words “fire” and “explosion”.
(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.

International Conference
Committee of the Whole 17 April 1989
Document LEG/C/ON F.7/VR.17

Article 1 - Definitions

Chile. Thank you Mr. Chairman. I would like to ask something from the Secretariat through you as regards the expression “adjacent waters” to be found in Article 1(d). Can this be territorial waters, Exclusive Economic Zone or what? I don’t know what happens in the open sea but I don’t consider the open sea to be an adjacent area. If we don’t, what happens with all efforts which are undertaken in order to avoid pollution in the open seas? I would like to have some explanation as to adjacent waters, whether it includes the open seas and if so this would mean there might be damage to the environment if the pollution occurs in the open seas. Thank you, Sir.

The Chairman. Of course I would agree to put that hot potato to the Secretariat but I am afraid that this is the wrong address. This is a text which has been drafted by the Legal Committee and it is up to the delegations to define the terms which have been used in that text. Delegations should say what they had in mind when they drafted that Draft Convention. So I cannot in my opinion – but anyway I would give the floor to the Secretariat – officially ask the Secretariat to give an explanation of that term. But Mr. Mensah you will give an explanation? I am very happy to give you the floor on that point.

Mr. Mensah. Thank you, Mr. Chairman. Thank you very much for really defending the Secretariat, because you are absolutely right – it is not for the Secretariat to give the explanation. I think as you said that this is a decision of the Legal Committee and I do have here an indication of what the Legal Committee meant because in paragraph 35 of the report of the Legal Committee’s eighth session, and in paragraph 113 of the Legal Committee’s eleventh session, that is, documents LEG/53/8 and LEG/55/11, the observation was made and I think with your permission, Mr. Chairman, I will read it.

The Chairman. Yes, of course.

Mr. Mensah. It was said: “It had been agreed to limit the concept of environmental damage to damage in areas adjacent to coastal States, specifically the definition would serve to make clear that cases involving only a risk of environmental damage on the high seas would be excluded.” This is from the report of the Legal Committee. It is not the view of the Legal Committee and I do have here an indication of what the Legal Committee meant because in paragraph 35 of the report of the Legal Committee’s eighth session, and in paragraph 113 of the Legal Committee’s eleventh session, that is, documents LEG/53/8 and LEG/55/11, the observation was made and I think with your permission, Mr. Chairman, I will read it.

The Chairman. Thank you, Sir. Is Chile satisfied with this information? Thank you, Sir.

(57) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
France. Thank you very much Mr. President. I refer to a proposal on environmental damage which I would consider as a supplementary proposal to the definition of cultural property. This is true, insofar as we now introduce in our paper under the concept of damage to the environment, cultural heritage. This is the only addition we want to make to the draft Convention’s basic text of damage to the environment, because we feel that when salvors are in the course of a salvage operation, the first duty imposed on them by the Convention should certainly be to devote their efforts to preserve the environment and we want that concept to extend also to a case (obviously it might be exceptional) but certainly a case where cultural property on the seabed corresponding to our previous definitions, could be protected for this reason. We feel that salvors in their salvage operations should be enjoined not only to take care of the environment in general but also, and more specifically, to take care of the cultural heritage of mankind. This is the reason behind our addition to the definitions which are contained in page 2 of 7/24, paragraph 2, article 1(d). Thank you.

The Chairman. The floor is open. We comment on the French proposal contained in document 7/2458, page 2. No comment. Does that mean that the proposal is acceptable to the Committee. Federal Republic of Germany, will you press your button Sir.

Federal Republic of Germany. Thank you very much, Mr. Chairman. We are very pleased that the silence could at least be due to the fact that our delegation is wondering what is the exact meaning of the French proposal. If we speak of cultural heritage we have to bear in mind that this is a provision which defines damage to environment, which must in a way be applicable by courts so that the damage described is subject to some possible evaluation, in monetary value, and I wonder whether I may ask the distinguished delegation from France whether he could perhaps explain a bit more and give examples of what he may understand as cultural heritage. If this is, let us say, our famous Vasa ship or whatever, it is quite clear, but this is property already, but if it is not, then I think we have lost the understanding of the exact meaning. Thank you very much, Mr. Chairman.

The Chairman. May I ask the French delegation to answer the question. Is France ready to answer the question?

France. Mr. Chairman, thank you very much, but Sir, this definition of cultural heritage refers precisely back to the definition of cultural property, which we produced earlier in the very same document LEG/CONF.7/24. I hope that all delegates have this before them. We have obviously changed the definition of property

---

18 April 1989
Documents LEG/CONF.7/VR.35-38

France. Thank you very much Mr. President. I refer to a proposal on environmental damage which I would consider as a supplementary proposal to the definition of cultural property. This is true, insofar as we now introduce in our paper under the concept of damage to the environment, cultural heritage. This is the only addition we want to make to the draft Convention’s basic text of damage to the environment, because we feel that when salvors are in the course of a salvage operation, the first duty imposed on them by the Convention should certainly be to devote their efforts to preserve the environment and we want that concept to extend also to a case (obviously it might be exceptional) but certainly a case where cultural property on the seabed corresponding to our previous definitions, could be protected for this reason. We feel that salvors in their salvage operations should be enjoined not only to take care of the environment in general but also, and more specifically, to take care of the cultural heritage of mankind. This is the reason behind our addition to the definitions which are contained in page 2 of 7/24, paragraph 2, article 1(d). Thank you.

The Chairman. The floor is open. We comment on the French proposal contained in document 7/2458, page 2. No comment. Does that mean that the proposal is acceptable to the Committee. Federal Republic of Germany, will you press your button Sir.

Federal Republic of Germany. Thank you very much, Mr. Chairman. We are very pleased that the silence could at least be due to the fact that our delegation is wondering what is the exact meaning of the French proposal. If we speak of cultural heritage we have to bear in mind that this is a provision which defines damage to environment, which must in a way be applicable by courts so that the damage described is subject to some possible evaluation, in monetary value, and I wonder whether I may ask the distinguished delegation from France whether he could perhaps explain a bit more and give examples of what he may understand as cultural heritage. If this is, let us say, our famous Vasa ship or whatever, it is quite clear, but this is property already, but if it is not, then I think we have lost the understanding of the exact meaning. Thank you very much, Mr. Chairman.

The Chairman. May I ask the French delegation to answer the question. Is France ready to answer the question?

France. Mr. Chairman, thank you very much, but Sir, this definition of cultural heritage refers precisely back to the definition of cultural property, which we produced earlier in the very same document LEG/CONF.7/24. I hope that all delegates have this before them. We have obviously changed the definition of property

---

(58) Document LEG/CONF.7/24
Additional observations submitted by the French Government.
Article 1(d)
It will be desirable to include the concept of cultural environment in the definition of the environment as given in this paragraph. The paragraph should thus be worded as follows:
(d) “Damage to the environment means substantial physical damage to human health, to marine life, to the maritime cultural heritage or to marine resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.”
to exclude maritime cultural property and we have also given a definition of maritime
cultural property; that is on page 1 of 7/24, which would mean any property of
prehistorical, archaeological or historical interest. Consequently, Sir, when we turn
over the page and we are talking about the question of property and heritage,
explained that during the debate, normally we find that such maritime cultural
property is found on the seabed or half embedded in it, then the environment would
include that property, because the environment includes anything affecting human
kind, flora and fauna, maritime resources, but also obviously it includes what we
consider as treasure trove, archaeological and other treasures found on the seabed or
half embedded therein, which should be equally well protected. For this reason this
cultural heritage (to turn back to page 2) is everything which might be found during a
salvage operation on the site of the salvage operation and where we are requesting that
the same preservation and care are to be taken as for the preservation of all other items
which could be included under the general heading of environment. Cultural heritage
is only one element of the environment; it is not often encountered, it is not the only
item, the least often counted on item, we have flora and fauna, resources of the sea, but
certainly why not objects or prehistorical, archaeological or historical interest

The Chairman. Mr Herber may I ask whether you are satisfied by this answer?

Federal Republic of Germany. Thank you Mr Chairman. Not really, I have to
confess. I am grateful for the answer. I am satisfied with the answer but I am not
satisfied with the proposal. I am afraid I think it is still my concern that it is too vague
to be introduced as a basis for substantial damage which in the context of our
convention perhaps need not to be evaluated just for the purpose of article 11 but
there must be a sound basis for judging whether a given situation has caused damage
to such property and I think it may be subject to a too wide an interpretation so we are
rather inclined not to favour the introduction. Thank you very much.

The Chairman. Thank you. Any other comments – Denmark?

Denmark. Thank you Mr Chairman. Hopefully to make this discussion very short
I can fully support what has been stressed by Professor Herber from the Federal
Republic of Germany.

The Chairman. Is there any other delegation who wants to take the floor and
respond? Well there was no support for this proposal, to make it clear what the
situation is we can have an indicative vote on that proposal. I will explain to you that
all formal votes will be taken together when we have finished the debate on package
number one. In the meantime we will have only indicative votes. Well, is that
acceptable that we proceed to an indicative vote on the French proposal? O.K. Then I
would like to ask the following questions. Who is in favour of the French proposal to
amend the definition of damage to the environment in article 1, subparagraph (d) as
contained in document 7/24. Those in favour please raise your cards.

The Chairman. May I ask again those delegations, I am sorry for the interruption,
may I ask again those delegations who are in favour of the French proposal to raise
their cards. Five in favour, in this case I would also ask delegations who are against to
raise your cards please. Well, there is an overwhelming majority against it. May I ask
the French delegation whether you are still insisting on your proposal. You have now
the possibility, this was an indicative vote. You have now of course the right to insist
or a formal vote at a later stage or you have the possibility to withdraw it. Mr Douay,
may I ask you what your choice is.
France. Mr Chairman I think it is obvious what my view is going to be. We did not have much hope for this proposal, I might point out, we don’t insist of course, so I think that answers your question, Sir. Thank you.

The Chairman. This means that the French proposal has been withdrawn.

ACOPS. Thank you Mr Chairman. The ACOPS proposal to article 1(d) 59 was fairly minor and a modest one. Its purpose was to remove the distinction between substantial and possibly non-substantial and more importantly, the distinction drawn by the use of major incident compared to any other incident. It is certainly the experience of many in environmental matters that the definition of major or minor or substantial or insubstantial are very difficult to define, are generally imprecise and generally lead to the opportunity to people to do nothing where something should be done. So the amendment basically to remove substantial from physical damage and to remove major from similar incident in that article. Additionally, there is a desire for completion to add to resources or property on the high seas. Thank you Mr Chairman.

The Chairman. Well the floor is open. Who wants to comment on that proposal?

Democratic Republic of Germany. Thank you Mr Chairman. This delegation believes that one of the many differences of the present draft convention to the 1910 Convention is that the new convention takes due note of the importance of protecting the marine environment. Unfortunately, the present draft falls much short of giving the necessary protection to the environment. We therefore endorse and fully support the removal of the words “substantial” and “major” from this item for the reasons that have been very ably and fully explained by ACOPS in their document LEG/CONF.7/6. Thank you Mr Chairman.

Australia. Thank you Mr Chairman. My delegation would also support the deletion of the word “substantial” and “major”. If we consider the purpose of this definition we realize that it is central to articles 10 and 11 and the calculation of salvage rewards. It seems that in assessing such rewards if the incident is not substantial, if there is not substantial physical damage, then clearly the addition to the reward will

(59) Document LEG/CONF.7/6
Submission by the Advisory Committee on Pollution of the Sea (ACOPS)
LEG/CONF/7/3 – articles 1(d) and 6
ACOPS supports the proposal in article 6 of the draft convention, that the salvor and the owner and master of the vessel or other property in danger (“the casualty”) should owe a duty “to exercise due care to prevent or minimize damage to the environment”. However ACOPS is concerned that the duty is so circumscribed in the proposed draft that it will do no more than provide the incentive to salvors to undertake salvage operations which prevent or minimize damage to the environment, for which articles 10 and 11 provide. In particular ACOPS regrets that the duty to exercise due care to prevent or minimize damage to the environment is limited in the following particular respects:
1. The definition of “damage to the environment” in article 1(d) limits the scope of the duty in the following ways:
   (a) The words “human health or marine life and resources” are intended to exclude physical damage to property from the scope of the definition.
   (b) The words “in coastal or inland waters or areas adjacent thereto” limit the duty to those areas, and exclude other areas such as the high seas.
   (c) The definition excludes damage which is not “substantial” or which arises from an incident which is not a “major” incident.
itself be insignificant. It seems, therefore, there is no requirement to put these words in our definition which, as the representative of ACOPS has said, does lead to uncertainty and problems of interpretation. It seems that, having regard to the purpose of that definition, we do not need such limitations. May I also say that my delegation would have favoured a broader definition that would have also included reference to the high seas as the ACOPS proposal suggests but included those words “property on the high seas”. We heard yesterday an explanation as to the understanding of the Legal Committee as to the meaning of the existing words “in coastal or inland waters or areas adjacent thereto” and that takes away some of our concern but Mr. Chairman from my perspective that the delegation of Australia would be inclined to clarify even further that it is pollution, or physical damage to human health and resources wherever it occurs that may give rise to damage to the environment for which a salvage reward is available. Thank you.

The Chairman. I thank you. The next speaker, is the delegation of Zaire.

Zaire. Thank you, Sir. Quite simply to support the arguments put forward by ACOPS regarding the adjective. We want these adjectives deleted and we agree with ACOPS. I repeat thank you, Sir.

The Chairman. Do you also agree with the addition or the amendment in square brackets. Zaire, may I ask you that. You see, ACOPS has not only proposed the deletion of such words as “substantial” and “major” but has also proposed to make an amendment which has been put in square brackets in the second and third lines. What is the position of Zaire, if I may ask you, on this point? You supported the proposal only to make it clear. My question is whether you have supported the whole proposal of ACOPS or only the deletion of those two words.

Zaire. Yes Sir, we in my delegation would prefer to delete the adjectives and deleting the square brackets around the proposal. Thank you.

The Chairman. That makes it clear. Thank you very much. The next speaker is Kuwait.

Kuwait. Thank you, Mr. Chairman. My delegation also supports the proposal of ACOPS, i.e. to delete the words “substantial” and “major” which appear in article 1(d). Thank you, Mr. Chairman.

The Chairman. USSR the next speaker. USSR. The delegation of the USSR.

USSR. Thank you Mr, Chairman. Our delegation does not want to strike a false note in this wonderful atmosphere, the orchestra which is being created. Unfortunately, however, we cannot support this proposal, not because we are against it because it is a good idea in general. The point at issue, in our view, is that the definition of damage is a very carefully balanced compromise which was achieved in the Legal Committee of IMO. We should not forget that our convention is not only connected with damage but with the liability of captains, owners and the salvor, so if there is substantial damage that could be an important factor. Therefore, we feel at the moment we cannot support the proposal to delete the adjectives and we prefer to abide by the previously developed compromise. Otherwise we feel we might go on for a long time discussing the matter and waste an awful lot of time, therefore we prefer to abide by the original proposal. Thank you.

The Chairman. The next speaker is Greece.

Greece. Thank you very much, Mr. Chairman. I should like to second the
statement just made by the distinguished delegate of the USSR, who are in favour of the remaining of those words in the original text. Thank you very much, Mr. Chairman.

**The Chairman.** I thank you. The next speaker is the delegation of Japan.

**Japan.** Thank you, Mr. Chairman. This delegation would like also to fully support the view just expressed by the distinguished delegate from USSR. Thank you Mr. Chairman.

**The Chairman.** Thank you, Sir. The United Kingdom.

**United Kingdom.** Thank you Mr. Chairman. We would equally support the view expressed by the distinguished delegate of the USSR and echoed by others, most recently by Japan. Thank you Mr. Chairman.

**The Chairman.** I thank you. Before I give the floor to the delegation of Italy I would like to propose that we proceed to an indicative vote that perhaps could shorten our debate, because here it is only the question of whether a delegation supports the proposal or is against it, and it is a very simple question and we can perhaps proceed to an indicative vote, so that we see where we stand. But now the delegation of Italy.

**Italy.** Thank you, Chairman. I will be very brief, Sir. The Italian delegation supports the USSR proposal. Thank you, Sir.

**The Chairman.** I thank you. The next speaker is Poland.

**Poland.** Thank you Mr. Chairman. Only a very short remark. Our delegation would support the view of the Australian delegation that the words “at sea” should be included. Thank you.

**The Chairman.** Yes. Your delegation would not support the deletion of the words “substantial” and “major”.

**Poland.** No, we will refrain on this problem.

**The Chairman.** You support only the addition of these words in square brackets.

**Poland.** Yes.

**The Chairman.** I thank you. Well, the delegation of Canada.

**Canada.** Thank you, Chairman. Since you have announced the possibility of a vote I just want to get some clarification. It seems to me that there are two parts to this proposal. One is the deletion of two words, which we could live with if they were deleted. On the other hand we could also stay with the definition the way it is. We do not have any strong feelings on that. However, we do have some difficulty with the words in square brackets, simply because we do not really know what they mean. In other words, what is “property on the high seas”? So how do you propose to proceed here? Are you going to proceed in two parts or are you going to vote, have an indicative vote on the whole proposal, including the words in the square brackets?

**The Chairman.** Well, originally I had the intention to put at votes the whole proposal, with all elements, but it came up from the debate that some delegations can support one part or one element in that proposal, and others can support another element. So I will divide that vote into two parts. One part will be the deletion of “substantial” and “major” and the other part would be the amendment which has been put in square brackets as a proposal. Is that acceptable, Canada?

**Canada.** I thank you.
The Chairman. The next speaker is Mexico.

Mexico. Thank you Mr. Chairman. The delegation of Mexico would prefer the original text of the draft convention. Thank you very much.

The Chairman. The Netherlands, please.

Netherlands. Thank you, Mr. Chairman. I think it would be wiser here to split up the indicative vote into two parts, as suggested by you. We have no strong feelings about deletion of the word “substantial”, we think it would be of major influence with regard to the duties of the salvor and we have some doubts whether any physical damage to the environment should be included. I think it would be wise to keep the words “substantial and major” intact. On the other hand, we could, and we think that is an important part of the proposal, agree to the idea that also the marine environment on the high seas will be protected, but with Canada, we have objections against including the word “property”, but that may be a question of drafting, so we would vote in favour of the words, or the idea behind the words in square brackets in the ACOPS proposal, but with a different wording perhaps.

The Chairman. You could agree that we vote on this wording and subject to further drafting? Well, in that case, I would like to propose that we now proceed to vote. We will have two votes: first we will vote on the deletion of the words “substantial” and “major”. Who is in favour of the deletion of these words? Please raise your cards. I thank you. Who is against that deletion? The result is 12 delegations in favour and 29 against, so that is a very clear result, I would say. We come now to the next proposal. Who is in favour of the proposed amendment within the square brackets? Please raise your cards. Thank you. And who is against that amendment? Please raise your cards. I thank you. The result of the vote is 11 in favour of that amendment, 24 against that amendment. This is also a clear indication of the position of the views of delegations. Well, ACOPS has of course a possibility to insist on a formal voting when we come to the formal vote, but you also have the possibility to withdraw your proposal, it depends on you. What is your choice? Yes, ACOPS, please.

ACOPS. Thank you, Mr. Chairman, for giving so much attention to this item. ACOPS still feels strongly that for proper concern to be shown towards the environment in matters related to salvage, that the language should be as precise as possible, and is saddened that we have not been able to tighten up the language in this article. Nevertheless, ACOPS would not wish to push this to a final vote and is prepared to withdraw. Thank you very much, Mr. Chairman.

The Chairman. Thank you, Sir, for your co-operation. That means that the proposal has been withdrawn. Well we make progress.

21 April 1989
Document LEG/CONF.7/V R.111

The Chairman. We come to the definition of damage. Can I take it that we agree upon that definition; subparagraph (d), by consensus, or there any delegation which insists on a vote? No delegation? Subparagraph (d) has been adopted by consensus.

Draft Articles agreed by the Committee of the Whole
(Document LEG/CONF.7/CW/4)
Article 1 - Definitions

For the purpose of this Convention:

(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 due under this Convention.

Plenary Session 28 April 1989
Document LEG/CONF.7/VR.225

FOR THE PURPOSE OF THIS CONVENTION:

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

CMI Montreal Draft Document LEG 52/4-Annex 1

Article 1.1 - Definitions

For the purpose of this Convention:

5. Payment means any reward, remuneration, compensation or reimbursement due under the provisions of this Convention.

CMI Report to IMO Document LEG 52/4-Annex 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.

The Sub-Committee has also proposed the following definition “owner of the goods means the person entitled to the goods”. This definition was deleted in Montreal as being superfluous. On the same grounds proposals from some national MLAs for definitions of “owner” and “salvor” were not adopted.

IMO Legal Committee Report on the Work of the 52nd Session (Document LEG 52/9)

36. In response to a query about the need for a definition of “payment”, the CMI representative explained that it was a general word covering all disbursements such as expenses as well as awards and bonuses.

Report on the Work of the 55th Session (Document LEG 55/11)

Article 1 - Definitions (e)60

115. One delegation doubted the need for this definition but the Committee decided to retain the text for the time being.

Document LEG 58/12-Annex 2

Article 1 - Definitions

For the purpose of the Convention:

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

(60) Article 1-1.5 of the CMI Draft was renumbered Article 1(e) by the IMO Secretariat.
Consideration of the Draft Convention on Salvage
Note by the Secretariat

(e) Payment

22 This definition was included to introduce in the draft a general word covering payment in respect of expenses as well as payment in respect of a property award. No comments were made by the Committee in respect of this rule. (LEG 52/4, annex 2).

International Conference
Document LEG/CON F.7/3

Article 1 - Definitions

Committee of the Whole 21 April 1989
Document LEG/CON F.7/VR.111

The Chairman. We come to subparagraph (e). Can I take it that we adopt subparagraph (e) by consensus? Is there any delegation which insists on a vote? That is not the case. Well, then we have adopted subparagraph (e) by consensus. Thank you ladies and gentlemen.

Draft Articles agreed by the Committee of the Whole
(Document LEG/CON F.7/CW/4)

Article 1 - Definitions

For the purpose of this Convention:

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

Text examined and approved by the Drafting Committee
(Document LEG/CON F.7/DC/1)

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

Plenary Session 28 April 1989
Document LEG/CON F.7/VR.225


(61) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
FOR THE PURPOSE OF THIS CONVENTION:

(f) Organization means the International Maritime Organization.
(g) Secretary-General means the Secretary-General of the Organization.

International Conference
Committee of the Whole 25 April 1989
Document LEG/CONF.7/VR.174-176

Cyprus. Thank you, Mr. Chairman. Just an observation. We refer here to the Secretary-General and in the first paragraph to the Organization. If we look in the definitions, these terms are not defined. I wonder whether it would be advisable to introduce these terms as definitions in article 1 of the convention so we have a clear picture of what is going on, or to qualify these terms in these paragraphs and carry them further downwards. Thank you.

The Chairman. Thank you. I think that is dealt with in provisional article (a) which is ? I would ask the Secretariat to comment on that point. Mr. Mensah.

Mr. Mensah. Thank you, Mr. Chairman. Yes, in fact there is a proposal to be put before the Drafting Committee to have in the article of definitions in article 1 a definition of the Organization and of the Secretary-General, so I think this point will be reported to the Drafting Committee as reinforcing the proposal already before them.

The Chairman. Thank you. So we understand from the Secretariat that it is already being dealt with by the Drafting Committee and we will ensure that that is reflected in our request to the Drafting Committee to take that into consideration.

Draft prepared by the Drafting Committee

Article 1 - Definitions

For the purpose of this Convention:

(f) Organization means the International Maritime Organization.
(g) Secretary-General means the Secretary-General of the Organization.

Plenary Session 28 April 1989
Document LEG/CONF.7/VR.225

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.

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Article 1.2 - Scope of application
1. This Convention shall apply whenever judicial or arbitral proceeding relating to matters dealt with in this convention are brought in a contracting state. The Convention may also be applied whenever the vessel to which assistance is rendered or the vessel undertaking the salvage operations belongs to a contracting state.
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 operation exclusively on government non-commercial services.]
      Note: Considerations may be given to give this provision effect only to liens in such vessels.
   d) to removal of wrecks.
3. This Convention shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owners.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81

Article 1.2 - Scope of application
1. This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a contracting State. The Convention may also be applied whenever the vessel to which assistance is rendered or the vessel undertaking the salvage operations belongs to 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.
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 operation exclusively on governmental non-commercial services.]
   d) to removal of wrecks.
This Convention shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owners.

Report by the Chairman of the International Sub-Committee Document Salvage-19/III-81

The Sub-Committee was of the view that the Draft Convention should be given as wide a scope of application as possible, cf. art. 1-2(1). This provision is a combination of the principles expressed in the 1976 Limitation Convention art. 15(1) and the 1910 Convention art. 13. It was felt that the problems relating to warships and the like should be left for separate regulation.

Montreal Draft Document LEG 52/4-Annex 1

Article 1.2 - Scope of application

CMI Report to IMO Document LEG 52/4-Annex 2

The CMI, is of the view that the Convention should be given as wide a scope of application as possible. While the 1910 Convention is only applicable when either the salved vessel or the salving vessel is registered in a contracting State, the draft convention provides in addition for its application also if proceedings are brought in a contracting State and if the salvor belongs to a contracting State.

The rule that the Convention is applicable if proceedings are brought in a contracting State is based on the principles expressed in the 1976 Limitation Convention, Art.15.1. In most jurisdictions this rule will make it superfluous also to have rules concerning the application of the Convention in the other cases mentioned. However, in a few countries the addition of these connecting factors could give the Convention a broader application, and for this reason they have been included. (…)

Warships and similar ships were excluded from the 1910 Convention. In the Protocol to this Convention dated Brussels May 27th, 1967, the Convention was made applicable for such vessels. In particular, in view of the rather limited acceptance of this Protocol, it has been felt that these problems should not be regulated in the new Convention, but left for separate regulation.

During the work of the CMI it has been suggested that there should be a protocol modelled on the 1967 Protocol enabling contracting States to apply the Convention to vessels of inland navigation and/or warships and similar vessels if they should so wish.

Art.1-2.2.(a) is mentioned above in the comments concerning Art. 1-1.1., and Art. 1-2.2.(d) in the comments concerning Art. 1-1.2.

IMO Legal Committee Report on the Work of the 52nd Session (Document LEG 52/9)

38. The question was asked whether the factual situations giving rise to the

(62) The provisions on the scope of application have been left unvaried.
application of the draft convention were intended to be alternative or cumulative. If all these conditions were to be met, the Convention could never apply when the incident involved a salving or salved vessel registered in a non-contracting State. Several delegations considered that the first part of Article 1-2.1 was a very useful inclusion of the lex fori rule. The CMI representative explained that the conditions set forth were alternative and that the second part was intended to widen the scope of application and encourage the use of the Convention under the doctrine of lex fori. Other delegations considered, however, that some contracting States might wish to apply the Convention to ships registered in non-contracting States when judicial or arbitral proceedings were brought in the contracting State. It was suggested that the provision be amended to state that the Convention would apply “if a risk is caused by the vessel of a non-contracting State”.

39. One delegation felt that it would not be appropriate to reproduce those provisions of the 1910 Convention which excluded the application of the Convention, to the benefit of national law, even where all the Parties concerned in a salvage operation were nationals of the same State. In fact, a State having ratified a Convention must have national legislation in conformity with that Convention.

40. With regard to the use of the lex fori, the representative of the CMI observed that a conflict of laws rule might in any case result in application of the Convention if it required reference to the law of the contracting State.

Report on the Work of the 53rd Session (Document LEG 53/8)

Paragraph 1

36. The CMI representative stated that the paragraph was based on the principles in the 1976 Limitation Convention (Article 15.1) and was intended to make the proposed convention applicable whenever proceedings were brought in a Contracting State, and also in the other cases mentioned. Some delegations considered the additional grounds for jurisdiction were either superfluous or irrelevant.

37. Other delegations considered it useful, however, to provide for the application of the convention in such cases.

38. The Committee concluded that, for the time being, the text of paragraph 1 should remain unchanged, but that further consideration would be given to the points made in the discussions.

Report on the Work of the 55th Session (Document LEG 55/11)

Article 2 - Scope of application

116. One delegation considered the opening sentence of this provision as superfluous and legally unsound. It was particularly critical of the second phrase in the sentence because the court in a State which was not a party to the prospective convention could not be compelled to recognize the Treaty in the absence of some link between that jurisdiction and the case before it.

(63) Article 1-2 of the CMI Draft was renumbered Article 2 by the IMO Secretariat.
The delegation suggested the deletion of the entire sentence but would accept the removal of the second phrase only.

117. Another delegation pointed out that the origin of the provision was the 1910 Convention, but the introduction of the concept of the lex fori in the first phrase of the provision meant that the remainder of the sentence had no relevance to the scope of the application. Once the lex fori had been adopted for determination of the scope of application, the courts of a Contracting State would apply the Convention to all cases; whether or not a salvor or a vessel was of a Contracting State would be irrelevant to applicability of the Convention. It was also stated that the article had no meaning as a designation of substantive law.

118. One delegation considered that article 22 (Jurisdiction) was sufficient for the purpose intended by this sentence, and the entire sentence could be deleted. Another delegation questioned whether it had any utility in terms of conflict of laws, and the representative of the CMI acknowledged that the second part had little practical utility. However, if a salvor of a Contracting State assisted a vessel also of a Contracting State but litigated a salvage claim in the court of a State which was not a Contracting State, it could be useful for that State to apply the Convention.

119. Several delegations observed that it was impossible to extend the application of the Convention to States which were not parties.

120. The Legal Committee decided to delete the second phrase of the opening sentence of article 2.

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

However, this 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 [undertaken by direction of a State or otherwise requested by national law],
[(e) whenever the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation.]

Where a State decides to apply the Convention to its warships or other vessels owned or operated by a State and being used at the time of the salvage operations exclusively on governmental non-commercial services it shall notify the depositary thereof specifying the terms and conditions of such application.

Report on the Work of the 56th Session (Document LEG 56/9)

Paragraph 1

One delegation requested that further attention be given to paragraph 1 of this article. This delegation considered that paragraph in its present form to be unacceptable because it did not provide that the substantive law should be determined at the outset of any issue. The Committee agreed to examine the proposal at the next session in view of the decision taken at the present session.
50. The Committee agreed that the entire paragraph 2 of Article 1-2 should be retained in square brackets for examination as to which parts thereof should remain in the convention.

14. One delegation stated that the whole of paragraph 2 was unnecessary and that it would be better to leave the applicability of the convention to be determined by national law.

14. The Committee reverted to a proposal from the United Kingdom delegation carried over from the fifty-sixth session, to replace the existing chapeau of paragraph 2 by the following text:

“However, the Convention shall not apply, except when otherwise provided by national law of the contracting State:”

Some delegations expressed support for this proposal. Some of these indicated that such a provision would be essential for them for constitutional reasons.

15. Several other delegations, however, queried the purport of the proposed text. Questions were raised as to whether any application of the convention would have to be total or whether it would be possible to be selective as to the exceptions to be invoked. It was suggested in this context that if, e.g., the convention were to be declared to be applicable to inland navigation, then the entire convention would have to be extended to such navigation. Other delegations, however, preferred a resolution whereby an extension would not create any treaty obligations but would simply form part of the national law of the State extending the convention.

16. In the light of these differences of view and following the decision of the United Kingdom delegation to withdraw its proposal, the Committee invited interested delegations to give further consideration to the matter.

17. In response, the delegations of the German Democratic Republic, the Federal Republic of Germany and Greece proposed deleting paragraphs 2 and 3 of article 2 entirely and replacing them by two articles which would be included among the final clauses of the convention. These new texts read as follows:

“Article X

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 vessels of inland navigation;
(b) when all interested parties are nationals of that State;
(c) whenever the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation.”

The exclusions listed in article 1.2.2(a) and (b) of the Montreal Draft have become reservations under article 30(1) of the Convention and therefore the debate relating to each of them will be found under article 30. Only the general debate on paragraph 2 of the Montreal Draft has been kept thereunder.
No other reservations shall be admissible to the substantive provisions of this Convention.

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

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

“Article Y

1 Unless a State Party decides otherwise, 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.

2 Where a State Party decides to apply the Convention to its warships or other vessels owned or operated by that State 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.”

18. These proposals met with wide support in the Committee.

19. With respect to draft article X, there were divergent views on the desirability of including the sentence prohibiting reservations other than those specified in the article. Reference was made to the precedent to be found in article 18.1 of the 1976 LLMC Convention. Some delegations favoured the retention of the sentence in brackets so as to draw the conference’s attention to the matter, while other delegations felt that it would be inappropriate for the Committee to include any reference to this matter in the draft convention. The Committee agreed to delete the sentence “No other reservations shall be admissible to the substantive provisions of this Convention”.

20. One delegation noted that paragraph 1(c) of draft article X might result in an undesirable lack of uniformity.

21. One delegation queried whether the exception envisaged in paragraph 1(a) of article X related only to inland navigation vessels of the State making a reservation in this respect or also to inland navigation vessels of other States which were involved in a salvage operation. In response, it was suggested that the wording of the provision implied that the exception would apply to all inland navigation vessels involved, without distinction as to their nationality.

22. With regard to article Y, the Committee agreed to some drafting changes in paragraph 1 which would now read as follows:

“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.”

23. With these amendments, the Committee agreed to introduce articles X and Y in the draft convention and to delete paragraphs 2 and 3 of article 2.
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.

However, this 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 [undertaken by direction of a State or otherwise requested by national law],
(e) whenever the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation.

Where a State decides to apply the Convention to its warships or other vessels owned or operated by a State and being used at the time of the salvage operations exclusively on governmental non-commercial services it shall notify the depositary thereof specifying the terms and conditions of such application.

Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 2 – Scope of application

It was explained that this article intended to make the Convention applicable whenever proceedings were brought in a Contracting State (LEG 53/8-36).

After several exchanges of view, the Committee decided not to refer to the cases in which the convention would apply in a non-contracting State whenever the salvor belongs to, or the salving vessel, or the vessel salved, is registered in a Contracting State. It was stated that in neither of these cases could a State which was not party to the prospective convention be compelled to recognize the treaty in the absence of some link between that jurisdiction and the case before it (LEG 55/11-116,117).

After several deliberations the Committee decided to delete from this article a paragraph on cases of non-applicability of the convention. Instead, it was decided at a later stage of the discussions, to include an article on reservations, (see draft article 24) and an article on State owned vessels (see draft article 25). It was considered that these two cases would enable States not to apply the convention’s provisions in certain cases.

International Conference
Committee of the Whole 18 April 1989
Document LEG/CON F.7/3

Article 2 - Scope of application

The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
Federal Republic of Germany. Thank you, Mr. Chairman. The amendment before you in working paper WP.3 is meant to remedy some hole which we believe is to be found in article 2. Article 2 as it stands in the draft defines the scope of application and it does so by exclusively referring to the law of the Court seized with the case. That means in terms of international procedural law with *lex fori*. Now the *lex fori* guarantees in a way, and in this is a simple solution possible, it guarantees that in any case where litigation is made in a contracting State the rules of the convention apply. We feel, however, there are, and I have to admit this may be the exceptional case, shortcomings in the solution. If you take the example that ships belonging to the contracting States, be it that they fly the flag of the contracting State or that they are registered there, are engaged in a salvage action but that it happens that the proceedings are introduced in a non-contracting State, so that the non-contracting State even if it would be willing to apply the rules which normally would apply to this salvage action, this non-contracting State possibly would not be able to do so because it is very likely that the non-Contracting State in such a case never would be bound by our Convention and would apply the same principle of *lex fori*. I think that the principle of *lex fori* in this context is not reasonable so to say. It may be practical but it is not reasonable, is not usual, and this led us to the idea that one should at least, in addition, tie the application of the Convention to a substantive link and we believe this should be the flag or the place of registry. I take it – or let me first recall to you that this was the solution of the CMI draft as well. It has an alternative tying up either to the *lex fori* or in addition to the flag. Now you know that the flag is a difficult element nowadays. So we have proposed to take as well the flag or the registry just to make the application as broad as possible. As to the wording of course this is subject to later drafting, perhaps whether the words “at least” should go in or should not go in. I think the essential point is that there should be a substantial tie to the law embodied in the Convention not only a reference to *lex fori*. May I conclude, Mr. Chairman, by stressing that of course we are not pressing this point. It is just something we find would be better resolved on the broad lines of the CMI draft. If there is no support for it of course I take it – may be exceptional cases but I think we should consider it. Thank you very much, Mr. Chairman.

The Chairman. Thank you, especially for your flexible position. May I ask for comments on the proposal of the Federal Republic of Germany. Who wants to make comments? The Netherlands.

Netherlands. Thank you Mr. Chairman. Mr. Chairman, of course we have discussed this wording which is included now in the submission by the Federal Republic of Germany in the Legal Committee and the reason why we in the Legal Committee deleted actually this second part is that the Salvage Convention cannot

(66) Document LEG/CONF.7/CW/ WP.3
Submission by the Federal Republic of Germany
Article 2 should read:
“*This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party, as well as when the salving vessel or the vessel salved is flying the flag of a State Party or is at least permanently registered in a State Party*.”
The reasons for this proposal are set out in document LEG/CONF.7/10, page 5.
bind the court of non-Contracting States to apply the rules of the Convention. It would have a substantial meaning if the second condition that means that the salving vessel or the vessel salvaged should be flying the flag of State party or be permanently registered in a State party. That would be in addition to the lex fori. We would not be in favour of such an extra because that would narrow down the possibility of applying the Salvage Convention but now I think as it has been worded now the only possibility is that an action is brought before a court of a non-Contracting State and with the hope the court would read article 2 of the Salvage Convention and would apply that Convention and that is very dubious. If they wish to do so they can apply their own rules of international private law and come to the conclusion of course that a law of a State Party to the Salvage Convention would be applicable and that could be a reason for applying it - maybe that would give an extra argument if you would add those words but normally, I think, we should not introduce any provisions in a Convention which gives the impression that you would influence any decision of a court of a non-Contracting State. That is the reason why we could not support actually the proposal by the Federal Republic of Germany. Thank you very much.

The Chairman. I thank you. Next speaker is Sweden.

Sweden. Thank you Mr. Chairman. I would be very brief. It goes without saying that this delegation sympathises with the purpose behind the proposal by the FRG which is in the document LEG/CONF.7/10 67, that is to stimulate a world wide unification of the law of salvage at sea and make forum shopping less attractive. But for the reasons, Mr. Chairman, so well expressed by the distinguished representative of the Netherlands, we also find it difficult to support the proposal. Thank you.

The Chairman. I would call on the delegation of Japan.

Japan. Thank you Mr. Chairman. This delegation has also some sympathy for the proposals submitted by the distinguished delegate from the Federal Republic of Germany. However, this delegation would like to support the view just expressed by the distinguished delegate from the Netherlands and supported by the Swedish delegate. If the State is a Contracting State such State should apply the Convention but this provision has no meaning because a State other than the State Party is not bound by any provisions in the Convention. Therefore this kind of provisions theoretically has no meaning. Therefore this delegation cannot support this kind of provision. Thank you, Mr. Chairman.

The Chairman. I thank you. I have on my list as the next speaker the United Kingdom but Federal Republic of Germany, you wanted to intervene at this stage to say that you are willing to withdraw the proposal. Yes, of course, Sir.
Thank you, Mr. Chairman. In order to get the floor, I am willing to express this readiness but only as a second solution. May I try to say because perhaps I have to apologize as I have not made myself clear enough. There is a misunderstanding, I think, and as there was some sympathy for the idea behind, I would like to answer the distinguished delegate of the Netherlands who has explained very clearly the position of the Legal Committee and I have been taking part in there. I think, it is not the question of binding any non-Contracting State. It is just a possibility that a non-Contracting State applies the Convention. Let me give an example. If we assume that the Netherlands and other countries are members of the Convention and let us say the Federal Republic of Germany is not. And now you have a salvage action before the Dutch coastline and a Dutch ship and a British ship are involved, all Contracting States, and now the question of application of Article 11 arises, let’s assume. Now they go to a German court for whatever reason and now the German court even if it would be willing under German international private law to apply Dutch law, which it is very likely that it will, it cannot apply the Convention as Dutch law because it is not by definition substantial law of the Contracting States, it is just applicable under the procedural angle of the lex fori. That would mean that in this case certainly the German court, assuming not being a Contracting State, had to apply the law of the Republic of Germany without Article 11. This is just an example and I think of course, if the non-contracting State whatever we do never applies the Convention, you can never bind it – that is quite clear. As a rule, the non-contracting State in case its international private law refers to the law of a contracting State would be ready to apply the Convention; but just what I wanted to say is that under this scope of application it is unable unless it enacts special legislation but if it does not ratify it is quite normal that it will not have any special legislation – that is just my concern. I take it perhaps it is not too grave but you have to have in mind to introduce something new, if you introduce it and I do hope we do, the Article 11 solution and the temptation of some parties involved to go outside the Contracting States may be tempting. That is just my concern, but sorry for intervening again, I promise never to do it again, if there is no support we certainly withdraw. Thank you very much.

The Chairman. I give now the floor to the delegation of the United Kingdom.

United Kingdom. Mr Chairman. Thank you. I am afraid that despite the, if I may say so, forensically very ingenious explanation given by the distinguished delegate from the Federal Republic of Germany, we agree with the other delegations who have not shared its view. Indeed, what the distinguished delegate from the Federal Republic has last said reinforces our view that if these words were added and the question then came up in a non-contracting State you would start with total uncertainty and the first round so to speak, would be taken up with arguments of private international law along the lines which are being discussed at the moment. We accordingly take the view that this would be confusing and undesirable and we would prefer to leave the text as it was. Thank you Mr Chairman.

The Chairman. I would now give the floor to a delegation who wants to support that proposal. I see no cards raised. Professor Herber may I ask you again what your conclusions are? You would withdraw? O.K. That proposal has been withdrawn.
The Chairman. We come now to article 2, the basic text. Can I take it that article 2 as is contained in the basic text is adopted by consensus or is there a delegation that insists on a vote? No delegation insists on a vote. That means that article 2 in the basic text has been adopted by consensus.

Draft Articles agreed by the Committee of the Whole (Document LEG/CON/7/CW/4)

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.

Text examined and approved by the Drafting Committee (Document LEG/CON/7/DC/1)

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 Party.

Plenary Session 28 April 1989
Document LEG/CON/7/VR.225

The President. Article 2. No comments. Approved.
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 seabed mineral resources.

CMI
Report by the Chairman of the International Sub-Committee
Document Salvage-19/III-81

4. General provisions. The definitions contained in art. 1-1(1)-(3) mean that the scope of the international law on salvage has been extended so as to include not only ships but also any other structure capable of navigation as well as property in danger in navigable and other waters. In this context note was taken of the proposal in respect of salvage relating to off-shore mobile crafts adopted at the CMI Rio-Conference 1977.

IMO
Legal Committee
Report on the Work of the 54th Session (Document LEG 54/7)

13. The Committee resumed its second reading of the articles of the draft Convention prepared by the CMI. At the opening of the discussions the observer from the Oil Industry International Exploration and Production Forum (E and P Forum) introduced document LEG 54/4/2 and reiterated the position of the Forum that production platforms permanently attached to the sea-bed and engaged in production, storage or transportation of hydrocarbons, including certain ancillary devices, should not be considered as “property” in a revised convention on salvage. The Forum proposed adding words to draft article 1-2 Scope of application to this effect:

2. However, the Convention does not apply:

(e) Whenever the vessel or property in danger is permanently attached to the sea-bed, as in the case of hydrocarbon production, storage and transportation systems.

14. The Committee took note of this proposal which received the support of the French delegation.

Report on the Work of the 56th Session (Document LEG 56/9)

Subparagraph (e)

26 The Legal Committee considered a suggestion by the Exploration and Production Forum (E and P Forum), that fixed platforms for hydrocarbon production, storage and other purposes should be excluded from the ambit of the convention. The Committee agreed to replace the text of the paragraph with a revised text to read as follows:
“whenever the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation systems.”

Article 2 - Scope of application
1. This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a Contracting State.
[2. However, this Convention does not apply:
[(e) whenever the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation]}

Report on the Work of the 57th Session (Document LEG 57/12)

Article 2.2(e)

112. The Committee considered a proposal by the delegations of Norway and the United States and the observer of the E and P Forum to amend subparagraph (e) to the effect that the convention shall not apply:
“whenever the vessel or property is attached to a well for the purposes of exploitation, production, processing or storage of hydrocarbons”.

113. The proposers explained that the operations referred to in this provision were usually carried out under the strict supervision and control of a coastal State and were generally covered by detailed contingency planning. In such cases, i.e. when the vessel was in an “industrial mode”, it would be better to declare the convention inapplicable so that professional salvors might know that services in respect of such proposers would not fall within the scope of the convention.

114. A number of delegations expressed support for the principle underlying the proposal, although they expressed doubts about certain aspects of the proposal. For example, it was pointed out that the references to “vessel” and to “property” might create difficulties.

115. Another problem referred to in this connection related to oil tankers which might be used for storage purposes. Divergent views were expressed as to whether such tankers would be covered by the proposed exclusion clause. The observer of the ISU suggested that the word “permanently” be inserted before “attached”. A nother suggestion was that a phrase might be added at the end of the subparagraph reading “with the exception of tankers solely used for storage purposes”.

116. One delegation had more fundamental misgivings about the proposed text. Drawing a parallel to lightships, the delegation stated that there was no justification for excluding any tankers from the scope of the convention, even if they were used for storage purposes.

117. There was not enough support for the proposed text at this time. The Committee decided to retain the text contained in paragraph 2.2(e) in brackets and to consider a substitute text at the next session.

Report on the Work of the 58th Session (Document LEG 58/12)

17. In response, the delegations of the German Democratic Republic, the Federal Republic of Germany and Greece proposed deleting paragraphs 2 and 3 of article 2 entirely and replacing them by two articles which would be included among the final clauses of the convention. These new texts read as follows:
"Article X

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

(c) whenever the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation.

No other reservations shall be admissible to the substantive provisions of this Convention.

18. These proposals met with wide support in the Committee.

23. With these amendments, the Committee agreed to introduce articles X and Y in the draft convention and to delete paragraphs 2 and 3 of article 2.

Paragraph 2(e)

24. The United States delegation proposed to replace the existing subparagraph (e) by a new text reading as follows:

“(e) whenever the vessel or property is attached directly or indirectly to the well-head for purposes associated with hydrocarbon exploration and exploitation, including drilling, production, processing and storage, but not including transportation.”

25. The delegation explained that the new text did not refer to “transportation” and constituted therefore a more restricted exemption, while it would discourage casual and inexpert salvors from undertaking salvage operations in respect of vessels engaged in the exploration for and exploitation of hydrocarbons. The complexity of these vessels made it seem desirable to prevent such salvors from rendering assistance. The phrase “directly or indirectly” had been proposed to cover not only production units but also processing units which were not always directly attached to the well-head.

26. Several delegations expressed doubts about this proposal, in particular with regard to the inclusion of certain vessels in the new text which would result in these vessels being excluded from the scope of application of the convention, and with regard to the difficulties of interpreting the phrase “attached, directly or indirectly, to the well-head” might create.

27. Several delegations expressed a preference for deleting paragraph (e) altogether. One of these delegations noted that the provisions regarding safety zones which were contained in article 5 of the 1958 Geneva Convention on the Continental Shelf and in article 60 of the 1982 United Nations Convention of the Law of the Sea give satisfactory protection to the interests of coastal States.

28. Another delegation, which also supported the deletion of sub-paragraph (e), suggested that the matter could be further clarified by adding in article 1(c), after “shore-line”, the phrase “or to the sea-bed”.

29. One delegation sought information about the current practice in respect of salvage activities regarding platforms, in particular in respect of insurance and in respect of salvage awards.

30. One delegation recalled, however, that the Committee had already decided to retain the principle contained in subparagraph (e) and that the provision had been inserted in brackets merely for reasons of drafting.
31. In the light of the divergence of views, the Committee proceeded to an indicative vote on whether to retain the principle reflected in subparagraph (e). Nineteen delegations were in favour of retaining the provision, while 13 delegations were in favour of its deletion. In the light of this indicative vote, the Committee invited a working group to consider the text of subparagraph (e) taking into account the various views expressed during the discussion.

32. The Working Group submitted the following text to the Legal Committee for further consideration:

“(e) whenever the vessel or property is connected to a well-head for the purpose of hydrocarbon exploration or exploitation, including drilling, production, processing, and storage, but not including transportation.”

33. The Committee noted the statement by the Chairman of the Working Group that the first two sets of brackets indicated alternative approaches, while the third set indicated that the Working Group was unable to reach agreement on the issue whether storage should be included in the exception.

34. A number of delegations welcomed this new text which they considered to constitute an improvement over the basic text.

35. Several delegations stated that it was necessary to make the exception regarding platforms as restricted as possible in order to ensure effective protection of the marine environment.

36. For this reason, some delegations emphasized the importance of treating floating platforms as vessels for purposes of the convention. Other delegations, however, reaffirmed their concern at the possibility that casual salvors might interfere with contingency plans established for fixed as well as floating platforms.

37. Some delegations felt that the best criterion for determining the applicability or otherwise of the convention would be whether the property was connected to a well-head or not. Other delegations, however, felt that such a criterion would result in too broad a restriction of the application of the convention and would, thus, be detrimental to the aim of providing maximum protection to the marine environment.

38. One delegation suggested that the text proposed by the Working Group be simplified to read as follows:

“(e) whenever the vessel or property is being used for the purpose of hydrocarbon exploration or exploitation, but not including transportation.”

39. While some delegations expressed support for this approach, other delegations were of the opinion that the reference “being used” would result in excluding too many vessels from the scope of application of the convention and would therefore be unacceptable.

40. Diverging views were expressed as to whether storage of hydrocarbons should fall within the scope of the convention or not.

41. Some delegations suggested to refer to “the vessel or other property”.

42. One delegation suggested that, in any case, Contracting States should be allowed to make a reservation in respect of subparagraph (e).

43. In an indicative vote, 19 delegations expressed a preference for the basic text, while 8 delegations preferred the approach reflected in the text submitted by the
Working Group. However, in the light of the decision of the Committee reported under paragraph 23, this subparagraph, together with the whole of paragraph 2 of article 2, was replaced by article X.

**Document LEG 58/12-Annex 2**

**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:

   (c) whenever the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation.

---

**International Conference**

**Committee of the Whole 18 April 1989**

**Document LEG/C ON F.7/3**

**Article 24 - Reservations**

**Document LEG/C ON F.7/VR.25-31**

**China.** The second point concerns the application of the Convention to drilling platforms. We believe salvage operations concerning drilling platforms will need special techniques. However, at the moment in the world there are not so many countries which have such an emergency force to do such a salvage. For the purpose of this Convention, that is to encourage assistance and to protect the marine environment, we believe it is not necessary to exclude such properties from the scope of application of this convention. This problem could be solved by selecting capable salvors and suitable salvage methods and therefore we could solve this problem by the reservation article.

**United States.** Lastly, with regard to paragraph 1(c), we can agree with the proposal made by the UK, of course noting that we do have a proposal regarding the exclusion of platforms and certain vessels which we have currently suggested should be included in Article 2, and of course we will talk about that when we get to that particular article. Thank you, Mr. Chairman.

**Brazil.** In regard to item (c), we support the exclusion from the scope of this convention of the platforms. We also support the inclusion of the word “seabed” in the draft text.

---

(68) The text of this paragraph is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).

(69) Reference is made to paragraph 1(c) of the draft Article 24-Reservations which so provided:

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

   (a) .................................................................

   (b) .................................................................

   (c) whenever the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation.
The Chairman. We come to article 2. On article 2 we have a submission of the United States and we have a submission of the Federal Republic of Germany. The United States submission is in document 7/16\(^70\) and the submission of the Federal Republic of Germany is in document 7/20.\(^71\)

---

(70) Document LEG/CONF.7/16
Submission by the United States

Article 2

The fundamental purpose of the draft Convention is to provide an incentive for salvors to assist vessels and property in distress by taking positive action. The possible inclusion of offshore platforms and drilling vessels engaged in the exploration, exploitation and production of seabed natural resources within the scope of convention coverage could thus be expected to encourage salvage attempts with respect thereto.

In certain cases, this consequence would be undesirable in that casual or inexpert salvors could attempt to assist an offshore facility which might or might not actually be in peril. In either case, it is highly unlikely that such salvors would be able to accomplish any positive result with respect to these offshore facilities and – owing to the nature of such facilities – their attempt could in fact cause serious property damage or even grave environmental harm.

In offshore resource development, very specialized and technical equipment is necessary to cope with the unusually high pressures and other special operational conditions encountered in finding and removing not only hydrocarbons, but other resources such as sulphur. Skilled and highly trained personnel are critical to the safe functioning of these facilities. Such expertise is important not only when facilities are operating normally, but even more so when an emergency condition occurs. Zealous actions by inexpert salvors on an imperilled or seemingly imperilled facility that is directly engaged in the specified resource activities could potentially cause serious damage to the facility involved and the environment.

Such a risk is both undesirable and unnecessary. In order to minimize adverse environmental damage and property loss, the offshore industry prepares and utilizes contingency plans as a means of ensuring that proper backup equipment and trained personnel are available and that certain shutdown and other vital procedures are followed in the event of an emergency.

During the early stages of Legal Committee preparatory work, it was proposed that certain types of offshore facilities be excluded from convention coverage altogether; subsequently, however, a number of States urged that the convention scope of application ought to remain as broad as possible, on the theory that any salvor in a position to render assistance that might possibly minimize damage to the marine environment should be encouraged. The eventual outcome was the following reservation option contained in article 24.1(c) of the conference draft:

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 …

(c) whenever the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation.

In addition to the previously mentioned safety and environmental concerns associated with a State declining to exercise this reservation option, such an approach would also engender a lack of uniformity. Furthermore, the present formulation of the reservation is not fully satisfactory for several reasons: specifically, the word “permanently” is subject to different interpretations and thus would be difficult to apply as a criterion; the term “hydrocarbons” would not encompass all seabed natural resource activities (e.g., offshore sulphur production); and certain highly specialized “vessels” (as distinguished from “property”) would not be covered by the exclusion – even if they were on location and in the process of exploratory drilling (with all of the attendant environmental risks).

In reviewing the need to include these offshore facilities within the convention, two principal considerations bear careful examination. First, the machinery and equipment on these facilities
Republic of Germany is in working paper 371. I have one procedural problem with the United States proposal. Presently that subject is to be dealt with in article 24, the United States has now proposed to bring that item to article 2. The first question would be the exclusion of platforms should be treated as a reservation clause in article 24 or should be treated as a plain exclusion from the scope of application. That is the first question and the second question is then the wording of that article, or of that proposal should be considered. You have two possibilities. We can postpone the debate on the United States proposal when we come to article 24 and make the decision on the place of that article at that time, and we can also discuss the wording of that proposal in this context. May I ask the United States whether they could accept this procedure, or whether they would prefer to have a debate on their proposal at this stage in the context of article 2. The United States, you have the floor.

United States. Thank you, Mr. Chairman. We are prepared to introduce our proposal either at this time or later in connection with the discussion of reservations.

is highly complex, potentially dangerous and not at all similar to the machinery and equipment with which even professional salvors are familiar through their training and experience with typical marine salvage. Misuse of such machinery and equipment can present a significant environmental risk, as well as a property loss risk in the event of mishap. Second, in order to avoid damage to the environment, minimize loss of valuable resources and preserve valuable equipment, the offshore industry utilizes contingency plans to provide for emergencies. These contingency plans (which identify the proper backup equipment and trained personnel and specify certain shutdown and other vital procedures for emergencies), coupled with the owner’s strong incentive to operate the offshore facility safely, together provide a superior alternative to coverage under this convention.

Accordingly, the following additional paragraph reinstating an outright exclusion is proposed for insertion as new article 2.2 (in lieu of the reservation option in article 24.1(c)):

This Convention shall not apply to fixed or floating platforms or drilling vessels directly engaged in exploration, exploitation or production of seabed mineral resources.

It should be noted that this exclusion proposal is specifically not intended to cover vessels (i.e., tankers) involved in transportation of the seabed resources. We concur with those States who maintain that this activity should be subject to the convention.

In conclusion, the exclusion approach proposed herein is felt superior to the existing reservation approach. The latter is too narrow in scope; moreover, if the reservation option is not exercised, application of the convention to offshore facilities would clearly be undesirable. Accordingly, article 24.1(c) should be deleted in favour of an appropriately tailored exclusion. This substitution would leave emergency response in the hands of those knowledgeable concerning the complex offshore facilities and the unique risks involved and would avoid the serious problems which casual or inexpert salvors could create both for such facilities and the environment.

The full text of article 2 in its proposed amended form is set forth in Annex I.

ANNEX

The complete text of article 2 as it would be revised in accordance with the proposal by the United States is set forth below (with the suggested new text underlined):

Article 2
Scope of application

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

2. This Convention shall not apply to fixed or floating platforms or drilling vessels directly engaged in exploration, exploitation or production of seabed mineral resources.

If proposed article 2.2 is adopted, existing article 24.1(c) should be deleted in consequence.

(71) Supra, p. 134, note 66.
in article 24, and we leave it to your judgment, Sir, as to the appropriate time for this debate.

The Chairman. In that case I would decide that we leave it for the time being and come back to it when we discuss article 24. Is that agreed? Thank you, Sir.

Documents LEG/CONF.7/VR.40-44

The Chairman. We would then come to article 3 but on article 3 we have no proposal – that means we can immediately proceed to article 24 and here we have a somewhat difficult situation. Article 24, paragraph 1, subparagraph (a) depends on the decision about the definition of article 1, subparagraph (a), and that means we would postpone any discussion on subparagraph (a). It would be meaningless to discuss it before we have decided on the new definitions in article 1. Is that agreeable? O.K. On subparagraph (b) of paragraph 1, we have not received a proposal so there is no need to discuss that but we come then to subparagraph (c) and we have received a proposal not on (c) but on article 2 but we decided to postpone that debate until we come to article 24. Now we have reached that stage of our debate and I would like to give the opportunity to the United States to introduce its proposal.

United States. Thank you Mr Chairman. In submitting this proposal for an outright exclusion in article 2 in place of a reservation possibility in article 24, 1(c), United States wishes to express strong concern about the potential unintended consequences of possible application of the draft Convention to fixed or floating platforms and drilling vessels that are directly engaged in the exploration, exploitation of seabed mineral resources. In most circumstances, such application would be undesirable, in that casual or inexpert salvors might thereby be induced to attempt assisting an offshore facility which might or might not actually be in peril. In either case, it is highly unlikely that such salvors would be able to accomplish any positive results with respect to these offshore facilities and owing to the nature of such facilities their attempt could indeed cause serious property damage or even grave environmental harm. In offshore resource development, very specialized and technical equipment is necessary to cope with the unusually high pressures and other special operational conditions encountered in finding and removing not only hydrocarbons but other resources such as sulphur. Skilled and highly trained personnel are critical to the safe functioning of these facilities. Such expertise is important not only when facilities are operating normally, but even more so when an emergency condition occurs. Zealous actions by inexpert salvors on an imperilled or seemingly imperilled facility that is directly engaged in the specified resource activities could potentially risk serious damage to the facility involved and the environment. Such a risk is both undesirable and unnecessary. In order to minimize adverse environmental damage and property loss, the offshore industry has and utilizes contingency plans in close co-operation with coastal States as a means of ensuring that proper backup equipment and trained personnel are available and that certainly shuts down any other vital procedures that are followed in the event of an emergency. In doing so, the industry is strongly motivated by its concern for the mass of investment in its facilities and the increasing potential for liability in cases of adverse environmental consequences. While a reservation in 24(c) has been suggested, uniformity is more desirable. Thus because of the previously mentioned safety and environmental concerns a reservation is unsatisfactory. Furthermore, the present formulation of the reservation is not fully satisfactory for several reasons. Specifically the word “prominently” is subject to different interpretations and thus would be difficult to apply as a criterion. Second, the term
hydrocarbons would not encompass all seabed natural resource activities such as sulphur production and third, certain highly specialized vessels as distinguished from property would not be covered by the exclusion, even if they were on location and in the process of exploratory drilling with all of the intended environmental risk. It should be noted that this exclusion proposal is specifically not intended to cover vessels, i.e. tankers involved in transportation of the seabed resources. We concur with those States to maintain that this activity should be subject to the Convention. In conclusion, the exclusion approach proposed herein is felt superior to the existing reservation approach. The latter is too narrow in scope. Moreover, if the reservation option is not exercised, application of the Convention to offshore facilities would clearly be undesirable. Accordingly, article 24, 1(c) should be deleted in favour of an appropriately tailored exclusion. This substitution would leave emergency response in the hands of those knowledgeable concerning the complex offshore facilities and the unique risks involved and would avoid the serious problems which casual or inexpert salvage could create both for such facilities and the environment. I would also add that it is specifically not intended that this exclusion apply to offshore supply vessels just as it would not apply to tankers. Thank you, Mr. Chairman.

The Chairman. Thank you, Admiral Vorbach. We have two issues which should be discussed and I would like to urge the delegations to address these two issues. The first issue is, should the subject covered in 24(c) remain a reservation clause or become a plain exclusion provision. That is the first item that should be discussed by delegations. The second item is the wording. I must say that we had certain experiences in the past with attempts to come to a wording which could be accepted by a broad majority of delegations. I would like to urge delegations not to start drafting in this Committee. When a delegation is not able to accept one or the other proposal it might be indicated and the idea that that delegation had could be expressed and we could perhaps form on the wording a small drafting group of delegations which could come together trying to find a better draft. But if the majority of delegations, of course, is in favour for instance of the basic text or of the text of the United States, O.K., then the situation would be simple and we could take a decision. Any other amendment or addition would prompt me to propose a working group on the wording of that article. But in any event, delegations should discuss in their interventions the question that there should be a reservation clause or a plain exclusion from this Convention. Well, the floor is open. The first speaker on my list is the delegation of France.

France. Thank you, Mr. Chairman. As regards substance, we share the view just put forward by the United States. Indeed, for the reasons indicated by that delegation, and which are found in its document 7/16, it does indeed appear that in the case of an accident occurring to a drilling platform, which is practically a plant out at sea for exploitation and production, the evacuation of oil leads us to a different situation to that of vessels. The salvors, though they may be suitably equipped in order to assist vessels and to carry out the necessary assistance operations with regard to vessels and a certain number of floating craft, or even property coming from such craft, these same salvors probably do not have the necessary technical facilities for these platforms and I think it would even be of service to the salvors to say that this Convention shall not apply to floating platforms or drilling vessels, whether drilling vessels or drilling platforms, mobile or otherwise, which when in place may become production instruments for mineral resources, so I think we should exclude these installations from the scope of this Convention, whether as I was saying, platforms or vessels for drilling purposes. When we look at the text of article 24(c) which allows for reservation for
property permanently attached to the seabed for the transport, the carriage and the storage of hydrocarbon, we believe that this provision is very inadequate. Indeed, it does not cover floating platforms, it does not cover drilling vessels and, in fact, there is no distinction between fixed platforms or drilling vessels, because they carry out the same exploration, exploitation and production activities. We therefore entirely agree with the United States delegation as the result is the pure and simple exclusion from the scope of the Convention which, as rightly indicated by the United States delegation, no longer requires the inclusion of (c) of article 24(1), which means that this provision 24(1)(c) should be deleted. The only problem we may have, and this is where your suggestion of a small drafting group might be useful, is to see whether this provision, the substance of which we agree on, should be included in article 2 or possibly in article 1, because in article 1 one could very simply, without doing anything to article 2, as regards the scope of the Convention, one could purely and simply exclude fixed or floating platforms or drilling vessels in the definition of vessels and we might possibly exclude them in the definition of property. We should not, indeed, forget that we have a very broad definition of property which covers everything which is not permanently and intentionally attached to the coast and this would cover the floating platforms and the drilling vessels. So we may have to see where this provision should be included, either in the definition of vessel (and this might be enough) but of course we will have to see if we have to revise the definition of property also, but in any case this exclusion must be included in the Convention and furthermore, I would say that we entirely favour the United States proposal, that it must entail the deletion of (c) of article 24(1), but we have still some doubt (and this doubt could be cleared up in a small drafting group) whether rather than to include this provision in article 2, it would not be better to include it in article 1 under the definition of vessel and possibly under the definition of property. Thank you, Mr. Chairman.

The Chairman. I have some doubt that a working group should decide whether that exclusion should be included in article 1 or 2. That should be decided by the Committee. A working group should be set up if it becomes necessary to draft a new text. Whether it is then included in article 1 or 2, that is not the main question. The main question is whether we will formulate that as a plain exclusion or only as a reservation clause. I must say I would prefer Article 2 but, of course, there are some reasons just given by Mr Douay that Article 1 was also a proper article for such an exclusion. But that is a decision which should be taken by the Committee. A working group should only deal with the wording of that text. I would urge the delegations not to discuss now whether Article 1 or 2 is the proper place, but only to refer to the question of whether the delegation concerned would support the exclusion or would support a reservation clause. The next speaker on may list is from Norway.

Norway. Thank you, Mr. Chairman. Norway is also seriously concerned about the problems raised by the United States regarding offshore platforms and other structures operating at the Continental Shelf. Like the Americans, we believe that property and environmental protection interests in connection with the oil industry is better dealt with by the constituency plans prepared by the offshore industry. This is because, as also expressed very clearly by the United States, the salvage industry is not familiar with the special problems to be dealt with in this highly technical field. On the other hand, however, it is our opinion that the scope of this Convention should be as broad as possible. Therefore, after studying the American proposal very closely, we have come to the conclusion that we are satisfied with the present reservation clause in Article 24(c). However, we do have a great sympathy towards the American
proposal to the extent that it is our opinion that the reservation clause should not be limited to hydrocarbon production but should also include the production of the seabed mineral resources in general. But that might be a problem for a small working group, I do not know.

**The Chairman.** Thank you. The next speaker is from Greece.

**Greece.** Thank you very much, Mr. Chairman. I shall be very brief. The opinion of this Delegation is that the platforms and all these things must be excluded from the scope of application of the Convention and we fully agree with the views expressed by the distinguished delegate from the United States of America. As for putting it in Article 2 or 1, we can live with both solutions, although we think that it should be in Article 2 in the main text of the Convention. Thank you very much.

**The Chairman.** I thank you, Sir. The next speaker is from the Delegation from the Federal Republic of Germany.

**Federal Republic of Germany.** Thank you, Mr. Chairman. I asked for the floor just to indicate that my Delegation found the reasoning for the United States proposal quite convincing. To begin with we think that there might be some merits in transforming the exemption which is now contained in Article 24 into an outright exclusion because it would help to make the instrument more uniform, and uniformity is desirable. Preferably we would like to have this outright exclusion as it has been proposed by the United States Delegation in Article 2. Moreover, in substance we agree fully with the distinguished Delegation of the United States and we do not propose any redrafting or rewording of the American proposal. Let me only stress that two words in the proposal of Article 2(2) would be substantial to our Delegation, those are the words in the second line “directly engaged”. If the words “directly engaged in the production” are included, this text would be fine with us. Thank you.

**The Chairman.** The next speaker is from the Delegation of Spain.

**Spain.** Thank you very much, Mr. Chairman. My Delegation likewise listened with considerable interest to the reasons put forward and explained by the Delegation of the United States and also by the Delegation of France and, in principle, we have no opposition to the request, so we would be ready to consider the form of words put forward by the United States. Nevertheless, we would like to ask that Delegation to make a comment, if they could, as to whether they consider and to what extent, that the structure of Article 16 of the Draft Convention in relation to subparagraph 1 of Article 6 does not already provide sufficient protection to the interests that they were referring to. Clearly the draft indicates that there would be no remuneration when the master has taken a certain action which would refer possibly not only to the master but to the person responsible for the platform and this would give us a solution in order to avoid operations which would be carried out by people who are not qualified. I am not really making a proposal asking for a modification but I wonder if this might not be a solution to the problem. But in any case I would like to know to what extent the delegation of the United States has taken into consideration this possible solution in order to solve the problem raised which is a serious one. Having said this, however, if we see this solution under Article 6(1)(e) we could accept your proposal and we think it could be possible to extend the concept of hydrocarbon to include other resources which could be extracted from the sea bed. Unlike the speaker who preceded me, we believe that the exclusion would operate in the view of the United States exclusively with regard to platforms and special vessels to the extent to which these are involved in extraction operations at the time in which the salvage occurs. I am saying this because in the
Spanish text at least this is not quite clear. They say “takes part directly” but I would like some clarification on this and we may have to come back to this in a drafting committee, if there is a drafting committee, but our idea is that these platforms or special vessels should actually be involved in these operations when the salvage occurs. We would not like an exclusion to apply when they are travelling to the place where they will be installed or when they are not involved in these operations specifically. Thank you, M. Chairman.

The Chairman. Thank you. The United States, do you wish to reply to the problems just raised by Spain? I give you the floor.

United States. Thank you, M. Chairman. To clarify the question posed by the distinguished delegate from Spain with respect to the applicability of article 16 as a possible solution to our concerns, we had to consider that possibility. Nevertheless, we wish to pursue the exclusionary language since one of the initial contingency options that are provided for is often the removal of the crew when a serious storm threatens their safety. Therefore, with no one being on board such a drilling rig or platform at the time, an owner or master would not be able to communicate with prospective salvors as is envisaged under article 16. Our concern continues to be with a casual, if you will, salvor, inexpert in the procedures of handling a complex rig or platform intervening and perhaps causing severe environmental damage as well as property damage. So we prefer to pursue the exclusion as we have proposed. The next question I believe our colleague from Spain raised was with respect to the words “directly engaged” and indeed those words are important to our proposal in that we contemplate this exclusion applying when the rig would be at a site and engaged in its business of drilling. Drilling platforms en route to a site would not be subject to this exclusion, but rather would be treated as are vessels as defined in our draft convention. Thank you, M. Chairman.

The Chairman. May I ask the delegate of Spain whether he is satisfied with this explanation. Yes, I thank you. Will Spain support the proposal of the United States without any reservations?

Spain. Yes, M. Chairman, but subject to the fact that in the drafting committee we will return to the Spanish text in order to be perfectly sure that the text is quite clear. Thank you, M. Chairman.

The Chairman. The next speaker is the delegate from the United Kingdom.

United Kingdom. M. Chairman. I can be quite brief because we are in agreement in principle with everything that has been said. May I just mention one or two things. Firstly, we would formally, in view of this discussion, withdraw the proposal that in article 1(c) the words “or seabed” should be added after “shoreline”. Secondly, we definitely favour any exclusion of the structures rather than a reservation in article 24. I will not enter into the question whether this should be article 2 or 1 in view of what you have said. Thirdly, and finally, I would say that we have had some reservations and doubts about the inclusion of drilling vessels in this exclusion, because a vessel, although drilling in a stationary position, looks very much like an ordinary ship and we would have preferred to limit this exclusion to platforms or rigs. We do not feel strongly on this point, but we would suggest it for consideration and no more. We would be happy to contribute to the drafting of this exclusion. Thank you, M. Chairman.

The Chairman. Ladies and gentlemen the meeting is called to order. Before we proceed to our votes I would like to say the following on article 24. I say that we suspend the debate on that point for the time being and that we will come back to that
article on Wednesday afternoon, in the meantime the delegates who are interested in the wording of the American proposal or of article 24 subparagraph (c) should come together and try to find a wording which is generally acceptable. The United States is ready to act as lead country as I understand. Is that OK Sir, fine. So you should do something and not forget this point.

19 April 1989
Document LEG/C ON F.7/VR.65A

The Chairman. Let us now continue the debate on package No. 1 which was suspended yesterday. We were discussing paragraph (a), article 24 yesterday, and the proposal of the United States on article 2. I still have a list of speakers on these two items, and you may remember that we have discussed two items. The first item was whether or not it was a reservation clause or a provision on the exclusion of platforms, and the second item was to find the proper wording. I have been informed that certain consultations had taken place on the question of the wording. May I ask the United States delegation what the results are?

United States. Thank you, Mr. Chairman. Let me briefly say that a ten-nation informal working group met over the lunch break for approximately one hour, together with three observer delegations, and substantial progress was made in identifying the few remaining areas of difficulty and in discussing several possible means of addressing those difficulties. It was thought advisable to allow more time for discussion between delegations and perhaps to meet on one more occasion. If that is in accordance with the time schedule that you have established for us, Mr. Chairman, the group has asked me to request that you schedule such an informal meeting and that we proceed on that basis. Thank you, Mr. Chairman.

The Chairman. Thank you. I am very happy to hear that progress has been made. It was my intention to take formal decisions tomorrow afternoon on all provisions belonging to package No. 1. Therefore, the new wording of the clause, either a reservation clause or a provision on the exclusion of platforms, would be required by at least tomorrow afternoon. Would the group be ready to meet at night or tomorrow morning? A meeting tomorrow lunchtime would be too late because delegations would need to consider the text in order to consider their decision. Would it be possible to meet at night or tomorrow morning, or even simultaneously with our meeting?

United States. Thank you, Mr. Chairman. I would suggest that our group meet at 8.30 tomorrow morning if that was agreeable to the other delegations involved, and if we could obtain a room at that time.

The Chairman. That will be no problem. You may have a room at 8.30 a.m.

United States. Thank you, Mr. Chairman.

The Chairman. That means we could perhaps leave for the time being the wording and concentrate on the question of whether it should be an exclusion or a reservation clause. We started with a discussion on that and I have outstanding the list of speakers. It may be decided that it is not necessary to intervene at this stage, and thus there is the possibility that we shall have an indicative vote on this question. The first speaker on my list is Denmark. Mr. Bredholt, are you ready?

Denmark. Not at all, Mr. Chairman. We do not want to say anything at the moment.
The Chairman. The next speaker is Liberia, where the situation is the same, as well as Canada and Japan. Ireland?

Ireland. Thank you, Mr. Chairman. I shall be very brief. I think I probably have a drafting amendment to propose rather than anything else, but if this article 2(2) is to be continued with I do not know that article 2 is the best place to have it if we are going to go on the exclusion path rather than the reservation path. I think it is the type of exclusion that if it is not going to be in article 1 it should have an article all on its own. I do not think that a provision discussing judicial or arbitral proceedings is the best place to say "and there shall be left out of the judicial or arbitral proceedings matters relating to oil platforms". The object is to exclude platforms and that type of vessel from the scope of the convention. Thank you, Mr. Chairman.

The Chairman. Yesterday I said that we can decide this point later as to whether it should be included in article 2. Another delegation has proposed that it should be included in article 1, and you have now made a proposal to include it in a separate article. We can decide this later. The first and the main question is whether it should be a reservation clause or a provision on exclusion of platforms from the scope of application. I see the card of the United Kingdom; you have the floor.

United Kingdom. I think we may have said before that we would greatly prefer it to be an exclusion rather than a reservation for the sake of uniformity. Thank you.

The Chairman. I believe that the decision on this question does not depend on the wording so we can perhaps have an indicative vote on this question without having the wording. We have been promised that we will get a draft tomorrow afternoon, better the wording; we should receive the documentation in the morning to have the possibility to take a decision tomorrow afternoon, but we can now, just to shorten the debate, come to an indicative vote on the question of whether it should be a reservation clause or a provision on the exclusion from the scope of applications. Yes, United States.

United States. Thank you Mr. Chairman. Just very briefly, I might elaborate my report of a few moments ago by saying that that specific question was dealt with in our informal group and there was an indication from several delegations very involved with the issue that their views on a reservation versus and exclusion might in fact be dependant on the substance of the formulation, specifically the words used. With that in mind, Mr. Chairman, I just thought that you might take a different view with respect to an indicative vote at your discretion.

The Chairman. Well, if that is the case, we can of course postpone that decision until the afternoon, but that is the last opportunity. But tomorrow afternoon we will take a formal vote. Tomorrow afternoon there is no time left then for an indicative vote. Is that acceptable to the Committee that we then proceed tomorrow afternoon to a formal vote on both items, on the wording and on the question whether it should be a reservation clause or a provision on exclusion. Is that acceptable? It seems to be the case, OK then the decision I postponed until tomorrow afternoon. We will come back to that question. That means we have at least for the time being finished the work or the discussion on article 24. I understood from the United Kingdom that some negotiations or consultations are going on, Mr. Wall is the competent man for that. Mr. Wall I understood that some consultations are going on on a possible new wording of article 24 subparagraph (a) is that correct?

United Kingdom. Yes, Sir that is correct Mr. Chairman. We are also looking at
the option of seeing if there is any scope for improvement of article 1(a) but we are looking at both of those options.

21 April 1989
Documents LEG/COF.7/V/R.111-113

The Chairman. We come now to article 2. We had asked the contact group to work out a new proposal on that proposed new paragraph in article 3, but during the debate, some delegations were of the opinion that the better solution would be a reservation clause. We have, therefore, first to vote on the question whether we should have a reservation clause on platforms or we should have a provision which excludes platforms from this Convention. In the second stage of our vote we would then come to the text, and I would like to ask in the second stage for the United States to introduce their proposal. Would you like to do that, Admiral Vorbach? O.K., then you have the floor.

United States. Thank you, Mr. Chairman. I asked for the floor, Mr. Chairman, not so much to request a difference in timing as to delivering the paper out, to suggest that we invert the order of the vote you had suggested originally. The reason for that is the number of nations who indicated that they would prefer to know the framing of the text that would be used to describe what was either excluded or was the subject of a reservation option, before they took that decision as to whether it should be a reservation or exclusion. Since I do have the floor, Mr. Chairman, with your permission I will go ahead and provide a report of our informal working group. Our informal working group met on two occasions, 19 and 20 April. On the first occasion eleven delegations participated along with three non-governmental international organisations; the following day ten delegations participated. The results are provided in working paper No. 2472 and the final decisions that were taken by the informal working group with respect to the text that is set forth as article 2.2 was unanimous, with two exceptions which I would like to underscore. With respect to the question of whether this matter should be dealt with as an exclusion or as a reservation, eight delegations preferred an outright exclusion, while two delegations preferred a reservation option. On a second point, Mr. Chairman, with respect to the term “on

(72) Document LEG/CONF.7/CW/WP.24
Report of the Informal Working Groups
Proposed article 2.2
1. An informal working group of interested delegations met on 19 April 1969 to consider article 24.1(c) and proposed article 2.2 which had been discussed previously in the Conference Committee of the Whole. The delegations participating were as follows: Brazil, Canada, China, Italy, Japan, Kiribati, Netherlands, Norway, Sweden, United Kingdom and United States, as well as Comité Maritime International, International Association of Drilling Contractors and International Salvors Union.
2. The informal working group met again on 20 April 1989, with the following delegations participating: Australia, Brazil, Canada, Italy, Japan, Netherlands, Norway, Spain, United Kingdom and United States, as well as E & P Forum, International Association of Drilling Contractors and International Salvage Union.
3. At the close of its deliberations, the informal working group adopted the proposed text set forth below for consideration by the Committee of the Whole as new Article 2.2.
location” that you will see in the text adopted for article 2.2, six delegations preferred the term “on location”, while two delegations indicated that, based on their assessment of how the term “on location” might translate, they might prefer the term “directly” in place of “on location”. One additional note, with respect to changes that appear in article 2.2 is adopted by the informal working group, is that the expression or the term “mobile offshore drilling unit” was substituted for the term “drilling vessels”, and this recommendation was put forward by the working group in the light of its definition in the MODU Code which several other members of the working group were familiar with and brought to our attention. Working paper 24 has a reference to that particular definition. I would read that definition for the benefit of the delegations and could provide a copy to anyone if they wish to see it. “As defined in the MODU Code, the term “mobile offshore drilling unit” means a vessel capable of engaging in drilling operations where the exploration for or exploitation of resources beneath the seabed, such as liquid or gaseous hydrocarbons, sulphur or salt”. The working group felt that that was a more appropriate term to use in place of drilling vessels. Thank you, Mr. Chairman.

The Chairman. I thank you. Since that is a new text, I would allow questions for clarification to be asked of the United States or any other member of that group. I have on my list China.

China. Thank you, Mr. Chairman. From working paper 24 we can see that the Chinese delegation participated in the first meeting of that informal working group, but we did not attend the second one. The reason why we did not attend the second meeting is that it is our view that the term platform would be better put in the reservation clause. We think the suggestions put forward by you, Mr. Chairman, that we first vote on the question of whether it should be an exclusion clause or a reservation clause, and then should come back to the basic text. By the way in so doing the first vote will have an effect on the second stage of voting. Thank you, Mr. Chairman.

The Chairman. Well, in any event, when we start with the second question, that means the vote on the text, then delegations will say that it will have an effect as to whether there should be a reservation clause or an exclusion clause. It is like the famous question “Which came first, the chicken or the egg?” I decided that we should
start with a decision on the more formal question, whether there should be an exclusion or a reservation; I think that is appropriate, and then we can agree upon the text. Well, I have two other delegations on my list. Is it a question for clarification? I can give you, of course, the floor but that is for the later stage. First, clarification; I can then give, if delegations so desire, the floor to two delegations to speak, in favour and against, but that depends on your opinion. That is the maximum I can allow for the debate. We had a long debate on this point. With that in mind, I give the floor to Ireland.

Ireland. Thank you, Mr. Chairman. What I have to say is more a point of clarification than either in support or against this proposal. I think, as a matter of drafting, it looks all right if it is to be in the form of an exclusion clause. I would just like to recall, Mr. Chairman, that if it is the desire of this Conference to adopt an exclusion clause, I think that in that case, it should be referred to the drafting Committee to find an appropriate place for it to be located in the Convention. Thank you, Mr. Chairman.

The Chairman. After the vote, we will ask the drafting Committee whether the Committee is ready to take up that question. The next speaker is Sweden.

Sweden. Thank you, Mr. Chairman. This is just for clarification, nothing else. The reservation clause in the basic text refers to property attached to the seabed for production, storage and transportation and, if my memory serves me rightly, transportation would have the effect that it included, for instance, pipelines. The proposal in working paper No. 24 only deals with units or property engaged in exploration, exploitation or production. My question to Commander Ross would then be, Mr. Chairman, whether I am correct in understanding the proposal that it does not exclude pipelines unless of course, they are not attached to the shoreline which follows from the definition in article 1 and also that the exclusion does not apply to units used for storage. Thank you.

The Chairman. Thank you. Mr. Ross are you ready to answer that question.

Mr. Ross. Thank you Mr. Chairman. I could be very brief. The distinguished delegate from Sweden is in my understanding correct in his understanding.

The Chairman. May I ask the delegation of Sweden whether this answers your question. Does that satisfy you and it has no further consequences for any amendment whatsoever. Any other delegation? We would refer to the question of whether there should be an exclusion or a reservation clause. Since it has been proposed by the United States that there should be an exclusion, we have to vote first on that. Who is in favour of such an exclusion which excludes from the scope of application of this Convention the platforms. Is the question clear - exclusion of application of this Convention to platforms as defined in the text which we have before us. Please raise your cards. Who is against? The result of the vote is: 29 in favour, 9 against, 6 abstentions. That means the committee has decided to include a provision which excludes application of this Convention to platforms. We have now to decide upon the text. We have the basic text which is contained in article 24 and we have the submission of the working group. We have first to vote on the proposal of the working group and when that proposal is adopted, article 24 paragraph 1, subparagraph (c) becomes irrelevant. The question is: who is in favour of the text proposed by the working group contained in working paper 24. Please raise your cards. Who is against? The result of the vote is: 39 in favour, no delegation against, 1 abstention. That means the text submitted by the working group in working paper 24 has been
adopted. We have now to ask the drafting Committee to find a proper place for that clause.

DRAFT ARTICLES AGREED BY THE COMMITTEE OF THE WHOLE
(D ocument L E G /C O N F.7/C W/4)

Article 2 - Scope of application
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 seabed mineral resources.

TEXT EXAMINED AND APPROVED BY THE DRAFTING COMMITTEE
(D ocument L E G /C O N F.7/D C /1)

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.

Plenary Session 28 April 1989
D ocument L E G /C O N F.7/V R.225

The President. Article 3. No comments. Approved.
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.

CMI
Draft submitted to the Montreal Conference
Document Salvage-18/II-81
Art. 1 - 2. Scope of application

2. However, the Convention does not apply:

c) to warships or to other vessels owned or operated by a State and being used at the time of the salvage operation exclusively on governmental non-commercial services,

Montreal Draft
Document LEG 52/4-Annex 1
Art. 1 -2. Scope of application

CMI Report to IMO
Document LEG 52/4-Annex 2

Warships and similar ships were excluded from the 1910 Convention. In the Protocol to this Convention dated Brussels May 27th, 1967, the Convention was made applicable for such vessels. In particular, in view of the rather limited acceptance of this Protocol, it has been felt that these problems should not be regulated in the new Convention, but left for separate regulation.

IMO
Legal Committee
Report on the Work of the 52nd Session (Document LEG 52/9)

37. Some delegations considered that there should be no exclusion of warships

(73) The provisions on the scope of application have been left unvaried.
and other State-owned or operated vessels being used at the time of the salvage operations exclusively on government non-commercial services. The provision of (c) in 1-2.2 should therefore be omitted. In this view, the Brussels Protocol of 27 May 1967 amending the 1910 Convention would, when in force, cover the matter and would include in the general salvage law under the 1910 treaty “a ship of war or any other ship owned, operated or chartered by a State or Public Authority”. One of these delegations suggested, however, that vessels in inland waterway commerce should be excluded in the definition of “vessel” rather than in Article 1-2; since “salvage operations” appeared to include them.

42. With regard to warships and vessels on governmental non-commercial service, one delegation favoured the retention of Article 1-2.2(c) but suggested that it be broadened to include government-owned non-commercial cargo as well. A reference to such property in (c) would obviate any inconsistency between this provision and Articles 1-4.2 and 4-5 where “property” was separately dealt with.

Report on the Work of the 53rd Session (Document LEG 53/8)

44. Many delegations did not think there was any reason why warships and other vessels on governmental non-commercial service should not be subject to the ordinary rules of international law on salvage. Other delegations considered it desirable to allow an option for States to apply the provisions of the draft convention if they saw fit. This might be done by a provision in the convention to permit a State, when signing, ratifying or acceding to the convention, to declare that it would not apply the provisions of the convention to warships or other vessels owned or operated by it and being used, at the time of the salvage operations, on governmental non-commercial services. Some delegations pointed out that warships and governmental non-commercial vessels, if not excluded as proposed, would fall under all the substantive provisions of the draft convention. This could give rise to difficulties. For example, the jurisdiction provisions and the provisions on security might conflict with established principles of sovereign immunity. In the view of these delegations, subparagraph (c) should be retained. It was suggested that a similar exclusion should be provided in respect of governmental non-commercial cargoes.

45. It was observed by one delegation that it was not clear whether the proposed exclusion applied to governmental vessels or other craft when they provided salvage services or when they were the objects of salvage. It was necessary to indicate clearly whether the proposal to exclude or permit application of the convention would apply in one or other of the cases, or in both cases. In this connection, it was noted that some States applied the same law of salvage to governmental vessels as to other vessels, whether the governmental vessel or other craft acted as a salvor or was the object of salvage operation by another vessel. It was also pointed out that in some areas of the world salvage services were undertaken exclusively by naval vessels, with very few private salvage vessels available. It was therefore necessary to consider to what extent the proposed convention would apply in those cases.

46. The Committee noted that it might not be possible to apply all the provisions of the convention to governmental vessels, even if the option to do so were provided. Attention would also have to be given to the distinction between a governmental vessel providing salvage and one which was receiving such services.

47. One delegation observed that consideration should also be given to the application of the convention to governmental cargoes.
15. Several delegations considered that States should be given the discretion to decide whether to apply the convention to warships or other vessels owned or operated by States and being used at the time of the salvage operation exclusively on governmental non-commercial services. It was suggested that this could be done by the inclusion of a provision in the convention permitting a State to declare that it would not apply the convention to such vessels.

16. Some delegations pointed out that it was necessary to clarify whether such an exclusion would apply to governmental vessels when they were providing salvage services or when they were themselves the objects of salvage services. The Australian delegation, in this regard, proposed that the words “when such vessels are the object of salvage” should be inserted at the end of subparagraph (c) to clarify this. There was a difference of opinion among some delegations on whether the exclusion of warships and other governmental vessels under subparagraph (c) should apply only to governmental vessels when such vessels were the object of salvage or when they were undertaking salvage operations.

17. It was generally agreed that it would be difficult to arrive at a satisfactory international rule which would be applicable in all cases. It was suggested, therefore, that subparagraph (c) would be re-examined with a view to determining whether the problem could be resolved by means of a provision giving discretion to States to apply or exclude the convention for governmental vessels. To facilitate the work of the Committee several delegations prepared a number of options for treatment of paragraph (c). The alternative texts read as follows:

Alternative I
Article 2.2(c) is deleted and a new paragraph 3 is added which would read as follows:

3. A State Party may stipulate in its national legislation that this Convention shall not apply to warships or other vessels owned or operated by a State and being used at the time of the salvage operation exclusively on governmental non-commercial services:
(a) when such vessels are rendering salvage operations, or
(b) when salvage operations are rendered to such vessels.
A State availing itself of the provision of this paragraph shall notify the depositary of the extent to which, in its national legislation, it withholds the application of the Convention to such vessels.

Alternative II
Retain subparagraph (c) in article 2.2 and add a new paragraph 3 which would be as follows:

3. Where a State decides to apply the Convention to its warships or other vessels owned or operated by a State and being used at the time of the salvage operation exclusively on governmental non-commercial services it shall notify the depositary thereof specifying the terms and conditions of such application.

Alternative III
Article 2.2, subparagraph (c) would be amended to read as follows:
(c) to salvage operations rendered to warships or other vessels owned or operated by a State and being used at the time of the salvage operations exclusively on governmental non-commercial services;
In addition a new paragraph 3 would be added to read as follows:

3. Where a State decides to apply the Convention to its ships and vessels described in paragraph 2, subparagraph (c), it shall notify the depositary thereof specifying the terms and conditions of such application.

The Committee agreed to consider these proposals at its next session.

18. One delegation proposed that government-owned non-commercial cargo ("property owned, possessed, shipped or controlled by a State and not intended for use for commercial purpose") should be treated in the same way as government-owned non-commercial vessels.

Report on the Work of the 57th Session (Document LEG 57/12)

Article 2.2(c)

106. The Committee had before it several alternative proposals on the question of the application of the convention to warships and other State-owned vessels engaged in non-commercial services.

107. The Committee considered first whether the exclusion of the convention applied where State-owned non-commercial vessels were the object of salvage operations or where such vessels were themselves engaged in salvage operations to assist other vessels or property.

108. The second question considered in this context was whether the convention should be deemed to be applicable to State-owned vessels unless they were specifically excluded by the Contracting States concerned or whether the convention would not apply except where the individual Contracting States declared the convention applicable to such vessels by means of an express notification.

109. Some delegations pointed out that the extension of the convention to warships and other Government-owned non-commercial vessels when they rendered salvage services would result in such ships being subject to all the provisions of the convention, such as for example, article 8 of the draft convention. These delegations felt that this would be inappropriate. Reference was made in this connection to the 1926 Convention on Immunity of State-owned Ships and the Protocol of 1934 thereto.

110. A clear majority of delegations which intervened in the discussion were in favour of retaining subparagraph (c) of the draft convention as drafted, with the addition of a new paragraph 3 to article 2 reading as follows:

"Where a State decides to apply the Convention to its warships or other vessels owned or operated by a State and being used at the time of the salvage operation exclusively on governmental non-commercial services it shall notify the depositary thereof specifying the terms and conditions of such application."

111. The Committee agreed to retain the text of subparagraph (c) with the addition to article 2 as proposed.

Report on the Work of the 58th Session (Document LEG 58/12)

16. In the light of these differences of view and following the decision of the United Kingdom delegation to withdraw its proposal, the Committee invited interested delegations to give further consideration to the matter.

17. In response, the delegations of the German Democratic Republic, the Federal Republic of Germany and Greece proposed deleting paragraphs 2 and 3 of article 2
entirely and replacing them by two articles which would be included among the final clauses of the convention. These new texts read as follows:

“Article Y

1. Unless a State Party decides otherwise, 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.
2. Where a State Party decides to apply the Convention to its warships or other vessels owned or operated by that State 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.”

18. These proposals met with wide support in the Committee.

22. With regard to article Y, the Committee agreed to some drafting changes in paragraph 1 which would now read as follows:

“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.”

23. With these amendments, the Committee agreed to introduce articles X and Y in the draft convention and to delete paragraphs 2 and 3 of article 2.

Document LEG 58/12-Annex 2
Article 25
(article Y in the report of the Legal Committee’s 58th session – LEG 58/12)

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 that State 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.

Consideration of the Draft Convention on Salvage
Note by the Secretariat

108. It was explained that the intention of this proposal was to ensure that not only vessels, but also other shipped property which had a governmental, non-commercial purpose, would be immune from legal process and that the State would not be subjected to suit against its will in a foreign forum. (LEG 58/12 - paragraph 45)

109. Several delegations expressed the view that the principle underlying this proposal was an important one and that it should be retained in the draft convention. Most of these delegations felt, however, that in its present form, the provision would not be suitable for insertion in the draft text and needed careful examination before a decision on its adoption could be taken. (LEG 58/12 - paragraph 49).

110. In respect of the first sentence, one delegation felt that the extension of the
exemption to all State-owned non-commercial cargo was too broad. With regard to the last sentence, several delegations suggested that the number of articles to be excluded seemed to be too substantial and needed detailed consideration. (LEG 58/12 - paragraphs 50, 52).

111 In the light of the discussions the Committee agreed that the text proposed could not be included in the draft convention. The Committee agreed, however, that the proposal should be submitted to the diplomatic conference in an annex to the basic conference documentation. (LEG 58/12 - paragraph 53).

International Conference
Committee of the Whole 19 April 1989
Document LEG/CONF.7/3
Article 25-State-owned vessels

Documents LEG/CONF.7/VR.67A-79

The Chairman. On Article 25 we have a proposal from the United States in Document 7/1375 and we have a proposal submitted by Spain in working paper No.

(74) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12 - Annex 2).

(75) Document LEG/CONF.7/13
Submission by the United States
During the course of the Legal Committee preparatory work, there was significant discussion of the application of the Convention to government-owned, non-commercial cargoes that are carried aboard commercial vessels. The concern underlying this discussion was the international law principle of sovereign immunity which applies to both vessels and cargoes that are government-owned and engaged in non-commercial activities. In view of the specific provision in article 4.2 of the Convention that the master has the authority to conclude contracts on behalf of cargo, failure to specifically address the status of government-owned, non-commercial cargo would have significant impact upon traditional principles of sovereign immunity.

Under the present conference draft, the master of a private vessel may enter into a contract binding a State owner of such cargo to arbitration in a foreign forum. In the absence of specific agreement concerning jurisdiction, the State would be subject to suit in any forum set forth in article 21. Moreover, the State would be required to post security and the master and salvor would presumably not release the cargo in the absence of such security (article 18); additionally, the government-owned cargo could be subject to a maritime lien (article 17), and the State owner could be liable for interim salvage payments (article 19) and interest payments (article 22) in an amount determined by a foreign court.

While the Legal Committee did not reach agreement concerning this issue, the Committee thought it appropriate to annex an amended version of a proposal by the United States to the draft articles for the diplomatic conference. (See Conference Document LEG/CONF.7/3 of 1 July 1988).

Since submitting our earlier proposal, we have given careful study to this matter in an effort to develop a more broadly acceptable alternative approach. In recognition of the evolving nature of sovereign immunity, we now propose that the relevant international law standards be incorporated for purposes of implementing the Convention with respect to government-owned cargoes entitled to sovereign immunity. Furthermore, while providing an opportunity for States to choose otherwise, we seek to exclude only those articles the application of which to such cargoes would infringe upon the sovereign immunity of State owners.
I would first like to ask the United States Delegation to introduce its proposal.

United States. Thank you, Mr. Chairman. Our fundamental concern here is the unintended impact which the present Draft Convention may have on application of sovereign immunity principles with respect to both vessels and cargoes that are

This revised approach could be accomplished by adding the following paragraph to existing article 25:

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention of cargoes owned by a State and entitled to sovereign immunity under accepted principles of international law, nor shall articles 4.2, 17, 18, 19, 21 and 22 apply to such cargoes.

We propose further that:
1. the title of article 25 be changed to “State-owned vessels and cargoes,” so as to reflect the full scope of the article as amended;
2. the exclusion test in articles 25.1 and 25.2 be changed from “vessels owned or operated by that State and being used at the time of the salvage operations exclusively on governmental, non-commercial services” to “vessels owned or operated by a State and entitled to sovereign immunity under accepted principles of international law,” so as to maintain consistency throughout article 25; and
3. the term “State” vice “State Party” be used in article 25.1, so as to be consistent with the 1910 Convention (see article 14) and to promote uniformity of application.

In our view, by clarifying that implementation of the Convention with respect to government-owned cargoes is subject to “accepted principles of international law,” the amended article would ensure that the Convention is not used as a basis for abridging sovereign immunity principles. Moreover, the qualification “[u]nless the State owner agrees otherwise” at the outset of the proposed new paragraph takes into account the specific treaty obligations of States Parties to the 1926 Convention on the Immunity of State-Owned Ships (see article 3). This same qualification, which is similar to the existing option provision in article 25.1, also affords States the flexibility of applying the Convention to their otherwise immune government cargoes if they so choose.

In advancing this proposal, we wish to emphasize our view that the fundamental issue is one of reconciling the principles of sovereign immunity with certain provisions of the Salvage Convention, not whether government owners should pay for salvage services rendered in respect of such cargoes. As a major shipper of such cargoes, the United States recognizes an obligation to pay for salvage services rendered thereto, and has established formal procedures for payment of such claims.

The full text of article 25 in its proposed amended form is set forth in the annex.

Annex
Article 25
State-owned vessels and cargoes

1. This Convention shall not apply to warships or other vessels owned or operated by a State and entitled to sovereign immunity under accepted 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 of this article, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.
3. Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention of cargoes owned by a State and entitled to sovereign immunity under accepted principles of international law, nor shall articles 4.2, 17, 18, 19, 21 and 22 apply to such cargoes.

Proposal submitted by Spain
Government owned and engaged in non-commercial activity. This concern is most sensitive as regards government owned non-commercial cargoes being carried on commercial vessels. To illustrate, according to existing Article 4(2) the master of such private vessel may enter into a contract binding a State owner of such cargo to arbitration in a foreign forum and in the absence of specific agreement concerning jurisdiction the State would be subject to suit in any forum set forth in Article 21. Moreover, the State would be required to post security and the master and salvor would presumably not release the cargo in the absence of such security, according to Article 18. Additionally, the government owned cargo would be subject to a maritime lien pursuant to Article 17 and the State owner could be liable for interim salvage payments pursuant to Article 19 and interest payments pursuant to Article 22 in an amount determined by a foreign court. Article 25(1) of the present draft states that the Convention shall not apply to warships or to other vessels owned or operated by a State Party and being used exclusively on government non-commercial service. We recognize that this approach is very similar to that in the 1910 Convention yet, in our view, there are compelling reasons for a departure from this model. In the first instance, while the phrase “government non-commercial service” in Article 25 has fairly broad acceptance in international law, this test is inconsistent with that applied in some nations. More importantly, while the Article 25 approach may have been satisfactory some 80 years ago owing to the limited scope of the 1910 Convention, the present draft convention contains numerous provisions. For example, Article 17, 18, 19, 21 and 22 which were not part of the 1910 Convention and which today have significant implications for sovereign immunity. Briefly stated, the existing Article 25 could afford salvage claimants a basis for asserting that even though certain government owned non-commercial property would otherwise be immune from detention or requirements to post security according to the law of the forum, the State owner’s ratification of the 1989 Salvage Convention constituted an implicit waiver of that immunity. This, we feel, may present serious concerns for a number of States. While the Legal Committee did not reach agreement concerning this issue, the Committee thought it appropriate to annex an amended version of a proposal by the United States to the draft Articles for the Diplomatic Conference. Since submitting that earlier proposal, we have given careful study to this matter in an effort to develop a more broadly accepted alternative approach. In recognition of the evolving nature of sovereign immunity, we now propose that a general reference to the relevant international law standards be incorporated for purposes of implementing the Convention with respect to government owned property entitled to sovereign immunity. One approach would be the proposal set forth in the annexed conference paper 13. The principle feature of this proposal is its use of a reference to the phrase “accepted principles of international law” as the determinant for excluding certain vessels from Convention application altogether and certain such cargoes from the application of specific Convention Articles unless of course the State owner decides otherwise. We fully recognize that the phrase “entitled to sovereign immunity under accepted principles of international law” is not without ambiguity. But then, neither is the phrase “government non-commercial services”. In both instances,
a lex fori will determine the application of these phrases under that State's national law of sovereign immunity. The form of construction, however, does not lend itself as readily to the judicial interpretation that by ratifying the Salvage Convention a State Party implicitly waived the sovereign immunity otherwise respected by that forum. In our view, by clarifying that implementation of the Convention with respect to Government owned cargoes is subject to “accepted principles of international law” the amended article would ensure that the Convention is not used as a basis for abridging sovereign immunity principles. Moreover, the qualification “unless the State owner agrees otherwise” at the outset of the proposed new paragraph takes into account the specific treaty obligations of States Parties to the 1926 Convention on the immunity of State owned ships. ... This same qualification which is similar to the existing option provision in Article 25(1) also affords States the flexibility of applying the Convention to their otherwise immunity Government cargoes if they so choose. In advancing this proposal we wish to emphasize our view that the fundamental issue is one of reconciling the principles of sovereign immunity with certain provisions of the Convention, not whether Government owners should pay for salvage services rendered in respect of such cargoes. As a major shipper of such cargoes the United States recognizes an obligation to pay for salvage services rendered thereto and has established formal procedures for payment of such claims. We simply wish to ensure through adoption of our proposal or an alternative proposal with similar effect that the 1989 Salvage Convention in essence remains neutral with respect to sovereign immunity issues. In other words that it is clear that ratification of the draft Convention by a State in no way constitutes a waiver of any sovereign immunity otherwise applicable to its vessels or cargoes.

The Chairman. Thank you for this introduction. I would now like to ask the Delegation of Spain to introduce its document, working Paper No. 10. You have the floor, Sir.

Spain. Thank you very much, Mr. Chairman. The Delegation of Spain submitted an amendment to Article 25 of the Convention so that it would start by saying “without prejudice to the provisions of Article 3” and the rest would remain unchanged as in the draft. The reason for this proposal is in the draft of Article 3. This Article when referring to public authorities taking action as regards salvage, makes a distinction between two types of action. The first are salvage operations which are carried out under the supervision of public authorities but which are not operated directly by them but by third parties. In this case, number 2 would apply according to which third parties – that is to say, the salvors – can take advantage of the resources and the rights of the Convention. The second case is when salvage operations are carried out by the public authorities themselves. In that case, it is number 3 which applies, according to which the public authority as the salvor itself can take advantage of the rights and resources of the Convention to the extent to which these are taken up in their national legislation. However, Article 25 expressly excludes the application of the Convention in the case of vessels which are owned by the State itself and Article 3, moreover, allows the public authority to take advantage of the resources of the Convention when it has included this in his national legislation. There would therefore appear to be a certain contradiction between the two provisions and I think we should clearly understand the scope of the Convention and see what the exact meaning of Article 4 and Article 25 is. The clear and substantive difference with respect to the 1910 Convention which introduces the need to protect the marine environment in the new Convention. There is no reason to exclude the coastal States who use their own vessels from the possibility...
of recuperating the costs undertaken in order to avoid damage to the environment. And this is covered in Article 11 of the draft Convention. If by the mere fact of using their own vessels the State would forfeit the right to benefit from the Convention, this possibility would in a certain sense disappear. Even though it is reflected in national legislation, there is a risk that this national legislation may not be in line with international obligations. In order to avoid any possible doubt, we are suggesting that Article 25 should start with the words “without prejudice to the provisions of Article 3”. Thank you, Mr. Chairman.

The Chairman. Thank you. I would like to propose that we discuss those proposals in the following order. We should first start with paragraph 1 of the United States proposal, paragraph 1 of Article 25. There is a change to principles of international law instead of the present formulation which says “vessels owned or operated by a State and being used at the time of the salvage operation exclusively on Government non-commercial service”. I understand that this is the change that has been made. We have on the same paragraph 1, not to the American proposal but to the original paragraph 1 – the Spanish proposal – I believe it would be useful to take up both proposals at the same time. We would then go to paragraph 3 of the United States proposal, that is the old annex to the basic draft in a new version, that means immunity of State owned cargo. We then come to humanitarian cargoes as the third point in our debate. First paragraph 1 and both proposals can be discussed. The Spanish proposal for a new phrase of the first sentence and the United States proposals replace that which has been made and which I have just explained to you. The floor is open for discussion. Who wants to take the floor? Is there a delegation who wants to speak in favour of either the Spanish or the United States proposal? No delegation? Nobody is seconding ... Oh yes, that is Mexico. Sir, you have the floor.

Mexico. Thank you, Mr. Chairman. With respect to Article 25 and the proposal put forward by the United States, the Delegation of Mexico supports the United States proposal but the explanation is very clear. The idea is to avoid any misinterpretation with respect to the term where a State has non-commercial purpose and this is solved thanks to the explanation that this cargo is covered by sovereign immunity under accepted principles of international law. That is much clearer and defines the position more clearly and this is why the Delegation of Mexico agrees with this proposal put forward by the United States. Thank you very much, Mr. Chairman.

The Chairman. Thank you. Is there any other Delegation. Yes, Democratic Yemen.

Democratic Yemen. Thank you, Mr. Chairman. This Delegation as far as the proposal of the United States is concerned prefers the text as is presented originally for the simple reason that the wording that has been used here has been used in many other Conventions and agreements which have been passed under the auspices of the International Maritime Organization and it has become a familiar term in these Conventions. A problem may be faced when we are trying to find out the meaning of “accepted principles of international law”. The question may be asked, accepted by whom? Because there is no criteria which is accepted by everybody internationally. However, this Delegation does not have very strong views on that point, but our preference is for the draft as presented by the Legal Committee. As far as the Spanish proposal is concerned, we believe that it is a very useful addition and in fact it could be very vital when we are taking into consideration the fact of protecting the marine environment. If we give immunity to such Government ships, a ship could be in danger
and endangering the environment very close to possibly heavily populated areas, but no action could be taken because of such immunity. Therefore, we would very much like to support the Spanish proposal to add that sentence at the beginning of Article 25. Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker is from the Delegation of Ecuador.

Ecuador. Thank you, Mr. Chairman. This Delegation wishes to support the proposal put forward by the distinguished Delegation of the United States with regard to Article 25. Thank you, Mr. Chairman.

The Chairman. The next speaker on my list is Brazil.

Brazil. Thank you, Mr. Chairman. The Brazilian delegation supports the proposal of the United States as in the annex to document LEG/CONF.7/13. Thank you Mr. Chairman.

The Chairman. We are now discussing paragraph 1, article 25. The annex concerns paragraph 3. Was it on purpose that you have not spoken on paragraph 1.

Brazil. Yes. That is so.

The Chairman. The next speaker is the delegation of Liberia.

Liberia. Thank you, Mr. Chairman. This is to say that our delegation supports the proposal of the United States. Thank you.

The Chairman. I thank you. The delegation of Australia.

Australia. Thank you, Mr. Chairman. My delegation would, I think, have preferred to continue with the language we already have in paragraph 1 of article 25 which refers to a well-known category of government ship and wording that is contained in many other conventions, IMO conventions, specific conventions such as the 1926 convention and conventions like the 1958 and 1982 Law of the Sea conventions. However, Mr. Chairman we would be relaxed if delegates find the proposed wording by the United States acceptable as I think they indicated in their intervention that whatever wording we use it will ultimately be for the courts of the forum to determine its meaning and application in a particular case, so on that basis we would be happy to go along with the United States proposal. Thank you.

The Chairman. I thank you. The next speaker is the delegation of the USSR.

USSR. Thank you, Sir. My understanding is that we are talking only about paragraph 1 of article 25. Is that correct? Fine, thank you. Let us start with the simplest approach from the Spanish proposal. We understand that the words proposed “without prejudice” etc. refer only to paragraph 1 of article 25, although in working paper 10 it is said that article 25 should begin thus. Presumably this is not quite correct. If we are talking only about paragraph 1 of article 25, we find Spain’s proposal totally relevant and we could support it. The United States proposal regarding paragraph 1 of article 25 is not really very different in a radical way from the basic text, although certainly the wording is different regarding sovereign immunity. We have no particular preferences I may say. We could live with either the existing text or the United States proposal, but in such a case we find it better to take note of the proposal made by the delegation of Democratic Yemen. It seems to us that the word “accepted” is not totally appropriate in this context. For this reason, could we not refer only to “international law” or recognized standards and principles of international law. We would prefer to avoid the word “accepted”. I think that is all on paragraph 1 of article 25. Thank you.
The Chairman. The next speaker is the delegation of the United Kingdom.

United Kingdom. Sir, we are discussing the points that have just been mentioned by the USSR and other delegations with the distinguished American delegation. Like other speakers, we can live with or without what they suggest, but we would prefer to start with the wording of the 1926 convention to which the United Kingdom is a party. As regards the Spanish proposal, we have no problem with it.

The Chairman. I thank you. The next speaker is the delegation of the German Democratic Republic.

Democratic Republic of Germany. Thank you, Mr. Chairman. The formulation contained in paragraph 1, article 25, is the same as in other new maritime conventions which are in force. As the United States delegation in principle has just said we are not here to prepare a new convention about immunity of States. Therefore, we cannot support the United States proposal. Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker is the delegation of the Marshall Islands.

Marshall Islands. Thank you, Mr. Chairman. I would like to say, firstly, that this is the first time we have spoken in this forum and I would like to congratulate you, Mr. Chairman, on your appointment and election to this committee. In regard to article 25, the Marshall Islands delegation supports and is associated with the proposed material given by the United States along with Spain and the USSR. Thank you, Mr. Chairman.

The Chairman. The next speaker is the delegation of Canada.

Canada. Thank you, Mr. Chairman. I understand that at the moment we are only talking about paragraph 1 of article 25, and the views of my delegation are very similar to those of the delegations of Australia and the United Kingdom, that is to say we could live with the language, and might even prefer the language, that is contained in paragraph 1, article 25 of the basic text. However, if I have understood Sir Michael correctly, discussions are already in progress and obviously we would have an open mind for the results of any changes in language that those discussions might bring forward. Thank you, Mr. Chairman.

The Chairman. I thank you. Are there any other speakers on this point? Would the United States of America give us information on the talks that are going on at this point.

United States. Thank you, Mr. Chairman. Before giving a status report on these discussions, I would first say that we could accept the modifications suggested by the Soviet Union, that is to delete the term “accepted” and have the proposal read “under the principles of international law” or “generally accepted principles of international law”. Either of those formulations would be acceptable. We are indeed engaged in some consultations with other delegations which require further discussion. We would hope that, in accordance with your schedule for article 24, the conclusions of these informal consultations will be presented to you so as to resolve this issue tomorrow afternoon.

The Chairman. I thank you. I would say that this is good news. I have the impression, before I give the floor to other speakers, that most delegations have no strong feeling on either your proposal or the basic text, and that is perhaps a good starting point for your discussions with other delegations to find the text which is generally acceptable within this committee. For that reason, I would say that we can
postpone the decision. It is not necessary to take an indicative vote on your proposal this afternoon, but that would mean that we would formally vote immediately on your proposal, the new text of which perhaps you could submit tomorrow afternoon. Would that be acceptable for you and the committee? Are you not preparing a new text or are you only talking?

**United States.** Thank you, Mr. Chairman. We are talking, and we hope that these discussions will lead to a revised text that would be acceptable to all involved and, without consulting with other delegations who are involved, I believe that it would be safe to say that the schedule you have announced would be acceptable.

**The Chairman.** We will have an immediate formal vote then, tomorrow afternoon, on that new text, without further debate perhaps, because this afternoon many delegations have said they have no strong feelings, so we have no point to discuss. It will only be for us to look at the new text and make a decision. O.K. Well, I have on my list Spain. I have the impression that the proposal of Spain has met with a certain amount of support. No delegation has directly spoken against that proposal. I would like to propose that we have an indicative vote on the proposal of Spain on article 25, paragraph 1. The proposal is contained in Working Paper No. 10. Is that acceptable? O.K. My question is: who is in favour of the proposal of Spain to add at the beginning of article 25, paragraph 1, the following words: “Without prejudice to the provisions of article 3”. Please raise your cards. I thank you. Who is against that proposal: please raise your cards. I thank you. Well, 17 in favour, 1 against. That means the proposal is tentatively adopted. We will, in any event, have to vote formally on that proposal also tomorrow afternoon. It is not necessary to discuss article 25, paragraph 2. There are certain consequential changes depending on the decision on paragraph 1.

**Federal Republic of Germany.** Thank you very much, Mr. Chairman. I am terribly sorry I did not want to take too much time, I did not on the other hand want to intervene earlier because it is a minor point but it relates to Article 25(2) which we did not touch on until now because there have not been any amendments. Our concern as to Article 25(2) is that this provision is extremely unusual in an international convention. I know there is an example, but only one as far as I know unfortunately. The question whether warships are included and you foresee reservation as one solution or whether you exclude them as it is done in the draft, we could go along with either solution. In principle we are inclined to apply the rules to warships as well. The problem we have and which do not intend to carry in the final vote on Article 25(2) is that in article 25 paragraph 2 we foresee an obligation of States Parties to the Convention to notify a rule of their own legislation which is entirely out of the scope of the Convention. So to say first we exclude warships in paragraph 1 and then we say if some State wants to apply the rules, partly or altogether, to warships, he has to notify it. And I think it is highly undesirable to fix, that is I have to admit and am very cautious for this reason; it is perhaps a matter of principle, it is not so much the substance which worries us but it is the principle that is growing in international conventions that there is an obligation for a notification outside the Convention. If warships are excluded States are not bound as to warships and so there shouldn’t be any notification, I think, that’s not logical, that’s not consequential and it is a dangerous development to foresee notifications to bind in a way the contracting States outside the scope of application of the Convention. That’s the reason we have objections against paragraph 2 and tend not to carry it in the final vote, I just wanted to communicate if there is support for this view we would be happy to strike it out, if not of course we do not want to take too much of your time. Thank you Mr. Chairman.
The Chairman. May I take it that you have just made the formal proposal to delete paragraph 2. Well three minutes, we cannot discuss that problem, the only possibility would be to have a vote. Would you accept that? To have an indicative vote.

Federal Republic of Germany. Sorry if I may perhaps ask you to ask whether there is any support for it, if not I certainly would prefer it, thank you.

The Chairman. Is there any support for the proposal of the Federal Republic of Germany to delete paragraph 2 of article 25. I don’t, yes, Cuba is that support for the proposal?

Cuba. Mr. Chairman, we support the proposal.

The Chairman. Is there any other delegation which wants to support that. It seems to me there is only one delegation who supports that, Professor Herber, would you withdraw it? You have of course the possibility to vote against the whole paragraph when we come to the final voting on the basic text. I thank you.

21 April 1989
Documents LEG/CONF.7/V.R.115-118

The Chairman. We come then to article 25. On article 25 we have received a document, working paper 2577, for a new version of article 25. I would like the United States to introduce that document.

United States. Thank you, Mr. Chairman. An informal working group met on this
article on two occasions with a substantial number of States that had articulated views on these issues participating in the working group. At the close of its deliberations, the working group adopted the proposed text which is set forth in working paper 25 as a recommendation for consideration by the Committee of the Whole. In highlighting the text adopted by the informal working group, I would note three significant changes from the proposal that was originally submitted by the delegation of the United States in conference paper 13. In article 25, paragraph 1 and paragraph 3, the term “generally recognized principles of international law” was considered by the working group to be a more appropriate reference than what had been contained in the United States proposal. The second significant change is in the third paragraph. Language from the 1926 Convention on State immunity was incorporated in this paragraph specifically by adding the words “by any legal process of, nor for any proceedings in rem against” as being a clear and more complete reference to the appropriate standard. One final change is that the enumeration of specific articles that had been contained in the United States proposal, was not considered necessary or desirable by the working group. It was felt that the preceding statement in the third paragraph was a sufficient statement to address this issue and accomplish the aim of ensuring that the salvage convention is not utilized as a basis for breaching this immunity rights of States with respect to their property. There are two additional brief notes I would make, Mr Chairman, the first is a drafting point - there were several delegations that felt the more correct usage would be the term “immunity” instead of the term “sovereign immunity”, a matter we thought for the drafting committee and the second point and final that I would make is that one delegation participating in the working group specifically reserved its position.

**The Chairman.** Since that was a new text which has been submitted I give you the opportunity to ask questions for clarification.

**Denmark.** Thank you very much Mr Chairman. I am very grateful for the last remark by the distinguished delegate of the United States. I think I could start by saying that as far as Denmark is concerned, the question of the immunity of state-owned ships and cargo carried on board those ships or commercial ships is dealt with in the 1926 Convention. May be I should confine myself first to article 25.1. As far as we are concerned, we think one word is lacking there and that would be “non-commercial”, we prefer if in the second line after “or other” put in “or other non-commercial vessels”. That will mean that it was more or less in line with what we believe to be the international law in accordance with the 1926 Convention. If it is the purpose of the inclusion of article 25 (1) as it stands from the working group to widen the scope of international law with regard to sovereign immunity, it would be unacceptable to us, and we do not think it should be put in here because that would contradict what is international law according to our view. If it were possible to put in “non-commercial” I think it would correspond more to the 1926 Convention. Turning to article 25, subparagraph 3, the view is more or less the same. We think that it is dealt with in the existing 1926 Convention, it does not belong here, we should not address sovereign immunity in this convention, but if we were to do it, again we would like to insert these two words in the fourth line before the words “cargoes” we would like to insert “non-commercial” and I think if that was not possible to insert those two words in article 25(1), and article 25(3) it will be impossible for Denmark to vote in favour of this text.

**The Chairman.** The United States.
United States. Thank you Mr. Chairman. I must apologise in that in reporting the work of the working group I neglected to identify a fourth significant change. That change is found in article 25.1, was the result of a formal proposal having been made on the floor by the distinguished delegation of Spain and it involved the inclusion of the phrase “without prejudice” to article 3, that is intended to provide a specific and it was felt by the working group necessary reference to the provisions of article 3 as regards the conduct of salvage operations in which governments are involved.

The Chairman. May I ask the delegation of Denmark whether they want to make a formal proposal to amend the text in working paper 25. You have the possibility to make or propose an amendment.

Denmark. We would formally propose to insert the two words in 25.1 and 25.3.

The Chairman. To identify the problem, Denmark has now proposed an amendment to the text proposed by the working group. You have to put before vessel” on the second line the word “non-commercial” and in paragraph 3, before “cargoes” on the fourth line, “non-commercial”.

Delegate. Thank you Mr Chairman. We would like very briefly to state that we entirely agree with what has been said by the distinguished delegate of Denmark and we would like to support the sub-amendment.

Greece. What I am going to say is not probably the point of substance but for us it is very important. Thus for international convention practice, especially in a legal convention, it has been considered as appropriate to avoid the expression that pertain or refer to one legal system in order to ensure an international application. On the basis of this line of thought this delegation would not like to retain, in paragraph 3, the period “nor for any other proceedings in rem against”. Proceedings in rem is a peculiarity of the common law which is totally unknown in continental law, it is entirely untranslatable, at least to our language and it is something which we would not like to see in the text of an international convention. As far as I recall, I cannot remember another place where I have seen it and, therefore, I would urge the delegations that have proposed this text to reconsider it or probably the deletion or substitution for something else. Thank you.

The Chairman. I thank you. We have no time for reconsideration. That is our problem. You have two possibilities: either you propose the deletion of this word, or you can vote against the text. We have a basic text available. We cannot start drafting at this stage; we are in a voting procedure. These delegations should have this in mind. I would hesitate to open a new debate on the whole text. We have two texts - delegations which are against the proposal of the working group vote against that. We have no time for drafting. Finland.

Finland. Thank you, Mr. Chairman. I would like to say that I fully share the views expressed by Denmark, at least at the moment, because we have no explanation why the term “non-commercial” has been dropped, when it was in the original text. Thank you, Mr. Chairman.

The Chairman. Thank you. It is not necessary to support that amendment. I will put on the vote that amendment. The next speaker is China.

China. Thank you, Mr. Chairman. We support the opinion put forward by the delegate from Greece.

The Chairman. Well can I take it that it is now a formal proposal to delete these
Greece. Reluctantly, yes.

The Chairman. Sorry, Mr. Perrakis, either you propose that we are in a voting procedure – fine, that has been seconded. That means there is the proposal in paragraph 3 to delete the following words: in the third line starting with “Nor for any proceeding in rem against”. To delete these words; I will put to the vote that amendment. Sweden, another amendment?

Sweden. Thank you, Mr. Chairman, no other amendment, just one question to my distinguished Danish colleague and I wonder whether his proposed amendment meets the aim that he was seeking. I understand from his proposal that he was quite happy with the text as it is in the basic document, and that text does not refer to non-commercial vessels but to vessels operated by a State for non-commercial purposes, and if that was his intention, I would be quite happy to give my support to that when we come to vote. Thank you Mr. Chairman for the clarification.

The Chairman. Well, Denmark, are you ready to answer that question, very shortly?

Denmark. A slight mistake on my part. I agree entirely with what was expressed by the distinguished delegate of Sweden, so I think that could be perhaps left to the drafting Committee.

The Chairman. The idea is, in any event, to bring in “non-commercial”. Either “vessels for non-commercial purpose” or non-commercial vessels”. I would say that is a question which could be left to the drafting Committee. I would seek the agreement of Mr. Sturms. Mr. Sturms, could the drafting Committee accept it? Yes. France.

France. Thank you Sir. Very briefly, Sir, we want to say that we are in favour of the basic text for the reasons already pointed out, by the way, by previous speakers. This is true of the first paragraph to begin with and we also agree with what Greece says about paragraph 3. However, I think we can simplify things by saying that we are against paragraph 3. These provisions are dealt with in another Convention, i.e. on the immunity of State-owned vessels, and we do not need these provisions here. Therefore, we stick to the basic text and that is all we want to say about paragraph 3, apart from what I have said before.

The Chairman. United States. I would like to finish the debate; we have only three minutes left and it was my intention to finish the voting procedure before coffee. Is it necessary to take the floor you insist, United States? I saw you put your card down. Then you have the floor, Sir.

United States. Thank you, Mr. Chairman. With respect to the two proposals on the table. In the first instance, it is the position of this delegation “non-commercial” is one of the criteria that is embraced within the reference to generally recognised principles of international law, the application of which would of course be left to the Court of the foreign State. The intent of this proposal was initially, and continues to be in its refined form as the result of the informal working group, an attempt to accommodate several differences which exist by its general reference, the effect of which is to avoid this Convention having an impact with respect to certain questions of sovereign immunity as they apply to Government-owned cargoes. Briefly, with respect to the second proposal, as to the reference to language which is utilised in a widely accepted convention and includes a specific reference to a proceeding in rem,
The Chairman. Thank you. Italy. Do you insist? If not, fine. We have no other speakers, so we can proceed to vote. We shall vote paragraph by paragraph. First paragraph 1 - we have a proposal to amend paragraph 1 of the text proposed in working paper No. 25, to include the word “non-commercial” before “vessels”. Who is in favour of that amendment? United States, is there any change in paragraph 2 as compared with the basic text? A brief explanation, Mr. Ross.

United States. Thank you, Mr. Chairman. I am checking the text myself now as I look at it. I believe, in fact, that there is a change which was made. It was so many changes ago it will take me a moment, however.

The Chairman. We then go through all paragraphs. You can explain it then. On paragraph 3 we have two amendments, first to include before “cargoes” the word “non-commercial”, that means the same problem as in paragraph 1. Who is in favour of the inclusion of these words in paragraph 3? Please raise your cards. Who is against? Abstentions? The result of the vote is 31 in favour, 9 against, 3 abstentions. That means these words have been included in that text. We have the second amendment, proposed by Greece, to delete in paragraph 3 the words starting in the third line with “nor” and continuing “for any proceedings in rem against”. It has been proposed to delete these words. Who is in favour of the deletion? Please raise your cards. Who is against? Abstentions? The result of the vote is 15 in favour of deletion, 16 against, 9 abstentions. That proposal has not been adopted. The words remain in the text.

Mr. Ross. Thank you. The change is that simply at the outset of paragraph 2 you have a reference back to paragraph 1 without repeating the standard.

The Chairman. Thank you. That is clear, I think. Vote on paragraph 2. Those in favour of paragraph 2 please raise your cards. Thank you. Who is against the text of paragraph 2? Abstentions? The result of the vote is 42 in favour, 2 against, 1 abstention. That means paragraph 1 has been adopted. Paragraph 2. Mr. Ross, are you now ready to answer my question? You have the floor.

Mr. Ross. Thank you. The change is that simply at the outset of paragraph 2 you have a reference back to paragraph 1 without repeating the standard.
Sweden. Sorry, Mr. Chairman. I really do not want to correct you but you said we had adopted article 25 as proposed in WP/25. I would like to add “as amended” for the records. Thank you.

The Chairman. We have no records, but in any event (laughter).

Draft Articles agreed by the Committee of the Whole
(Document LEG/CONF.7/CW/4)

Article 25 - State-owned vessels and cargoes

1. Without prejudice to article 3, this Convention shall not apply to warships or other non-commercial 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 and entitled 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 owned or operated by that State and being used at the time of the salvage operations exclusively on governmental non-commercial services, described in paragraph 1 of this article, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

3. 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 to sovereign immunity under generally recognized principles of international law.

Plenary Session 28 April 1989
Text examined and approved by the Drafting Committee
(Document LEG/CONF.7/DC/1)

Article 4 - State-owned vessels

1. Without prejudice to article 3, 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 of this article, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

3. 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 to sovereign immunity under generally recognized principles of international law.

Document LEG/CONF.7/VR.225

The President. Article 4 with the correction which was made in paragraph 2, “where a State Party”. Paragraph 2 of article 4, “where a State Party”. No comments. Article 4 is approved.

* This paragraph has been made a separate article – Article 25.
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.

CMI
Report by the Chairman of the International Sub-Committee
Document Salvage 5/IV-80

4. Liabilities arising out of salvage (the concept of salvage).
   d) States having incurred cost in connection with state-guaranteed or state-organized salvage operations can be expected to seek indemnity from the ship or the shipping industry, if necessary by imposing duties or liabilities subject to new or no limits.

The relationships between the state concerned and the shipowner as well as between the state and the salvors arising in these cases fall outside the scope of the work of the Sub-Committee. However, even in such cases remedies under the law of salvage applicable in the relation between the salvors and the ship, cargo and other interest subject to salvage, should remain applicable. This is not the approach of the 1910 Convention art. 13, as it has usually been interpreted. However, the degree and form of state involvement may vary considerably, and borderline cases or unwarranted differences in law may otherwise arise. Moreover, any compensation due to the salvors will reduce his claim against the state and thereby the need for a particular recourse from the state to the commercial interests having been in danger.

Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Art. 1-3 Salvage Operations Controlled by Public Authorities
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.

2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the 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 remedies provided for in this Convention shall be determined by the law of the state where such authority is situated.
Note: It was decided to retain the salvors’ right against the ship, vessel or other property even where the salvage was directed by public authority in an attempt to preserve the system of private salvage settlements which was outlined in the President’s report (paragraph II. 2ff. p.4a) and generally supported at the first meeting of the international subcommittee. It was generally felt that if the primary right were to be one against the public authority, leaving the authority to its right of recourse against the shipowner, this would lead in time to a system of publically organized salvage, with appropriate provisions for recourse against the salved interests, which would be against the interest of the maritime community.

Draft submitted to the Montreal Conference  
Document Salvage-18/II-81  
Art. 1-3. Salvage operations controlled by public authorities

Report by the Chairman of the International Sub-Committee  
Document Salvage-19/III-81

The Draft Convention does not deal directly with questions relating to salvage operation by or under the control of public authorities, nor with the right of salvors in such cases to payment from the authority concerned, cf. art. 1-3 and the 1910 Convention art. 13. However, the fact that a salvor has performed salvage operations under the control of a public authority shall not prevent him from exercising any remedy provided for by the Draft Convention against the private interests to which salvage services are thereby being rendered. Whether the salvor is entitled to recover from such private interests depends on whether, according to the facts, the conditions for recovery set out in the provisions of the Draft Convention have been met.

Montreal Draft  
Document LEG 52/4-Annex 1

Article 1-3. Salvage operations controlled by Public Authorities

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.

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.

CMI Report to IMO  
Document LEG 52/4-Annex 2

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.

(80) This article has not been changed.
The draft convention does not deal directly with questions related to salvage operations by or under the control of public authorities, nor does it deal with the rights of salvors to payment in such cases from the authority concerned. This is in accordance with the system of the 1910 Convention, and Art. 1-3.1, has in fact the same wording as part of Art. 13 of the 1910 Convention.

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 operation.

In this provision it is now made clear that the fact 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. Whether the salvor is entitled to recovery from such private interests depends upon whether, according to the facts, the conditions for recovery set out in the provisions of the Convention have been met.

It should be remembered that according to Art. l-2.2.(d) the Convention does not apply to removal of wrecks. Therefore if on the national level it is felt that a salvor engaged in wreck removal under supervision of a “public authority” should be entitled to the rights provided for in the Convention, a provision to this effect should be included in national law.

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.

The present law varies from State to State as to whether for instance the coast guard or the fire service may recover in salvage. It is intended that this position should be preserved.

IMO
Legal Committee
Report on the Work of the 52nd Session (Document LEG 52/9)

44. It was suggested that, in paragraph 1, the provision regarding national law or treaty relating to salvage “by and under the control of public authorities” and in paragraph 3 the words “shall be determined by the law of the State where such authority is situated” might result in a possible contradiction with the right of the salvor under paragraph 2 to avail himself of the rights and remedies of the Convention. It was also suggested that there was a contradiction with Article 1-4.1 by which the salvor could set aside the convention by contractual means. Salvage operations could not be free and voluntary under a private contract if at the same time the application of the draft convention was set aside in favour of national law or another convention.

45. A delegation felt that the provisions of Article 1-3.2 would permit a claim against a shipowner by a salvor who had no contract with that shipowner. It was questioned whether this might not imply duplicate remuneration – one payment under a contract with the government and another award from the shipowner. Another form of double recovery might arise by application of the 1969 Liability and 1971 Fund Conventions on the one hand and the new salvage convention on the other. The salvor should be able to recover only to the extent that the award under the draft convention exceeded one form of alternative recovery or another.
46. The representative of the CMI stated that Article 1-3.2 was intended to preserve the salver’s rights under the draft convention to recover from the private interests to which he rendered service, even if he performed them under control of a public authority and without contract. Article 1-3.3 dealt with the extent to which a public authority, such as the coast guard or a fire service, might recover in salvage. Article 1-3.1 was a repetition of Article 13 of the 1910 Convention.

Report on the Work of the 53rd Session (Document LEG 53/8)

51. The Committee considered the question, posed by the delegation of Japan in document LEG 53/3/4, whether paragraphs 1 and 2 read together might permit duplicate remuneration in cases in which the salver performed, in the same operation, salvage under the control of a government (with or without a contract) and also salvage under a separate contract with a shipowner. The delegation of Japan stated that its purpose was to call attention to the problem rather than propose a particular solution. However, it considered that possibly paragraph 2 might either be deleted or combined with paragraph 3 of the same Article.

52. Many delegations shared the concern expressed by the Japanese delegation and one delegation suggested the insertion in Article 1-3.2, or elsewhere as appropriate, of the words “to the extent not provided by the State”. One delegation proposed that both paragraphs 2 and 3 should be deleted.

53. In the opinion of another delegation the exercise of State intervention would not be a salvage operation and costs would be distributed on the “polluter pays” principle.

54. Several other delegations considered that the two paragraphs should be retained. They stated that a salver who was carrying out operations under the direction of a State, deserved to benefit from the convention, irrespective of whether he was acting involuntarily or under an agreed contract.

55. The Committee agreed to retain paragraphs 2 and 3 of Article 1-3 in square brackets for further consideration.

Report on the Work of the 56th Session (Document LEG 56/9)

A rticle 3 - Salvage operations controlled by public authorities

27. The Committee considered a new text of this article proposed by the United Kingdom in document LEG 56/4/5. The text reads:

“This Convention shall not affect the provisions of national law or international Convention relating to salvage operations by or under the control of public authorities except that a salver other than a public authority [including any employee of that authority] who is under a duty to perform salvage operations shall be entitled to avail himself of the rights and remedies provided for in this convention in respect of salvage operations.”

28. It was explained that this text would give greater prominence to national law in respect of salvage operations by or under the control of public authorities.

29. The observer from the CMI explained that the original text was intended to
specify clearly the extent to which a salvage operation would be controlled by public authorities, and the rights and remedies which might be expected by a salvor before he undertook the operation. This was considered necessary since uncertainty on these points could delay urgent salvage work in some cases.

30. Some delegations considered it better to have an international solution than to leave the matter to national law. It was pointed out that public authorities were likely to want to intervene in salvage operations where they perceived an imminent danger to their interests. It was therefore desirable, in the interest of the salvor, that the law regarding such intervention should be spelled out in the convention rather than be left to national law, particularly as national law might not always be certain in its content or application.

31. The United Kingdom delegation explained that it was not its intention to prevent public authorities availing themselves of the provisions of the convention, but to leave the entire matter to national law.

32. Some delegations wished to give closer study to the United Kingdom proposal.

33. A number of delegations considered that paragraph 1 of article 3 was sufficient and that paragraphs 2 and 3 were unnecessary, but one delegation suggested that paragraph 3 should at least be retained.

34. The Committee noted that the issue to be determined in this context was the extent to which salvage operations controlled by public authorities should be regulated by the new convention or be left to be regulated by national law. The Committee decided to give further consideration to the matter and the proposal of the United Kingdom.

35. The Committee agreed that paragraphs 2 and 3 of article 3 should be considered for inclusion or deletion together. Accordingly it was decided to put those paragraphs into brackets.

**Report on the Work of the 57th Session (Document LEG 57/12)**

124. The Committee considered a proposal by the United Kingdom for a redraft of this article to read as follows:

“This Convention shall not affect the provisions of national law or international conventions relating to salvage operations by or under the control of public authorities except that a salvor other than a public authority [including any employee of that authority] who is under a duty to perform salvage operations shall be entitled to avail himself of the rights and remedies provided for in this Convention in respect of salvage operations.”

125. This proposal did not receive sufficient support in the Committee and was therefore not adopted. The Committee decided to retain the article without change but with the brackets removed around paragraphs 2 and 3.

**Document LEG 58/12-Annex 2**

Article 3-Salvage operations controlled by public authorities

---

(82) The text of Article 1-3 of the CMI Montreal Draft has remained unvaried.
Consideration of the Draft Convention on Salvage Note by the Secretariat

Article 3: Salvage operations controlled by public authorities (CMI draft, art. 1-3, 1910 Convention, art. 13)

26. It was explained that this article was intended to specify clearly the extent to which a salvage operation would be controlled by public authorities, and the rights and remedies which might be expected by a salvor before he undertook the operation. This was considered necessary since uncertainty on these points could delay urgent salvage work in some cases. (LEG 56/9, paragraph 29).

27. During the discussions some delegations considered that the law regarding the intervention of public authorities in salvage operations should be spelled out in the Convention rather than be left to national law. It was pointed out that public authorities were likely to want to intervene in salvage operations where they perceived an imminent danger to their interests. It was therefore desirable, in the interest of the salvor, that the law regarding such intervention should be spelled out in the Convention rather than be left to the national law, particularly as the national law might not always be certain in its content or application. (LEG 56/9, paragraph 30).

28. In regard to the protection of the salvor's interests, it was explained that the purpose for the inclusion of paragraph 2 was to preserve the salvor's rights under the convention to recover from the private interests to which he rendered service, even if he performed them under the control of a public authority and without contract. (LEG 52/9, paragraph 46).

29. It was equally explained that paragraph 3 dealt with the extent to which a public authority, such as the coast guard or a fire service, might recover the salvage. It was intended that the present law which varies from State to State offered a solution which should be preserved. (LEG 52/9-paragraph 46 and LEG 52/4, annex 2).

30. After considering the different views expressed in respect of this article, the Committee agreed that the extent to which salvage operations controlled by public authorities should be left to the national law. It was therefore decided that the text of this article should remain unchanged. (LEG 57/12, paragraph 125).

International Conference
Committee of the Whole 21 April 1989
Document LEG/C ON F.7/3

Article 3 - Salvage operations controlled by public authorities

The Chairman. We come now to article 3. I would like to propose that we vote on the whole article unless a delegation wishes that we vote on a separate paragraph. We will vote on article 3 as a whole. May I take it that the committee is ready to adopt that article by consensus. We have adopted article 3 as it stands in the basic text by consensus.

(83) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2) and is that approved by the CMI at Montreal: supra, page 176.
Draft Articles approved by the Committee of the Whole (Document LEG/CONF.7/CW/4)

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.

Plenary Session 28 April 1989

Text examined and approved by the Drafting Committee (Document LEG/CONF.7/DC/1)

Article 5 - State-owned vessels

Document LEG/CONF.7/VR.225

The President. Article 5. Article 5 is adopted.

(84) The text is that approved by the CMI at Montreal.

(85) The Drafting Committee has approved the text approved by the Committee of the Whole. Only the number of the Article has been changed to Article 5.
ARTICLE 6
Salvage contracts

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

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

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

PARAGRAPH 1

CMI
Report by the Chairman of the International Sub-Committee
Document Salvage 5/IV-80

VI. THE ROLE OF SALVAGE CONTRACTS.

1. The approach.

Salvage contracts should only have a supplementary role in determining the rights and duties of parties concerned.

a) Standard form contracts are likely to be prepared on a commercial level without adequate representation of the public and third party interests affected by salvage operations. Standard forms are also likely to be prepared with reference to a particular national legal system or a particular dispute-settlement procedure and may consequently not obtain such general and worldwide use as is required from the point of view of international uniformity.

b) In particular salvage situations contract negotiations prior to the commencement of the salvage operation should be avoided to the extent possible. Salvage situations do not represent the kind of environment envisaged by general principles of contract law as appropriate for negotiating contracts. Such negotiations may also delay the salvage operations to the detriment even of third party interests threatened by the ship in danger, but not parties to the negotiations.

2. The accommodation of the purposes of salvage contracts through revision of the international law of salvage.

The international law of salvage should attempt to deal in a generally acceptable manner with the matters presently covered by standard form contracts for salvage.

a) One purpose, relevant only in some of the difficult salvage cases, is to modify the principles of “no cure no pay” or otherwise to fix in advance the remuneration payable to the salvors. The proposed new remedy for the cost of preventive measures (supra IV) will probably remove to a great extent the need for such modifications.

b) A salvage contract reserves for the salver a first opportunity to perform the
salvage operation, thereby protecting him against competing salvors. However, this idea conflicts with the need for cooperation between salvors in order to accomplish speedy and efficient salvage. The interests of the “first” salvor may be adequately protected in a more flexible manner within the framework of the rules of the apportionment of awards among several salvors, supra III (1) and (3).

c) A salvage contract may remove any doubt as to whether there exist a salvage situation. However, whether the services rendered amount to salvage is not a question to be settled in advance, but only after all the facts are known.

d) A salvage contract usually determines the court or arbitral tribunal competent to decide questions relating to the remuneration payable to the salvors. A salvage convention cannot meet the need of parties wishing to resort to an exclusive forum or to arbitration at a particular place. It may, however, adopt the more limited measure of making available to the parties a balanced choice of jurisdictions, including fora such as the first port of call, the shipowner’s domicile, the place where guarantee has been provided, the place where damage to third party interests has occurred or would have occurred, etc.

e) A salvage contract usually provides that the salvor is entitled to demand a guarantee to secure his claims. This may also be provided for in a salvage convention, for instance in the form that if a guarantee has not been provided on demand, the salvor may exercise a direct action against the respective insurers.

If the salvor is recognized as a claimant under the 1969 and 1971 Conventions relating to oil pollution, he will be able to benefit from the insurance system and the direct action provided for in these conventions.

The position is the same if the concept of “liability salvage” is recognized.

f) Standard form contracts may deal with various other matters. For instance, in the Lloyd’s open form, providing for “Lloyd’s arbitration” the bulk of the provisions are rules governing the arbitral procedure, and many other provisions restate what is already accepted law. These matters do not have to be dealt with in a salvage convention. Nor does there seem to be necessary or desirable to burden a standard form contract with such matters.

In case of institutionalized arbitration, such as Lloyd’s, ICC or ICC-CMI Arbitration, a general clause in the contract should be sufficient, the procedural rules being set out in some sort of regulation.

g) The above observations suggest that most purposes of salvage contracts may and should be met by provisions in a salvage convention.


a) Simplification of standard forms for salvage contracts and reduction in terms of items covered will reduce the risk of detrimental delays resulting from negotiation of salvage contracts in particular cases.

b) A revised and amplified international law of salvage will provide a good basis for considerable simplifications.

c) Simplified standard form contracts suited for international use may be prepared by commercial organizations or by non-interested organizations such as CMI or IMCO.

4. The validity of Contracts.

a) Salvage contracts should as a rule remain valid subject to provisions on the invalidity of unreasonable terms or contracts (compare the 1910 Convention art. 7)
b) In cases where third party interests outside the ship are in danger the principle should be that contracts concluded in advance of or during the salvage operations should not be enforceable. However, the parties should be free to determine in advance the place for settlement of disputes by courts or by arbitration as well as to refer disputes to an institutionalized arbitral forum.

**Draft prepared by the Working Group**
**Document Salvage-12/IX-80, Annex I**

Art. 1-4. Salvage operations according to contract.

1. This Convention shall apply to any salvage operation performed under contract save to the extent that the contract otherwise provides expressly or by implication. However, the provisions of arts. ... shall apply even if the contract contains any stipulation which is inconsistent therewith or derogates therefrom.

**Draft submitted to the Montreal Conference**
**Document Salvage-18/II-81**

Art. 1-4. Salvage contracts.

1. This Convention shall apply to any salvage operation performed under contract save to the extent that the contract otherwise provides expressly or by implication. However, the provisions of arts. ... shall apply even if the contract contains any stipulation which is inconsistent therewith or derogates therefrom.

**Report by the Chairman of the International Sub-Committee**
**Document Salvage-19/III-81**

According to art. 1-4 the Draft Convention shall apply to any salvage operations except to the extent that the contract otherwise provides expressly or by implication. In the Sub-Committee some national association put forward proposals relating to the mandatory character of one or more of the articles in the Draft Convention, but these proposals did not receive the support necessary for inclusion in the text.

**Montreal Draft**
**Document LEG 52/4-Annex 1**

Art. 1.4-Salvage contracts

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

**CMI Report to IMO**
**Document LEG 52/4-Annex 2**

It is here provided that the rules of the Convention shall not be mandatory save for the rather limited scope of the rules concerning invalid contracts in Art. 1-5. As mentioned, some national associations did put forward proposals relating to the mandatory character of one or more of the articles in the Convention, but these proposals did not receive the necessary support. The discussion within the CMI concerning this subject is summarized above in the general comments.
IMO Legal Committee
Report on the Work of the 52nd Session (Document LEG 52/9)

47. The question was asked what purpose the draft convention would serve if its provisions governed the salvage operation “save to the extent that the contract otherwise provides”. This provision left the salvor and shipowner with plenary contractual freedom. LOF 1980 would answer all requirements and the prospective convention could be set aside. It was felt that such extensive contractual freedom was not desirable.

48. Several delegations stated that it was essential to preserve the freedom of contract of the salvor. Separate contracts were called for on many occasions and a comprehensive salvage convention would have to contemplate them. There were, for example, contracts for day-to-day remuneration for salvage services. No convention could be applied as mandatory in every salvage situation. One delegation added that to deprive the salvor of freedom of contract could adversely affect safety at sea and the preservation of the marine environment. The draft was well-balanced and gave public authorities all necessary freedom of action which, in any case, they would normally exercise.

49. In support of the unrestricted right to contract, a delegation pointed out that the draft convention dealt comprehensively with salvage and account should therefore be taken of the non-professional salvor. There were ships and even land-based units that could be used in non-professional salvage and that form of salvage should not be discouraged.

52. Some delegations referred in discussion of Article 1-4 to the importance of balancing private rights of contract with the control by public authorities and of deciding precisely which provisions of the draft could be set aside by contract. In this connection, references were made to the imperative right of States to take measures of self-protection and to the need for the draft convention to effectively protect the public interest. The basic premise of the draft and of the work of IMO on this subject was that the concept of salvage should cover the public interest. A major question raised in this work was whether a public law objective could be achieved in a private law treaty. There would of necessity be some mandatory rules, including the obligation not to set aside the environmental preservation provisions of the draft by contract. The borderline between necessary contractual freedom and overriding obligations would have to be clearly delineated. Such matters as payment of awards could clearly remain in the realm of contract, although it would be noted that LOF 1980 was restricted to tankers. The essential task with regard to the draft convention was to determine what was compulsory and what was not. That was not yet sufficiently clear.

Report on the Work of the 53rd Session (Document LEG 53/8)

56. It was pointed out that this provision was intended by the CMI to make it clear that most of the rules of the convention would not be mandatory. This approach was based on a recognition of the fact that there was a variety of contracts for salvage involving different categories of salvors, professional as well as non-professional.

57. Some delegations considered that it was essential to look closely at the draft convention to decide which provisions needed to be mandatory and which could appropriately be made “optional”, in that a party to a contract would be free to deviate...
therefrom. It would then be necessary to have an express provision identifying any such “optional” rules.

58. One delegation was not in favour of a general right to contract-out of convention provisions. It stressed that a salvage convention should impose obligations in order to achieve its purpose. In its view there should be no possibility for a party to contract-out of the requirement of Article 1-5 (Invalid contracts or contractual terms), for example. In the view of this delegation most of the provisions of the convention should be mandatory, including the duty to render assistance to all persons in need of it at sea (Article 2-3,1).

Report on the Work of the 55th Session (Document LEG 55/11)

Article 4-Salvage contracts

Report on the Work of the 58th Session (Document LEG 58/12-Annex 2)

Article 4-Salvage contracts

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

Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 4-Salvage contracts

(CMI draft, art. 1.4)

31 The discussion on paragraph 1 focused on the extent of the contractual freedom to be acknowledged by the new convention. It was noted that this provision left the salvor and the shipowner with plenary contractual freedom. In the opinion of some delegations, it was essential to preserve the freedom of contract of the salvor. (LEG 52/9, paragraphs 47 and 48).

32 Other delegations felt that such extensive contractual freedom as the one provided in the draft was not desirable. It was pointed out that it was essential to decide which provisions needed to be mandatory and which could appropriately be acknowledged as “optional”, in that a party to a contract would be free to deviate therefrom. Within this context mention was expressly made, not only of cases for annulment and modification such as the ones foreseen in draft article 5, but also of the duties to prevent or minimize damage to the environment as well as the duty to render assistance to all persons in need of it at sea. (LEG 52/9, paragraph 47, LEG 53/8, paragraph 57).

33 Notwithstanding these opinions, the Committee agreed to retain paragraph 1 on grounds that the draft was well balanced and gave public authorities all necessary freedom of action, which, in any case, they would normally exercise. (LEG 52/9, paragraph 48).

34 The need to preserve the freedom of contract of the salvor was also highlighted by pointing out the case of separate contracts, such as contracts for day to day services.

(86) Article 1-4 of the CMI Draft was renumbered Article 4 in the consolidated text prepared by the IMO Secretariat.
day remuneration for salvage services. Account should also be taken of the cases in which ships and even land-based units could be used in non-professional salvage and that form of salvage should not be discouraged. A comprehensive convention should have to contemplate these cases. No convention could be applied as mandatory in every salvage situation. (LEG 52/9, paragraphs 48 and 49).

International Conference
Committee of the Whole 20 April 1989
Document LEG/CONF.7/3

Article 4-Salvage contracts

The Chairman. Ladies and gentlemen, the meeting is called to order. Would you please take your seats, ladies and gentlemen. Well, I am very happy as I see that the majority of the delegations could manage to come this morning to the meeting. I have the impression we are at least a quorum. We start this morning with the discussion of those articles which are part of package No. 3. We will go through the remaining articles in the order as contained in the basic draft. The first article is article 4. On article 4, paragraph 1, we will take that paragraph by paragraph. On article 4, paragraph 1 we have a proposal of the Federal Republic of Germany and I would like to ask the delegation of the Federal Republic of Germany to introduce the document, WP/14. You will find the proposal in WP/14. Federal Republic of Germany.

Federal Republic of Germany. Thank you, Mr. Chairman. With respect to article 4, let me start differently. In our general observations in conference document LEG/CONF.7/10, under paragraph 3 on page 3, we have submitted the observation that it has always been held with respect to the Convention of 1910 that it implicitly admits non-contractual or spontaneous salvage as a typical case coming within the general scope of the uniform law of salvage at sea, even though there are cases where no contract exists between the salvor and the owner of the salved vessel might be exceptional, but there are some provisions in the earlier Convention as well as in the new draft convention from which it can be inferred that non-contractual salvage should be covered, and we felt it might be useful to have at any place of the convention the more general provision which indicates explicitly that the convention’s rules

(87) The text of paragraph 1 of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
(88) Document LEG/CONF.7/CW/WP.14 Submission by the Federal Republic of Germany Article 4 para.1 should read: “This Convention shall apply to any contractual as well as non-contractual salvage operations save to the extent that the contract otherwise provides expressly or by implication.” Even though salvage operations are usually covered by standard form contracts for salvage, a salvor deserves to benefit from the Convention irrespective of whether he was acting under an agreed contract (e.g. salvage operations carried out in compliance with a public law duty under the control of public authorities – cf. Article 3 para. 2 Draft Convention). For this and other reasons as set out in document LEG/CONF.7/10, p. 3, Article 4 para. 1 of the Convention should explicitly spell out that the Convention shall apply to contractual salvage as well as to non-contractual salvage operations.
govern contractual salvage as well as non-contractual salvage and we felt that article 4, which deals with the freedom of contract might be a suitable place to mention this issue and, therefore, we now propose that paragraph 1 of article 4 should read “This Convention shall apply to any contractual as well as non-contractual salvage operations, save to the extent that the contract otherwise provides expressly or by implication”.

Thank you.

The Chairman. I thank you. The floor is open for discussion. The first speaker is Sweden.

Sweden. Thank you, Mr. Chairman. This delegation does not have any problems with the general thrust of the proposal from the Federal Republic of Germany. We quite share the view just expressed on how the convention is to be interpreted, and we could also support the proposal in WP/14. We would, however, have preferred just a minor amendment in article 4.1. We agree that the convention is not explicit on the question that it should apply not only to contractual but also to non-contractual salvages, and what might confuse the reader here is probably the use of the definite article in paragraph 1 of article 4, where is says that it should apply to salvage operations save to the extent that “the” contract otherwise provides. So we think that just the substitution of the definite article to an indefinite article, “a” contract, would meet the aim the Federal Republic of Germany is trying to achieve with their proposal. So we would have preferred that little amendment but we could live also with the proposal as laid down in WP/14. Thank you.

The Chairman. I thank you. That would mean that you would prefer – that another alternative for your delegation would be to replace in the second line after “that” the article “the” by “a”. Is that O.K.? Has that been understood? Well. So we have two alternatives to solve this problem. Please comment also on the very simple Swedish proposal. It is not necessary, I believe, to wait for a written submission on this change. The next speaker is Greece.

Greece. Thank you very much, Chairman. Just to subscribe to the Swedish proposal. Thank you very much.

The Chairman. I thank you. Any other delegations? Argentina.

Argentina. Thank you, Mr. Chairman. We, likewise, agree with the proposal put forward by the delegation of the Federal Republic of Germany and with the comment made by Sweden. But what happens if the parties agree differently, that is to say, that it is not a contract? Could we not say “unless the parties agree explicitly or implicitly”, or something like that? Thank you, Chairman.

The Chairman. Would you please explain your idea.

Argentina. Yes, I would just say that it might be simple to say, unless the parties provide expressly or implicitly otherwise because it might not be a contract. It could be another type of agreement between the parties. It need not necessarily be a contract. It would be much more general to say unless parties agree explicitly or implicitly otherwise the implicit means that there could be a tacit agreement in a form of other than a contract. Thank you Mr. Chairman.

The Chairman. I thank you. Well, now we have a third alternative. It seems to me that the problem touched upon by the proposal of the Federal Republic of Germany is not a problem of substance. Anyway it is a drafting point, it has been understood in
the past that both situations should be covered by the Convention. The question is now, how to present that. It is a question of presentation, and we should perhaps not lose too much time in discussing this drafting aspect. If it is not possible to agree quickly on one of these alternatives, I would then ask the delegations interested in this point to come together and to present us a draft which is agreed by these interested delegations. The next speaker on my list is France. Mr. Douay you have the floor, Sir.

France. Mr. Chairman, thank you very much. Sir, the proposal just presented by the Federal Republic of Germany, in our view, is very interesting. Indeed it seems to us desirable for the Convention to be able to apply whether there is a formal written contract or not. For in fact, this Convention, as drafted at article 4, states to apply to any salvage operation unless there is a specific contract which provides otherwise. The text of FRG is interesting because it helps us to cover a salvage operation offered by a salvor which spontaneously begins to salve property and this is even more important in the contract when applying to the ship where persons or the crew are on board but shall also apply to any property whatsoever. It is not very likely that you would have a person or crew on board or property. Certainly there should not be anybody able to formally forbid a salvage operation. In such a situation, it is a good thing for the Convention to be able to apply. It is also good for the Convention to be able to apply if the salvor is acting at the request of a third party which might be a public authority. This being so, Sir, we are very firmly in favour of the Federal Republic of Germany in its amendment. Regarding now the proposal of Sweden, quite honestly, I must say that I did not quite grasp it. If it is merely a drafting change, I cannot really make a statement on it. Furthermore, as regards the Argentinean proposal, unless the parties have agreed otherwise, I do not really see what that means either. If it is agreed that the Convention will not be used, it means that the contract must apply a salvage contract which must be written or a tacit implied contract. The Convention, however, is meant to apply unless a contract specifically provides otherwise and replaces other provisions. So again to be very frank, I would like to say to Argentina that I really do not grasp the sense or purpose of its amendment and for the moment I would prefer to go along with the text proposed by the Federal Republic of Germany. Thank you.

The Chairman. Thank you. The next speaker is the delegation of Spain.

Spain. Thank you very much, Mr. Chairman. I agree with you, this is a very simple matter and we should not waste too much time in the Committee of the Whole. It is practically a drafting matter. In any case, my delegation entirely agrees with the proposal of the Federal Republic of Germany. It is a very pertinent one, which explains the scope of the Convention and the sub-amendment of the Swedish delegation also appears satisfactory and we would support it. Thank you, Mr. Chairman.

The Chairman. I thank you. Next Federal Republic of Germany.

Federal Republic of Germany. Thank you. I take the floor a second time only for the sake of the acceleration of the procedure to reduce the alternatives. I would like fully to associate myself with the proposal made by the distinguished delegate of Sweden. I had this alternative in mind too but I was not ready enough when I drafted the proposals. Thanks.

The Chairman. I thank you. Perhaps that simplifies our procedure. Argentina, have you asked for the floor? O.K.

Argentina. Just in order to explain that we are not presenting any amendment.
We were just trying to make things a little clearer but we will not insist. Thank you, Mr. Chairman.

The Chairman. Thank you. Well, that means we have only one alternative, that is the Swedish proposal. Could the Committee agree upon that proposal? I repeat the proposal, that means, the second line after “that” to replace the article “the” by “a”. Is that acceptable? O.K. Then this change has been adopted. Sorry, Ireland, do you have another alternative?

Ireland. Thank you for the floor. Which text we were amending by the word “a” because it is, I think, something we could fully agree with in the main text. Were you amending the German text or the main text?

The Chairman. The main text, of course.

Ireland. Very good. Thank you, Mr. Chairman.

The Chairman. Chile.

Chile. Thank you, M.r. Chairman. I would like one point of the Swedish proposal to be explained to me. Here we say “a contract”. What happens when the salvage is carried out following an order from the public authorities? In that case the salvaged vessel would have no contract – to be a contract between who win that case. I do not know if you have got the thrust of my question. I would like to have an explanation on that. Thank you, Mr. Chairman.

The Chairman. Thank you. May I ask you, have you addressed that to the Swedish delegation.

Chile. Yes.

The Chairman. I have to ask whether Sweden is in a position to give an answer to that. M.r. Göransson?

Sweden. Thank you, M.r. Chairman. The intention of the Swedish proposal was just to make it more clear that the convention would apply to any salvage operation save to the extent that there is a contract which provides expressly or by implication otherwise and I thought that the use of the definite article would give the impression that there should always be a contract when we refer to the contract, so of course in a situation where there is no contract, the convention would apply according to this rule. The proposal by this delegation was just of a drafting nature, it did not change anything in the nature of the FRG proposal, it was just a simple way of saying the same and trying to get rid of what might have been confusing in the basic text. Thank you.

The Chairman. Thank you. I think your point is covered to a certain extent by article 3, paragraph 1, and you see we have included in that article a provision which clearly states that the convention does not touch upon national provisions on salvage operations carried out by public authorities. Chile.

Chile. Thank you, M.r. Chairman, and I will thank the Swedish delegation for the explanation, it is perfectly clear now and we can support that. Thank you, M.r. Chairman.

The Chairman. Thank you. Well, is that on this point, Italy, please?

Italy. Thank you, Sir, the Italian delegation also could go along with the suggestion made by the Swedish delegation. Thank you.
The Chairman. We adopted this proposal, no further support is necessary because the Committee has adopted the proposal made by Sweden. I thank you.

PARAGRAPH 2

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Article 1.4 - Salvage operations according to contract

2. The master shall have the authority [at all times] to conclude contracts for salvage operations on behalf of the owner of the vessel and of property thereon.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81

Article 1.4 - Salvage contracts

2. The master shall have the authority [at all times] to conclude contracts for salvage operations on behalf of the owner of the vessel and of property thereon.

Montreal Draft
Document LEG 52/4-Annex 1

Article 1.4 - Salvage contracts

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

CMI Report to IMO
Document LEG 52/4-Annex 2

This rule is new. So far it has been left to national law to provide if the master has such an authority, and in fact such authority is not always implied. This may in many cases have caused delay due to communication between owners 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 cases expected to increase the element of encouragement.

IMO
Legal Committee
Report on the Work of the 52nd Session (Document LEG 52/9)

50. There was discussion on whether the provision of Article 1-4.2 was needed and whether the shipowner (and manager or other servants of the owner) should be mentioned as well as the master. It was noted that there were occasions when cargo interests might challenge the right of the master to contract in salvage for cargo, and the shipowner in certain circumstances could be better placed than the master to contract effectively for a salvage operation. A suggestion was made that the master
might also have the specific right under the draft convention to terminate a salvage contract since occasionally cargo interests were either too distant or too dilatory in accepting that a salvage operation has ended. Some delegations considered this right to terminate as inherent in the right to contract and thought that any mention of it was unnecessary.

51. In connection with Article 1-4.2, the suggestion was made that more clarity was needed as to whether the operator or manager might contract, in particular on behalf of a cargo. Another suggestion was that it was unnecessary to make any reference to rights of agency normally governed by national law. The CMI representative explained that it was necessary to clarify that the master had authority to bind cargo (including government-owned non-commercial cargo, in the view of one delegation).

Report on the Work of the 53rd Session (Document LEG 53/8)

59. Some delegations favoured this provision and stated that such a provision was essential to remove all doubt about the shipmaster’s right to contract for salvage in circumstances of urgency and danger.

60. The observer from the International Salvage Union (ISU) proposed that the words “and shipowner” should be inserted after the word “Master”, with a final phrase “and to accept re-delivery of the vessel and such property” added at the end of the paragraph. The observer from the ISU informed the Committee that many salvage contracts were made by shipowners or their managing agents. He also emphasized the need for the master to terminate salvage contracts where necessary.

61. Several delegations supported the CMI draft text. Some of these accepted the proposed reference to the shipowner although they did not consider this reference necessary. There was some support for the words suggested to be added at the end of the paragraph. However, doubt was expressed as to whether the drafting of the provision, as suggested by ISU, would achieve the desired objective.

62. One delegation thought that a specific reference to the shipowner’s right of contract for salvage would raise questions as to whether the term “shipowner” would include various kinds of charterers. Another delegation pointed out that the word “master” might create problems since, in the case of contracts involving helicopters, drilling rigs, platforms and offshore oil installations, there might not be a person who could accurately be called “master”. In response to this observation, it was suggested that the “master” of a vessel has traditionally in maritime law a special position of authority.

63. It was suggested that it could be examined whether the definition of “owner” could be inserted in Article 1-1.

64. The observer from the ISU stated that it was important to specify that the persons who ordinarily made contact with salvors should be free to contract. Abandoned ships or ships without effective radio communications were often subject to salvage under contracts not entered into by the master. Also, it was important for the salvor to be freed from the untenable situation where cargo interests would not accept the right of the master or shipowner to terminate the salvage contract. In the opinion of the observer of ISU, the provision of Article 2-1.3 did not provide a practical solution to the problem of termination.

65. Some delegations were not convinced that the termination question should be
dealt with as recommended by ISU. With regard to the ISU observer’s statement that few masters assumed responsibility for salvage contracts, one delegation considered it appropriate that the master should have the primary responsibility to determine matters of navigation and risk to the ship.

66. The Committee decided that the words “and owner” should be retained in square brackets for further consideration. It was also agreed that, in any future presentation of the draft articles, a footnote should be added to call attention to the problem as follows:

“The Legal Committee considered the question of whether the owner of the vessel should have authority to conclude contracts for salvage operations on behalf of the owners of the property on board the vessel. In addition, the concept of “owner” will be subject to further examination.”

Report on the Work of the 56th Session (Document LEG 56/9)

39. It was observed that the words “and owner” in paragraph 2 of this article needed to be clarified to indicate whether the reference was to the shipowner or the owner of cargo. The Legal Committee agreed that such a clarification was necessary and agreed to consider a redrafting of the paragraph.

40. The observer of the International Salvage Union stated that the shipowner should have the authority, along with the master, to contract for salvage operations. However some delegations considered that the reference to the shipowner was unnecessary. They felt that what was essential was for the master to have the authority to enter into salvage contracts on behalf of the shipowner and the owners of other property involved.

41. The question was raised whether bareboat charterers and managing agents would also have the authority to make contracts for salvage operations. It was noted that there was no definition of “owner” in the draft convention. In this connection it was pointed out that a bareboat charterer might take out a “hull policy” in the name of the shipowner. It might, therefore, be desirable to define the word “shipowner” in article 1.

42. The Committee noted that two basic questions needed to be decided in the context of this provision, namely:

(i) whether the exclusion of the words “and owner” in paragraph 2 would confer authority to conclude salvage contract on the master alone, and thus possibly deprive the shipowner of the right to conclude such contracts himself, and

(ii) who should constitute the “shipowner” for the purposes of the proposed convention.

43. In this connection it was noted that account might be taken not only of the distinction between the “owner” and the “operator” of a vessel, but also of the position of the bareboat charterer.

44. One delegation thought it would be wrong to give the master the exclusive right to contract for salvage operations. However, a provision conferring the right to contract on the master, would not necessarily deprive the shipowner of his right to enter into such a contract where this was possible and desired. Another delegation pointed out that the major innovation in the article was that it provided that the shipowner signing the salvage contract would sign also on behalf of the cargo owner or owners.
45. The Committee concluded that the right of the shipowner to conclude salvage contracts should not be affected by the authority of the master to conclude such contracts. It was also agreed that consideration should be given to the possibility that other persons, such as the ship’s operator or the bareboat charterer, would also have the power to enter into salvage contracts under the convention. One method to achieve this objective was set out in the text proposed by a group of delegations. That text reads:

“2. The master shall have authority to conclude contracts for salvage operations on behalf of the shipowner. The master and the shipowner shall have authority to conclude such contracts on behalf of the owners of the property on board the vessel.”

The Committee decided to consider this proposal at the next session.

46. One delegation proposed that, in order to avoid misunderstanding, paragraph 2 should be broken into two parts, the first giving the master alone the right to contract for a salvage operation, and the second giving to both the master and the shipowner the authority to conclude the contracts for the owners of property other than the vessel.

47. Some delegations stated that an attempt to define “shipowner” in article 1, could have a number of unwanted consequences. In particular it was pointed out that it would be necessary to determine whether such a definition should be limited in its application to article 4 alone or to the entire convention.

48. The Committee considered the proposal of the ISU for the insertion of the words “and to accept re-delivery of the vessel and such property” in paragraph 2. The observer of the ISU explained that “re-delivery” was the term employed to designate the end of salvage services, when a vessel was handed over in a safe place. The ISU considered that the words proposed by it were needed because there might be cases in which the shipowner would be willing to accept “re-delivery”, but the cargo owner or owners might not. It was also possible to have a number of cargo owners involved in the same case who could not be reached and requested to accept re-delivery. It was to deal with such cases that the ISU proposed that the master should be empowered to accept re-delivery on behalf of all concerned.

49. Some delegations noted that re-delivery was a matter of fact and did not depend on the subjective determination of the salvor or the master. The cargo owners might, in some cases, have a greater interest than even the master or shipowner in the question whether re-delivery should take place or not.

50. It was recognized that part of the purpose of the proposal was to ensure that the salvor would be paid, but it was pointed out that the salvor would have a lien on the property salved, and he would also have the right to take proceedings against the person who signed the contract.

51. There was not sufficient support for the proposal of the ISU and the Committee, therefore, decided not to include the words proposed in paragraph 2.

Report on the Work of the 57th Session (Document LEG 57/12)

126. In the interest of greater clarity, the Committee agreed to insert in the draft convention the following wording for paragraph 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."

127. With respect to paragraph 3 the Committee agreed to insert at the end of the paragraph the phrase "nor duties to prevent or minimize damage to the environment" in order to clarify that the duty to protect the environment could not be excluded from a salvage contract. It was, however, noted in this connection that it might be appropriate to extend this prohibition to duties other than those relating to the prevention of damage to the environment.

Report on the Work of the 58th Session (Document LEG 58/12-Annex 2)

Article 4 - Salvage contracts

The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel and of property thereon. 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.

Consideration of the Draft Convention on Salvage Note by the Secretariat

Article 4 - Salvage contracts

(CMI draft, art. 1.4)

35 It was pointed out that paragraph 2 introduced an innovation in the existing law which leaves to the national law the power to provide the master with the authority to conclude salvage contracts. This situation was considered to be, in many cases, a source of delay due to the difficulties of communications between the owners and salvors or the master. The proposed rule was considered important to prevent any such delay. (LEG 52/4, annex 2).

International Conference Committee of the Whole 20 April 1989 Document LEG/CONF.7/3

The Chairman. Well, we come now to article 4, paragraph 2, where we have several proposals. One proposal has been submitted by France in document 7/11 on page 2, another proposal has been submitted by Saudi Arabia, working paper 13, and there is a third proposal submitted by Poland, working paper 18. I would propose that we first take up the proposals made by France and Saudi Arabia because they are very similar and I would like to ask these delegations to introduce their proposals. First I call on the delegation of France.

France. Thank you, Sir, the amendment proposed by the French delegation to paragraph 2 of article 4 is a very simple amendment, it is almost a correction in drafting

(89) The text of paragraph 2 of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
insofar as the master may enter into a contract of salvage and it would therefore be appropriate to replace “owner of the vessel” by the expression “operator of the vessel” which is more extensive in scope and in the French text of the said paragraph 2, instead of limiting the power of the master to conclude contracts for salvage on behalf of the owner of the vessel, it should read in the plural, and should read “on behalf of the owners of the property on board the vessel”, so what we are trying to do is cover all the owners of all property.

_T he Chairman._ Thank you, may I ask the delegation of Saudi Arabia to introduce working paper 13.

_Saudi Arabia._ Thank you very much, Mr Chairman. In working paper 13 which we have submitted to you there is a proposal to add to paragraph 2 of article 4 what we have just done in paragraph 1, there is an addition also to paragraph 2 of article 18 of exactly the same addition. Mr Chairman, if the captain has the freedom to enter into contract on behalf of the owner or operator of the ship usually, in our days, there are a number of owners who do not operate their ships, there are ship operators, there is another type, i.e. chartered ships, either bare boat charters or for a specific time. So my country’s delegation wishes to propose the addition of the word “operator” to the draft so that it would read as follows: “The master shall have the right to enter into contracts on behalf of the owner or operator of the vessel”, the addition here is of the word “operator”. Obviously the owner has the right to decide, so the operator will have to contact the owner to get permission to go ahead, so this is the reason that led us to propose the addition of this word on paragraph 2 of article 4. Thank you very much, Mr Chairman.

_T he Chairman._ May I ask the delegations of France and Saudi Arabia whether there is a possibility to unify both proposals, especially I would like to ask France whether France could also accept the proposal made by Saudi Arabia, that means, to include owner and operator.

_France._ Thank you, Sir, we entirely agree to add that expression and thus encompass the Saudi Arabian proposal. However, we still have in the French proposal a further provision, that is the indication of the owners of the property on board the vessel, therefore we should say “on behalf of the owner or operator of the vessel and of the owners of the property on board the vessel”. Thank you.

_T he Chairman._ Well, that means we have only one proposal now, a unified proposal, not to replace the word “owner” by “operator” but to add the wording “or operator”, that means we would have in that text “owner or operator” and you should also comment on the French proposal to say, instead of “owner of the property”, “owners of the property”. The floor is open for comments. The first speaker is the delegation of the United Kingdom.

_U nited Kingdom._ Thank you, Mr Chairman. We are in sympathy with both suggestions but we think that there may be drafting repercussions in other parts of the Convention and what we would suggest for consideration, possibly by the drafting Committee, is to include in article 1 definition of “owner” which would include “operator” and would make it clear that owner and owners are synonymous throughout the Convention. Thank you, Mr Chairman.

_T he Chairman._ Thank you. Well, that is a possible alternative. May I ask Saudi Arabia and France whether they could live with that proposal. The United Kingdom is right in pointing out that we would have to make consequential changes when we
include operator in this place, then we have to go through the text to see where we have to make consequential changes. M. Douay, you have the floor.

**France.** I entirely agree with our colleague from the United Kingdom. Indeed changing one article is insufficient. I do not think we should touch the text as regards the owner of the vessel. There is another simpler and much more logical way of dealing with the problem and that is to add in article 1 under “Definition” a definition of the owner of the vessel. A very simple one which we all know is the definition appearing in the 1976 Convention. We have owner, managing operator and charterer. This is what is in the 1976 Convention and we have no further problem with the operator and we do not need to touch the other articles. I think that this would really be the best solution and would like to have the view of other delegations, specifically that of the United Kingdom. By introducing a new definition of owner of the vessel, which is the same one as in the 1976 Convention in article 1 thereof, owner of the vessel means owner, ship owner or charterer and the managing agent, and the only problem remaining is to make owners of property on board the vessel in the plural. Thank you, Sir.

**The Chairman.** M. Douay, can I take it that you can agree with the proposal of the United Kingdom to include a definition of the term “owner” in article 1 at least saying that owner includes the operator of the vessel. To add all the other persons mentioned in the definition of the 1976 Convention would go a little too far, because the definition of 1976 Convention has another purpose. That definition shall provide for the right of the broad circle of persons to invoke limitation and that is a different purpose. We should be very careful in using definitions which have been drafted for the purpose of other Conventions. M. Douay, could you agree that we restrict the definition of “owner” to the word “operator”, that means owner includes and so on, but not to include charterer, managing agent and other persons mentioned in article 1 of the 1976 Convention. Is this all right.

**France.** Mr. Chairman, if that is the majority view, certainly, but what is the operator of the vessel, if it is not the charterer or the managing agent. We have another expression in the 1962 Nuclear Ships Convention – I admit this Convention is not in force but the expression “operator” in legal language applies to the person operating a nuclear vessel in this particular case and therefore has a license to operate. What is the operator of a conventional vessel unless it is the person who owns the ship, the person who has chartered it or the managing agent. You might say the 1976 Convention has made it very clear who might benefit from the limitation of liability. I could not disagree, but these are the same persons benefiting from limitation of liability who may have the power to operate a vessel. If it is not the actual owner, then it is a charterer or a managing agent. It seems to me more logical to refer to those expressions rather than merely to refer to operator. Thank you.

**The Chairman.** M. Douay, you have just asked who is the operator. You have proposed, Sir, to include that term. Using the other terms in article 1 of the 1976 Convention does not mean that you could define the term “operator” because the other terms in that article of 1976 Convention are put on an equal footing with operator, it would not define operator in that sense. Well, M. Douay, I will not have a private talk with you on this question. I try only to clarify what alternative should be discussed by the Committee. May I ask you again whether you could live with a definition which says “owner includes the operator”. Is that O.K.? That is my only question.
France. Certainly yes, although I do regret that we cannot have a better definition. In our initial proposal of operator we made one proposal and after that I proposed the 1976 Convention definition; the only reason for that was because we felt it was better. That had nothing to do with the question, however, but I could go along with the operator, which is a new expression in international maritime conventions, we find it nowhere else, apart from the 1962 Convention on Nuclear Powered Ships, but if the Conference wishes to make a innovation in this respect, I would not oppose it. Thank you.

The Chairman. M. Douay, you have proposed the inclusion of operator only to mention that. O.K., now we have the clear picture - the joint proposal I understand. Saudi Arabia, could you live with the inclusion of a definition in article 1 that says “owner includes operator”? I think that solves your problem, I hope.

Saudi Arabia. Thank you, Mr. Chairman. It is clear that the delegation of France agrees with the proposal of the United Kingdom to amend the definition of the owner, and by the owner we mean the operator. My delegation believes it is better to insert in article 1 a new definition of operator. The definition of the owner of the ship has occurred in many conventions. However, I agree with the United Kingdom proposal if it is not possible to find a definition for the operator. Thank you.

The Chairman. You have just proposed the inclusion of the term. I thank you. The floor is now open for discussion. The present proposal under discussion is: to include in article 1, a definition of the term “owner” and that definition would only say owner includes operator and perhaps some general wording. That is the proposal. The basic problem is, of course, which we have also to discuss, whether we want to rely on this vague term “operator” and delegations which make interventions on this unified proposal can also comment on that. The first speaker on my list is Democratic Yemen.

Democratic Yemen. Thank you Mr Chairman. I wish the position is as clear in my mind as it is in yours. However, I will try to comment on all the points that have been raised and I would start by giving our full support to the proposal of Saudi Arabia.

The Chairman. That proposal is no longer relevant because Saudi Arabia have accepted United Kingdom’s proposal. There is only one proposal now. The proposal of the United Kingdom to include in article 1 of our Convention, an additional definition saying that owner includes the operator. That is the only proposal which we have before us. You may continue.

Democratic Yemen. Thank you Mr Chairman. With due respect I think there are two points in front of us; one of them is the definition which has been proposed by the United Kingdom to be included in article 1, and there is the additional proposal of the French delegation and therefore as far as the second point is concerned the delegation of Democratic Yemen would like to fully support that point. On the definition of owner, I remember clearly as the head of the French delegation said that as there is no support for the 1976 Convention definition of owner he would agree with the addition of the word “operator” only but if there is support he would prefer the 1976 definition. It is the opinion of this delegation that the definition in the 1976 is much clearer and the whole purpose of giving the Master more authority is to make sure that action is taken in time and without any prevention from any other source, and therefore, this delegation would fully support the definition as presented in the 1976 Convention. Thank you very much.

The Chairman. The inclusion of that definition is not under consideration. You
cannot support a proposal which is not under consideration. The next speaker is Japan.

**Japan.** Thank you Mr Chairman. Even in the case of bareboat charter the owner shall only have the benefit to make contract for salvage of vessel because the salvage of vessels is a salvage of property and therefore, the operator other than the owner of the vessel has no right or power to make salvage contracts in general principle. Even if the operator makes salvage contract such contract may be done on behalf of the owner and as agent in the name of the owner. Therefore, the Captain or Master may conclude the contract only for salvage operation on behalf of the owner of the vessel not of the operator. From this viewpoint, this delegation cannot support the proposal to add the new definition of “owner”. Thank you Mr Chairman.

**The Chairman.** I thank you. The next speaker is the delegation of the Peoples Democratic Republic of Korea.

**Democratic Republic of Korea.** Thank you Mr Chairman. This delegation oppose the inclusion of the definition of “owner”. This is not needed because when the Master signs the contract on behalf of the owner, the operator has a different status from the actual owner. Therefore, this delegation could support the proposal put forward by Saudi Arabia. However, we need to change it; that is the Master should sign the contract on behalf of the owner and we should not include anything about the cargo. Thank you Mr Chairman.

**The Chairman.** The next speaker is the Federal Republic of Germany.

**Federal Republic of Germany.** Thank you Mr Chairman. I don’t have much to add to what has been stated by previous delegations in particular by Japan. We as well, unfortunately are unable to support the proposal as it has been discussed neither in the original form of the proposal by the French delegation nor in the form of a definition. I think the salvage operation is done on behalf of the owner of the vessel and of the cargo. The old concept of the Convention holds exclusively liable for the reward the owners of the ship and of cargo, and the operator not being at the same time owner of the vessel, has in principle nothing to do with the salvage operation. Of course, he may have some disadvantages or advantages but this is something entirely different than to be subject to the Convention and you yourself Mr Chairman, have already stated that it is always dangerous to look into other conventions; the 1976 Convention has an entirely different purpose, it just protects everybody acting in connection with the vessel against liability which exists under the applicable law and under other conventions. Here, the only question is who is liable for the award and I think if you mention even just the definition of the operator on an equal footing as the owner, it may well be the interpretation – and I am not entirely sure whether this has been the intention of the authors – is very likely that the operator may be liable for the salvage reward and this certainly would not be an appropriate solution. So our delegation believes as has been stated by, in particular, the delegation of Japan, not to mention in this context, any other person than the owner and in particular not the operator, not even in the definition which in my mind amounts to the same result. Thank you Mr Chairman.

**The Chairman.** I thank you. The next speaker is the delegation of Malaysia.

**Malaysia.** Thank you Mr Chairman. Without wishing to further deliberate on the subject matter, my delegation would like to simply support the proposal. In fact we thought the simplified proposal made by the UK delegation which will accommodate both the Saudi Arabia and French delegation requirement. Thank you Mr Chairman.
The Chairman. Thank you. I now call upon the delegation of the Netherlands.

Netherlands. Thank you Mr Chairman. We completely agree with the interventions just made by the delegations of Japan and the Federal Republic of Germany. We were tempted in the first instance by the United Kingdom proposal, but I think this could have far-reaching consequences and we do agree that, since the salvage award has to be paid by the property interest, the salvage operation is carried out on behalf of the owner rather than on behalf of the operator. This has, I think, been the accepted principle of the law of salvage for a long time and we should not confuse a matter which has for a long time been accepted in maritime law. Therefore we cannot support any of the proposals made of this article.

The Chairman. The next speaker is the delegation of Spain.

Spain. Thank you very much, Mr. Chairman. My delegation approves the basic problems presented by France and Saudi Arabia. As for the United Kingdom proposal, we think we should leave it to the drafting Committee, because in view of the number of times the term “ship owner” is referred to, is it worth establishing a definition in this regard or not? If it were decided to have a definition of the owner, following the United Kingdom proposal, we would agree with a simplified proposal according to which the owner would include the operator. This would be the easiest thing. If, despite this, we have to look for a definition already to be found in an international convention, my delegation would be in favour of the modern, clear and concise definition which appears in the UN Convention on the Registration of Vessels. That would be a “fall-back” solution; we would prefer the simplification of the text, as indicated. Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker is Ireland.

Ireland. Thank you, Mr. Chairman. This delegation would like to endorse entirely the statement made by the distinguished delegate of Japan which we think covers all the points we would like to have made. Mr. Chairman, perhaps I might just ask a question at this stage, concerning the present draft of the proposed Convention. This matter and this article went through very lengthy procedures in the Legal Committee and I am very surprised that the draft which has been put forward now meets with the dissatisfaction of a number of very distinguished delegates. I wonder, Mr. Chairman, if there is an explanation for this that, in the eyes of some delegations, the proposed convention could have got it so wrong, that now appears to be the position. Mr. Chairman, for the reasons that have been stated by Japan and endorsed by those delegations that supported it, we would favour the existing text. Thank you, Mr. Chairman,

The Chairman. Thank you. The next delegation on my list is Denmark.

Denmark. Thank you, Mr. Chairman. For the reasons already expressed by a number of delegations, we would oppose the present proposal. We are quite happy with the term “owner”; we think that according to national law there is some room for interpretation of that term, and we would certainly not favour the inclusion of the term “operator” of which I have heard several explanations today, and there does not seem to be any agreement as to the meaning of that word. So we oppose the proposal. Thank you.

The Chairman. Thank you. The next speaker on my list is the United Kingdom.

United Kingdom. Thank you, Mr. Chairman. We would like to make it clear that we were merely trying to assist France as regards the drafting, because we thought, and
think, that the problem would arise in other parts of the Convention. Having heard what the distinguished delegations have said, we are perfectly content with the word “owner” and do not ourselves seek to add “operator”. As regards the plural, in our law the singular includes the plural, so we would not require any alteration with regard to that, but if it were to be done, then perhaps in article 1 it should be provided that “owner” includes “owners” because, at any rate in English law, you can also have several owners of vessels, up to 64, so there might be something to be said for the second part of the French proposal about the plural and that being dealt with in article 1. We would support that from the point of view of the Convention if other countries feel that it is necessary, but we ourselves are perfectly happy with the text as it stands. Thank you Mr. Chairman.

The Chairman. The next speaker is the delegation of Poland.

Poland. Thank you. After the explanation of the United Kingdom, we do not wish to take the floor any more on this issue.

The Chairman. Thank you. The delegation of Saudi Arabia.

Saudi Arabia. Thank you, Mr. Chairman. As I said previously, the master needs to be assisted. He is, however, liable for the vessel and the property on board. But if the owner were to disappear, who would be his contact person? Who will the master contact? If there is an operator or a charterer or an agent he would be vindicated. Well, in the contract there is nothing to say that a ship owner is always liable in the last resort. As you know, contracts are signed and there must be an agreement. There may be an agreement between the owner and the charterer, and so on. We do not want to go into all these details but we would certainly wish to relieve the burden and the onus on the master and the extent of his liability. We would also like to give him more margin of manoeuvre, more flexibility, so that the type of accident which occurred in 1978 would not occur any more; which is why we would now like to add the word “operator” which we ourselves suggested in WP.13, if we cannot change the definition of owner. Thank you.

The Chairman. Thank you. The next speaker is the delegation of Mexico.

Mexico. Thank you, Mr. Chairman. The problem of the term “owner” does appear correct if we remember that the main expression “bare boat charter” or the term “charter” expressly allow the charterer to share in the benefits of the salvage with the owner of the ship. This is perfectly clear. The one who receives is the owner, not the charterer or the operator, but they share in the benefits, so the term “owner” appears more correct. There is nothing further to add if we agree in the definition of these typical expressions which are used in international maritime trade. Thank you Chairman.

The Chairman. Thank you. The next speaker USSR.

USSR. Thank you Sir. Mr Chairman, in this room our committee has many experienced people who know perfectly well the situation prevailing and have many examples to advance. So the first reaction which we have to the proposals of Saudi Arabia and France is that of sympathy and an immediate desire to support these proposals. I think the same reaction have many people, certainly our delegation but apart from sympathy, we do have principles of law to observe and if we start to analyse the situation from the point of view of general legal principles, we are more and more convinced that it is not possible to include the definition of “operator”. It is impossible to add “operator” to article 4 unless we want to complicate the situation further that
it already is complicated today. For this reason we fully support the proposals and comments which have been put forward by Netherlands, Japan, the Federal Republic of Germany and other delegations and we would prefer therefore to retain the existing text and we are sure that only if we do so will we avoid the complications which are bound to arise if we accept the French and Saudi Arabian proposals, despite all the sympathy and respect we have for these proposals. Thank you.

The Chairman. The next speaker is the delegation from Greece.

Greece. Thank you very much Mr Chairman. This delegation can live with owner or owners in the plural as was commented by other delegations and we can subscribe on that point with the second point of the French proposal. We think however, Chairman, that the question of operator and the actual missions of the operator are of very high importance for the financial operation of the ship. That is why only the owner or the captain of the ship must have the right to bind himself by such acts but not the operator. That is why we fully support the proposals of the distinguished delegation of Japan, West Germany and others. Coming to an end, Mr Chairman, I cannot resist the temptation to reply to the distinguished colleague from Saudi Arabia and tell him that there is no need for the master to contact somebody because from the Convention he has the duty and the right to act by himself.

The Chairman. I thank you. The next speaker is Sweden.

Sweden. Thank you Mr Chairman. Perhaps we are approaching the time when you would call for an indicative vote and if that is the case I won’t prolong the debate, if that is not your intention I would like to add the voice of this delegation to those who have said that unfortunately they are not supporting the proposals starting with the distinguished representative of Japan and followed by others. Apart from the second point of the French proposal, “owner” or “owners” that would not cause any problems for us. Thank you.

The Chairman. Thank you. The next speaker is Zaire.

Zaire. Thank you Mr Chairman. I would like to make a comment if I may. I have the impression that you are following the alphabetical order but I think that my country which starts with a Z runs the risk of being forgotten sometimes. I would like to say that as we understand it, the UK presented the first proposal conditionally because that delegation said that it had some sympathy for the French proposal and that of Saudi Arabia. If the two expressions “owner” and “operator” were maintained, it would then be useful to define “owner” in article 1 and later the UK came back, confirmed its position and said that we weigh this proposal to support France and Saudi Arabia. Now we believe it is no longer necessary and we no longer see an interest in having that definition. My delegation does believe that to the extent to which the UK has withdrawn its proposal, this definition would just become cumbersome and there would be no need to retain it. As for the plural, the “owners” or the property, I think that the UK proposal applies in all languages. There is the singular which implies the plural; in cases such as this so you can keep a singular “owner” of the property as you also have in other languages and this will be the solution to this lengthy debate. Thank you Mr Chairman.

The Chairman. Thank you. I can assure the delegation of Zaire that I follow the order of my list of speakers. The next speaker is China.

China. Thank you Mr Chairman. The Chinese delegation could support the original wording of the draft Convention. We could also support the proposal put
forward by Sweden. We may carry out the kind of vote to decide whether we should include such a definition on operator. Thank you Mr Chairman.

The Chairman. In any event, it is my intention, but I cannot carry out a vote if I have speakers on my list unless delegations having asked for the floor withdraw their requests. That would concern France and Italy.

France. Thank you Mr Chairman. First of all I would like to thank the United Kingdom delegation for having given us support and co-operation when we put forward our proposal along with that of Saudi Arabia. I agree with the UK representative that the term “owner” could designate a multiplicity of people. That is true, and I also acknowledge that if you just say the “owner” of the property, this singular can in fact cover several people because there can be several owners of property and if property is in the plural in the French text this would imply a multiplicity of owners, so we could live with that. As for the word “owner” and I am helping you Mr Chairman, I would be inclined to say that we could live with the word “owner” alone even if no definition is given of it is so as to include explicitly the charterer or the operator or the shipping agent. We can certainly live with that but I would conclude with a final remark, following up the statement made by Japan supported by other delegations. This legal approach is all very fine and well but I give you a frequent example, the example of the Tanio, this was owned by a leasing firm, a banker which was not operating them, there was a charterer, a bare boat charterer who turned to an operator and the master was appointed by it and he could only sign on behalf of the owner, he didn’t actually know who the owner was and you can’t even ignore, he may not know who he is, and any leasing company owning a ship would certainly not interfere with the salvage operation as this is a bare boat chartered ships and the banking interests know nothing about what has happened on the sea. So the master, when you say that he signs a contract on behalf of the owner, in actual fact he will be signing on behalf of the manager whom he represents, who appointed him and he therefore doesn’t know who the real owner is, and the salvor, to get his reward, will turn to the managing agent and not to the leasing company or the bank which is the real bareboat owner. That is what I wanted to point out. But I am trying to be as flexible as possible, I would like to thank the UK once again, and to stop quarrelling over minor terminological matters, I personally would renounce all these proposals, but I stick to my opinion nevertheless, that is to say, that the owner of the property should be in the plural and the ship owner should also be the person operating the ship, the managing agent, but not necessarily the real legal owner whom the master may not even know. Thank you, Mr Chairman.

The Chairman. So France has withdrawn both proposals on article 4, paragraph 2, they are no longer relevant. I have still three speakers on my list. Do these speakers insist on taking the floor, the first speaker would be Italy, do you insist? Fine; I thank you. Chile, do you insist?

Chile. Yes. Thank you, Mr Chairman. My delegation would like to keep to the text for the reasons already explained by the delegations of Japan and the Federal Republic of Germany. Nevertheless, my delegation would be interested in maintaining the second proposal put forward by France, that is to say, “owners” instead of “owner”, owner in the plural. France has made two proposals, the first referred to the owner of the ship, but we would like to keep the original text, but nevertheless I think it would be helpful to change the singular of owner of the property into “owners of the property”. That is all, thank you.
The Chairman. This has also been withdrawn by France, there is no proposal to amend the word “owner” by adding the letter “s”. France has withdrawn this proposal, therefore the proposal is no longer relevant. You have the possibility to reintroduce it formally, that is the only possibility now, you cannot support a proposal which is not on the table.

Chile. Thank you, Mr. Chairman, in that case Chile proposes a new draft in which the word “owner” of the ship is as in the original text and the owners of the property should be in the plural. Thank you Chairman.

The Chairman. Thank you. United States, do you insist on speaking on this point, well you have the floor, Sir.

United States. Thank you, Mr. Chairman, only to note our earlier concerns relating to sovereign immunity which are under consideration in the contact group working on article 25 and that we may have to come back to this article, depending upon the outcome there. Thank you, Sir.

The Chairman. You mean that your new draft on article 25 may influence article 4, paragraph 2?

United States. Not influence 4.2, Sir, but if our draft on article 25 successfully addresses the concerns we have on sovereign immunity, then we will not have to revisit 4.2, if it does not, then perhaps 4.2 might be adjusted to address this concern.

The Chairman. I thank you. Well, you will have a last possibility to introduce proposals on 4.2 when we come to a formal vote. We take now an indicative vote in any event on the proposal, not of France, we have only to vote now on the proposal of Saudi Arabia because UK has withdrawn its proposal, France has withdrawn the proposal, that simplifies the situation. I have no more speakers. First we vote on the proposal of Saudi Arabia, in document working paper 13, to add in paragraph 2, Article 4, the word “operator” so that article 4, paragraph 2 would read “the master shall have on behalf of the owner or operator”. That is the proposal of Saudi Arabia, that is the only proposal that is relevant in this regard. Who is in favour of that proposal, please raise your cards. Saudi Arabia you are not in favour of your own proposal? Two are in favour, thank you. Who is against? It is an overwhelming majority, it is not necessary to count the votes. I thank you. The proposal has been tentatively rejected. Saudi Arabia, may I ask you whether you withdraw your proposal at all, or do you insist on a formal vote.

Saudi Arabia. Thank you, Mr. Chairman. Of course the situation is rather difficult, however, though we are convinced that this addition is necessary, we could accept the withdrawal of our proposal. Thank you, Mr. Chairman.

The Chairman. I thank you. That would mean we would not come back to your proposal when we take a final vote. Chile, do you insist on a vote on your proposal? Fine, it is withdrawn. There is another proposal submitted by Poland on article 4, paragraph 2, that proposal is contained in working paper 1890. May I ask the Polish delegation to introduce this proposal.

(90) Document LEG/CONF.7/CW/W.18
Submission by the delegation of Poland
Amendment to:
Article 4.2
Poland. The reason of our proposal is that we are afraid of a combined effect of para 1 and para 2 of article 4. Article 4(1) provides for freedom of salvage contracts and gives the parties the possibility to exclude the application of the Convention. Now para 2 gives the master authority to conclude salvage contract for the owner without any restriction. There is no such provision in the 1910 Salvage Convention. In practice the master is only authorised to conclude open salvage contracts on the no cure no pay basis such as the famous Lloyds Contract. Now the combination of para 1 and para 2 of article 4, gives the master an unrestricted authority which would cover salvage contract for fixed amount of remuneration and even with exclusion of the no cure no pay rule. Moreover, the master and the owner of the vessel will be authorised to bind by such a contract the cargo owners provided the terms of the contract do not affect article 5. It seems that there is some danger in giving such a wide authority to the master and to the ship owner to bind cargo interest. It seems that the owners authority to bind cargo interest by salvage contract should cover only contracts on terms conforming with the Convention. And of course, we may agree on the difficult formulation of the restriction imposed on the master's authority. We may say open contracts on the no cure no pay basis but in any way we think that some restriction on the master's authority is necessary. Thank you, Mr. Chairman.

The Chairman. The Polish delegation has introduced in working paper 18 a proposal on article 4 paragraph 2. May I ask the committee to comment on that proposal. Japan the first speaker.

Japan. Thank you Mr Chairman. This delegation would like to express its opposition to the proposal submitted by the distinguished delegate from Poland regarding an amendment of article 4, paragraph 2 in working paper 18. Under this amendment the master has the authority to conclude contract for salvage operations on behalf of the owner of the vessel only on the basis of the provisions of the Convention. If so, even if the owner of the vessel wishes to make a salvage contract in another form, and he has ordered the master to conclude the contract in such manner the master cannot conclude such contract under this paragraph. This result is completely against the principle in paragraph 1 of this article. The freedom of contract should be maintained even under this paragraph. The master shall conclude the contract on behalf of the owner of the vessel. Therefore this delegation cannot support this Polish amendment.

The Chairman. Is there another delegation who wants to take the floor on this point? The Federal Republic of Germany.

Federal Republic of Germany. Thank you Mr Chairman. Yes, we support the proposal of Poland. We have, however, problems with the wording and perhaps the principle but we think that the idea is absolutely sound and is even necessary because as it has been stated by Poland, the new convention provides for authority for the master to conclude contracts on behalf of the owner of the ship as well as the cargo, and since this is new, the problem is new as well. There should be a borderline and I think that if the master wants to bind the owner either of the ship or the cargo to a

---

2 The master shall have the authority to conclude contracts on the basis of provisions of this convention 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.
larger extent, for instance, by renouncing the rule of the convention no cure no pay is to say that he obliges – that which he certainly can, under the present wording – the cargo owner or the ship owner to pay an award even in case there is no result of the salvage or if he promises to pay a certain amount of remuneration whatever, I think he would go too far and we must not foresee such authority. The problem we have with the restriction is that if the authority is restricted to contracts concluded on the basis of provisions, I take it that this is meant to cover agreements which are not exactly under the conditions of the Convention but just deviated and this of course would put an immense burden of uncertainty to a third party which is always the problem when restricting a legal authority. If one introduces this restriction it will make it even clearer that the master should be able to bind the owners of the ship and cargo only in accordance with the provisions of this Convention. That means – to make it clear – that the master may conclude a contract of salvage but only under the conditions of the Convention; he may not deviate because if one permits a certain kind of change or deviation, then one brings so much uncertainty to it. I think that in this understanding that the master is just bound strictly to the provisions of the Convention in concluding this contract which could be expressed by perhaps changing the words. We would support the Polish proposal.

The Chairman. May I ask the Polish delegation whether that delegation would be ready to accept that change?

Poland. Yes, we would be prepared to accept this change but may be we may use words such as “not contrary to the provisions of the Convention” or something of this kind.

The Chairman. Would you please then read your proposal in the new version for the benefit of the committee.

Poland. “The master shall have the authority to conclude contracts not contrary to the provisions of this Convention for salvage operation on behalf of the owner of the vessel and without change”.

The Chairman. Thank you. Has anybody taken down the change which has now been made in the text. The first two lines read: “The master shall have the authority to conclude contracts not contrary to the provisions of this Convention” and that means the words “on the basis of …” are to be deleted. Any other delegation agrees?

Japan. Thank you Chairman. I am a little puzzled with this proposal and I would like the proponents to offer me some explanation on the following points. Paragraph 1 of article 4 states that “this Convention shall apply to any salvage operation save that the contract otherwise provides expressly or by implications”. If we have an amendment to make it will have to be done there. We can say that certain provisions cannot be altered by the agreement of the master. However, I am concerned with the practical aspects of this which says what are the provisions which really can be agreed or which can be contrary in a contract and which shall affect this Convention in particular about the calculation of the remuneration, about the duty imposed. I don’t think any contract can preclude the duty to render assistance to others. So, in fact, what I like from the proponents, is to give us some examples how a contract can affect the provision and in what part the contract can not affect the provisions of this draft. Thank you.

The Chairman. I thank you. Before I give you the floor, Poland, are you ready to answer that question?
Poland. Mr. Chairman, certainly. Thank you. I think that under paragraph 1 of article 4, the contractual freedom is unrestricted, only provisionally not contrary to article 5 or concerning the duty to protect the environment. So it is unrestricted freedom of contract for all that own the vessel or the owner of the cargo salvaged. They can make a contract without stipulating, for instance, the no-cure no-pay rule for a fixed amount and irrespective of the result obtained. Now, paragraph 2 deals with the authority of the master, who is only an agent of the owner and of the cargo in some respects, so of course you know the authority of the agent, as the master is, should be to our mind restricted and here we intend to impose a restriction on the master’s authority. Thank you, Mr. Chairman.

The Chairman. I thank you. Next speaker is the delegation of the United Kingdom.

United Kingdom. No, Sir, not at this point thank you, in view of what has just been said by the distinguished delegate from Poland.

The Chairman. Thank you. Ireland.

Ireland. Thank you, Mr. Chairman. This delegation presumes that there is still a proposal for an amendment on the table and would like to oppose this amendment for the reasons that have been offered by the distinguished delegates of Japan and Greece. We would add to it that it is practically impossible to consider that the master of the vessel should be restricted, when he is in distress, from negotiating the contract that is appropriate in the circumstances; and, while it is feared that this may have repercussions for other innocent parties such as the owner of the vessel or the owner of property, we feel that the convention in its wisdom does provide in article 5 for an equitable result, and for that reason we do not believe any amendment of the text is necessary. Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker is the delegation of The Netherlands.

Netherlands. Thank you, Mr. Chairman. My delegation agrees with what has been said by Professor Tanikawa of Japan, that is, that this provision as proposed by Poland is not considered favourably, and I think we discussed this provision in the Legal Committee and there it was agreed that the importance of this provision is that there should not be any uncertainty about the authority of the master to conclude contracts. A delay due to such an authority is not to the advantage of speedy actions on the part of salvors, and that is the whole purpose of this convention. So that is the additional reason, except for the reason already given by Japan, why my delegation is not in favour of this proposal. Thank you very much.

The Chairman. Thank you. Democratic Yemen.

Democratic Yemen. Thank you, Mr. Chairman. I think we have to bear in mind that the master of a ship has many conventions to abide by and deal with, and he cannot be expected in an emergency to go back to a certain convention and see whether he is authorized or not to act on that convention. A restriction of that type would probably cause a big hazard to the environment and probably to people on board. As had been mentioned by the distinguished delegate of Ireland, the draft convention has given enough safeguards in article 5 with regards to the possibility of misusing such authority. Therefore this delegation would like the draft convention article to remain as it is. Thank you, Mr. Chairman.
The Chairman. Thank you. I think the situation is that Italy will speak now. I will then proceed to an indicative vote.

Italy. Thank you, Sir. For the reasons put forward by the delegations of Japan and Greece, we prefer to retain the existing text in the draft convention. Thank you.

The Chairman. I think we can close the debate and come to an indicative vote. France, do you insist this is necessary?

France. Well, I insist very briefly to say that I share the view that we should retain the text, retain the right of the master to enter into a contract of salvage without any particular limitation thereon to that right. Thank you.

The Chairman. Well, indicative vote on the Polish proposal in WP/18 on article 4, paragraph 2. Those in favour of the proposed amendment, please raise your card. Thank you. Those against that amendment, please raise your card. Well, it is apparently the overwhelming majority; it is not necessary to count the votes. May I ask the Polish delegation whether that delegation would insist on a formal vote when we come to that stage of our debate.

Poland. Thank you, Mr. Chairman. We want to withdraw it since it did not have the support we expected it to have.

The Chairman. Thank you. That proposal is withdrawn. That is all we have on article 4.

PARAGRAPH 3

CMI
Montreal Draft
Document LEG 52/4-Annex 1
Article 1.4 - Salvage contracts

3. Nothing in this article shall affect the application of the provisions of article 1-5.

IMO
Legal Committee
Report on the Work of the 56th Session (Document LEG 56/9)
Article 4 - Salvage contracts

36. The Committee discussed the extent to which freedom of contract should be provided in the convention for the conclusion of contracts for salvage operations. It was pointed out that although paragraph 3 stated that article 5 would override the provisions of private contracts, the question remained whether there might be other provisions in the convention which should also override such private contracts.

37. In this connection, the delegation of Australia proposed that article 3 should be extended to read:

(91) Supra, p. 186, note 86.
“Nothing in this article shall affect the application of the provisions of article 5 nor duties under this Convention to prevent or minimize damage to the environment.”

38. This proposal was supported by some delegations; but one delegation suggested that the words “under this Convention” be omitted. That delegation considered that it would not be desirable to imply that parties to private contracts could set aside their duties to prevent or minimize damage to the environment which may arise from sources other than the salvage convention. The delegation of Australia agreed with this suggestion and the Committee decided to examine the proposal, as amended, at its next session.

Consideration of the Draft Convention on Salvage
Note by the Secretariat

Article 4 - Salvage contracts
(CMI draft, art. 1.4)

36 The question of mandatory, as contrasted with optional, provisions was again raised in respect of paragraph 3. Some delegations stated that the provision should be retained in order to emphasize that the freedom to contract should not be interfered with by the activities referred to in article 5. The Committee agreed to insert at the end of the paragraph the phrase “nor duties to prevent or minimize damage to the environment” in order to clarify that the duty to protect the environment could not be excluded from a salvage contract. (LEG 52/8, paragraph 67, LEG 57/12, paragraph 127).
3 Nothing in this article shall affect the application of the provisions of article 7 nor duties to prevent or minimize damage to the environment.

Plenary Session 28 April 1989

Text examined and approved by the Drafting Committee (Document LEG/CONF.7/DC/5)

Article 6 - Salvage contracts

Document LEG/CONF.7/VR.225


(92) The Drafting Committee has approved the text approved by the Committee of the Whole. Only the number of the Article has been changed to Article 6.
ARTICLE 7
Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if:
(A) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
(B) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I
Art. 1-5. Invalid contracts or terms.
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 remuneration under the contract is in an excessive degree too large or too small for the services actually rendered (excessive or derisory).

Note:
i) The chapeau of this article does not refer to a contract for salvage operations deliberately, so as to allow the nature of the contract to be characterized after the event in the cases considered.
ii) It was thought unnecessary to provide that the parties could agree to remuneration after the event or that courts could invalidate an agreement for reasons of domestic law other than those mentioned in the text, since these results would follow in any event.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81
Art. 1-5. Invalid contracts or contractual terms
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 remuneration under the contract is in an excessive degree too large or too small for the services actually rendered (excessive or derisory).

Report by the Chairman of the International Sub-Committee
Document Salvage-19/III-81
Art. 1-5 is mainly reflecting the principle of the 1910 Convention art. 7. This article does not prevent the application of national rules relating to the invalidity of contracts or terms thereof.
Montreal Draft
Document LEG 52/4-Annex 1

Article 1.5 - Invalid contracts or contractual terms

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.

CMI Report to IMO
Document LEG 52/4-Annex 2

This article mainly reflects in a modernized language the principles of the 1910
Convention, Art.7. This article does not prevent the application of national rules
relating to the invalidity of contracts or contractual terms.

IMO
Legal Committee
Report on the Work of the 52nd Session (Document LEG 52/9)

53. Some doubt was expressed on the use of terminology referring to “the
influence of danger” as a motive for annulment or change of a salvage contract. It was
pointed out that all salvage operations presupposed some apprehension of danger, and
clarification was therefore needed as to the point where the threat of danger was such
that the consent of an owner or master to the terms of a contract might be deemed to
have been induced by the undue exploitation of danger.

54. It was suggested that the matters in Article 1-5 were adequately treated in
national law and could be omitted from the draft.

55. It was pointed out that this Article was a new form of a 1910 Convention
provision (Article 7, paragraph 1) and that determination of the grounds for
annulment or modification would be left to the courts or arbitral tribunals.

Report on the Work of the 53rd Session (Document LEG 53/8)

68. One delegation suggested that this provision could be improved by replacing
“if” in the opening phrase with the words “to the extent that”. This would clarify that
a portion of a contract might be annulled or modified, without necessarily annulling
the contract as a whole. The proposal was supported. It was agreed that this drafting
point would be considered at a later stage.

Report on the Work of the 56th Session (Document LEG 56/9)
Article 5-Invalid contracts or contractual terms\(^{93}\)

52. The Committee decided that the words “to the extent that” at the end of the

\(^{93}\) Article 1-5 was renumbered Article 5 by the IMO Secretariat.
opening sentence of the article should be deleted, since these words implied only partial rescission of a contract whereas it might be totally annulled.

53. The delegation of Australia proposed that a provision found in the 1910 Convention should be introduced in the draft text. This provision would add a new subparagraph (c) as follows:

“(c) the consent of one of the Parties is vitiated by fraud or concealment.”

54. The observer of the CMI stated that paragraph (a), of the draft was intended to deal with the problem raised in the Australian proposal. Several delegations agreed that it was unnecessary to insert the proposed paragraph, and it was concluded that a sufficient guarantee against fraud or concealment was already provided in the existing words of article 5 in particular by the words “undue influence”, and by the general principle of law concerning the annulment of fraudulent contracts.

Report on the Work of the 57th Session (Document LEG 57/12)

128. The Committee agreed to retain the following two alternatives for the title of the article: “Validity of contracts” and “Invalid contracts”. The French delegation pointed out that the expression “validity of contracts” did not correspond to the content of the article which governs cases of nullity. The Committee decided to reconsider the title at its next session.

129. The Australian delegation expressed doubts as to whether the term “undue influence” contained in subparagraph (a) would encompass cases of fraud or concealment and suggested, accordingly, that this be specifically stated by inserting the following new subparagraph (c):

“the consent of one of the Parties is vitiated by fraud or concealment.”

130. There was, however, not enough support for this proposal.

Report on the Work of the 58th Session (Document LEG 58/12)

54. The Committee considered a proposal by the Chinese delegation to replace the existing alternatives for the title of the draft article by “Invalidity of contracts”. After considering this and other proposals, the Committee agreed on the following title for the article: “Annulment and modification of contracts”.

Document LEG 58/12-Annex 2

Article 5-Invalid contracts or contractual terms

Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if:

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

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

Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 5-Annulment or modification of contracts (CMI draft, art. 1-5, 1910 Convention, art. 7)

37 The proposal of one delegation to explicitly mention fraud and concealment
as causes for annulment was not accepted by the Committee. It was explained that paragraph (a) of this article intended to include fraud or concealment, in particular by using the words “undue influence”. A further guarantee against fraud or concealment was provided by the general principle of law concerning the annulment of fraudulent contracts. (LEG 56/9, paragraph 54)

38 Following a detailed exchange of view on the interpretation of the original text in the CMI draft, the Committee decided to re-draft this provision to make clear that the owner of the vessel was authorized to conclude salvage contracts on behalf of the owner of the property on board the vessel. In this respect, it was noted that there were occasions when cargo interests might challenge the right of the master to contract in salvage for cargo, and the shipowner in certain circumstances could be better placed than the master to contract effectively for a salvage operation. A suggestion was made that the master might also have specific right under the draft convention to terminate a salvage contract since occasionally cargo interests were either too distant or too dilatory in accepting that a salvage operation has ended. Some delegations considered this right to terminate as inherent in the right to contract and thought that any mention of it was unnecessary. (LEG 52/9, paragraph 50, LEG 57/12, paragraph 126).

International Conference
Committee of the Whole 20 April 1989
Document LEG/C.ON.F.7/3

Article 5-Annulment and modification of contracts

Documents LEG/C.ON.F.7/VR.90-93

The Chairman. We come now to article 5. On article 5 we have a proposal from France in WP/2095. May I ask the French delegation to introduce that proposal?

France. Thank you, Sir. I feel that this proposal would link up very well with what we have discussed under article 4, and we have just finished that as you know. However, may I draw the attention of delegates to the first paragraph of article 4, and the first paragraph makes it clear that this convention shall apply to any salvage operations save to the extent that a contract otherwise provides. In other words, we have a convention which contains additional provisions but it is still possible to enter into a different contract referring to other provisions than those of this convention. Having said that, Sir, we must not lose sight of that fact and now we have this next article, article 5, which provides certain provisions, thanks to which contracts may be

(94) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
(95) Document LEG/CONF.7/CW/WP.20
Proposal by the delegation of France
Article 5: Add the following words at the beginning:
“Notwithstanding any stipulation to the contrary, a contract or any terms thereof may be modified...”

Article 5 contains rules on contractual freedom which are essential to the overall balance of the Convention. It is therefore desirable to avoid a situation in which, in a salvage contract which departs from the terms of the Convention – a departure permitted by article 4(1) – there is an impairment of the provisions on the annulment and modification of contracts contained in article 5.
annulled or modified, and these are very important provisions because it is just possible, which is the case in the 1910 Convention, to annul a contract agreed to under unreasonable pressure or under the influence of danger if the clauses are not equitable. Therefore this principle remains; we have to consider the annulment of contracts concluded under the influence of danger, which is a civil law provision. Furthermore, if the payment under the contract is considered excessive or, on the contrary, excessively small because of the services actually rendered, then it would be possible to come back to these provisions and modify the contract, which is regularly done by the way by judges and those in charge of tribunals, and this is also provided for in the 1910 Convention. Therefore, these two provisions in article 5 are fundamental and we are particularly attached to maintain these possibilities. On the other hand, we do not want and this is why I began by speaking about article 4, paragraph 1 – I repeat we do not want this possibility of another contract being entered into ruling out the Convention and, if this second contract would rule out any provision for modification or annulment of contracts, you can obviously appreciate the risk. A contract is made and then someone can say this contract cannot be annulled if it has been entered into undue influence or the influence of danger and the agreed price shall be paid and there will be no change to the contract if the price is too high or too low. What you want to be sure of is that article 5 will always prevail, irrespective of the contract entered into. Indeed, what we must do is precisely avoid providing for a contract which would arrange otherwise and counter to the rules laid down by article 5. For this reason, we are proposing an addition, a very simple addition, to article 5. We would add the words in English “notwithstanding any stipulation to the contrary”. Thus it is made absolutely clear that in any contract, which is a derogation from the Convention, we cannot fail to apply article 5 to this regarding annulment or modification of the price agreed. It seems, therefore, absolutely necessary to have this in the text. I hope that I am not being offensive to the Legal Committee; they may not have noticed this point, but I feel it is cautious to have this provision in if, under article 4, paragraph 1, we are going to have a possible derogation or a waiver to the articles of this Convention we are now developing. Thank you.

The Chairman. Thank you. Before we proceed, there is a printing error in the English text, that concerns only the English text. Mr. Zimmerli will be kind enough to indicate that mistake.

Mr. Zimmerli. Thank you, Mr. Chairman. It is actually a small error in the translation, not of the proposal itself, but of the accompanying explanation. In the third line from the bottom it says “there is no impairment of the provisions”. In fact this should be “there is an impairment” so that the crucial second sentence would say that “it is therefore desirable to avoid that there is an impairment of the provisions of article 5”. That applies only to the English text, Mr. Chairman.

The Chairman. Thank you. Well, the floor is open for comment. The first speaker is Yugoslavia.

Yugoslavia. Thank you, Mr. Chairman. Just to say that our delegation completely agrees with the proposal and the reason given by the distinguished representative of France. It is to protect fundamental principles of international salvage law, so we would support the proposal. Thank you, Sir.

The Chairman. Thank you. Any other speakers? The Federal Republic of Germany.

Federal Republic of Germany. Thank you, Mr. Chairman. I am not sure that we
quite understand this proposal. Article 4 does not provide, in our mind, as the motivation given in document 20 seems to show, for an absolute freedom of contract. Of course, it provides for the possibility of contracts and then article 5, as we understand it, draws a certain borderline or gives a certain corrective to a contract. That means that if a contract has been entered into under certain circumstances, it may then be nullified, that is a sort of correction and I cannot quite see how it should be possible. We have to try to find out whether the French wording is the same as we understand the English, but it seems to be so. Then we understand the French proposal in a way that it gives preference to the contractual freedom to article 5, but this would, in our mind, make article 5 altogether superfluous because how can you exclude by contract the possibility of the correction given by article 5? I would be grateful to the French delegation for an explanation. Thank you.

The Chairman. Well I would have thought it the other way round, but France will you please give an explanation.

France. M r. Chairman, it is exactly the contrary what my colleague and friend M r. Herber understood. In any contract we do not want the provisions of article 5 to be discarded, and we must say so explicitly. All the more so, indeed, because it is possible in article 4 to depart from the provisions of the Convention which is why this one here is justified in article 5. So, M r. Chairman, you have perfectly well understood. It may be because of the English text which M r. Zimmerli corrected. There may be something wrong in the English text, but in any case that is exactly what I meant. Thank you, M r. Chairman.

The Chairman. The next speaker is the delegation of Spain.

Spain. Thank you very much, M r. Chairman. Very briefly, I would say that my delegation supports the proposal put forward by the delegation of France and we clearly see that this would explicit the character of imperative law of article 5 of the Convention in such a way that it could not be modified by means of contractual arrangements. The only thing, and this is where there may be some confusion, there may be a drafting problem and in the drafting Committee we would reserve the right to see what form of words would be most suitable to reflect the idea; but we do believe that this article has an imperative character and the will of the Parties cannot go beyond it. This is why we think that we should say something to the effect that, notwithstanding any stipulation to the contrary, we will find suitable words in the drafting Committee. Thank you.

The Chairman. The next speaker is the delegation of Sweden.

Sweden. Thank you, M r. Chairman. We received this proposal this morning and we have just been able to read through it and listen to the explanations given by the distinguished representative of France. Perhaps we have not fully grasped the thrust of it. I would have believed that what is intended by the French proposal was already in the Convention in article 4.3 which says that “Nothing in this article shall affect the application of article 5” so my intervention, M r. Chairman, is merely a question to the French delegation if that is a correct understanding, or if not, in what way the proposal in working paper 20 adds to the basic text. You may of course then understand that I have no real problem with the French proposal, but cannot see what it adds to what we already have in the convention. Thank you.

The Chairman. It is more a drafting problem for you, because you believe the problem is already covered by article 4, paragraph 3; is that correct?
Sweden. Yes.

France. A brief intervention to reply in a couple of words, what does the French proposal add to the basic text? Well, by adding these few words, notwithstanding any stipulation to the contrary, we are giving article 5 an imperative character, a mandatory character, one cannot depart from article 5, that's what it clearly means in French at least. While it is possible to depart from the convention in article 4, paragraph 1, this will not be possible in article 5, that is what it means. Thank you, Mr. Chairman.

The Chairman. Mr. Göransson has drawn our attention to article 4, paragraph 3, Monsieur Douay, and he believes that paragraph 3 of article 4 covers already your concern. Would you please reflect on that point. Is France ready to answer that point which has been raised by Sweden?

France. I must admit, Mr. Chairman, that paragraph 3 of article 4 refers to article 5, however, it does seem more cautious, more prudent to say so in article 5 itself, but it is not possible to provide for any contrary provision. Thank you.

The Chairman. I would say that this problem is only a drafting problem. Would you agree to that Monsieur Douay? Can we perhaps, and the next speakers who may comment or ask for the floor, could they also comment on that, can we simply refer the problem to the Drafting Committee, would that be possible? Is that acceptable? USSR, please.

USSR. Thank you, Mr. Chairman. I have understood by the way we are working that we refer to the Drafting Committee texts which have led to an agreement but where we are just trying to correct the wording. If I understand the French proposal correctly, however, I understood the position differently. Further explanations are necessary in order to clarify the meaning of the French proposal. If that is the case it might be preferable not to adopt it. We, the specialists, really have different interpretations on this text, what will happen later when we are no longer here to explain what the meaning of this text actually is. We must therefore agree as to the specific meaning of this French proposal, and if we do not agree on that, there is no point in sending it to the Drafting Committee. It is only once we have an agreement here that we can do that. Thank you, Mr. Chairman.

The Chairman. We can continue this debate but the French delegation has accepted that the proposal he has made is already covered by article 4, paragraph 3, and then he stated that it would be prudent that we also add the same to article 5 directly in order to make clear what has been said in article 4, paragraph 3. I do not see where the point of substance is, there is an agreement that the point is already covered in article 4 and now it is only the question whether the same should also be said at the beginning of article 5. That is the only point which we have before us. There is no point of substance at all.

France. I agree with you, Mr. Chairman, and I think that your proposal to send this on to the Drafting Committee is very wise. The Drafting Committee might perhaps envisage, and I am not trying to replace the Drafting Committee in its job, but they might consider that the form of words we are proposing for article 5 is much clearer and much more mandatory than the provision in paragraph 3 of article 4, which states "nothing in this article shall affect the application of article 5". The form of wording we are suggesting seems more in its place in article 5 but it is a drafting problem, there is no difference as regards substance. The Drafting Committee could certainly consider what form of words best to use. Thank you, Mr. Chairman.
The Chairman. We will now hear some other comments. I hope that we will not have a long debate on this problem. The delegation of Seychelles.

Seychelles. Thank you, Mr. Chairman. My delegation would support the position of France that provision should be made that the provisions of article 5 should not be excluded by a contract outside the convention. Thank you, Mr. Chairman.

The Chairman. I thank you, but we have just come to the conclusion that this is already covered in article 4, paragraph 3. Article 4, paragraph 3 excludes the possibility not to apply article 5, and that is in agreement between France and the Chair, at least, and Sweden, and I hope that others could join us. Poland.

Poland. Thank you, Mr. Chairman. Since we agree that article 4, paragraph 3, contains a restriction of the freedom of contact, this should not be repeated in article 5, because in article 4.3 we have the restriction concerning the application of article 5 and the duty to prevent or minimize danger to the environment. If you repeat once again this restriction in article 5 you will weaken by this way the restrictions in article 4.3. Thank you, Mr. Chairman.

The Chairman. I thank you for drawing our attention to that possible effect. To speed up the procedure, may I ask whether there is any delegation which would support the French, let us say, drafting amendment to article 5. Is there a delegation which would support? No support for the proposal? Sorry, there was Czechoslovakia. Czechoslovakia, please. You are on my list that you had supported it. Have you to say something now or will you destroy your support?

Czechoslovakia. Mr. Chairman, just to say that we were supporting.

The Chairman. We have two supporters then we have to proceed to an indicative vote as a possibility. May I ask the Committee or may I ask the delegations, who wants to support the French proposal in Working Paper No. 20 to raise your cards. Please raise your cards. Five. I thank you. And who is against that amendment? That is the overwhelming majority. I thank you. That means the proposal has been tentatively rejected. May I ask the French delegation whether that delegation would be ready to withdraw or would you insist on an information or a formal vote when we come to that stage of our debate. France you take the floor.

France. We would give up our proposal, Mr. Chairman.

The Chairman. That proposal has been withdrawn.

25 April 1989
Document LEG/C/ON F.7/V R.168

The Chairman. We have no proposal on article 5. Can I take it that the Committee agrees by consensus on the basic text as it stands in article 5 of our Convention. Is there a delegation which insists on a vote? No delegation. Then I take it that we have agreed article 5 by consensus.

Draft Articles agreed by the Committee of the Whole
(Document LEG/C/ON F.7/CW/5)

Article 5 - Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if:

(a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
(b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

Plenary Session 28 April 1989
Text examined and approved by the Drafting Committee

(Document LEG/CONF.7/DC/5)
Article 7 - Annulment and modification of contracts

(Document LEG/CONF.7/VR.225)

The President. Article 7. Approved.

(96) The Drafting Committee has approved the text approved by the Committee of the Whole. Only the number of the Article has been changed to Article 7.
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.

CMI
Report by the Chairman of the International Sub-Committee
Document Salvage 5/IV-80

III. Preventive measures
1. Duties of shipowners
   a) Where a ship in danger represents a risk that damage be caused to persons or property outside the ship (third parties), the shipowner shall have a duty to take reasonable measures to avoid the danger or otherwise to prevent or minimize the damage to third parties (preventive measures). In particular cases this duty will arise whenever the third party interest can be considered to be in danger in a sense analogous to the meaning of this term as used in the 1910 Convention art. 1.

   b) The shipowner may reject an offer of salvage or prohibit the performance of salvage operations if there is no risk of damage to third parties or if the capability of the salvor is inadequate.

   c) These principles should apply mutatis mutandis to the master of the ship.

2. Duties of the cargo owners.
   Where the cargo of a ship in danger represents a risk that damage be caused to persons or property outside the ship, a subsidiary duty to take preventive measures may be imposed on the cargo owner.
3. The salvage operations.
   a) The salvor shall use his best endeavours to carry out the salvage operations successfully and whenever reasonably required, arrange for assistance from other salvors.
   b) During the salvage operation an offer of assistance from another salvor may not be rejected unless the first salvor is able to complete the salvage operation within a reasonable time or the capabilities of the second salvor is inadequate. However, when several salvors have joined the salvage operation successively, the circumstances in which this was done should be taken into account when distributing a salvage reward among each of the salvors.
   c) The salvors are entitled to the full cooperation of the shipowner and the cargo-owners.

4. The relation to public duties.
   a) The principles in paras. 1-3 above shall be subject to any measures in respect of the salvage operation imposed by an appropriate public authority within its powers to supervise or direct such operations.
   b) Where a salvor has carried out salvage operations under a public duty to do so, he shall nevertheless be entitled to avail himself of any remedy under the salvage convention in order to recover compensation for his services.
   c) Salvage services rendered notwithstanding the express and reasonable prohibition by an appropriate public authority or the shipowner, shall not give rise to claim under the salvage convention, comp. the 1910 Convention art. 3.

Draft prepared by the Working Group
Draft submitted to the Montreal Conference

Art. 2-1. Duty of the owner and master

The owner and master of a vessel in danger shall take timely and reasonable action to arrange for salvage operations and/or preventive measures. They shall also cooperate fully with the salvor and shall use their best endeavours to save the vessel and property thereon and to avoid damage to [third parties] [the environment].

Art. 2-2. Duty of the salvor

1. The salvor shall use his best endeavours and shall carry out the salvage operations and preventive measures with due care. The salvor shall whenever reasonably required arrange for assistance from other salvors available.
2. The salvor may not reject an offer of assistance made by another salvor unless he can reasonably expect to complete unassisted the salvage operations successfully within a reasonable time, or the capabilities of the other salvor are inadequate.
2. The owner of a vessel or property salved and brought to a place of safety shall accept redelivery when reasonably requested by the salvors.

Art. 2-2. Duties of the salvor

1. The salvor shall use his best endeavours to save the vessel and property and shall carry out the salvage operations with due care. The salvor shall, whenever reasonably required, arrange for assistance from other salvors available, also use his best endeavours to avoid and minimize damage to the environment.

2. The salvor shall, whenever the circumstances reasonably require, obtain assistance from other available salvors. However, he may not reject an offer of assistance made by other salvors unless 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.

Report by the Chairman of the International Sub-Committee Document Salvage-19/III-81

5. Performance of salvage operations. The provisions of Chapter II are new, except art. 2-3 which is a concise restatement of the principles of the 1910 Convention art. 11-12. The Draft Convention arts. 2-1, 2-2 and 2-4 deal with the duties imposed on the various private and public parties concerned for the purpose of ensuring the efficient carrying out of salvage operations, also with the view that damage to the environment be avoided. The need for co-operation between the parties is a recurrent theme.

The case where several salvors may be available is dealt with in art. 2-2(2). The first salvor may then have a duty to obtain assistance from such other salvors. These provisions are based on the idea that the law should encourage co-operation between the several salvors available rather than consider them as competitors. It is envisaged that, when assessing the payment due to each of them (cf. arts. 3-2 and 3-4), the court may take due account of the fact that one of the salvors may have commenced the operation before others arrived to take part.

The discussions in the Sub-Committee revealed that co-operation from public authorities of coastal states would often be indispensable to the success of the salvage operations. On the other hand, it was recognized that the drafting of provisions on this subject was a most delicate matter. Art. 2-4 should be read in the light of this.

Montreal Draft Document LEG 52/4-Annex 1

Article 2.1. Duty of the owner and master

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 endeavours to avoid or minimize danger to the environment.

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. 3 The owners of vessel or property salved and brought to a place of safety shall accept redelivery when reasonably requested by the salvors.
Art. 2-2. Duties of the salvor

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. 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. 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.

CMI Report to IMO
Document LEG 52/4-Annex 2
Chapter II. - Performance of salvage operations
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 cooperate fully with the salvor and shall use their best endeavours to prevent or minimize danger to the environment.

This provision is new as are the other provisions of chapter II, except Art. 2-3.

As mentioned above, the “Amoco Cadiz” incident made it clear that it was important to impose duties on the various private and public parties concerned, for the purpose of ensuring the efficient carrying out of salvage operations and also with a view to avoiding damage to the environment.

The duties as proposed by the CMI in the draft convention will, of course, have certain, and in some cases considerable, effects on the legal relationships between the parties, e.g. owners, salvors and public authorities, but it should be noted that the CMI has not felt that it is within its mandate to consider or to propose what measures could be adopted within the scope of public law, either in national law or by convention, to enforce these duties.

As an exception, however, the draft convention in Art. 2-3.2 deals with such public law rules concerning the master’s duty to save human lives in danger at sea. The reason for this is that such rules are already contained in the 1910 Convention, Art.12.

During the work of the CMI it was asserted that problems frequently arose when attempts were made to take vessels into ports or coastal areas during salvage operations because public authorities required guarantees of some kind, and it was proposed that owners should be obliged to provide any such guarantees. The CMI did not, however, feel that it would be reasonable or practical to impose a duty, the consequences of which seem to be unclear and maybe very far-reaching. Therefore the proposal was not adopted.

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.
The cases where several salvors may be available are dealt with here and in the corresponding article concerning the salvor's duty, Art. 2-2.2. In such cases it is provided that the owner and master as well as the salvor may have a duty to obtain assistance from such other salvors. These provisions are based on the idea that the law should encourage co-operation between the several salvors available rather than consider them as competitors. It is envisaged that when assessing the payment due to each of them (cf. Arts. 3-2 and 3-3) the tribunal may take due account of the fact that one of the salvors may have commenced the operation before others arrived to take part.

Art.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.

This is one of several new provisions introduced to facilitate the salvors' working conditions to increase the elements of encouragement.

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.

While according to Art. 2-1.1 the owner and master of a vessel in danger each has the duty, separately and independently, to use best endeavours to prevent or minimize damage to the environment the salvor’s duty, according to this provision, to avoid damage to the environment is in addition to the duty to salve and not independent from it.

There is, of course, a close relationship between this new duty and the rules in Art. 3-2.1(b) concerning enhancement of the salvage reward in such cases as well as the rules in Art. 3-3 providing for special compensation for salvage operations in cases where the environment was in danger.

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.

The provision contains the duty of a salvor to obtain assistance from other salvors, and reference is made to the comments to the corresponding duty of the owners provided for in Art.2-1.2
They differed from the 1910 Convention’s duty to render assistance to persons in danger of being lost at sea, and they represented an effort of the CMI to deal with important public law duties, but their generality gave rise to questions about the desirability of such provisions.

58. The observer of the International Salvage Union pointed out that the factor of redelivery mentioned in 2-1.3 had taken on increasing importance. Ships which had been salved were often denied safe haven if they were still crippled and likely to cause environmental damage. Bonds, indemnification or liability for pollution sometimes accompanied permission to enter port. Even when permission was given, removal of a ship was sometimes ordered thereafter. The financial burdens fell upon the salvor but it would be better for these bonds, guarantees and indemnities to be met by the shipowner. The salvor should also be able to use the gear and supplies of the salvaged ship free of expense, as provided in LOF 1980.

59. The position regarding bonds and other security or payment was not accepted by shipowners, and the CMI representative informed the Committee that the salvor interests had requested that a provision on bonds and other financial outlays be inserted in the draft convention, but that the CMI did not agree to do so.

60. Several delegations observed that Chapter II was a crucial expression of the duties of interested parties in respect of the public interest. The mixture of private and public interest was, in the view of some delegations, essential. National law would impose the penalties for infraction. It was observed, however, that the Article 2-1 duties might be vitiated by the application of Article 1-4 and that the former of these Articles should be clearly mandatory. Private contracts should contain peremptory rules of public law.

61. It was suggested that all the mandatory provisions should be preceded by the qualifying words “wherever there is risk to the marine environment”, and it was observed that divergent penalties for the same infraction would result if national law were not provided with some guidance by the draft convention as to the level of penalty to be imposed.

62. The preference for enforcement to be left to national law was widely expressed, as was the view that Article 2-1.1 and Article 2-1.2 should be connected exclusively to risks to the marine environment.

63. Some doubt was, however, expressed as to whether the provisions of 2-1.1 were exclusively “public law” and it was observed that the idea was also found in LOF 1980. Doubt was also cast by the CMI representative on the idea of making the duties conditional on risk to the marine environment.

**Article 2-2. Duties of the salvor**

64. A salvor’s duty, it was noted, was primarily to salve vessels and property in danger of loss. The protection of the marine environment came in the course of the primary salvage operation. Thus the words “in so doing” were crucial in Article 2-2.1. Where two duties existed, it was suggested that the drafting of the obligation should be closely studied to make each of them clear.

65. One opposing view was that it was not possible in a private law convention to provide for duties which required that primacy be given to the public interest. That interest might require that the vessel and its cargo be sacrificed.
66. It was also observed that this Article might not apply readily to the casual or non-professional salvor.

67. Over-insistence on mandatory salvage was described as likely to deprive a salvage operation of proper execution. When necessary, a serious casualty might lead to intervention by public authorities, but the salvage should not be discouraged at the stage of voluntary action.

68. Note was taken that Article 2-2 left open the stage of determining whether intervention would be necessary or not.

**Report on the Work of the 53rd Session (Document LEG 53/9)**

**Article 2-1. Duty of the owner and master**

69. The Legal Committee dealt with this Article in conjunction with a document submitted by the delegation of France which contained certain proposals for amendment of the provision. The document of the French delegation is annexed to the present report as annex 1.

70. One delegation expressed the view that the content of paragraphs 1 and 2 of the CMI draft article related to public law matters and should not be in the draft of a private law treaty. In its view only paragraph 3 of the article could be considered as being of a private law nature. Some of the provisions appeared to be more appropriate for a “code of conduct” rather than provisions in a treaty for the harmonization of private law. Another delegation also felt that the paragraphs needed careful review in relation to how they would be enforced and whether such enforcement could be uniform.

71. Some other delegations considered that it was necessary to specify clearly the obligations on persons engaged in salvage operations. If the present convention did not contain such provisions it would not be of much help in promoting the objective of preventing damage to the marine environment.

72. These delegations therefore felt that paragraphs 1 and 2 should remain in the draft text.

---

(97) **ANNEX 1**

Proposal by the delegation of France

Chapter II Performance of salvage operations

The Government of France proposes that Article 2-1 of the draft convention prepared by the CMI and set out in annex 1 to document LEG 52/4 should be amended as follows:

Article 2.1 Duty of the owner and master

1. The master of a vessel in danger shall take timely and reasonable action to arrange for salvage operations during which he shall co-operate fully with the salvor and shall use his best endeavours to prevent or minimize danger to the environment.

2. The owner of a vessel in danger shall not, by way of instructions given to the master or other means, prevent the master from taking timely and reasonable action in order to obtain assistance.

3. The owner and master of a vessel in danger shall not oppose a salvor’s decision to require 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.

4. The owners of vessel or property salved and brought to a place of safety shall accept redelivery when reasonably requested by the salvors.
73. One delegation was not convinced that the provisions of paragraphs 1 and 2 really related to public law questions. In its view those provisions were akin to mandatory provisions of national law regulating private relations. This delegation suggested that the provision in paragraph 1 might be improved by inserting the word “also” at the beginning of the phrase “shall use their best endeavours”. This would link these provisions with Article 2-2,1.

74. It was generally agreed that these provisions should be retained at this stage but that the Committee should give further consideration to their implications in terms of their practicability.

75. With regard to the proposal by the delegation of France, the discussion centred on the suggestion to delete the words “owner and” from paragraph 1 of the CMI text and the introduction of certain new measures regarding the powers of the master and the salvor.

76. The delegation of France explained that French shipowners wanted the master to be the only person who would be entitled to take action to arrange salvage operations. This was due to practical considerations which also accounted for the proposal to curtail the right of the shipowner to control the actions of the master when delay might increase the danger to a ship in distress. A third proposal would alter paragraph 2 to free the salvor from any control which might deny him the decision to engage another salvor’s services.

77. Many delegations stated that they were unable to take firm positions on the proposals without further study, and they proposed that the proposals should be reviewed at the next session of the Committee. Some delegations doubted whether there was any need for provisions on directives to be introduced into salvage contracts.

78. Some delegations did not agree with the proposal to delete the words “owner and” from paragraph 1. It was observed that the master might not in some circumstances be able to take the action required.

79. One delegation observed that due to economic considerations, decisions on the acceptance of salvage services would in many cases have to be taken by the shipowner after consultations with the hull insurer and, if necessary, with the cargo interests.

80. It was agreed that the Members of the Committee would examine the legal and practical implications of the provisions of this Article in relation to the various parties to the salvage operation. Consideration would also be given to whether and how the problems of implementation would be dealt with in national legislation.

81. The Legal Committee concluded its consideration of private law aspects at this point of the CMI draft. It was agreed that the examination of the draft convention would be continued at the fifty-fourth session, beginning with Article 2-1, paragraph 3.

Report on the Work of the 54th Session (Document LEG 54/7)

Article 2-1. Duty of the owner and master

15. The Committee noted the views of the International Salvage Union (ISU) endorsing paragraph 3, concerning the right of salvors to request the shipowner to accept redelivery of a vessel after the end of salvage operations. The observer of the ISU stated that in the experience of his Union, salvors encountered difficulty in terminating salvage operations because shipowners refused to accept redelivery of
salved vessels. He agreed that it was necessary to clarify in what condition the ship should be for a request for delivery to be considered as reasonable and referred to the additional wording which the ISU had proposed in document LEG 53/3/1. The additional words read:

“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.”

16. The attention of the Committee was also drawn to another problem faced by salvors when they sought to enter ports with vessels after salvage. It was stated that port authorities frequently requested financial guarantees before permitting the entry of such vessels. As the guarantee requested sometimes extended to various expenses to be incurred by the vessel during its stay in port which were beyond the control of salvors, such as the wages of dock workers, ISU considered that such guarantees should be requested of shipowners. It was pointed out that this was particularly necessary in relation to “non-professional” salvors.

17. With regard to the redelivery of a vessel after salvage, a number of delegations considered that whether or not a salvage operation has been terminated was a matter of fact to be determined by courts or arbitral tribunals in cases of controversy. Some of these delegations considered the problem raised could be resolved by drafting paragraph 3 more precisely to indicate that the redelivery should be accepted when “a prudent master might reasonably be expected to deal with the vessel” after a salvage operation. In this connection, one delegation felt that too detailed drafting of the provision was not desirable. Many delegates considered that the matter could only be dealt with on a case-to-case basis.

18. One delegation observed that the interests of insurers and cargo owners were important in regard to these problems and would have to be taken into account.

19. On the matter of guarantees, many delegations recognized the concerns of the ISU as valid. They noted that what was at issue might be expenses incurred after the ship was safely in port and pointed out that some of these would be completely outside the scope of salvage operations. Some delegations were, however, doubtful whether it would be justifiable to impose the obligation to give such guarantees entirely upon the shipowner. The observer of the International Chamber of Shipping pointed out in this connection that, if the shipowners were made responsible for all guarantees, the salvor might not hesitate to accept obligations on behalf of the shipowner which the salvor would not accept for himself; and port authorities might be tempted in such situations to require higher guarantees than would be justifiable or acceptable to salvors.

20. In this connection, it was pointed out by one delegation that the interest of the coastal State could be of considerable importance in some circumstances since the conditions of a vessel after salvage might not always be as sound as the salvor might claim when he wished to bring it into a port.

21. The observer of the CMI explained that the problem of guarantees had been extensively discussed in the CMI. The conclusion of the CMI had been that, as the salvor was the person in control when a request for guarantees arose, it was appropriate that the salvor should be the one to provide that guarantee.

22. In the light of the difficulties, it was suggested by the Chairman that the matter should be further studied by the parties most concerned with the salvage
operation so that a solution acceptable to both the salvors and the shipowners might be proposed to the Committee by the organizations representing those interests.

23. There was general support for the suggestion that the interests concerned should propose further drafting solutions. Furthermore, it was agreed that national law might deal adequately with the problem in many cases.

Article 2-2. Duties of the salvor

24. Discussion of paragraph 1 centred on the usefulness or otherwise of the expressions “best endeavours” and “due care” in this provision. Some delegations felt that the provisions requiring the salvor to use his “best endeavours” were unduly onerous and could constitute a disincentive to undertake salvage operations, especially by the non-professional or casual salvors. Reference was made in this connection to the comment on this point made by the delegation of Japan in a document submitted to the Committee at its fifty-third session (LEG 53/3/4). In addition, several delegations noted that the use of “best endeavours” and “due care” in the same sentence created ambiguity requiring clarification.

25. Other delegations felt that required standards of care would be determined by judges and arbitrators in accordance with the facts of each situation and that the status and efficiency of the salvor would be taken into account. It was emphasized by some delegations that even non-professional salvors should have a measure of responsibility to operate carefully and to make reasonable efforts to avoid damage to the marine environment, whether the salvage operations they undertook were contracted for or not.

26. The relation between this provision and the remuneration of the salvor (article 3-2) was also pointed out. It was, however, noted that the discharge of the salvor’s duties under article 2-2,1 did not appear to be a pre-condition for the payment of reward under article 3-2,1. In particular, reference was made to subparagraph (b) of article 3-2,1 in which the consideration for fixing the reward was limited to “the skill and efforts of the salvors in preventing or minimizing damage to the environment”.

27. Some delegations emphasized that possible disincentives might arise from these high standards of care even if their implications were left to be determined by courts or tribunals. If the determinations of the courts and tribunals involved high standards of performance, salvors - particularly non-professional salvors - might hesitate before they undertook salvage operations in some cases; and it was even possible that some insurers might discourage non-professional salvage in some situations altogether. In this connection, it was pointed out that shipmasters had in many cases to make quick decisions on whether to undertake salvage operations or not, and a provision imposing a standard of performance higher than “due care” from them might otherwise induce shipmasters to avoid getting involved in situations in which they might be able to provide useful assistance. These delegations, therefore, suggested that the provision should be worded simply to establish a standard of performance no higher than that of “due care”.

28. It was noted that the concept of “best endeavours” featured in the Lloyds Open Form (LOF 80), but it was pointed out that, in the draft of article 2-2, the requirement for the use of best endeavours would apply also to non-contractual salvage to which LOF 80 was not intended to apply.

29. The Committee did not reach a consensus on whether article 2-2, paragraph
1 should be retained and, if so, whether it should be amended to require a lesser standard of performance from the salvor. The Committee agreed to give further consideration to the matter.

30. In considering this provision, the Committee discussed whether it was a public law or private law provision. Some delegations considered that the duties of the salvor specified in paragraph 1 were purely private law, but other delegations felt that the provision had elements of public law. It was noted in this connection that there was a link between the provision and the first sentence of article 2-1, which imposed on the owner and salvor the duty to “take timely and reasonable action”, and that the provisions of article 2-2 specified obligations which applied between shipowners, salvors both inter-se and also vis-à-vis third parties. In the view of one delegation all these separate elements needed to be fully analysed.

31. Some delegations doubted whether it was useful to attempt to distinguish between private and public law issues in this context, since a provision to prevent or minimize damage to the environment might not easily be categorized as either public or private law.

32. The Committee reviewed the likely consequences of the salvor using or not using his best endeavours to avoid environmental damage, and the possible obligation of the salvor to third parties in such cases. It was noted in this connection that the 1910 Convention regulated the relationship between salvors and the vessels or persons to whom salvage was rendered, but not between the salvor and third parties. The CMI draft had introduced a new element and some delegations considered that this had suggested a new hierarchy of objectives for salvage operations, namely (i) the salvage of lives, (ii) the protection of the marine environment and, finally, (iii) the salvage of property. However, article 2-2,2 required, in the first sentence, that “best endeavours” should be used for the salvage of the vessel and property and, in the second sentence, that “best endeavours” should be used to prevent or minimize environmental danger. There was no indication as to which of these “best endeavours” had priority over the other, in cases where the salvor could not hope to achieve both objectives.

33. The observer of the CMI explained that the provision represented an effort to set out the salvor’s duties clearly and to include environmental protection in those duties in such a way that no salvor or owner could claim that such “best endeavours” had not been required of the salvor. Moreover, the second sentence was linked to article 3-2,1(b), which dealt with the salvor’s reward, and to article 3-3 regarding the compensation to be given when a reward had not been earned.

34. With regard to article 2-2,2, the CMI observer explained that the intervention referred to in the final phrase of the paragraph related only to the “intervention of other salvors”, in the earlier part of the paragraph.

Report on the Work of the 56th Session (Document LEG 56/9)
Articles 6 and 7. General principles

55. The Committee began its discussion of this article by examining a proposal of the United Kingdom that articles 6 and 7 be replaced by a new text which would read as follows:

(98) Articles 2-1 and 2-2 of the CMI Draft have been renumbered Articles 6 and 7 by the IMO Secretariat.
“1. The salvor shall owe a duty to the owner of the property in danger:
   (i) to exercise due care to salve the property in danger,
   (ii) to carry out the salvage operations with due care,
   (iii) in performing the duties specified in (i) and (ii) to exercise due care to prevent or minimize damage to the environment,
   (iv) whenever circumstances reasonably require, to seek assistance from other salvors, and
   (v) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the 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 property in danger shall owe a duty to the salvor:
   (i) to co-operate fully with him during the course of the salvage operations,
   (ii) in so doing to exercise due care to prevent or minimize damage to the environment,
   (iii) when the property has been brought to a place of safety, to accept re-delivery when reasonably requested by the salvor to do so”.

56. The United Kingdom delegation stated that no clear need had been shown for the inclusion of public law provisions regarding the performance of salvage operations. It noted that these matters were already dealt with in MARPOL 73/78, and the prevention of pollution of the marine environment was covered by that treaty and dealt with in IMO by the Marine Environment Protection Committee. Moreover the delegation considered that there was lack of clarity with regard to how the obligations in articles 6 and 7 were intended to be enforced. The inclusion of these articles in the convention might encourage litigation and dissuade salvors from undertaking salvage operations in some cases. In the delegation’s view it was inappropriate to deal with public law issues of this kind in what was essentially a private law convention. Reference was also made to the need to observe resolution A.500(xII) of the IMO Assembly and, in particular, the requirement that new international rules should be developed only if there was compelling and documented need for such new rules.

57. Several delegations agreed with the United Kingdom that the provisions of articles 6 and 7 should deal only with contractual and quasi-contractual duties as between the salvor and the parties interested in the property to be salved.

58. Some other delegations had doubts about the applicability of MARPOL 73/78 to pollution arising from salvage operations. Several delegations considered that articles 6 and 7 should be retained in their present form. One delegation stated that the advantage of these provisions was that they called for timely action which was an essential obligation in matters of salvage. Reference was also made to paragraph 2 of article 6 which imposed an obligation on the owner and master of a vessel to ensure the adequacy of salvage services. These delegations were prepared to give further consideration to the United Kingdom’s proposals.

59. The observers of the International Union for the Conservation of Nature and Natural Resources (IUCN) and of Friends of the Earth International (FOEI) expressed doubt as to whether the MARPOL 73/78 system dealt fully with all the problems which were addressed in articles 6 and 7. The observer of FOEI invited attention to the origins of the Committee’s work on the revision of the 1910 Convention which included the demands that due account be taken of the interests of the public and of coastal States in the prevention of coastal pollution. The provisions
of MARPOL 73/78 and the 1969 Civil Liability Convention did not make the provisions in question entirely superfluous, given the public interest in protecting the environment which had been the principle motive for IMO to consider the revision of the salvage convention.

60. One delegation considered that the sole purpose of the Committee’s revision of the salvage convention was to provide an incentive to salvors to help prevent or minimize damage to the environment. This delegation suggested that articles 6 and 7 were defective because their meaning was unclear and it was doubtful if they would be effective. Moreover, it did not believe that the omission of these provisions would in any way harm the environment.

61. Some delegations considered articles 6 and 7 required consideration in the light of article 4 and the freedom of contract provided therein.

62. The Committee concluded that the proposal of the United Kingdom should be given further consideration as a possible alternative to articles 6 and 7. The Committee agreed to discuss the matter at its next session.

Article 6. Duty of the owner and master

63. The observer from the Oil Companies International Marine Forum (OCIMF) explained its proposal for an additional paragraph to be added to paragraph 1 of article 6 as follows:

“The owner or master shall have the right to terminate the salvor’s services if the owner or master believes there is no justification for the continuance of such services, without prejudice to the salvor’s right to compensation for the services rendered.”

The observer explained that this addition was intended to preserve the right of the master to control salvage operations, and to ensure consistency with Lloyd’s “Standard Form of Salvage Agreement 1980” (LOF 1980). OCIMF believed that the owner or master should have the right to terminate salvage operations if these were no longer justified.

64. The observer from the ISU pointed out that LOF 1980 gave the right to the salvor to continue the salvage operation until the vessel was in a position of safety. In the view of ISU, the revision suggested by OCIMF could require a salvor to terminate salvage operations even when it was not reasonable to do so. It would give the owner or master a unilateral right to terminate when he wished and in circumstances which might otherwise be a breach of contract. This could not be right and the draft clause should be amended appropriately.

65. Several delegations did not consider it necessary to have too specific guidelines with respect to a matter which might best be left for regulation under national law. Reference was made in this context to article 17 which, in the view of some delegations, dealt with the issue raised in the OCIMF proposal. The Committee agreed not to insert the new paragraph proposed by OCIMF in article 6.

66. One delegation doubted if the “owner” would in all cases be in the position to assume the duties imposed upon him under article 6. This delegation suggested that the Committee give due consideration to extending the article also to the bareboat charterer, the ship’s operator, or armateur gérant, etc. The Committee agreed to look further into this suggestion.

67. The Committee discussed whether the words in brackets in paragraph 3 of
article 6 should be retained or not. Consideration was also given to a proposal by the Australian delegation for the addition of the words “in accordance with any agreement between the salvor and owner, or, in the absence of any agreement” after the word “re-delivery” in paragraph 3 of article 6. Consideration was also given to a general comment by the International Chamber of Shipping (ICS) contained in document LEG 56/4/4.

68. Also with reference to paragraph 3 of article 6, two delegations indicated that, at least in their own legal systems, the word “re-delivery” was incorrect as it necessarily implied the idea of a previous transfer of ownership of the property salved, for which there was generally no need in salvage operations.

69. One of these delegations therefore proposed an alternative wording for the whole of paragraph 3 replacing the concept of “delivery” with that of “end of operations”.

70. The observer of the ISU explained that the proposal in the second set of brackets was intended to clarify the question of when salvage services were completed. The Committee agreed that the words in the first set of brackets could be deleted. It was however, generally agreed that a draft provision on the matter dealt with in the second set of brackets was desirable, since the clarification it provided would be of assistance to courts and arbitrators when they had to decide on these matters.

71. The Committee therefore agreed to retain the second sentence within brackets.

72. The Committee discussed an Australian proposal for an addition to paragraph 3 to make it clear that salvors and owners were free to reach agreement on re-delivery arrangements. Some delegations considered that such an addition was unnecessary in view of the provisions of article 4, paragraph 1. The Committee did not approve the inclusion of these words.

Article 7. Duties of the salvor
Paragraph 1

73. The Committee considered a proposal by the delegation of Australia for the substitution of a new text for paragraph 1 of article 7. The text proposed reads as follows:

“1. A salvor shall use his best endeavours to:
   (a) salve the vessel and property; and
   (b) prevent or minimize damage to the environment.
   In so doing, a salvor shall exercise due care.”

74. The delegation of Australia stated that the new text was intended to clarify the standards of care to be exercised in fulfilling the duties of the salvor in respect of the vessel and property and in respect of avoidance of damage to the environment.

75. One delegation noted that the proposal would omit the words in the current text which made it clear that the salvor’s “best endeavours” to prevent or minimize damage to the environment were to be made during the course of the entire salvage operations, and not solely in salvage operations relating to environmental protection.

76. Although there was some support for the Australian proposal, many delegations considered that the text should remain in its present form. It was agreed that further attention should be given to the words “best endeavours” and “due care”,...
but that the wording of paragraph 1 should remain unchanged for the time being.

77. Some delegations pointed out that the expressions “best endeavours” and “due care” were not sufficiently clear, and they feared that their retention in the convention might have the effect of discouraging the casual salvor from undertaking salvage operations because of the high standard of care imposed on him. These delegations felt that further consideration should be given to this issue.

78. The observer from OCIMF explained the proposal for a paragraph to be added after paragraph 1 of this article as follows:

“The salvor shall, to the extent practicable, consult and co-operate with the owner or master during the course of the salvage, including steps to prevent or minimize damage to the environment.”

He stated that the addition was intended to complement the provisions of article 6 and called for consultation and co-operation by the salvor with the owner or master during the operations.

79. It was suggested that the additional wording might be included in paragraph 1 of article 7, but some delegations preferred it to be in a separate sentence. Some delegations questioned whether such a provision would in fact increase the effectiveness of the convention. One delegation pointed out that one single provision might, if necessary, cover the matter of co-operation but there was no need for two provisions, one calling for the salvor to co-operate and another for the owner and master to do the same.

80. In the light of the discussions and suggestions, the observer of OCIMF, in cooperation with one delegation, prepared a new text which reads as follows:

“The salvor shall use his best endeavours to salve the vessel and property and shall carry out the salvage operations with due care, in particular by acting in consultation and co-operation with the owner or the master during the salvage operations. In so doing, the salvor shall also use his best endeavours to prevent or minimize damage to the environment.”

81. It was decided to revert to this proposal at the next session of the Committee.

Report on the Work of the 57th Session (Document LEG 57/12)

Articles 6 and 7. Duties of the owner and master and Duties of the salvor

131. The Committee gave further consideration to a proposal, which had already been considered at the Committee’s fifty-sixth session, intended to replace articles 6 and 7 with a single new article as follows:

“1. The salvor shall owe a duty to the owner of the property in danger:
   (i) to exercise due care to salve the property in danger;
   (ii) to carry out the salvage operations with due care;
   (iii) in performing the duties specified in (i) and (ii) to exercise due care to prevent or minimize damage to the environment;
   (iv) whenever circumstances reasonably require, to seek assistance from other salvors; and
   (v) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the 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 property in danger shall owe a duty to the salvor:
   (i) to co-operate fully with him during the course of the salvage operations;
   (ii) in so doing to exercise due care to prevent or minimize damage to the environment;
   (iii) when the property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.”

132. The United Kingdom delegation explained that the intention of the new draft was to exclude from the convention all matters which were not of a private law nature and which did not concern the relationship between the salvor and the owner of the salved property. It felt that public law matters should be taken up in the context of the 1973/78 MARPOL Convention, and that private law matters relating to third party liability were to be dealt with by the general law of negligence or other appropriate international conventions. Applying the above criteria, all relevant aspects contained in articles 6 and 7 of the CMI draft had been included in the new draft. The duty to take timely and reasonable action to arrange for salvage operations had not been included because that was not a duty which could directly affect the relationship between salvor and salved property. However, in so far as failure on the part of the master or owner in this respect resulted in the salvage operation becoming more difficult, that would normally lead to the salvor obtaining a higher award.

133. Many delegations supported the principles underlying the proposal.

134. Some delegations reserved their position, and one delegation expressed its opposition to the proposal. One observer delegation expressed a preference for the original text of the article.

135. The Committee decided to insert the proposal of the United Kingdom in the basic text. The Committee also decided to insert the words “vessel or other” before “property” in the appropriate places in the new text.

136. In response to a question, the United Kingdom delegation explained that it had replaced the words “to obtain assistance” in article 7.2 by “to seek assistance” in the new article 6.1(iv) in order to protect the salvor in situations where he sought assistance but was unable to obtain it, through no fault of his own.

137. One delegation suggested that the contents of subparagraphs 1(i) and (ii) of the new article 6 were very similar and could therefore be merged.

138. In the light of the decisions taken by the Committee in respect of articles 6 and 7, the Italian delegation withdrew its proposal relating to article 7.2, and contained in document LEG 57/3/4 because, in its view, the United Kingdom’s text adopted by the Committee resolved the problem to which the Italian proposal had addressed.

**Document LEG 58/12-Annex 2**

**Article 2–2 6. Duty of the owner and master and duties of the salvor**

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.

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 duties specified in subparagraphs (a) and (b) to exercise due care to prevent or minimize damage to the environment;

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.

(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.

Article 2.1. Duty of the owner and master

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 endeavours to prevent or minimize danger to the environment.

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. The owner and master of the vessel or 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;

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

Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 6. Duty of the owner and master and duties of the salvor

(2.1 draft, arts. 2.1 and 2.2)

39 The duties of the owner and master and the duties of the salvor were extensively discussed, and several proposals to amend the pertinent part of the CMI draft were introduced. Among these proposals, the Committee adopted, with some modifications, the one presented by the delegation of the United Kingdom, which deals with the above referred to duties in one single article, and two paragraphs, the first referred to the duties of the salvor, and the second one to those of the owner and master of the vessel or other property in danger. (LEG 56/9, paragraph 63 to 81, LEG 57/12, paragraph 131).

40 It was explained that the intention of the present article 6 was to exclude from the convention all matters which were not of a private law nature and which did not concern the relationship between the salvor and the owner of the salved property. It was felt that public law matters were taken up in the context of the 1973/78 MARPOL
Convention and that private law matters relating to third party liability were to be dealt with by the general law of negligence or other appropriate international conventions. Applying the above criteria, all relevant aspects contained in articles 6 and 7 of the CMI draft had been included in the new article 6. The duty to take timely and reasonable action to arrange for salvage operations had not been included because that was not a duty which could directly affect the relationship between salvor and salved property. However, insofar as failure on the part of the master or owner in this respect resulted in the salvage operation becoming more difficult, this would normally lead to the salvor obtaining a higher award. (LEG 57/12, paragraph 132).

41 The principles indulging the present text of article 6 were supported by many delegations while some delegations reserved their position. One delegation expressed its opposition to the new text. (LEG 57/12, paragraphs, 133, 134).

42 A detailed discussion was held on whether the words “due care” as referred to the duties of the salvor should be preferred to the expression “best endeavours” used in the CMI draft and the Lloyds Open Form (LOF 80).

43 Those delegations in favour of retaining the words “best endeavours” emphasized that this concept was featured in the LOF 80, and was intended to apply to contractual salvage, this requirement could also apply to non-contractual salvage. It was also emphasized by some delegations that even non-professional salvors should have a measure of responsibility to operate carefully and to make reasonable efforts to avoid damage to the marine environment, whether the salvage operations they undertook were contracted for or not. It was also explained that the provision represented an effort to set out the salvors duties clearly and to include environmental protection in those duties in such a way that no salvor or owner could claim that such “best endeavours” had not been required from the salvor. (LEG 54 – paragraphs 25,33).

44 The view widely shared by many delegations and finally adopted by the Committee was that the words “due care” should be preferred to those of “best endeavours” used in the CMI draft. It was felt that to require the salvor to use his “best endeavours” would make his duties unduly onerous and could constitute a disincentive to undertake salvage operations. Within this context, mention was made of the fact that these possible disincentives might arise from the requirement of standards of performance higher than that of “due care” even if, in the end, their implications were left to be determined by courts or tribunals. If the determinations of the courts and tribunals involved these higher standards of performance, salvors, particularly non-professional salvors might hesitate before they undertook salvage operations in some cases, and it was even possible that some insurers might discourage non-professional salvage in some situations altogether. In this connection, it was pointed out that shipmasters had in many cases to make quick decisions on whether to undertake salvage operations or not, and a provision imposing a standard of performance higher than “due care” from them could induce shipmasters to avoid getting involved in situations in which they might be able to provide useful assistance. (LEG 54/7-paragraphs 24,27).

45 The attention of the Committee was also drawn to another problem faced by the salvors when they sought to enter ports with vessels after salvage. It was stated that port authorities frequently requested financial guarantees before permitting the entry of such vessels. As the guarantee requested sometimes extended to various expenses to be incurred by the vessel during its stay in port, which were beyond the control of
the salvor, such as the wages of dock workers, it was suggested that such guarantees should be requested of shipowners. Another view held that if the shipowners were responsible for all guarantees, the salvor might not hesitate to accept obligations on behalf of the shipowner which the salvor would not accept for himself; and port authorities might be tempted in such situations to require higher guarantees than would be justifiable or acceptable to salvors. (LEG 54/7 - paragraph 16).

46 The Observer of the CMI explained that the problem of guarantees had been extensively discussed in the CMI. The conclusion of the CMI had been that, as the salvor was the person in control when a request for guarantee arose, it was appropriate that the salvor should be the one to provide that guarantee. (LEG 54/7 - paragraph 21).
close. Now having said that I would like to come to the substance of our proposal. The present text of article 6 is, as we well know, based on discussions in the Legal Committee of the IMO and I think it was then the delegation from the United Kingdom, submitted a text that gained wide support, explaining that the intention of the present draft Convention was to exclude from the convention matters which were not of a private law nature and which did not concern the relationship between the salvor and the owner of the salved property. In principle, we endorse this view that the aim of the present draft Convention is to deal primarily with the private law aspects of salvage and, therefore, we think that the overall structure of article 6 is sound and reasonable. However, this view has led to the fact that it was also the duty of the master to take timely and reasonable action to arrange for salvage operation. That means to create a situation where this relationship between the salvor and the owner of the salved property is created. Also this aspect has been sacrificed to the underlying principle that we should deal only with the private law matters. We see the merits in this view; nevertheless, we have the feeling that there could be in the Convention an indication of whatever nature that the master of the owner of the ship in peril are obliged to take timely and reasonable action to arrange for salvage operations, because in the past the bad cases have not been that the masters of ships in peril did not embark on salvage contracts at all but there were lot of cases where there was some delay and delay can be very harmful. The result of the salvage operations are thus in danger and also the environment and our proposal aims at improving the efficiency of a new concept of salvage mainly with a view to preventing or minimising damage to the environment. Moreover, we feel that, of course, one can draw a clear cut line between public law and private law but the present draft Convention is anyway not confined only to private law and there are some areas where the Convention might touch both areas – private and public law aspects – and if we would introduce an obligation to take timely and reasonably action and if this obligation is not followed, this might also affect the private law relationship between salvor and the owner of the salved vessel and we do not think that the duty to take timely reasonable action could not in any way affect the relationship between the salvor and salved property that could have an effect on the amount of the reward which has to be paid because salvage operations might become more complicated. There might probably be consequences where damages have to be paid but even if the legal consequences of a breach of this duty to take timely and reasonable action are somewhat unclear, we think it is a necessary psychological element that everybody knows that if a salvage situation arises, action has got to be taken and they have to be taken timely to lead to a useful result at least in respect of the environment. I think I have said enough to this proposal and I would be interested to hear the explanation of the French proposal if there is any.

The Chairman. Thank you for drawing my attention to the French proposal. In fact the proposal of France would also have a similar effect and we should include their proposal into the first round of our debate on article 6. May I then ask Poland to introduce the proposal of that Government.

Poland. Thank you Mr Chairman. Our proposal101 is very simple. We propose to distinguish the duty of the salvor to exercise due care to prevent or minimize damage
to the environment. To distinguish in the text from other duties the salvor's duty to prevent or minimize damage to the environment that we know cannot be excluded by contract. It would follow therefrom that it is a special duty borne by the salvor in every circumstance even in the case where there is no ground for civil liability of the ship owner for damage to the environment. We may imagine such cases; we know very well that the CLC provides for certain exceptions. So in such cases where there is no liability of the ship owner for damage to the environment, the salvor's efforts to prevent or minimize damage to the environment cannot be considered as a liability salvage. If there is any agreement on the special nature of this duty in some cases duty to the community, it should be distinguished from other duties of the salvor to the owner of the vessel or property in danger and dealt with in a separate paragraph. We are aware, Mr Chairman, that the amendments we proposed follows from an accepted philosophy which may not be shared by other delegations. We think that a public law element cannot be excluded. Actually public law elements are present also in the 1910 Convention. In fact the master's duty to save life at sea is a public law duty. In the present draft convention, the value to be protected by the public law rule is not only human lives that is protected but also human environment and since the salvor's duty to take care of the environment is set out under article 4(c), that means that public interest is involved. So there is a reason to distinguish the duty in article 6 by stipulating in a separate paragraph and I may refer that to the significance of the public law rules. I would refer to the Australian paper LEG/CONF.7/9 and also to the ACOPS paper LEG/CONF.7/6, both these papers have raised the problem of the importance of public law rules in this Convention.

The Chairman. The next speaker is France. France, you have the floor to introduce your proposal on article 6.

France. Thank you, Sir. Article 6, as you know, determines the various obligations of the shipowner and the master and, on the other hand, it also determines the responsibilities and duties of the salvor. Regarding paragraph 2 of the basic proposal of our text, the feeling of my delegation is that before we start talking about liabilities regarding full co-operation with the salvor during salvage operations, and before we begin to talk about taking due care to safeguard the environment, and before even we begin to talk about restoration of property, the primary liability which does not appear in the text, which we feel is most important, is to state quite simply that the master and the owner of a ship and those in charge of property at risk should take in due time necessary measures, reasonable measures, to obtain help. I think this is perhaps the most important thing to state because before we talk about co-operation or recovery...
of property salved, etc., the most important thing is to say that the main obligation is for the shipowner and the master to take reasonable measures to obtain assistance, which would imply salvage. We find in the text a very serious loophole. Consequently, we propose in paragraph 2 of article 6 that we begin the first sentence by saying the owner and master of a vessel or other property in danger shall take timely and reasonable measures to obtain assistance. The text appears in LEG/CONF.7/1102. I would insist that this is the first duty which in fact would underly the success of any salvage operation that is to ask for assistance or salvage opportunities at the appropriate time in order to obtain assistance when necessary. How many times have we seen situations like the Amoco Cadiz for example where the master and the shipowner were rather late in taking timely measures to obtain the appropriate assistance. This is why, Sir, we are requesting this introduction of the introductory sentence to paragraph 2. That is the first part of the French proposal. This of course does not cover neither subparagraph (a) of paragraph 2 or subparagraph (b) thereof, but between (b) and (c) we are proposing a new paragraph which would state the following: “The master and owner of the ship or the owners of other property at danger have the duty not to oppose a decision of a salvor to take recourse to the service of other salvors” because indeed, Sir, we find in the text of article 6 in paragraph 1(e) an obligation not to object to the intervention of the salvor. It is an idea that if the shipowner or the master reasonably expect salvage there should be no effect on the salvors need for remuneration. I think that is quite clear. Who could not say anything against it. But we do think that there should be a provision which will be symmetrical in paragraph 2 or article 6 which would be a provision under the new paragraph (c) proposed by France which would say that the master and the owner of the ship may not oppose a decision of a salvor to call upon the services of other salvors. We feel this is an obligation which precisely balances out opposition to a salvor’s intervention. A salvor may be obliged to accept intervention from other salvors if the master and owner so require, but it does seem to us that it is equally necessary if the salvor, as we feel, is a reasonable person, if he arrives on the site of a casualty with insufficient talent or whatever and he needs to call upon other salvors who can help him out to make sure that the salvage operation is successful, in such a case the master and the owner of the ship should be obliged to accept this intervention of other salvors. This is the text proposed you can find in CONF.7/11 which would form a new subparagraph (c) of article 6(2) implying that there is an obligation not to oppose a decision of a salvor to call upon the services of other salvors, wherever it appears reasonable, but a salvor already involved in salvage operations cannot complete those operations in a

(102) Document LEG/CONF.7/11

Article 6
In paragraph 2 put:
“2 The owner and master of the vessel or other property in danger shall take timely and reasonable measures to obtain assistance.
They shall owe a duty to the salvor:
(a) no change
(b) no change
(c) not to oppose the decision of a salvor to call on the services of other salvors whenever it seems reasonable to believe that the salvor who is already engaged in salvage operations cannot complete them alone within a reasonable period or where his resources are inadequate.
(d) insert the text of existing subparagraph (c)”.

THE TRAVAUX PREPARATOIRES OF THE 1989 SALVAGE CONVENTION

239

Article 8 - Duties of the salvor and of the owner and master
reasonable period of time when he finds his own means of assistance are insufficient. This is what France proposes, the first is in the first paragraph of article 6, paragraph 2; it implies that the owner and master of a vessel or other property in danger shall take timely and reasonable measures to obtain assistance. Secondly, in the same paragraph 2, in the new subparagraph (c) there shall be duty on the owner and master of a vessel not to oppose the decision of a salvor to call on the services of other salvors whenever reasonable. We find this fundamental and we feel that, for the moment, the text contains a loophole and this is why we are making this proposal, Sir. Thank you.

The Chairman. Thank you. May I ask the observer delegation of ACOPS if that delegation is ready to introduce its proposal?

ACOPS. Yes, thank you Mr. Chairman. Like the distinguished delegate of FRG we too appreciate the history of the draft Convention and the decision to leave aside public law aspects, but we nevertheless considered that some important environmentally related issues do desire further examination. We trust that the arguments advanced on pages 2 to 4 of our proposal for amendments to article 6 set out in our paper 7/6 are self explanatory. But I would just reiterate the rationale for

(103) Document LEG/CONF.7/6
Submission by the Advisory Committee on Pollution of the Sea (ACOPS)

ANNEX

Article 1 (d)
Damage to the environment means substantial physical damage to human health or to marine life or resources [or property on the high seas,] in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.

Article 6
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 salvage operations with due care;
   (c) in performing the duties specified in subparagraphs (a) and (b) to exercise due care to prevent or minimize damage to the environment;
   (c)(d) whenever circumstances reasonably require, to seek assistance from other salvors; and
   (d)(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 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;
   (b)(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.
3. During salvage operations, the salvor shall owe a duty to exercise due care to prevent or minimize damage to the environment.
4. After the danger to the vessel or other property has arisen, the owner and master of the vessel or other property in danger shall owe a duty to exercise due care to prevent or minimize damage to the environment.
5. The duty specified in paragraphs 3 and 4, shall be owed to all persons or states which the person by whom such duty is owed, foresees or ought to foresee would suffer damage as a result of a breach of that duty.
6. All such persons or states shall be entitled to recover from the person by whom such a duty is owed, compensation for loss and damage caused by a breach of the duty specified in paragraphs 3 and 4, which is or ought to be foreseeable as a consequence of a breach of that duty.]
our proposal is two-fold. First, whilst it is of course logical that the duties of the salvor should coincide with the commencement of salvage operations, it is the period between the time when the danger arises and the time the salvage commences that is likely to have a significant impact on the steps taken to avoid damage to the environment. Hence our proposal to place duty on the owner and master of the vessel or other property in danger during that critical period, i.e. proposal to delete 6.1(c) and 6.2(b) and introduce 6.3 and 6.4 and secondly, under article 6 duty is owed either by the salvor to the owner of the casualty or by the owner and master of the casualty to the salvor. But no duty is owed to third parties who may be more directly affected by failure to exercise due care to salvage the casualty, hence our proposal to introduce new paragraphs 5 and 6 in our paper. Thank you Mr. Chairman.

The Chairman. I thank you. The floor is open for comments. Who wants to speak first. You have several alternatives for this problem. United Kingdom.

United Kingdom. Thank you Mr. Chairman. This may be a hostage to fortune but we would respectfully oppose all these proposals. But we do, as I indicated a few moments ago, see them in a slightly different way although we recognize that the ACOPS proposal combines them to some extent. Perhaps I could deal first with the more limited proposal of the Federal Republic of Germany in working paper 15 and the similar proposal of France in 7/11 both of which recognize that this is not intended to be a public law convention. The difficulty that we have is that it is not clear we think whether if one takes the German proposal it would in fact be treated as a private or a public law obligation. It appears to be from its position in article 6 to be in the nature of a private law obligation because that is generally the subject matter of article 6 and that would raise very considerable problems. It could for instance be said if one just looks at the text of article 6 with that amendment to it, that this is a duty owed by the master and the owners vicariously through him to cargo. In which case, there would be questions as to whether it is excluded by the terms of the bill of lading or not. It could be said that it is a duty owed even to the salvors themselves because by the time that they arrive on the scene, or having arrived on the scene, are not allowed to enter into a sensible contract, the position of the vessel may have deteriorated and the salved values may be less. That could not be taken into account by an arbitrator in his award, since his award would only take account of what happened after the contract was made. So in theory, one could see proceedings of that kind, even within the parties to the adventure and including the salvors. It would also, in any event, we suggest, be doubtful whether it is of a private or a public law nature for the reasons that I have indicated already. If it were to be confined to be a public law nature, we would rather see it if at all that we would be against it in the next article which have to be re-titled because it is clearly of public law nature. The other important question which would arise is: suppose the master clearly fails in that duty. How is it to be enforced? In so far as there are, contrary to our opinion, public law duties in this Convention, as we understand it if there is a breach of a public law duty it could only be enforced against the master in the State of the flag. But we could foresee that if this amendment appears in this paragraph, that when the ship arrives in any contract jurisdiction, proceedings would be brought against the master by anybody who might have been prejudiced by the breach of that duty and different countries might take different views as to whether this is merely within the jurisdiction of the flag State or whether it can be sued upon in any contract State. These are the sort of difficulties which we have, even though, as was made so clear by the delegate on behalf of the Federal Republic of Germany, in a sense these can be regarded as amendments of a private law nature. We still see
Mr. Chairman, having said so much on that aspect, I would rather not speak any further on the general public law aspects, as they clearly would be in relation to the environment at this point.

The Chairman. I thank you. The next speaker, the delegation of Japan.

Japan. Thank you, Mr. Chairman. This delegation would like to oppose to the proposals submitted by the distinguished delegates of the Federal Republic of Germany and France. Mr. Chairman, in the ordinary case of salvage if the vessel is in danger, the decision whether salvage operations should be taken or such measures should be abandoned is done by the ship owner, based mainly upon the judgement of the hull insurer. Such judgement of the insurer usually is done on the basis of the marshal judgement whether the vessel may be salvaged within the cost payable by the hull insurer with the insurance money or not. If the insurer considers the salvage operation has no possibility to maintain a balance that salvage operation is definitely not done. In such case, if some works to prevent or minimize damage to the environment is necessary, such works are done as a preventive measure and this preventive measure are not salvage operation in any sense, even if such measures are taken by the salvage enterprise. Therefore, this delegation considers that it is overburden and is not suitable to all duties to the owner, etc., in any occasion to take action to arrange salvage operations or to take measures to obtain assistance. From this view point this delegation cannot support this amendment. Thank you, Mr. Chairman.

The Chairman. I thank you. Next speaker, the delegation from Hong Kong.

Hong Kong. Thank you, Mr. Chairman. This delegation would like to raise a question regarding the philosophical or policy basis of this Convention, which may be of fundamental importance in the sense that law-making should be clearly directed towards the achievement of some object. The main motivating object of this Convention is the protection of the environment. The main question for debate on article 6 appears to be whether this object can be achieved by private law or public law measures or a bit by both, and in what proportion. In this connection, this delegation questions the assumption that the Convention is a private law Convention. We consider it is worth emphasizing, Mr. Chairman, that not even the 1910 Convention was entirely a private law Convention, and indeed it might be said that there would not have been a 1910 Convention were it not for the fact that there is a strong public policy element in the maritime law of salvage. The salvor and the ship owner have never, at least over the last century and perhaps longer, operated in a vacuum of private rights or duties owed only amongst themselves as contracting parties. Of course, the origins of salvage is not contractual but is based on principles of equity. The public policy element in this is not only that the law imposes on the owner of property saved an obligation to pay the person who has saved that property because in the view of the law it is just that he should, but also it is contained in the concept that as a matter of public policy, the salvor should be encouraged by reward to save lives and property since the maritime community and the public at large are thereby benefiting. Mr. Chairman, this public policy element was perhaps the crucial factor which led to the first attempt to unify the law of salvage internationally in the 1910 Convention and is the reason why this draft Convention ought not to be considered as dealing with private law in isolation from public policy. The 1910 Convention incorporated the positive public duty to render assistance to persons in danger of being lost at sea. To the concerns of the saving of life and property recognized under the 1910 Convention are now to be added the concerns of the saving of the environment and the duty of
cooperation of contracting States to be recognized under the prospective 1989 Convention. The concern for the protection of the environment has already been recognized to some extent in private law arrangements, such as the model agreement which was formed in 1980. But it is to be noted that the concern to protect the environment is not incorporated in LOF 1980 as a duty to protect the environment, but only as a duty of the salvor to use his best endeavours to prevent the escape of oil. The primary duty is still to save property, and the prevention of pollution or damage to the environment is merely incidental or consequential to the saving of that property. On the other hand, the CMI draft introduces the positive duty on the part of both the owner and master and the salvor to use their best endeavours to prevent or minimise damage to the environment. It may be noted that at least one authority on the maritime law of salvage has suggested that the duty of the owner or master to arrange salvage operations was implied in article 3 of the 1910 Convention. This duty, in the form of the duty of the owner and the master of the vessel in danger to take timely and reasonable action to arrange for salvage operations, was made express in the CMI draft. The CMI draft does not specifically devine the nature of the various duties or to whom they are owed. However, it appears to be clear by context in the CMI draft whether a particular duty is owed between the parties to the salvage agreement as a private duty or whether the duty is owed by any of those parties or a contracting State as a public duty. The present article 6 fuses and recasts duties of owners, masters and salvors as private duties owed only under contract. The distinguished delegate from the United Kingdom has explained that a major reason for this is to ensure that only private duties are included in article 6. As we have explained, however, we do not, respectfully, consider that the convention can, or indeed should, be considered as a purely private law matter, mainly because the public policy element is too great and too important to ignore. Having said that, however, we do have considerable sympathy for the United Kingdom view that the nature of the public duty with respect to the protection of the environment, for example, whether a breach of the duty is to be regarded as the commission of a tort or a criminal offence, or both, the types of sanctions, if any, to be applied, and who may enforce the duty, appears not to have been sufficiently canvassed, or, more importantly, plotted out to enable such a public duty at least to be readily incorporated in this convention on this occasion. On the other hand, we see little point in incorporating what is essentially a public duty, the duty to protect the environment, in the guise of an ostensibly private duty owed between contracting parties under article 6. This is contrary to both logical and legal reality, and tends to weaken the convention as a rational, coherent, self-consistent legal document. Neither contracting party has any real incentive to enforce against the other what appears to be appropriately characterised as a duty demanded of the parties, not of each other, but, in reality, by the public or both. The concern of owners and masters is to ensure that the vessel and the property are saved. They would be extremely public spirited or civic minded if they were to undertake on behalf of the public the no doubt expensive and uncertain task of trying to enforce compliance of, or to seek redress for, a breach of contract from the salvor in respect of his duty under article 6(1)(c) to prevent or minimise damage to the environment. Likewise, the salvor will be primarily concerned to ensure that owners or masters co-operate with him to facilitate his salvage operations in respect of the rescue of the vessel or other property. If that occurs, the salvor will not be concerned to enforce the duty of care under article 6(2)(b), the expense of that would eat into his reward in respect of the property, and we have already heard expert opinion on the difficulty, if not the impossibility, of quantifying the proportion of the reward that might have been attributable to an
environmental rescue. The difficulty of establishing the enhancement that might have been attributable to an environmental rescue had due care under article 6(2)(b) been exercised would appear almost certainly to deter such enforcement action on the part of the salvor. We also note that duty to protect the environment has only a tenuous link, if any, with the salvor and the salved property. Mr. Chairman, we respectfully submit that all reference to the essentially public duty to protect the environment should be deleted from article 6, if that article is to remain in its present private law oriented form. The real and practical incentive for protection of the environment arises from the encouragement similar to LOF 1980, but extended, given to the salvor under articles 10 and 11 and not from any public duty that could only notionally be private duty under article 6. With such a deletion, the convention would appear to reflect both practical reality and logic. Thank you, Mr. Chairman.

The Chairman. I thank you. The next speaker is the delegation of the USSR.

USSR. Thank you, Sir. Mr. Chairman, we have before us a very carefully drafted, clear proposal. However, it seems to us that most of us in this room understand where these proposals come from and what the purpose of them is. We would like to speak briefly, but to start with the same words as used by our distinguished colleague from the United Kingdom. Our delegation would like to say that we cannot agree to any inclusion of public law into the convention, not because we want purity - we do not want to limit any intervention of public law in the convention - but because we feel that this is not the place to deal with such questions, especially in the way it is being proposed. Of course, we understand the proposals, but we feel that the master and the owner of the vessel should take all timely and reasonable measures to obtain assistance. What happens if the master does not do it? Suppose we come back and say that each State in its national legislation should lay down rules and regulations in accordance with which any violation of this duty would be a matter of penal law? We are not saying that, are we, but it certainly is a duty? This is a private law convention, and if we say things of the kind being suggested then quite simply it is a matter of dust flying in the air. This problem must be discussed, of course, during the conference, but certainly all these proposals must be subject to common sense. We cannot bring public law into this convention. I really do not see that introducing these extraneous elements will help us to solve the problem. Therefore, quite honestly, I cannot agree to this proposal. Thank you.

The Chairman. Thank you. The next speaker is Australia.

Australia. Thank you, Mr. Chairman. As I think the last few speakers have indicated, the way in which article 6 is framed at present confines the duties owed by salvors and owners to contractual duties, and I listened with interest to what the representative from Hong Kong had to say and many of the things he said I would have agreed with. However, I do not reach the conclusion which he reaches that the solution is to take any reference to prevention of damage to the environment out of article 6 because it is not simply a contractual duty but goes beyond that; that to me is not the solution to the issues that have been raised. Having looked at the proposals that are on the table from France and the Federal Republic of Germany and Poland and from ACOPS, I think what they illustrate is that it is not adequate in article 6 to seek to define the basic duties that are owed at present by salvors and which exist under most systems of law, I would expect - duties that are not simply contractual duties but which exist as a matter of tortious law or otherwise, it is not possible to simply state these duties in an article like article 6 that seeks to deal only with a
contractual relationship. Such an approach suggests that salvors and owners of vessels and cargo operate in a bilateral contractual relationship of their own but are subject to no other general obligations under the law of particular States. That, Mr. Chairman, is clearly not the case. These general obligations exist and they exist independently of contract and it is for that reason that my delegation would support the proposals that are on the table to state these general obligations and to state them in a way which makes it clear that they don’t arise simply as a result of a bilateral contractual relationship. In stating these obligations, it does not seem to my delegation that one is necessarily involved in a debate about whether they are public or private duties or how they are enforced under national legal systems, it seems to me that these duties already exist under national legal systems and that it would be inappropriate if this Convention did not recognise those duties. They are well established duties and I think therefore they should be stated in the way proposed in the various proposals on the table, because I think in that way we will more accurately state the general nature of the obligations and recognise that they are not simply bilateral contractual obligations. In relation to the duty to prevent and minimise environmental damage as with the other duties that I have referred to, it clearly is difficult to see how one can adequately define that duty simply in terms of a duty owed to the other contractual party alone. It is a general duty imposed on the salvor and the owner just as the obligation to carry out salvage operations with due care is in reality not simply a contractual duty but a general duty of care that is owed to those in the vicinity and those who may be harmed if the duty is not carried out properly. For these reasons, Mr. Chairman, we think it important to recognise the general obligations of salvors and owners and for that reason we would support the various proposals that we are at present debating. Thank you.

The Chairman. Thank you. May I ask the delegate of Australia whether he has a specific preference. You have supported all four proposals and that makes it a bit difficult for the Chairman to identify your position. Have you a specific preference for a proposal?

Australia. Thank you, Mr. Chairman. I think in relation to the Federal Republic of Germany's proposal that stands on its own and we would support that. It may be that the ACOPS proposal and the proposal by Poland are seen as covering the same matters. My delegation would support the Polish proposal. It is not entirely convinced that it is necessary to set out all the details contained in the ACOPS proposal and in particular it seems to my delegation that paragraphs 5 and 6 of the ACOPS proposal are not essential. It would be adequate in our view to include a provision such as suggested by Poland dealing with the duty to prevent and minimise damage to the environment without seeking to specify how States would give effect to that particular obligation. Thank you.

The Chairman. I thank you for your co-operation. The next speaker is Democratic Yemen.

Yemen. Thank you, Mr. Chairman. This delegation was very impressed listening to the distinguished observer from Hong Kong explaining the shortcomings of this draft Convention as far as its obligations towards coastal States are concerned. However, like my distinguished colleague from Australia, we are disappointed and of course do not agree with his conclusions that whatever is already included should be deleted. I agree entirely with the remarks that have been made by the distinguished delegate of Australia regarding the enhancement of this document in order to protect
the rights of coastal States and therefore with regard to the proposals on the floor - and there are four - this delegation thinks that the proposals of France and ACOPS encompass all the proposals and we think they complement each other. The French proposals cover areas which the ACOPS proposals do not and therefore we would like to support both the proposals of France and ACOPS. Thank you, Mr. Chairman.

**The Chairman.** I thank you. I have no other speaker on my list. That doesn’t mean that we have to close. France.

**France.** Mr. Chairman, I hope that my statement will enable this debate to come to a close. I would start by recalling that the proposal of the Federal Republic of Germany in document WP.15\(^{104}\) covers the first of the French proposals to be found in document 7/11105, with the exception of the word “charterer” which is to be found in the proposal of the Federal Republic of Germany, but I believe that after the discussion we had this morning this delegation will not insist on the term “charterer” because we decided to stick to the term “owner” exclusively. The proposal of the Federal Republic of Germany under these conditions and the first French proposal in paragraph 2 coincide, are practically the same. These are provisions saying that the owner and the master of a vessel or other property in danger shall take timely and reasonable measures and the Federal Republic of Germany says to arrange for salvage operations and we say to obtain assistance, so it is just a small matter of words and this is the first duty owed by the master and the owner of a vessel: that is to say, to take reasonable measures so that the salvage operations may be taken in a timely manner. This is an obligation under private law. I have heard references to public and private law and I really wonder what public law has to do with all this. The whole of article 6 - and the French proposal changes nothing in this regard - covers the duty owed by the owner, by the master and by the salvor and these are general obligations, that is to say, to take timely and reasonable measures to obtain assistance. As for the Polish proposal here we have something slightly different; the proposal doesn’t go very far, its purpose being to delete (c) of paragraph 1 and to introduce that text at the beginning of paragraph 2. Due care will be taken to limit damage to the environment, that’s a very general obligation imposed on the salvor saying that you are called in to assist a vessel and you have an additional obligation, which is that of exercising due care in order to protect the environment. This doesn’t change things very much whether you put it in (c) or at the beginning of paragraph 2. We can perfectly well go along with this. As for the other proposal of France, that under (c) of paragraph 2, which is a new (c), we are trying to establish a symmetry between this obligation and the obligation you have in the previous paragraph, under (e), the obligation owed by the salvor. The salvor must accept intervention of other salvors requested by the owner or the master, and we are simply saying the same thing in a new paragraph (c) indicating that the master and the owner must accept the decision of the salvor to require the services of other salvors. So there is nothing new here and it is exactly the same kind of obligation placed symmetrically on the other party. So these are obligations which are purely and simply under private law and by these proposals we are trying to cover the small voids that exist in this text. Since the beginning of this Conference the general approach which consists of saying, we stick to the basic text and all the proposals are rejected, this is what’s happened so far. All proposals have been refused saying a lot of work has been

\(^{104}\) Supra, p. 238, note 100.

\(^{105}\) Supra, p. 241, note 102.
done in the Legal Committee, we've done a good job, no need to change anything. Well I can accept the fact that we worked very well and we took a long time over it, but nevertheless this text is far from being a marvel and here all we are trying to do is fill in a few gaps and loopholes. All we are saying is that the text is a good one but a few things could be added here and there, some additional obligations which would make this text even more perfect. This is why we can't understand the attitude of a lot of delegations including that of our friend from the USSR who declares opposition to any new proposal and tells us, of the basic text, that even if there are a few loopholes and difficulties it is better to keep it as it is. Far from it we are in a diplomatic conference with the purpose of improving the basic text and certainly we are not suggesting anything very revolutionary. We are certainly not modifying the structure of the basic text. All we are doing is to introduce a few additional elements where a few points are lacking. This is the purpose of the proposal put forward by the FRG on one point, this is the French proposal on two other points, Poland is just suggesting moving a paragraph from one place to another, well, Mr. Chairman, all this is perfectly reasonable, and I don't think it would be a very good idea to come and spend 15 days in a diplomatic conference and turn down every new proposal by saying we keep the basic text, without thinking the matter over carefully and without seeing the advantages of these modifications. Thank you Mr. Chairman.

**The Chairman.** I thank you. May I ask the delegation of France and of the Federal Republic of Germany whether one of these delegations would be ready to withdraw its proposal in order to simplify the situation. Either from the Federal Republic of Germany or France, so that we have only one proposal on the same item, both proposals are very similar. Yes, Federal Republic of Germany.

**Federal Republic of Germany.** Thank you Mr. Chairman. Of course we would be ready to have both our proposal and the distinguished French delegation merged on the first point, our proposal is only on the first point of the French proposal, and we would agree to have “all charterers” deleted and the rest might be subject either to drafting or taking in the draft of the French. We are not quite sure what would be the best draft of it, but we would like to have only one proposal to talk about.

**The Chairman.** I’m going to propose an indicative vote and it must simplify the situation when we only vote on one text. If we have two texts which say the same is very difficult for delegations to make their decision, would it be possible that both delegations, the Federal Republic of Germany is open-minded as I understand.

**Federal Republic of Germany.** Well, we would agree that on this first point the French proposal would prevail.

**The Chairman.** OK then your proposal is withdrawn. Well I must say that it is a good example, that delegation was open-minded and well, so we have only the French proposal on paragraph 2 the proposal of the Federal Republic of Germany has been withdrawn. The next speaker on my list the delegation of the United Kingdom.

**United Kingdom.** Mr. Chairman may I briefly come to the wider public law aspect of the suggested amendment. In particular that of ACOPS in 7/6 and of Poland in working paper 8. I’m not going to take up time in submitting why we submit that this is essentially and should remain a private law convention. As we understand it that has been debated, I mustn't say ad nauseam, I wasn’t present but it has been very fully considered and our position in that regard is unashamedly precisely the same as that of the USSR. But I would just make three points, I hope quite shortly. First, I would submit that the speakers which we have already heard on this topic show the great
uncertainties which would arise if these amendments are made. It simply is not, if I may say so, good enough to say that we are not concerned with questions of enforcement, we are. We are concerned with the multiplicity of legal proceedings which would arise out of this Convention, in many jurisdictions, if these amendments are made and the possible multiplicity of different decisions which would result from them. Secondly, I would remind delegates respectfully of the existence and effect of other Conventions which are effective in this area, and which are clearly public law conventions. In particular, of course, MARPOL 1973 and 1978 and I think above all in this context, one should refer to the Civil Liability Convention 1969 as amended by the Protocol of 1984, and in that connection I have in mind article 4, paragraph 2 of the 1984 Protocol. This provides that subject to certain matters affecting recourse which are not relevant, and I read the relevant words: "No claim for compensation for pollution damage under this Convention or otherwise may be made against (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority". I merely throw that into the pot in order to show the sort of complications and uncertainties which would arise if the amendments of this kind are made, however desirable environmentally in a very general sense they obviously might be. The final matter is that I submit, because it has not already been mentioned but I am sure it must have been present previously to the minds of the framers of the original text, the extent to which salvors would be likely to be deterred by the introduction of a multiplicity of duties of this kind in this Convention. Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker is Indonesia.

Indonesia. Thank you, Mr. Chairman. This Delegation would like to inform you, Sir, that originally the Indonesian Government issued a package of deregulations on shipping policy that shipowners may charter any vessels. Therefore, this Delegation is in favour of using the term "charterers" which is indicated in the proposal made by the distinguished delegate from the Federal Republic of Germany. Thank you, Sir.

The Chairman. The Federal Republic of Germany's proposal has been withdrawn and is no longer relevant. You cannot support that proposal. I am sorry.

Indonesia. Sorry, Sir. May I come back again because this is a matter of the use of the term whenever it is convenient to put in the draft Convention since some of the conditions that charters may exist. Thank you, Sir.

The Chairman. It has been decided by that delegation to withdraw that proposal; we cannot come back to that unless you make a new proposal. But I would like to remind you that this morning we had a long debate on the term "operator" and by decision we excluded all other terms save the term "owner". That means only owner is included in any place in this Convention and no other term. Is that acceptable?

Indonesia. Yes.

The Chairman. Thank you. I would like to propose that we now come to an indicative vote on these proposals. First we should vote on the most far-reaching proposal, that is the proposal of ACOPS, which you will find in document 7/6 in the Annex. Since there was only little support for the proposal I would like to propose that we vote on that very complex proposal as a whole. Is that acceptable? Yes. The question is then who is in favour of the proposal of ACOPS as contained in the Annex of document 7/6 to replace the present Article 6 in the basic text by the text contained in that document which I have just mentioned. Who is in favour? Please raise your
cards. One, thank you. Who is against that proposal? It seems to be the overwhelming majority, it is not necessary to count the vote. May I ask the Observer Delegation of ACOPS whether they are ready to withdraw their proposal or do they insist on a formal vote, later when we come to formal voting?

ACOPS. No, Mr. Chairman, we do not insist on a vote. We are prepared to withdraw it. Thank you.

The Chairman. Thank you for your co-operation. That proposal has been withdrawn. The proposal of the Federal Republic of Germany has also been withdrawn. We come first to Poland’s proposal in working paper No. 8. Who is in favour of that proposal? Please raise your card. Seven. Thank you. And who is against? Please raise your card. Fifteen. The result of the vote is 7 in favour, 15 against. Poland you have the possibility to insist on a vote when we come to formal voting. We come then to the French proposal. First to include a new paragraph 2 as proposed in document 7/11, on page 2. Who is in favour of such a subparagraph? Please raise your card. Ten. Thank you. Who is against? The result of the vote is ten in favour, 21 against. France, you have the possibility of coming back to that proposal when we vote formally. Is that your intention? We will vote on subparagraph (c) of course, but first it is subparagraph (2). Will you come back to that proposal when we formally vote?

France. Of course not, Mr. Chairman, because that just proves that you can make any proposal and they will be rejected anyway. I have received proof of that once again. Thank you, Mr. Chairman.

The Chairman. May I take it then France has withdrawn that proposal? We come then to France’s proposal in the same document to amend paragraph 2 by a new subparagraph (c). Who is in favour of that amendment? Please raise your cards. Thank you. And who is against? Please raise your cards. The result of the vote is nine in favour, 16 against. May I again ask the French delegation whether you would come back to that proposal when we formally vote, or would you like to withdraw that? France, you have the floor.

France. Thank you, Mr. Chairman. The situation is the same and it is even more serious because here it is a matter of imposing exactly the same provision on the owner and the master which we have imposed on the salvor: the one is on the basic text and the other isn’t, but the result is the same. Under the situation, why insist, and if this is the case why stay here until next Friday? Thank you, Chairman.

The Chairman. I thank you. Well, we have voted on these proposals. There are some other proposals on article 6 and we will now come to the remaining submissions. There is another proposal of Poland in Working Paper No. 18. It seems that is the only proposal left. Yes? Working Paper No. 18, a proposal of Poland. I would like to give the delegation of Poland the floor to introduce your document.

Poland. Thank you, Mr. Chairman. Before I speak about our proposed
amendment, I would like to draw your attention to a certain linguistic problem in the first line of subparagraph 2 which we are now discussing. It reads in my text: “the owner and master of the vessel or other property in danger”. I don’t think we can refer to master of property. Should we rather say the owner and master of the vessel or the owner of other property?

The Chairman. Thank you, Professor Lopuski, for drawing our attention to that problem. We did that in other places in the Convention. There is another place in the Convention - in article 4, I think - where we have made a clear distinction in saying the owner and master of the vessel or the owner of other property. That is not a substantive issue, but in any event I would like to thank you. This is, at least I hope agreeably, a subject which can be referred to the Drafting Committee. I see its Chairman is nodding his head. That is the first he has accepted, I think. All my other proposals to refer formulations to the Drafting Committee have not been accepted. Now you have the floor to introduce your proposals.

Poland. Thank you, M r. Chairman. We think that the duty of the owner – referred to in article 6, paragraph 2(c) – of the salved property to accept redelivery should apply only to cases when the salvor acts under a salvage contract but when the salvor undertakes salvage of a vessel abandoned by her crew or other jettisoned cargo, he must do it at his own risk, because the owner of such property may not at all be interested in the recovery at a very high cost of salvage remuneration. In any case, the owner of such property should be entitled to abandon it to the salvor who has undertaken the salvage operation at his own risk. Thank you, M r. Chairman.

The Chairman. Thank you. The floor is open for comments on this proposal.

Greece. Mr. Chairman, thank you. The Greek delegation during the work of the Legal Committee had supported this view, so we can now go along with the Polish proposal.

The Chairman. I thank you. Any other speaker on this point? The Netherlands.

Netherlands. M r. Chairman, I have some doubts with regard to the legal implications of the Polish proposal and I do not see quite a difficulty under the present text, because the salvage award cannot exceed the value of the salved property so that cannot be a reason for his having to pay a high salvage award when he gets back, in any case, a value which is never less than the amount of the salvage award. M y concern is that at a certain moment the salvor has brought a vessel or property to a safe place and must know actually that he can sell that property in order to get a recourse for his salvage award. But if you are going to limit this (c) to contractual salvage, I do not know actually what the situation for the salvor would be for non-contractual salvage, whether he will be free to sell the property: in any case, the salved property is still owned, in fact, by the interest and there must be a rule to the effect that at a certain moment it is established that the owner refuses to accept the redelivery. That’s my concern whether, by introducing this Polish proposal, you do not really create legal difficulties. But perhaps the salvors’ union has more experience with this matter than I have and could enlighten us on this particular point. Thank you very much.

The Chairman. The next speaker is the delegation of Spain.

Spain. Thank you very much, M r. Chairman. M y delegation would prefer the text as it is now in the draft and not the amendment proposed by the delegation of Poland. I know the reasons, because the inexistence of a contract in a salvage operation can be
due to the fact that a ship has been abandoned or that the operations had to be carried out urgently and for these reasons we cannot accept the Polish proposal.

The Chairman. The Dutch delegation has addressed a question to the International Salvage Union. Is that organisation in a position to give an explanation. Yes? International Salvage Union.

International Salvage Union. I don’t know that we can really add much to it; the proposal is a further restriction on the ambit of the Convention in only applying it if the salvage operations are performed under a contract. We would like a shipowner to accept delivery even if it is not under a contract but a common law salvage claim.

The Chairman. Any other speaker? No other speaker? Well, we can then proceed, before the coffee break, to an indicative vote. The question is: who is in favour of the Polish amendment contained in Working Paper No. 18? The amendment to article 6(2)(c) reads: “As a result of salvage operations performed under a contract...” which is the text underlined in your working paper. Will those in favour of that amendment please raise their cards? Thank you. Will those against that amendment please raise their cards? Thank you. The result of the vote is: 2 in favour; 23 against.

25 April 1989
Document LEG/CONF.7/VR.169

The Chairman. On article 6 we have a proposal in WP/8, a proposal from Poland. We have discussed this proposal but now we have to take a formal vote on it because Poland has, after the debate, insisted on a formal vote. The proposal of the Polish delegation in WP/8 is to include a new paragraph 2 and to make the consequential changes by deleting subparagraph (c) in paragraph 1; the present paragraph 2 would become paragraph 3. Poland, have I explained your proposal correctly? Yes? I thank you. May I ask the Committee who is in favour of the proposal submitted by Poland in WP/8. Please raise your cards. Who is against the proposal? Abstentions? The result of the vote 6 in favour, 12 against and 12 abstentions. That means that the proposal has not been adopted. Now we have to vote on article 6 as a whole. I think we can, after this vote, take up the whole article. Who is in favour of article 6 as contained in the basic draft? Please raise your cards. Who is against? Please raise your cards. Abstentions? No abstentions. Well, article 6 has been adopted as contained in the basic draft. We have received a submission by the delegation of Hong Kong in WP/29. I am sorry I have overlooked that. Hong Kong, you have not raised your card. Is it your intention, or was it your intention - we have just voted on article 6 as it stands and you did not interrupt the voting procedure. Can I take it that you did not intend to introduce that document? I am sorry for overlooking it but you should have raised your card. Hong Kong, you have the floor.

Hong Kong. Thank you, Mr. Chairman. It would be my intention perhaps, subject to confirmation that the conference has, in fact, decided that this issue of whether the duty to take timely and reasonable action was to be included as a public duty had been settled. It seems to me that the consensus is that that has, in fact, been the case. The thinking behind the proposal was that, if the decision had been taken that public duty was not to be incorporated in the convention, then the proposal was

(107) Supra, page 239 note 101.
an attempt to explore possible ways, if any, by which a duty to take timely and reasonable action to arrange salvage operations could realistically be incorporated as a private duty. I do not think that is a realistic prospect and we might have amended our proposal to include the duty to take timely and reasonable action as a public duty before subparagraphs (a), (b) and (c) in their present form. I repeat, Mr. Chairman, that as it is the case that the public duty issue is no longer open, we would have withdrawn that proposal. Thank you, Mr. Chairman.

**DRAFT ARTICLES AGREED BY THE COMMITTEE OF THE WHOLE**

**Document LEG/CONF.7/CW/5**

**Article 6. Duty 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) 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.

**Plenary Session 28 April 1989**

**Text examined and approved by the Drafting Committee**

**Document LEG/CONF.7/DC/5**

**Article 8. Duty 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 duties 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.
that such a request was unreasonable.

2 The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:
   (a) to co-operate fully with him during the course of the salvage operations;
   (b) in so doing, to exercise due care to prevent or minimize damage to the environment; and
   (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.
**ARTICLE 9**

**Rights of coastal States**

*NOTHING IN THIS CONVENTION SHALL AFFECT THE RIGHT OF THE COASTAL STATE CONCERNED TO TAKE MEASURES IN ACCORDANCE WITH GENERALLY RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW TO PROTECT ITS COASTLINE OR RELATED INTERESTS FROM POLLUTION OR THE THREAT OF POLLUTION FOLLOWING UPON A MARITIME CASUALTY OR ACTS RELATING TO SUCH A CASUALTY WHICH MAY REASONABLY BE EXPECTED TO RESULT IN MAJOR HARMFUL CONSEQUENCES, INCLUDING THE RIGHT OF A COASTAL STATE TO GIVE DIRECTIONS IN RELATION TO SALVAGE OPERATIONS.*

**IMO**

**Legal Committee**

**Report on the Work of the 57th Session (Document LEG 57/12)**

Article 15 bis

19. The Committee's attention was drawn to the proposal made by the delegation of Australia at the previous session for a new article 15bis as follows:

“The taking of any action at the direction of a coastal State issued in accordance with article ... shall not prejudice any payment that may be paid to a salvor pursuant to articles 10 to 12.”

20. There was not much support for the proposal, and the Committee decided to give it no further consideration at this stage.

**International Conference**

**Committee of the Whole 20 April 1989**

**Documents LEG/CONF.7/VR.104-109**

The Chairman.

Ladies and Gentlemen, the meeting is called to order. First the announcement on the voting procedure tomorrow morning. (...) Well, we can proceed with our debate then and as I have already announced, we come now to the Australian proposal in document 7/9108 and I would like to ask the Australian...
Delegation to introduce their document. Would you also introduce your document on Article 15(b). Is that the same?

Australia. Yes, it is the same document.

Australia. Thank you, Mr. Chairman. Australia has proposed in conference document 7/9 a new Article 6 bis. This Article is proposed as a limited carefully worded provision in order to include in our Convention a recognition of a duty on a salvor to comply with the direction of the coastal State concerning protection of the environment from pollution or threat of pollution. The reasons why Australia wishes to make this proposal are set out in that document and I need not elaborate them at great length. Chairman, Australia is not concerned in making this proposal to debate the adequacy of the intervention or to seek to resolve or to set out in this Convention the powers of the coastal State in this area. They are issues for another time and another place. However, what we do wish to do is to include in our new Convention a provision that deals with the duties of salvors. To ensure that the Convention contains an up-to-date and proper statement of those duties. We consider that it would be a major omission if in our new Convention that recognizes the importance of the protection of the environment as an aspect of modern day salvage operations if we made no reference to

Convention as an incomplete statement of those duties. One cannot necessarily expect a salvor to be aware of duties arising under customary international law or other Conventions. Recognition of the legitimate right of a coastal State to ensure that its interests are observed would prevent any possible confusion as to the salvor’s position. It is the view of the Australian Government that it is possible to introduce into the Salvage Convention provisions which will allow for the participation of coastal States in salvage operations where their coastline and coastal waters are under threat from serious pollution, without undue interference with the fundamental principles of salvage law and without in any undue way imposing upon the accepted modus operandi of salvors. The inclusion of a provision in the draft Convention that required a salvor, who had commenced operations, to comply with directions as to the method of salvage given by a coastal State whose environment is endangered would relate directly to and complement the salvor’s duty as currently stated in draft Art. 6.1(c) to “exercise due care to prevent or minimise damage to the environment”.

Australia accepts the view that any proposal to compel ships in innocent passage to undertake salvage and to expose them to commandeering by a coastal State (the idea of mandatory salvage) is inconsistent with the voluntary nature of salvage operations. Accordingly, the proposal Australia has in mind does not involve any notion of mandatory salvage. It merely enables coastal States to exercise their legitimate rights under international law in relation to the protection of their environment once salvage operations have been undertaken. Australia accordingly proposes that the following new Article be inserted into Chapter II as Art. 6 bis:

“The salvor shall owe a duty to comply with a direction of a coastal State, given in accordance with international law, to take measures 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”.

At the same time it is important to ensure that 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 reward or compensation. The salvor should, of course, remain liable for any fault or neglect or fraud or other dishonest conduct in relation to such actions. Australia therefore proposes that the following provision be inserted as Art. 15 bis:

“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 Arts. 9-12 of this Convention”. 
the obligation to comply with directions given by the coastal State. As I have mentioned, the reasons are elaborated in our conference document and it is our belief that if we do not include a provision like this, we would leave our new Convention not just as an incomplete statement of duties of salvors, but as a statement which omits one of the significant and important duties. The duty of the salvor to comply with the direction of the coastal State given in accordance with international law as proposed in our document represents an existing duty. We are not creating something new. International law already recognizes this provision, and its inclusion in our Convention would be a proper acknowledgement of its existence along with the other duties of salvors set out in article 6. I note, Mr. Chairman, that in this publication that we have just been issued by the International Chamber of Shipping and International Marine Forum, paragraph 9.4 recognizes the issue and has an explicit heading governing intervention. I think, Mr. Chairman, is a reflection of the importance of this duty and that it is well established. Mr. Chairman, in our document we also propose the inclusion of an additional article, article 15bis, which makes it clear that compliance with directions of the coastal state does not affect the reward that would be paid to a salvor. It is a provision that, simply clarifies the taking of any action at the direction of the coastal State, and does not of itself prejudice claimants and rewards payable to a salvor pursuant to the other relevant articles in our Convention, which are articles 9 to 12. Mr. Chairman, I think that adequately explains the reasons for our proposal and its purpose. I would stress again that it is a limited proposal which merely seeks to recognize a duty that already exists and a duty which we consider to be a significant one and one that deserves to be recognized in our Convention. Thank you.

The Chairman. I thank you. The floor is open for the discussion of this proposal. The first speaker, Canada.

Canada. Thank you, Chairman. I can be very brief in my intervention because I simply intervene to support the proposal that has just been made for the reasons that have been set out in the Australian paper. However, while I have the floor, I would like to make a small amendment to the Australian amendment, which I believe might be acceptable to that delegation. In the third line, the third and fourth line at the present time reads “to make measures to protect its coastline or related interests”. We would make a small amendment there, so that those words would read as follows: “to take measures to protect and preserve its marine environment from pollution, etc. etc.” I can repeat that if that was not clear enough.

The Chairman. It was clear but nevertheless would you repeat that at dictation speed.

Canada. So that the third line would read as follows: “to take measures to protect and preserve its marine environment from pollution, etc. etc.”. We believe that that particular amendment would better reflect what is expressed, I think, in the Australian paper. Thank you, Chairman.

The Chairman. I thank you. May I ask the delegation of Australia whether that delegation could accept this change in the text.

Australia. Yes, Mr. Chairman, we would be happy to accept the Canadian amendment.

The Chairman. I thank you. Has anybody taken that change or is it necessary that we read perhaps the whole text again in order to make that clear? Well we will read the whole text.
Australia. “The salvor shall owe a duty to comply with the direction of the coastal State given in accordance with international law to take measures to protect and preserve its marine environment from pollution or the effects of pollution following upon a maritime casualty or relating to such a casualty which may reasonably be expected to result in major consequences”.

The Chairman. I thank you. Anybody should now be aware of the amendment to the amendment. The next speaker is Ireland.

Ireland. I thank you, Mr. Chairman. This delegation would also like to support the proposal as amended for the reasons given by the distinguished Australian delegation. Thank you, Mr. Chairman.

The Chairman. I thank you. The next speaker is Mexico.

Mexico. Thank you, Sir. The proposal from Australia, which we now have before us has just pointed out what has been said in other international conventions. Intervention from the coastal State for the purposes of protecting the coastline and the marine environment and the EEZ is very important. For this reason, we support the Australian proposal. Above and beyond everything else, we feel that in this draft Convention, we are stressing the protection of the marine environment. As Australia points out, coastal States, if they participate in taking measures aimed at reducing to the minimum pollution risks, show that they are prepared to protect their own coastline. For this reason, we feel that this proposal is a very welcome one. As Australia points out, this does not mean anything aimed against the modus operandi in cases of salvage operation. On the other hand, it does not mean that we are prepared to accept the Canadian amendment, which in its turn amends the Australian proposal. Thank you, Sir.

The Chairman. Thank you. The next speaker, Indonesia.

Indonesia. Thank you, Mr. Chairman. This delegation is happy not to get late. Now I jump to support the Australian proposal as amended. Thank you, Sir.

The Chairman. I thank you. Cuba.

Cuba. Thank you very much, Sir. The delegation of Cuba had part of its general comments made last Monday when it raised the point that the text of the draft convention should reflect the interests of the coastal State regarding the conservation of the marine environment. Therefore, this would imply the need to monitor salvage operations and indeed to intervene during the said operations in order to be able to protect a State's coastline from any possible risk of pollution. For this reason, we support Australia's point in document No. 7/9 as amended by Canada. Thank you very much, Sir.

The Chairman. The next speaker is the delegation of Venezuela.

Venezuela. Mr. Chairman, thank you. I wish to express my support for the Australian proposal as amended by Canada. Thank you.

The Chairman. Thank you, madam. The next speaker is the delegation of Democratic Yemen.

Yemen. Thank you, Mr. Chairman. Our delegation wish to support the proposal of Australia as amended by Canada. Thank you.

The Chairman. Thank you. The next speaker is the delegation of the Islamic Republic of Iran.
Iran. Thank you, Mr. Chairman. This delegation would also like to support the proposal made by Australia as amended. Thank you.

The Chairman. Thank you. The next speaker is the delegation of France.

France. Thank you, Mr. Chairman. We find it totally in order that the draft convention should contain a provision which would enforce an obligation on the salvor to respect any indications given by the coastal State to protect the marine environment of the said coastal State since that State will be the most involved in any salvage operation, and certainly that State could ask that the salvor, during operations, should take measures necessary to preserve the environment. I would add that we accept the amendment proposed by the Canadian delegation, accepted by Australia, and the change proposed in article 15 bis as that causes no problem - it is simply a clarification, because, in our view, it is in order that a salvor taking measures at the request of a coastal State to preserve the marine environment should enjoy the right to an award under the convention. Thank you.

The Chairman.

The delegation of the United Kingdom.

United Kingdom. Thank you, Mr. Chairman. I am sorry to have to spoil the unanimity that has prevailed on this topic, but it is not acceptable to the United Kingdom. We have some sympathy, in fact considerable sympathy, with the purpose that underlies this proposal. We agree that the coastal State has, under the intervention convention or, alternatively, customary international law, the right to intervene to protect its interests, and we would agree that in appropriate cases that could include intervention in salvage operations. Unfortunately, we have the same problem with this proposal as we had with article 6 in that it introduces a public law provision, at least it appears to be a public law provision, whose scope is not entirely clear. We would be prepared to do anything that would assist in clarifying our understanding that the intervention convention, which is a public law, would prevail over the salvage convention. In other words, that nothing in the salvage convention prejudices the right of coastal States to intervene. But, as drafted, it seems to us that it reintroduces a public law provision into this convention and sadly creates confusion again. To whom is the duty owed? The Australian delegation has very properly introduced article 15 bis to take care to some extent of the civil liability point, but the public law point remains. It is for that reason that we would be very happy to have something saying: “Nothing in this convention shall prejudice the right of the coastal State to intervene.” That causes us no problem, but we do not think it appropriate to include an actual duty in this private law convention. Thank you, Mr. Chairman.

The Chairman. Thank you. Is it the intention of the United Kingdom to submit a document or a proposal?

United Kingdom. Mr. Chairman, if that would be useful, we are quite prepared to do so. I do not know whether it would meet with any acceptance or whether it would assist the Australian delegation.

The Chairman. May I ask the following speakers to address this idea presented by the delegation of the United Kingdom, although we do not yet have a concrete text at the moment. The next speaker is the delegation of Malaysia.

Malaysia. Thank you, Mr. Chairman. Despite the reservation of the United Kingdom delegation, we see the merit of article 7/9 proposed by the Australian delegation, and support the idea. Thank you.
The Chairman. The next speaker is the delegation of Greece.

Greece. Thank you, Mr. Chairman. I think that everyone in this room recognises that, under international law, existing conventions regarding coastal States and the marine environment are not perfect, but it is also recognised that the marine environment has to be protected. While in favour of strong protection, we think that provisions like this have nothing to do with the purpose we are considering. We cannot accept the Australian proposal as it stands, and are ready to co-operate and support every effort in respect of the proposal presented by the distinguished lady of the United Kingdom delegation. Thank you.

The Chairman. Thank you. The next speaker is the delegation of the Marshall Islands.

Marshall Islands. Thank you, Mr. Chairman. The Republic of the Marshall Islands supports the proposal brought forward by Australia as amended by Canada, but is also open to any further clarification as suggested by the delegation of the United Kingdom. Thank you.

The Chairman. Thank you. The next speaker is the delegation of Denmark.

Denmark. Thank you, Mr. Chairman. Like the United Kingdom, I think that, at best, this proposal is entirely superfluous. We have every sympathy with the background for it, but it is already there and there is no need, in our opinion, to put it in this convention; it does not belong there. I think we could go along with what the United Kingdom proposes, but we do not accept the Australian proposal. Thank you.

The Chairman. Thank you. The next speaker is the delegation of Brazil.

Brazil. Thank you, Mr. Chairman. My delegation support the proposal of Australia as amended by Canada. Thank you.

The Chairman. Thank you. The next speaker is the delegation of Spain.

Spain. Thank you very much Mr. Chairman. To be quite frank when I asked for the floor we were thinking of supporting without any reservation the Australian proposal as amended by Canada. However, listening to the UK I must say some doubts came to mind as to the possibility of dealing with this matter in the way proposed. Perhaps a clause of a general nature saying that nothing in this Convention will prejudice the rights of the coastal States, and so on, might be more helpful from a practical viewpoint, and would obtain the same results. So we would be open to cooperate in finding a form of words of that kind, but otherwise the idea in itself we could support. Thank you Chairman.

The Chairman. Thank you. The delegation of Japan.

Japan. Thank you Mr. Chairman. This delegation does not oppose the principle contained in the proposal submitted by the distinguished delegate from Australia. However, Mr. Chairman, this delegation cannot support this proposed text because this proposal introduces the public law issues into this salvage convention dealing with private law matters. Thank you Mr. Chairman.

The Chairman. Thank you. The delegation of the USSR.

USSR. Thank you, Sir. Mr. Chairman, before we came to these meetings we had a certain amount of hesitation because we cannot forget what France has had to say on the subject thus far. I do hope that this statement will not accelerate his departure from London and we hope that we will still be friends with Mr. Douay until next Friday.
What I’m trying to say, Sir, is the following. The existing international law as we now know it doesn’t require us to reaffirm international instruments over and over again. History shows certainly that over the last twenty years international private law has been more and more evident on the horizon and we still refer back to these conventions and certainly these conventions are more and more accepted and what we are doing now is actually trying to fiddle with the existing international instruments. We know what the world is like, we have the Dumping Convention for example for that, we have the Convention on the Intervention on the High Seas, then we have the United Nations Conference on the Law of the Sea, and now we are trying to deal with everything at the same time in two short weeks. The 1969 Convention on Intervention exists, we have an entire machinery contained therein on intervention, but making a brief reference in our convention today to that law might really lead to certain misunderstandings. Having said that I entirely share the views of our distinguished colleague of Australia and all those who have supported his proposal. We cannot fail to support that idea contained in the proposal because we are a party to the Convention referred to by Australia. And we have an enormous coastline in my country, as everyone must be aware, I’m not going to repeat myself or repeat what has been said by previous speakers, but we do feel that our convention really has no right to have such a provision in it. Its not the right place for it. We support the United Kingdom, a few clarifications in paragraph 1 of article 3 might be made which in our view, even today without any clarifications, could have a negative effect on what happens in Australia. It’s rather expansive in the formulation, but certainly if we say that this convention shall not cover or affect any other international instruments or any national legislation and anything that public authorities may be required to monitor, then all we are doing really is referring back to the 69 Convention. We have appropriate provisions in fact in UN CLOS, the United Nations Conference on the Law of the Sea, I think all the concepts put forward are quite correct but we would prefer to stick to the brief formulation which was defended by the United Kingdom of Great Britain and Northern Ireland. Thank you.

The Chairman. Thank you. The next speaker is the delegation of Argentina.

Argentina. Thank you Mr. Chairman. The delegation of Argentina supports the proposal for a new article 6bis and 15bis as put forward by the delegation of Australia. We also agree with the amendments suggested by the delegation of Canada. We do believe that these amendments defined more clearly and specifically the framework within which private operations are to take place in this new convention which we are trying to come up with. Thank you Mr. Chairman.

The Chairman. Thank you. The next speaker is the delegation of the Netherlands.

Netherlands. Mr. Chairman, we do agree with the intervention which has been made by the United Kingdom and other delegations and in particular also with the further explanations which have been given by the distinguished delegate of the USSR. We do agree with the principle of the Australian delegation but we don’t think that this convention is the right place for such a provision. We also expect that this provision will bring about a certain confusion in international law, we think that in particular the Intervention Convention is the right place if it would be necessary to deal with this matter in such a positive way. We understand that the Intervention Convention of course is aimed in the first place at what I would call the casualty ship, but our interpretation of the Intervention Convention is that the coastal States by
intervening under that Convention has the right also to give certain directions, perhaps through the master of the casualty ship, also to the salvor. In any case, if you are going to have a separate provision in this convention there is more to be said about what should be provided for, for instance we do miss a provision like article 6 of the Intervention Convention which deals with the compensation to be paid by the authorities of a coastal State in cases where the measures exceed those reasonably necessary to achieve the end of the Convention. And probably, we don’t know whether this is really necessary, we could live with a text along the lines that has been suggested by the UK delegation, but of course subject to further drafting. But we are against a method where in separate conventions, in fact you are dealing more or less with the same problem, and that is our main objection against the Australian proposal. I think the Canadian amendment makes it even worse by introducing new language which deviates from the language which we find in the Australian text and which related in any way to language used in the Intervention Convention, and that would only, in our view, add to the confusion which would be brought about by this new provision. Thank you, Mr. Chairman.

The Chairman. The delegation of Cyprus.

Cyprus. Thank you, Mr. Chairman. I shall be quite brief because it is getting late. We simply support the principles behind the Australian suggestion and, because we feel the conference should reflect the concerns of the coastal States we look forward to what the United Kingdom wishes to suggest.

The Chairman. The Federal Republic of Germany.

Federal Republic of Germany. My delegation would like to associate itself with the position expressed by the distinguished delegation of the United Kingdom especially after the proposals of France and the Federal Republic of Germany on article 6, whether there should be a duty which might be construed as a public law duty in article 6, paragraph 2, obliging the master to take timely action, so if one doesn’t want this we think too that the present proposal would go even farther into the public law aspect. What we could support is of course a provision along the lines proposed by the British delegation that the Convention should not infringe or should not be contrary to other existing public law conventions. That wouldn’t do any harm, but we don’t feel that even this would be necessary.

The Chairman. The delegation of Algeria.

Algeria. Thank you, Mr. Chairman. In Algeria, we have just come up against a very recent experience, over the past few four days while this conference was going on. An oil tanker, abandoned by its crew with more than 73,000 tonnes of crude, drifted towards the Algerian coast. This is why I came here late and I am sorry about that. Despite the weather conditions which were very poor, the tanker was salved with its cargo after 36 hours. We have just escaped a real calamity, a real disaster, and this is why I can say that we are convinced of the need to include in this Convention the proposal put forward by Australia as modified by Canada, despite the right recognised under the 1969 Convention for a State to intervene to protect its coasts and its environment.

The Chairman. The delegation of the United States of America.

United States. We are in full agreement with the results which Australia hopes to be able to achieve by its proposal. In fact, we have on a number of occasions exercised the type of authority which Australia desires to include in this Convention: we have
exercised it under the Intervention Convention or under domestic law. I think many delegations will recall that several years back we produced a long paper indicating the number of situations where we had intervened, in our view successfully, in order to protect our coastline. Accordingly, we think that the authority to do what Australia wants to do in this Convention already exists and clearly exists, so in our view it seems unnecessary to include that in this Convention. If a number of delegations feel that it is necessary to, in an abundance of caution, include that, we will of course agree with the United Kingdom proposal to look at a way to make a reference to other public law conventions.

The Chairman. The delegation of Norway.

Norway. Like other delegations, we would like to just state that we are very sympathetic to the idea behind the Australia proposal. We still, however, have some reluctance on the way of getting this into this Convention and I think the idea put forward by the British delegate would be a fruitful way to try to find a good solution during these weeks. So we support the British idea on the proposal.

The Chairman. Czechoslovakia.

Czechoslovakia. Although our delegation comes from a landlocked country, we fully share the worries of the coastal States as regards pollution. But for purely juridical reasons, we associate ourselves with the United Kingdom point of view.

The Chairman. The delegation of the Republic of Korea.

Republic of Korea. We, too, agree with the philosophy behind the Australian proposal. However, we do not support the proposal for the same reason expressed by the distinguished delegation of the United Kingdom.

The Chairman. The Observer delegation of the International Salvage Union. Can you make a short statement?

International Salvage Union. Thank you, Mr, Chairman. Salvors would feel a little uncomfortable with this proposal whilst they fully understand it, because it imposes on them possibly a conflicting duty under article 6, one to the masters and the owners which obliges them to use due care to salvage the vessel, and then this duty which is imposed here. We have no doubt which duty would have to win at the end of the day but we could be in breach of one if we comply with this. We would feel very much happier if we are given instructions under the Intervention Convention which has been clearly thought out to deal with this sort of situation, and will be much better from the salvors' point of view.

The Chairman. There are no other speakers on my list. France. It was my intention to sum up. Is it a brief statement?

France. I will try, as we are still here. All the amendments would have fallen along the way, let's see what happens to this one. We must not forget that we are defining a convention on salvage, salvage to property and the first obligation to the salvor is to salve property but at the same time in this Convention – and this is the new element – there is an obligation which is that of preserving the environment. If this is accepted – and I think it has been generally accepted – we don't see what difficulty there would be in saying that in order to satisfy this latter obligation, which is to preserve the environment, the salvor must follow the instructions given by a coastal State, which is in the best possible position to ensure the protection of its environment. This has nothing to do with the 1969 Convention on the right to intervene. The 1969
Intervention Convention comes into play outside the application of this Convention and it would be rather ridiculous to come and say in this Convention here that this in no way prejudices the 1969 Convention or the provisions thereof, which is what the United Kingdom is suggesting. You could say that for any Convention. The provisions of one Convention certainly do not prevent the provisions of other Conventions applying, but there is no need to say so. It is perfectly obvious. And when you say that the obligations of the salvor are covered by the Intervention Convention, I say there is no provision in the Intervention Convention making any duty mandatory on a salvor. Here we are referring to the obligations of the salvor and one of these obligations is that of preserving the environment and in order to protect the environment we are asking him to go along with the instructions given by a coastal State with a view to protecting the environment. You do not find this in the Intervention Convention. Here we are just trying to define the obligations and duties of a salvor and this is absolutely essential which is why we entirely support the proposal presented. Thank you, Mr. Chairman.

The Chairman. Thank you. You have left some time at least for the Chairman to try to sum up. To start with the point of agreement. All Delegations have stated that a coastal State should have or has already a right to intervene. That seems to be the general agreement within this committee. But there are different views let me say on the legal technique of how to deal with that right of intervention. A majority of Delegations has supported the proposal of Australia to include a specific provision into the Salvage Convention. A number of States have objected to that because they are of the opinion that this problem is already covered by other Conventions and is dealt with in a much more extensive manner there. The United Kingdom has offered an idea to make it sure that the right of intervention is not damaged or prejudiced by this Convention to include a provision of that kind saying that this Convention would not prejudice the right of a coastal State to intervene in these cases. This idea has been supported by a number of Delegations. It seems to me that after this debate there is room for negotiations and room for consultations. I would therefore propose that we do not take an indicative vote at this stage but that we perhaps ask the Delegation of the United Kingdom to act as contact Delegation and the United Kingdom could negotiate with all interested Delegations a text which reflects the idea put forward by this Delegation; or any other text whatsoever. We would have the possibility to come back to this Article then perhaps on Monday. It is a very substantial point apparently for many Delegations. We have to be very careful in treating this problem. For that reason I would like to propose that we offer some time to interested delegations and give them the opportunity to negotiate. On Monday, we will in any event come back to Article 10 and Article 11, this is also a substantial point and we would then also come back to the proposed Article 6 bis and 15 bis. That is the day of the substantial issues. May I ask the United Kingdom Delegation whether that Delegation would be ready to act as contact Delegation?

United Kingdom. Certainly, Mr. Chairman.

The Chairman. Thank you. Can I take it that we agree on the procedure? Fine. The meeting is adjourned until tomorrow morning at 9.30 a.m.

25 April 1989
Documents LEG/C0NF.7/V/VR.165-169

The Chairman. That brings us to article 6bis. We can at least start the debate before coffee. You will remember we had already a long debate on a proposal made by
Australiа and after that debate we decided that we should give time for consultations. These consultations took place in the meantime, the result is contained in working paper 30\textsuperscript{109}, and the informal group which met in the meantime has proposed a new wording for that article 6bis and I understand that Australia will withdraw its own proposal in favour of this text of the working group. Australia.

Australia. Mr Chairman, I think this group should consider working paper 30 and in the light of the consideration of that paper, and I will indicate the position with the Australian proposal.

The Chairman. We will first discuss working paper 30. I hope we have not a lengthy debate on that because the problem has already been debated in the committee and it is not necessary to repeat all the arguments. But it is necessary that we find out whether the committee or the delegations would be able to agree upon the text which is now proposed in working paper 30. After that debate and after a possible decision Australia will then decide what the fate of the original proposal will be. The first speaker on my list is USSR.

USSR. Thank you Sir. We were members of the informal working group and for that reason we are therefore satisfied with the text which now appears before us which was the result of our deliberations in that group. However, within the group itself, we expressed our concern about the last sentence which refers to the rights of coastal States to give directions in relation to salvage operations. One might ask why we have such concern. Until today, the institution of the right of intervention has been regulated in the 1969 Convention and in the Protocol to that Convention. Furthermore, we do have provisions, a kind of umbrella in the United Nations Convention on the Law of the Sea. This is what conventional law has in existence regarding the right of intervention. The text before us in working paper 30 envisages a certain development or rather a clarification of existing international law in this area and we do not think that the salvage convention is the appropriate place for such a development of international law as it now prevails. Practically speaking, however, the doubts and the complications connected with this might be the following. If we look at the intervention convention, then we can see that the rights of a coastal State to intervene are subject to a whole series of conditions which are in fact contained in article 3 of that Convention. Before an intervention is undertaken, the State must consult with the flag State, it should also consult with independent experts and there are many other conditions prevailing. We would like to know, Sir, the answer to the following question: if the coastal State enforces a salvage operation, and if it gives directions regarding such salvage operations, is it going to be obliged to meet all these conditions? I doubt it, it does not stem from the present text that the State shall be so obliged. We are referring here to the generally accepted rules of international law contained in article 3 of the Intervention Convention. Obviously this cannot be

\textsuperscript{109} Document LEG/CONF.7/CW/WP.30
Proposal by an Informal Working Group
Article 6 bis
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.
considered as a generally accepted principle of international law. What we have in article 3 of that Convention is not merely a matter of principle, but rather standards or rules and not generally accepted. This convention is relatively restricted in its participants and thus from the present text of 6 bis, for our convention, our interpretation could be that giving directions in relation to salvage operations would have behind it certain international standards, or rules rather, laid down in international law, and the State might not be obliged. Of course, Sir, we do understand that this text is the result of very serious work and naturally it is a compromise in nature, therefore we do not want to insist on our negative approach to the results of this work but certainly we would like to know, Sir, whether there are delegations which share our misgivings. If so, we might think about what we might do to eliminate these misgivings. As regards our delegation, however, we could be satisfied with the deletion of the last sentence. Thank you, Sir.

The Chairman. Thank you. You just mentioned the last sentence. May I ask you which part of that sentence you had in mind?

USSR. Thank you, Sir. What we mean is in fact the last phrase of the last sentence beginning with the word “including”.

The Chairman. The next speaker, the delegation of the United Kingdom.

United Kingdom. Thank you, Mr. Chairman. May I first speak really as Chairman of the informal working group to explain what the group’s position was. 17 delegations participated, and they were Argentina, Mexico, Netherlands, Canada, USSR, Hong Kong, France, Australia, United States, Sweden, Finland, Kiribati, Federal Republic of Germany, Norway, Ireland, United Kingdom and the Democratic Republic of the Yemen. Mr. Chairman, from the outset it was agreed by all delegations that it was not the intention of this article to create any new right of intervention for coastal States. Its purpose was to highlight, at the request of a certain group of delegations, the fact that such powers existed in view of the circumstances, which I think are fairly obvious, that those powers might become exercisable in circumstances where there were salvage operations. I stress it was not intended to create any new power at all. The text reflects the language of the Intervention Convention, though it doesn’t mention it specifically. That is partly because it is not customary to refer in one convention to another, and partly because we did not want to limit the operation of this highlighting to States who were parties to the 1969 Convention plus Protocol. Of the delegations, the USSR has already expressed its reservations, but all the other delegations were not particularly happy with the text; they felt that they could accept it, that it was a compromise between those who did not wish any article on the lines of 6 bis at all and those whose view was totally contrary. As far as the United Kingdom is concerned, we could accept this text, I think it was clear from the earlier stages in the debate that we were not particularly anxious to have it, but we could accept this compromise text. Thank you, Mr. Chairman.

The Chairman. Thank you, Madam. Next speaker: delegation of Greece.

Greece. Thank you very much, Mr. Chairman. My delegation and some other delegations have stated previously that an article of this nature should not be in this convention because there are other instruments of international law for the protection of the marine environment and I think that they have worked very well so far. As regards now the compromise solution, we are going to accept it if the general consensus of this conference is to accept, but in no way can we accept the last phrase, which is, I think, superfluous in this text and complicates things. The purpose of the
whole text is to facilitate the work of the salvors, the Governments and the other parties involved. Thank you.

The Chairman. Thank you. Japan, we have some minutes left, you usually make short statements, I give you the floor, Sir.

Japan. Thank you Mr. Chairman, my delegation would like to support the proposal by the distinguished delegate from the USSR. This last sentence, beginning with “including” might introduce some misunderstanding that the right of the coastal States to give direction in relation to salvage operations independently should be recognized, even if that use of such right were not in accordance with generally recognized principle of international law. It would be completely against the intention of the working group; from this point of ambiguity of this text, this delegation would like to support the USSR. Thank you, Mr. Chairman.

Australia. Thank you Mr Chairman. My delegation participated in the informal working group and would be prepared to support the compromise contained in working paper 30. May I say Mr Chairman that my delegation regards the inclusion of the last few words as most important and an essential part of the compromise contained in this document. I think delegations need to be conscious of the fact that the proposal in working paper 30 is not the ideal for any delegation, but certainly for the Australian delegation we would have preferred something closer to our original proposal and for other delegations I know that what is in working paper 30 is not very ideal either. I think delegations here should consider this proposal against that background. There is a compromise and as part of that compromise the whole text including the last few words are an essential part of the package. Mr Chairman as the representative of the United Kingdom indicated, when reporting on the work of the informal working group, it was accepted by all participants that we were not creating new law but we were rather highlighting existing rights under international law and that qualification applies equally to the last few words as to the rest of the proposal. The right of the coastal State referred to in article 6bis is clearly qualified by the reference to generally recognized principles of international law, and so Mr Chairman I would urge delegates to support the text in working paper 30 as it stands in total recognition that it is a compromise and may overcome the desire of a significant number of delegations for some provision on this matter to be included in our text. Thank you.

The Chairman. The next speaker is the delegation of Canada.

Canada. Thank you Chairman. I intervene briefly to say, like Australia, that we participated in the group that worked out this compromise contained in working paper 30 and for the reasons that he put so well, we support that compromise and we would urge that the text in its entirety including the last phrase, be adopted by this conference.

The Chairman. Delegation of Cuba.

Cuba. Thank you very much Mr Chairman. My delegation would like to entirely support the statement made by the distinguished representative of Australia. Indeed, if you do away with the last phrase as suggested, the purpose we were pursuing in the document presented by Australia, would be entirely lost. We would like this to be taken into account very clearly and those who are present clearly realized that this compromise should be entirely supported without excluding any phrase, or any sentence, or any paragraph. We have already sacrificed quite enough with respect to the original idea, an idea which had quite a lot of support, if not a very general support.
The Chairman. Delegation of Mexico.

Mexico. Thank you Mr Chairman. I would like to support what has just been said by the delegation of Australia. I took part in this group which was trying to work on a compromise and we reached this form of words with the view to trying to respect in so far as possible, the sense of the Australian proposal. So I agree with what has just been said by the Cuban delegation that we must respect the spirit of this compromise.

France. Thank you, Sir. The French delegation wants to give its support to the statement made by our colleague from Australia, and we entirely support what he has said and supported by other delegations. We consider that we all worked on this text in the small informal working group and therefore we feel that this text should be taken as a whole because otherwise we have no exit as a solution which is a compromise like any compromise it can only be a compromise it must be taken as a whole and we firmly support what has just been said to this end by Australia. This would go to the same end by other delegations.

The Chairman. Delegation of Argentina.

Argentina. Thank you Mr Chairman. My delegation supports the text of article 6bis as in working paper 30 for the same reasons as clearly explained by the delegation of Australia.

The Chairman. Delegation of Spain.

Spain. Thank you Mr Chairman. Likewise my delegation would support the text of article 6bis as drafted in working paper 30.

United States. Thank you Mr Chairman. My delegation believes that while this proposal in W.P.30 is not necessary in a convention dealing with private international law, we nevertheless understand that it is important to a number of States and hence we can accept it as a compromise among the various proposals put forward with the understanding that the language is qualified in total by the “with generally recognized principles of international law” as contained in the draft article 6bis. Thank you, Sir.

The Chairman. I thank you. It is my intention to proceed at a certain stage to an indicative vote – only to inform you on that. Next speaker, Ecuador.

Ecuador. Thank you Mr Chairman. This delegation supports article 6 bis, as drafted in W.P.30, and would go along with the statements made by the delegation of Australia. Thank you Mr Chairman.

The Chairman. Italy.

Italy. My delegation was not a member of the informal Working Group but certainly we entirely agree with the proposals which have been put forward and, therefore, we can accept the proposals as they appear in toto – a compromise is a compromise and certainly a compromise must be abided by. Thank you, Sir.

The Chairman. Thank you. Delegation of Columbia.

Columbia. Thank you Mr Chairman. This delegation supports the proposal put forward in W.P.30. Thank you very much.

The Chairman. Thank you Madame Brazil.

Brazil. Thank you Mr Chairman. My delegation supports the proposal made by the informal Working Group in W.P.30, about the article 6bis. Thank you Mr Chairman.
The Chairman. I thank you. Liberia, you have the floor, Sir.

Liberia. Thank you Mr. Chairman. The delegation of Liberia supports the compromise proposal made by the informal Working Group. Thank you very much.

The Chairman. I thank you. It seems, there is no other speaker, then we come to an indicative vote on that proposal contained in Working Paper No.30. We have first to vote on the amendment proposed by the USSR. The USSR has proposed to delete the part of the sentence which starts: “including the right of a coastal State to give directions in relation to salvage operations”. The proposal of the USSR is to delete this part of the text. Who is – France, what? Is it on this proposal?

France. Before the vote, Sir, on this point, Yes. I think we heard enough delegations who are of the view that since this is a global compromise it cannot be subdivided. Therefore, we feel in this room, so far at least, the majority wants the adoption of the compromise as a whole, and, therefore, would be opposed to an amendment being now introduced, which will restrict the compromise by deleting the last phrase. That we want a vote on the entire compromise which, in English, you would find could be translated as a package deal. Thank you.

The Chairman. Any delegation has a right to introduce amendments to proposals which have been submitted to the Committee. I give the floor to the USSR.

USSR. Thank you, Sir. Strictly speaking, we did not make the proposal as just announced. We shared with the meeting our doubts about this article. We wished quite simply like to hear the views of the other delegations and depending on what they say then we could decide whether or not, from the point of view of my delegation, to produce a formal proposal. Although certain delegations have made their views clear in support of our doubts or misgivings, we feel that the majority finds the compromise acceptable. Therefore, Sir, we are not intending to make a formal proposal. I do not see any need for a vote at the moment. Thank you, Sir.

The Chairman. You said, Mr. Bozrikov, you said “at the moment”. What that mean is that you would come back to that question when we formally vote on. O.K. Only to make sure. I thank you for your co-operation. That makes the situation much simpler and we can now come to vote on the text as a whole as it stands in Working Paper No.30. Who is in favour of that proposal contained in Working Paper No.30? Please raise your cards. Well, it seems to be the overwhelming majority. Please put down your cards. I will ask who is against, that is simpler. Who is against that proposal in Working Paper No.30? That is fine, that means practically we have reached a consensus on that proposal. May I ask the delegation of Australia whether that delegation would take a decision in the light of the vote which we had. Australia.

Australia. Yes Mr. Chairman. If the Committee is inclined to adopt Working Paper 30, I see no need to proceed with my original proposal.

The Chairman. Thank you. It was only to clarify the position. Next we have to vote formally on article 6(bis). We took an indicative vote. Now we have to make a formal decision on article 6(bis). Who is in favour of article 6(bis) as contained in WP/30? Please raise your cards. Who is against? No delegation is against. Abstentions? The result of the vote is 55 in favour, no delegation against and two abstentions. Article 6(bis) is adopted as contained in WP/30.
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.

Plenary Session 28 April 1989

Text examined and approved by the Drafting Committee (Document LEG/CONF.7/DC/5)

Article 9-Rights of coastal States

Document LEG/CONF.7/VR.225

The President. Article 9. No remarks. Approved.

(110) The Drafting Committee has approved the text approved by the Committee of the Whole. The Article has been renumbered Article 9 and titled “Rights of coastal States”.
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.
The whole of this provision corresponds in a modernized language and form to the rules provided in the 1910 Convention, Arts.11 and 12. The draft convention contains in Art.3-5 rules regarding salvage of persons corresponding to Art.9 of the 1910 Convention.

69. The Article was originally Article 11 of the 1910 Convention.

70. It was observed in connection with this Article that the Convention should apply to the contracting State of a master under Article 1-2 - Scope of Application.

35. It was pointed out that several international conventions besides the 1910 Salvage Convention contained provisions on the duty to provide assistance to persons in danger of being lost at sea. Reference was made in particular to:

(i) The International Convention for the Safety of Life at Sea, 1974 (chapter V, regulation 10 of the Annex);
(ii) The Geneva Convention on the High Seas, 1958 (article 12);
(iii) The International Convention on Maritime Search and Rescue, 1979 (chapter 2, paragraph 2.1.10 of the Annex);

36. Some delegations questioned whether, in view of the more detailed provisions in those conventions, a provision on the subject was also needed in the new salvage convention; particularly since such a provision appeared to deal with what is essentially a public law duty.

37. Some other delegations, however, considered that such a provision would be desirable in the new salvage convention. The observer of the CMI pointed out that there was a similar provision in the 1910 Convention. He also drew attention to article 3-5 of the CMI draft which provided, in paragraph 2, that a salvor of human life is entitled to a fair share of the remuneration for salvaging a vessel or other property, or preventing or minimizing environmental damage. He explained that the two provisions were linked, and the provision on the duty to render assistance should, therefore, be retained.

38. With regard to paragraph 3, one delegation considered that the shipowner should not be relieved of liability if he contributed to the breach of duty by the master. In response to this, it was explained that the provision merely relieved the shipowner of vicarious liability but did not relieve the owner of liability where he himself was responsible for breach of duty by the master.

39. The Committee decided to retain article 2-3 without change. It was, however, agreed, that the provision needed to be considered further for possible redrafting to emphasize that it was not intended to effect a radical change to the 1910 Convention.
**Report on the Work of the 56th Session (Document LEG 56/9)**

**Article 8. Duty to render assistance**

82. Some delegations pointed out that the duty of the master to render assistance to persons in danger at sea was a time-honoured obligation which was recognized in several treaties as well as customary law. They therefore wondered whether this provision should be retained in the new salvage convention. In this connection it was noted that more refined texts of the provision were contained in several existing treaties.

83. Some delegations, on the other hand, considered that the provision, which was in the 1910 Convention, should be retained in the new convention. They feared that the absence of such a provision in a revised convention would be misinterpreted.

84. One delegation also considered that paragraph 1 of article 8 would be adequate in this regard, while another delegation felt that there was a link between this provision and article 14 dealing with the salvage of persons.

85. One delegation suggested the deletion of paragraph 3 of article 4, as it considered that this matter should be left to national legislation.

86. The Committee decided to retain article 8 in its present text for further consideration.

**Report on the Work of the 57th Session (Document LEG 57/12)**

139. One delegation proposed that paragraph 2 be revised to require a Contracting State “to provide for suitable penalties for breach of the duty of the master”.

140. One delegation, while not opposed to the proposed amendment, noted that only the flag State would have jurisdiction to fulfil this duty. The Committee agreed with this interpretation.

141. Another delegation said that penalty provisions should be left to the discretion of the Contracting States in adopting “measures necessary to enforce the duty”. That delegation explained that it could accept the word “appropriate” in place of “necessary”.

142. Other delegations felt that no change was necessary to paragraph 2.

143. The proposal referred to in paragraph 139 was not accepted by the Committee.

144. One delegation proposed that paragraph 3 be revised by adding words which would relieve the owner of the vessel from liability for breach of the master’s duty under article 8, “when the owner himself prevented the master from performing the duty”.

145. Many delegations could not support this proposal. One delegation said the master’s duty was absolute, and no exoneration should be recognized in the article. Another delegation noted that the article reflected the approach of the 1910 Salvage Convention.

146. The Committee did not accept the proposal.

(111) Article 2-3 of the CMI Draft has been renumbered Article 8 by the IMO Secretariat.
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 the preceding paragraph 1.

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

Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 7 - Duty to render assistance

(CMI draft, art. 2-3, 1910 Convention, arts. 14-2)

47 It was pointed out that several international conventions as well as the 1910 Salvage Convention contained provisions on the duty to provide assistance to persons in danger of being lost at sea. Reference was made in particular to:

(i) The International Convention for the Safety of life at Sea, 1974 (chapter V, regulation 10 of the Annex);

(ii) The Geneva Convention on the High Seas, 1958 (article 12);

(iii) The International Convention on Maritime Search and Rescue, 1979 (chapter 2, paragraph 2.1.10 of the Annex);


48 Some delegations questioned whether, in view of the more detailed provisions in those conventions, a provision on the subject was also needed in the new salvage convention; particularly since such a provision appeared to deal with what is essentially a public law duty. (LEG 54/7 - paragraph 35).

49 Some delegations, however, considered that such a provision would be desirable in the new salvage convention. The observer of the CMI pointed out that there was a similar provision in the 1910 Convention. He also drew attention to the provision (in paragraph 2 of article 13) according to which a salvor of human life would be entitled to a fair share of the remuneration for salving a vessel or other property, or preventing or minimizing environmental damage. He explained that the two provisions were linked, and the provision on the duty to render assistance should, therefore, be retained. (LEG 54/7, paragraph 37).

50 With regard to paragraph 3, one delegation considered that the shipowner should not be relieved of liability if he contributed to the breach of duty by the master. In response to this, it was explained that the provision merely relieved the shipowner of vicarious liability but did not relieve the owner of liability where he himself was responsible for breach of duty by the Master. (LEG 54/7 - paragraphs 35 to 38).
International Conference
Committee of the Whole 21 April 1989
Document LEG/CONF.7/3

Article 7. Duty to render assistance

Documents LEG/CONF.7/VR.120-125

The Chairman. We proceed with our debate on package number 3. We come now to article 7. We have received on article 7 several proposals, one proposal made by Saudi Arabia in working paper 1\(^{113}\), and another proposal made by Kuwait in document 7/19\(^{114}\). You should try to find these documents. I believe it should be possible to deal with all these proposals together and first I would like Saudi Arabia to introduce working paper 1. Saudi Arabia, you have the floor.

Saudi Arabia. In paragraph 3 of paper 1, submitted by the delegation of Saudi Arabia, we requested the deletion of article 7. The title of this article is the duty to provide assistance. Mr. Chairman, we are well aware that our proposal might be opposed by a large number of delegates. Since the first day of this Conference every proposal submitted was rejected and the draft text of the convention has been maintained. Mr. Chairman, we have a religious principle in my country which states that if you find that something is wrong then you should try to put it right. Mr. Chairman, we should in this forum try to do our best to put what is right, and I believe that this approach is reasonable and just. My delegation maintains that the draft convention under discussion is not designed to render assistance but rather to provide a service. We

\(^{112}\) The text of this Article is that approved by the Legal Committee at its 58\(^{th}\) Session (Document LEG 58/12-Annex 2).

\(^{113}\) Document LEG/CONF.7/CW/W.P.1
Submission by the delegation of Saudi Arabia
3 Article (7) “Duty to render assistance” to be deleted.
The intention of deletion of this article is “__________ “.
This article “Duty to render assistance” is a repetition of regulation 10, chapter (5) in SOLAS 1974.
This convention is salvage only, not assistance; the meaning of salvage is “saving” so it is preferable to delete this article from the salvage convention as long as it is already inserted in the 1974 SOLAS Convention.
In case this amendment is not accepted, we then suggest that the title of the convention be changed to “Salvage and Assistance at Sea”.

\(^{114}\) Document LEG/CONF.7/19
Submission by Kuwait
Article 7
Paragraph 2 is recommended to be modified as follows:
The Contracting States shall adopt the measures necessary to enforce the duty set out in paragraph 1 (and to protect the master from punitive action by the owners and liability from any party for loss suffered consequent upon his fulfilling his duty under paragraph 1).
Note: Many shipowners may not look favourably on a decision by the master to render assistance, especially if the salvage operation did not have a useful result, hence no reward or where the reward amount is small. A salvage operation could cause injury or death to some of the crew members of the vessel engaged in salvage operations. It could also cause injury or loss to third parties. Hence, in order to encourage the master to render assistance, it would be necessary to give him protection, by law, from punitive action by the owners and from liability from other parties.
believe that every service provided should be rewarded and also should be regulated. We do not oppose the use of the term “saving of life” in this article. Article 7 of the draft convention is a repetition of article 10, chapter 5 of SOLAS 74. The saving of life at sea is very important not because it is contained in international conventions but because it is a humanitarian action. Now our opposition to article 7 is because this article is a repetition of article 10 in the 1910 Convention. In this context we would like to thank the Legal Committee for its work. The first convention of 1910 had some gaps and did not deal with the safety of life at sea. Now the convention under discussion is related to the salvage of property and we believe that article 7 of the draft convention is a repetition of article 10 of SOLAS 1974. SOLAS 74 has an objective and that is to save life at sea. There is also another convention, i.e. SAR 79, which is concerned with saving life at sea. The presence of this article in the draft proposal is not suitable, therefore my delegation proposes that if our suggestion is not accepted, then we propose to amend the title of this article to read “salvage and assistance at sea”. Thank you, Mr. Chairman.

The Chairman. May I ask for a clarification. Your last proposal, did that refer to article 7 or the title of the convention? Saudi Arabia?

Saudi Arabia. Mr. Chairman, our last proposal says that if the Committee is not willing to accept our proposal, i.e. to delete article 7, then we should amend the title of article 7. Thank you, Mr. Chairman.

The Chairman. With the greatest respect, I must say that this Committee has not rejected any proposal which has been made. This morning we adopted several proposals, new proposals which have been replaced as the basic text. Only to make that clear. May I now call on Kuwait to introduce document 7/19.

Kuwait. Thank you Mr. Chairman. This proposal which we have submitted to you in document 7/19 would take the place of article 7 of this convention. Article 7 of the draft convention, Mr. Chairman, has the title of “Duty to render assistance”, and the very first paragraph of this article starts with the words “Every master is bound”. So, Mr. Chairman, we have to fulfil this duty and we have, at the same time, to protect whoever takes this duty upon his shoulders, i.e. the ship’s captain. You are, of course, all aware that a number of shipowners are not in favour of the captain rendering salvage duties, and if the captain takes such a decision, and the reward and salvage result is not successful then things become very complicated, especially if we bear in mind that a salvage operation could cause injury or death as well as causing loss to third parties. Therefore, Mr. Chairman, we have to encourage the master not only to render assistance but at the same time to give him protection by law from punitive owners and from liability from other parties. There is a necessity to say that expressly and to insert that in the second paragraph of the article, so that it would read as follows:

“Contracting countries will adopt the necessary measures in order to render the duty mentioned in paragraph 1 and to protect the captain from punitive actions from the owners as well as from legal liability from a third party because of the loss emanating from fulfilling the duty submitted in the first paragraph of this article.”

Thank you, Mr. Chairman.

The Chairman. The floor is open for comments. Is there any delegation which wants to support? Let us start with the deletion, the proposal of Saudi Arabia, is there any delegation which wants to speak in favour of the deletion? Is there a delegation which wants to speak against deletion? You should have an opinion on that. The delegation of the United Kingdom. Thank you, Sir Michael.

United Kingdom. Mr. Chairman, we would, on balance, support the view of Saudi
Arabia that this article is not required or appropriate in this convention and for the reasons which he has given. Thank you, M r. Chairman.

**The Chairman.** Thank you. Another delegation?

**France.** Thank you, Sir. As far as we are concerned, we do not entirely share this view. It is, after all, an absolutely basic essential regulation, which is that any master, in order to save anyone on board or anybody in distress at sea, must have this regulation existing. I think Saudi Arabia pointed this out. This is in SOLAS, but this provision also appears in the 1910 Convention. It is a Convention on assistance and salvage and we would find it somewhat extraordinary to delete this regulation, one indeed might wonder, when reading the new convention, whether this regulation no longer applies to a master and obliging him, therefore, to assist anyone at sea in distress. We feel that the first duty of a master, before preserving the environment or salvaging property, is to lend assistance to any person in danger at sea. If we delete this essential duty to all salvors and also implying the duty of all masters despite the existence of SOLAS. We are against this proposal therefore. Thank you.

**The Chairman.** Thank you. Next speaker, delegation of Mexico.

**Mexico.** Thank you, Sir. The Mexican delegation has followed with great attention and interest the proposal of Saudi Arabia. However, Sir, my delegation may not support that proposal despite all the arguments advanced by the delegation of Saudi Arabia. Indeed, the Mexican delegation feels that although this principle of saving human life at sea appears in our convention, and although it is repeated elsewhere, it can only be a favourable effect which would accrue. I feel, therefore, that it would be a great shame if this Organization, one of the purposes of which precisely is the safety of life at sea, were to delete from this future convention any article which appeared as long ago as the 1910 Convention. This is a Convention developed not by this Organization, and I feel all seafarers would feel very annoyed if we deleted this provision. Therefore, to repeat my views, we want to keep the article as it appears in the basic text. Thank you.

**The Chairman.** The delegation of Spain.

**Spain.** Thank you, Sir. We followed with great attention the interventions which have been made on this subject so far, and we entirely agree with the two most recent speakers. Indeed, we feel that we should retain in the text of the convention the obligation on the master to afford assistance to anyone, any person, that is who is in danger at sea. This principle appears in other international conventions; mention has been made of the 1910 Convention, for example, but if we delete these provisions there will certainly be doubts in other peoples’ minds. One might wonder what has happened, why has this provision disappeared. We cannot accept the deletion of this provision. Thank you.

**The Chairman.** Thank you. The next speaker is Yugoslavia.

**Yugoslavia.** Thank you, Mr. Chairman. I completely agree with all previous speakers as to keeping the same regulation in this Convention, Sir. If I remember correctly, the duty to render assistance is mentioned not only in SOLAS, but in altogether six or seven international acts. Permit me to mention certain rescue conventions, Convention on Telecommunications, Convention on Open Sea of 1958, new Convention on the Law of the Sea, and so on and so on. May I add that the 1910 Convention is not only one of the first unifying acts, but it is also a monument of the Law of the Sea, so to pay our due respects to that international act, one of the first, I
would like to see the duty to render assistance as it is in the draft text. It is the proper place to keep it. Thank you, Sir.

The Chairman. Thank you. I will give the floor to the speakers who I have on my list, but I think this proposal is ripe for an indicative vote. China.

China. Thank you, Mr. Chairman. I do not want to waste too much of our time. I support both Mexico and Spain in this respect. We cannot support the proposal by Saudi Arabia. Thank you.

The Chairman. Thank you. Italy.

Italy. Thank you, Sir. I will be extremely brief. The Italian delegation entirely supports the retention of the existing text of the article now under consideration.

Cuba. Thank you, Sir. We also not only wish to support the idea of retaining the text of article 7 but we also feel, what is more, that this article should become even stronger in what it says about rendering assistance. We would like deletion of any reference which would imply that assistance should be given to anyone in danger at sea. We quite simply want a reference to any person at risk at sea or in distress, which is more accurate. Thank you.

The Chairman. Is it the intention of Cuba formally to propose an amendment to article 7? Is it short? Could you then read the text you have in mind for the benefit of the Committee at dictation speed, please, and so that interpreters could follow.

Cuba. Thank you Sir. Could I repeat for your assistance that our proposal is very simple and short. It is quite simply a matter of not qualifying the danger in paragraph 1. We should speak of assistance to any person at risk at sea, and the adjectives should be deleted. “Someone likely to be lost at sea” should be deleted. There are many other dangers – there are dangers of hypothermia at sea and dangers of other sorts. We quite simply want a reference to anyone at risk or in danger at sea. Thank you.

The Chairman. That would mean that the text should read (I will try to read the text): “Every master is bound to render assistance to any person in danger of being lost at sea”. Is that correct? So I was told that you made another proposal. I will try to read the proposal again: “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 at sea.”. Well, I think, the United Kingdom please, then we will proceed to a vote on the proposal of Saudi Arabia and after that decision, we can discuss the amendments which are to be made now by Cuba and by Kuwait. The United Kingdom.

United Kingdom. Mr. Chairman, the United Kingdom is not opposed to saving life at sea. We merely felt that there was no need to refer to it here and we shall certainly not insist in any way on what I have said. We are concerned that it may arise in connection with the Kuwaiti proposal that any breach of this duty by masters should only be dealt with in the State of the flag and not anywhere else. We have a concern about article 7 in that connection. Thank you, Mr. Chairman.

The Chairman. I thank you. Well, it was my intention first to come to an indicative vote whether that article should be deleted or not, but I still have two speakers on my list. Zaire.

Zaire. Thank you, Sir. Having heard all the interventions made and particularly that which we have most recently heard, Zaire would like to give its support (very firm support, in fact) to the proposal of Cuba.
The Chairman. Thank you. That can be decided after the first decision whether that article should be kept in the body of the text or not. Saudi Arabia, is it on your own proposal or to give us good news?

Saudi Arabia. Thank you very much, Mr. Chairman. The international maritime community is very well aware of what this Organisation does and, in fact, the many heroic things it has done for saving life at sea. But Mr. Chairman, especially when I was submitting working paper No. 1, i.e. from my country’s delegation, it is not necessary to repeat one single article in many conventions. I am in agreement that this particular article is not necessary and if we are going to say: why is it not necessary; obviously all captains are all aware of the content of SOLAS 1974. There is no need, Mr. Chairman, to repeat this and I insist on our request. Thank you very much.

The Chairman. We come now to an indicative vote on the proposal of Saudi Arabia. The proposal of Saudi Arabia is to delete the whole article. Who is in favour of the deletion of that proposal to delete the whole article. Please raise your cards. Who is in favour of the deletion of that proposal, the proposal to delete the whole article 7? Saudi Arabia, are you not in favour? Thank you, well it is apparently not necessary to ask who is against. Would you be ready to withdraw that or would you insist that we come back to that in a formal vote?

Saudi Arabia. Thank you, Mr. Chairman, as you are aware and as I said, in my proposal I would like to propose, as I said, that if we should not agree on deleting article 7 and our voting has just shown that I am the only person supporting the deletion of article 7, then we have another request, I have submitted it earlier, i.e. the addition of the word “assistance” to the title of the convention, because, as I explained, this article adds the concept of assistance to the concept of salvage. Thank you.

The Chairman. We can take that into consideration in our debate on the various proposals which we now have on article 7. To make it clear, we have now a proposal to amend the title of article 7 by adding “assistance”, that was your proposal, so that the title would read “Salvage and assistance”, is that what you have proposed? Fine, that is the first proposal. Then we have the proposal of Cuba to delete some words in the third line of paragraph 1, the words “of being lost”. And we have the proposals made by Kuwait which have already been introduced. The floor is open for comments on these proposals. Ecuador.

Ecuador. Thank you, Sir. My delegation wishes to express its support for the proposal made by Cuba. Thank you.

The Chairman. The next speaker is Democratic Yemen.

Democratic Yemen. Thank you, Mr. Chairman. First we would like also to support the proposal made by the distinguished delegate from Cuba, and we would also like to support both proposals which have been put forward by the distinguished delegate of Kuwait, that is in respect of paragraph 2, and if we are also talking about paragraph 3, then we would lend our support to that, but certainly on paragraph 2. There is only one point which is not clear as far as the latest proposal of Saudi Arabia is concerned, that in working paper 1, the last paragraph indicates that they are proposing the amendment to the title of the convention, so is it the amendment to the title of the convention or to article 7, we should like some clarification on that point.

The Chairman. I asked the delegation of Saudi Arabia twice to answer that question and he gave me the answer that he has the intention to replace the title of the
article, that is the only information I have received from Saudi Arabia. I give the floor to Saudi Arabia.

**Saudi Arabia.** Thank you, Mr. Chairman. Perhaps I did not understand your question, or maybe I did not get it through the interpretation, but we want to alter the title of the convention. The title of article 7 is “Duty to render assistance”. So we want to change the title of the convention, it should be a convention on salvage and assistance. Thank you.

**The Chairman.** Democratic Yemen, is it now clear?

**Democratic Yemen.** Yes, Mr. Chairman, it is clear now, and we are not in a position to support that proposal.

**The Chairman.** Thank you. I would like to ask the Committee not to comment on the proposal on the title. The title is not under consideration. We are considering article 7, you may come back to your proposal and working paper 1 later, when we have to discuss the title, but not at this stage. The next speaker is Kuwait.

**Kuwait.** Thank you very much, Mr. Chairman. We wish to support the Cuban proposal, i.e. to delete the words “of being lost”.

**The Chairman.** Thank you. Sweden.

**Sweden.** Thank you, Mr. Chairman, I would also like to comment on the Cuban proposal for which we have great sympathy, we certainly appreciate the worries of the distinguished Cuban delegate that the text as drafted might give the impression of being too narrow, but on the other hand, Mr. Chairman, I feel that we might lose something by deleting the words “of being lost” at sea. Or perhaps I should say we give too broad an application of the convention if we delete those words. As I understand the paragraph, it would apply also to persons being in danger on board ships and on board platforms, or whatever other situations where you are in danger at sea. And I think that maybe that is why we need some qualifying words, like “of being lost” at sea, even though I realise that it could give an impression of having a limiting scope, but it is, Mr. Chairman, an expression that we are familiar with and we have it in the 1910 convention and we feel that we need to have something like that still, and therefore we are sorry that we wont be able to support the Cuban proposal. Thank you.

**The Chairman.** Thank you. It is time for the lunch break. We continue this discussion this afternoon. The meeting is adjourned.

**The Chairman.** I thank you. The next speaker on my list is the delegation of Malaysia.

**Malaysia.** Thank you, Mr. Chairman. My delegation think that the small amendment proposed by the Cuban delegation will actually further widen the scope on the principle of assisting persons in danger or distress at sea as far as this Convention is concerned and, therefore, we fully support the proposal.

**The Chairman.** I thank you. The next speaker is Côte d’Ivoire.

**Côte d’Ivoire.** Thank you, Mr. Chairman. Our delegation would support the amendment put forward by the Cuban delegation. Thank you.

**The Chairman.** I thank you. Czechoslovakia? No, USSR.

**USSR.** Thank you, Sir. Mr. Chairman, our delegation does not want to strike a false note in this unanimity which is now emerging around the proposal from Cuba. The only
point we want to draw your attention to, and that of the Committee, is that the formulation contained in the present text in paragraph 1 of article 7 is a formulation which has stood the test of time and over these decades nowhere has it been shown that this text is not satisfactory and that there were any complications in using this text in practice. If you look at the 1910 Convention, then obviously all delegations have become convinced that this is certainly where this phrasing appeared first and over the years and during the first United Nations Law of the Sea Conference when the High Seas Convention was being developed. It was exactly the same wording used and this was in article 12 of that United Nations Convention. When that Convention came into force until 1958, there were no doubts at all. But in 1982, a new Convention was adopted in the United Nations with the very active participation of Cuba in the preparation of that new Convention and in article 98, again we have exactly the very same wording. So the question which must arise is this: Why are we making this change just now? Or are we trying to expand the scope of application of our new Convention? I would be very surprised if you were. Are we rather not just trying to re-produce the accepted principles? Of course we do not object to the principle of Cuba’s proposal but our first question must be: Why is this proposal coming forward? We had something here for years and years and years is being repeated many times. The United Nations Law of the Sea Convention repeats the very same wording. It reflects existing international law. So, why are we changing things now? This is why we do not want to change anything without any obvious explanation which we have not heard so far. Thank you.

The Chairman. I thank you. The next speaker, Hong Kong.

Hong Kong. Thank you Mr. Chairman. We are in sympathy with the aim of the proposal made by the distinguished delegate for Cuba, that is to simplify or clarify the text of article 7, paragraph 1. However, it appears to our delegation that the removal of the words “of being lost” will not achieve the same but will instead render paragraph 1 more vague. If the word “danger” is made unqualified by the removal of these words then uncertainty arises as to the type of danger covered by paragraph 1. The word “lost” has several meanings and it does not mean only that something has disappeared or cannot be found. It also means to be destroyed, or ruined physically and it is in that sense that lost is used in paragraph 1. Any person in danger of being lost at sea is in danger of being physically destroyed or ruined at sea and the causes may be many. For example, drowning, starvation, fire, disease, piracy and so on. In other words, the person’s life is in danger. In this sense, the danger of being lost at sea reflects - and this was hinted at by the distinguished delegate for the USSR - the well-established nature of the duty to save life at sea, which in turn forms the basis for any claim for a salvage award to take account of the saving of life. Consequently, we prefer the existing wording of paragraph 1. Thank you, Mr. Chairman.

The Chairman. I thank you. The next speaker, delegation of Finland.

Finland. Thank you Mr. Chairman. All I wanted to say was that we associate ourselves with what has been said by the distinguished delegates of Sweden, USSR, and Hong Kong and for the reasons they have explained, we cannot support the proposal made by Cuba. Thank you very much Mr. Chairman.

The Chairman. It is my intention to proceed to an indicative vote. I will now give the floor to the next speakers on my list: Norway. No? Greece. No? Japan. No? Fine. Well, we vote only on the proposal of Cuba now. To delete the words in article 7, paragraph 1, the third line “of being lost”. Who is in favour of the proposal to delete
these words? Please raise your cards. Thank you. Against? I thank you. The result of the vote is: Nine (9) in favour; Twenty-eight (28) against. That means the proposal has not been adopted. We keep the words in the text. We come now to a vote on the proposal of Kuwait on paragraph 2. Only some delegations have commented on that. Nevertheless, we can perhaps take up that proposal very quickly by voting on it. That proposal is contained in document 7/19, article 7, paragraph 2. Who is in favour of that proposal? Please raise your cards. Thank you. Who is against? Apparently there is a great majority against. That means that the proposal has not been adopted. May I ask Kuwait whether you will come back to that proposal when we formally vote on article 7 or whether you are ready to withdraw it. There is another proposal made by Kuwait in the same document to amend paragraph 3. Do you insist on a vote. I have the impression, that to a certain extent, it is consequential. Do you insist on a vote? No? withdrawn. Thank you.

25 April 1989

Document LEG/CONF.7/VR.169

The Chairman. We come now to Article 7. Here we have a proposal on article 7, paragraph 3, submitted by France in document 7/11. In paragraph 3 France has proposed to put the word “owner” into the plural. It is perhaps more or less a drafting point but to clarify that very quickly, can we agree? First we have to find document No. 7/11. That was an error on our notes. M. Douay refers to article 9 in the plural. I am sorry for having caused this trouble but we have some problems with all the notes which we have here. Well that means you have no proposal on article 7. No proposal on article 7. Can I take it that the Committee is able to agree by consensus or is there a delegation which insists on a vote? No delegation? That means article 7 has been adopted by consensus.

Draft Articles agreed by the Committee of the Whole
(Document LEG/CONF.7/CW/5)

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 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.

Plenary Session 28 April 1989

Document LEG/CONF.7/VR.225

Text examined and approved by the Drafting Committee
(Document LEG/CONF.7/DC/5)

Article 10. Duty to render assistance

The President. Article 10. No remarks. Approved.

(115) The Drafting Committee has approved the text approved by the Committee of the Whole. The Article has been renumbered Article 10.
ARTICLE 11
Co-operation*

A STATE PARTY SHALL, WHENEVER REGULATING OR DECIDING UPON MATTERS RELATING TO SALVAGE OPERATIONS SUCH AS ADMITTANCE TO PORTS OF VESSELS IN DISTRESS OR THE PROVISIONS OF FACILITIES TO SALVORS, TAKE INTO ACCOUNT THE NEED FOR CO-OPERATION BETWEEN SALVORS, OTHER INTERESTED PARTIES AND PUBLIC AUTHORITIES IN ORDER TO ENSURE THE EFFICIENT AND SUCCESSFUL PERFORMANCE OF SALVAGE OPERATIONS FOR THE PURPOSE OF SAVING LIFE OR PROPERTY IN DANGER AS WELL AS PREVENTING DAMAGE TO THE ENVIRONMENT IN GENERAL.

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Art. 2-4. Cooperation of Contracting States

A contracting state shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or provision of facilities to salvors, take into account the need for cooperation between salvors and public authorities in order to ensure 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.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81

Art. 2-4. Co-operation of Contracting States

Montreal Draft
Document LEG 52/4-Annex 1

Article 2-4. Co-operation of contracting States

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.

CMI Report to IMO
Document LEG 52/4-Annex 2

The discussions within the CMI revealed that co-operation from public

* See also Appendix II - Public law aspects, infra, page 678.
(116) The text of this Article has been left unvaried.
authorities of coastal States would often be indispensable to the success of the salvage operations. On the other hand, it was recognized that the drafting of provisions on this subject was a most delicate matter. Art. 2-4 should be read in the light of this.

**IMO Legal Committee**
***Report on the Work of the 52nd Session (Document LEG 52/9)***

71. The observer of the International Chamber of Shipping recommended a stronger provision requiring States to provide “ports of refuge”. One delegation noted that such a provision would be undesirable, but that the problem of obtaining port access could be addressed, at least partially, by having States adopt contingency plans which would establish a mechanism for informed decision-making.

**Report on the Work of the 54th Session (Document LEG 54/7)***

40. The majority of the Committee were in favour of this article. It was suggested that there should be an obligation of States to admit vessels in distress into their ports and that this might be spelled out more clearly. This suggestion was endorsed by some delegations, but some delegations expressed doubt on the desirability of including such a “public law” rule in a private law convention. It was also pointed out that the interests of coastal States would need to be duly taken into account in any such provision. Doubt was also expressed whether such a provision would in fact affect the decisions by the authorities of coastal States in specific cases.

41. One delegation expressed the view that, under this provision, the decision taken by Governments and authorities would not be affected.

42. Another delegation suggested that the adoption of adequate contingency plans by States would provide a mechanism to make informed port-entry decisions.

43. Some observers suggested that this article should place stronger obligations on States. The Chairman invited them to table proposals.

**Ports of refuge**

131. The Committee considered the question whether it would be appropriate to require States to establish “ports of refuge” which would be open to vessels in distress. The delegations which addressed this issue felt that experience had shown that such an advance determination of ports in general terms would not be satisfactory. In their view it would be better to direct vessels in distress into ports on a case-by-case basis and in the context of appropriate contingency plans.

132. Some observer delegations were of the view that contingency plans did not satisfactorily resolve all problems. Practical experience had shown that, in the absence of appropriate ports of refuge, there was always the risk that local authorities would refuse entry into a particular port. It seemed important, therefore, that a central authority be designated on the national level which would be entitled to direct vessels in distress into appropriate ports.

133. The Committee agreed to revert to this matter during its third reading of the CMI draft Convention in the context of its consideration of article 2-4.
Article 9. Co-operation of Contracting States

87. Several proposals for the revision of the article were considered by the Committee.

88. In introducing its proposal in document LEG 56/4/6, the delegation of the United States stated that an essential element in a State's ability to deal with vessels in distress off its coast would be the presence of a sound contingency plan. A mechanism of this kind would be a realistic alternative to the pre-designation of ports of refuge, since the essence of a contingency plan was to ensure effective response to particular cases, including permitting vessels to enter ports of refuge on a case-by-case basis. The United States felt that to oblige a coastal State to provide assistance to distressed vessels would be too onerous.

89. A joint paper of ICS, OCIMF, Intertanko and FOEI was introduced by ICS, which proposed that Governments recognize an obligation to meet the needs of vessels in distress for prompt assistance and to that end develop contingency plans. A new draft of article 9 was therefore submitted for consideration by the Committee (LEG 56/4/2).

90. The Chairman referred to document LEG 56/4/7 in which Intertanko expressed support for the concept of contingency plans to deal with incidents involving salvage and prevention of damage to the environment, and it joined with OCIMF, ICD, and FOEI in the proposal to reword article 9, as contained in document LEG 56/4/2.

91. The observer from the International Association of Ports and Harbors (IAPH) stated that it could not agree with the proposal that States should recognize an obligation to designate ports of refuge for vessels in distress. The IAPH observer considered that this was a public law provision which was inappropriate in a private law convention. He also pointed out that difficulties could arise if a treaty obligation were imposed upon States to allow entry of vessels in distress to its ports.

92. The observer of the Friends of the Earth International (FOEI) suggested that the concerns raised by IAPH might be taken into account in preparing supplementary guidelines, in the Marine Environment Protection Committee (MEPC) of IMO, on the procedures to be followed in the ports in question. It had certainly not been the intention of the observers who had introduced the proposal for a new draft article 9 contained in document LEG 56/4/2 to impose very strict requirements upon States that left no room for a compromise solution. The observer of ACOPS expressed full support for the views of FOEI.

93. Some delegations preferred the CMI draft text of article 9 and expressed concern with the proposal to include more specific or far-reaching obligations in the convention. They believed that other treaties, such as the regional conventions established in various parts of the world, could be relied on to meet the needs of vessels in distress. It was important to avoid inclusion of any provision which might delay the entry into force of the prospective salvage convention.

(117) Article 2-4 of the CMI Draft has been renumbered Article 9 by the IMO Secretariat.
94. One delegation referred to the International Convention on Maritime Search and Rescue, 1979, which dealt with some of the issues raised in the discussions.

95. The Legal Committee decided to retain the article in the form drafted by the CMI.

**Document LEG 58/12-Annex 2**

**Article 8. Co-operation of Contracting States**

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.

**Consideration of the Draft Convention on Salvage**

**Note by the Secretariat**

Article 8 - Co-operation of Contracting States (CMI draft, art. 2-4)

51. It was suggested that there should be an obligation of States to admit vessels in distress into their ports and that this might be spelled out more clearly. This suggestion was endorsed by some delegations, but some delegations expressed doubt on the desirability of including such a "public law" rule in a private law convention. It was also pointed out that the interests of coastal States would need to be duly taken into account in any such provision. Doubt was also expressed whether such a provision would in fact affect the decisions by the authorities of coastal States in specific cases. (LEG 54/7, paragraph 40).

52. Some observers suggested that this article should place stronger obligations on States. Accordingly, several proposals were introduced to either pre-designate ports of refuge or to ensure the effectiveness of an adequate contingency plan. After due consideration, the Committee decided to retain the article in the form drafted by the CMI, rather than including more specific or far reaching obligations which, in imposing stricter requirements upon States, might delay the entry into force of the prospective salvage convention; other treaties, such as the regional conventions established in various parts of the world, could be relied on to meet the needs of vessels in distress. (LEG 56/9 - paragraphs 87 to 95).

**International Conference**

**Committee of the Whole 21 April 1989**

**Document LEG/CON F.7/3**

Article 8. Co-operation of Contracting States

**Document LEG/CON F.7/V.R.125**

The Chairman. That brings us to article 8. We have two proposals submitted by

(118) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
observer delegations; one proposal by ACOPS and another one by Intertanko. I now give the opportunity first to the observer delegation of ACOPS to introduce the proposal submitted in document 7/7/119.

ACOPS. Mr Chairman, it is an honour to introduce this proposal on behalf of the Advisory Committee on Pollution of the Sea which as the Chairman has mentioned, is in document 7/7. ACOPS is proposing the new language in article 8 because it spells out responsibilities of contracting States more clearly than is the case at present. A legal obligation should be imposed on contracting States to provide facilities for aiding vessels in difficulties where life and property are at risk and/or which pose a threat to the environment. It could be improved by providing some kind of duty on a contracting State to provide haven for vessels which pose a threat to the environment but not necessarily within a port area. I would like to point out that there is nothing new in principle in this revision, it represents a tightening up and there were two key words in the proposal; the first is “shall” in the third line and the second phrase is in the sixth line “a place of refuge”, and I would like to underline that it is a place rather than a port so that it could be a bay, it could be a sheltered area, it could be anything and not necessarily a port. Mr Chairman, would you like me to read the proposed article which is in sheet 7/7.

The Chairman. The delegations should have received the documents. It is not necessary to read that article. I was informed (just to get the confirmation from Intertanko) that Intertanko had withdrawn its proposal in favour of the proposal by ACOPS. Would Intertanko confirm that?

Intertanko. Intertanko so confirms. Thank you Chairman.

The Chairman. Thank you. So we have only to discuss the proposal submitted by ACOPS in 7/7. The floor is open for comments. Is there any delegation which wants to speak in favour of the proposal? Is there any delegation that seconds that proposal?

(119) Document LEG/CONF.7/7
Submission by the Advisory Committee on Pollution of the Sea (ACOPS)
LEG/CONF.7/3 – article 8
It is the view of ACOPS that article 8 in its present form is inadequate and vague. If it is designed to address the problem posed by the leper casualty which no State is prepared to permit to enter its port, it has not achieved its objective. As worded, it is limited in scope and serves no useful purpose. A legal obligation should be imposed on a Contracting State to provide facilities for aiding vessels in difficulties where life and property are at risk and/or which pose a threat to the environment. It could be improved by investing it with some kind of duty on a Contracting State to provide haven for leper vessels which pose a threat to the environment.

ACOPS therefore proposed that article 8 should be amended as follows:

Article 8 Responsibilities and co-operation of Contracting States
Contracting States recognize an obligation to assist in saving life and property in danger as well as preventing and minimizing damage to the environment. Contracting States shall provide prompt assistance to vessels in distress and take such measures as may be necessary for the prevention of damage to the environment including the provision of a contingency plan and the designation of a place of refuge for vessels in distress. 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 co-operate with salvors, public authorities, coastal States and other interested parties.
That seems not to be the case. That means it is not necessary to open the debate on that point. The proposal is no longer relevant. May I make it sure - would ACOPS come back to that proposal when we come to a formal vote and can we take it that this proposal has been withdrawn. ACOPS.

ACOPS. If there is no support for it, I am afraid that ACOPS has no alternative.

Draft Articles agreed by the Committee of the Whole (Document LEG/CONF.7/CW/5)

Article 8. Co-operation of Contracting States

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 provisions of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

Plenary Session 28 April 1989

Text examined and approved by the Drafting Committee (Document LEG/CONF.7/DC/5)

Article 11. Co-operation

Document LEG/CONF.7/VR.225


(120) The Drafting Committee has approved the text approved by the Committee of the Whole. The Article has been renumbered Article 11 and titled “Co-operation”.
ARTICLE 12
Conditions for reward

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner.
CMI Report to IMO
Document LEG 52/4-Annex 2

These provisions are in accordance with the 1910 Convention, Art.2, paragraph 1. The rules establish the important principle of “no cure no pay”.

The salvors have a clear preference for a system in which rewards are based on the “no cure no pay” principle rather than daily rate systems in the normal cases of salvage, 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.

It should be noted that the “no cure no pay” principle is not fully retained if there is a risk of damage to the environment where, as mentioned, the salvors may be entitled to a special compensation according to the rules of Art.3-3.1, even if there is no useful result, while the additional compensation according to Art. 3-3.2 is governed by the rules of Art. 3-1.

The fact that salvors under the “no cure no pay” system run the risk that they may not recover normal compensation for their services or may only recover part of that compensation, is an important factor to take into account when the payment for successful services comes to be fixed according to Art. 3-2, or Art. 3-3.2.

This rule in Article 3-1.2 corresponds to Art.5 of the 1910 Convention. It has importance, in particular in cases where under national law according to Art. 3-4.2 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 also 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.

Report on the Work of the 52nd Session (Document LEG 52/9)

72. Although Article 3-1.3 was in the 1910 Convention, it was queried whether it was in conflict with Article 1-2.2(b). That Article set the application of the draft convention aside “when all interested parties are nationals of the State where the proceedings are brought”. Under Article 3-1, the owners coming before the court of the flag State might find that the application of the draft convention was prevented by the earlier provision. The CMI representative observed that Article 3-1.3 might still be appropriate where payment was to be made by an owner of a salved ship to persons in a non-contracting State. The Convention would indeed be set aside if the owners were nationals of the same State.

Report on the Work of the 54th Session (Document LEG 54/7)

44. Attention was drawn to the possible contradiction between paragraph 3 of this article and the provision of article 1-2.2(b). One delegation, while recognizing that the same provisions appeared in the 1910 Convention, considered that there was an inconsistency which should be removed.

45. One delegation observed that no problem had arisen in applying the 1910 Convention in this regard. The delegation explained that article 1-2.2(b) and article 3-1,3 had different objectives: article 1-2.2(b) was intended to remove from the scope of the draft Convention any purely national proceedings, and the purpose of article 3-1,3 was to ensure that conditions for reward did not include restraints which were not provided for in chapter III of the draft Convention. If the interested parties in an article 3-1,3 situation were nationals of the same State, article 1-2.2(b) would apply and there would be no contradiction.
46. It was agreed that this matter would be considered again when article 1-2 was re-examined.

Report on the Work of the 57th Session (Document LEG 57/12)

Article 10. Conditions for reward

149. The Committee discussed a proposal from the delegation of the United Kingdom that the words “salved property” should be substituted for “salved vessel” in paragraph 3 of this article.

150. Some delegations agreed that there might be a problem if the word “vessel” was used by itself. However, they noted that the word “property” would also not cover all the situations which the article was intended to address. It was suggested that the phrase “salved vessel or salved property” could be used in paragraph 3.

151. Several delegations observed that salvage operations could be conducted without the use of a vessel, as when a helicopter undertook salvage. One delegation suggested the phrase “vessel undertaking, or equipment used in salvage operations ...” be used in the second part of paragraph 3.

152. One delegation expressed confidence that a court would apply the principle in paragraph 3 to situations involving common ownership of property salved and property used in the salvage operation. Another delegation, however, doubted that paragraph 3 as drafted was adequate to cover cases when equipment other than a vessel was used in a salvage operation.

153. The Committee felt that the matter warranted further consideration before any revision would be made to paragraph 3.

154. The delegation of the United States introduced a proposal, in document LEG 57/3/8, for a new paragraph 4 to be added to article 10. This paragraph would provide that all rewards or compensation awarded under articles 11 and 12 were to be considered salvage awards.

155. The United States delegation explained that the purpose of the proposal was to leave no doubt that the special compensation awarded under article 12 would be a salvage award for the purpose of maritime liens and limitation of liability.

156. One delegation suggested that the same purpose could be accomplished by changing the titles of articles 11 and 12. Article 11 might be entitled “Ordinary reward” and article 12 entitled “Special reward”.

157. One delegation felt that the problem was theoretical and noted the proposal might affect the interpretation of other conventions. The observer from the CMI agreed with this view and said the proposal would be useful in very few cases since special compensation under article 12 would be awarded when salvage in respect of the vessel on which a lien could attach had probably not been successful. Other delegations said the proposal would introduce confusion into the draft convention and would not solve questions of interpretation under other conventions.

158. The Committee did not agree to the proposal to add a new paragraph 4 to article 10.
55. The Committee gave further consideration to the use of the terms “salved vessel” and “vessel undertaking salvage operations” in paragraph 3. The Chairman recalled the discussions which had taken place during the fifty-seventh session of the Committee (LEG 57/12, paragraphs 149 to 153). The delegations who spoke on the extension of the application of this paragraph were of the opinion that it should only cover, as in the 1910 Convention, operations undertaken from a vessel and not operations conducted without the use of a vessel.

56. The Committee decided to retain the text of the paragraph unchanged.

Document LEG 58/12-Annex 2

Article 9. Conditions for reward

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owners.

Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 9. Conditions for reward

(CMI draft, arts. 3-1, 1910, art. 2, paragraph 1)

53 The Committee decided that the CMI text should remain unchanged. It was indicated that in normal cases of salvage, the salvors had a real preference for a system in which rewards were based on the “no cure no pay” principle, rather than daily rate systems. It should be noted that the “no cure no pay” principle would not be fully retained if there were a risk of damage to the environment where the salvor might be entitled to a special compensation according to the rules of article 11, paragraph 1, even if there was no useful result. If, on the other hand, the salvor had succeeded in preventing or minimizing damage to the environment, he would be entitled to the additional compensation according to art. 11, paragraph 2. (LEG 52/4, annex 2, page 20).

54 It was also explained that the rule in paragraph 3 had importance in cases where under national law, according to article 12, paragraph 2, apportionment of a reward is made between the owner, the master and other persons of a salving vessel. Furthermore, the rule made it clear that the owner of the salving vessel would be, in such cases, also entitled to receive payment of the cargo’s share of the salvage reward. Furthermore, he would normally be entitled to claim payment of the vessel’s share from his own underwriters. (LEG 52/4 Annex 2).

International Conference

Committee of the Whole 25 April 1989

Document LEG /CONF.7/3

Article 9. Conditions for reward

(122) The text of this Article is that approved by the Legal Committee at its 58th Session (Document 58/12-Annex 2).
The Chairman. We have no proposal on article 9. France. Thank you for drawing our attention to that.

France. Thank you, Mr. Chairman. Practically speaking it is a purely drafting point. In paragraph 3 of article 9 indeed, it is said that the chapter shall apply notwithstanding that the salved vessel and the vessel undertaking the salvage belong to the same owners, but here we believe it should be in the singular a collective singular. Obviously the owner of one ship can even be several people, but from a drafting standpoint and in line with other decisions we have taken on this sort of situation of a singular covering a collectivity of persons, we believe the text should be in the singular and not in the plural, so “the owner” instead of “owners”. I believe the Spanish text is correct, but the English and French should be put in the singular. Thank you, Mr. Chairman.

The Chairman. I would ask the delegation of the United Kingdom whether that delegation could, in the light of the English language, accept the deletion of the “s” at the end of the sentence, that means to put “owners” into the singular. Does that cause problems for the delegation of the United Kingdom...? Well, is there another English-speaking delegation who is ready to volunteer at this stage? Sir Michael, would you like to speak on that point.

United Kingdom. Mr. Chairman, we would leave it to the drafting Committee. All we want is consistency. Thank you.

The Chairman. Thank you, Mr. Sturms, you would accept this task for your drafting Committee. I thank you, that has settled the problem. Oh, I have several speakers. Is that on the plural? I thank you for your co-operation. Well, we will have the formal vote on articles 10 and 11 tomorrow so we pass to article 12. Sorry, we were so concerned on that plural and singular, I have of course to ask whether the Committee is ready to accept article 9 as such. May I take it that the Committee is able to agree upon this article by consensus, or is there a delegation which wants a vote? No delegation. O.K. Article 9 has been adopted by consensus.

Draft Articles agreed by the Committee of the Whole (Document LEG/C ON F.7/C W/5)

Chapter III - Rights of salvors

Article 9. Conditions for reward

1 Salvage operations which have had a useful result give right to a reward.
2 Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3 This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owners.
Plenary Session 28 April 1989  
Document LEG/CONF.7/VR.225  

TEXT EXAMINED AND APPROVED BY THE DRAFTING COMMITTEE  
(Document LEG/CONF.7/DC/5)  
Article 12. Conditions for reward^123  

Document LEG/CONF.7/VR.225  


(123) The Drafting Committee has approved the text approved by the Committee of the Whole. The Article has been renumbered Article 12.
ARTICLES 13 AND 14 AND COMMON UNDERSTANDING

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 salvaged 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 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.

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged 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 salvaged value of the vessel and other property.

ARTICLE 14
Special compensation

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

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

3. Salvor’s expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in Article 13, paragraph 1(h), (i) and (j).

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

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

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

**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.

**Introduction – The Montreal Compromise**

The substance of the compromise that was arrived at during the CMI Montreal Conference in 1981 was to allocate the compensation payable to the salvors in respect of services performed with a view to preventing or minimizing damages to the environment between the owners of the cargo and their insurers and the owners of the vessel and their liability insurers.

This result was achieved by adding to the criteria for fixing the reward in Article 13.1 under (b) “the skill and efforts of the salvors in preventing or minimizing damages to the environment” and then by providing in Article 14 that a special compensation should be payable to the salvor who has carried out salvage operations in respect of a vessel which
threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable under article 14.

In view of the strict interrelation between the above provisions it was necessary to assemble together all travaux préparatoires relating to article 13.1(b) and article 14, as well as those relating to the Common Understanding concerning the aforesaid provisions.

The travaux préparatoires referred to above will be preceded by those relating to the other provisions of article 13 that consist in the normal criteria for fixing a reward set out in article 13.1(a) and (c) to (j), to the ceiling of the reward (article 13.3) on the one hand and to the persons by whom payment of the reward must be made (article 13.2) on the other hand.

ARTICLE 13 - PARAGRAPH 1(A) AND (C) TO (J) AND PARAGRAPH 3

CMI
Report by the Chairman of the International Sub-Committee
Document Salvage 5/IV-80

II. REVIEW OF THE LAW OF SALVAGE

4. Liabilities arising out of salvage (the concept of salvage).

a) The 1910 Convention art. 1 means, generally speaking, that it is salvage of the property value of ship, cargo and other things onboard which creates the liability to pay compensation for the services rendered.

Compensation due under the law of salvage should continue to be payable by the owners of ship and cargo and their respective insurers. This should apply also where the measures taken by the salvors have prevented damage to third party interests outside the ship since it is difficult to envisage that a duty to pay for salvage should be extended to such third parties.

b) Nevertheless, the concept of salvage should be extended so as to take account of the fact that 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 only 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 operations.

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 benefits.

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 where third party interests outside the ship are in danger, particularly in cases where the chance of saving ship and cargo is rather remote. Finally, contributions from new sources may enable the international salvage capacity to remain at an adequate level.

V. SALVAGE REWARDS

1. The “no cure no pay” principles of the 1910 Convention art. 2 should continue to govern the right to salvage rewards. Rewards should be liberally fixed in accordance with the principle of encouragement.
2. Salvage rewards for ship or cargo may remain subject to the rules of art. 8 of the 1910 Convention. However there seems to be a need to review the enumerated factors. Avoidance of delay may be taken into account. Consideration should be given to giving added weight to the insured values instead of market values. Some of the interests attached to ship or cargo may thereby be indirectly taken into account (e.g. a charterparty interest as insured under an interest-policy).

3. The salvors should be entitled to a reward on the ground that liability for damage to third party interests outside the ship has been prevented or minimized. This should be considered to be “a useful result” within the meaning of the principles of “no cure and no pay” of the 1910 Convention art. 2. The reasons for this appear supra II.4.b. Some particular rules may be required to determine how the reward for liability-salvage shall be fixed. The values in danger as well as the salvaged values will as a rule have to be determined with regard to applicable limits of liability. In a case of oil pollution, for instance, depending upon the circumstances, both the 1969 and the 1971 limits may be relevant, also with the consequence that the liability insurer and the fund each will have to cover a proportionate part of the reward.

In cases where the salvors have prevented damage for which the shipowner would not have been liable, the salvors may only recover the cost of preventive measures, cf. supra IV.

4. In cases of liability-salvage as well as salvage of ship and/or cargo, the reward may be fixed in two stages, first the total amount and subsequently the apportionment determining for which amount each of the respective interests shall be responsible.

5. The points of view expressed supra III.1 and 3 are intended to encourage cooperation between several salvors available in a particular situation. As mentioned supra III.3.b this may require some particular rules relating to the apportionment of the rewards among the several salvors having participated, cf. the 1910 Convention arts. 6(2) and 8(2).

Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Art. 3-2 The Amount of the Reward

1. The reward shall be fixed with a view to encouraging salvage operations and on the basis of the services rendered, the value of the property saved and the damage to [the environment] [third Parties] avoided.

2. When considering the services rendered the following factors shall be taken into account
   a) the nature and degree of the danger,
   b) the extent to which a useful result has been obtained,
   c) the promptness of the services rendered,
   d) the efforts of the salvors, 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 use of vessels or other equipment intended for salvage operations,
   g) the state of readiness and efficiency of the salvors’ equipment and the value thereof.

3. The reward [in respect of the property salved] may not exceed the value of the property salved [save in cases where damage to the environment [and liability therefore] have been avoided].

4. [However the amount awarded because damage to the environment [and liability therefore] have been avoided may not exceed an aggregate amount ......... of
units of account for each ton of the ship’s tonnage, but not less than ……….. units of account].

Note: For the definition of ton and unit of account, see the 1976 Limitation Convention Arts. 6(5) and 8. However, some other method of limitation could be employed.

**Draft prepared by the British Maritime Law Association**

**Document Salvage-12/IX-80, Annex II**

Art. 3-2. The amount of the salvage reward

(i) The amount of the salvage reward shall be fixed with a view to encouraging salvage operations, according to the circumstances of each case, taking into account the following considerations:

(a) the value of the property salved;
(b) the measure of success obtained by the salvor in his duty under Article 2-2(i);
(c) the efforts of the salvor;
(d) the danger to the salved ship and to persons and property thereon;
(e) the danger to the salvors and to their employees, equipment and other property;
(f) the promptness of the services rendered
(g) the time expended, the expenses incurred and losses suffered, and the risk of liability and other risks run by the salvors;
(h) the value of the salvor’s property exposed to such risks, due regard being had to the special appropriation, if any, of the salvor’s property for salvage purposes;

[(ii) endeavours made by the salvor while performing his duty under Article 2-2(i) to avoid or minimise damage to the environment in accordance with Article 2-2 (iii).]

(iii) The Court shall not quantify the weight given to individual items in (i) above unless requested by all parties before it.

Art. 3-3. The salvage reward shall not exceed the value of the property salved.

Art. 3-4. The Court shall take into account when making a salvage reward against any salved interest the value of the property of that salved interest which has been salved.

**Introductory Note to the drafts**

**Document SALVAGE E-12/IX-80**

6. The Draft contains provisions relating to the extent to which and the manner in which a salvor may be remunerated because he has rendered services preventing, or for the purpose of preventing, that damage is caused to the environment or third parties.

a) The draft introduced the concept of preventive measures (art. 1-1(2)) and the principle that compensation for such measures may be claimed by the salvor, even if ship or cargo has not been salved (art.3-3).

b) The provisions of arts.3-1 and 3-2 reflect various options relating to the extension of the principle of salvage reward to cases where the salvor has succeeded in preventing damage to the environment or third parties or liability for such damage. It appears from art.3-1(2) that the Working Group discussed whether these questions should be approached through the concept of liability salvage or directly as a concept of reward payable by the maritime interests (not by the third parties) to a salvor having prevented that, as a result of marine accidents, damage is caused to third parties. In either case the following questions are relevant:

(i) the scope of such a regime, cf. art. l-l(5) and (6) setting out options ranging...
from oil pollution only to damage to third parties.

(ii) the criteria to be used in determining the additional amount to be awarded to salvors, cf. art. 3-2(1) and (2)

(iii) the relation to the reward for salving ship or cargo, in particular whether the additional amount awarded to salvor shall be given in the form of an enhanced reward for salvage of ship or cargo, and whether the salved value of ship and cargo shall constitute a limit for the total amount awarded to the salvors in any particular case, cf.art.3-2 (3).

(iv) the question of a separate limit for the amount to be awarded to the salvors for preventing damage to the environment or to third parties, cf. art. 3-2 (4).

(v) the relation between the reward and compensation for preventive measures, cf. art. 3-3 (2).

7. The approach relating to salvage reward for preventing damage to third parties or liability therefore may also be extended to salvage of persons, cf. art.3-6 (2).

8. The purpose of the draft contained in Annex II is to reflect in terms of a draft Convention the agreements reached in the recent amendments to the Lloyds Open Form (1980). The main philosophical difference is that this draft focuses on the physical property at risk and not on potential liabilities. However, provision is made for the risk of oil pollution in two ways:

a) First, by virtue of art. 3-2.i(i), the award in respect of salving the property will be enhanced to reflect measures taken to avoid damage to the environment.

b) Second, by virtue of art. 3-5, where a salvor does not receive an award or receives an award smaller than his expenses, he is entitled to recover his expenses together with an increment of up to 15% (see the definition of Salvor’s expenses in art. 1).

Draft submitted to the Montreal Conference
Document Salvage-18/II-81

Art. 3-2. The amount of the reward124

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) .................................................................

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.

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 operation.

(124) This draft is based on both the draft prepared by the Working Group (supra, page 299) and that prepared by the British Maritime Law Association.
Article 3-2. The amount of 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) .......................................................... 
   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.

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 operation.
saved for the salved vessel should have any direct relevance apart from the new subparagraph g), where it has been provided that due regard shall be given to the promptness of the service rendered.

re: b)

Here reference is made to the skill and efforts of the salvors in preventing or minimizing damage to the environment. 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 specifically to this consideration and to leave it to future practice to decide the particular weight to be given to it.

Like the 1910 convention the draft convention refrains from dealing with the question of the person(s) liable to pay rewards due under Art.3-2., and in particular also any enhancement awarded according to sub-paragraph b).

The CMI proposes that this question should still be solved at national level and by agreement.

One reason for this is that the solutions adopted in the various national laws differ to such an extent that the acceptability of the draft convention might be reduced if an attempt was now made to bring about international uniformity.

Another important reason is that there is presently a general understanding between most of the world marine insurers that on the one hand the ship's liability insurers should fund the special compensation payable under the safety net rule of the LOF 1980 while, on the other hand, the property underwriters, i.e. hull and cargo insurers, shall fund the total reward for property salvage including any enhancement for preventing or minimizing oil pollution. It is envisaged a similar relation to the distribution of payments according to the draft convention. This, in particular, was an important reason for following the safety net model of the LOF 1980.

The Association of European Average Adjusters have in a report approved by their XI\textsuperscript{th} General Assembly in Copenhagen in September 1983 entitled “Salvage - LOF 1980 and the CMI Draft Convention” dealt in detail with this so-called “funding agreement” and laid down suggestions for a common approach to the problem of the treatment in General Average of any elements of such enhancement in the rewards payable for successful salvage. See “AIDE Copenhagen Report 1983”.

re: f)

By virtue of the “no cure no pay” system 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 if the expenses have been substantial.

The salver does not run the risk of losing his expenses under the “no cure no pay” rule if the vessel or its cargo threatens damage to the environment, as according to Art. 3-3.1. the salver will always receive payment for his expenses. Therefore in such a case it could be argued that the reward should be fixed at a lower level.

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 when 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.

re: h)

This rule is of particular importance for professional salvors. The use of the word “availability” in this context, 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 salvage 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.

This rule in 3-2.2 restates the important principle contained in the 1910 Convention, Art.2, paragraph 3.

**Report on the Work of the 52nd Session (Document LEG 52/9)**

73. It was recommended that this Article be examined to ensure that double recovery would not be possible through a salvage award and compensation under the 1969 CLC and 1971 Fund system.

74. A proposal was made by the observer representative of the International Salvage Union that sub-paragraph (b) should read “the skill and efforts of the salvors in salvaging the vessel, property and life, and in preventing or minimizing damage to the environment”. An amendment should also be made to paragraph 2 to specify that the reward would be “exclusive of any interest and recoverable legal costs that may be payable thereon”.

**Report on the Work of the 54th Session (Document LEG 54/7)**

81. Several delegations opposed any mention of life salvage in article 3-2. They felt that moral and other issues were raised by any suggestions that salvage of life was subject to reward and pointed out that the 1910 Convention had not included such a provision. Life salvage was in article 9 of the 1910 Convention and article 3-5 of the CMI draft and should not be raised elsewhere. Courts or arbitrators might, however, take it into account.

82. The proposal by the ISU prompted the question about whether it was logical to have life salvage taken into account under article 3-2 and the life salver share in “remuneration” under article 3-5. Another question raised was whether the list in article 3-2,1 should be regarded as exhaustive or merely illustrative.

83. The CMI observer stated, with regard to the list in article 3-2,1, that there was no consensus in 1910 on this and it was similarly left open in preparing the CMI draft Convention. It was a comprehensive list, so little was omitted, but the decisions had not been taken firmly that it was or was not open-ended. He also informed the Committee that CMI considered article 3-2,1(d) to cover dangers encountered by passengers and crew.

84. Support was expressed for the two ISU proposals. With regard to life salvage some delegations considered that if it was not mentioned in article 3-2,1, it should at least be made clear that the list in that paragraph was not exhaustive. Some delegations saw a clear link between articles 3-2 and 3-5. But questions arose as to whether article 3-3 was similarly linked. In the view of these delegations the salver of property would be entitled, if life was also saved, to a reward under the former, and the salver who saved human life would have a fair share of the reward under the latter. One delegation pointed out that article 3-5,2 was applicable to all persons who rendered assistance for life salvage, but article 3-2,1 only related to the condition of the salver of property; therefore these provisions had no relationship and were completely independent.

85. The Committee recognized in respect of life salvage that there were divergent views and the position of States differed as well. It was noted that the draft Convention did not deviate from the 1910 Convention in respect of the salvage of persons, since
both texts permitted national law to regulate the matter. However, it was felt that there was some ambiguity in the draft Convention. It was noted that, where property was also salved, the life salvor would have a “fair share of the remuneration awarded to the salvor” under article 3-5, 2, but it was not clear whether such life salvage should, therefore, be taken into account in the reward for property salvage.

86. As regards the exclusion of interest and recoverable legal costs, payable on the reward in article 3-2, several delegations saw this as a proper subject for the lex fori. It was pointed out that there was already an article on interest (article 4-6). The Committee decided to consider at a later session the proposal by ISU to include new wording on this point. One delegation considered that the limit of amount of reward should also be applicable to the interest and legal cost.

Report on the Work of the 56th Session (Document LEG 56/9)

Article 11. The amount of the reward

126. One delegation expressed concern that the list of considerations in article 11, paragraph 1 might be interpreted as being exhaustive. To avoid this the words “among others” might be inserted after the words “taking account” (LEG 56/W.P.13). The observer from the CMI replied that it was unwise to seek uniformity in this regard, since there was a great disparity in the attitude of courts and arbitrators toward application of the list set out in the 1910 Convention, in particular as to whether or not it was exhaustive.

127. It was decided to leave this proposal for further examination.

128. In article 11, paragraph 2, the phrase which would exclude from the reward interest and recoverable legal costs payable thereon remained in brackets in the text. The Committee decided therefore to examine whether these brackets could be removed.

129. The observer of ISU pointed out that if the maximum reward (value) included interest and recoverable legal costs, it could be a disincentive to the salved property to conclude the assessment of the award. Normally, the salvor’s award was limited to the value of the property salved and it was only when the salvor’s expenditure approached the value of the ship that an award came near the total value of the property salved. Such cases were usually complicated and took a long time before an award was made. If interest were included in the maximum award of total salved value there would be no incentive to the salved property to conclude the assessment of the award. The courts should therefore have discretion to add interest on top of value, though whether or not they were entitled to interest and legal costs was a matter for the lex fori.

Report on the Work of the 57th Session (Document LEG 57/12)

169. The Committee agreed to alter the heading of article 11 to read “Criteria for assessing the reward”, as proposed by the delegation of China in document LEG 57/3/1.

(125) Article 3-2 of the CMI Draft was renumbered Article 11 in the consolidated document prepared by the IMO Secretariat.
170. In respect of the opening sentence to paragraph 1, the Committee decided not to make the conditions outlined explicitly open-ended with an insertion of the words “among others”, but to retain the wording contained in the basic text.

171. In respect of paragraph 1(e), the Committee agreed to delete the text in brackets in 1(b) and to insert that text, without brackets, in paragraph 1(e), so that that subparagraph would now read:

“(e) the efforts of the salvors in salving the vessel, property and life, including the time used and the expenses and losses incurred [by the salvors];”.

172. One delegation, noting that paragraph 1(e) referred to the salving of life, questioned whether there was not a need to define that term. The majority of the Committee considered that such a definition would not be desirable.

Report on the Work of the 58th Session (Document LEG 58/12-Annex 2)

Article 10.-The amount of 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 measure of success obtained by the salver;

c) the nature and degree of the danger;

d) the 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 service rendered;

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

h) the state of readiness and efficiency of the salver’s equipment and the value thereof.

2. The reward, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the value of the salved property.

International Conference
Committee of the Whole 19 April 1989
Document LEG/CON F.7/3

Article 10-Criteria for assessing the reward

24 April 1989
Document LEG/CON F.7/V R.143-147

The Chairman. Well, ladies and gentlemen, the meeting is called to order. From

(126) Formerly Article 11.

(127) The text of this article is that approved by the Legal Committee at its 58th Session (Document 58/12-Annex 2).
time to time, we need a bit exciting debate in order to keep awake but I hope we will not always use the procedure for that purpose. We can use much better points of substances. Text of articles 10 and 11. In the first round we will go through the proposals which have not yet been discussed. That means those proposals which do not touch upon the substance of article 10 and 11. We will go through the text article by article of course and paragraph by paragraph. The first proposal is on article 10, paragraph 1, subparagraph (a). That proposal has been submitted by France in document 7/11. May I ask the French delegation to introduce that proposal?

**France.** Thank you, Mr. Chairman. This proposal may appear just a point of drafting because in fact the purpose is to indicate the value of the vessel and include the property salved. So, instead of saying the value of the property salved, one should say the value of the vessel and of the other property salved. So it is a very small addition which improves the text emphasising the problem of the vessel and the other property. So instead of just saying the property salved, we would say the vessel and the other property salved. Thank you Mr. Chairman.

**The Chairman.** I thank you. I think it is a very clear proposal. Who wants to comment on that French proposal to amend article 10, paragraph 1, subparagraph (a)? Federal Republic of Germany.

**Federal Republic of Germany.** Thank you Mr. Chairman. I think this proposal does not need further explanation. I would only like to indicate that our delegation is supporting it. Thank you.

**The Chairman.** Is that the general feeling of the Committee or is there any delegation against that proposal? No one is against that? Italy, you have the floor.

**Italy.** Thank you Mr. Chairman. Along the same lines, I would just like to add one word. The vessel and other property salved, in order to establish a parallelism between the vessel and the other property. So we are going along with the French proposal, but this gives the possibility of having some legal alignment of the text.

**The Chairman.** Well, could you please read the text in your version which you would prefer or have you no amendment to make. Italy, you have the floor.

**Italy.** The new wording could be: “the vessel and the other property salved”. The same wording is used in some other provisions in the draft Convention and it is our opinion that also article 10 should be put in line with such other provisions, such as article 6 and article 16. Thank you Mr. Chairman.

**The Chairman.** I thank you. France.

**France.** Mr. Chairman, I must certainly thank my colleague from Italy, who has in fact corrected the French proposal. It should be said “the value of the vessel and of the other property salved”. So it is the same proposal. The interpreter will point out that this is exactly what is in the English text.

**The Chairman.** France and Italy, that was already in the English text. O.K. Fine. That proposal has been supported. Is there a delegation which is against that proposal? Can I take it that we adopted at least tentatively the French proposal? O.K. That means that proposal is adopted tentatively – I have to say – because we have then to go through articles 10 and 11 and to take formal decisions. But in any event at this stage it has been adopted. That means, article 10, paragraph 1, subparagraph (a) has been replaced by the wording which was proposed by the French delegation. O.K. Then we have a proposal submitted by the Federal Republic of Germany on article 10, paragraph 1,
subparagraph (e). May I ask the delegation of the Federal Republic of Germany to introduce that document, that is, Working Paper No. 6. You have the floor.

**Federal Republic of Germany.** Thank you Mr. Chairman. We believe that our proposal in Working Paper No. 6 is of the same nature as the French proposal which we have just adopted, that is to say, that it is a drafting proposal rather than a proposal changing the substance. May I draw your attention to article 10, paragraph 1, subparagraph (b) and subparagraph (e). Subparagraph (b) deals with the skill and efforts of the salvors in preventing or minimising damage to the environment. Subparagraph (e) refers to the efforts of the salvors in salving the vessel, property and life. Subparagraph (e) also includes the reference to the time used and expenses and losses incurred by the salvors. We believe that the compensation scheme of articles 9, 10 and 11 would be more properly reflected if the time used and the expenses and losses incurred by the salvors were drafted as a separate items for the court or the arbitrator, to be taken into consideration when assessing an award under article 10. It has very long been the view of the Legal Committee of the IMO, and I quote from one of the earlier papers from April 1985, when it was stressed by the majority of delegations that it would in most cases be extremely difficult, if not impossible, to qualify actions taken in a salvage operation as being for the protection of the environment as opposed to the protection of property and vice versa. So we think it is more logical to have the list split and to follow the pattern which has already been followed by the 1910 Convention, where all those items which have to be taken into consideration when assessing a reward under article 10 on the discretion of the court or arbitrator, but this should be addressed separately. If it is acceptable that this is only to clarify the text of article 10, I would like to stop at this stage. If a delegation were to feel that it touches on the substance I might have to say more and probably change our proposal, but for the time being I would like to keep the proposal as it stands in WP/6, and what I wanted to say about the 1910 Convention was that all the items there are just listed, divided by commas, just saying he has to take into consideration this, this, that and the expenses and the time used are also listed like that. If one changes the draft, having letters to identify the items, then would refer to the costs separately. Thank you.

**The Chairman.** Thank you. I have a first speaker on my list on this proposal. Sweden, you have the floor.

**Sweden.** Mr. Chairman, after the very clear presentation for the reasons behind this proposal I can be brief in stating that this delegation would support the proposal just presented, that is, making a separate new subparagraph (f) in paragraph 1 of

---

(128) Document LEG/CONF.7/CW/WP.6
Submission by the Federal Republic of Germany

Article 10 para. 1 should be amended by deleting the second and third line in subparagraph (e) and inserting a new subparagraph (f). Both provisions should read:

“(e) the efforts of the salvors in salving the vessel, property and life;
(f) the time used and expenses and losses incurred by the salvors;”

The former subparagraphs (f), (g), (h) and (i) would then become subparagraphs (g), (h), (i) and (j). The “time expended” as well as “the expenses incurred and losses suffered” are separately addressed in Article 8 of the Brussels Convention of 1910. The reasons why this pattern should be kept in the present Convention are set out in document LEG/CONF.7/10, p. 6 and 7.
May I at the same time, Mr. Chairman, draw your attention, and perhaps the attention of the Chairman of the Drafting Committee, to the fact that if this proposal is adopted it would lead to consequential amendments, at least, I have noticed, in article 11, paragraph 3 which refers to the preceding subparagraphs of article 10. I just to draw the attention of the Drafting Group to this, and I may grasp the opportunity, I would also like to mention that perhaps the Drafting Committee could also take into account the effects that would follow on the proposal of France, which was just adopted, for instance, in subparagraph (e) of article 10, paragraph 1. I take it that could merit also there to talk about the vessel or the property; this is no formal proposal, Mr. Chairman, just an attempt to draw the attention of the Drafting Committee to this. Thank you.

The Chairman. Thank you. May I ask if the Drafting Committee or the Chairman of that Committee will be ready to take up these points? Thank you. Next speaker on my list is Cuba.

Cuba. Thank you, Mr. Chairman. Very respectfully we disagree with the proposal put forward by the distinguished representative of the Federal Republic of Germany. We do believe that the efforts of the salvor are to be measured in terms of time, of expenses or loss in order to measure his efforts. If we separate this into two parts, we cannot really see how we can measure his efforts. Therefore, we would be in favour of the draft text as it is.

Thank you, Mr. Chairman.

The Chairman. The delegation of the Islamic Republic of Iran.

Islamic Republic of Iran. This delegation is of the view that the separation of these two parts in subparagraph (e) of paragraph 1 of article 10 could have very good results because, when we separate these two, specially the last part which also deals with the time used and expenses and losses incurred in respect of the salvor’s efforts regarding the safeguarding of the environment, so we would support the proposal made by the Federal Republic of Germany. Of course, we have a slight amendment to the first part and we propose that the words “and initiatives” be added after “the efforts” and so it would read: “the efforts and initiatives of the salvors in salving the vessel, property and life.” because we think that initiatives of the salvor should also have a significant role. Thank you, Mr. Chairman.

The Chairman Thank you. To make sure what text has just been proposed, I will read the text and I would like to ask for your confirmation after my reading. Subparagraph (e) in accordance with the Islamic Republic of Iran, reads as follows: “the efforts and the initiatives of the salvors in salving the vessel, property and life”. That refers to the proposal of the Federal Republic of Germany in WP/6. The Islamic Republic of Iran has not amended the basic text. The proposal refers to the proposal of the Federal Republic of Germany, WP/6. I will read it more quickly: “The efforts and the initiatives of the salvors in salving the vessel, property and life”. May I ask the Federal Republic of Germany whether that delegation could accept that proposal?

Federal Republic of Germany. Thank you, Mr. Chairman. It can.

The Chairman. Well, we have a new version of the Working Paper since the sponsor of that document has accepted it. We have a new version of WP/6. (e) has now been amended by the proposal made by the Islamic Republic of Iran. The Federal Republic of Germany has accepted that amendment. So we have a new version of working paper 6. Please take that into account. The next speaker is the delegation of France.
France. Thank you Mr Chairman. We accept and support the proposal made by the Federal Republic of Germany with the view to separating paragraph (e) in its first part, that is to say the efforts in salving vessel, property and life and to make two separate paragraphs so as to reflect in paragraph (f) the time used and expenses and losses incurred which is perfectly in line with the drafting of the 1910 Convention which separates these two matters. Like the Federal Republic of Germany, we can also accept the addition of the words “and initiatives” and say “the efforts and initiatives” and we can accept the small amendment put forward by Sweden with the view to saying the vessel and other property. So with these amendments, we bring our support to the proposal made by the Federal Republic of Germany.

The Chairman The next speaker is the delegation of Denmark.

Denmark. Thank you Mr Chairman. We too would be able to support the proposal from the Federal Republic of Germany and may be even the last change, but I ask myself if we look at the draft now and may be we are deeply in a drafting committee but there is an old principle which I had mentioned before... I have been listening too long that I have been convinced by that principle. If you look at the wording in paragraph 1(b) then you could ask yourself if we want to change the “efforts and initiatives”, in one of the same kind and to use the words “the skill and efforts”. It is only a proposal but if that could be accepted by the proponent I think there would be no more difference in the wording of this article.

The Chairman. May I ask the delegation of the Islamic Republic of Iran if they could accept that proposal.

Iran. Yes, we do.

The Chairman. Federal Republic of Germany - the same? Then the text would read: “the skills and efforts of the salvors in salving the vessel, other property and life”. Is the text now clear? The United States delegation.

United States. Thank you Mr Chairman. My delegation believes that notwithstanding the intention that this be a minor clarification that there nevertheless will in fact be some substantive effects as a result of the proposal put forward by the distinguished delegate of the Federal Republic of Germany. We can accept the proposals now made by the distinguished delegate of Denmark to refer to the skill and efforts of the salvors if we are to change this subparagraph, but we would want to, in an effort to clarify the application of this new subparagraph (f) to suggest the following additional language to follow at the end of the proposal by the Federal Republic of Germany and I will read slowly Sir. “The time used and expenses and losses incurred by the salvors” - the new language would read: “in performing the duties specified in article 6, subparagraphs 1(a)(b) and (c)”. Although we would prefer that the text in the draft convention remains as is, if there must be an additional subparagraph (f), we feel that this more closely attracts the intentions of this paragraph.

The Chairman. May I first ask the delegation of the Federal Republic of Germany whether that delegation could accept that amendment or would you prefer to stay with your own version.

Federal Republic of Germany. Well in principle, my delegation has no objection against a cross-reference as proposed by the distinguished United States delegation, but in respect of procedures, and since we don’t know what the view of other delegations is on this suggested amendment we would rather prefer to have this as a separate proposal by the United States delegation.
The Chairman. That means on a new subparagraph (f) we have two different proposals; one is the original proposal of the Federal Republic of Germany and another one now proposed by the delegation of the United States of America. The next speaker on my list is Zaire.

Zaire. Thank you Mr Chairman. I wanted to say something with respect to the harmonization of the subparagraphs to which the Danish delegation refer rather than to support the United States proposal. My delegation indeed did not approve the use of the terms “efforts and initiatives”. Initiatives is rather ambiguous and overlaps efforts to a certain extent. We would favour the use of the expression “ability/skill and efforts” and we believe that that would be satisfactory.

The Chairman. The Islamic Republic of Iran has already agreed to withdraw the original proposal to include “initiatives” and has accepted the proposal of Denmark to include “skill” so that you have now only a proposal on (e) and that proposal reads: “the skill and efforts ...” and that is quite in line with your own ideas. We still have two proposals on (f); only one proposal on (e). The delegation of the United Kingdom.

United Kingdom. Mr Chairman we could support the proposal of the Federal Republic of Germany in relation to (f) but with all due respect, we would not regard it as appropriate to add references back to article 6.1(a)(b) and (c) which all refer to the exercise of a duty of care. It seems to me strange that one should talk about expenses and time, losses incurred in exercising a duty of care, which is cast upon one. Such references, time, expense and losses refer to activities and not to the carrying out of activities subject to a standard of care. Therefore, with all due respect, I would not regard the reference back as appropriate. Thank you, Mr. Chairman.

The Chairman. I thank you. May I ask whether there is a delegation which supports the United States proposal. I ask this question because we have heard several speakers supporting the proposal of the Federal Republic of Germany, as amended by Iran and Denmark on (e) and we had several speakers who said that they could support the proposal in subparagraph (f) as proposed by the Federal Republic of Germany, but no speaker has supported, so far, the proposal of the United States. May I ask whether there is a delegation which is able to support the United States version on a new subparagraph (f). No delegation is able to support that. May I ask the delegation of the United States whether that delegation would insist on an indicative vote on the proposal made. The United States.

United States. Thank you, Mr Chairman. The proposal was intended to refer to the kind of activities that are referred to in article 6, paragraph 1(a), (b) and (c). This is in response to the intervention of the distinguished delegate of the United Kingdom. We think that would be helpful in clarifying this proposal for subparagraph (f). However, if there are no delegations who wish to support this we would, of course, not insist on an indicative vote.

The Chairman. I thank you. So we have before us only the proposal of the Federal Republic of Germany on subparagraphs (e) and (f) amended by the word “skill” and the word “other” and we have the proposal of the Federal Republic of Germany on a new subparagraph (f) without any amendment. Well, we can now perhaps have an indicative vote - perhaps it is possible to take them up both together; or does a delegation wish to vote separately on (e) and (f)? Please raise your cards. No delegation, then we can take up both proposals together, I read to make it quite sure, subparagraph (e) again with the amendments. “The skill and efforts of the salvors in salving the vessel, other property and life”. (f) is unamended as it stands in working
paper No. 6. Who is in favour of both new subparagraphs? Please raise your cards. Thank you, we will not count, it is overwhelming. I will ask for the vote. Who is against that proposal? One delegation is against it. O.K. It is a clear decision I think. That means we have amended article 10, paragraph 1; we have now a new subparagraph (e) and we have an additional subparagraph (f). We would like to ask the drafting Committee to make the consequential changes. I thank you.

**ARTICLE 13 - PARAGRAPH 2**

**Legal Committee Report on the Work of the 54th Session (Document LEG 54/7)**

62. One delegation pointed out that the draft Convention did not have a general provision stating who is obliged to pay the reward for the salvage operation. It pointed out that, under the law of some countries, the shipowner was liable for the full salvage reward and no direct action could be taken against cargo owners by the salvors. The shipowner would recover the cargo’s share via distribution in general average. This system offered the advantage to the salvor that he had to turn to only one person, the shipowner, who would know the identity of the cargo owners, and was thus in a better position to recover the share due from such cargo owners. The delegation said that the draft raised problems in this connection, especially if the York/Antwerp Rules were interpreted to prevent the shipowner, who had paid the salvor a reward for both himself and the cargo, to recover part of the enhancement for preventing environmental damage from the owners of the cargo via distribution in general average since that part of the award did not relate to salvage operations carried out for the common safety of ship, cargo and freight at risk. In order to make it possible for average adjusters to determine what proportion of the award should be attributed to the environmental element, it would be necessary to make in the judgements a distinction between remuneration to salvors for saving the property from common peril and the enhancement. The delegation considered submitting a proposal to that effect.

64. In connection with the issues raised by the Netherlands delegation, some delegations considered it unwise to introduce questions of general average into the proposed salvage Convention. Several delegations felt that it would be impracticable to attempt to apportion elements of the compensation to the prevention of damage to the environment. On the question of who should pay for salvage awards it was noted that the absence of a provision in the 1910 Convention on that subject had created no problems. The CMI Montreal Conference had not reached agreement on a new draft on that point.

66. The observer from the CMI noted that the ICS was up to now opposed to the new convention containing any rule as to who should pay the general salvage award under article 3-2. The observer, however, noted that the ICS had now, in document LEG 54/4/6, proposed a provision that the salvage award should be paid by the respective property interests in proportion to the value of the property salved. In the view of the CMI observer the change in the attitude of the ICS resulted mainly from the fact that it was now clear that such a provision would facilitate the work of the general average adjusters and that contrary to what all expected when the CMI draft was made, no HNS convention will exist by the time the new salvage Convention is completed.
Report of the Work of the 57th Session (LEG Document 57/12)

173. In respect of paragraph 2, the Committee considered a proposal by the ICS in document LEG 57/3/9 – which read as follows:

“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 amounts shall be borne by the property interests in proportion to their value.

The awards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the value of the salvaged property”.

174. In addition, the ICS suggested the inclusion of an additional sentence stating “Nothing in this article shall prejudice any right of recourse or defence”.

175. The observer of the ICS stated that the reference to the concept of proportionality in the proposal was intended to clarify the contents of the compromise arrived at in Montreal and thereby to reduce any risk of differing interpretations of article 11. The observer noted that, by referring to national law, the draft gave at the same time maximum flexibility to Contracting States.

176. Some delegations were opposed to the proposal of the ICS. One of these delegations recalled the view expressed on the issue by the CMI in its explanatory report.

177. Many delegations, however, expressed support for the proposal, although some of them had reservations to the wording at this stage.

178. The Committee agreed to include the ICS proposal in the draft convention, but with a footnote indicating that the wording of the paragraph would need further consideration.

Report of the Work of the 58th Session (Document LEG 58/12)

61. The Committee reverted to a proposal made by the International Chamber of Shipping (ICS) at the Committee's last session to include the following provision in paragraph 2:

“Nothing in this article shall prevent any right of recourse or defence.” (document LEG 57/12, paragraph 174).

62. Several delegations supported the inclusion of this sentence. One of them recalled that paragraph 2, as agreed upon at the Committee's fifty-seventh session, had constituted a novelty in international law and that the additional sentence was in essence a consequential addition.

63. The Committee agreed to insert this text at the end of paragraph 2.

Document LEG 58/12-Annex 2

Article 10 - Criteria for assessing the reward

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 amounts shall be borne by the property interests in proportion to their value. Nothing in this article shall prevent any right of recourse or defence.
International Committee of the Whole 24 April 1989
Document LEG/CON F.7/3

Article 10 - Criteria for assessing the reward

Document LEG/CON F.7/VR.147-149

The Chairman. We come then already to article 10, paragraph 2. Here we have two proposals; one proposal submitted by Kuwait in LEG/CON F.7/19 and a proposal of the Netherlands in working paper No.5 for a new draft of paragraph 2. May I first ask the delegation of the Netherlands to introduce that document, working paper No.5 and the proposal made in that document.

Netherlands. Thank you very much Mr. Chairman. As I have stated already in my general statements, my delegation is not very happy with the present wording of paragraph 2 of article 10 in the basic text. It is the intention of that paragraph to identify the persons who are the debtors of the reward due under this article. It establishes the principle that the reward shall be borne by all property interests, but it leaves to national law to decide whether any of the property interests, for instance the shipowner may be ordered to make an additional payment. The provision seems to imply that in such a case, a shipowner will have a recourse action against the other property interests, for their proportionate share. Whether or not through a contribution in general average. Since it is impossible for a national legislature in implementing the above principle to construe an obligation on the other property interest to contribute through general average it is necessary, in our view, to expressly provide for a right of recourse in such a case without prejudice to the apportionment

(129) The text of this article is that approved by the Legal Committee at its 58th Session (Document 58/12-Annex 2).

(130) Document LEG/CON F.7/CW WP.5
Proposal submitted by the delegation of the Netherlands

Article 10, paragraph 2
Paragraph 2 of Article 10 identifies the persons who are the debtors of the reward due under this Article. It establishes the principle that the reward shall be borne by all property interests, but leaves it to national law to decide whether any of the property interests (for instance the shipowner) may be ordered to make the initial payment. The provision seems to imply that in such a case the shipowner will have a recourse action against the other property interests for their proportionate share, whether or not through a contribution in general average. Since it is impossible for the national legislator in implementing the above principle to construe an obligation on the other property interests to contribute through general average, it is necessary to expressly provide for a right of recourse in the given case, without prejudice to the apportionment of general average.
Proposal:
Replace Article 10, paragraph 2, by:
2. Payment of a reward fixed according to paragraph 1 must be made by all property interests in proportion to their salved value. 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 share as determined in accordance with the first sentence.
in general average. But we don’t think that it is necessary to provide this explicitly but we think that is the understanding that we do not touch on the principles of general average in this paragraph 2 of article 10. This matter has been discussed at a rather late stage of the proceedings in the Legal Committee and provision has been included subject to possible improvements of the wording. Our concern is that our country has traditionally rules different from those which we find, for instance, under English law and other legal systems, in fact the shipowner is under Dutch law liable for the whole award. We could accept of course, a rule which makes all, not only the shipowner but also the other property interest, liable for their share in the salvage reward provided that we can give the salvor the possibility of first claiming the whole reward from the shipowner, who then of course has the right of recourse against the other property interest. It is the intention also of the basic text to do that but it has not been worded in a clear way, and it does not give for our legislature a clear indication how they should proceed with a national legislation in order to be in line with this Convention. That is the reason Mr. Chairman for our proposal which is in our view more a question of wording than that we want to change the substance of the present provision. I thank you very much Mr. Chairman.

The Chairman. I thank you. I would like to propose that we first discuss this proposal before we come to the proposal of Kuwait. The floor is open for comments. Islamic Republic of Iran.

Iran. Thank you, Mr. Chairman. This delegation is of the view that the proposal made by the distinguished delegation of the Netherlands is very clear-cut and very clearly shows the States how to handle this in their national laws and for this reason we fully support the proposal.

The Chairman. Is that the general feeling of the Committee, so that we can save time? Is there any delegation which is against that new wording for paragraph 2? No delegation is against it? Brazil.

Brazil. Thank you, Mr. Chairman. The Brazilian delegation does not support the proposal by the Netherlands.

The Chairman. Next delegation, the delegation of the United States of America.

United States. Thank you, Mr. Chairman. Just to point out that in the restatement of article 10, paragraph 2, by the distinguished delegate of the Netherlands, the concept of defence has been left out and, consequently, we would propose to add in the fifth line after the word “recourse” “or defence of this interest against the other interests” etc. Another drafting suggestion, Mr. Chairman, is that in the penultimate line we could say “against the other interests for their proportional share”. And delete the balance of that sentence. That is something that the Drafting Committee might want to consider.

The Chairman. Just to clarify the amendment. After “recourse” in the third line from the bottom, you would prefer to include “or defence”? That is O K. And in the second line from the bottom, after “their” before “share”, you would include “proportional” and then where do you want to put the full stop? After “share” and delete the rest? Is that clear? May I first ask the Dutch delegation whether that delegation could accept these amendments? The Netherlands, you have the floor.

Netherlands. Mr. Chairman, we could accept the second proposed amendment by the United States delegation, subject to the Drafting Committee looking at it. I think that is a purely drafting matter. As for the first proposed amendment, we could...
accept it in principle but we don’t think it should be included in this way. Perhaps it is better to let the Drafting Committee have a look at this also. There is another suggestion that if you would like to keep “defence” in, it could perhaps be put in a separate sentence, reading “nothing in this article except defence and the right of defence”. But that is also a matter for the Drafting Committee to look into.

The Chairman. May I ask the delegation of the United States if they could accept the last proposal of the Netherlands, to include the word “defence” in a separate sentence, and saying nothing of this Convention?

United States. That is very acceptable to my delegation.

The Chairman. O.K. For the benefit of the Committee, we have now to clarify what we are discussing. The word “defence” which had been proposed by the United States should be deleted – if you have included that in your text, you should delete it again – and add at the end of the whole paragraph the following sentence: “Nothing in this article shall prejudice” – you may correct me Mr. Clayton: I beg your pardon? Oh, should prevent – Before I make other mistakes, Mr. Clayton, would you please read the sentence?

United States. Subject to the conclusions of the Drafting Committee, the sentence would read: “Nothing in this article shall prevent any right of defence.” Recourse has already been included.

The Chairman. That comes very close, or is practically the same sentence as in the old draft but without the words “recourse or”. Is that clear? So we have the following additional sentence. You will find the sentence at the very end of paragraph 2 in the basic text. That sentence starts: “Nothing in this article shall prevent any right of defence.” Delete “recourse or”. And that sentence should be added at the end of the Dutch proposal. Mr. Clayton, you could accept the inclusion of the word “proportionate” before share?

United States. I think so. I said “subject to the conclusions of the Drafting Committee”. In principle, we accept, but it is a matter of drafting.

The Chairman. The amended text as proposed by the Dutch delegation is under consideration. The next speaker is Spain.

Spain. Thank you very much, Mr. Chairman. My delegation has no problem at all in accepting the text proposed by the distinguished delegation of the Netherlands, as amended. Nevertheless, in the text we have before us in W.P.5 in Spanish in the first line it says “be made by all property interests in proportion to their salved value”. For the same reason as that in (a) of this article, the text in the Spanish version only refers to property, whereas we should also say vessel and property because both are contributing values. It would appear that in English however this problem does not exist, because an expression is used which would cover both the vessel and the property, whereas the Spanish version would only cover property and therefore is not correct. We believe that this is only a problem of translation and this is something that certainly the Drafting Committee can have a look at, as it would appear that the English version is correct and the Spanish version is not. If this is not considered to be a Drafting Committee problem, we would then be forced to present a new amendment to the joint proposal or the proposal put forward by the Netherlands, as amended. Thank you, Mr. Chairman.

The Chairman. I will now ask the Chairman of the Drafting Committee, Mr.
Sturms, whether he would be ready to accept that work to bring the Spanish text into line with the English text? Mr. Sturms, you have the floor.

The Chairman of the Drafting Committee. Thank you, Mr. Chairman. I don’t know the Spanish text on this point. It’s not meant to bring any substantial change. It is always acceptable for the Drafting Committee to see whether the texts in all languages are identical. On the other hand, I do not know where the difficulty lies here because on purpose the Legal Committee use the words “property interests” which is supposed to include all interests including the vessel. When we would change these words, we would have probably difficulties in drafting, and we would try to replace the words “property interests” by “vessel or other property”, it would have considerable consequences. So my plea is to stick to the English text in this respect and to try to find a solution with the Spanish text but not to try to improve the English text any way. Thank you.

The Chairman. The Spanish delegation has not spoken against the English text and not against the substance. He has only asked to bring in line the Spanish text with the English, that seems to be the only task of your Committee, Mr. Sturms, and then it is acceptable. I thank you. Well is there any other speaker on the Dutch proposal or can we proceed to an indicative vote on that proposal as amended. Do you accept an indicative vote? The amendments are clear or are there any questions on the amendment? Please raise these questions now. No questions. Fine. Who is in favour - sorry, Ireland. You have the floor.

Ireland. Thank you Mr. Chairman. You said either speak now or forever hold one’s peace. I remember reading something this morning but unfortunately I do not have that at my finger tips, but it is a proposal on general average and I wonder if this proposal had regard for the, I think it is the reference to general average in a United States working paper, a proposal that we would leave all matters of general average for a new conference. I am only saying this now, Mr. Chairman, for fear that it may have had relevance and the time would be passed. Thank you.

The Chairman. Yes, may I ask whether you are going to propose that we postpone a decision on this article?

Ireland. Mr. Chairman if it is material then perhaps we should postpone it but it could be that I misread the situation and it is not relevant, but I do not know.

The Chairman. No indicative vote. So we will in any event vote formally on that when all amendments have been discussed. So that at that stage we would have a possibility to check out whether there is a link between another proposal on article 11 or on a resolution on this case or not. I would like to propose that we proceed to this vote, bearing in mind that we have another possibility to look into that link between a proposed resolution and this article, so the resolution has not yet been introduced. Well who is in favour of the proposed article 10, paragraph 2, proposed by the delegation of the Netherlands in working paper number 5 as amended? Who is in favour please raise your cards? Thank you. Who is against that proposal? No delegation against. That is a fine result. The result of the vote is thirty-seven in favour, no delegation against. That means that we have now by this indicative vote replaced article 10, paragraph 2 by a proposal of the Netherlands as amended. We will come back in any event to that when we vote formally on the whole on both articles 10 and 11. Well may I ask now the delegation of Kuwait, whether their proposal is still relevant. I have the impression that the point which it has raised in that proposal is covered by the proposal which we have just adopted. Kuwait.
Kuwait. Thank you very much, Mr. Chairman. There is no need to submit our proposal now since we have just agreed to the proposal from the Netherlands. Thank you very much, Mr. Chairman.

The Chairman. Thank you. One of your concerns was to include the words “salve” and that has been included in the Dutch proposal. So we can live, or you can live with that. I thank you.

ARTICLE 13 PARAGRAPH 1(B) AND ARTICLE 14

CMI Report by the Chairman of the International Sub-Committee Document Salvage 5/IV-80

5. The main implications for a revision of the law of salvage.

The above considerations suggest that legislative measures be adopted in the following areas:

a) The duties of the parties in a salvage situation to take preventive measures (infra III)

b) The modification of the “no cure no pay” principle by the introduction of a new remedy for the recovery of the cost of preventive measures (infra IV).

c) The review of the rules relating to the salvage rewards, particularly with the view of determining compensation for liability-salvage (infra V).

d) Measures affecting the role and scope of salvage contracts (infra VI).

e) The liability of salvors for damage caused during salvage operations (infra VII).

III. PREVENTIVE MEASURES

1. Duties of shipowners

a) Where a ship in danger represents a risk that damage be caused to persons or property outside the ship (third parties), the shipowner shall have a duty to take reasonable measures to avoid the danger or otherwise to prevent or minimize the damage to third parties (preventive measures). In particular cases this duty will arise whenever the third party interest can be considered to be in danger in a sense analogous to the meaning of this term as used in the 1910 Convention art. 1.

b) The shipowner may reject an offer of salvage or prohibit the performance of salvage operations if there is no risk of damage to third parties or if the capability of the salvor is inadequate.

c) These principles should apply mutatis mutandis to the master of the ship.

2. Duties of the cargo owners.

Where the cargo of a ship in danger represents a risk that damage be caused to persons or property outside the ship, a subsidiary duty to take preventive measures may be imposed on the cargo owner. (...)

IV. THE COST OF PREVENTIVE MEASURES

1. A new remedy

a) The principles of “no cure no pay” (1910 Convention art. 2) should be modified by the introduction of a new remedy by which the salvor may recover the cost of preventive measures (cf. supra III.1.a). This remedy must be distinguished from the
salvor’s right to a salvage reward, which should remain subject to the principles of “no cure no pay” (infra V).

b) For this purpose cost of preventive measures shall include further loss or damage caused by such measures, but the right of recovery extends only to the cost of measures reasonable under the circumstances, cf. the language contained in the 1969 Oil Pollution Liability Convention art. 1(6) and (7).

c) The new remedy should be so defined that to the extent possible one exploits in the first place any right of recovery for cost of preventive measures under the existing law. Rights of recovery specifically allowed under the salvage convention should have a supplementary role, see infra paras. 2-5.

2. Preventive measures in respect of oil pollution.
   a) The liability system for oil pollution contained in the 1969 and 1971 Conventions allows recovery of the cost of preventive measures. Since the 1969 Convention does not specify who may be entitled to claim under the Convention, it is left to national law to determine who may act as claimant.

   In some countries public authorities or even other third parties are considered to be proper claimants for cost of preventive measures incurred, and salvors are considered to be such third party. In other countries the position of salvors may not be equally certain. In order to remove any doubt existing, the right of the salvors to recover the cost of preventive measures under the 1969 and 1971 Conventions, can be recognized in the new salvage convention in the form of a provision by which the contracting parties to the salvage convention undertake to give the salvors the status of claimants.

   b) This solution may also be used vis-à-vis other systems for compensation in cases of oil pollution.

   c) In a salvage situation preventive measures as defined supra III.1.a cover in the first place measures taken to avoid the danger before damage resulting therefrom has been caused to ship, cargo or third party interests. At first glance, the term “preventive measures” of the 1969 Convention art. 1(7) seems to be narrower, referring to measures taken after an incident has occurred. However, this is not so. In art. 1(8) “incident” is defined as an occurrence causing pollution damage, thereby suggesting that a spill of oil must have taken place. However, the term “pollution damage” as defined in art. 1(6) includes not only damage caused by the spill of oil, but also the cost of preventive measures. This means that there is also an “incident” when occurrence has caused preventive measures to be taken. It is submitted that the salvage situation itself is such an occurrence, viz. the fact that the ship has come in danger and that measures taken subsequently in order to prevent spill of oil are within the meaning of art. 1(6)-(8) of the 1969 Convention.

3. Hazardous substances other than oil.

   The new salvage convention should foresee that a new convention dealing with hazardous substances other than oil may be adopted. To the extent that this convention will impose liabilities for cost of preventive measures beyond the liability of shipowners under the 1976 Limitation Convention, the solution suggested above para. 2 may be used also with respect to such future convention.

4. The remaining cases.
   a) For cases which may not be covered by any other regime the salvage convention should provide that the salvors are entitled to recover the cost of preventive measures from the shipowner.

   b) This claim may be subject to global limitation under the 1976 Convention (or...
other rules), cf. art. 2(1)f, cf. also art. 1(3) 2nd sentence. However, this does not apply if the claim is for remuneration under a contract, cf. art. 2(2) in fine, e.g. a salvage contract not based on the principles of “no cure no pay”.

In this context it should also be noted that “claims for salvage” are excluded by art. 3(a), but it may be argued that this provision applies only to salvage rewards.

5. Excess fund.
   a) Cost of preventive measures may be incurred in cases where the marine accident has also caused extensive damage to persons or property. The right of recovery under regimes contemplating limitation of liability may in such cases be only partial. To ensure that this does not affect the willingness of salvors to engage in the salvage operation and take the measures required, the salvage convention should determine an amount to be available for recovery of the unpaid portion of cost of preventive measures (excess fund).
   b) In order to ensure speedy recovery the salvors may be given the right to claim immediately against the excess fund, leaving it to a recourse in e.g. the global fund, cf. the 1976 Convention art. 12(2) and (3).
   c) Such an excess fund may be insured by shipowners, for instance in connection with other liability insurance.

6. Direct action.
   a) Under the 1969 and 1971 Conventions direct action against the insurer is available to the salvors.
   b) With respect to other cases, the salvage convention should provide for direct action in cases where the shipowner does not on demand put up adequate security for the salvors claim for cost of preventive measures.

Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Art. 3-3. Compensation for Preventive Measures.

1. The salvor is entitled to compensation for preventive measures [taken in respect of a vessel carrying oil as cargo in bulk] even if such measures have had no useful result. The compensation shall be fixed so as to give the salvor a fair rate for equipment and personnel used as well as reimbursement for expenses reasonably incurred.

   Note: The use of the words employed in the second sentence is not intended to shut out the notion that, in view of the efforts of the salvor, “a fair rate” may, at the discretion of the court, be fixed higher than an ordinary daily rate.

2. When fixing the amount of such compensation the use of equipment or personnel or expenses incurred by the salvor shall not be taken into account to the extent that adequate compensation has been given by any reward according to art. 3-2.

3. The owner of the vessel is liable for the compensation due under this article. However, this shall not prejudice any right of recourse of the owner against any third parties who may be liable to pay compensation in respect of such preventive measures.

4. Contracting States shall adopt the measures necessary to give the salvor the right to avail himself of any remedy in respect of preventive measures provided for in international convention or national law.

Draft prepared by the British Maritime Law Association
Document Salvage-12/IX-80, Annex II

Art. 3-2. The amount of the salvage reward
(i) The amount of the salvage reward shall be fixed with a view to encouraging salvage operations, according to the circumstances of each case, taking into account the following considerations:

(a)-(h) ........................................................................................................

[(i) endeavours made by the salvor while performing his duty under Article 2-2(i) to avoid or minimise damage to the environment in accordance with Article 2-2 (iii).]

Art. 3-3.-3-4. .................................................................

Art. 3-5. Reimbursement of salvor’s expenses

If the salvor attempts to save a tanker laden or partly laden with oil and, without negligence on his part or that of his servants or agents, he fails to earn a salvage reward or earns a reward or rewards amounting to less than his expenses, the Court may order the owner of the vessel to reimburse the salvor for his expenses, subject to deduction therefrom of any such lesser reward or rewards earned by the salvor.

Report by the Chairman of the International Sub-Committee

Document Salvage 5/IV-80

Draft submitted to the Montreal Conference

Document Salvage-18/II-81

Art. 3-2. The amount of 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 presented below:

a) ........................................................................................................

b) the skill and efforts of the salvors in avoiding or minimizing damage to the environment,

c)-i) ........................................................................................................

Art. 3-3. Reimbursement of salvor’s expenses and entitlement to a special reward

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 might 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.

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. “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.

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.

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.

(131) Supra, pag. 318.

(132) This draft differs so significantly from the two previous drafts that it is not possible or convenient to indicate the changes.
Article 3-2. The amount of 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 skill and efforts of the salvors in preventing or minimizing damage to the environment,

   b) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Article 3-3. Reimbursement of salvor’s expenses and entitlement to a special reward

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 might occur, or to minimize such damage, the salvor is 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 payable by the owner of that vessel equivalent to the salvor’s expenses as herein defined.

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. 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.

3. “Salvor’s expenses” for the purpose of paragraphs 1 and 2 above of this Article means the out of pocket expenses reasonably incurred by the salvor in the salvage operations and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, together with the expenses reasonably incurred by the salvors in the salvage operations taking into consideration the criteria set out in paragraph 1(g), (h) and (i) of Article 3.2.

4. Provided always that any recovery under this Article the total compensation under this Article shall be paid only if and to the extent that it exceeds any sums payable to the salvor under Article 3-2.

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

6. Nothing in this Article shall affect any rights of recourse on the part of the owner of the vessel.

CMI Report to IMO
Document LEG 52/4-Annex 2

Art. 3.3. Special compensation

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.

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 2 above, but in no event shall it be more than doubled.

Art.3-3 gives the salvors new remedies in cases where salvage operations in respect of ship and cargo are carried out also in order to prevent damage to the environment occurring. In such cases the salvor is entitled to recover from the shipowner firstly expenses involved as defined in Art. 3-3.3 and secondly an additional special reward contingent upon actual avoidance of such damage. The reward is to be fixed taking into account the criteria enumerated in Art. 3-2.1, but shall not exceed the salvor’s expenses. This means that the total compensation under Arts. 3-3.1 and 3-3.2 will not be more than twice the salvor’s expenses.

In cases 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.

Art. 3-3 together with Art. 3-2.2(b) must be considered as part of a compromise. The shipowner’s willingness to accept the funding of the compensation and to accept the broad definition of salvor’s expenses in Art. 3-3.3 is clearly connected with the salvors’ acceptance of the limit in Art. 3-3.2 and his acceptance that he will not insist on any rules in the new convention as to who should be liable for the rewards payable under Art.3-2. Equally, the fact that these provisions should not be made mandatory was an important part of the compromise.

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 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.

The special reward according to Art.3-3.2 is only payable if a useful result has been obtained. The reward cannot 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 were fixing a traditional salvage reward under Art. 3-2.

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.

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.

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.

This rule provides that the payment under Arts. 3-3.1 and 3-3.2 shall be made only if the award under Art. 3-2 is insufficient to meet the expenses of the salvor under Art. 3-3.1 and any increased compensation under Art. 3-3.2. An example may serve to illustrate more clearly the relationship between Arts. 3-2 and 3-3: If the property salved is valued at $100,000 and a property award of $10,000 is made under Art. 3-2 and expenses of $5,000 have been incurred, there would be no separate compensation under Art. 3-3. However, if the expenses incurred amount to, say $12,000, then $2,000 will be recoverable under Art. 3-3.1. Further, if an increased compensation is awarded under Art. 3-3.2 the same pattern will be followed. For example, if the expenses of $6,000 were incurred under Art. 3-3.1 and increased compensation of $5,000 awarded under Art. 3-3.2, making $11,000 in all, then, assuming an award under Art. 3-2 of $10,000 against the property salved of $100,000, $1,000 would be payable under Art. 3-3.

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.

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 Art. 3-3.5 will increase the level of caution of the salvor’s in relation to damage to the environment.

3-3.6. Nothing in this Article shall affect any rights of recourse of the part of the owner of the vessel.

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.

**Report on the Work of the 52nd Session (Document LEG 52/9)**

73. It was recommended that this Article be examined to ensure that double recovery would not be possible through a salvage award and compensation under the 1969 CLC and 1971 Fund system.

74. A proposal was made by the observer representative of the International Salvage Union that sub-paragraph (b) should read “the skill and efforts of the salvors in salving the vessel, property and life, and in preventing or minimizing damage to the environment”. An amendment should also be made to paragraph 2 to specify that the reward would be “exclusive of any interest and recoverable legal costs that may be payable thereon”.

75. With respect to Article 3-3.1, dealing with compensation by the shipowner, one delegation questioned why the cargo should not also contribute to compensation. One answer suggested was that the shipowner was the contracting party and that no
liability rested on cargo in international law. Another answer was that an arrangement had been made in connection with LOF 1980 for the reward in question to be provided by mutual insurance coverage and this was reflected in the draft convention.

76. Two further questions were posed, one whether 3-3 should not also cover an operation which involved protection of the environment but not salvage of a vessel or its cargo, and the second whether 3-3.3 should not include a fair return on capital, in particular the salvo’s ship. The CMI representative considered that the first question was answered by the definition in Article 1-1.1 and the second in Article 3-2.1(h) and (i).

77. It was noted that in contrast to Article 3-3 which stated that the shipowner is liable for the special compensation, Article 3-2 did not specify who is liable to pay the reward, which tacitly is left to national law to determine. In this connection, it was suggested that this should be specifically stated in Article 3-2, with a provision whereby courts would fix a total reward as well as the apportionment between shipowner and cargo interests of the reward, including that part of the reward ascribed to the prevention or minimizing of damage to the environment under Article 3-2.1(b).

78. The lack of clarity of the provision for special compensation was criticized by some delegations, in particular 3-3.4. The special compensation was a second reward for protection of the marine environment, but how that was to be paid was unclear. The distinction between the reward for the salving of goods and property and the special compensation for the preservation of the marine environment should be clarified, and criticism was levelled at the concept of the level of special compensation being dependent on the value of property salved. The two elements should be independent. If nothing were salved the salvo would still be reasonably rewarded with a bonus for the protection of the marine environment.

79. The representative of the CMI expressed sympathy with efforts to simplify the system. However, he stressed that the solution reached at the Montreal Conference reflected a delicately balanced compromise and urged that it be maintained as much as possible.

ANNEX
Statement by Mr. Bent Nielsen, representative of the CMI, on the CMI Draft Convention.

2. The “Safety-net”
These new roles centre around the situation, experienced in some tanker accidents, whose characteristics are:
- major salvage operations are urgently needed to prevent or minimize pollution damage;
- the distressed vessel’s condition is so bad that there is only very little, if any, prospect of successful salvage of the ship and its cargo, and
- on the other hand, the potential salvo’s possibilities to prevent pollution damage are good, e.g. by refloating a grounded tanker and towing it some hundred miles off the coastline before it sinks.

In such a situation, the existing rules of salvage as contained in the 1910 Convention are clearly inadequate, because they are based on the principle that the salvo is only paid if he saves the ship or its cargo.

Therefore, under the present regime, the potential salvo would do nothing to save the tanker in my example. He cannot be expected to invest heavy costs in the refloating and the towing if he is not paid. He will need a contract, which secures that he is paid for his services, and while he is waiting for this the tanker’s situation may deteriorate so much that the pollution damage can no longer be avoided.

To cope with such problems the CMI have proposed a so-called “Safety-net”, which is contained in Article 3-3.

Under Article 3-3.2, the salvo is guaranteed the payment by the owner of his costs, provided only that the vessel by itself or its cargo threatens damage to the environment.
This payment is secured to the salvor, even if he has no success, not only with respect to the salvage of property, but also with respect to damage to the environment.

However, under Article 3-3.2, if the salvor actually prevents or minimizes damage to the environment, he is entitled to a bonus on the top of his costs, again paid by owners. This bonus cannot exceed the costs incurred; in other words the ceiling is twice the expenses which again in Article 3-3.3 are defined very broadly.

3. The “enhancement”
Now, fortunately, a distressed ship which threatens damage to the environment will much more frequently be salved with little, if any, environmental damage. Also, in such a situation, the salvor will receive a bonus for saving the environment. This is said in Article 5-2(b) of the draft, which gives the salvor a right to an “enhancement” for, as it is said, “the skill and efforts in preventing or minimizing damage to the environment”.

It should be noted that this is one of a number of elements to be taken into account when the traditional salvage reward for successful salvage of ship and cargo is fixed, and that the “enhancement” therefore is not separately quantified. It is just a part of the total lump sum awarded.

4. No express rule as to who pays “enhancement”
While the “safety-net” compensation is payable by owners, the draft is deliberately silent as to who should pay the traditional reward, including any “enhancement”. By doing so CMI have tailored the draft in such a way that it fits together with the so-called “market agreement”.

This is an agreement made between most of the world’s marine insurers that the ships’ liability insurers - the P and I Clubs - shall fund the “safety-net” compensation while the property insurers, which are the hull and cargo insurers, shall fund the “enhancement”.

The agreement is in force already because the “safety-net”/”enhancement” system is established already in standard salvage contracts; and the agreement, it is reported, works satisfactorily. For further details I refer to the CMI report (LEG 52/4, Annex 2, pages 25-24).

5. The rules are not mandatory
As mentioned in the report (page 6), it was discussed within the CMI whether these rules relating to prevention of damage to the environment should be mandatory. The main point was that in the situation I described, where the salvor is able to protect the environment, but not the ship and cargo, the parties should simply not be allowed to negotiate other solutions with the resulting risk of losing valuable time. The “safety-net” should be the only system permissible.

However, a large majority within the CMI strongly felt that it would be dangerous to put such limits on contractual freedom.

The “safety-net” is only one of several systems of compensation in this situation. The parties will often have time to negotiate and to find solutions, which in given cases may be much better instruments to avoid environmental damage.

6. The “Montreal compromise”
All the subjects I have briefly described are linked closely together and were parts of the compromise which was arrived at after a very long and difficult debate within the CMI. The main elements of the “Montreal compromise” are mentioned in the report (page 26, last paragraph), and are the following:
- Acceptance that owners should fund the special compensation payable under Article 3-3.
- Acceptance of the very broad definition of salvors’ expenses contained in Article 3-3.
- Acceptance that there shall be no rule in the convention as to who should be liable to pay the rewards payable under Article 3-2.
- Acceptance of the limit fixed in Article 3-3.2 that the total compensation under Article 3-3 must not exceed twice the expenses of salvors.
- Acceptance that the rules should not be mandatory.

The commercial parties having interest in salvage were all represented at Montreal and during the work of the CMI in the period before. Shipowners, insurers, oil companies and in particular P and I Clubs and salvors. At the national level in the national Maritime Law Associations they have also voiced their feelings.

For a long time it appeared as if it would be impossible to find solutions which all commercial parties could approve. However, the compromise was finally found.

7. The “Montreal compromise” still stands
During the last months we have tried informally to clarify if in the three years since Montreal any of the commercial parties have changed their minds, and I am happy to report that this does not seem to be the case.

The parties still support the compromise, which stands, provided the substance of all its main elements are retained. No one seems particularly happy, which shows the fine balance of the solution.

8. Conclusion

Therefore, if the basic elements of the “Montreal compromise” are made part of the final convention, it will find a very widespread support which again, I believe, will greatly facilitate the life of the final convention and the prospects of its speedy and wider international implementation.

I have in this opening report only dealt with a few important subjects and feel certain that many delegations have points they wish to have clarified. We shall be happy to reply to any questions.

Thank you.

Report on the Work of the 54th Session (Document LEG 54/7)

47. The Committee considered a submission by the Federal Republic of Germany (LEG 54/WP.1), setting out examples to illustrate the assessment of a salvage reward under these two articles. That submission is reproduced in the annex to this report.

---

(133) Document LEG 54/WP.1
Consideration of the question of salvage, in particular the revision of the 1910 Convention on Salvage and Assistance at Sea, and related issues
Submission by the delegation of the Federal Republic of Germany
The examples given in the annex are intended to illustrate the assessment of a salvage reward under Articles 3-2 and 3-3 of the CMI draft convention on salvage.
Salvage operations carried out in respect of a vessel which by itself or its cargo threatened damage to the environment

A. Salvage operations have had no useful result with respect to the salvage of property; however, by his salvage operations the salvor has prevented or minimized damage to the environment:

3-1.2 no reward
3-3.1 special compensation 10.000 $
3-3.3 equivalent to the salvor’s expenses
3-3.2 increased compensation 5.000 $

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 value of the property salved 14.000 $
3-3.1 special compensation equivalent to the salvor’s expenses 10.000 $
3-3.2 increased compensation 5.000 $
3-3.4 reward recoverable under 3-2 14.000 $
1.000 $

---
48. The delegate of the Federal Republic of Germany, in introducing the document, stated that the examples given showed that assessment of the reward for a salvor might not always ensure a fair and adequate remuneration. He pointed out that the first example dealt with a situation in which successful measures had been taken to protect the marine environment from damage without any useful result as far as salvage of property was concerned, while in the second illustration, success had been achieved both in protecting the environment and in the salvage of property. Yet the amount received by the salvor had been the same in each case.

49. Such an anomaly might lead a salvor to claim reward for measures to prevent environmental damage under another convention, such as the 1969 Civil Liability Convention or the 1971 Fund Convention in the form of “preventive measures” under those treaties. It was the view of the Federal Republic of Germany that a salvor should not be entitled to reward for such expenses under articles 3-2 or 3-3 of the draft salvage Convention, if and to the extent that he had been compensated in respect of such expenses under the other conventions. The delegation, therefore, suggested that an appropriate provision should be included in the Salvage Convention to prevent such double remuneration.

50. The observer of the CMI explained that the illustrations by the Federal Republic of Germany correctly described how the two articles were intended to be applied in the situations outlined in those illustrations. It should be remembered, however, that situations where property was salvaged but its value did not exceed the compensation payable under article 3-3,1 and 3-3,2 would be unusual. In the typical situation the value of the salvaged property would exceed the compensation under 3-3,1 and 3-3,2, and in such cases the disadvantages illustrated by the example in the working paper (LEG 54/W.P.1) did not exist. The CMI agreed fully that double recovery should not be permitted and is of the opinion that this is made sufficiently clear in the present text of the draft Convention.

51. The Director of the International Oil Pollution Compensation Fund (IOPC Fund) was of the opinion that salvors could claim compensation under the Civil Liability and the Fund Conventions in respect of costs of preventive measures. However, he felt that an attempt to distinguish between prevention of damage to the environment and “pure salvage” in the salvage Convention was not likely to succeed. Such a distinction might best be made in individual cases, based on the facts of each case. He agreed that the shipowner should not be able to recover twice for his expenses, but there was a possibility that the shipowner might recover from the Fund what he had paid to the salvor under the terms of the salvage Convention.

52. The Committee considered again a proposal by the delegation of France which had been submitted to the fifty-third session of the Committee (document LEG 53/3/2 and Corr.134). In the view of the French delegation, the proposed provision would avoid the problems raised by the Federal Republic of Germany.

(134) Document LEG 53/3/2 and Corr. 1
Proposal by the Delegation of France
Amendments to article 3.3 of the CMI draft convention*
Art. 3.3 Special Compensation
1. A salvor who has rendered assistance to a vessel which, by itself or its cargo, caused or threatened to cause damage to the environment and who, in addition to measures to save the vessel and its cargo, has carried out specific preventive measures to protect the environment, shall be entitled to special compensation on that account.
53. The French delegation explained that its proposal would provide special compensation to the salvor whether or not he was entitled to the reward provided for under article 3-2, and this special compensation would arise when specific preventive measures to protect the environment had been carried out. Under paragraph 5 of the proposal additional compensation would be provided over and above the compensation mentioned above, taking account of the nature and scale of the environmental risk, the promptness of the service given and the efficacy of the equipment used. There was a “bonus for success” provided in paragraph 6 of the proposed provision.

54. In response to questions about paragraph 7 of its proposal, the delegation of France explained, that the “value of the property salved” was not intended to be determined by reference to the property remaining at the termination of the salvage operation, but rather by reference to the value of the ship and cargo at the outset of the salvage operation. The delegation stated that in its view there was need for a maximum ceiling to be set in this regard. In this connection some delegations pointed out that where a ship and cargo with high values had been salved, the provision might result in compensation which would be unreasonable having regard to the efforts actually expended by the salvor to achieve success in the operation.

55. Some delegations also noted that paragraph 7 in fact maintained a link between salvage of property and salvage to protect the environment although the French delegation had suggested that its proposal was intended to create two independent awards.

56. Other problems arising from the proposal were pointed out by delegations. One delegation considered that the distinction between remuneration on a traditional basis and the special environmental compensation, as proposed by the French delegation, would mean that article 3-2,1(b) should be omitted. It was also stated that the French proposal did not make clear who would be responsible for the special compensation.

2. Such special compensation shall be payable to the salvor, whether or not he is entitled to the reward provided under article 3.2.

3. In order to receive this special compensation, the salvor must establish that the preventive measures to protect the environment were not taken solely in order to salve the vessel and its cargo. The reasonableness of these preventive measures must be assessed in the light of the environmental risk which has been caused, and the cost of the damage which has been prevented or minimised.

4. The salvor shall be entitled to the reimbursement of reasonable expenditure incurred in respect of preventive measures taken in accordance with the provisions of article 3.3.1. Such expenditure on preventive measures shall be subject to the shipowners’ limitation of liability.

5. In addition, the salvor may receive compensation taking into account the nature and scale of the environmental risk caused, the efforts which have been made, the promptness of the service rendered and the efficacy and value of the equipment used.

6. If the salvor has prevented or minimised the environmental damage as a result of the preventive measures undertaken, the compensation he receives may be increased in the light of the success obtained.

7. In no circumstances may the special compensation exceed twice the value of the property salved.

* delete Art.3.2.1(b)
57. A number of delegations remarked that it would in most cases be extremely
difficult to qualify actions taken in a salvage operation as being for protection of the
environment as opposed to the protection of property.

58. One delegation considered that the responsibility of the shipowner should be
limited in respect of special compensation in this draft, as was done in the 1969 Civil
Liability Convention. For this purpose appropriate limits should be inserted in articles
3-3.2 and 3-3.4. The delegation also noted that part of this special compensation was
to be paid by the owners of any cargo which was dangerous to the environment; and
it therefore proposed that an appropriate provision to that effect should be inserted in
article 3-3.1 (LEG 54/WP.2).

59. Many delegations were opposed to the suggestion to establish limits by
reference to limitation of liability under any convention or national regime. One
delegation considered it wrong to fix such limitations, and felt that any such provision
would be difficult to implement and might in fact become irrelevant by being
disregarded by courts and tribunals. The delegation noted in this connection that the
1976 Limitation Convention excluded claims for salvage and there were no provisions
in the 1969 Civil Liability Convention for property salvage. In the view of this
delegation, the draft Convention was intended to encourage salvors and it would be
inadvisable and discouraging to salvors to attempt to fix limitations on the rewards
which should be given to salvors.

60. It was generally accepted that it was not feasible to attempt to quantify the
damage averted by successful salvage, and determine the level of the award on such
quantification.

61. There was general agreement that the illustrations contributed by the Federal
Republic of Germany were helpful to an understanding of the draft CMI Convention,
but there were differing views on whether the document demonstrated the need for
any specific changes in the draft. Some delegations considered that the figures given
in the illustrations were too low and could not, therefore, give a useful guide as to the
effect which the provisions would have on normal salvage situations. Most delegations
favoured measures to prohibit double recovery of expenses, although it was agreed
that the means of doing so required further study. (…)

63. One delegation also noted that cargo vessels, unlike tankers which were
dedicated to specific cargoes, could carry both dangerous and non-dangerous goods.
The question was whether it was reasonable that the non-dangerous cargo (the
“innocent cargo”) was required to bear part of a reward which is awarded for the
prevention of damage which could not have been caused by that cargo. (…)

65. The observer of the International Chamber of Shipping (ICS) said that the
ICS was content with the LOF 80 solutions which were working. They would wish
them maintained and salvors encouraged to assist all ships in distress. The ICS
observer referred to the proposal contained in document LEG 54/4/6 to add a
sentence to article 3-3.2 stating that awards under that paragraph should be paid by
the owners of the property salved. Several delegations supported the proposal of the
ICS. (…)

67. One delegation observed that these problems demonstrated the need to
accept that any salvage system would have to accommodate some imperfections. The
CMI draft, based in part on LOF 80, had the merit of being regarded as workable by
the industries concerned, including the insurance market. The solutions proposed in
the draft did not depart too radically from the tradition of no-cure-no-pay and they did provide suitable incentive to salvors, including the added incentive to preserve and protect the marine environment. Under the draft a salver would receive his expenses in any event, and this would prove to be an adequate incentive. But this delegation believed that the special compensation should be the responsibility of the shipowner. There was a link between the special compensation and the preventive measures of the 1969/1971 system and, for consistency's sake, the shipowner should continue to be the person responsible for paying for these measures. The existing agreement concerned with LOF 80 provided a compromise regarding the payment for environmental salvage which was reached in the insurance market. Such an arrangement could equally ensure the success of the CMI draft Convention.

68. One delegation stated that the special compensation should not go beyond the level necessary to provide such incentive. Where the salvage of the vessel or property had not succeeded, the amount of special compensation should be limited to a suitable figure. In its view, the present level under 3-3.2 was too high. It suggested that a suitable figure should be more carefully examined or discussed among the interested parties, including cargo interests, and that, at this stage, the word “doubled” should be maintained in square brackets.

69. Some delegations considered that the question of “innocent cargo” should be looked at more closely. It might prove difficult to distinguish between cargoes in terms of their capacity to cause damage. It was also pointed out that the provisions of LOF 80 on environmental salvage were focused on carriage of oil; accordingly, the implications for ships transporting other cargoes might be different, particularly as regards insurance coverage.

70. Many delegations favoured the approach in the CMI draft articles 3-2 and 3-3 and regarded it as a sound commercial compromise. While they shared the concern about double recovery of expenses, some of these delegations considered that this matter should not be regulated in the draft Convention but could be left to courts or to arbitrators.

71. Some delegations considered that the French proposal merited further study, and the Committee decided that it should be included in the documentation of the next session of the Committee.

72. The observer of the IUMI informed the Committee that the question of which interests should contribute to the cost of salvage operations to prevent environmental damage under the draft Convention was under serious study. The CMI Montreal draft was three years old and the principle of the arrangement which had been devised for LOF 80 in respect of oil tankers was now being looked at in relation to ships carrying other cargo. Additionally the funding agreement of LOF 80 had not been accepted unanimously by marine insurers. In the context of insurance the cargo owner could benefit from salvage, but there might also be situations in which “innocent cargo” was abandoned as a result of an incident caused by other cargo. Since the IMO work on the draft HNS Convention began, there had been awareness of the role of cargo interest in such situations as well as concern about the problems which arose from potential conflict between two conventions dealing with salvage in respect of the carriage of hazardous and noxious substances. IUMI would meet in September 1985 and hoped to present its views to the Committee at the October session.

73. The observer of the International Group of P and I Associations invited the Committee to note that concepts such as “liability” and “innocent cargo” were of no
significance in salvage. In arriving at traditional salvage awards arbitrators took no notice of defects in ship or cargo and merely shared the award in proportion to salved values. Enhanced awards could and should be shared in the same way. Another point was that the object of LOF 80 was to provide a purely commercial compromise putting salvors in a more secure position. LOF 80 was confined to salvage of tankers carrying oil. After examining closely the merits of separate awards in relation to damage to the environment the CMI had decided to adopt the LOF 80 formula and widen its scope. The P and I Clubs were not, in principle, in favour of funding the safety net in article 3-3 which generally arose from the nature of the cargo, however they had accepted the compromise in the CMI draft and were under the impression that the insurance market generally would agree to extend the LOF 80 arrangement. The P and I Clubs would seek more formal undertakings as to continuation of the LOF 80 arrangements and report to the next meeting of the Legal Committee. With regard to the theoretical difficulty of dealing with enhanced awards in general average, it was suggested that if adjusters could not agree to adjust such awards it might be necessary to consider revising the York/Antwerp Rules.

74. The President of the CMI informed the Committee that the solution adopted in Montreal was based on the agreement which had been arrived at between all parties concerned with the assistance and co-operation of the CMI itself. It is the sincere hope of the CMI that the agreement could stand, and that the delicate balance which had been arrived at will not be disturbed. The President of the CMI, however, informed the Committee that he had deemed it convenient to approach immediately the President of IUMI, with whom he had tentatively arranged a meeting in the near future, with a view to considering the problems which had arisen and to hopefully clarify them without changing the existing draft. In any event, it was the primary wish of the CMI to ensure that any new international legislation might be such as to offer acceptable and well balanced solutions.

75. The observer of the Friends of the Earth International (FOEI) considered that the salvors reward for measures to protect the environment should be a basis for enhancement of the award irrespective of the property salved. FOEI would not agree to the link to this effect.

76. The OCIMF observer stated his belief that (i) both the enhancement of the award under article 3-2,1(b) and the special compensation under article 3-3,2 should, by the terms of the Convention be separately stated by the forum granting the salver the award or special compensation; and (ii) a special compensation equal to double his expenses was not warranted and the concept embodied by common agreement as to its commercial equity in Clause 1(a) of Lloyd’s Standard Form of Salvage Agreement (1980) should apply, viz. expenses plus a 15% profit. As regards the distribution, OCIMF believed that any enhancement of an award, or the special compensation awarded for preventing damage to the environment, should be for the account of the owner and not be subject to general average apportionment, without prejudice to the owner’s right of recovery under applicable conventions, or domestic law; and it considered that the officers and crew of the salving vessel should not be entitled to any special compensation in the event that the operation prevented damage to the environment, regardless of whether property had been salved or not.

77. The observer of the International Association of Independent Tanker Owners (INTERTANKO) said that in his view IUMI overstated the problem of extending the LOF 80 arrangements to cargoes other than oil. INTERTANKO supported the CMI draft. (…)

---

**Article 13 - Paragraph 1 (b) and Article 14**

---
79. The Committee noted the statement on behalf of the CMI and IUMI and by other observers and recognized the value of firm agreement among the most interested bodies commercially involved.

80. An observation was made by the ISU that paragraph (b) of article 3-2,1 referred to “the skill and efforts of the salvor in preventing or minimizing damage to the environment” but did not refer to such “skill and efforts” in respect of the saving of life or the salvaging of the vessel or property. ISU also proposed that in 3-2,2 it should be made clear that the reward would be exclusive of interest and recoverable legal costs payable thereon. (…)

87. In respect of paragraph 1 of article 3-3 the observer for ISU pointed out that the draft text, by making the payment of a special compensation dependent on the carrying out of actual salvage operations, did not cater for the situation where a potential salvor proceeded to a casualty with the intention of lending assistance but, before carrying out salvage operations, was ordered to tow the ship away and sink it in order to protect the environment. The ISU felt that, in such a case, the salvor should still be entitled to special compensation. The observer, therefore, proposed the insertion of the words “or any other operations made with a view to preventing or minimizing damage to the environment” after the words “salvage operations” in paragraph 1. Most delegations were opposed to this suggestion. It was pointed out that the inclusion of cases such as the one outlined by the ISU would fundamentally alter the concept and the scope of application of the draft Convention. The Convention would then become applicable even in cases where there was no salvage at all. One delegation, however, was of the view that it would be appropriate for the Convention to deal with such cases.

88. In respect of paragraph 2 some delegations felt that it was somewhat excessive to allow for a doubling of the special compensation payable to the salvor who had, by his salvage operations, prevented or minimized damage to the environment. The observer for the CMI recalled that this level had been set at Montreal after lengthy discussions and formed an essential part of an overall compromise.

89. In response to a query regarding the last phrase of paragraph 3 (“.. taking into consideration the criteria set out in paragraph 1(g), (h) and (i) of article 3-2.”) the observer of the CMI explained that the drafter’s intention of the provision was to ensure that the rate for equipment and personnel used would be appropriately marked up where a professional salvor was engaged in salvage operations. The reason for this was that such salvors had to maintain a constant state of readiness and had to have special equipment in order to be able to lend assistance more promptly; this resulted in increased standing costs and overheads for professional salvors. It was also emphasized that such increased state of readiness or special equipment would in most cases be of use only in a limited number of urgencies; while it would not be of noticeable benefit to the salvor in his normal day-to-day operations.

Report on the Work of the 56th Session (Document LEG 56/9)

Article 12. Special compensation

105. The Committee had before it a number of proposals with respect to this article.

(135) Article 3-3 of the CMI Draft was renumbered Article 12 in the consolidated document prepared by the IMO Secretariat.
The Committee began with a general discussion of the mechanism of compensation for salvage operations, as set out in articles 11 and 12 of the draft convention.

106. The Committee heard statements presented by the observers of IUMI and the International Group of P and I Associations (P and I). The text of these statements are reproduced in annexes 2 and 3 to this report.

107. While inviting attention to particular points made in this statement, the observer from P and I Clubs stated that the Clubs had received with satisfaction the information that a large majority of the markets represented in IUMI were prepared to accept the compromise on which the CMI draft was based. The Clubs also continued to support this compromise.

108. The President of the CMI also made a statement with regard to the compromise on which the draft convention was based. He said that it was the tradition of the CMI to give due regard to the views of the commercial interests involved in the matters which it considered; and to arrive at workable, clear and practical solutions which would be of advantage to all interested parties. In connection with salvage, the two main objectives of the CMI in preparing the revision of the 1910 Convention were first to provide adequate inducement to the salvor where the damage to the environment was threatened but there was little prospect of saving vessel or property and second an equitable allocation of the costs which would arise from salvage operations in such cases. The second of these objectives involved the insurance market; and it had been tested with that market where it had largely been found to be sufficiently simple, clear and workable. The CMI considered that it was desirable for the system set out in the draft convention to be maintained as a fair and workable compromise. In this connection another observer of the CMI pointed out that the response to the IUMI's enquiry from insurers indicated that a majority of insurers were satisfied with the CMI solution. The CMI placed great emphasis on the need to keep the main elements of the compromise intact so that there might be no disturbance of the very delicate balance which the compromise had achieved.

109. The Committee noted that it was the responsibility of Governments to adopt a system which would be sound and workable in practice. For this the views and comments of the private, professional and commercial interests would be taken into account, but the final decision would be for Governments. Governments would however have an overriding obligation to ensure that they arrived at international solutions which were both practical and equitable.

110. One delegation referred to the problems which confronted courts and arbitrators in arriving at solutions which were acceptable both legally and commercially. In this context it pointed out that the concept of “enhancement” could be misleading. Judges and arbitrators were not normally required to fix an award and then to supplement that award by fixing an additional one for environmental protection. A rule followed for centuries was that each of the owners involved in the maritime adventure, including the owners of vessel and cargo, would pay pro rata for the salvage. Separate awards for different cargoes were not possible, since it was not always or usually possible to apportion specific expenditure or effort to particular cargoes. It would not be practical to require or expect an arbitrator to add a specific figure to the award that he would otherwise have made. If that were the meaning of “enhancement” it was unrealistic.

111. The observer of the ICS also endorsed the compromise in the CMI draft convention as an acceptable solution. The shipping industry supported the
compromise which was simple and acceptable legally and commercially. However, ICS wondered whether the text was sufficiently clear, in particular with regard to article 11. An essential element of the compromise, as described by the CMI, was that the property interests would respond to claims under article 11. The draft was clear that the shipowner was to pay the special compensation under article 12. Although an overwhelming majority of the insurance interests had indicated approval, the text of article 11 did not set out that element of the compromise with certainty. This question of who should pay could not be left open; otherwise the burden could fall entirely on the shipowner who would be responsible both for the normal award and for the special compensation. Clearly this was not the intent of the compromise. ICS therefore proposed a new text to deal with this problem as follows:

“the reward under paragraph 1 of this article shall be paid by the respective property interests in proportion to the value of the property salved at the time of the completion of the salvage operation and shall not exceed such value.”

This text would be inserted in article 11.

112. The observer from INTERTANKO endorsed the comments of the ICS and supported the text proposed by the ICS.

113. Reference was made in this connection to the existence of two systems for the payment of salvage awards: namely, the cost of an award distributed according to the value of the property salved, with the salvor claiming against all owners thereof, and, alternatively, an award paid to the salvor by the shipowner alone, with the costs of the award distributed among other parties concerned in general average, according to the York/Antwerp Rules. It was noted that arbitrators had indicated that they would not find it possible to treat the “enhancement” separately from the basic award. It was therefore questioned whether it would be better to attempt to solve the matter in the salvage convention or to leave the question for solution in another way, possibly involving the amendment of the York/Antwerp Rules.

114. The Committee then discussed how to divide the remuneration of the salvor (“enhancement”) between the shipowner and the contributing cargo.

115. One delegation considered that before the provisions on special compensation could be applied, there would need to be evidence that dangerous cargo capable of harming the environment was on board the vessel. In salvage operations the award would be arrived at by the normal and usual means, and thereafter the court or arbitrator would be required to assess the special compensation only in cases in which there were environmental considerations. Thus, the only occasion for invoking article 12 would be where a dangerous cargo was aboard the vessel and where special acts of the salvor were required. This delegation regarded it as possible to distinguish the cargo aboard a vessel which was dangerous and would participate in the higher remuneration from those cargoes which were not. As regards the efforts of the salvor to prevent or minimize danger and damage to the environment, this could still be covered in the usual award.

116. Some delegations did not consider that it would be possible to calculate the “normal salvage award” without including the environmental factor and the efforts of the salvor to prevent or minimize damage to the environment. Doubt was also expressed whether it would be acceptable to consider efforts made to prevent or minimize damage to the environment in arriving at a “normal salvage award” under article 11. In this connection one delegation considered that the words “in preventing or minimizing damage to the environment” should be removed from article 11, 1(b).
117. Other delegations disagreed with the idea that measures taken to protect the environment should not be taken into account in assessing the “normal salvage award”.

118. It was suggested by one delegation that article 11 provided no difficulty for courts or arbitrators, since the value of the property salvaged was the whole basis for arriving at an award. All the “considerations” listed in article 11 would be taken into account for any salvage operation by the arbitrator concerned. Hence if the damage to the environment was prevented or minimized it would be one of the factors which the arbitrator would consider in determining the level of the award in each case.

119. The same delegation referred to the possibility of double awards and stated that there should be no possibility of an award for preventing or minimizing damage to the environment if there had been recovery for such preventive measures already. There would be no difference in principle between the salvor and persons who deployed booms to prevent pollution spreading, as preventive measures under the 1969 Civil Liability Convention.

120. The Director of the International Oil Pollution Compensation Fund (IOPC Fund) noted that the relation of the draft convention to other regimes would require attention. First, there was the question whether the salvage operations foreseen in the draft could be compensated under the 1969 Civil Liability and the 1971 Fund Conventions. This question had arisen in the Patmos incident that occurred in the Straits of Messina in Italy. In his opinion, the draft salvage convention covered the contractual link only. The IOPC Fund took the position that salvage operations could be considered as preventive measures under the CLC and the Fund Convention regime only if the primary purpose of the measures taken was to prevent or minimize oil pollution damage. He pointed out that the regime under the Civil Liability Convention and the Fund Convention had been created for the purpose of providing compensation to persons who otherwise would be without adequate compensation. If salvage operations were generally considered as preventive measures it could happen that, in case of major incidents, there would be less available in compensation for the real victims of oil pollution. He confirmed that under the CLC and Fund system only costs of preventive measures were compensated, and accordingly the criteria under that system were different from those used for calculating “normal salvage awards”.

121. With reference to the proposal of the ICS (see paragraph 111), some delegations considered that such a provision would solve the complex problem of distinguishing between costs to be attributed to the salvage of property and protection of the environment. Many delegations, however, referred to the delicate balance achieved in the CMI compromise text and felt that while the ICS proposal had some merits, it needed to be examined further to be certain that it would not adversely affect the CMI solution. In the light of the discussions most delegations agreed that it was best to leave the draft text unchanged. The problems which had been raised could be examined further and the ICS draft might be amended to take care of such problems. The observer from the ISU suggested that the problem might be solved by leaving the question of apportionment for determination by national law.

122. The delegation which proposed that the words “in preventing or minimizing damage to the environment” should be deleted from article 11,1(b) in the draft text, also proposed that the brackets around the preceding words (“in salving the vessel, property and life and”) should be removed. This delegation considered that it would only be necessary to have the phrase in article 12.
123. One delegation, while indicating general support for the commercial compromise underlying the CMI draft, noted the concerns of some cargo owners regarding the requirement to contribute to the property award on the basis of factors relating to environmental protection.

124. Some delegations did not wish the words omitted from article 11, since even the successful salvor might not be given a just reward for preventive action, particularly if the environmental aspect was removed from the considerations in article 11, paragraph 1.

125. It was decided that the proposal to remove words from 11(b) should be examined in the context of the discussions of article 12. (…)

131. The delegation of France explained the proposal in document LEG 55/3 annex 2 which would be further amended to read as follows:

Paragraph 3
“In order to receive this special compensation, the salvor must establish that the preventive measures to protect the environment were not taken solely in order to save the vessel and its cargo but principally for the preservation of the environment. The reasonableness of …….. (the rest without change)”. 

Paragraph 5
In addition, the salvor, whether or not he receives the special compensation provided under article 11, may receive compensation taking into account the nature and scale of the environmental risk caused, the efforts which have been made, the promptness of the service rendered and the efficacy and value of the equipment used. The salvor, if he is not entitled to the compensation provided under article 11, shall nevertheless be able to obtain reimbursement of expenses designed to prevent or minimize damage to the environment”.

132. It was the intention of France that even if no property were salved, there should be compensation if some measures had been taken by the salvor to prevent or minimize damage to the environment. The special compensation would come into play if the salvor had taken preventive measures to protect the environment not solely in order to save the vessel and its cargo but “principally for the preservation of the environment”. Further changes were proposed to paragraph 5 of article 12 to ensure that the salvor would receive compensation whether or not he received a reward under article 11, and, if not entitled to compensation provided under article 11, the reimbursement of expenses which were designed to prevent or minimize damage to the environment. In LEG 56/4/1, the delegation of France proposed that the special compensation should not exceed the value of the property involved in the operation, whether it was salved or not.

133. Other delegations repeated their opinion that the provisions for special compensation in article 12 should be kept as close to the CMI draft as possible.

134. One delegation pointed out that in the normal event the compensation for measures of environmental protection would be included in the reward. The French proposal would create two distinct measures of compensation) (i) for salving property and (ii) for protecting the environment.

135. It was observed that, in practice, it would be very difficult to decide whether a particular measure was taken primarily to protect the environment or with the salvage of property as its object. It was thought that such a distinction would have
to be made if the French proposal were to be adopted. The Committee decided that this proposal should not be inserted in the draft text.

136. The Committee discussed the proposal by OCIMF that article 12 should contain two additional clauses as set out in LEG 56/4/3.

137. One delegation considered that the two clauses did not belong in the new salvage convention but rather in the York/Antwerp Rules. This delegation also considered that the proposed paragraph 8 would concern the national labour law of the flag of the salvaging vessel, rather than the salvage convention.

138. This view was supported by other delegations.

139. The Director of the IOPC Fund observed that it was not certain that a court or tribunal would accept some salvage claims under the 1969 Civil Liability Convention as it might not find that the measures were taken primarily to prevent or minimize pollution damage and therefore, under paragraph 7, the claimant might find that he could recover neither under that Convention nor in general average.

140. The Committee decided that the proposal of OCIMF had not received the support necessary for inclusion in the draft text.

141. The Committee next considered the proposal by the Federal Republic of Germany (LEG 56/4, annex 1) for an additional paragraph 4 to be added to article 12 as follows:

4. Provided always that the total compensation under this article will be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 11 less an amount of [5] per cent of the value of the property salved.

142. The delegation of the Federal Republic of Germany explained that the proposal was intended to ensure that the draft convention would not result in an anomaly, namely that the salvor who succeeded both in salving property and in preventing or minimizing damage to the marine environment would be awarded compensation under article 12 in an amount no greater than that of the salvor who had not succeeded in salving property but had prevented damage to the environment.

143. Attached to the proposal in LEG 56/4, annex 1, were illustrations with figures to show that under article 12 of the CMI draft the aggregate amount of compensation received would be the same even though no useful result had come from efforts at property salvage.136

144. The delegation of the Federal Republic of Germany explained that its proposed wording would ensure that this gap would be filled and the salvor ensured of a reward. In that respect it was appropriate to use a percentage (5%) of the value of the property as a limit. Up to that limit the compensation recoverable under article 12 for a successful salvage would exceed the compensation recoverable under that article by a salvor who in the same circumstances had prevented damage to the environment but had not succeeded in salving any property.

145. The Committee decided to give the proposal more reflection and to add it to the basic documentation for the fifty-seventh session with an indication that the Committee would then decide whether to adopt it or not.

(136) The figures are those in Document LEG 54/W P.1, supra p. 327 note 133.
146. The Committee then considered the \textsc{Intertanko} assertion in document \textsc{LEG} 56/4/7 that the maximum of 100\% was too high a figure for the limit of the increment under article 12, paragraph 2. It was decided to leave this matter to the diplomatic conference, and therefore to retain the word “doubled” in brackets.

147. The delegation of the Netherlands explained its proposal to add to article 12 a new paragraph 2 which would entitle the salvor to special compensation, provided that he had the intention to save the vessel or property when he proceeded to the casualty, and that once at the site he actually undertook measures to prevent or minimize damage to the marine environment.

148. The proposal was to insert in article 12 (with consequent re-numbering of the other paragraphs) the following:

“2. If the salvor with reasonable intention of rendering assistance has proceeded to a vessel or property as defined in article 1 threatening damage to the environment, and has only been able to take measures to prevent or minimize such damage these activities shall be considered salvage operations for the purpose of this article.”

149. The proposal was intended to ensure that if the salvor arrived on the scene and found it impossible to perform acts to assist a vessel in the ordinary sense, but was able to perform measures in respect of the vessel to prevent pollution (e.g. towing a crippled vessel to deep water for sinking), he would still fall within the provisions of article 12. There would be two conditions: (i) that while proceeding to the casualty he intended to render assistance and (ii) that he actually performed measures of environmental protection.

150. Several delegations requested explanations of the proposal, some of them considering that it might entail unequal treatment for salvors who proceeded with the same intent to the place of a casualty and some of them were thereafter deprived of compensation.

151. The delegation of the Netherlands explained that compensation would be given to a salvor who performed measures of environmental protection if the expenses were reasonably incurred according to paragraph 3 of article 12, and that those who did not, would receive none.

152. Several delegations opposed the proposal, while others supported it. One delegation expressed the opinion that the measures taken by the salvor under the conditions as explained by the delegation of the Netherlands might already be qualified as salvage under the draft articles.

153. The Netherlands delegation stated that this matter was in doubt and that therefore the proposal was intended to make it clear that a salvor would be compensated for environmental measures taken.

154. The observer of the \textsc{Foi} noted that the Netherlands proposal helped to show that situations could exist in which environmentally-oriented acts could be clearly distinguished from property-oriented salvage and there would appear therefore to be little doubt that the former could be entitled to reimbursement of expenses under the \textsc{Civil Liability Convention}.

155. There was insufficient support for the provision to be added to the draft text but the Committee agreed that further study should be given to it.

156. One delegation queried whether the words “special compensation” in article 12 might not raise questions as to whether the amounts involved were part of a salvage award or not.
157. The Chairman noted that this question had pertinence to other treaty regimes such as the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships and the Convention on Limitation of Liability for Maritime Claims, 1976. If the “special compensation” was considered a salvage award it would be excluded under article 3 of the latter Convention from the limitation rules set out in that treaty. If not, there could be other results for the salvor. The Committee agreed that this should be studied further.

158. Other proposals were made during the course of the session for the drafting of this article. One delegation proposed the removal of the words “at least equivalent to the compensation assessable in accordance with article 12” in paragraph 1 because, in its view, this phrase unnecessarily complicated the drafting in view of the provisions of paragraph 4 of the same article.

159. Another delegation suggested that the words “Provided always that” should be removed from the opening of paragraph 4.

160. In connection with these drafting proposals, one delegation also proposed that the title of article 11 should be changed to: “Criteria for assessing the reward” It was agreed that this suggestion would be studied at the next session.

Report on the Work of the 57th Session (Document LEG 57/12)

159. In respect to this article, the Committee considered a proposal submitted by the United States contained in document LEG 57/3/10 for a new wording as follows:

“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 conducting salvage operations;
(c) the measure of success obtained by the salvors;
(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 salvors’ equipment and the value thereof.
2 The reward determined under paragraph 1 may be adjusted based upon the skill with which the salvor prevented or minimized damage to the environment. Any adjustment under this paragraph may not increase the reward determined under paragraph 1 by more than ___%.
3 The reward under this article, exclusive of interest and legal costs recoverable under the law of the forum, shall not exceed the value of the property salved at the time of the completion of salvage operations.”

160. The United States delegation explained that its proposal was not intended to diminish the remuneration of the salvor nor to interfere in any major way with articles 11 and 12. It noted that a broad range of general cargo was currently not liable.
for environmental damages. Even where oil cargoes were involved, damage associated with their spillage would fall primarily on the owner of the vessel, with the cargo secondarily liable. Yet, under the text as proposed by the CMI when it came to salvage a large part of the burden of preventing damage to the environment – up to 100 per cent of the value of the salved property – would fall on cargo. Thus in many cases, general cargo would be responsible for a substantial portion of the award dealing with operations designed to avoid damage to the environment. The proposal by the United States delegation would place a limit on the burden that could fall on cargo as a result of measures taken for preventing damage to the environment. No particular percentage had been suggested at this stage for the delegation felt that a decision thereon might be taken by the Committee.

161. Many delegations opposed the proposal and expressed a strong preference for the compromise reached in 1981 at the CMI Conference in Montreal. They noted that this compromise was reflected in articles 11 and 12 of the CMI draft and should, in their view, not be jeopardized. The solution in the “Montreal compromise” had the backing of the relevant industry interests and it would be inadvisable and risky to deviate at this stage from the basic proposal. Some delegations, while expressing reservations with regard to some aspects of the Montreal compromise, nevertheless felt that it was generally acceptable and should be adhered to.

162. The observer of the CMI indicated that the CMI had consulted the industry and commercial interests on the United States proposal and that their response had been clearly that this proposal was not compatible with the Montreal compromise and its adoption would result in many of these interests withdrawing from the understanding reached in 1981. The observer also recalled that a large majority of the members of IUMI had indicated their support for the Montreal compromise.

163. The observer of the P and I Clubs made a statement on this matter, the text of which is reproduced in annex 2 to this document.137

(137) Document LEG 57/12

Statement on behalf of the P and I Clubs with regard to the proposal from the United States delegation contained in Document LEG 57/3/10

1 The United States paper LEG 57/3/10 arrived too late for me to consult my colleagues fully so that I can only express the preliminary reaction of those I have been able to contact.

2 Our first reaction to the United States paper is one of dismay since it is clearly based on a different understanding of the draft convention and the compromise on which it is based. If a misunderstanding has occurred then it is clearly our fault since the United States Maritime Law Association was very well represented at Montreal (including representatives of cargo underwriters) and we have failed to explain adequately our view of the compromise. It may therefore be worth restating some important principles as we understand them.

3 In the first place we do not think the draft convention has made any important structural changes in the computation of the award made against the property salved: measures intended only to prevent pollution will remain outside salvage altogether. This was the case before LOF 80, under LOF 80 and under the draft convention. We therefore do not see the scope for the sort of increase in awards which the United States delegation seems to fear.

4 In the second place we do not think that article 11 will introduce any difference in the manner in which salvage awards are assessed. I would like to quote the following passage from Geoffrey Brice’s recent book on Maritime Salvage: “Article 8 of the 1910 Convention was never intended to be exhaustive and such factors (i.e. those set out in article 11) were in any event considered by courts and arbitrators as being of importance in assessing an award.”
164. In response, the United States delegation also referred to the Montreal compromise mentioned on several occasions and observed that some cargo markets did not share the view that they were a part of that compromise.

165. One delegation informed the Committee of doubts that had been expressed in its country by shipper associations and their insurers regarding the acceptability of article 11 on account of the implication in that article that cargo interests would share in the cost of pollution prevention measures. That delegation noted that if this understanding of the article, and of the underlying Montreal compromise, were correct then the article might well be unacceptable. For that reason it considered the United States proposal an interesting one that merited further study.

166. Some other delegations also expressed support for the concept underlying the United States proposal. In their view the proposal presented a more equitable solution than the one contained in the Montreal compromise. Some of these delegations suggested that the solution was more convincing because it provided for an equivalent treatment of the salvor both under article 12 of the draft convention and under article 11 as proposed by the United States delegation. Some of these delegations also disputed the fact that the commitment by the IUMI and the P and I Clubs to the Montreal compromise had been as unequivocal as had been suggested, and doubt was expressed whether the agreement reached in Montreal still held firm.

167. The French delegation expressed regret at the fact that governmental representatives had been unable to impose a more equitable solution and had met at IMO merely in order to ratify a compromise reached in Montreal, within the CMI, among commercial interests. This concern was shared by some other delegations. Other delegations, however, pointed out the reference to the Montreal compromise was not intended to prevent Governments taking decisions, but merely to draw attention to the need for Governments to take account of the views of interests whose participation was essential for the success of the new convention.

168. In the light of the views expressed by delegations, the Committee decided not to adopt the United States proposal but to retain the text of article 11, paragraph 1, as contained in the draft text. (...)

---

Admittedly there is a general exhortation in the preamble to article 11 to increase property awards to salvors but this is not urged in relation to any particular factor listed. Thus we do not envisage that property awards will be vastly increased solely because the list of factors to be taken into account now includes the skill and efforts of the salvor in avoiding damage to the environment.

As to the proposed limit on the property award which has been proposed by the United States, we fail to understand why a cap is necessary. The exposure of both sets of underwriters will be uncertain and will depend on the particular facts of each case, however the exposure under article 12 may be much greater than under article 11 – twice the salvor’s expenses may greatly exceed the value of the salved property.

We have referred to our understanding of these matters at such length because we feel that we may not have sufficiently explained our view of the compromise on earlier occasions. We hope very much that our discussions with our friends in the United States delegation will continue and that we shall eventually view the effects of the compromise and the draft convention in the same way.

However I should warn, and I have been asked to make this clear, that if the United States proposal were to be included in the draft convention we would no longer consider ourselves bound by the compromise.
179. With respect to paragraph 1, the Committee reverted to a proposal by the delegation of the Netherlands for a new paragraph 1bis to read as follows: “If the salvor, with reasonable intention of rendering assistance, has proceeded to a vessel or property as defined in article 1 threatening damage to the environment and has only been able to take measures to prevent or minimize such damage, these activities shall be considered salvage operations for the purpose of this article.” This proposal had already been considered by the Committee at its fifty-sixth session (LEG 56/9, paragraphs 147 to 155).

180. There was little support for the proposal and it was, therefore, not adopted.

181. Following this decision, the Committee also decided to delete the text contained in the first set of brackets in paragraph 1.

182. With regard to the text contained in the second set of brackets in paragraph 1, many delegations expressed the view that the retention of the wording “and from the owner(s) of her cargo” could again pose a serious threat to the compromise reached in Montreal. One delegation pointed out in this connection that, in casualties involving risk of damage to the environment from substances other than oil, and not, therefore, covered by the CLC Convention, the absence of strict liability of the shipowner, without imposing liability on the cargo in cases where the prospects of salvaging the vessel were minimal might act as a disincentive to the owner of the vessel to seek assistance.

183. The Committee decided to delete the text in brackets.

184. The Committee thereafter considered a proposal from the Federal Republic of Germany contained in document LEG 57/3/5 to amend paragraphs 1 and 4. A similar proposal had been submitted to the Committee at its fifty-sixth session. The amendment proposed was as follows:

“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 article 12 plus an amount of [5] per cent of the value of the property salved, he shall be entitled to compensation from the owner of that vessel equivalent to his expenses as herein defined”.

“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 less an amount of [5] per cent of the value of the property salved”.

185. The delegation of the Federal Republic of Germany explained that its proposal was intended to ensure that, in cases of salvage involving a vessel or its cargo which posed a danger to the environment, the aggregate compensation payable to the salvor would be higher where property had been salvaged than would be the case where no property had been salvaged. The delegation stressed that the situation outlined in this example was by no means purely theoretical. In fact, as illustrated by the examples given in the annex to document LEG 57/3/5, the proposal would become applicable whenever, in a case where there was a threat of damage to the environment, the expenses incurred by the salvor in his operations to prevent or minimize damage to the environment were rather high as compared to the value of the property salved.

186. Some delegations expressed support for the proposal, noting that it was more equitable and provided a desirable supplementary incentive for salvors. Several other delegations, however, expressed their preference for the basic text, emphasizing that the proposal by the Federal Republic of Germany introduced more complications into an already complex provision.
There was not enough support for the proposal to justify its inclusion in the basic text.

With respect to paragraph 2, the Committee agreed that the question of the multiplier to be inserted in the last phrase of the paragraph should be left in brackets for final determination by the diplomatic conference.

Report on the Work of the 58th Session (Document LEG 58/12)

The observer of the International Union of Marine Insurance (IUMI) made a statement to the Committee regarding the “Montreal Compromise”. The text of the statement is contained in annex 1 to this report.

---

I have asked for an opportunity to speak at this session of the Legal Committee of IMO on behalf of the International Union of Marine Insurance (IUMI). Normally IUMI’s spokesman at this meeting would have been Mr. Seumas Cowley. However, Mr. Cowley is unfortunately unable to attend as he is recovering from a serious illness so that I have the honour and pleasure of acting as his stand-in.

Possibly the delegates present here will have read an account, published in Lloyd’s List of Friday, September 25th, of IUMI’s annual conference which was held in Nice three weeks ago. The publication in Lloyd’s List mentions that there is a certain difference of opinion within IUMI with respect to the so-called “enhanced award”. By “enhanced award” I mean article 11 of the draft convention which says that one of the elements which should be taken into account when the salvage award is established is to be:

“the skills and efforts of the salvors in preventing or minimizing damage to the environment”.

This article is important for marine insurers as they have been asked to fund the salvage award as part of the so-called Montreal compromise. As you are aware the other part of the Montreal compromise is that the special compensation mentioned in article 12 will be paid by the P & I Clubs.

This subject has led to considerable discussions within IUMI during the past two or three years. One of the main reasons for this discussion is that funding of the salvage award by marine insurers means that the award will be paid by the hull and the cargo insurers, in proportion to the salved values. The cargo insurers concerned are not only the insurers of the dangerous or noxious cargo which caused a threat to the environment but also the insurers of completely “innocent” cargo which is incapable of causing environmental damage. The question has arisen within IUMI whether such an arrangement is equitable towards “innocent” cargo and its insurers.

As you will remember IUMI’s spokesman, speaking at the fifty-sixth session of the Legal Committee in April 1986, mentioned that the Montreal compromise had been discussed in IUMI. Many of IUMI’s member associations were prepared to agree to the Montreal compromise, although not with any great enthusiasm, as a compromise solution. Quite a lot of IUMI members – especially cargo insurers – had considerable reservations with respect to the Montreal compromise. At least one (prominent) IUMI member considered the Montreal compromise to be unacceptable as it was inequitable towards “innocent cargo”; it was felt that this was a liability risk which should not be introduced into cargo (or hull) cover.

After this statement had been made at the fifty-sixth session on behalf of IUMI a new development arose at the fifty-seventh session in October 1986. At that session the US Delegation proposed an amended version of the “enhanced award” provision – article 11 – which intends to put a limit on the element of enhancement. This proposal was not adopted by the Legal Committee but IUMI understands that it is not impossible that the US Delegation will come back to its proposal at the diplomatic conference. For this reason IUMI has reviewed the US proposal, especially as it was felt that it was more in keeping with the views of some IUMI members than the text contained in the draft convention.
58. The delegation of Mexico objected to the decision to annex the text of the statement to the report. The delegation pointed out that annexing the text of statements was contrary to the practice established in the United Nations.

59. The observer for the International Group of P & I Associations expressed his disquiet at the apparently ambiguous support of IUMI for the Montreal Compromise. He illustrated the potential practical difficulty of the stance taken by some members.
of IUMI by enquiring whether they would accept a revision of the Lloyds Open Form based on the Montreal Compromise.

60. The Chairman suggested, and the Legal Committee agreed, that it had already decided to accept the basic philosophy of the Montreal Compromise. The statement by IUMI had been noted as indicating the shades of opinion in IUMI. The Committee did not consider it necessary to alter in any way its decisions on the Montreal Compromise. That agreement had constituted a compromise and it was undesirable to introduce any reservations which could lead other parties to reconsider their commitment to the Montreal Compromise. While the Legal Committee could not prevent delegations from presenting any proposal they wished to make to the conference, the Legal Committee had to emphasize its decision in favour of the Compromise. (...)

64. The Committee noted that a decision as to the multiplier to be inserted with regard to the special compensation would be taken by the diplomatic conference. The observer of the CMI recalled that the limit of a doubling of the compensation had been set at the Montreal CMI Conference. Some delegations pointed out that the matter had never been discussed in the Legal Committee and that no figure should be included at all in the text which would be submitted to the conference. Other delegations felt that it would be of assistance to the conference if an indication in this respect would be submitted to the conference.

65. The Committee agreed to delete “double” from the brackets, and to include a reference to this multiplier in a footnote to paragraph 2.

Document LEG 58/12 - Annex 2

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) .................................................................
   b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
   c) - j) .................................................................

Article 12 - 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 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.

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 the 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.

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

(139) Formerly Article 12.
for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 11.1(g), (h) and (i).

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.

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.

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

International Conference
Committee of the Whole 19 April 1989
Document LEG/C ON F.7/3

Article 10-Criteria for assessing the reward – Paragraph 1(b)
Article 11-Special compensation

Document LEG 58/12 Annex 2

The Chairman. Well, we come then to our main item this morning. I announced yesterday that we will start with the discussion on articles 10 and 11. This is the first round of our discussion and within this first round I would like to propose that we concentrate on submissions by delegations which propose a change in substance of these articles, that means proposals which refer to the question of payment for salvage operation, either the reward or the special compensation, or other proposals could be or can be taken up within our second round. That second round will take place either on Friday or on Monday. I will call on those proposals which are relevant in our present discussions and I would like to ask the delegations concerned to introduce their proposals. I would like to refer to the proposal of the United States of America in document 7/22 – a proposal on article 10, paragraph 2 for a new paragraph 2, and a

(140) The text of these articles is that approved by the Legal Committee at its 58th Session (Document 58/12-Annex 2).

(141) In Document LEG/C ON F.7/22 the United States has presented two options:
- “Case 1: Proposal for a Significant but Moderate Increase”
- “Case 2: Proposal for a More Significant Increase”.
In “Case 1” Article 10 (now Article 13) paragraph 1 was amended by deleting sub-paragraph (b) and by adding the following new paragraph 2:
“The reward determined under paragraph 1 may be adjusted based upon the skill and efforts of the salvors in preventing or minimizing damage to the environment during salvage operations. This adjustment may not change the reward determined under paragraph 1 by more than [____%].”
In article 11 (now Article 14) the following paragraph was added after paragraph 5:
“The total compensation under this article shall not be subject to the general average process.”
In “Case 2” Article 10 was amended by deleting sub-paragraph (b), by adding the following new paragraph 2:
“The reward determined under paragraph 1 may be adjusted based upon the skill and efforts of the salvors in preventing or minimizing damage to the environment during salvage operations.”
and by amending paragraph 2 (that became paragraph 3) as follows:
proposal on article 11, paragraph 6. And then we have a proposal submitted by France in document 7/11, for a new article 11, paragraph 4. One Observer delegation namely OCIMF has submitted a proposal in document 7/17 for a new article 12 – this consequential amendment in article 10. These three delegations have now the possibility to explain their position and to introduce their proposals. I call on first the United States of America. Are you ready to introduce your proposal, Sir?

United States. Yes, thank you, Mr. Chairman. I wish to preface these introductory remarks by stating that the United States regards the compensation structure of articles 10 and 11 as vital to achieving the important objectives of this Convention, specifically the preservation of life and property from maritime peril and the safeguarding of the marine environment. In concluding this draft Convention it is appropriate that the Governments assembled here carefully review these fundamental objectives and then evaluate the desirability of the proposed Convention means for achieving them. In our view, the basic approach embodied in articles 10 and 11 is sound. This approach incorporates first increased rewards for salvors in the majority of cases through the introduction of the new environmental enhancement. And secondly a guarantee of salvors expenses with the possibility of additional compensation in all cases posing an environmental threat so as to provide an incentive for salvors to undertake what might otherwise be commercially unattractive cases. We also believe that the increased compensation in new environmental incentives provided through this approach must be significant, if the Convention is to accomplish its objectives in respect of the salvage industry and the environment. During the course of the Legal Committee preparatory work, a significant concern came to light, however, with respect to the application of proposed article 10. Other than the total salved value of property, that is hull and cargo combined, there is no limit to the extent to which the new environmental factor could increase the salvage award. This is significant in that within the broad range established by the limit of salved values set forth in article 10.4, the question of the weight to be assigned to the new environmental factor is left entirely to the discretion of the salvage arbitrator or judge. Ample compensation for salvage operations which simultaneously preserve property and prevent damage to the environment is clearly desirable, however, inasmuch as the extent to which the new environmental enhancement may increase salvage awards is unknown and article 10 places the primary burden for the enhanced award on hull and cargo, these interests are unsure of the extent of their cost exposure under the new compensation structure. Cargo interests are particularly concerned in that in light of modern ratios of cargo to hull value, cargo would typically pay the larger percentage of the new salvage award including the new environmental enhancement. This concern is understandable in that responsibility for pollution prevention expenses currently rests with P and I under accepted principles of international law. Cargo has no direct primary responsibility for such expenses, rather with the exception of certain circumstances in limited defences, the only involvement of cargo is pursuant to specific

“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, the reward determined under paragraph 1 shall be borne by the property interests in proportion to their value. The adjustment under paragraph 2 shall also be borne by the property interests in proportion to their value, except where such adjustment exceeds [___%] of the reward determined under paragraph 1, the excess amount shall be borne by the owner of the vessel. Nothing in this article shall prevent any right of recourse or defence.”
international oil pollution regimes under which cargo pays claims indirectly through a
fund system only when such claims exceed the limit of P and I liability. Thus, while
there is some precedent for cargo paying pollution prevention expenses, that
responsibility relates only to oil and normally is neither direct nor primary. Requiring
that cargo pay a share of oil pollution expenses directly in article 10 is therefore a
significant departure from the applicable international regimes, moreover no sharing
regime has been developed for polluting cargoes other than oil and this new salvage
convention is an inappropriate vehicle for deciding who should bear the environmental
liability for hazardous and noxious substances, a complex and controversial subject
concerning which the Legal Committee recently resumed work. Lastly, any underlying
rational to the effect that polluting cargo should pay does not apply to non-polluting
cargo, such as computers, fertilizer or grain. There has been some discussion to the
effect that the new article 10 enhancement will simply legitimise current practice, that
is that in recent years salvors have already been receiving awards enhanced for
environmental purposes. However in light of salvors’ present financial difficulties and
the widely shared international desire to improve environmental safeguards, a result
which merely ratifies the status quo probably will not suffice. It is important to note that
article 11 also plays an essential role in the new compensation structure by ensuring that
salvors will at least receive their salvage expenses where there is a threat to the
environment, a threat which may be posed by fuel bunkers as well as cargoes. There is
some question however with respect to how often article 11 would require a payment
in actual practice, given the nature of salvage as bounty with salvage awards well
exceeding expenses; the new article 10 award, especially with the proposed
environmental enhancement, will presumably be greater than the new special
compensation tied to expenses and determined in accordance with article 11,
paragraphs 1 and 2. Thus, in the large majority of cases, when the salved vessel and
property have substantial value, no payment would be triggered under article 11, and
even in cases where the article 10 award is less than the article 11 special compensation,
P and I would pay only the amount by which the article 11 special compensation
exceeded the article 10 award, that is, article 10 acts as a deductible for article 11.
Another important observation regarding article 11 is that while the ship owners’
obligation under this article would be a new one in certain instances, in other instances
this will probably not be the case. Whereas ship owners, in the hope of minimizing their
costs, may once have had the option of allowing a vessel to sink if the salvage value
appeared slight and/or the vessel posed a significant liability risk, the expanding
environmental consciousness world wide suggests that this option is increasingly
unavailable where coastal States intervene because of their concern that such sinking
might pose a present or future environmental threat. The ship owner typically would
then have the primary responsibility for the resulting costs. It is with the foregoing
considerations in mind that the United States submitted its amendment proposal in
conference paper 22, while the further elaboration of the details of this proposal may
appropriately be deferred until our substantive discussions, first in the Chairman's
contact group and then later here in the Committee of the Whole; it is important to
emphasize our fundamental purpose, together with other nations and particularly those
with significant cargo interests, we seek a compromise that will be regarded by all
concerned parties as transferring an appropriately limited share of P and I's responsibility for pollution related expenses to cargo, which share is approximately commensurate with the burden of P and I's assumption of a new responsibility to guarantee salvors expenses in salvage operations involving an environmental threat. From the standpoint of equity, that is the benefits which will accrue to all maritime
interests from a viable salvage industry, it is our view that cargo should clearly be expected to contribute to the overall increased cost of the proposed compensation structure, but, as noted earlier, there must be an appropriate balance, not an illusionary compromise. Mr. Chairman, the United States wishes to promote the interests of both the salvage industry and the environment through an equitable compromise that will prove workable in a manner consistent with established maritime law and practice. We emphasize that this proposal does not in any way diminish the absolutely essential requirement that salvage operations must be conducted with the maximum regard for the environment. With a broadly acceptable compromise in place the new salvage regime would provide, first, a feasible commercial mechanism for maintaining a viable salvage industry and, secondly, an effective system of incentives to encourage salvors to safeguard the environment. Our paper has presented two options: case one and case two. This Conference could adopt either option or variance thereof. We see case two as more flexible, an option which can better cover cases with unusual environmental aspects to the salvage operations undertaken. Mr. Chairman, this has been a rather lengthy introduction of our paper, and I apologize for the time that it has taken. Nevertheless, I think it highlights the complexity of the issues that are involved. We would hope that in the contact group we could communicate perhaps more simply, using a blackboard to illustrate the principles that I have just described in words and hopefully be able to reach a compromise with interested States. I thank you.

The Chairman. Thank you. I give now the floor to the delegation of France. You may introduce your document.

France. Thank you, Mr. Chairman. I would point out that I will be referring to the document LEG/CONF.7/11. The French proposal has the purpose of amending the Article 13 - Paragraph 1 (b) and Article 14

Observations by the Government of France

Article 11

In the title of the article replace the word “compensation” by the word “reward” and amend the text of article 11 in consequence.

In paragraph 2: at the end of this paragraph it should be stated, with regard to the special reward, that it shall not be more than “doubled”, specifying that such double amount shall be the amount of the expenses incurred.

The amendment to be made is thus:

“more than double the expenses incurred by the salvor”.

Paragraph 4: The special reward for preservation of the environment should not be paid only “if and to the extent that such reward is greater than any reward recoverable by the salvor under article 10”; it is necessary for the salvor to recover such special reward irrespective of whether or not the salvor has recovered the normal rewards for salvage. In the opinion of the French Government the special reward should be autonomous, whether there has been any useful result for the vessel and its cargo or not, in other words, whether or not the salvor recovers the normal reward for salvage. This is the best way of motivating the latter to make every effort and to take all measures to preserve the marine environment.

The text of paragraph 4 should be amended to read as follows:

“… under this article shall be paid whether or not it is greater than the reward recoverable by the salvor under article 10”.

This amendment entails the deletion in paragraph 1 of the expression:

“… and failed to earn a reward under article 10 at least equivalent to the compensation assessable in accordance with this article ... “.
principle of the arrangements covered in articles 10 and 11. Indeed, what is the philosophy of these two articles as proposed by the Legal Committee? There is one point which is certainly excellent and which is the strong point in this convention, and that is that the efforts of the salvor for the protection of the environment are taken into consideration when he carries out salvage operations and this is first of all reflected in article 10, paragraph 1(b) where, in order to determine the reward, the skill and efforts of the salvor in preventing or minimizing damage to the environment are taken into account, and this is a good thing at the outset. But if we move on to article 11, which covers the special compensation for the protection of the environment, we can see that this special compensation provided for in article 11 is only paid, as paragraph 1 says, if the salvor has not been able to obtain on the basis of article 10 (there is a mistake in the French text) an equivalent compensation to that covered in article 10. That is to say, if he has not been able to obtain any reward for salvage operations and if he has made efforts to protect the environment, he will then be entitled to the special compensation for environment protection but not otherwise. Moreover, the amount of the special compensation is limited in paragraph 2 – as you see, this is between square brackets – and this should be at least twice the salvor's expenses, which is not indicated in the text because you have dots in the square brackets. But the difficulty in this text is what you see under paragraph 4, where you see that the total compensation paid to the salvor for the salvage of property and for the protection of the environment, or rather, the total compensation which is paid out, is only paid for the protection of the environment to the extent that such compensation is greater than any reward recoverable under article 10. That is to say, the normal salvage reward. Now what will happen in the more frequent case where the salvor has done the greater part of his job, that is to say, he has salved the vessel and the property at risk and he has made efforts in order to protect the environment? He will only be paid, at maximum, if he salved all the property according to article 10, and he will have a normal reward. He will not be able to obtain the special compensation because paragraph 1 of article 11 clearly indicates that he can only obtain this if this exceeds (no, I am referring to paragraph 4; sorry) if this exceeds the compensation he could have obtained under article 10; in this case the property will have been salved, the efforts of the salvor will be taken into consideration as regards the protection of the environment under paragraph (b) of article 10, but the salvor will not obtain anything more for having protected the environment. So what will he be tempted to do? He will be tempted to salve the property, which will give him the maximum reward for salvage operations, it being understood that as he will have collected this salvage reward he will not be able to obtain anything else under special compensation for the protection of the environment, and we do not believe this system to be satisfactory. The idea of the French delegation, therefore, is that there should be two rewards which are quite separate; specifically, one for the protection of the environment which should be completely independent from the other, the normal reward. This special compensation should come into play and the salvor should benefit from it whatever reward he will receive for the salvage of property under article 10, that is to say, the normal reward. There must be a completely independent system and if the salvor who has obtained the normal reward, whatever the outcome is, must obtain special compensation if he has made special efforts in order to protect the environment. This is the main point and this seems to us the best way of creating this incentive which we are trying to introduce, so that the salvor can be reimbursed for his expenses and remunerated for his efforts when he would have taken steps to protect the environment. I will not go into details at this stage but we are suggesting a deletion in paragraph 1 of article 11 and to delete this condition that he, under article 10, will not be able to obtain
a reward equivalent to that calculated in accordance with this article, and we substantially amend paragraph 4 of article 11 where we indicate that the reward shall be paid whether or not it is greater than the reward recoverable by the salvor under article 10, that is to say, the normal salvage reward. So from our viewpoint, there must be a clear distinction between these two types of reward, one refers to the salvage of property and the other, in any case, refers to measures taken for the protection of the environment, and in that case one need not take into consideration whether there has been salvage of property or not, or whether a reward has been paid. The environment protection reward must come into play in any case, and that is the purpose of our proposal with a view to amending article 11. Thank you, Mr. Chairman.

The Chairman. I thank you. The observer delegation of OCIMF has now the possibility to introduce its proposal.

OCIMF. Thank you, Mr. Chairman. The oil Companies International Marine Forum has submitted a paper for consideration of the conference, 7/17\(^{143}\), and this

(143) Document LEG/CONF.7/17
Submission by the Oil Companies International Marine Forum
For these reasons OCIMF believes that the Salvage Convention should incorporate provisions which would provide that:
(i) to the extent that a Forum awards enhanced compensation to a Salvor under the provisions of Article 10.1(b) or Article 11 of the Draft Salvage Convention, in excess of the award granted for saving property, that enhanced amount should be separately stated and
(ii) such enhanced compensation should thereafter be for the account of the Shipowner and should not be deemed to be a general average sacrifice, but without prejudice to the Shipowner’s rights to receive reimbursement for these costs under any other applicable Conventions, Law, Regulations or Contract.

The remainder of the Award which does not represent Costs Incurred for Pollution Abatement Measures should, in the view of OCIMF, be subject to general average apportionment, if applicable, as it is under existing law.

These proposals if incorporated into the Draft Salvage Convention will prevent a distortion of the so called “balances” represented by the above regimes and of course would not in any way compromise or limit the salvor’s compensation as presently anticipated under the Draft Salvage Convention.

OCIMF believes that the above could be accomplished if:
A. Article 10(2) were to be amended so as to insert at the commencement of the clause and prior to the words “Notwithstanding that a court having jurisdiction may . . .”, the words “Except as provided in Article 12”.
B. Insert a new Article 12, renumbering Article 12 and all Articles thereafter, reading as follows:
“Article 12
Any enhancement of the reward payable to a Salvor for its efforts in preventing or minimizing damage to the environment, under the provisions of either Article 10 or 11, shall be separately stated by a court having jurisdiction; that portion of the award so stated shall be deemed to be compensation for Pollution Damage and/or Costs incurred for Removal and/or to Prevent or Minimize Damage to the Environment and as such shall be for the account of the Shipowner and shall not be deemed to be a general average sacrifice, but without prejudice to any right the shipowner might otherwise have to seek reimbursement for all or any portion of said enhancement under any other provision of or allowable under applicable law.”
addresses what we see to be a potential inconsistency arising as between the conventions which have been established to deal with the question of responsibility for oil pollution damage and pollution abatement, and what is contained in articles 10 and 11 of the draft salvage convention. I would state at the outset that we fully support the concept that protection of the environment should be a factor which is taken into account in relation to salvage operations and the award that is made for successful efforts. What we are concerned with however, is the balance of contribution to the cost arising out of pollution abatement measures which has been established under Conventions and I have in mind here particularly the Civil Liability Convention 1969, the Convention 1971 and the 1984 Protocols thereto. The balance that has been achieved of contribution to costs between ship and cargo could be disturbed by the present provisions of the draft Convention articles 10 and 11, and we have addressed in the paper the question of who shall pay for them and we have in mind particularly of course, that under article 10 it is provided that the contribution should be paid by the salved interest in proportion to their values and this would of course mean that there was a split as between ship and cargo and part of the cargo contribution would be in relation to pollution prevention measures. We have therefore, taken account of this potential inconsistency because we suggest that the delicate balance of contribution as between ship and cargo which has been encompassed in the conventions on oil pollution, it would be undesirable if that was disturbed and I would just quote one sentence from our paper - we have said clearly it would be both inconsistent and inequitable if costs incurred for pollution abatement measures were treated differently in the case of the ship owner depending on whether or not he incurred those costs in the course of a salvage operation and taking account of what we see as an inconsistency in treatment, we have suggested for consideration of the Conference and we do this with all respect, an amendment of article 10, 2 and the insertion of new article 12 which would address this inconsistency which we see as likely to arise out of the present draft of the salvage Convention. Thank you Mr Chairman.

The Chairman. I thank you. Well the floor is open for comments on these three proposals. I would like to call on first the Comité Maritime (CMI).

CMI. Thank you Mr Chairman. First a few words on the basic features of the compensation structure as it is in the present proposal for articles 10 and 11. We have felt it perhaps of some value to do this, although we know that many of you will know it in all details from the previous meetings in the Legal Committee and/or even some of you also from the meetings in the CMI before. There are a number of people here today who have not attended these meetings and for the benefit of them I hope that I may use just a few minutes of your time to let you have the basic features of the compensation scheme. The scheme reflects the compromise first arrived at between commercial parties notably salvors, donors, P & I clubs and property underwriters during the deliberations of the CMI. The CMI came to the Legal Committee and said that this is something which still stands between the commercial parties mentioned and if you accept this, we have the hope that you will get a convincing compensation scheme here which will suit the commercial interests as a whole. Now what are the basic features? Article 11 is new. As you probably all know, one of the basic principles of salvage law as it is up to now, is that unless the salvage operation has a useful result, the salvors are not paid. That is a basic rule and under that rule, as it is today, the salvors are only paid if and to the extent they are able to save cargo and ship. Now article 11 abolished this no cure-no pay system in all cases, where there is a risk of
damage to the environment. In such cases on article 11.1 the salvors costs are always paid. Additionally, under article 11.2, a premium up to a certain ceiling proposed in the CMI draft to double the cost. A premium is paid to the salvors if they have useful result to the effect that their efforts minimize or avoid environmental damage. These are the two main features of the new proposed system. Then under article 11.4 it is made clear that the article 11 compensation is only paid even to the extent that what we would normally call a salary reward under article 10 is insufficient to cover what would be earned under article 11. Article 10 basically reflects the same features as did the old 1910 Convention with respect to the calculation or the fixing of the traditional salvage reward. We have listed in article 10.1 various considerations which shall be taken into account when the tribunal is fixing the salvage reward which must always be fixed with the view to encourage salvage operations. Under (a) to (i) of article 10.1, all these considerations have been listed. What is said there to the tribunal fixing the salvage reward, is you should have in the forefront of your mind to encourage salvage operations and then you should not forget that when you find out what is the payment. Out of all the considerations we have listed here, one of them is new; that is article 10.1(b): efforts of salvors in preventing or minimizing damage to the environment, that is the consideration which is putting the same effect as all the other basically old considerations which should be taken into account. It does not mean more; it is treated in exactly the same way as they were and it is worth here noting I believe that no experienced salvage tribunal to my knowledge ever apply a method whereby they say you have this sum because of the value of the property saved, you have this sum because of the measure of success obtained by the salvor, you have this sum because of the efforts in preventing damage to the environment and then add it altogether. That is never done by any experienced tribunal in my view. What they do is that they fix the fair remuneration in view of all this and basically to encourage salvage operations. Therefore, in our view, article 10.1(b) is not a very new feature, not a very important feature; it is important because it is new but it comes into line with all the old considerations, which should be taken into account. Then, as a final point of article 10 as proposed, who is going to pay, and it is made clear in article 10.2 that the property interests are going to pay the article 10 award proportionate to their values and is made clear in article 11 that the basic compensation under article 11 is payable by owners alone. I now turn to the various proposals we have before us today, entailing an amendment to the compensation system we have in articles 10 and 11 as they stand in the present draft. I think it is first wise to stress what has already been stressed by the United States delegation that their proposal is in no way a proposal that the compensation structure should be changed. It is just a proposal that we should change the system as to who is paying. It is just a cost sharing side of our compensation system which is under attack by the United States’ own proposal. On the contrary, there are clear indications that the other parts of this system are acceptable and valuable and are approved. Now what costs are we talking about? First, the purpose of the new compensation system in articles 10 and 11 is not, as indicated in the United States intervention, to assist the salvage industry by a broad increase of salvage rewards in the majority of cases. This was discussed at the outset in the CMI. We discussed whether we are going to make amendments to make it possible to assist the salvage industry if it needs assistance and we very early came to the conclusion that this is not necessary to do. We already have the framework in the 1910 Convention and we have it in the present draft for the judges, for the tribunals to increase payment if they feel that the salvage industry has problems. As it was put, during one of the earlier meetings, to assist the salvage industry by environmental compensations, is to put your right shoe
on your left foot. That was not our purpose with articles 10 and 11; we think that purpose is served already because we have the framework under the 1910 Convention, according to which the judges can give their awards and if they are convinced that the awards are not fair enough to keep alive a viable salvage industry, they are able to increase it and the salvors will tell them so. So the purpose of articles 10 and 11 is to cope with the environmental problems alone, at least this was the idea of the drafters. Secondly, we cannot assume, in our view, a very significant increase of the awards payable under article 10. First many awards in many countries as you have heard, notably this country, England, this consideration is already taken into account and the salvage awards are fixed. There are apparently other countries where this is not the case, but there would be no significant increase, I believe, in the United Kingdom because this rule is already acknowledged. I am not saying that I believe there will be no increases at all because it might direct the judge's mind more to the consideration that it is now written in the acts, but it has been there already. But there may be other countries where this consideration is not accepted by the judges and, of course, that may influence generally, the salvage awards in these countries. But how much are we talking about? I have tried for your benefit to get figures out of the commercial interest. I have asked the salvors what are the likely salvage awards payable presently on a world basis under what is the article 10 system, at least in the United Kingdom. No one knows exactly, but very educated guesses indicate that the total awards payable at present would be between Pounds 50 and 100 million per year. That is all. You can imagine with such a figure that any increase due to the new consideration of article 10.1(b) will be a fraction of that sum. On the other hand, what are the cargo interests involved? They are the people who are dissatisfied with this balance as to who is going to pay how much. I do not have world statistics on it but an educated guess of the total cargo values insured on the London market only is that it is in the region of Pounds 130 billion per year. I think this shows that the proportion of what we are talking about, the burdens we are putting on the commercial parties, in particular cargo underwriters who share the proposal, is not very heavy, to say it in modest words. Furthermore, as you all know, I believe, most of you, it is very difficult to quantify the increase of salvage awards due to article 10.1(b). It is a highly speculative way, because when fixing the awards, as I mentioned, the tribunal takes into account all factors, this may include a danger to the environment. Such danger may have required quite different lists of factors as would otherwise have been used. To say what the award would have been if such an element among many others had not been there, would be just as difficult as for example to say what the award would have been if the vessel salvaged had grounded on sand and not on rocks, had been a container vessel or a bulk carrier difficult to lighten and not a tanker, or had been exposed to the dangers in a storm, not to the limited dangers in sheltered and calm waters. In other words, if you ask them to quantify the enhancement that is not a good word because it is something you do afterwards, when you have fixed all the other factors and you put something on the top that is not what is done. So enhancement by the way is not a good word. But if you nevertheless as a tribunal fix the enhancement then you have to guess really the salvage reward you would have fixed in an entirely different situation where there was no risk to the environment. What would you have done, what would the salvors have done in that case if they have not had that risk. That is a highly speculative exercise so in our submission the result of the American proposal, under which the tribunal is required to fix this sum, would be highly speculative and highly unsure. The American proposal, in my view, seems to overlook some of the benefits for the cargo side of the safety net. It is as if one is saying: what can we expect the safety net will cost
the P & I Clubs? We should put that up against the cargo share of the advancement under article 10 and we expect that this is an unfair balance. The cargo is going to take too much. But I think you overlook one of the very great advantages for the property, notably the cargo side of the safety net in article 11. In all the difficulties nowadays of salvage, where the salvor feels that the salvage operation will not succeed, he will very often try to get an agreement with the salved property, including the cargo, and that we set the no-cure, no-pay rule out of this. One of the models for such an agreement as it is in present-day practice is an agreement under which the salvor is paid a daily rate plus the bonus. In other words, he is guaranteed his costs, and if it goes well he will have something more. That is arrived at in many cases today by agreement, and where there are necessary delays until this agreement is reached and when the costs of producing in some cases guarantees and things like that for the salvor’s costs. Now we get the article 11 system in, the property interest will no more need to bother with this because they already have automatically the guarantee of the costs, the daily rate agreement so to say, and the bonus on the top. So the cargo is getting what it is today by agreement, it is getting that free from the Clubs. That is an advantage that should not be overlooked. Finally, Mr. Chairman, it should be pointed out that there may be hard cases under the proposed system where the environmental problems are at loss, that the salvor’s costing connections with the salvage operation is increased very much as compared with what they would have been had there not been such a situation, and it is worth pointing out that, should the tribunal find that it would be unfair in a specific case with large costs to let the property interest pay all this under article 10, it is open to him not to do so. It is open to him under article 10 as it stands at the present proposal not to face an award in such a case which is equal to the cost plus a bonus under article 11, so he can make another award, he can fix a lower sum payable by the property interest under article 10 and he can make an award under article 11 and let the Clubs pay increased costs or some of them if he so likes. So there is a mechanism to solve the hardship cases in a fair way. Finally, the compromise I started to mention between the commercial interests. Basically it is there still. There are commercial parties or other parties who do not share these views here. There are notably American cargo underwriters, there are oil companies, but the others, they still stick to it. They are not happy, they have never been happy. A good compromise is one in which no party is happy, and so it is today. Personally I am a bit concerned that the attacks on articles 10 and 11 we experience now will tempt the commercial parties to be all unsatisfied with the compromise to use it, may tempt the salvors to say “Ah-ha, we are going to get more out of the compromise”, or may tempt the Clubs or the owners to say “Ah-ha, apparently we will not get a convention. We can go on with a cheaper one from 1910 for more than 10 years again. So this is a risk I personally see, Mr. Chairman, with the proposals we have tabled today. Thank you for using all this time.

The Chairman. Thank you, Sir. Well, the floor is open for further comments on the proposals submitted. The first to come is Canada.

Canada. Thank you, Chairman. Chairman, at the outset of this conference my delegation did not make any general comments, mainly because we did not want to take the time of this conference to make general observations in a situation where we knew we are under severe time restraints. However, I would not like that to be read to mean that my delegation has no concerns with the draft articles. I would say that, as a general proposition, we are satisfied with what has been achieved by the Legal Committee but, when it comes to articles 10 and 11, particularly article 10, my delegation and my Government does have concerns and I would briefly address them.
at this time. Our concerns relate, as I have said, mainly to article 10 and the effects on that article with respect to the distribution of costs associated with pollution prevention amongst all property interests in proportion to their value. These costs, we believe, have always been the responsibility of the ship owner and we see no reason to pass them on to the cargo interests, especially in those cases where they have not in any way contributed to the pollution, to the threat of pollution. Now we recognize, as has been said here this morning, that there are certain specific instances regulated by convention where there is a contribution by cargo interests, but those are specific cases, namely the 1969 Civil Liability Convention and the 1971 Fund Convention. Now, Chairman, a number of proposals have been made to this conference which we believe merit serious consideration. For that reason we have not made any proposal ourselves; we believe that the two or three proposals that have been made do represent alternatives to the basic text that merit serious consideration. I would like to emphasize at this time that the successful outcome of this conference is very important. We believe that it is an important objective of this conference to achieve a guarantee of compensation for the salvors which, in turn, will lead to additional protection of the environment. For this reason we would urge very serious consultations, perhaps informal consultations, between interested delegations to see if the various proposals that have been made could be reconciled, and perhaps could offer an alternative to what is now in the basic text. I think it is important in closing to say that it is extremely important that we strive to bring these negotiations to a successful conclusion by the adoption of a Convention that is as widely acceptable as possible. Therefore, Mr. Chairman, I would hope that we should have time at this conference to consider these proposals and to see if they can be reconciled and if the basic concept of article 10 could be re-examined. Thank you Mr. Chairman.

The Chairman. Thank you. Next, delegation of Poland.

Poland. Thank you Mr. Chairman. I would like to speak on article 10. We look at the American proposal to amend article 10 with a certain sympathy because of two reasons. The first of these reasons has its roots in accepting the philosophy concerning this Convention - philosophy which probably has not come on to all delegation here. It seems to us that the duty of the salvor to prevent or minimise damage to the environment should be considered as a special duty. In fact it is distinguished in article 4(3) of the draft Convention and you have submitted a paper proposing to distinguish in article 6. Consequently the environmental factor should be distinguished from other factors taken into consideration in the assessment of salvage award and this is what you will find in article 10(2) proposed by the United States delegation. Even if the reasons of the United States delegation might have been different. We know that the assessment of salvage award by courts or arbitrators is often very subjective and I would say arbitrary. One can hardly guess which criteria and to what an extent have influenced the minds of courts or arbitrators. It seemed that if the American proposal is accepted it should at least compel the courts or the arbitrators to indicate the reasons to what an extent the environmental factors have influenced their work. For this juridical reason, it may prompt us to support the American proposal. (Otherwise we cannot.) Considering the practice of marine insurance, the burden of salvors’ remuneration is borne by the insurers of the salved property. In most cases by vessels and cargoes. Liability for pollution is borne by the P&I insurance. In this Convention we deal now with an increase of remuneration because of salvor’s efforts to prevent or minimise damage to the environment for which the P&I insurance would be liable. There is a problem of fair distribution of this increase among the insurers concerned. Under
article 10 of the draft Convention, this is borne by the property interests, viz. by vessels and cagoes, with no participation of the liability insurance. If the environmental factor is distinguished, that would clear the issue of the participation of the liability insurers in the increased salvage work. This is the second reason why we generally support the idea of the American proposal. Thank you Mr. Chairman.

The Chairman. I thank you, Sir. Next speaker on my list is the German Democratic Republic.

German Democratic Republic. Thank you Mr. Chairman. I asked for the floor to mention that in our view the articles 10 and 11 of the draft Convention are very important. We are of the opinion that the content of these articles is an excellent compromise reached by all delegations which have worked on the draft Convention in the Legal Committee. My reason for this assumption is the present situation on the international insurance market. Both parts of the market, the hull and P&I, like the articles 10 and 11. That is very important for a new Salvage Convention in future. Therefore our delegation cannot support the proposal from the distinguished delegation from the United States relating to article 10, because such assessing of the enhancement can destroy the border between hull insurance and P&I insurance and the ship owner and the cargo interests cannot cover this risk. It is also our opinion that the proposal from the distinguished delegation of France relating to article 11 is not realistic. The salvor should not earn twice. That means if he has earned a reward recoverable by the salvor under article 10 then it is not necessary for the salvor to recover the expenses for preventing or minimising damage to the environment once more in article 11. We can fully support the statement from the CMI. Thank you Mr. Chairman.

The Chairman. I thank you. Now we have no other governmental delegation. Argentina.

Argentina. Thank you Mr. Chairman. My delegation would like to say that it considers that this is the crucial point of our discussions on this Convention and it is therefore very important to give it all the importance which this topic justifies. To this end, I would like to indicate that, in principle, we support the proposal put forward this morning by the delegation of the United States, and which they introduced and I would indicate that, though we agreed with the form in which this proposal is put forward, in general, and how the reward system is defined as regards to the threat to the environment. We also believe that it is necessary to preserve as carefully as possible a fair sharing out among the various commercial interests involved in maritime shipping and not to modify the balance achieved in other international agreements and conventions like those mentioned by the Observer from the Oil Companies International Marine Forum. There is a very important distinction to be made but with the interest of the cargo mentioned by the United States delegation the polluting cargo, toxic and dangerous substances or non-contaminating or polluting substances like wheat and grain, which is very important in the international trade and to which my country attaches considerable importance and which are perfectly innocent. This topic should be very carefully considered and it was indicated that a contact group might be very helpful in this sense or whatever you would consider most appropriate and the Argentine delegation would be ready to participate in these consultations with a view to the final success of this Convention. Thank you Mr. Chairman.

(144) Supra p. 350, note 142.
The Chairman. Thank you. The delegation of Denmark.

Denmark. Thank you Mr Chairman. A few years ago, we had a celebration here in London because it was the ten years jubilee of the Oil Pollution Fund and some of us who have been dealing with that for sometime used that occasion to make some reflections and one of the reflections I made myself was that I as a humble civil servant, the most part of your time you are making rules and problems for your city members in your country. But from time to time, you are really able to do something which could help you when you are in front of St Peter where you can tell them you are doing something good and the Oil Pollution Fund is one of that kind because you are doing something for the people. I have always looked at this proposal here in the same way. We had the old Salvage Convention of 1910 and nine years ago, some of us started in Montreal to try to do something good here in connection with the Salvage Convention, and the good thing of course, was to try to help the victims of environmental damage, and this is the whole idea behind this proposal. Having listened this morning to the proposal from the United States, I was very happy to hear and I understand very well that they are completely behind the main idea in this proposal. I was also listening very carefully to my Canadian colleagues. But what you have to be aware of is that as I stressed on the first day, we have very limited time here and we have tried to discuss this problem through eight to nine years and as it was stressed by the representative from CMI, there is of course, a compromise and a compromise is never a good thing for anyone but I am not so sure it could be because of what we have to do with the Fund. I am completely in agreement with Mr Perrakis when he put it that it is quite a new thing we are creating here. The whole idea behind the Fund was to create something new and it was again a compromise question to balance between the cargo and shipowners interest. What I really fear here is that if after we have tried for so many years to come forward with an acceptable solution, a lot of us have tried first in Montreal and then during the very exhaustive negotiations in the IMO’s Legal Committee, that we should be able here in two or three days to completely change what many of us feel was a compromise. It would lead only to one thing, and it is that we have nothing to defend when we look at St Peter because there would not be any convention. So therefore, I think it is very important to state that it is a compromise we have here and we can live with that compromise. I hope very much that all the countries who have been listening here would be able to appreciate what was the main idea and to support it in the way as it is in the text here. I am sorry again that I am not even able to support the proposal from France and I don’t have to repeat the reason, it was very clearly stated by the German Democratic Republic. Thank you Mr Chairman.

The Chairman. I thank you. I give now the floor to the Federal Republic of Germany to make a statement.

Federal Republic of Germany. Thank you very much Mr Chairman. Anyway, as the distinguished delegate from Denmark announced in substance was not wrong because our position is pretty closer to that of the distinguished delegate of the German Democratic Republic. After that what has been already said here, my general statement to articles 10 and 11 can be rather brief. From a pure logic legalistic view of a law maker, we find that the proposal of the French delegation seems to be very appealing and so if we would have been nine years back just starting with work, we might have been prepared to support this proposal. However, the distinguished delegate from Denmark has pointed out and other delegations as well, there are serious commercial interests involved in this convention and so you cannot only look at the question of how the text look more nicely, but you have to find a balanced solution which meets with wide
support and not only support from lawyers and courts, but support from the concerned economic circles and for this particular reason, our delegation has got the impression that if this Conference will come to a useful result, it can do so only if we negotiate on the basis of the work which had been done by the CMI and the Legal Committee of the IMO and for that reason we would for the time being tend to stick more to the draft as it stands than to introduce a new compensation scheme under article 10 and 11, even though we feel that in theory there might have been a suggestion which is more appealing. Thank you very much Mr Chairman.

The Chairman. I thank you. The delegation of Finland please.

Finland. Thank you Mr Chairman. We highly appreciate the work done by the CMI and the Legal Committee when the draft convention has been subject to lengthy and thorough discussion during many years. The real novelty which have come out in these discussions is the special compensation in article 11. That special compensation responds to one of the main objectives of the new convention that is to give an additional incentive to the salvor in preventing damage to the environment. Articles 10 and 11 form the essential part of the new convention and during our discussions we have in the Legal Committee agreed upon a balance in these articles which meets the requirements of the different interests involved. We consider it to be a very delicate compromise which should not be disturbed. We, however, recognize the concern behind the U.S. proposal but anyhow we are of the opinion that at this stage we should not open up the discussion on this matter because the discussion would only be a repetition of the discussion in the fifty-seventh's Legal Committee meeting where the U.S. proposal was strongly rejected. Mr Chairman, if we at this stage start negotiating a new compromise concerning articles 10 and 11, which are the heart of that new convention, we endanger our possibilities to fulfil our task to create a new salvage convention as the delegate of Denmark pointed out. Our delegation is strongly in favour of the new salvage convention which takes into account the environmental concern and therefore we support articles 10 and 11 as they are now drafted. Thank you Mr Chairman.

United Kingdom. Thank you, Mr. Chairman. We, as I think is already known from our general opening statement, entirely support the present text and wholly endorse the detailed arguments which have been put forward on behalf of the CMI as well as what has been said about the general approach by the distinguished delegations from Denmark and Finland, and in that respect we are also in line with what has been said by the German Democratic Republic and the Federal Republic of Germany. We do take the view very seriously that these proposals by the United States and Canada, while we can understand the reasons that lie behind them, now come so late that they very seriously endanger the success of this Conference. Mr Chairman, I will not run through all the arguments. One could speak about this for quite a while, but may I just mention them more or less by heading. First, nobody objects to the inclusion of article 10.1(b); that is accepted. We submit that once that provision is in article 10, so that the environmental benefit is a factor to be taken into account which, indeed, has been the practice for a long time, then it is inescapable as a matter of the present law and logic that the award should continue to be borne in proportion to their value by the property interests involved. Once property interests accept that there should be a 10.1(b) the present article 10.2 follows. We must remember that salvage is concerned with the benefits to a joint venture between ship and cargo and not with liabilities. Secondly, we must remember the difficulties of apportioning an award and that point has already been made on behalf of the CMI. It is impossible, in practice, to distinguish in a case...
which falls under article 10 between the weight which is to be given to factor (b) in contrast with the other factors. One only has to remind oneself of the Amoco Cadiz and many of you will have read articles in the literature about the very real possibility that that vessel might have been saved. How could, if that had happened, an arbitrator then have apportioned the benefit which that salvage would have conferred upon the environment as opposed to ship and cargo. Just think, if I may say so, of the expert evidence that would have been involved that the poor arbitrator would have had to listen to before he could come to a conclusion. We also submit, Sir, that it is not surprising at this time that public policy should have been expanded to include considerations of dangers of pollution to the environment and demand that if an attempt to save valuable property, then this should be done without damage to the environment, and therefore if valuable property is saved, with damage to the environment, or with the benefit of saving damage to the environment, then it appears to us perfectly just that the cost of that and the appropriate reward for it should be borne by the property interests involved. The compromise in article 10, including 10.2, has been applied in the United Kingdom by very experienced arbitrators for many years and is the practice under LOF 80 in relation to oil cargoes. We submit that to differentiate, or to attempt to differentiate in an award under article 10 between (b) and the other factors would introduce arbitrary criteria which would be wholly speculative, as has been said. Finally, Mr. Chairman, I am sorry for taking up more time than I should, but I would just say very briefly that, with regret, we cannot support the French proposal in relation to article 11. First, it departs significantly from the Montreal compromise which we finally obtained and which we should always bear in mind. It would also mean, as I follow it, that whenever a salvor’s actions have benefited the environment to some extent, however minor, he would be entitled to his expenses under article 11. Thirdly, as I think has already been pointed out, an award under paragraph 10 already takes into account the salvor’s expenses, the salvor who is entitled to an award under article 10 should therefore not also be entitled to an award under article 11. Thank you, Mr. Chairman.
Convention. As many speakers have said, this text has been prepared by the CMI and the IMO Legal Committee. It is a balanced text which takes into consideration the commercial interests involved. Thank you, Mr. Chairman.

The Chairman. Thank you, Madame. The next speaker is the delegation of Japan.

Japan. Thank you, Mr. Chairman. This delegation would like to associate itself with the view put forward by the previous many speakers, for instance Germany, Denmark and others. Especially, this delegation would like to fully endorse the statement expressed by the representative of the CMI, Mr. Nielsen, and the view expressed by the distinguished delegate of the United Kingdom, Sir Michael. In other words, this delegation would strongly like to support the text as it stands.

The Chairman. Thank you. The next delegation on my list is Greece.

Greece. Thank you, Mr. Chairman. What I am going to say contains nothing original, because what we have heard this morning contains nothing original from whatever side. I have been involved in the work on this draft since before the Montreal Conference of the CMI and all the arguments that were aired this morning have been aired during the various sessions of the Legal Committee, during the preparatory work of the CMI, during the CMI Conference and even during the last efforts of drafting the text for this Conference. The result of all these deliberations and of these sessions was this text. It took nine plus two and a half years to be born. If we want to alter it I can definitely forecast that we shall need an extra eleven years and, of course, at that time I shall not be amongst you. Much to my regret, I say; but even then I do not think the text would be ready. It has been said that nobody is satisfied with this text. We certainly believe that the fallacy has been aired even this morning about innocent cargoes like wheat, milk or whatever. I am not afraid that they would be forced to be treated. I think that is the greatest fallacy of all, because, to begin with, the innocent cargo does not cause pollution and they do not harm the environment. If a cargo of wheat sinks, the only immediate result is probably that there will be some increases in the fish population of the area. But not yet, and the same applies to all innocent cargoes. From the side of the ship owners, they are not satisfied because they are called to contribute to the costs and the enhancement of the salvors, in case there is no salvage, because they believe that 90% of the risk to the environment comes from the cargo and only 10% from the vessels. But we had submitted to the decision, we have accepted the situation and we have accepted this text. If we were to reopen all these questions in all fairness, we are not there. If we want to, let us say, stimulate the salvors to act, there is no other question. If you want to stimulate them then it is up to the question of public law. It is not a question of private law. In the first place, as it was said by the distinguished representative of the United Kingdom, a view to which I subscribe entirely, we are here to consider private law. The private law aspect has been attempted to be solved by this text. We have to stick to it, otherwise, as I said, we shall need some extra time. Naturally, then, it will be the public law element that will come into play; although I do not think that has been, as recent events have shown, very efficient either. Therefore, I think that this delegation sticks with the original text on all substantial points, with the exception of those that have not been agreed as yet. Thank you.

The Chairman. Thank you. I call now on the Director of the International Oil Pollution Compensation Fund. Mr. Jacobsson you have the floor.

IOPCF. Thank you, Mr. Chairman. As you know, the IOPC Fund to which reference has been made in certain Conventions, is the intergovernmental organisation responsible for the administration of the regime of compensation set up by the 1969
Civil Liability Convention and the 1971 Fund Convention. Now it is, of course, not for me and for my organisation to make any assessment as to whether or not one proposal or the other is fair or upsets the balance between the various interests involved in salvage operation. But in one of the documents submitted which was introduced this morning a reference has been made to the oil pollution liability regime and for this reason I thought it would be appropriate for my observer delegation to make some points, and I am referring to document LEG/CONF.7/17145, which has been submitted by the Oil Companies International Marine Forum. Now, with all respect for my friends in OCIMF, this document gives rise to certain concern on behalf of the IOPCF. As you realise the two conventions which I just spoke about contain the definition of a notion of pollution damage as far as oil is concerned. In the document submitted by OCIMF (7/17) we find a proposal for a new article 12; in that article it is said, among other things, that the enhancement should be separately stated and that portion of the award “shall be deemed to be compensation for pollution damage” and then it continues with preventive measures. And now, Mr. Chairman, this seems to me to indicate that the authors of this document mean that there is a link between the salvage convention and the 1969 Civil Liability Convention and the Fund Convention. I submit that this is not the case from a legal point of view. Whatever is put into the salvage convention, in my view, cannot in any way amend or modify the definition of pollution damage as laid down in the Civil Liability Convention and the Fund Convention. Those conventions will have to be applied and interpreted independently of what is stated in the salvage convention. I must also draw the attention of delegations to the fact that in article 3, paragraph 4, of the Civil Liability Convention it is stated that no claim for compensation for pollution damage shall be made against the ship owner otherwise than in accordance with this convention, that is, in accordance with the Civil Liability Convention. So that the intention was clearly that the Civil Liability Convention was an exclusive remedy for all pollution damage and all pollution damage will have to be interpreted on the basis of the text of that convention and that convention alone. This question which we are now looking at, i.e. the relationship between salvage operations and oil pollution liability has been addressed by the IOPC Fund in a major case in Italy some years ago, I think some of you may be aware it is the so called partners case, where large claims were made against the ship owner under the Civil Liability Convention and against the IOPC Fund under the Fund Convention for operations that were technically salvage operations. This matter was studied very seriously by the Member Governments of the IOPC Fund, at present 42, most of them I believe are represented here today, and the position taken by the Member Governments of the IOPC Fund, given the instructions to this effect, was that salvage operations can be considered as covered by the notion of pollution damage in the Civil Liability Convention if, and only if the primary purpose of the operations was to prevent or minimize pollution. If the primary purpose was something else, for example, salvage of hull and cargo, they could not be considered as pollution damage and, in particular, as preventive measures, as laid down in the convention, and this even if they had a secondary effect of preventing pollution. I would also like to point out that this position of the IOPC Fund Member Governments was shared by the Italian court of first instance at Messina. The judgment of the court was appealed by cargo interest but an out of court settlement, which was endorsed later by the Court of Appeal in Messina, laid down very clearly that nothing

(145) Supra p. 352, note 143.
was paid at all for the salvage operations in this context. And so, Mr. Chairman, it has been the very clear position of the Member Governments of the IOPC Fund that firstly, of course, the notion of pollution damage has to be interpreted on the basis of the Civil Liability Convention alone and that pollution damage prevention operations, the primary purpose of which is to prevent and minimize pollution damage. There is of course another question of recourse and that is also addressed in the document submitted by OCIMF and in the end it says that without prejudice to any right the ship owner might otherwise have to seek reimbursement under any other provision under applicable law, and I take that to mean also under other conventions. And clearly yes, that is quite correct, but on the assumption of course, that such recourse is only possible to the extent that the claim is covered by a definition of such other convention or applicable national law. Thank you, Mr. Chairman.

The Chairman. I thank you, Mr. Jacobsson. The next speaker on my list is the delegation of Sweden.

Sweden. Thank you, Mr. Chairman. It is quite true that article 10.1(b) introduces a new criterion for the assessment of the salvage award, and one could of course say, like some previous speakers, that this has the effect that the salvage award calculated in accordance with article 10 and paid by property interests would include an element which in other circumstances would be regarded as costs for preventive measures and as such paid by the P and I insurance. I therefore understand that this solution could be regarded as unfair in that it upsets the balance of the normal costing system, and could, therefore, like the United States proposal, look at ways of regaining that balance. What I then ask myself is whether this could be done by changing article 10. Well, Chairman, like others have pointed out, this could not be done because it presupposes that you could distinguish between the effect of 10.1(b) and the other criteria in that article which should be taken into account while assessing the award. The balancing of costing could therefore as we see it only be done outside article 10 and it is being done by the introduction of the special compensation in article 11, and by the ship owners’ responsibility for that compensation. So it is quite true, Mr. Chairman, that the basic text contains a compromise and it contains a compromise that this delegation would like to give its full support. We say this not because of the time restraints in this Conference, not just because it is a compromise, but because we believe it is a sound compromise which also has the benefit of having the backing of all the interests concerned in my country, and probably also from what we have learnt during the Legal Committee sessions, by interests concerned in many other countries. Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker will be the delegation of the Netherlands.

Netherlands. Thank you, Mr. Chairman. In my general statement on Monday I have already stated on behalf of my delegation that my delegation is in favour of keeping the basic system of articles 10 and 11 as it stands. We are discussing delicate compromises and matters of principle but I would like to stress that this compromise should be approached also in the businesslike manner which is the tradition of maritime law. I was very much impressed by what has been said by the CMI and the UK delegation that, in fact, what we are trying to do here is not to upset the present practice of arbitrators and that in practice it has been shown that we are discussing here in terms of money a very minor problem. One could say we are not discussing money here, we are discussing principles, but I am afraid, Mr. Chairman, if we do not take a pragmatic
approach we will end up with no convention at all, and I am happy to hear that we all agree that we should have a salvage convention which gives encouragement to salvors to take proper and immediate actions in cases where the protection of the environment is involved. I appreciate that the United States delegation with its proposal does not want to upset the compromise in principle. What it tries to do, in fact, is to try to separate the so-called enhancements for the protection of the environment from the other elements of article 10. But this goes against the present way in which the board and arbitrators really fix the salvage rewards in the normal salvage cases. The word “enhancement” as, in my view, has been said by Mr. Nielson very properly, is a misleading term. It suggests that you would top up the salvage reward with respect to the saving of the ship and cargo with a certain percentage, and that is not the case. It is only one of the elements which will be taken into account by an arbitrator or a court when the salvage reward has to be assessed. In the same way I think that the salvage operations have been complicated by adverse weather conditions or by the fact that the lives of the crew of the ship had to be saved. Now, I think that the court and arbitrator should keep in mind that they should not use all the room which is available under article 10 when we are dealing with the actual value of the properties salved, to use that in cases where the environmental aspect is a major one in a salvage operation. We should keep in mind, of course, that I think that the present wording of articles 10 and 11 gives sufficient flexibility to the court to apply in such cases the special compensation where the expenses and remuneration for environmental parts of the salvage operation are a major element, but I think that was already a fear which was expressed by the United States delegation during the meetings of the Legal Committee, that the court would really fix too important a part of the salvage reward with respect to the protection of the environment. I do not fear that that will be the case. There is article 11 to deal with the specific environmental elements, we should have a pragmatic approach, we should trust the arbitrators and the courts who have already taken into account under the 1910 Convention, also in my country, that the element of the protection of the environment should be taken into account to a certain extent. They can continue that practice only in those cases where, in fact, the elements of the protection and also the cost of the protection of the environment is an important factor and then they should use article 11, that means the special compensation. We think that the present text should be kept, also not only as a matter of principle but for pragmatic reasons and that is the reason why we strongly support the present texts contained in articles 10 and 11. Thank you very much, M r. Chairman.

The Chairman. I thank you. The next speaker is the delegation of Indonesia.

Indonesia. Thank you, M r. Chairman. Having listened carefully, Sir, this delegation wish to associate with the previous speakers, as also mentioned by the distinguished delegate of Japan, which indicate to keep the basic text as it is in articles 10 and 11, and this delegation also agreed to the idea put forward by the distinguished delegates of the IOPC Fund for his clear explanations as to the position of CLC and Fund Conventions. Thank you, Sir.

The Chairman. The next speaker is the delegation of Côte d’Ivoire.

Côte d’Ivoire. Thank you, M r. Chairman. We understand that the present text represents a compromise but we likewise understand the concern expressed by the United States delegation in the document, which is why we would support this proposal and we would favour the setting up of a contact group which could look at this proposed amendment. Thank you, M r. Chairman.
The Chairman. I thank you. The next speaker is the delegation of Cyprus.

Cyprus. Thank you, Mr. Chairman. Cyprus has noted with great interest the submission of the United States and France and the comments made so far by various speakers. We believe that these suggestions may contain merits which command consideration and which may lead to further improvement in something which is already perfect. To this end we wish to support the suggestion made by Canada entailing to affording the originators of the proposal a last chance to debate their suggestions, primarily for the benefit of those who did not have an opportunity to attend the meetings of the Legal Committee and the CMI group and which are called today to make decisions one way or another. We have already heard one side of the story. Naturally these informal discussions do not mean that we would change the basic text. In supporting the Canadian suggestion we take into consideration the comments made by Dr. Stankovic a few days ago, from which we conclude that any change in the basic text introduced at this stage will trigger chain reactions in the proposed treaty. Finally, Mr. Chairman, we believe that the seriousness of the matter which will govern salvage practices in the years to come can afford, for the last time, the luxury of the time. Thank you, Mr. Chairman.

The Chairman. I thank you. The next speaker is the delegation of the USSR.

USSR. Thank you, Sir. Mr. Chairman, when we use the word “compromise” we always understand that this means that some decisions has been achieved which does not fully satisfy everybody but certainly which will meet with some agreement. We understand, for example, the United States proposal is aimed at improving the compromise achieved in Montreal. My delegation is grateful to the United States for the efforts exerted and is still exerting in this direction. The only point we have to raise, and we certainly have serious misgivings about this point, is that at this stage of the negotiations, can we or not improve the compromise achieved at Montreal? Sometimes we are told that, in the remaining days of this conference, we could have a contact group which could improve the text. Let us hope so, but with all due respect, we have serious doubts about whether this group can achieve any positive results. It is hardly likely, Sir, over the remaining days, that we can really change the approaches which have been emerging over many years. That is my point to start with. It is not because we were part of the Montreal compromise, and we supported that. We worked in the Legal Committee of IMO, we are not saying what we are saying because of that, lets be pragmatic. We are basically starting with the situation. I mean today, there is no alternative to the approach contained in the present text. Obviously, there may exist other possibilities but at the moment we don’t see any other alternative. So on the basis of these references I made and entirely agreeing with the CMI and the United Kingdom, we would like to support the basic text of articles 10 and 11. Regarding the contact group, I repeat we are ready to work with anybody but we don’t see any point in setting up a group today because we don’t have too much time before the end of the Conference. Thank you, Sir.

The Chairman. I thank you. The next speaker is the delegation of the Peoples Democratic Republic of Korea.

People’s Democratic Republic of Korea. Thank you Mr Chairman. Many delegates have pointed out that the present draft convention is a quite balanced text and therefore this delegation supports the present articles 10 and 11 in the basic document. Thank you Mr Chairman.

The Chairman. Next speaker is the delegation of Spain.
Spain. Thank you very much Mr Chairman. For the reasons explained here on several occasions, our delegation likewise supports the basic text as it is here. As I have the floor, and since we are discussing articles 10 and 11, I would like to possibly make a few comments which do not pertain to the main debate but it is just a matter of clarification on articles 10 and 11. But as there are very small points we do not think a paper would be justified. If I may Mr Chairman, I would like to make a few comments. In our modest opinion, paragraph 1 of article 11 when it refers back to article 10 in the fourth line of the Spanish text, it could more properly refer to articles 9 and 10.

The Chairman. I just said at the beginning of our debate that we will go through the whole draft of articles 10 and 11 and through all the proposals which have been submitted on Friday or Monday. Today, we have to concentrate on the substance of those articles that means payment for the salvage operations. Could you perhaps make your remarks when we come back to the second round of our debate on articles 10 and 11. Would that be acceptable to you?

Spain. With great pleasure Mr Chairman. That is why I had asked you Mr Chairman if you would allow me to do so now but of course, we are perfectly ready to postpone our statements till a later stage. Thank you Mr Chairman.

The Chairman. I give now the floor to the observer delegation of the International Salvage Union.

International Salvage Union. Thank you Mr Chairman. As a potential recipient of the encouragement envisaged by the Convention, it may be useful to know how the salvage industry feels about the amendments. Well it is quite clear that under all the three possible amendments, the salvor stands to gain and to be paid and to be encouraged for protecting the environment and for that the industry is grateful. It might perhaps be thought that on that basis we would not really mind which alternative was chosen, or perhaps to pick the best. But this is not the case. These negotiations for this Convention started a long time ago, and led up to the Montreal Conference in 1981. At Montreal the International Salvage Union were part of a commercial compromise which has resulted in the articles as they stand at present. The industry will stick by that and support it. We don’t really want it to be changed eight years later even though some of the alternatives might in fact be better for the industry. We might under some of these proposals particularly that of France, gain even more money. But we think we should stick to the compromise particularly as we are keen to have the Salvage Convention and do not want anything to endanger it. We have listened well to the fears expressed by the delegations of the United Kingdom and Denmark, and many other delegations, the fear that if this existing text and the compromises is broken we won't end up with a convention. The industry feels that it must have a convention and therefore wants to support the draft as it is at the moment. There are also practical reasons as to why we think the present draft is better. In all three of the alternatives it will be necessary to sever the element of the damage to the environment. Any court or tribunal is going to decide precisely how much goes to that particular criteria. There are two objections from the ISU point of view; one is we think that it is quite impractical in reality to divorce that particular element from the other nine or ten elements that you have to weigh in the balance. The delegation of the United Kingdom had drawn to your attention how you would assess that separation if you have to deal with the problem, how would you envy an arbitrator or court in having to decide how much came down for that particular element. Secondly, and perhaps more importantly to the International Salvage Union, we envisage that if a court or tribunal did have to sever the...
damage to the environment, it will cause greater delay and greater expense in obtaining a salvage award. One of the complaints of the industry at the moment is the length of time that it takes to get a salvage award. It is not uncommon to be 18 months or two years before it is paid. If we have another element in the assessment of the award and that is the damage to the environment, an arbitrator has to make an award under the normal criteria and also has to make an award for the damage to the environment. There is far more scope for any of the parties involved to appeal and cause further delay and expense. So for practical reasons, we are not in favour of it. Finally, whilst having the floor, I would like to draw to the attention of delegates and particularly to those supporting the hull and cargo interest, who feel that perhaps they are not getting a fair deal by the present compromise. There is one element where I think they will gain and which has been proved in practice. There has been a safety net in Lloyd's form which applies to tankers since 1980. Whilst there have been very few safety net cases, it has in fact encouraged the salvage industry to go to the assistance of ships and to save them whereas butt for that encouragement they might not have done so. A prime example of this is the Gulf War. In 1984 (I think it was) was the first international ship hit there. They were hit by missiles and the salvage industry was faced with something which it had never to face before. It was faced with VLCCs in blaze from stem to stern in a very remote and inhospitable area in a war zone. It went to the assistance of those ships for a variety of reasons: one was the industry was in a bad form but secondly because it thought that the safety net would apply. Nearly all the cases under the Lloyd's form and all the ships involved were tankers and the salvors were under the impression that if they went to the assistance they at least would be protected for their expenses. This was very important to them because faced with that situation in the Gulf they were put to horrendous expense in mobilizing and actually assisting those ships. Certainly some of the earlier cases in the Gulf, the actual out-of-pocket expenses and that is money paid to third parties not for their own equipment, was well several million dollars. I think the biggest was about three and a half million dollars. This was an investment which the industry put in to saving those ships and did so because it had the security of the safety net. In the event, the professional salvors found that they could cope with the situation; they were able to salvage those ships and extinguish the fires and save the ships and cargoes. I think it is fair to say that there were no safety net cases arising out of the Gulf, because nearly all of them were ultimately successful. The point is, that at the beginning, the salvor did not know that he was going to be successful and, giving the financial outlay that he would have had to make, he probably would not have gone into it in the first place but for that safety net. Now that was enured for the benefit of the hulls and cargoes in those ships. Thank you, Mr. Chairman.

**The Chairman.** Thank you. The next speaker is the representative of the International Group of P and I Associations.

**International Group of P and I Clubs.** Thank you, Mr. Chairman. Mr. Chairman, the International Group of P and I Clubs is grateful for the opportunity of expressing its support for the provisions set out in articles 10 and 11. Outlining our reasons for endorsing these compensation arrangements, which have come to be known as the Montreal compromise, one must go back to the late 1970s and to the spate of serious tanker casualties of that time. While salvors did valiant work in response to those casualties, it was frequently the case that their work was rendered more difficult or even impossible. Their work was rendered more difficult, or even impossible because of environmental considerations. In some instances, for example, governments would insist that in order to protect the environment a vessel and her cargo be sunk or
destroyed at sea. In a “no cure, no pay” operation the risks assumed by the salvors were then quite simply unacceptable and it became apparent that the system for rewarding them and encouraging them to take on these difficult and hazardous operations needed to be reformed. This led, then, in the first instance to a commercial solution. An amendment to Lloyds’ Open Forum 1980 worked out by a committee set up by the then Chairman of Lloyds, on which were represented all parties concerned, salvors, ship owners, oil companies, property underwriters and P and I Clubs. As is well known, it was agreed by the salvor that he would use his best endeavours to prevent the escape of oil from the vessel or, in other words, to prevent pollution. In exchange, the ship owner and cargo owner accepted that this obligation which was spelt out for the first time in the contract, would be reflected in the property award. In addition and most important, since the circumstances in which this new arrangement would apply were likely to impose a risk of only partial success or even failure for the salvor, the ship owner agreed to an exception to the rule of no cure, no pay, and instead allowed for a minimum reward in every case – the safety net, expenses plus 15% for the salvor. This agreement led to the first of the commercial compromises. Property underwriters agreed to underwrite the property award as it reflected the express obligation on the salvor to keep the oil in the vessel, and the P and I Clubs agreed to underwrite the safety net. So far so good, but in the view of some, this did not go far enough. In particular the amendment to Lloyds Open Forum did not cover all vessels, only laden tankers and some felt that the safety net might be made more generous. This then was the background to the CMI Conference in Montreal where, building on the LOF 1980 consensus, a further development of those arrangements was worked out, the result of which is in essence before this Conference. Again, this was underpinned by a commercial compromise. Property underwriters undertook to underwrite the property award and the clubs to underwrite to safety net. Since 1980, the clubs have maintained their support for Lloyds Open Forum 1980 and the subsequent Montreal compromise. It is, in the view of the International Group, the best practical solution available. Lloyds’ Open Forum 1980 and the subsequent Montreal compromise. It is, in the view of the International Group, the best practical solution available. Lloyds’ Open Forum 1980 and the subsequent Montreal compromise. It is, in the view of the International Group, the best practical solution available. Lloyds’ Open Forum 1980 and the subsequent Montreal compromise. It is, in the view of the International Group, the best practical solution available.

The Chairman. Thank you. It is my intention to finish this debate this morning, so that we can continue this afternoon with article 24. I have on my list three observer delegations and the United States have asked for the right to reply. May I ask the three observer delegations whether they want to intervene in any event or whether there is the possibility to give up their right to speak. That concerns Friends of the Earth International, INTERTANKO and ICS. Do you insist, Friends of the Earth International? (Answer: No). What about INTERTANKO? (Answer: We do not insist) ICS (Answer: We never insist, M r. Chairman). M r. Duffy, I give you the floor for a very brief statement.
ICS. Thank you Mr. Chairman. It is merely to reassure anybody who has any doubts, that we as one of the paying parties, support the compromise. Thank you, Mr. Chairman.

The Chairman. Thank you, that was really a brief statement. I now give the floor to the United States and hope that that statement will also be brief. You have the floor Sir.

United States. Thank you, Mr. Chairman. I have listened very carefully to the various comments during our debate this morning and would like to take just a few more minutes before we adjourn for lunch, to clarify what I think are perhaps some misunderstandings, and certainly to communicate our position with respect to our proposals. First of all, there has been frequent mention of the compromise. When I first became involved with this enterprise of the conference that we are embarked upon, I made enquiries as to who on our delegation or in our nation was party to that compromise and I have to say that I have been unable to determine if any United States cargo representative was party to this. So consequently, it may be better understood if we have difficulties accepting the compromise when it is appreciated that we were not indeed included in such a compromise. There have been frequent references to the difficulties associated with isolating an environmental enhancement. And those statements included the fact that it had never been done before. I think civilization would be far worse and indeed would be declining rapidly if every time we encountered something that had never been done before we backed away from the prospect. Indeed our colleague Mr. Bradhold might have even more anxiety about his confrontation with his maker and I would certainly do so. In the same line of argument the comment was made that to attempt to isolate an environmental enhancement would be speculative. I submit that many years since 1910, the calculation of the award for salvors has proceeded independent of any additional item relating to environmental enhancement, and hence that process could indeed continue to be supplemented by consideration of environmental enhancement. Indeed this is the very process that call for in article 11(2). Therefore, it should not be very difficult to do this and perhaps some modification in article 10 could facilitate making that possible. Several speakers spoke of the possibility of the judges being able to isolate from major cases and minor cases, a portion of the salvage award so that it would be more equitably distributed. Indeed this is our concern. I fail to be able to read articles 10 and 11 to see how that process can take place and believe that some discussion in a contact group might lead to a better understanding on our part on how this could occur. Perhaps some clarification of the existing text could make this more certain and be of help to resolving our problems. We do not want to completely change articles 10 and 11, and as I said in my statement, we are committed to the basic structure of 10 and 11. So I would wish to clear up any doubt that our intention is not to be a spoiler or direct this conference by our proposal but rather to take something that is yet to be protected, that is indeed the purpose of our assembly here, and to try and make it more clear and to improve its ultimate utility to the maritime industry and to the environment. Some had said our proposal is a repetition of that which we presented in the 57th session of the Legal Committee and I assure you that is not exactly true. There are new elements in our proposal and indeed some Governments have already noted, many of those here in the room were not parties to the discussions in the 57th session and want to have at least the opportunity to consider these ideas in this conference. Finally, Mr. Chairman, my delegation wishes to associate itself with the remarks of the representatives of the IOPC with respect to the difficulties of assessing or apportioning the salvage award vis-à-vis the provisions of the CLC and Fund Convention. There may indeed be circumstances where a major
pollution clean up effort is entirely devoted to the containment and amelioration of the environment, of the damage to the environment and others which would be a mix and that would have to be reviewed in the light of the primary purpose test that was annunciated in the case arising in the straits of Sinai. I think, Sir, that our process is one in which all of us are assembled to try and produce a more perfect document many have said we have reached that point at this time, and I submit that further discussions in the contact group might indeed help clarify some of the issues that have been raised this morning in which I have just addressed. Thank you.

The Chairman. I thank you. No time is left for the Chairman. Well, any way, we have finished the debate and I have arrived to make some remarks and to express my views on the procedure which should be followed. I would like to adjourn the meeting now for lunch. We will meet again at 2.30 p.m. and I will then make some remarks on our further procedure. I thank you.

The Chairman. Ladies and gentlemen, the meeting is called to order. Before summing up this morning’s debate, I would like to congratulate the committee on its pertinent discussion and to thank the delegations who spoke for the clear statements. It was evident that all delegations wished to adopt a convention and to provide a reasonable basis on which the salvage service could operate in the interests of the safety of shipping and the protection of the environment. The great majority of the delegations who spoke supported the basic draft, although several delegations pointed out that the draft was not in every respect the best solution from a legal point of view. It is, however, a workable and practicable compromise which could really support the financing of the salvage service. One of the results of our debate was that the proposals submitted by the delegation of France and OCIMF have not gained any support. Some delegations supported the proposal of the United States and that proposal remains to a certain extent within the limits of the basic draft but would have the effect of interfering with the present balance of the payments to be made for the salvage operation. We will not take a decision today on these articles, not even on the substantive elements, because we shall return to the whole package when we go through the remaining proposals which have not been discussed today. In the meantime, the delegations which have submitted proposals may reconsider their position in the light of this morning’s debate, and they are free to conduct consultations on a totally informal basis. Interested delegations may come together and try to find a wording which they believe could be submitted to this committee. But that is totally up to the delegations. There will be no contact group or other working groups on a formal basis, and no Chairman’s contact group. I have been informed that the delegation of the United Kingdom, as the host country, has been kind enough to serve as a contact delegation, and anyone interested in these consultations may approach them. You may, of course, at any time approach the Chairman; he is always ready, even at night or in the morning to discuss this problem with you. This can only be done on a totally informal basis and has nothing to do with the formal working group or with the formal contact group. In any event, we have to take into account that a great majority supports the basic draft, and those delegations which come together should consider the situation very carefully. Good luck in your consultations.

24 April 1989
Documents LEG/CONF.7/VR.143-147

The Chairman. I would propose that we adjourn a bit earlier. After the lunch break we will start with a discussion of articles 10 and 11. Three stages of this
discussion, the first stage we will go through the minor amendments which have been made, and which have not been discussed in our first round. The second stage, we will discuss the result of the consultations and these results are contained in one document, that is document working paper 28; that document is available in all three languages. Please pick that document up when you go to lunch and read it during lunch hour. That would be the second stage, and the third stage would then be to come back to the substance and to see what the situation is after the discussion of that document, working paper 28. Is that clear what the procedure is after lunch? The meeting is adjourned, have a good lunch.

The Chairman. Well, ladies and gentlemen, the meeting is called to order. From time to time, we need a bit exciting debate in order to keep awake but I hope we will not always use the procedure for that purpose. We can use much better points of substances. Text of articles 10 and 11. In the first round we will go through the proposals which have not yet been discussed. That means those proposals which do not touch upon the substance of article 10 and 11. We will go through the text article by article of course and paragraph by paragraph. The first proposal is on article 10, paragraph I, subparagraph (a). That proposal has been submitted by France in document 7/11. May I ask the French delegation to introduce that proposal?

LEG/CONF.7/VR.149-156

The Chairman. We come, therefore, to article 11. Here we have a proposal submitted by the Federal Republic of Germany on paragraph 1 and paragraph 4. Both proposals are linked and I would like to propose that we take up this proposal of the Federal Republic of Germany both on paragraph 1 and paragraph 4. These proposals are contained in working paper number 7147. You will find there a proposal on article 370 COMITE MARITIME INTERNATIONAL

Article 13 - Paragraph 1 (b) and Article 14

RULE OF INTERPRETATION CONCERNING THE INTERRELATIONSHIP BETWEEN ARTICLES 10 AND 11

In fixing an award under article 10 and assessing special compensation under article 11, the tribunal is under no duty to make an award under article 10 up to the maximum value of the salvaged property before assessing the special compensation to be paid under article 11.

RESOLUTION ADOPTED BY THE INTERNATIONAL CONFERENCE ON SALVAGE, 1989

The States represented at the Conference.

HAVING ADOPTED the International Convention on Salvage, 1989,

CONSIDERING that payments made pursuant to article 11 are not intended to be allowed in general average.

REQUESTS the Secretary General to invite the International Maritime Committee to amend as a matter of priority the York-Antwerp Rules, 1974, to ensure that special compensation paid under article 11 is not subject to general average.

LEG/CONF.7/CW/WP.7

Submission by the Federal Republic of Germany

Article 11 para. 1 should read:

"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 9 and 10 at least equivalent to an aggregate amount composed of the compensation assessable in accordance
11, paragraph 1 and paragraph 4, and my impression is that both are linked and it would be appropriate to discuss them together. May I ask the Federal Republic of Germany to introduce that document.

Federal Republic of Germany. Thank you, Mr. Chairman. I am in the advantageous position that my delegation in the light of the discussions which had been carried on outside the formal meetings that form part of our paper and I would like to start instead of introducing the paper, introducing those points which we are going to withdraw now. And I refer to begin with to paragraph 1 of article 11. Paragraph 1 has one substantial amendment, that is that there should be a certain percentage of the value of the salved property added, that is in the sixth line of our paper, referring to paragraph 1. So this proposal, with a percentage, is no longer relevant and we would like to withdraw this. There remains a very, very small drafting point whether one should refer in paragraph 1 not only to article 10 but also to article 9 because we feel that with respect to the general salvage award, the basis of this we work with would be 9 and 10 together, but this could be entirely left to the drafting committee, and if anybody would object it would not mean that we would press this minor point. With respect to paragraph 4, there are also two elements in it, and I will start with this element which we are going to withdraw. That is the end of the sentence, which reads “less an amount of x-percent of the value of the salved property”. This proposal also is no longer relevant in the light of the previous discussions on how article 10 and 11 function, but there is a slight amendment to the language of paragraph 4. The original draft states: “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 recovered by the salvor under article 10.” We believe that this drafting covers only one of many possible cases, i.e. that the salvage operation in its traditional sense had been a total failure so that no general salvage reward could be awarded under articles 9 and 10 because of the principle of no cure, no pay. As we have learned with respect to articles 10 and 11, there are many cases where both provisions can be applicable. Part of the money will be paid as a general salvage reward under article 10, and the balance will be paid under article 11, and we feel that this notion would probably be better reflected if the text were changed so as to read: “Provided always that the compensation under this article shall be paid only if and to the extent that the total compensation assessable in accordance with this article is greater than any reward recoverable by the salvor under articles 9 and 10.” This amendment should make it clear that articles 10 and 11 can be applied simultaneously, that one is making a calculation of what would be the total that could be assessable under article 11 and then setting off gains under article 10, and paying the balance under article 11. Thank you.

with this article plus [___] per cent of the value of the salved property, he shall be entitled to compensation from the owner of that vessel equivalent to his expenses as herein defined.”

Article 11 para.4 should read:

“Provided always that the compensation under this article shall be paid only if and to the extent that the total compensation assessable in accordance with this article is greater than any reward recoverable by the salvor under article 10 less an amount of [___] per cent of the value of the salved property.”

The reasons for this proposal are set out in document LEG/CONF.7/19, p. 7, 8 and 9 and in document LEG 57/3/5 of 3rd September 1986.
The Chairman. I thank you. Is the text clear for everybody, or are there any questions? Greece.

Greece. Thank you, Mr. Chairman. I would like to have the wording of the proposal under consideration as it is not the text in Working Paper No. 7. Thank you.

The Chairman. Can we ask the delegation of the Federal Republic of Germany to read both articles in extenso in the new version. Thank you. You have the floor, sir.

Federal Republic of Germany. Thank you, Mr. Chairman. I will be happy to do so. Paragraph 1 reads: “If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatens damage to the environment, and failed to earn a reward under articles 9 and 10 at least equivalent to an aggregate amount composed of 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.” Paragraph 4 reads: “Provided always that the compensation under this article shall be paid only if and to the extent that the total compensation assessable in accordance with this article is greater than any reward recoverable by the salvor under article 10.” That concludes my delegation’s proposal. Thank you.

The Chairman. In your first intervention you proposed to say “articles 9 and 10” at the end of paragraph 4. Can you confirm this?

Federal Republic of Germany. Thank you for drawing my attention to that slight amendment.

The Chairman. Therefore, the end of article 4 will read: “... articles 9 and 10”. Thank you. The floor is open for comments on both paragraphs. Is there any support for the proposal of the Federal Republic of Germany? It seems, Mr. Schrock, that there is no support for your proposal so we do not need to open the debate. I take it that you will withdraw your proposal?

Federal Republic of Germany. Certainly.

The Chairman. Both proposals on paragraphs 1 and 4 of article 11 have been withdrawn. Thank you. There remains one problem – the blank spaces in paragraph 2, article 11. In their written submissions, some delegations have proposed a doubling of the figure. Can we have an exchange of views on this figure? We have only tomorrow, you cannot say we have to postpone that decision. There is no more time. I thank the delegation of the Netherlands for saving me.

Netherlands. I didn’t want to have you wait too long, Mr. Chairman. We should realize of course that in paragraph 2 when we have to fill in a percentage or a number, we should realize that this is a limit, that means that the arbitrator or court must not in all cases apply a percentage that is above the limit. Moreover, we are of the opinion that in certain cases, even when you would double this amount, and I refer to cases where for instance the amount of expenses has been relatively low, but where the skill and initiative, to use a word which has been proposed this afternoon, of the salvor has been very high, it leaves him with a rather moderate and small remuneration, smaller than he would receive in circumstances under article 10 where the arbitrator is not bound by any limits to top up the award, the regular salvage reward. So I think that the double is in fact in our view the minimum which should be filled in by this conference. But we take into account that this matter has been highly discussed at the CMI Conference in Montreal and this seems to be an acceptable figure by the industries involved. We do not always respect decisions by the industries but in this instance we would like to respect this compromise. Thank you very much.
The Chairman. I thank you. Any other delegation? Well in the meantime we can then give the floor to an observer delegation: Intertanko.

Intertanko. Mr. Chairman, Intertanko fully recognizes that it is necessary to guarantee to salvors that in environmentally sensitive cases they should not be faced with a loss but always to recover their out of pocket expenses. With a reasonable increment in relation to the same. That is the concept of the safety net as commercially agreed between the interested parties for the purposes of Lloyd’s Open Form 80 on the basis of a 15% increment. We heard last week Mr. Chairman the ISU observer delegation referring to examples from the Gulf War in 1984 how effectively that had been working as a sufficient guarantee to enable salvors to step into very large commitments, up to three million dollars in some cases, for work and equipment needed for particular salvage operations. Intertanko, however, feels obliged to express strong concerns at the prospect of a 100% mark up being applied to figures like this. It does not seem enough to say that 100% should be a maximum which should only be applied in appropriate cases. The English delegate has made a proposal in paper 7/11 that article 11 should be redrafted on a special reward, rather than a special compensation basis, with doubling that 100% of expenses payable in all cases. If this proposal is adopted it may not serve as a safety net but more as a featherbed. If uniformity of application, Mr. Chairman, is one of the objectives of this convention, salvors should not find jurisdictions where they are given such a featherbed rather than a safety net. Intertanko would urge that a more realistic figure than 100% should be written into the convention. And that refers to the 15% commercially agreed for Lloyd’s Open Form 80. This would be realistic and would also, in due course, facilitate the entry into force of the new convention. We are of the considered opinion that as long as we are taking a percentage of incurred expenses the problem of inflation increasing cost takes care of itself and to replace the industry agreement of 15% with a new figure of 100% will be to go too far particularly as no strong and compelling need for this change has been documented. Thank you very much Sir.

The Chairman. I thank you. Is there any other speaker. Is there a governmental delegation which wants to take the floor? Well then we can give the floor to the International Salvage Union.

International Salvage Union. Thank you Mr. Chairman. The double figure is part of the Montreal compromise as we know it and this is why we spoke last week when we were willing to support the compromise made eight years ago. At Montreal this figure of a double was something which was negotiated between basically all the industry and all the delegates and it was a compromise. In fact the ISU wanted substantially more than that and was asking for 300%. The 100% was a compromise and we will certainly still stick with that compromise, I point out as the delegate for the Netherlands has mentioned, this is a maximum total not what is going to be given in each case. It simply gives the court or the tribunal a discretion as to what to award. Our distinguished delegate from Intertanko mentions that the Lloyd’s Form is 15%. It is correct, it is 15% under the Lloyd’s Form but the obligations under Lloyd’s Form are very different from what are proposed under this convention. The Lloyd’s Form simply imposes a duty on a salvor to prevent the escape of oil from a vessel. This convention envisages not only preventing the escape of oil from a vessel but also dealing with other hazardous and noxious substances, some of which can be far more taxing than even preventing escape of oil from vessels. Certainly also part of the criteria under article 11 for the assessment of an award is the skill and effort of the salvor in preventing or minimizing damage to the environment. This is far larger than preventing escape of oil from a vessel, we do
not think therefore there is any comparison with the limits imposed under Lloyds Form. Mr. Chairman if you are to encourage the salvage industry one can’t stick to the figures which were given in Lloyds Form. The International Salvage Union were content with a figure which was negotiated nine years ago and that is double, it will not be encouraged by anything less. Thank you.

The Chairman. I thank you. Denmark, you have the floor.

Denmark. Thank you Mr. Chairman. I remember when I was a little boy, when my late mother, but maybe more my father, received the bills from the bigger department stores in Copenhagen she always said: “you have to pay for everything”. And I think we are exactly in the same situation here. The whole idea behind this set up to make a few convention, was to do something in this area. The commercial parties themselves have made the Lloyds Open Form and if we are here with that something completely similar to Lloyds Open Form it means 15%. I don’t think ...............

United States. ................. ................................................... ................................................... than double is an important starting point for discussions. The United States delegation considers it essential that this percentage play a significant role in the overall article 10/11 framework for ensuring that salvage compensation is ample and thus effective, preventing or minimising damage to the environment. This is not a pure safety net; it is meant as an incentive and an encouragement to salvors. Accordingly we support the proposal of the Netherlands that this doubling figure be a minimum.

The Chairman. Thank you. The next speaker is the delegation of Mexico.

Mexico. Thank you, Mr. Chairman. We have listened with great care to what has been said here, and are very worried because it is always being said that what is important is that this convention be approved. We suggest that this will be difficult for some of our countries because of the costs which salvage will represent if they are set at high levels. It will be better in some cases not to salve the ship or the property in view of the costs. Despite this, we acknowledge and recognise the importance of protecting the environment. But I repeat, account must be taken of what these extremely high costs represent for countries such as my own. If such a high figure means that many of our countries will not ratify the new convention, we would find ourselves only with the 1910 convention after all our efforts. Thank you, Mr. Chairman.

The Chairman. I have several speakers on my list. I suggest we adjourn for tea and meet again at 4.30 pm. The meeting is adjourned.

The Chairman. The meeting is called to order. The next speaker on my list is Greece. Greece you have the floor.

Greece. Thank you Mr. Chairman. I have listened with great attention the arguments advanced about the fixing of the so-called safety net or enhancement or whatever you make of it as in article 11.2 of the draft, and I must say that I find myself in total disagreement with the structure that is suggested in this respect. In fact if this position is adopted finally, it will be charged to benefit unscrupulous owners, unscrupulous salvors and certainly not the environment. It is all very well to discuss

(148) Regrettably, page 1 of Document 7/VR 152 that contains the rest of the statement of the Danish Delegate and the beginning of that of the U.S. Delegate, is missing.
abstract things. Having been a sailor before being a lawyer, I prefer to view things from the bridge of a ship. It is the only way to view maritime matters. If you have a ship at risk, the value of which is smaller, relatively small, let us say $1 million, and at the same time it is probably carrying a cargo which is considered very dangerous for pollution or whatever, then, in case of risk, you will find that there is a fleet of tugs assembled with a cost, you have heard here, that the costs in such cases can reach an amount of, I would say here, $3 million, I know of a case where it was $1.8 million, and then what. There are two alternatives. One of the alternatives is for the salvor to say to hell with the vessel and the cargo, let us get into the protection of the environment, protect the environment and they produce a bill, which will be $1.8 million. I multiply by two and that makes $3.6 million, which should be paid by the shipowner. On the other hand, I am taking the other side of the coin, you get the shipowner who has got property at risk to the tune, to the same tune. What will he do to protect the environment, if he has got to face a bill, and do not try to convince me that it will be the underwriter, because the underwriter is nobody else but the shipowner in the end. Therefore, if this is the time when the shipowner will say, to hell with the property, I prefer to risk the vessel than having to face this bill. This unfortunately is the stark reality of all this. It is all very well to say that when LOF 80 was visualized, they visualized only the escape of oil. They visualized the escape of oil naturally. Now we are drafting a salvage convention. Salvage by its name implies the salvation of the property. Indeed we said that we wanted to protect the environment. Yes, we all say that. However, the protection of the environment cannot by itself amount to anything more than the salvaging of the property. If you get, and I come back to my example, if the salvors manage to save the ship 100% and the ship comes back intact, intact completely, save one container like the one that was in the Channel about a month ago, and which involved a lot of red herrings. Will it be logical that all the efforts of the salvor would be concentrated to trace that container, yes. I say it should be. But will it be logical to have a higher value for reward, in that case, than in the case of salvaging the vessel. I find it completely unacceptable. I find that we have been working with the LOF 80 for nine years and the fact that it has been a success, it is obvious by the result that we have not a major oil pollution wherever, except barring the latest events in the other side of this hemisphere, and this is entirely due to the satisfactory ruling, regimentation we have had from LOF 80. You may say as it has been said here that we have new substances but Mr. Chairman, with all due respect, we have been unable to hammer out a single instrument about this elusive HNS. We have been unable – it was the one in the string of, let us say shining successes of this Organization, it was the one and only failure we have had in all these decades of existence of this Organization, about the achievements of which we have every reason to be proud. I cannot see that this time by opening a gap, or shall I say a tank, we may be flooded by a vote which in the end will be completely inequitable, not only for the shipowner but it will be completely incompatible with fairness in treatment of all commercial interests concerned. And in the end, you will find that the shipowner cannot be held to account for more than what has got at risk. Right, we said we want something more than that. We have agreed that about LOF 80 to increase to this percentages. We risk not only an inequitable and unreasonable solution, we risk the sinking of this convention, and there will be scores of States which will not participate with these percentages. Thank you.

The Chairman. Thank you. The next speaker will be the Delegation of the United Kingdom. Oh no, the Delegation of Cuba.

Cuba. Thank you Mr. Chairman. My Delegation wishes to draw attention of the
various delegations here present with respect to the statement made by the Mexican Delegation. That has been said is very important and one should carefully consider the extent of these costs which have been considered here and which are to be paid for and we would draw attention to the very title of this article. This would not be a special compensation, it would be a sort of war of the value of salvage operations carried out. We would like to underline the substance of the statement made by the distinguished representative of Mexico. We want to have a Convention on salvage and if we want it this means that we should not increase this quantity to the extent suggested – that is to say more than double. My Government indeed and many of those present are very much concerned by this high level and this concern is now becoming the minimum level – not the maximum level, this doubling of the amount – so we will draw attention to what all this might mean in monetary terms and think of the compensation that this will imply. The cost of participating in the various clubs would increase as a consequence of this doubling of the amount. Thank you Mr. Chairman

Yugoslavia. Thank you Mr. Chairman. It just happens that I have in front of me the very recent publication of one of London's seated international P & I clubs. I must not advertise so I will not mention the name of the club. But it is worth quoting. So with your permission, Sir, I quote just three sentences, about the double figure which we are discussing now. The authors say: “It will be quickly seen that there are many instances where the existence of these provisions for special compensation will operate for the benefit of the property interests by encouraging a salvor who might otherwise be disinterested in the venture to attempt a salvage operation where the risks of success are slight or the potential property values low.” What the property underwriters appear to lose on the swings of Article 10, they gain on the roundabouts of Article 11. It is for this reason that these amendments are sometimes referred to as a “package” and indeed they emerged from discussions at Montreal between representatives of all the parties concerned. The proposals make good sense and they represent the best opportunity for meeting the very real concerns expressed by Governments and the public at large after the Torrey Canyon and the Amoco Cadiz that not enough was being done to ensure that those involved in transporting goods by sea were meeting their responsibilities for protecting the environment. It seems to us, Sir, that all concerned are aware of the delicacy of this regulation and are ready to accept the compromise obtained with many efforts up to now. So, Sir, we are better, Mr. Chairman, to make use of that spirit. Thank you, Sir.

The Chairman. Thank you. Thank you Mr. Chairman. The next speaker will be the delegation of the United Kingdom.

United Kingdom. Thank you Mr. Chairman. As a coastal State at very considerable risk from oil pollution since we border an extremely busy shipping lane, we certainly consider that the increase in Article 11(2) that the proportion of increase should be considerable. We think it should be increased, Mr. Chairman, to a maximum of double. While I have the floor, may I just make a minor drafting suggestion on this. In talking to other delegations it has been suggested that Article 11 could be construed to mean that you could get compensation of £100 under paragraph 1 and that would be doubled under paragraph 2 so that you land up with £300 which is I think not the intention. Might we suggest that at the very last line of paragraph 2, instead of saying “more than ...” we say “increased by more than 100%”. It would mean, we hope, precisely the same thing but it would make clear that this was an increase of the sum already assessed under the previous paragraph. Thank you Mr. Chairman.
The Chairman. I would like to propose that we take into consideration this proposal in the context of our discussion of the amounts because it seems to be important for that. I will try to repeat that proposal. In the very last line, I start with “but” after the comma, “but in no event shall be increased by more than 100%”. That is the proposal of the United Kingdom. Is that clear for all delegation what has been now proposed. A small change at the very end of the very last line. I give the floor to Brazil.

Brazil. Thank you Mr. Chairman. The Delegation of Brazil has the same concern as the Mexican and Cuban Delegations as to the great amount of the special compensation. For this reason we wish to support the views of Intertanko and Greece that the percentage be the same as the 15% in the Lloyds Open Form 80. Thank you Mr. Chairman.

The Chairman. The next speaker is from the German Democratic Republic.

German Democratic Republic. Thank you Mr. Chairman. Our Delegation can support the proposal from the distinguished delegation from the United Kingdom. That means not more than 100%. As an underwriter I have to say that this border is the maximum for covering this risk under the policy without increasing the premium rate. Thank you Mr. Chairman.

The Chairman. Thank you. I have two observer delegations and we have to come to certain conclusions. How shall I proceed with this problem? I give first the floor to the representative of the Group of P&I Clubs.

Int. Group of P&I Clubs. Thank you Mr. Chairman, I shall be very brief. As we said in opening the International Group of P&I Clubs stands four square behind the compromise, the whole compromise. This means that we can, and we will, if this is the wish of the conference, we will underwrite the mark-up under paragraph 2 of article 11 of up to 100%, or in total double the salvors expenses. Thank you Mr. Chairman.

The Chairman. Thank you. The next speaker is the delegation of Sweden.

Sweden. Thank you Mr. Chairman. My country also belongs to those who have a very long coastline and being such a country we welcome, as I said already in my general statement a week ago, we welcome the initiative taken to revise the Salvage Convention with the intention of trying to find an incentive for salvors to take action in cases where the environment is threatened. And we think the world needs a clear incentive to take such action and I already mentioned earlier last week that we find that the solution presented to the Legal Committee by the CMI and further refined in the Legal Committee represent a very delicate balance. We would be quite happy to stick to that balance, we realize that it has the backing of a large part of the industry, and we think that at the end it will be the coastal states especially that will gain if the incentive fulfils its purpose, that is making the salvors take action and thus minimizing or eliminating damage to our marine environment. So Chairman, to sum up we would also support the figure of 100% and with a drafting amendment suggested by Ms. Lind-Smith of the United Kingdom delegation.

The Chairman. I thank you. The next speaker, the delegation of France.

France. Thank you Mr. Chairman. We share the view expressed by several delegations as to the amount to be placed within square brackets at the end of paragraph 2. We would go along with the figure indicated, that is to say double. But rather than to accept the figure of 100% as suggested by the UK we think it is clearer to say that it cannot exceed double the expenses incurred by the salvoor. Which in our
view is clearer. Double the expenses incurred by the salvor. Thank you Mr. Chairman.

The Chairman. The delegation of Italy.

Italy. Thank you Mr. Chairman. You know the position of Italy in the Mediterranean, a coastal State which is very much concerned by the possible consequences of pollution. So in general terms we would be in favour of encouraging as much as possible any efforts to help salvors to take action, and we would favour some sort of balance so as to enable the principle of universality to be accepted. In general terms we do understand the difficulties which have been voiced by some countries in Latin America. But we do believe that it is important to find a general solution to this problem which is why we favour the kind of solution as suggested by the French delegation.

The Chairman. I thank you. I give the floor to the observer delegation of OCIMF.

OCIMF. Thank you Mr. Chairman. Let me first point out that since we were not, as far as I can find out, a participant in any way, shape or form, in the so called "Montreal compromise" we are of course perfectly free to make some comments on this doubling point. We believe that the Latin American delegates, most particularly Mexico, Brazil and Cuba, have made in fact very valid points. The cost here involved could be very high and actually could operate to discourage the owner of the cargo or the vessel to engage the salvor in the first place. And that is probably not a result that we want. Secondly we recognize the fact that we are talking about a maximum of 100% with a hope that it would be less. What we are talking about is the 100% of the capital cost plus the cost of the venture, however, we feel that there is an enormous tendency to fill the gap and that we might very well be posed with a substantial number of 100% mark ups if you will. And with all due respect that is a very, very, high mark up for a commercial venture. Most commercial people are very happy if they get returns of 8, 10, 15%, exhilarated if they get 20 or 25%, but a 100% return including your capital investment and your costs is very high. We do on the other hand want to encourage the salvors and one of the things that has occurred to us is that there might be some level of compromise between, and I know I'm talking about compromise when there is supposedly already a compromise, but some sort of a compromise between 100 and 15%, basically we think that a 15% return is a handsome return. Nevertheless we recognize the fact that there should be some area that could satisfy the concerns various delegations have expressed plus our own concerns of an amount in return of this size. Thank you Mr. Chairman.

The Chairman. I thank you. I give the floor to the delegation of Norway.

Norway. Thank you Mr. Chairman. As stated earlier during this conference, Norway finds it important to stand by the Montreal Compromise, and we would therefore like to support the proposal made by the French delegation concerning article 11, paragraph 2. Thank you.

The Chairman. I thank you. I call now the observer delegation of Comité Maritime International.

CMI. Thank you Mr. Chairman. First to confirm that the compromise meant, as indicated by the UK delegation, an increase of a further 100% on that paragraph 2, article 11, making the total up to a maximum of 200%. In other words it's not 200% to be added under article 11 paragraph 2. And I believe that the amendment proposed by the UK would make this clearer. Secondly to say, that the cost involved if there is an environmental disaster or damage, are, as I think we all know, very considerable.
Figures mentioned in relation to the claims in the Amoco Cadiz matter, and those mentioned in relation to the new American oil spill disaster clearly show that enormous sums of money are involved once there is environmental damage of a serious nature. The other side of the coin is what we are discussing here today - what are the sums of money involved if there is a payment of basic compensation at that particular level? I think we can say that, compared with just one large oil spillage catastrophe, this is simply a nominal sum. We are not, of course, able to look into the future and see the costs involved under the basic compensation proposal under article 11, but we do have some idea of what the costs might be from the valuable experience we have already gained in relation to how the safety net under LOF 80 has worked. In the eight years in which LOF 80 has been in operation, there have been only three cases where this safety net provision has come into operation. I would suggest that if the Lloyds Form 80 in these eight years had had 100 percent addition, not a 15 percent addition, it would not have meant anything. The sums so far paid under LOF 80 safety net provisions may have been hard to swallow for the cargo and ship owners, but, in the greater context in which we should put them, they are very small. And I submit that this will be the picture in the future with the special compensation on article 11 if we add the 100 per cent in paragraph 2, article 11, in particular compared with the large environmental costs which would be involved if there is a monumental disaster, and as mentioned by the Yugoslavian delegate, as compared with the loss of ships and cargoes which might otherwise occur if we did not encourage salvors to undertake difficult cases like this. Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker is the delegation of China.

China. Thank you, Mr. Chairman. We, like many other countries, have a very long coastline. Therefore, we agree that we should encourage the salvors to make efforts in safeguarding the marine environment. However, we should at the same time take into account the interests of cargo owners and shipowners and other interested parties, and we believe we should not set here too high a limit. In our country, the relevant authorities have conscientiously discussed the proposals put forward by CMI. We believe their proposal, that is the CMI proposal, is quite balanced and compromised. In order to keep this balance, we could support the opinion put forward by CMI that the increased part should not be more than 100 percent. As far as the wording is concerned, we could ask the drafting committee to hold further discussions. Thank you, Mr. Chairman.

The Chairman. Thank you. There are no further speakers on my list. I would like to propose the following. No decision should be taken on the figure at this moment, and I urge delegations to use every available opportunity to hold informal consultations. Do not be surprised if your chairman approaches some of the delegations. We have to take a decision tomorrow on the figure to be included in the blank space, as well as to vote formally on articles 10 and 11.

25 April 1989
Document LEG/C/ON F.7/VR.160-163

Intertanko. Thank you Mr. Chairman. My comment relates to Working Paper 28. It goes a little bit beyond it but it is closely related and it will only take a few minutes. So, if I may have that time. Working Paper 28 was introduced yesterday and

(149) Supra p. 372, note 146.
the distinguished representative of the USSR expressed some general concern. We in Intertanko share his concern. The Working Paper implies that the Convention is unclear on some important points – article 10 and 11. Our concern is, however, related to another element as it may be seen to represent a temptation or perhaps an invitation to utilise article 11 under which the shipowner alone shall contribute, according to the present text, instead of taking full advantage of article 10 where all property interest jointly becomes involved. What would be the effect of Working Paper 28? It seems to me that if it is agreed in combination with a high percentage figure of 100%, it can only be seen as new efforts to impose an unreasonable burden on the shipowner alone. On the other hand, Mr. Chairman, there may be less reason for concern, if the new increment to the salvor is set at a reasonable level. The present mark-up is 15%. Doubling has been a proper word of the last day. If the mark-up is doubled till – say 30%, it may be understood by many parties directly involved. If the intention is to go as high as 100 per cent, I regret, Mr. Chairman, that it is my duty to refer to Intertanko submission LEG/CONF.7/18, dated 23 February 1989. The point I will make has regrettably not been included in the IMO Secretariat's paper LEG/CONF.7/CV.3, dated 3 April, where all or most other observations by international associations are referred to. I would remind you of one of the most important principles which have served as a guideline when it comes to pollution damage since the grounding of the Torrey Canyon in 1967. I am referring to the principle of sharing all compensation. It is an essential part of the 1969 Civil Liability Convention confirmed by the 1971 Fund Convention and reconfirmed by the two 1984 Protocols revising these conventions. The preamble of the revised Fund Convention reads “The States parties to the present Protocol are convinced that economic consequences of pollution damage resulting from the carriage of oil in bulk at sea by ships should continue to be shared by the shipping industry and by the cargo interests”. This Conference addresses the same environmental issues and the same principles of sharing must or should apply. It is the special nature of the cargo transported and its inherent potential for causing environmental damage that lead to the problems we are now discussing. If the increment is set as high as 100 per cent then we feel that the Conference should kindly consider to bring in other property interests to contribute, and just like the distinguished representative of the USSR, we would be concerned if this Conference goes too far to meet the special requirements of Governments which, in practice, have shown little activity when it comes to ratification. You may not like what I have said, Mr. Chairman, and I would only perhaps quote the American author, Mark Twain, who once said about the music of Richard Wagner, that it is not as bad as it sounds. Thank you.

The Chairman. My second question, and that is practically the start of the third round, would the Committee agree that we vote on articles 10 and 11 and the proposals contained in working paper 28 as a package when we come to a formal vote? Is that agreeable? I will not ask whether you can agree to that package now, I will only ask you whether you could agree that we vote on articles 10, 11 and the proposals in working paper 28 as a package. Is that agreeable, when we come to a formal vote? Any complaints about that, Greece?

Greece. I find it hard to accept that we shall lump together all the provisions of articles 10 and 11 and the increment in one package. I can’t see, there are two points of divergence of opinion, so far as I can see, and these two are limited (a) to the point just mentioned by the Intertanko observer, and the amount of the increment. Therefore, these two points will have to be decided on their own, the rest, I am sorry to say, are cosmetics. Thank you.
The Chairman. Thank you. In any event, we will, I am sorry that I have not made that clear before we vote on the whole package, Mr. Perrakis, we have to take a decision on the figure to be included in the blank space in article 11, paragraph 3. That will be first, a separate decision, but when we have decided that problem and the Committee has agreed on a certain figure, then we have to vote in any event on article 11 as a whole, and at this stage I would like to propose that we then treat 10 and 11, after the decision on the figure, that we then treat 10 and 11 and the proposals contained in working paper 28 as a package. If we proceed in this way, would it then be acceptable to vote finally after the decisions on the various separate items have been made, to vote finally on 10 and 11 and working paper 28 as a package. Mr. Perrakis, you have the floor.

Greece. Frankly speaking, Chairman, I would prefer to have that decision on the voting once we have agreed on a figure. Thank you.

The Chairman. Well, we can postpone the decision but, for the Chair, it would be very important to know whether the Committee, if you have agreed upon that figure, could finally agree with this procedure. I need certain indications. What is the feeling of other delegations? No feelings at all. It is only the Chairman who has that feeling. Well, OK, then we give up the idea of the package. No delegation insists on that. Canada.

Canada. I hesitate to intervene to start a long procedural debate, but what I think you said seemed to me to be perfectly reasonable. That once we have a decision on the figure to be included in article 11, then we have decided that particular issue, and then it seems to me that we could proceed on a vote of the whole thing, including what is in working paper 28. I really don’t see what the difference is between what you have said and what Mr. Perrakis wishes to have. Thank you, Chairman.

The Chairman. Thank you. United States of America.

United States. Thank you, Mr. Chairman. We believe your recommendation is a sound one and support the proposal as you have stated it. These issues are interrelated, and once the decision is taken on the percentage, then the entire package could be taken up as a whole. Thank you.

The Chairman. Thank you. Delegation of the United Kingdom.

United Kingdom. Mr. Chairman, we equally agree with your proposal. Thank you.

The Chairman. Thank you. the Federal Republic of Germany.

Federal Republic of Germany. We also agree.

The Chairman. Thank you. Well, it seems to me that there is a general feeling of the Committee to proceed this way. We will not take the decision now, you have time to reflect on that, but you know now that it is our intention to vote finally on 10 and 11 and the proposals contained in working paper 28, as a package. We will come back to the whole issue when we have to take a formal vote on these provisions and on the proposals in working paper 28. I thank you, for the time being, we will leave 10 and 11. There are still some consultations going on the figure, we will postpone that decision. It is possible that we have tomorrow morning a short meeting. We will announce that after the coffee break. Sweden, you have the floor.

Sweden. Thank you Mr. Chairman. I am sorry to come back to article 11, but before you leave it there is a minor point that I would like to draw your attention to, and also the attention of the Drafting Committee. I had believed that it would have
been a drafting point, but having discussed it with Mr. Sturms, Chairman of the Drafting Committee, I realize that perhaps this is a matter to be discussed in this Committee to give directions for the Drafting Committee. My problem with article 11, paragraph 1, Mr. Chairman, lies in the fact that it refers to compensation assessable in accordance with this article. It says that if the salvor has carried out operations and his expenses have not been met by the reward assessable under article 10, he should be entitled to compensation assessed in accordance with this article, and this article includes, of course, also paragraph 2, and paragraph 2, as we know, is some topping up of his expenses. I had believed it would have been a drafting problem to make some changes, deleting the reference to this article, but Mr. Sturms, as I said, hesitated to look upon that as just a drafting problem. So if I may read out the idea that I have, and if the Committee could agree that that would be a matter for the Drafting Committee we might leave it to this. Thank you. I see you nodding, Mr. Chairman, so I will go on. My problem starts on the third line after the words “article 10” I would like to substitute the words starting “with at least equivalent”, ending on the next line with the words “this article”. I would like to substitute that part of the sentence with the words “which would compensate his expenses as defined in paragraph 3 of this article”. Then I would like to put a full stop after the word “vessel” in the second-last line. And if I read the article through it will read “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 which would compensate his expenses as defined in paragraph 3 of this article, he shall be entitled to such compensation from the owner of that vessel.” So the amendments would be that after “article 10” the new wording would be “which would compensate his expenses as defined in paragraph 3 of this article” and then the text would go on after the comma on the third line from the end “he shall be entitled to”, and then finally the addition “to such compensation”. Then I would like to put a full stop after the word “vessel” and delete the rest of the sentence. This, Mr. Chairman, is at least an attempt to make the drafting a little clearer. I would be perfectly happy to leave it to the Drafting Committee to refine the text, which I am sure they would be able to do. Thank you.

The Chairman. Thank you. The delegation of Japan.

Japan. Thank you, Mr. Chairman. This delegation would like to support the proposal just submitted by the distinguished delegate from Sweden, and I would like to add one reason. If the difference to this article remains in paragraph 1, and in paragraph 2 it says “compensation payable by the owner to the salvor under paragraph 1 may be increased,” some relationship is necessary between paragraphs 1 and 2 which might otherwise give rise to some difficulty in understanding. Therefore, this delegation strongly supports the proposal submitted by the Swedish delegation. Thank you.

The Chairman. Thank you. Is that the general feeling of the Committee? United States of America.

United States. Mr. Chairman, my delegation believes that this change does have a substantive effect and we would prefer that the text remain as is in article 11, paragraph 1. Thank you, Sir.

The Chairman. So we have one speaker in favour and one against. Can we proceed to a vote on that proposal? I have no other choice. Mr. Göransson, yes?

Sweden. Thank you, Mr. Chairman. My intention was, as I said, not to make any substantive change and if my proposal causes problems for delegations I would...
certainly not like to press it. My only plea then would be that we would give the Drafting Committee rather a free hand to take care of what seems to me, and to the distinguished representative of Japan, to be an anomaly in the relationship between paragraph 1 and 2. That was my sole purpose, Mr. Chairman. Thank you.

**The Chairman.** M.r. Göransson, if at this very late stage they raise that, and I would even hesitate to place that burden upon the Drafting Committee after one delegation has explicitly opposed any change to that paragraph, the Drafting Committee could face real difficulties and delegations who are against such a change could raise it in the Plenary again and we could cause trouble for the Plenary, so we have really to ask ourselves whether it is reasonable to submit at this stage such a change to the Drafting Committee after we have a speaker who is totally against it. The delegation of France.

**France.** M.r. Chairman, we share your views. We have listened very carefully to the text proposed and I believe that the authors could have presented a written document, because it is very difficult to take a stance on this text; and there may be drafting problems. We are not opposed to the fact that the Drafting Committee have a look at the text, but looking at it I no longer heard the words "owner of the vessel". Was this omitted? Because, if so, this would change the substance very radically. Thank you, Chairman.

**The Chairman.** Thank you. Sweden, for a last intervention.

**Sweden.** Thank you, Mr. Chairman. I agree with the distinguished representative of France. If this had been a formal proposal, of course it should have been submitted in a working paper, not even at this late stage. The reason, as I mentioned in my first intervention for not having done that, was that I had a hope that this could have been solved as a drafting problem. I do not want to prolong the debate on this. If there are delegations who have trouble I will not press for a vote on it. This was a proposal but I can certainly withdraw it if my distinguished colleague from Japan does not want to re-introduce it. If we have to live with the text we understand what it means, but we think it is not a very good text. Thank you.

**The Chairman.** Thank you. I take it that you have withdrawn the drafting amendment. Greece.

**Greece.** We would also like to second the Swedish proposal as was seconded by Japan.

**The Chairman.** It has been withdrawn. You cannot second it. Greece.

**Greece.** Excuse me Mr. Chairman, I did not hear what you have just said.

**The Chairman.** I said Sweden has just withdrawn their proposal so it is no longer on the table. We have finished that.

26 April 1989
Documents LEG/CONF.7/VR.186-196

**The Chairman.** Ladies and Gentlemen, the meeting is called to order. You are well aware that we have still to settle a question which is of importance. We have to decide on the figure which should be included into the blank space between the square brackets in article 11, paragraph 2. Since that is a very important point, I would like to propose that we continue our debate and that we even allow delegations which have already spoken on this point to take the floor again. I would hesitate to apply a
strict time limit for speakers. I hope that any delegation taking the floor will be as brief as possible so that as many delegations as possible can take the floor and speak on this point within the time available to the Committee. Is that acceptable for the Committee? Then we can start with our debate. The first speaker on my list is Canada.

**Canada.** Thank you, Chairman. I think that my delegation is one of those delegations that has not yet spoken in this debate and I would like to take advantage of this opportunity to lend the support of my delegation to those delegations that have already spoken in favour of an increase under article 11, paragraph 2, of 100 per cent, or a doubling, and I am wondering if I could just take a moment of your time to explain on what basis we have arrived at that conclusion. Mr. Chairman, it is our belief that there is an important interrelationship between articles 10 and 11, and that arbitrators in fixing compensation under these two articles must have a wide discretion. The two articles have been drafted on the basis of a balance which we believe it is important to maintain. As we understand it, when the reward is fixed under article 10, it is not necessary to exhaust the value of the property that has been saved. As we read article 11, it will only come into play when the reward calculated under article 10 is not equivalent to the special compensation calculated in accordance with article 11. That compensation is based on the salvor’s expenses as defined in article 11, paragraph 3, plus an enhancement designed, as we see it, to encourage salvors to intervene in order to prevent or minimize damage to the environment. It strikes us that the arbitrator must be given a broad scope under article 11 so as to be able to fix compensation that offers salvors the appropriate incentives. In other words, you have to offer an equivalent discretion under article 11 as is available under article 10 where the only limit is the value of the salved property. It seems to us, if arbitrators are only given a very small margin of manoeuvre under article 11, let us say 15 per cent, then in cases that have posed a grave risk of pollution involving extraordinary or exceptional measures by the salvor to prevent or minimize damage to the environment, arbitrators may be inclined to enhance rewards under article 10 which, as we know, are borne by all property interests in proportion to their value. From this analysis we have concluded that we should allow for a substantial increase under article 11, paragraph 2. We would suggest at least 100 per cent, or a doubling. From the discussions and the explanations we have heard, we understand that this upper limit would rarely be reached. I apologize, Mr. Chairman, for having taken so much of your time. Thank you, Mr. Chairman.

**The Chairman.** Thank you. The next speaker, the delegation of the United Kingdom.

**United Kingdom.** Thank you, Mr. Chairman. May we also take a few moments to support what has been said on behalf of Canada, to the extent that 100 per cent should figure in article 11.2, but as a maximum. We are not arguing for a higher figure. As we understand the position, the purpose of article 11 is to deal with the difficult hard case, perhaps the exceptional case, where the property fund is unlikely to justify a sufficient reward to the salvor who may have expended much money and effort in the salvage. Taking into account the operational success of salvors generally, we would therefore not expect article 11 to be brought into play very often, certainly not as a regular matter, which seems to be the concern of our colleagues from South America. Secondly, we should emphasize that the proposed limit of 100 per cent is, as I have just said, intended as an upper limit and we would expect very few article 11 cases where the 100 per cent would be fully awarded, fully consumed. In any event, we consider it to be out of the question that P and I costs generally would increase as a consequence.
of providing for a ceiling of 100 per cent in article 11.2, as opposed to some other ceiling, and we can see no possibility of some sort of a chain reaction which has the effect of raising freights. Now, it is quite true that there may be odd cases here and there a particular shipowner, who has had a casualty resulting in a large pollution, may find that his record with his P and I Club would be adversely affected if a sufficient payment has to be made on his behalf under article 11, but one should bear in mind that article 11 will only come into play, and will only result in a substantial award if, but for the salvage, there would have been damage to the environment. And so, but for the salvage, that shipowner would face what might be a far higher claim for pollution on its record. Since we all know, what enormous claims for pollution may result. So, it seems to us that it is wrong for shipowners to fear the rare case of a substantial award under article 11. Because it would only arise on the hypothesis that the shipowner will have been saved from something worse. The next point has been made many times. The purpose of this Convention is to encourage salvors to save property and to protect the environment. It is, therefore, essential that article 11 should provide a sufficient fund to give a real incentive to salvors in the difficult cases where he will be aware at the outset that he will have to expend a great deal of money with little or no hope of salvaging the ship or cargo. We will bear this in mind that salvors are accustomed to recover much more, of course, than their costs and an increment under the usual awards which would fall under article 10. And if we are to encourage them to intervene where the prospect of a normal article 10 award is limited, we must provide a sufficient fund in article 11. A 100% will, we think, very rarely be awarded. We think, to sum up, that there are three reasons, apart from what I have already indicated for fixing this figure at a 100%. First, if one were to fix it at a lower figure, there would be a temptation for arbitrators who make awards under article 11 automatically to award that percentage – be it 15 or say 50 - whereas a 100% is clearly intended as a maximum. Secondly, a lesser figure, which we think, would not provide sufficient incentive. Thirdly, as we know, the figure of a 100% has been agreed by the commercial interests and it was on that basis that the texts of article 10 and 11 have emerged. The figure at the end of the CMI meeting were doubled in article 10(2). But for that agreement we would not have articles 10 and 11 and they are basic to the Convention which we all desire. Mr. Chairman, I apologise for taking so long. Thank you.

**The Chairman.** I thank you. Next speaker; delegation of the Peoples Democratic Republic of Korea.

**Korea.** Thank you Mr. Chairman. We sympathise with the United Kingdom's opinion. We think the special compensation is not actual expense incurred by the salvor. The reward in article 10, both include the risk and efforts by the salvor to prevent and minimise damage to the environment. And article 11 is only to encourage the salvor to prevent damage to the environment. That is to say it is a kind of reward. So, we think that special compensation should not be at the same level as the reward mentioned in article 10. And the special compensation should be lower than the compensation in article 10. Therefore, we cannot agree with the 100% figure mentioned by some delegations. Thank you Mr. Chairman.

**The Chairman.** I thank you. The next speaker, Finland.

**Finland.** Thank you Mr. Chairman. We have not taken part in this discussion earlier because we thought that the figure 100 or double could be rather easily accepted. When there now seems to be some difficulty with this figure, we only want...
to state that when the private parties have been able to accept the upper limit under this article to be double the cost suffered by the salvor, we, as Government representatives were worried for our environment, should accept that figure of 100% with gratitude. Thank you Mr. Chairman.

The Chairman. I thank you. Delegation of Ecuador.

Ecuador. Thank you Mr. Chairman. Ecuador is also a country where we have a very long coast line which is extremely vulnerable. We do have a very significant country farming industry and the famous area of very fine natural beauty which being part of our heritage should be protected. For this reason, my delegation is firmly convinced that governments have the duty to take action with a view to protecting the marine environment. This is a worthwhile objective provided, however, that this can be obtained at reasonable cost. The P and I Clubs say that they are ready to provide additional cover but, of course, this will imply an additional cost for the shipowners. Somebody will have to pay this additional cost and shipowners, sooner or later, will have to increase their freight. And this means that carriage of cargo will become more expensive, our exports will suffer and our economy will be affected, like that of other developing countries, who mainly depend on their exports. LOF 1980 considers an additional payment of 15% in relation to the cost incurred by the salvor in order to protect the environment. We believe that this is a suitable and realistic level which has given good results so far, because it has provided incentives to salvors to assist property at risk. It has enabled protection of the environment and given the possibility to salvors to continue to remain a viable industry. This Convention somewhat extends the traditional duties of the salvors and we believe that it is fair that, in view of this, they should receive a special compensation of 30% over and above the cost, but a 100% that is to say, seven times the actual value so only in exceptional cases seems to us to be exaggerated and beyond the scope of this convention, which is a convention for the salvage of property at risk and not a convention on prevention of environmental damage. Finally, I would like to add that our true concern is that this additional cost which one is trying to impose on the maritime transport industry will affect the international trade of developing countries to the benefit of very few of the salvors in exchange for the possible protection of the environment, which we already have covered by other conventions like MARPOL, the Intervention Convention, the Civil Liability Convention and the Fund Convention. Thank you, Mr. Chairman.

The Chairman. Next speaker, the delegation of the USSR.

USSR. Thank you, Sir. Mr. Chairman, many delegates who have already spoken both yesterday and today in our view have been quite convincing in supporting the compromise which was achieved eight years ago. Furthermore Sir, what our conference over eight years since the original compromise has been trying to do, in my view, is playing a very good role in demonstrating how events have developed. In 1981, or 1982 perhaps, we were looking at the consequences of the Montreal compromise and the Lloyds Open Form 80; we were looking at that, and it was not clear then, and there was a certain amount of fog at that time and we had many doubts. Eight years have passed and the practice of using LOF 80 in that time has proved that nothing terrible has happened. What we are talking about now is an increase in the special compensation award. It is, or is it not, correct to raise the levels of compensation? In principle no-one objects. It has been said already, and could I remind you yet again, that in this agreement we are talking about loaded tankers only, tankers loaded with oil, that is. What we are saying now is something about any dangerous substance being
carried in any ship, so it would seem to prove that the scope of application and the environmental risk and the compensation we are trying to award today is much wider. At the same time, as you understand, in article 11, paragraph 2, we have some very serious indications to the effect that special compensation may be increased to a degree when the court considers it honest and necessary. We must look very carefully at events and decisions taken in certain countries, and of course we do understand full well that the court will look at each specific case and will look at the expenditure of the salvor and the results of the salvage operation. These are the factors which must be considered, and this is perhaps not 100% extra compensation but it is really a matter for the court in the light of specific circumstances to encourage the salvor, and further, I am convinced that the maximum sum will be awarded only in a case where the expenditure is not for greed but where there are significant efforts and results. In such exceptional cases, say, will the maximum award be given. In any case, Sir, if we start to compare the sum now existing for special compensation which we are intending to include in article 11 and the potential liability which will be on the ship operator, and in accordance with the CLC Convention and in accordance with the 1984 Protocol, we do not find this excessive. Yesterday it was said that the normal commercial practice is based on the fact that normally the percentage is 5, 10, 15%. We are not talking about compensation for a kind of profit; of course not. What we are trying to do is reward the salvor for making unusual efforts, working in special circumstances, and in which case he has helped to prevent damage to the environment, and damage to the environment sometimes cannot, in money terms, be assessed. We know about the limitation of liability in such cases; we know that liability is limited, but it sometimes takes several decades to eliminate the results of the pollution to the environment. Having looked at the pros and cons, we do not see any threat, rather we find it positive if, in our convention, in article 11, paragraph 2, we adopt the maximum up to 100% as a principle. Thank you.

The Chairman. Thank you. The next speaker is the delegation of Mexico.

Mexico. Thank you, Mr. Chairman. My delegation acknowledges the importance of this convention which we are trying to draw up, and the most important thing is to update the provisions of the 1910 Convention. Nevertheless, we will find it difficult to accept the fact that we are insisting on the close connection between articles 10 and 11, whereas the 1969 Convention clearly indicates that one treaty could be seen as a whole, and for us there is a link right from the very beginning to the end of a treaty. So it is too much to insist on a close link between articles 10 and 11 if we forget the fact that there is a link between all the articles of a treaty. We also recognize the fact that it is important to acknowledge the efforts of the salvors, help them to recover the costs they have, in fact, incurred. But, as indicated by the distinguished delegate of Ecuador, this is certainly important but one should also take into consideration the economic sacrifice which, for the developing countries, 100% would represent. My country, like Ecuador, could accept up to 30% as a maximum, as the upper limit. There are many important treaties where the problem of pollution is solved so that we would turn to those treaties and conventions to solve the problems which might occur as a result of marine pollution. As our colleague from Ecuador rightly pointed out, our Governments will be concerned with this and we do not see why we should insist on the problem of pollution in a treaty which is devoted, in fact, to salvage. Thank you, Mr. Chairman.

The Chairman. Thank you. The delegation of Australia.
Australia. Thank you Mr Chairman. It is recognized that the sole purpose of this article is to provide special compensation for the protection of the environment and to encourage salvors. It needs to be emphasized as the distinguished delegate from Canada has said this morning, it is most important to give the arbitrator room to manoeuvre in setting a compensation amount, although a limit of 15 or 30% will most likely lead to a disincentive for the salver with a consequential risk of damaging the environment rather than protecting it and for the reasons most adequately put to us today by the distinguished delegates from Canada, the United Kingdom and also the USSR, Australia supports the need for a higher rather than a lower amount, and supports therefore the 100% figure.

The Chairman. Delegation of Belgium.

Belgium. Thank you Chairman. You know that normally we do not take the floor very often and if we do, it is for very short statements. For reasons explained yesterday and this morning by several delegations and certainly for the same reason as the distinguished delegate of Finland, we are in favour of the 100% upper limit because we think as well as some other delegations do, that if industry can live with it, that we delegates from States should try to live with it as well. If I could just add Chairman, this entire delegation is unanimous about it.

The Chairman. Delegation of Bulgaria.

Bulgaria. Mr Chairman, thank you very much. You have asked us to be as brief as possible and therefore I will say just this. On behalf of Bulgaria, we wish to say that we agree to a doubling in paragraph 2 in article 11, which would mean a 100% maximum. This will be the maximum. This will be a compromise but certainly it would be satisfactory to us. During today’s discussion, some delegations have advanced arguments in support to this alternative and we fully support these arguments.

The Chairman. The next speaker is the delegation of Cuba.

Cuba. Thank you Mr Chairman. My delegation would like to draw the attention of this Assembly to the fact that the salvors are not encouraged to carry out a salvage for the amounts of the special compensation which we are considering right now. What interests salvors is really the reward so we do not believe it is useful to increase by such a great amount as indicated by some delegations, including up to a figure of 100%. Therefore we support the proposal of 30% presented by the distinguished representative of Ecuador and we would like to underscore that in a diplomatic conference such as this, we should not go into the sort of commercial transaction as those indicated by possibly other delegations.

The Chairman. Federal Republic of Germany.

Federal Republic of Germany. Thank you Mr Chairman. I too would like to be rather brief but that does not mean that we do not see that this is a very important question. We have listened very carefully to the debate yesterday and we are grateful for the explanations we have heard today and we indeed, found the explanations brought forward by the distinguished delegations of Canada, United Kingdom and the USSR very much convincing. We too think that we are dealing here with exceptional cases which are not constituting an economic threat, but which require discretion for the court to decide on the individual case and I think one really should take a positive attitude to this compromise of the 100% formula and we very strongly support this compromise.
The Chairman. Delegation of Greece.

Greece. Thank you Chairman. Since I did not intend to speak today but there has been a new event which dictates my intervention this morning. The underground decided to go on strike. This morning it did not run. I have the urge to get an axe and destroy the whole wretched building. Therefore I am going to turn this imaginary axe now to try to attack some of the arguments advanced for the famous 100%. There has been a lot of airing of views and I would like to take them one by one into consideration. First, they said that LOF 80 has proved that this increment has protected the environment. Yes, with an addition of 15% and if we do not increase that increment there is not going to be an incentive. I can tell you that in reviewing the cases that came in arbitration, those it has been possible to investigate, I found only one where the increment reached, if I am not mistaken, 11.5% and that was the maximum. Therefore, I cannot understand how it will be an anti-incentive if we keep the same position. Number two, we have heard a lot about this holy of holies compromise in Montreal for the commercial interest. What are the main interests concerned? The main interests are not, if I may say, the additional, the middling paragons interfering in the carriage, the main interests are the producers and the carriers, and I do not think they have agreed to anything. It is all very well to say these things, I understand the position of the State, I can understand it very well. A State has to consider what have I got, have I got a fleet, have I got goods, have I got underwriters, then I can balance one and can offset one against the other, but this is not true. The shipping interests have been against it right from the beginning, even in Montreal they have agreed to the 15%, we will stick to the 15%. Going from 15% to 100% is increased by 800% or just under. Therefore I cannot see any logic in that. I would like to go a bit further about arbitrators. I have been an arbitrator and I can assure you that nothing can influence me, no rules of interpretation, I will get facts and evidence. If I say up to 100% then that means it is obvious in my humble legal mind that I am not expected to award 4%, 3%, 5% as has been done, but I shall start from 20%, I shall add a 0 to that. Who is going to bear that cost? It would be the consumer. It will not be anybody else – it will be the consumer and sometimes, of course, it will be the less powerful interest. Large shipowners will not want to be bothered about that; if it is a carrier’s market there will be an agreement with the charterer and you will see who is going to bear the cost of all this increment safety-nets or featherbeds or whatever. It will be the small man who will suffer. It will be the consumer who will foot the bill. Other arguments arise – there will be no increase in costs. Well, I would like that to be proven. I have lived with shipping for some time and have seen how all these things have been added to the bill, to the so-called coals. It is all very well to say that, you know, this is all mutual insurance. Well it is mutual insurance, this is one by commercial interests, and all that adds to the costs. When the United States government has imposed a certain regulation they asked for compliance with certain bonds and guarantees; all these things have added. Also they have agreed, the P and I Club, to 500%. They have nothing to lose. In other hauls, there would be a backhaul and a double backhaul. So I am sorry to say that nothing of these arguments that they have heard, in my opinion, can have any value whatsoever in the same way as all the excuses of London Underground do not have any effect on me in my attitude to London Transport. Thank you.

The Chairman. Thank you. The next speaker is Hong Kong.

Hong Kong. Thank you, Mr. Chairman. Hong Kong supports the figure of 100% as the maximum amount of the special compensation payable under article 11(2) as a means of urging the salvor to make efforts to protect the environment. The amounts...
awardable and the maximum payable will be determined in the circumstances of each case according to the operative word to the extent that the Tribunal considers it fair and just to do so. In advising of this support, Mr. Chairman, this delegation adopts the reasons given by the distinguished delegate for the United Kingdom and by other delegations in support of this figure. Thank you, Mr. Chairman.

The Chairman. I thank you. The delegation of the German Democratic Republic.

German Democratic Republic. Thank you, Mr. Chairman. At this stage, Mr. Chairman, I am able to make a very short statement. Our delegation is fully in agreement with what the Canadian delegation, after opening the floor this morning, has said. We will give our full support to the compromise which was found by the CMI and the Legal Committee in accordance with the shipowners and insurance market. We see a necessity to encourage the salvors to protect the environment, our coastline too and the sea as a whole. Therefore, a compromise is the best way to satisfy all parties which are concerned, but I have to say that 100% must be the maximum. Thank you, Mr. Chairman.

The Chairman. I thank you. The delegation of Panama.

Panama. Thank you, Mr. Chairman. Our country applies the treaties on pollution with great vigour. As explained by other colleagues, Cuba, Ecuador and Mexico, who preceded me, the increased cost will affect trade and freight. My Government can accept no increase over and above the 15% which is considered, 100%, gentlemen, as pointed out by Greece, represents a 800% increase, which is excessive for developing countries, as explained by my colleague from Greece. Our country cannot accept more than 15%. Thank you, Mr. Chairman.

The Chairman. The delegation of Italy.

Italy. I will be very brief, Mr. Chairman. I merely wish to repeat the argument already advanced during this discussion yesterday. In other words, we favour a position to encourage to the maximum the efforts of salvors and my Government is very concerned with environmental protection, particular marine environmental protection. Obviously it is costly; there are costs both financial and costs which affect humanity, and therefore we want to encourage any effort to protect the environment and to permit a possibility of intervention on the part of the salvor. Therefore, we favour the 100% option.

The Chairman. Thank you. The delegation of Japan.

Japan. Thank you, Mr. Chairman. My delegation wishes to make a brief comment of a rather general nature about the very sensitive issue before us. As many previous speakers pointed out clearly, the two important objectives of the Convention are protection of the marine environment and encouragement of salvage operations. These objectives should be compatible. In other words, the Convention should be accepted or adopted by as many States as possible for the purpose of the implementation of the Convention. Otherwise the Convention is only a piece of paper. The widest acceptance possible by many States is indispensable. From that point of view, the figure should be realistic. My delegation has not a strong opinion about complete figures, but my delegation hopes that some percentage between 15% and 100% will be decided by consensus, from the spirit of compromise and co-operation. Thank you, Mr. Chairman.

The Chairman. Thank you. The delegation of Saudi Arabia.
Saudi Arabia. Thank you, Mr. Chairman. I would like to tell you about the suffering undergone by the Gulf countries during the Gulf War. The position of the Kingdom of Saudi Arabia lies between two of the most important regions in the world, the petroleum exporting region, and you know that most of the OPEC exporting countries are there, and also the Red Sea region, i.e. the area through which oil tankers cross in order to go to Northern or Southern Europe or America. This region did not suffer as a consequence of the increase in salvage operation during that period and, therefore, my country's delegation has a lot of sympathy with what the representatives of Ecuador, as well as all supporting countries to what he said. It is not correct to increase the percentage in order to be 100 per cent, as some countries have wanted. I am going to pose exactly the same question which has been posed by Dr. Perrakis, who is going to bear this cost? Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker is Yugoslavia.

Yugoslavia. Thank you, Mr. Chairman. We already have expressed our point of view in regard of 100 per cent as completely acceptable to us, for our delegation, Mr. Chairman, two reasons prevail. First is that all interested parties, including liability insurers who are to pay, actually, have reached a compromise as to the double item. The second, and perhaps even more convincing to us, was the fact that 100 per cent of salvor's expenses is a maximum. Forums will for sure give salvors much smaller rates, as many speakers have already said. One must remember that salvage remunerations according to the convention of 1910 may reach the salved value and, in practice, in average they reached 7.5 per cent only during the war in the Gulf area. Assistance services rendered there, including very strong and very influential considerations, amounted in average to about 18 to 20 per cent of salved value, according to certain international salvors union figures, if I recall them correctly. So we believe, Mr. Chairman, that there is no risk for anybody if we fix it on 100 per cent as absolute maximum. Thank you, Mr. Chairman.

The Chairman. Thank you. The delegation of Liberia.

Liberia. Thank you, Mr. Chairman. Liberia is also a coastal State and we happen to represent a large number of shipowners. We are very concerned about the environmental considerations and that, given the very busy shipping lanes which traverse our economic zone or territorial areas, in the time of any serious maritime pollution, that there will be sufficient incentive to attract professional and capable salvors. While the shipowner can obtain insurance against accidents, we are not certain that this would mean that the salvor can obtain coverage to ensure possible employment. He has to wait for accidents to occur to get employment. He has to make substantial investment in anticipation of such events. Being in Africa, the west coast of Africa, we know that there are not many salvage companies in the area and in the event of any major pollution, we would like to see salvage companies come to assist and in order to do so we believe that they have to be attracted to the kind of compensation that they could possibly receive. Therefore we are in favour of an increment in the special compensation award. We are also aware of the difficulties expressed by other delegations concerning such increment, and I think we will take the position taken by the distinguished representative of Japan, to say that we hope that some compromise figure can be achieved, given all of the relevant considerations here expressed. Thank you.

The Chairman. Thank you. Delegation of Brazil.

Brazil. Thank you, Mr. Chairman. I am not going to add to the arguments first advanced by the distinguished representative of Ecuador and followed by many
others, but I would like to touch upon the question of costs. It was pointed out rightly 
that costs will finally be paid by consumers, but that is correct mainly when we deal 
with industrialized products which we, in the developing countries, mostly import. In 
the case of raw materials and agricultural products, any increase in costs as we know 
by bitter experience, tends to be absorbed by the producer and the exporter. I find it, 
Sir, a bit ironical that an increase by a factor of over 6 on a compromise figure, a 
consensus figure, is now being itself called a compromise. My delegation initially 
supported the 15 per cent and in an effort to have, as the delegate of Japan said, 
maximum participation in the new convention, we can go up to 30 per cent. That, in 
our view, Sir, is a compromise, not an increase by a factor of over 6. Thank you.

**The Chairman.** The delegation of Argentina.

**Argentina.** Thank you, Mr. Chairman, to be brief, my delegation would like to go 
along and fully support the position explained by the distinguished delegate of 
Ecuador. That was also supported very eloquently by the delegation of Brazil and 
other delegations. We share the concerns expressed by those delegations who believe 
that 100 per cent is a very high figure, we also agree that to have an increase which can 
be sufficient incentive to the salvors is important. Mr. Chairman, this is a diplomatic 
conference, we are representatives of States and we do not feel bound by any private 
agreement between any interests, as representatives of States we must seek for the 
interests of the general international community and, along these lines, we believe that 
we should try and see that this convention, and on this very important point, should 
reflect the consensus of all the interests involved, all the interests, I repeat, as rightly 
said by the delegation of Greece. In this spirit, bearing in the mind the purpose of the 
convention is to be acceptable for a many States as possible, we agree with what was 
proposed by the distinguished delegation of Japan, we should seek indeed for a figure 
which represents an acceptable compromise and, in principle, we would support the 
figure of 30 per cent. Thank you, Mr. Chairman.

**The Chairman.** Thank you. The delegation of Peru.

**Peru.** Thank you, Mr. Chairman. My delegation, without any reservation, 
supports what was said by the distinguished delegate of Ecuador, and also what was 
very clearly explained by the distinguished delegate of Greece. And therefore we 
believe that to increase by 30 per cent the special compensation would be a reasonable 
level, both for the shipowners and for the salvors, thus enabling us not to increase the 
financial burden on the consumers or the exporters. Thank you, Mr. Chairman.

**The Chairman.** Thank you. The delegation of Zaire.

**Zaire.** Thank you, Sir. Mr. Chairman, the length of this discussion in itself shows 
the importance of this item and, indeed, searching for a compromise around the 
percentage idea is an imperious need. The delegation of Zaire would like to support 
the Greek arguments and also the argumentation put forward by Liberia regarding the 
West African coast, which is a matter of concern to my country also. It was pointed out 
by Liberia that on that coast there is no salvage company in existence. This is a reality 
and therefore we would like to support what has been said by Mexico, Brazil, Ecuador, 
Peru and Argentina, as long as, in trying to find a compromise, we do not neglect that 
the needs of countries which might receive assistance in salvage operations but which 
cannot afford to pay for it to a 100% level. Greece has proposed 11 percent. If we 
cannot go that far, and if we support the maximum of 100%, then really the percentage 
should be above 11 percent and below 100%, and therefore Zaire would support the 
30% as a reasonable percentage. Thank you, Sir.
The Chairman. Thank you. The delegation of Colombia.

Colombia. Thank you, Mr. Chairman. Very briefly I would like to say that this delegation supports the statement made by the distinguished delegate of Ecuador and the others who support it. Thank you.

The Chairman. Next, Democratic Yemen.

Democratic Yemen. Thank you, Mr. Chairman. This delegation of Democratic Yemen is really in a dilemma as to which position to take. On the one hand we have a very tiny shipping industry, hardly any exports, and our main source of income is fisheries. Therefore the protection of the marine environment is very important to us. Logically, if we look at it from that very narrow point of view, we should say that 100% is not sufficient. However, we are part of the rest of the world, and particularly we belong to the developing countries. We have listened very carefully and with great interest to the excellent arguments that have been presented by the very wise man from Greece and we believe and support completely those arguments. We are interested in the protection of the marine environment. However, it should be at a reasonable cost and the arguments that have already been presented on the side of reducing the 100% are very strong. We are inclined to support the 30% that has been proposed by Ecuador. However, like the People’s Democratic Republic of Korea and Japan and others, we would not strongly refuse a slight increase from the 30%, but we are not inclined to support the 100% as set out. Thank you, Mr. Chairman.

The Chairman. Thank you. The delegation of Israel.

Israel. Thank you, Mr. Chairman. We would just like to explain the position of my delegation. We support the arguments put forward by Greece, Argentina and others along the same lines.

The Chairman. Thank you, Madam. The delegation of Ireland.

Ireland. Thank you, Mr. Chairman. This delegation has listened with great interest to the way this debate has gone in choosing, or selecting, an appropriate figure to put into this article 11, paragraph 2. It is useful to recall that, as the document stands at the moment, there is nothing there; it is a blank, and every delegation must be aware that some figure has to go in there and it has to be a figure that will attract as much support as possible. I think it is not unfair to say that there is a tradition in the IMO to get as widespread support as possible and, indeed, in most cases to get unanimous support. So, Mr. Chairman, the figure that must go in there must be an acceptable figure but, by reason of the nature of the problem we are discussing, any figure that goes in there is arbitrary because it cannot be and is not based upon known facts and figures. As has been pointed out already by the distinguished delegate from Greece, in practice what happens is that the tribunal considering the matter arrives at a decision based upon all the facts and evidence, and of course this is the only way that one will ever know what is a reasonable or a fair figure for the type of service that is intended. It is the hope of this delegation that a figure will be found that will meet everybody’s needs and which, in practice, will also work out in a fair and equitable way. It can only be hoped, of course, that that is what will happen in practice and that courts or tribunals will arrive at a figure which strikes the right balance in the particular case before us. Of course, those cases that come to be decided will be the minority of cases because this is, after all, only a safety-net provision, a safety-net provision which at the same time provides an incentive which will act to the benefit of the marine environment of the whole world, and not just any one particular region. I think if there
is one country here that has suffered particularly badly in history it must be the French experience, which has been referred to throughout the debate in this discussion and, indeed, in other conferences – not the discussion yet on this article today – but Mr. Chairman, if there is one thing that brings home to a sovereign State the shortfall in either preparations or in services, it is a disaster which happens. It arrives when least expected and brings with it terrible consequences, and it is at that stage that that State realizes that the maximum services that are required should be available, and if the preparations have not been made they will not be there. It is at that stage a sovereign State might feel that, if it had the chance to vote again, it would vote for very, very high limits if that would have provided for its needs at the time that they were required. It is the experience of Ireland, which is only a small island set in a very large sea, that occasionally a disaster comes our way when least expected, and it is at that time that everybody's efforts are required to minimize the risk and the damage. We depend very greatly on our fishing industry and increasingly so for our daily requirements on a national level. It is our hope that, if there is to be a tragedy or a disaster, that help will be there and in this particular case help will come from salvors and the reward will be in the avoidance of disaster or in the minimizing of the disaster. It seems, Mr. Chairman, that the fears of this conference are that the costs will be too great, and how would that be? It would be because a tribunal or a court which fix costs, which are so high that they do have an affect on overall freight and transport costs around the world. It would seem, Mr Chairman, that in that case a safetiness is required for courts or tribunals getting the figures wrong and making mistakes which damages other interests. So, Mr Chairman, unless a compromise figure is brought about which is not a figure that everybody wants but which is a figure which meets the needs of producing a reasonable sum to go into this article. If that is to be achieved, a figure between 30% and 100% must be found. And, Mr Chairman, if it cannot be found, it would be this delegation’s proposal that a high figure should be put in because it will meet the needs of the marine environment. And perhaps some form of resolution or otherwise might be found to provide the safetiness in the light of experience of the awards of tribunals in the future. Such a resolution, Mr. Chairman, might be, after a certain amount of experience, to reconvene the Conference to come back and look at this question. Mr. Chairman, I will put that forward as being a reasonable way forward to meet what might otherwise be an impasse in finding a figure to put into this very important article. I apologise for having taken so much time. Thank you Mr. Chairman.

The Chairman. I thank you. Delegation of the United States of America.

United States. Thank you Mr. Chairman. We have undertaken to revise the 1910 Convention to provide incentives to salvors to aid vessels in distress and abolish the outdated no cure no pay regime. To encourage salvage actions in difficult cases, there must be a significant figure in article 11(2). This is important not only for the owners of hull and cargo but also for P and I and the trustees of the environment. Any one who remembers the Amoco Cadiz recalls the tragic costs attended upon and failure to take timely action. A 100% figure which is a cap, by the way, allowing a special compensation bonus of not more than 100% of expenses associated with actions to carry out salvage operations, is a modest cost when compared to the tragic costs of failure to act in a timely fashion. An additional clarification is worthy of note, particularly in the light of the statement by the distinguished delegate of Greece, to the extent that the new Salvage Convention resolves on any increase salvage costs. These costs will be shared by all shipping interests through the combined framework of both articles 10 and 11. Thus an appropriate percentage in article 11 would avoid the
situation in which cargo exporters and importers bear an inequitable share of any increased insurance premiums. It must be remembered, therefore, that shipping interests concerned over an increase in freight rates must also bear in mind the costs associated with article 10. Where efforts on behalf of the environment are recognised, either under article 10 or article 11, a cost may be passed on but that cost will not be passed on in double fashion – not twice. Shippers could be liable up to the full value of salvaged cargo under article 10 or if costs to P and I eventually pass through to shippers and we have had assurances that this will not happen. The costs are limited by the language “not more than 100%”. In short, consumers will pay all of any increased costs and those costs in article 10 must be equitably balanced with those in article 11. My delegation would view any article 11 figure less than a 100% figure to reflect a failure of one of the principle purposes of this Conference. We have at hand a Convention that is a product of many compromises – not totally satisfactory to all delegations and certainly not to mine. Nevertheless, it constitutes a significant improvement over current practices and States must not miss this opportunity to take a major step forward for International Maritime Law. When the work of this Conference is done, it must not be said that we short changed the environment by providing an inadequate incentive in article 11. That would indeed be the case if this maximum amount was any less than 100%. Thank you Mr. Chairman.

The Chairman. I thank you. Delegation of Nigeria.

Nigeria. Thank you Mr. Chairman. While Nigerian delegation supports the efforts to protect marine environment, this delegation is of the view that 100% increase is rather too high because the cost will pass to the shippers and finally to the consumers. Therefore, my delegation would like to support 30% option. Thank you Mr. Chairman.

The Chairman. I thank you. It is perhaps time for one more speaker before the coffee break. I call on delegation of Malaysia.

Malaysia. Thank you Mr. Chairman. My delegation have been listening with great concern with all the details given by the other delegates. My country is also very concerned with the protection of environment simply because we have large coastline and my country lies between the Malacca Strait, which is one of the world’s busiest shipping lane. One major incident in the Strait of Malacca will damage the whole west coast of Malaysia and it might also block the Strait of Malacca. So, we view environment protection very seriously. Although our marine protection capability is not the best and most likely will need the salvor in protecting damage to our environment, still we feel that a compromise as proposed that is 30% increase is very reasonable. Thank you Mr. Chairman.

The Chairman. Ladies and gentlemen, I apologise for this delay, but we needed some time to consult delegations because it is our intention to set up a formal group which meets this afternoon at 2.30 in room 141 and I would like to announce the names of delegations who are invited to participate in this group; Mexico, Ecuador, Argentina, Liberia, Zaire, Saudi Arabia, Democratic Yemen, Islamic Republic of Iran, Malaysia, Indonesia, United States, United Kingdom, the Netherlands, Denmark, Japan, Greece, France and the USSR. I hope all delegations agree and are ready to participate. We have tried on the one hand to keep that group as small as possible because you have to negotiate and on the other hand we have tried to include every region. I hope we have not overlooked a region. China please.

China. I do not know whether we can participate in that group.
**The Chairman.** You are on the list now. We will then continue with our debate. Delegations should bear in mind that this group will discuss the problem of the figure to be included in article 11, paragraph 2. Hong Kong you have the floor.

**Hong Kong.** I just wondered if you are still allowing delegations to speak on this debate.

**The Chairman.** I was just going to explain the situation. I still have a list of speakers and I will give those speakers the floor but it might happen that if we run out of time, I will ask speakers who are on the list to withdraw their request and to refrain from making statements. Is that acceptable? The next speaker is France.

**France.** Thank you, Sir. We listened to the discussion and we certainly do agree that we did not feel the need to re-intervene because we took the floor during the preceding discussion and our position is well known, but faced with a number of delegations who are in favour of a minimum increase and faced with their concerns and their fears, we thought we could not do anything apart from speaking again to try and clarify this discussion. What is the main concern? For my delegation, one of the main points of this convention is the preservation of the environment. Everyone agrees. Let us understand that every coastal State has its prime concern, this is the case of France. I won’t mention the number of catastrophes particularly the Amoco Cadiz which mean that we do have this concern. It is very high on our list of priorities. If France is considered a rich country, it is not a luxury to be concerned, we have much more concern than some other States which are considered as developing countries. Indeed, Sir, what are we looking for? We are looking for the safeguarding of our coasts, we want salvage operations in the case of a casualty and we want a coastal State not to be a victim; it can happen. We have certain provisions in our convention and one primary concern is that which appears under article 11; and in article 11 we have provided in paragraph 2 thereof to have an increase in the special compensation award. Some delegations have said a doubling, some delegations have said 100% but the doubling is expenditure incurred exclusively for the preservation of the environment which presupposes that these expenditures are justified and reasonable and to have this increase in paragraph 2 of article 11, what we need under preservation of the environment is a useful effective result of the salvage operations. Therefore, the marine environment must be considerably preserved to merit this indispensable award to the salvor. The big question is if a coastal State has its fears, its misgivings about its own environment, does the State pay? Certainly not, Sir. As a coastal State, our reasoning would be to require the maximum encouragement to the salvor under article 11 the shipowners should pay. Therefore, for France it has always been a foreign shipowner, it is normally the case, is always a foreign ship which is off the coast of a coastal State which creates environmental damage. The coastal State can only be the claimant of the highest possible damages in the case of damage to the environment. The salvor should take measures and the coastal State therefore in principle, should be the most interested party to maximum compensation to encourage to the maximum the salvor and the salvor should therefore make the maximum effort to preserve the environment. States might say that this would have a repercussion on costs, perhaps indirectly through freight costs, which in any state will be paid by maritime supplier of goods. In reality however, the overcost in principle, which should be covered by the P & I Clubs to cover the liability of a shipowner would be a modicum because freight insurance and carriage insurance is a very minimal level of cost particularly this is much more true as was pointed out by the UK. Insurance agents in the P & I Clubs and the shipowners themselves have agreed during the CMI meetings, and it is said...
during the Legal Committee meeting, as we know, the increase should be a doubling because it will be very expensive. The P & I Clubs would not agree if it costs too much, so to all coastal States we may say, and as a coastal State we may say, the following: let us try and have the maximum encouragement. We are not going to lose; we are not going to pay the shipowners and their underwriters will cover the overcost. This is even more necessary for salvors in States which do not have the appropriate equipment, in States where there are no salvors with the appropriate equipment to ensure the preservation of the environment. In such cases, therefore, salvors must be, to put it bluntly, imported; but for the salvor to be interested in coming not only to salve a ship and the property on board thereof, but also to ensure the preservation of the marine environment by the appropriate measures, then certainly the salvors who come from a long way away, not on the spot, must be encouraged. If you say to a salvor “Cover several nautical miles and preserve the marine environment during a salvage operation”, even with the best will in the world, then certainly the increase of his normal fee should be sufficient to encourage the man to come and do it. Consequently, to ensure these activities to the very best level, to pay for the appropriate equipment, then the encouragement must be there. If the salvors are not interested in moving because their over-payment in case of success is insignificant, firstly they will not come, and since they will not make any money, they will not make any effort to make available to a coastal State the equipment required. It is a very simple reasoning and therefore we find it entirely essential for any coastal State, and I would say further, a coastal State which may not have a lot of money, which is a poor country, and which does not have salvors at hand, then certainly the maximum encouragement must be provided so that the assistance of a salvor could thus be encouraged to provide that. To conclude, Sir, let us be very clear – a maximum is a maximum. It is like the guillotine; it is the deadline. The justification of expenditure under article 11, paragraph 1, must exist but there must be an effective result implying that efforts exerted by the salvor have avoided damage to the environment. It has been said that there can be very few cases where a court or an arbitrator would give the total maximum, and there I cannot agree with Mr. Perrakis. Why should the judge be deprived of the possibility of awarding the maximum? In penal cases, five or ten years imprisonment can be awarded for a certain offence. I think an expert is always reasonable, and should be reasonable, and therefore should appreciate the fact he has the maximum available to him and he can judge whether awarding the maximum can be justified. As an arbiter, for example, I would rather have a maximum which I may award in exceptional cases rather than not have the maximum. For all these reasons we find it necessary, in order to ensure the best preservation of the environment, to give the best possible conditions to the encouragement of environmental protection measures. This can be done through article 11, paragraph 2, and the higher the limit – I admit we agreed to the 100% but we would rather have more for the very exceptional case when another Amoco Cadiz disaster happens, when the salvor might incur considerable expenses in order to have an effective result of salvage. That is our approach, Sir. Thank you.

The Chairman. The next speaker is the delegation of Uruguay.

Uruguay. Thank you, Mr. Chairman. This permanent delegation to IMO has often asked itself the same question that was asked of us by the distinguished delegation of Greece. It was said in this room that he who pays the cost of the services is the industry or the trade and that they have agreed. But I have another question. Which industry and which trade is this? The industry of those countries which have 90%, the trade of those countries which have 90% of the activity, those countries
which also have the insurance companies, who also have the salvors? If that is the case, it would appear that it is a matter of passing money from one pocket to another pocket, from the right pocket of your trousers to the left pocket. But what really happens with those countries which are developing countries who do not have salvors, who do not have underwriters and who will end up by having to have the consumers pay for this? I want to be very realistic and I believe it is the developing countries who will pay for this service, whether negotiated or taking place in GATT or in other fora. I must acknowledge that it is extremely important to be able to fight and give all necessary means to the protection of the environment. In this sense, my country has interests in fishing, in tourism and this represents a high level of its GNP. We are very concerned by this and we must preserve the marine environment for this. But I would like also to think that the salvage companies are also concerned by the marine environment, and we believe that 15% added to the figure normally received by the salvors should be sufficiently attractive for them to try to do their best. This is why I would insist that this delegation would favour 15%. In view of the IMO spirit I could accept 30% with a view to achieving a compromise. Thank you, Chairman.

The Chairman. The next speaker on my list is Sweden.

Sweden. Thank you Mr. Chairman. I will be brief since we have talked on this matter the other day and then gave our support for the figure of 100%. Now I ask for the floor to explain why that is so. We think that what we are discussing, article 11, will come into play. We have to separate between two different situations one where there is salved value, the other where no value has been salved. For the first part I would like to say that I find it extremely difficult to predict the consequences in relation to costs. Why is that so? Well, the problem, of course, lies with article 11, paragraph 4, which I would like to emphasize and I think it has not really been mentioned here today, probably because it is so obvious to all, and that is that a special compensation will only be paid to the extent that a reward is being awarded under article 10. That means it is very difficult to see how high one will come with special compensation. How much will be paid under article 11 and how much will be paid under article 10? It is only the difference between those two awards which will be avoided under article 11. That means it is very difficult to see how high one will come with special compensation. How much will be paid under article 11 and how much will be paid under article 10? It is only the difference between those two awards which will be avoided under article 11. So even a very large increment in percentage, which is in percentage to the costs for the salvor, it would still mean that you only go a very little step beyond what has been avoided, according to article 10. Therefore, I have always believed that the importance of article 11 lies in the situation where there is no salved value or where salved value is so low that it does not even cover the costs of the salvor. That is the only situation where there is no salved value, where the special compensation will start from zero and not from the salved award. And here also article 11(2) comes into play the situation where the salvor has been successful in preventing pollution damage to the environment. There we have a situation where we think it is reasonable to give the increment to that successful salvor for what has been the alternative. Well, the alternative would have been damage to environment. So that is a comparison you will have to make. Which price would you prefer to pay - the price in damage to the environment, or an increment propping up the costs which the salvor has had. In that choice, Mr. Chairman, this delegation has chosen to give a real increment which could be an incentive for the salvor to take action to prevent damage to the environment, and that is the reason why we support this 100%. Thank you.

The Chairman. The next speaker is the delegation of Egypt.

Egypt. Thank you very much, Mr Chairman. I am to be very brief, although my
country’s delegation is represented in the drafting Committee, but I have attended your negotiations here. My country is positioned between two seas, the Red Sea which is very heavy with petrol exploration, and mineral exploration, which means that my country has had to bear very high costs so that this could have a separation scheme in the Gulf of Suez. It is going to embark on the same operation in the water of the Red Sea, which are within the territorial waters of Egypt, and at the moment it is going to apply exactly the same thing for Egyptian territorial waters in the Mediterranean. All this means dreadful expenses, but the main target is to preserve our marine environment. I want give you an example which perhaps will lead developing countries not to feel such a fear as we have heard this morning. Last year, a Dutch ship called Lanai came aground at the entrance to the Gulf of Aqaba and it had to be conducted from the straits of Teheran to the Gulf of Aqaba at a very slow speed which caused pollution of the sea. I was at the head of the investigation of this particular accident and I found the very harmful consequences of this accident, i.e. our resources were all destroyed and my country, in fact, underwent great expenses in order to protect the environment. There is a particularly valuable area which was completely destroyed and this disaster almost reached Rez Mohamed. Rez Mohamed is one of the most beautiful areas in the world, but thank God and by virtue of his power, this area was not polluted. The Government of the Netherlands shared these expenses with us because they knew that we were a developing country incapable of bearing those costs, so I refer, in particular, to the representative of the United States, i.e. the reduction of this percentage might mean the ignoring of this Convention. What I am saying is that the arbitration court or the tribunal which would have the competence to enforce this Convention on accidents, did not enforce Article 11, but that tribunal will have the whole Convention with different criteria on which the special compensation is going to be calculated. All these criteria are not, in most cases, going to lead to a percentage of 100% for the special compensation. As my distinguished friend from France said, as well as the delegate of Sweden, these cases come at a time when Article 10 is not applied or where 10 is not sufficient or in some extraordinary circumstances, 100% of expenses, if you are going to look at it from a materialistic outlook, 100% of costs means that there will be a salvor who will be ready, willing and able to minimize environmental damage. This salvor, when I am going to give him a figure it will be either a tribunal or an arbitrator – it is not the Convention that is going to give him a figure. When he finds he, in fact, is worthy of 100% then it is not an extremely high percentage for a country which has preserved its marine environment. For this reason, before I came to this Conference I discussed this matter with my country’s Government and I am totally prepared to agree to those people wanting 100% and I am totally ready to support a percentage figure of 30%, but I fear that the fear we have listened to, that nations are going to bear these costs. It is not to be borne by the nations, it is going to be borne by the industries and it will be limited to a certain percentage. Of course, there are percentages to be borne by modernising our industries and we have to bear the costs of such organisation, but in this case in particular, when the matter pertains to the protection of the environment and if it is destroyed, then it is impossible to take it back to the original. I have found crops in this area which are still contaminated with oil. There are coral reefs which are totally destroyed. This is what I wanted to say and thank you very much, Mr. Chairman.
The Chairman. Ladies and gentlemen, the meeting is called to order. You should have received WP/32. First I would like to indicate a small change. Please include among the States sponsoring this document, Japan. After Iran you should include Japan. You know that yesterday we took a decision to set up a formal Working Group in order to discuss the figure to be included in article 11 paragraph 2. That group met yesterday afternoon and at night. During the discussion there was a useful exchange of view of concerns of the delegations. Several alternatives were discussed, but at the end of the meeting of the Working Group a consensus emerged in favour of the text in document WP/32. This text reflects the concerns which were expressed both in this Committee and in the Working Group and the Working Group considers that the approach in the text you now received provides the basis for wide acceptance of our convention. This text is therefore presented by the members of the Working Group to the Committee of the Whole for consideration, and I hope that we will have a short debate and then we can come very quickly to a decision on this text. I have of course, to give the opportunity to delegations to make comments or to ask questions, but I would like to appeal to intervene only if it really necessary from the standpoint of the delegation concerned. May I ask first whether there is a delegation who wants to make a comment or to ask a question? Greece, you have the floor, Sir.

Greece. Thank you Mr. Chairman. Yesterday evening, as perhaps you can recall I accepted this document subject to confirmation from my Ministry, I contacted my Ministry and I am very sorry to say that we cannot accept it. Thank you very much, and I am sorry for the inconvenience.

The Chairman. Thank you. Is there another delegation? Well, now we know that there is at least one delegation that is against the document. Is it necessary that we vote, Mr. Perrakis? Greece may I ask you if you insist on a vote or may we take it that the Committee as a whole agrees on that text with the exception of Greece? We ca put it on record. Is that acceptable?

Greece. Mr. Chairman we ask for a vote.

The Chairman. Thank you. Delegation of Panama
Panama. Thank you Mr Chairman. Just to make one point clear. We have just read the document LEG/CONF.7/CW/WP32, which refers to a maximum increase of 30%. Yesterday we asked for 15% but we do not want to be too intransigent on this topic and, if this is the general consensus of my distinguished colleagues here present, we with great pleasure would go along with this consensus but only for the consensus. I want this to be perfectly clear. Thank you, Chairman.

The Chairman. Thank you. The delegation of Brazil.

Brazil. Thank you, Mr. Chairman. Brazil is in the same position as Greece. We need to receive instructions from my Government about the text of the document, W P/32. Thank You.

The Chairman. May I ask Brazil if you, also, would insist on a vote? Thank you. Well, we have no choice. We have to vote on the text. I put on vote the proposal contained in W P/32. Who is in favour of that proposal? Please raise your cards. Who is against? Please raise your cards. One delegation. Abstentions? Thank you. The result of the vote is 47 in favour, 1 delegation against and 3 abstentions. I think it is a good result and we can only congratulate the Working Group which has worked yesterday even overnight. We have now to take a decision on articles 10 and 11. We have already decided to vote on a package that means we have to vote on articles 10 and 11 together, and at the same time we have to vote on the proposals contained in W P/28\[151\] which is a proposal for a rule of understanding and for a resolution. We have already discussed that Working Paper and we have already decisions therein. These two elements, article 10 and 11 on the one hand and the resolution and the rule of understanding form a package. And we will vote on that package now.

COMMON UNDERSTANDING CONCERNING ARTICLES 13 AND 14 OF THE INTERNATIONAL CONVENTION ON SALVAGE, 1989

International Conference Committee of the Whole 24 April 1989 Documents LEG/CONF.7/VR.156-158

The Chairman. Let us now consider the results of the discussions by an informal consultation group on the proposal of the United States contained in Working Paper No. 22 in regard to articles 10 and 11. These results are contained in Working Paper No. 28\[152\], and I would like to ask the delegation of the United Kingdom to introduce them.

United Kingdom. Thank you, Mr. Chairman. May I report on the results of the informal consultations that took place between delegations on articles 10 and 11 last

(151) Supra p. 372, note 146.
(152) Document LEG/CONF.7/CW/WP.28 Report by the Chairman of the Informal Consultation Group on Articles 10 and 11
Articles 10 and 11
Rule of interpretation concerning the interrelationship between articles 10 and 11
In fixing an award under article 10 and assessing special compensation under article 11, the tribunal is under no duty to make an award under article 10 up to the maximum value of the salvaged property before assessing the special compensation to be paid under article 11.
The discussions primarily concerned the precise relationship between articles 10 and 11, and whether guidance should be offered to courts and arbitrators on that relationship. The debate was intensive and covered strongly held views and concerns. Various proposals were made and resisted on whether there were some cases where the court or arbitrator should be directed more to article 11 than to article 10. In the end it was agreed that:

- firstly, the court or arbitrator had wide discretion subject to the upper limit set in articles 10 and 11;
- secondly, the exhaustion of the salvage fund was not necessary under article 10 before a court or arbitrator considered an award under article 11; and
- thirdly, any guidance offered should be neutral, pointing at both articles 10 and 11, and that the wording should be consistent with the wording of the draft convention.

The proposal that it was eventually agreed should be offered to the Committee of the Whole was that a rule of interpretation should be annexed to the convention. The precedents for this were the 1976 Athens Convention which was prepared under the aegis of this organisation, and the Hamburg Rules 1978 which were prepared by another United Nations body. The text of this proposed rule of interpretation is on page 1 of Working Paper No. 28. Mr. Chairman, this is a point at which I would say that the following statements should be read into the summary records, if we have summary records. But I think it is important to allay the fears of some delegations and I must therefore stress that the wording of this rule of interpretation is not intended to convey the impression that where awards are being considered under Articles 10 and 11, special compensation must always be paid under Article 11. That is not the intention of the rule of interpretation. I would refer delegates to Article 11(4) which sets out the circumstances under which an award under Article 11 is clearly not to be paid. The proposal for a rule of interpretation in working paper 28 in no way seeks to alter the sense of Article 11, in particular paragraph 4. It is to be no more than a signpost to the application of the present text of Articles 10 and 11.

The Chairman. Thank you. Has the United States the intention of taking the floor? I would like to ask a question. The adoption of the rules of interpretation and the adoption of the resolution, what that means is that the United States could, in these circumstances, withdraw the proposal on Articles 10 and 11 contained in working paper 22?

United States. Thank you Mr. Chairman. We support the interrelated proposals as a compromise that clarifies the very delicate balance existing between Articles 10 and 11. This compromise certainly does not address all of our concerns but such is the nature of compromise. It must be unequivocally clear that our position is necessarily contingent on the overall outcome with respect to the entire Article 10 and 11 package and accordingly if these documents which have just been introduced by the distinguished Delegate from the United Kingdom are accepted and there are no further modifications to the Article 10 and 11 package, we would indeed withdraw our proposal on LEG/CONF.7/22. Thank you, Sir.

The Chairman. Thank you. We are facing a very clear situation adopting the rules of interpretation and attaching them to the body of the Convention and adopting the resolution contained in working paper 10/28 which means the United States would be able to withdraw the proposals contained in working paper 22. Thank you. The floor is open. How do the Delegations feel about the proposals made in working paper 28? Canada, you have the floor.
Canada. Thank you Mr. Chairman. I can be quite brief about this being one of those Delegations that earlier on in the discussions had indicated a certain dissatisfaction with Articles 10 and 11 as they presently feature in the draft articles. I am happy to say that my Delegation that participated in the intensive discussions that took place can accept the compromise that has been put forward in working paper 28. I would say perhaps one further thing that we would associate with the observations made by Mr. Wall in introducing that compromise. We hope that it will prove to be the clinching point as far as this very difficult subject is concerned. Thank you, Mr. Chairman.

The Chairman. Thank you. The Delegation of the Federal Republic of Germany.

Federal Republic of Germany. Thank you Mr. Chairman. I can say for my Delegation that we highly appreciate the results which have been achieved by the work of the informal consultation group in every respect and we would like to give full support to this result. Thank you.

The Chairman. Thank you. Can I take it that the Committee as a whole would be ready to adopt the proposed rules of interpretation in working paper 28 and would also be ready to adopt the resolution contained in the same document, bearing in mind that by this adoption we would solve a substantive issue in respect of Articles 10 and 11? Is that the general feeling of the Committee? Is there any Delegation which is against that proposal? No Delegation? Well, Greece.

Greece. Not to defend myself, Mr. Chairman, just to accept it I have to refer to my Captain to ask for his instructions. Thank you very much.

The Chairman. Thank you. Any other statements?

USSR. Thank you, Sir. I have taken the floor not to say that we need instructions on the question and not, either, in order to strike a false note in this approach which seems to be emerging. Can I express, however, some misgivings which have not disappeared during our listening to this discussion when we look at the proposals which are before us... Can I come to something slightly more serious now. This is the question of interpretation. Mr. Wall has reminded us of the Athens Convention, the Hamburg Rules, etc. I could remind him of the United Nations Convention on Multimodal Transport and respect has been paid to this in the preamble, but it is really a matter of understanding, a common understanding. At least two of these Conventions mentioned have the basis of fault underlying liability. That's one thing. This gives us a guideline for arbitration tribunals when they have to deal with disputes based on these Conventions and now what do we have in our rules? I'm not quite sure where to put the point. What we are saying is that the tribunal is not required to give a maximum award until such time as this has been determined in respect of special compensation. Well, what is this requirement? Is it a State requirement to apply its legislation in respect of these claims? Supposing I'm heading a tribunal which often and on many occasions deals with salvage affairs, it looks at this resolution. I am absolutely free, my hands are totally untied. I think a court in any country would be completely free to not be bound. At the moment, quite honestly, I am somewhat confused. I am rather upset. I don't want to go against the consensus of course, but on the other hand in our delegation we are trying to look at the consequences of all this and we can't come to any single decision even within our own delegation. We don't know what to do at the moment in these negotiations. Obviously we don't want to object to the efforts exerted thus far. Certainly one delegation seems to be happy with them. On the other hand, with all due respect to delegations in the room, we are not at all happy. Is the US going to ratify this?
Convention? Perhaps the US won’t be happy and therefore will not ratify. So, as I said, these are doubts, misgivings, I have. I don’t know what is going to happen after I have finished speaking. I honestly don’t know, but perhaps other delegations have a more clear-cut view on the questions. Thank you, Sir.

**The Chairman.** We have no possibility of testing that. We have to wait until tomorrow, because we have to adjourn. Please use the night for considering the proposal and Working Paper No. 28. I have on my list for tomorrow: Italy. Italy will be the first speaker tomorrow morning and I hope we can finish this item tomorrow morning very quickly and not embark on a new debate. We have already had a debate on that, a long debate. The meeting is adjourned.

25 April 1989
Documents LEG/C O N F.7/V R.159-161

**The Chairman.** Ladies and Gentlemen, the meeting is called to order. I hope you had a pleasant evening yesterday and that you have used that evening for consultation on working paper No. 28, so that this morning we can very quickly settle that problem. I still have one speaker on my list, that is Italy. Italy, do you want to intervene? You have the floor, Sir.

**Italy.** Thank you, Sir. My intervention is on a drafting point and I would like to state beforehand, with great clarity, that we agree with the content of the document working paper No. 28, but, Sir, the view of my delegation is that the drafting should be changed. We should be inspired by preceding changes in drafting and after “understanding” we should have a comma. Indeed, these are very small differences in form, but in our view, these changes would give force to the document which we have before us. Thank you, Sir.

**The Chairman.** Thank you. Could you please, for the benefit of the Committee, repeat the changes proposed.

**Italy.** Thank you, Mr. Chairman. We suggest some small modification simply in the heading of the proposal in order to put it in line with the precedent we have recorded in the 1974 Athens Convention and the 1978 Hamburg Convention. For these reasons we would prefer that in the heading we could have something like “Common Understandings adopted by the United Nations Conference on Salvage”. Then the wording of the text could start such as “It is the common understanding that” and then the formula that has been agreed. Of course, I ask for the help of the English-speaking delegation. Thank you, Mr. Chairman.

**The Chairman.** Thank you. I think the idea is clear. May I ask the Committee, especially the delegations involved in these consultations, if they could accept this change? The United States, you could accept that? France, you have the floor.

**France.** Thank you, Sir. We entirely agree with what is proposed by our colleague from Italy. We are not changing the text in substance, but this text would become a common understanding which could be joined to the Convention, as was the case particularly for the Hamburg Convention. Thank you Sir, in other words we agree.

**The Chairman.** Thank you. That would mean we would have a new title “Common understanding adopted by the International Conference on Salvage in 1989” and then we would start saying “It is the common understanding that in fixing
an award under article 20”, and so on. The rest of the text would then be unchanged. United States, you have perhaps the better wording.

United States. Only to suggest, Mr. Chairman, that the common understanding be identified as relating to the interrelationship between articles 10 and 11.

The Chairman. That is O.K. “Common understanding concerning the relationship between articles 10 and 11 adopted by the International Conference on Salvage, 1989”. Is that correct, then? I thank you. Greece, I hope you have not a long debate on this point, because it is simply drafting we are doing.

Greece. Thank you, Mr. Chairman. I really do not like pre-empting your suggestions from the chair, but this time I shall let it pass. What I wanted to ask is where is this text going to be. Is this going to be a paragraph in article 10, in article 11, or is it going to be a resolution? Nothing is said in the paper and until we know what and where this is going to be we cannot say what we shall vote. Thank you.

The Chairman. Well, yesterday it was explained in the introduction made by the United Kingdom that this should be an attachment to the final text, not a new article in the body of the Convention. Is that Greece?

Greece. Thank you. Is this going to be an article or in the final clauses? I want to know exactly what it is going to be – it cannot be an attachment. It has to be something – it is either going to be a resolution, an article or it is going to be an annex. We have to know what it is going to be. Thank you.

The Chairman. It was the intention to follow the precedents, for instance, in the Athens Passenger Convention. There is an attachment to that Convention, first that the text has been included in the Final Act and then attached to the Convention and that attachment contains a rule of interpretation of that Convention, and it has been proposed yesterday to follow the same procedure. It will not be an article in the body of the Convention. Is that clear now? (Yes) I thank you. USSR.

USSR. Thank you Sir. Perhaps I misunderstood you, Sir. If we are going to follow the procedure of the Athens Convention, then as far as I understand, this would be an attachment not to the Convention but to the Final Act of the Convention. Is that correct or not? Are we supposed to attach it to the Final Act? That is my question, Sir. Thank you.

The Chairman. Well, in any event it has to be attached to the Final Act and I think that is the procedure followed in 1974 in the Athens Convention. You are correct, Sir. Any other questions? France.

France. Thank you, Sir. We think it is, after all, preferable to follow the Hamburg precedent and this common understanding should be annexed to the Convention for, if we take the Athens Convention and the Brussels Convention, we find that the common understanding does not appear as an annex to the Convention. It is in the Final Act as such and, therefore, tribunals applying the Convention will consult the Convention. They are not going to consult the Final Act. The Final Act does not always appear in the text of the Convention, which is why we prefer that the interpretation rule should be annexed to the Convention and it should appear after the text of the Convention which is the case of the Hamburg Convention – thanks to which – it is easier to consult the regulation rather than putting it in an annex to the Final Act. Thank you.

The Chairman. Well, I have the impression, it would be less complicated when we attach that to the Final Act. What is the feeling of the Committee? Could the
Committee agree with an attachment to the Final Act? O.K. I thank you. Well, that is settled. To make it clear, it will become an attachment to the Final Act. O.K.

*Intertanko.* Thank you Mr. Chairman. My comment relates to Working Paper 28. It goes a little bit beyond it but it is closely related and it will only take a few minutes. So, if I may have that time. Working Paper 28 was introduced yesterday and the distinguished representative of the USSR expressed some general concern. We in Intertanko share his concern. The Working Paper implies that the Convention is unclear on some important points – article 10 and 11. Our concern is, however, related to another element as it may be seen to represent a temptation or perhaps an invitation to utilise article 11 under which the shipowner alone shall contribute, according to the present text, instead of taking full advantage of article 10 where all property interest jointly become involved. What would be the effect of Working Paper 28? It seems to me that if it is agreed in combination with a high percentage figure of 100%, it can only be seen as new efforts to impose an unreasonable burden on the shipowner alone. On the other hand, Mr. Chairman, there may be less reason for concern, if the new increment to the salvor is set at a reasonable level. The present mark-up is 15%. Doubling has been a proper word of the last day. If the mark-up is doubled till – say 30%, it may be understood by many parties directly involved. If the intention is to go as high as 100 per cent, I regret, Mr. Chairman, that it is my duty to refer to Intertanko submission LEG/CONF.7/18, dated 23 February 1989. The point I will make has regrettably not been included in the IMO Secretariat’s paper LEG/CONF.7/CV.3, dated 3 April, where all or most other observations by international associations are referred to. I would remind you of one of the most important principles which have served as a guideline when it comes to pollution damage since the grounding of the *Torrey Canyon* in 1967. I am referring to the principle of sharing all compensation. It is an essential part of the 1969 Civil Liability Convention confirmed by the 1971 Fund Convention and reconfirmed by the two 1984 Protocols revising these conventions. The preamble of the revised Fund Convention reads “The States parties to the present Protocol are convinced that economic consequences of pollution damage resulting from the carriage of oil in bulk at sea by ships should continue to be shared by the shipping industry and by the cargo interests”. This Conference addresses the same environmental issues and the same principles of sharing must or should apply. It is the special nature of the cargo transported and its inherent potential for causing environmental damage that lead to the problems we are now discussing. If the increment is set as high as 100 per cent then we feel that the Conference should kindly consider to bring in other property interests to contribute, and just like the distinguished representative of the USSR, we would be concerned if this Conference goes too far to meet the special requirements of Governments which, in practice, have shown little activity when it comes to ratification.

You may not like what I have said, Mr. Chairman, and I would only perhaps quote the American author, Mark Twain, who once said about the music of Richard Wagner, that it is not as bad as it sounds. Thank you.

*The Chairman.* Thank you. May I ask the Committee again whether the Committee could agree with the proposals contained in working paper 28. I hope it is not necessary to vote on that. Can we take it that we agree on the contents of that working paper by consensus, or is there a delegation which insists on a vote? That is not the case. That was my first question. That means that we have agreed upon the proposals contained in working paper 28 by consensus.

Rule of interpretation concerning the interrelationship between articles 10 and 11

In fixing an award under article 10 and assessing special compensation under article
11, the tribunal is under no duty to make an award under article 10 up to the maximum value of the salved property before assessing the special compensation to be paid under article 11.

The Chairman. We have now to take a decision on articles 10 and 11. We have already decided to vote on a package that means we have to vote on articles 10 and 11 together, and at the same time we have to vote on the proposals contained in WP/28 which is a proposal for a rule of understanding and for a resolution. We have already discussed that Working Paper and we have already decisions therein. These two elements, article 10 and 11 on the one hand and the resolution and the rule of understanding form a package. And we will vote on that package now. First, I will indicate the changes which we have made in 10 and 11 so that everybody is clear what text we are voting on. In article 10, paragraph 1, subparagraph (a), we included before the word property, the words “vessel and of the other” then continue property. Then we have a new subparagraph (e), which reads as follows.

“The skill and efforts of the salvors in salving the vessel, other property and life.”

And then we have a new subparagraph (f). That subparagraph reads “the time used and expenses and losses incurred by the salvors” and consequently the remaining subparagraph are renumbered. Then we have decided to replace the text originally contained in the basic draft by a new text for paragraph 2, that was the proposal made by the delegation of the Netherlands. It was contained in Working Paper No. 5. We made some small changes and I can ask Mr. Zimmerli to read out the text as it now stands. M r. Zimmerli, you have the floor.

Mr. Zimmerli. Thank you Mr. Chairman. The text as it stands in WP.5 is unchanged. I think, there was a decision to refer a small matter to the Drafting Committee. There is, the only change at the very end is to add what was in the original paragraph 2 but slightly changed at the last sentence again. So the last sentence of that paragraph 2 would now read: “Nothing in this article shall prevent any right of defence”. That would be added to the text as it appears in WP.5. If you wish I can read the whole text.

The Chairman. Is it necessary to read the whole text? What is the feeling of the Committee? You should have in front of you the Working Paper No. 5 and you are now aware of the changes which have been made. Is that acceptable? Yes, O.K. I thank you.

Drafts agreed by the Committee of the Whole
(Document LEG /CONF.7/CW/5)

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 vessel and of the other 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 skills and efforts of the salvors in salving the vessel, other property and life including the time used and expenses and losses incurred by the salvors;

f) 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;

h) the promptness of the service rendered;

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

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

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the property interests in proportion to their salved value. 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 share as determined in accordance with the first sentence. 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 value of the salved property.

Article 12- 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 11 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2 If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the compensation payable by the owner to the salvor under paragraph 1 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 article 11.1, but in no event shall it be more than to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 10, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

3 “Salvor’s expenses” for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 11.1, paragraph 1(h), (i) and (j).

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.

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.

6 Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.
Rule of interpretation concerning the interrelationship between articles 10 and 11

In fixing an award under article 10 and assessing special compensation under article 11, the tribunal is under no duty to make an award under article 10 up to the maximum value of the salved property before assessing the special compensation to be paid under article 11.

Texts examined and approved by the Drafting Committee
(Document LEG/CNF.7/Dc/8)

Article 10 - Criteria for assessing the award

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 vessel and of the other 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 salver;
   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 service rendered;
   i) the availability and use of vessels or other equipment intended for salvage operations;
   j) the state of readiness and efficiency of the salver’s equipment and the value thereof.

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the property interests in proportion to their salved value. 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 share as determined in accordance with the first sentence. 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 value of the salved property.

Article 11 - Special compensation

1. If the salver 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 10 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2. If, in the circumstances set out in paragraph 1, the salver by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salver under paragraph 1 may be increased to a maximum of 30% of the expenses incurred by the salver. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 10, 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 salver.

3. “Salver’s expenses” for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salver 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, paragraph 1(h), (i) and (j).

4 Provided always that 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 10.

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 payment due under this article.

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

Draft Common Understanding concerning the Interrelationship between Articles 13 and 14 of the International Convention on Salvage, 1989

Adopted by the International Conference on Salvage, 1989

It is the common understanding of the Conference that, in fixing an award a reward under article 10 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix an award a reward under article 10 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.

The President. Articles 13 and 14 and the resolution contained in document CONF.7/D.C.4, paragraph 1, and the common understanding. All this should be dealt with as a whole, as a package. So we are for a pool of articles 13, 14, the resolution.

Plenary Session 28 April 1989
Documents LEG/CONF.7/V.R.217-219
Document LEG/CONF.7/V.R.228

The President. The distinguished delegation of Mexico.

Mexico. Thank you very much, Mr. President. In article 14.2, we regret to see that what the Mexican delegation had requested as to the sentence to be found in the fourth line of the Spanish text, is not reflected. There we should say “up to a maximum of 30% of the cost incurred by the salvor”. That is why we were opposed to the change of the preposition “to” by “by” in English. Mr. President, we want to remind you of the fact that this was a compromise which was achieved with great difficulty, a very delicate compromise which required many hours of discussions, and I would like to remind you of the words which were used by the Chairman of the Committee of the Whole, Mr. Trotz, who when we had the document indicated that it was a document which was well drafted in the English language possibly, but that it was a compromise and as such was to be accepted. In the Drafting Committee, when the proposition was introduced to replace the already accepted word “to”, the delegation of China very rightly pointed out, Mr. President, that this would mean that there wouldn’t be an increase from 0 to 30, that is to say, 1, 2, 3, or 10 or 15 or 30 percent, and that we should stick firmly to this position. I insisted with the Chairman of the Drafting Committee that we should abide by the official compromise and that nothing be changed, because we put a lot of effort into this and if we remove the word “to” and if we leave the word

(154) The debate on the Common Understanding during the Plenary Session started in connection with the general debate on the Final Act: infra, pages 592-597.
“by”, we can say goodbye to our compromise, or as you would say in English “bye-bye” to our compromise. Thank you Mr. President.

The President. The Chairman of the Drafting Committee.

Chairman of the Committee of the Whole. Thank you, Mr. President. I would like to say that the delegate of Mexico is right in pointing out that we had decided in the formal Working Group and in this Committee not to draft on that new paragraph 2. We were well aware that the drafting of the wording of that new amendment is not the best one, but we decided at the same time to stick to the original text which was proposed by the Working Group. In fact, if you look at Working Paper No. 32, you will find in that text the wording “increased to a maximum”. Perhaps we should have said “up to a maximum”, to make it clear what we had in mind, but I’m afraid that the change from “to” to “by” could give the impression that an absolute layer should be on top of the costs incurred by the salvor and I would like to propose that we come back to the original wording which was agreed upon in the Working Group, in order to make it sure for all delegations that we did not deviate from that compromise which we found in that Working Group. The only improvement which could be made is perhaps to put before the word “to” in the original English draft the word “up”. So the fourth line in the original text Working Paper No. 32 would read: “increase up to a maximum of 30 percent”. I would prefer this solution and I hope that the Chairman of the Drafting Committee could agree with me and that we settle this point very quickly. It was an agreement in the Working Group not to change the wording of that sensitive compromise.

The President. Thank you. Delegation of the Netherlands, Chairman of the Drafting Committee.

The Chairman of the Drafting Committee. Thank you. The Chairman of the Committee of the Whole is correct in saying that in the Working Group there may have been made agreements but I can’t remember that that agreement was repeated in the Committee of the Whole as such. But that’s not at stake here. When the Drafting Committee was presented with this text, a number of English-speaking delegations said that the present text led to an absurdity. It was simply not a sensible text in English, and we thought that just by changing that small word which would not affect the text at all we would make it much clearer that the increase could not be more than 30 percent, and the word “maximum” would take care of the fact that you wouldn’t need the whole 30 percent in all instance. So it was just a matter of pure English language. If sentiments are so delicate about this clause, I think that the compromise proposal made by Dr. Trotz a minute ago might help, but I’m not an English speaking person, I cannot speak for the English-speaking nations. I was given to understand that the present text doesn’t make sense in English and leads to an absurd conclusion, in fact that you cannot add 30 percent but that the whole sum would be 30 percent of the expenses, and that was an acceptable text in that respect. Thank you.

The President. Thank you. The distinguished delegation of Ireland.

Ireland. Thank you, Mr. President. I just have two points. I would agree with what has been said already by the distinguished delegate of Mexico and the Chairman of the Committee of the Whole. I don’t know if it would meet the requirements, but I think a compromise on the wording which gives the correct sense might be to use the inelegant words “by up to”. But I think I will leave that for the rest of the Committee to decide. There is just a second small point on 14(3). I think we might remove the inverted commas around “salvor’s expenses” because, while that is the sense of the expenses in 13(2) or is it 14(2). So the inverted commas should be removed.
The President. The distinguished delegation of Greece.

Greece. Thank you, Mr. President. As I have to make an observation regarding the reservation of my country of this whole package, perhaps I can make it now or we can come back when you have resolved the matters which have been raised during the Plenary. Thank you.

The President. We can come back to the matter later, distinguished delegate of Greece. Ecuador.

Ecuador. Thank you, Mr. President. We took part in the work of the Group which drafted the old article 11, paragraph 2, which is now numbered article 14, paragraph 2, and I remember very clearly in the drafting group that looked at this article, after having revised the English text several times, it was decided that the text was a delicate compromise and shouldn’t be sent to the Drafting Committee in order to improve its form and it was better, as Mr. Trotz said, to have a good compromise and a bad text rather than the opposite. So, Mr. President, we are concerned by the fact that the English text has been changed in the Drafting Committee, and in Spanish too for that matter. So this could appear to be a matter of wording but can certainly give rise to difference of substance and difficulties for the interpretation of the judges. We can’t assess this. Mr. Sturms, the Chairman of the Drafting Committee was also present during the work of this small group. Mr. Sturms knew that we had decided not to touch the text for the reasons explained before. So Mr. President, this delegation would like to leave this text of article 14, paragraph 2, exactly as it was adopted and contained in LEG/CONF.7/W. P.32. Thank you, Mr. President.

The President. Distinguished delegation of the United Kingdom.

United Kingdom. Thank you, Mr. President. We would respectfully agree with what has been said by Dr. Trotz, the Chairman of the Committee of the Whole and what has been said by the Chairman of the Drafting Committee and I don’t think I would go further than that. Can I just explain the position as a matter of English. The present text “may be increased to a maximum” is not good English but one would know what was meant. Better English is “may be increased by a maximum” and one would get the same result in an English interpretation. If you say it “may be increased up to a maximum” that is the best solution of all, we would suggest. There can’t be any misunderstanding and that is the one that we would support. Thank you, Mr. President.

The President. Thank you very much. Democratic Yemen.

Yemen. Thank you, Mr. President. Being the original author of this particular paragraph, I regret to hear that our English was not particularly satisfactory, especially in view of the fact that we had a good representation of the British Delegation on that formal committee. However, I would like to point out in looking back at the original draft which was agreed during that formal group, there are two changes to the original draft. That is the introduction of the word “special” before “compensation” and that is a drafting and agreeable. Other delegations have agreed also that “understandable draft” is better than a draft which is purely linguistic and we think that the draft that we have agreed to in the formal group is understandable to everybody. However, the small additions that have been proposed by the distinguished delegate from the United Kingdom by adding the word “up” before “to”, in order to read “up to a maximum of 30%”. If it makes the text clearer than we would support that. Thank you, Sir.

The President. Thank you very much. I would like to turn to the distinguished
delegation of Mexico and then the delegation of Ecuador and would like to know if the proposal just made can satisfy you both?

**Mexico.** Thank you, Mr. President. We agree with the clear proposal made by Dr. Trotz in order to say “up to” but we would like to draw attention, Sir, to what was said by the delegation of Democratic Yemen. There were present representatives from the United Kingdom and other English-speaking countries who could have corrected us at that time and not afterwards, once we had achieved an official compromise. As was said here, we must respect the spirit of this Organization and in the sense of this IMO spirit, we can support the words “up to” as suggested by M. r. Trotz. Thank you very much, Mr. President.

**The President.** Thank you. The distinguished representative of Ecuador.

**Ecuador.** Thank you, Mr. President. Also in order to get over this difficulty – a problem which we certainly did not create ourselves – my delegation can accept Dr. Trotz’s suggestion to do away with the word “by” which was added by the Drafting Committee and put “up to” instead. Thank you very much, Mr. President.

**The President.** Thank you very much. Therefore, after the consensus achieved Article 14 is approved with the change of the word “by” and the words “up to” introduced instead. If there are no further remarks, Article 14 is adopted. In fact, this Article 13 is approved jointly with Article 14. Sorry. Distinguished delegate of Mexico.

**Mexico.** Thank you. I am sorry for delaying you in your work but I insist that also in Spanish one should make a correction because the Spanish text was also changed. From the beginning of the fourth line in the Spanish text we should say the following:

“Salvador en virtud del párrafo 1 podrá incrementarse hasta un maximo...”

Thank you, Mr. President.

**The President.** Thank you, Sir. So, Article 14 would be approved with this amendment both for the Spanish and English versions. The text of the resolution in Document DC/4.rev.1 and with that also the approval of the Common Understanding concerning articles 13 and 14 of the International Convention on Salvage, 1989. The distinguished delegate of Greece.

**Greece.** Thank you, Mr. President, for giving me the floor. I would just like to state that my Government has a reservation regarding the whole package of these two articles. It is the same position as we have stated at the Committee of the Whole. Thank you very much.

**The President.** Thank you very much. This statement will be recorded in the report of the conference. Distinguished delegate of Brazil.

(155) The change consisted in the replacement in the English version of paragraph 2 of the words “by a maximum of 30%” by the words “up to a maximum of 30%” corresponding in the Spanish version to “hasta un maximo del 30%”. 
Brazil. Thank you, Mr. Chairman. If I could record that if the elements of this package have been voted separately, my delegation would have abstained on Article 14. Thank you.

The President. Thank you. This will also be recorded in the record of the conference. If there are no further remarks, we would be approving Article 13, 14, as amended, and Document DC/4.rev.1 as well as the Common Understanding concerning Articles 13 and 14, which is the document CONF.7/DC.3. If there are no remarks, these documents are approved.

Article 13 - 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 vessel and of the other 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) 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 service rendered;
   i) the availability and use of vessels or other equipment intended for salvage operations;
   j) the state of readiness and efficiency of the salvor’s equipment and the value thereof.

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the property interests in proportion to their salved value. 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 share as determined in accordance with the first sentence. 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 value of the salved property.

Article 14 - Special compensation

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

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

3. “Salvor’s expenses” for the purpose of paragraphs 1 and 2 means the out-of-
pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).

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

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

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

Common Understanding concerning the Interrelationship between Articles 13 and 14 of the International Convention on Salvage, 1989

Adopted by the International Conference 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.
ARTICLE 15
Apportionment between salvors

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

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

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I
Art. 3-5. A pportionment among salvors

1. The apportionment of a reward between salvors shall be made on the basis of the criteria contained in art. 3-2.

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.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81
Art. 3-4. A pportionment among salvors

Montreal Draft
Document LEG 52/4-Annex 1
Art. 3-4. A pportionment between salvors

CMI Report to IMO
Document LEG 52/4-Annex 2
Art. 3-4. A pportionment between salvors

3-4.1. The apportionment of a reward between salvors shall be made on the basis of the criteria contained in Article 3-2.

This provision is in accordance with the rules of the 1910 Convention, Art.6, paragraph 2, and Art.8, paragraph 2. It should be kept in mind that the new

(156) Text unvaried.
(157) Text unvaried.
convention in Arts. 2-1.2 and 2-2.2. provides that the owners and the master of the ship involved in casualty as well as the salvors, when this is reasonable, have a duty to obtain assistance from other available salvors. Therefore, this rule becomes more important under the regime of the new convention.

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.

This is a restatement of the provision in Art.6, paragraph 3, of the 1910 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.

The law concerning apportionment between the owners and the crew of a salvage reward varies from State to State. The CMI did not consider that much could be gained by a unification of the rules concerning this subject, which is rather controversial.

IMO Legal Committee Report on the Work of the 54th Session (Document LEG 54/7)

90. The ISU observer stated that there were often many salvage claims from subcontractors who worked under the direction of a principal salvor. The ISU would favour insertion of a provision that would ensure that any agreement made by a salvor would bind his servants, agents and sub-contractors, as well as the servants and agents of the sub-contractors, and claims by these would be made directly to the salvor or to the sub-contractor as appropriate.

91. One delegation questioned whether it would be legally possible to control by this provision the relationship of a contractual kind between the sub-contractors, servants and agents of persons working for a principal salvor and that salvor.

92. It was suggested that the proposed addition might appear over-precise in view of the fact that the draft Convention was silent on who is liable for the salvor’s reward.

93. One delegation thought the provision might be useful, but it did not concern apportionment among salvors, so it should be elsewhere in the draft text.

94. The questions raised, in the view of one delegation, were whether the principal salvor would be enabled to distribute the totality of a reward he received and how he would do so. Under paragraph 1 there might be more than one principal salvor.

95. The CMI observer explained that article 3-4,1 only applied to salvors having contracts with the owners of vessels subject to salvage, not to sub-contractors.

Report on the Work of the 56th Session (Document LEG 56/9)

Article 13-Apportionment between salvors

161. The ISU proposal for a new beginning paragraph of this article, as set out

(158) Article 3-4 was renumbered Article 13 by the IMO Secretariat.
in L E G 53/3/1 and, in incomplete form, in L E G 55/3, annex I, was discussed by the Committee. The delegation of the United Kingdom (L E G 56/4/5, paragraph 19) considered that the matters covered in this proposal would best be dealt with in national law.

162. The observer of the ISU stated that the draft clause was intended to avoid a multiplicity of actions in different courts in different countries. The proposal was intended to assist the shipowner. Crew members of non-professional salvors could prosecute a claim in any number of courts. It would be better if there was only one person, the salvor, responsible for their claims rather than the salved property. This would concentrate all claims against salved property in one court.

163. One delegation expressed sympathy with the concept but had doubts about the “agreement” mentioned in the proposal. It was not clear when this was to be concluded and what its effects would be.

164. Some delegations considered the proposal useful for professional salvors, but of doubtful utility to the casual salvor with crew members on ordinary seamen’s articles.

165. One delegation expressed uncertainty as to how the proposal would relate to article 7, paragraph 2. Others considered that it was not properly placed in article 13 and that it should be situated in 4, 7, 11 or as a new article.

166. There were proposals for modification of the wording of the paragraph and the delegation of France undertook to provide a new text of the paragraph for consideration during the fourth reading of the draft articles at the fifty-seventh session.

167. The Legal Committee concluded its third reading of the draft articles with article 13.

(159) Document L E G . 5 3 / 3 / 1
Submission by the International Salvage Union
Article 3-4 Apportionment between Salvors

This is an area where there are frequent practical problems. Where tugs crews are not on salvage articles, or where sub-contractors are involved, there can be a plethora of salvage claims against the salved property, some in different jurisdictions, even when only one principal contractor is involved. Plainly this is not in the interests of the salved property, for a series of claims arising out of one instance can only, unnecessarily, increase the costs.

We do not seek to deny these parties the right to an appropriate share of the reward but do believe that sharing the reward between those working under one principal contractor should be a matter for that contractor and should not be a problem involving the salved property. The principal contractor should be entitled to enter into salvage agreement binding upon all salvors who work under his aegis. It must be in the best interests of all parties to achieve as much certainty as possible and we believe this problem could be minimised by introducing an additional section to this article, which should be numbered 3.4.1. and read:

“A salvor may make an agreement in settlement of the salvage reward, or failing agreement, have the reward assessed by a Court or Tribunal. Any agreement made by him shall be on behalf of and binding upon all his servants and agents and sub-contractors and their servants and agents, including members of the crews of vessels employed by him in the salvage operations. Any claim by the servants, agents or sub-contractors of a salvor for a share in the reward shall be made direct to the salvor. Any claim by the servants or agents of a sub-contractors for a share in the reward shall be made direct to that sub-contractor”.
Article 12 - Apportionment between salvors

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.

Consideration of the Draft Convention on Salvage
Note by the Secretariat

Article 12 - Apportionment between salvors
(CMI draft, art 3-4, 1910 Convention, art. 6, paragraph 2)

73 It was noted that paragraph 1 should be related to article 6, paragraph 1(e) which provided for the duty of the salvor to accept the intervention from other salvors when reasonably requested to do so. (LEG 52/4, annex 2).

74 It was also pointed out that the last part of the provision in paragraph 2 is new and takes into account the increasing number of cases where salvage was not carried out from the vessel. (LEG 52/4, annex 2).

75 A suggestion was made that a provision should be inserted ensuring that any agreement made by a salvor would bind his servants and agents of the sub-contractor, and claims by these would be made directly to the salvor or to the sub-contractor, as appropriate. This proposal was rejected on grounds that it did not concern apportionment among salvors. (LEG 54/7, paragraphs 90, 93).

International Conference
Committee of the Whole 21 April 1989
Documents LEG/CONF.7/F.7/3

Article 12 - Apportionment between salvors

The Chairman. There is no proposal on article 9. Articles 10 and 11 will be discussed on Monday. We have received a proposal on article 12, a very small amendment submitted by France. Article 12, paragraph 2 contained in document 7/24\(^{(161)}\). May I ask the French delegation to introduce that proposal.

France. Thank you Mr Chairman. We believe that this proposal at least in French, seems a purely draft point. I have not got before me the English text but we are trying to replace the French word “employé” “employees” in English by “préposés” and

(160) The text of this Article is that approved by the Legal Committee at its 58\(^{th}\) Session (Document LEG 58/12-Annex 2).
(161) Document LEG/CONF.7/24
Article 12.2
In the last sentence, the term “employees” should be replaced by the term “servants”.

Document LEG 58/12-Annex 2

Article 12 - Apportionment between salvors

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.
“servants” in English. I expect the English text may be correct, but the French certainly is not and in all international conventions, as well as in our domestic law, it’s the term “préposés” which is used and which we should keep in here. So Mr Chairman, if this does not have any effect on the English text, it may be purely a matter of drafting in the French text and the term could be changed in the French text to replace the word “employé” by “préposés”. If you agree, and if the English speakers are not affected by this proposal I think it can be sent on to the Drafting Committee.

The Chairman. The problem is that the same word is used in the English text. We have “employees”; that means the same word has been used in French and English. May I ask the delegation of the United Kingdom whether that delegation could accept a change in the English text; from “employee” to “servant”. It has perhaps, certain legal implications, I do not know. That is why I asked your delegation Sir Michael. You have the floor sir.

United Kingdom. We have no objection to that, Sir. We have no objection to changing employees to servants.

The Chairman. It seems to me that servants is the most used term in this context. At least in the Convention we normally rely on servants rather than employees. So perhaps it is useful to use the term servants.

Delegate. I was surprised to see “employees” but I thought it was a deliberate social change but certainly “servants” is more usual.

The Chairman. According to my recollection, it was not a deliberate change and we can leave it perhaps to the Drafting Committee simply to include “servants” instead of “employees”. It is not necessary to take a decision because it is not a substantial point. That was article 12. We have not received other proposals on that article.

25 April 1989
Document LEG/C/ON F.7/VR.170

The Chairman. We will take the decision on articles 10 and 11 tomorrow. We come to article 12. Here we have made a minor change in article 12, paragraph 2. You will remember that we had a discussion on the word “employee” in paragraph 2; at the very end of paragraph 2, and we decided to include, in the English text, the word “servants”. It seems to me that it is not necessary to vote specially on this single word, We adopted that already and nobody has protested, so we can make a decision on article 12 as a whole. Can I take it that article 12, as a whole, is acceptable for the Committee and that we can agree upon it, by consensus. Is there a delegation which wants to have a vote? No, that is not the case. Article 12 is adopted by consensus.

Draft Articles agreed by the Committee of the Whole
(Document LEG/C/ON F.7/CW/5)

Art. 12. Apportionment between salvors

1. The apportionment of a reward between salvors shall be made on the basis of the criteria contained in art. 10.

2. The apportionment between the owner, master and other persons in the service of each salvaging 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 servants.
Article 15. Apportionment between salvors

1. The apportionment of a reward [or special compensation] between salvors shall be made on the basis of the criteria contained in article 13.

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 salver and his servants.

Document LEG/CONF.7/VR.225

The President. There is a correction in paragraph 1 of Article 15, in the first line. “The apportionment of a reward...” then you should say “under Article 13” and delete what you have between square brackets. In other words, the words “or special compensation”. The text will then be, “The apportionment of a reward under Article 13” and then we go on to say “between salvors shall be made on the basis of the criteria contained in that article” deleting the word “13”.

The President. The distinguished delegation of Brazil.

Brazil. I do not insist on this, but perhaps the change announced by the distinguished Chairman of the Drafting Committee could have another setting in the phrase. It could read, I suggest: “The apportionment of a reward between salvors under article 13.” However, if that suggestion causes any problem at all to anyone, it is immediately withdrawn. Thank you.

The President. Thank you. The chairman of the drafting committee, the delegate of the Netherlands.

The Chairman of Drafting Committee. Thank you, Mr. President. Article 15, paragraph 1, deals with apportionment of a reward and the words following the word “reward” are meant to make it clear that it is only the reward fixed under article 13 and not the special compensation mentioned in article 14. There may have been misunderstandings about that, and you can see in deleting the words between brackets that, even in the drafting committee at a certain stage, there was confusion. But the Drafting Committee was of the opinion that apportionment of the reward could only concern the reward under article 13 because, for the purpose of article 14, each and every salver has to show his expenses and for that purpose this apportionment article could not apply. Therefore, the sequence of the words were chosen deliberately and the wording under article 13 should follow immediately the word “reward”. Thank you.

The President. Thank you. The distinguished delegation of France.

France. Thank you, Mr. President. We have grasped very clearly what is being said and what is implied, and we have had a clarification from the drafting committee. This being so, for the French text we should not say “la répartition de la rémunération” according to article 13. What we want is “répartition” in article 13, mentioned in article 13, which would imply that the remuneration in article 13 and only that is what is implied, at least in French to make it clear “répartition de la
rémunération” mentioned in article 13. This is basically the wording to make it very clear. Thank you.

*The President.* Thank you. We put to the Assembly the amendment suggested by the chairman of the drafting committee in paragraph 1. “The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.” If there are no further comments, this article 15 is approved.

**Text approved by the Plenary Session**

**Article 15. Apportionment between salvors**

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.
2. The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salver and his servants.
ARTICLE 16
Salvage of persons

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

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

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I
Art. 3-6. Salvage of Persons

1. A salvor of human life, who has taken part in the salvage operations, is entitled to a fair share of the reward.

2. In any event a salvor who has taken part in the salvage operations and has saved or attempted to save human life, is entitled to compensation fixed in accordance with the criteria contained in art. 3-3.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81
Art. 3-5. Salvage of persons

1. A salvor of human life, who has taken part in the salvage operations, is entitled to a fair share of the reward. Any payment due under this Convention.

2. In any event, a salvor who has taken part in the salvage operations and has saved or attempted to save human life, is entitled to compensation fixed in accordance with the criteria contained in art. 3-3 at the request of any party concerned or a public authority has salvaged 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. If the salvor has actually salvaged 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.

4. Provided always that any recovery under paragraphs 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.

5. The payment due under paragraphs 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.
Report by the Chairman of the International Sub-Committee
Document Salvage-19/III-81

Art. 3-5 deals with salvage of persons. Paragraph 1 is in accordance with the 1910 Convention art. 9(2), the first paragraph of that article having been deleted as superfluous. The Sub-Committee felt that salvage of persons was not satisfactorily dealt with in the 1910 Convention, and that most principles on which the new remedies in art. 3-3 are based, appeared to be suitable for corresponding application to cases of salvage of persons. However, as appears from art. 3-5(3), there was no consensus on the question whether salvage of persons should entitle the salvor to a special reward. Finally, it was felt that the liability for payments due on account of salvage of persons should be imposed on the shipowner or the State of registry of the vessel, as determined by the law of that State. It was noted that the law of some countries already had rules on this subject.

Montreal Draft
Document LEG 52/4-Annex 1

Article 3-5. Salvage of persons

1. No remuneration is due from the 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 salvage operations in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of any payment due under this Convention the remuneration awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

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.

4. Provided always that any recovery under paragraphs 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.

5. The payment due under paragraphs 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.

CMI Report to IMO
Document LEG 52/4-Annex 2

Art. 3-5. Salvage of persons

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.

This is a restatement of Art.9, paragraph 1, of the 1910 Convention. The provision must be read together with the draft convention, Art.2-3 which provides that every master has a duty to render assistance to persons in danger at sea.

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.
This rule restates Art.9, paragraph 2, of the 1910 Convention. An addition has been made, however, to make it clear that the life salvor shall have a share of any compensation for preventing or minimizing damage to the environment under the proposed new rules of Art.3-2.1(b) as well as Art. 3-3.2.

If there was a danger of damage to the environment, it follows from Art. 3-3.1 that the life salvor, who has taken part in the salvage operations, shall have his reasonable expenses paid.

The draft convention submitted by the Sub-Committee to the Montreal conference contained rules under which the salvor of human life should have remedies similar to those given to the salvor in Art.3-3 for avoidance of damage to the environment. Thus it was proposed that the life salvor should in all cases receive compensation for his expenses and in cases of success should be paid a special compensation. The liability for such payments should be imposed on the shipowner or the State of register of the vessel as determined by the law of that State, in which connection it was noted that the law of some countries already had rules on this subject.

The Montreal Conference, however, did not adopt this proposal. It was felt that the commercial aspects in the proposal were too strongly emphasized. It was feared that the proposed rules could lead to new problems and, on the other hand, it was felt that the present system, under which salvage at sea of human lives is often not compensated, was generally functioning satisfactorily.

IMO
Legal Committee
Report on the Work of the 54th Session (Document LEG 54/7)

96. One delegation expressed doubt as to whether a saver of human life would be remunerated if there was no property salved. It would appear that if there were no reward there would be no share for the life salvor.

97. The CMI observer confirmed that this was the case, but that if the article 3-3 “safety net” came into play and the principal salvor was paid special compensation then the salvor of life would have a share. He might also recover his own reasonable expenses.

98. The observer of the ISU, referring to a proposal in document LEG 54/3/1, stated that ISU thought that a salvor of life, unless he was a servant, agent or subcontractor of the property salvor, should pursue his claim directly against the salved property and not the salvor who salved that property. Since life salvage was not an element in assessing the reward under article 3-2.1 it would be unfair if the property salvor had to pay the life salvor when that salvage was not considered in assessing the property salvor’s reward.

99. Many members of the Committee had opposed a separate reward for life salvage in the earlier discussion of this matter, reported above, and one delegation saw the ISU proposal as merely another way of ensuring such separate reward.

100. One delegation stated that it would seem difficult on the one hand to determine expenses in cases of life salvage and, on the other, to bring it under the compensation under article 3-3, since that was primarily for the protection of the environment.

101. Agreeing with the doubts expressed by this delegation, others thought that
article 3-5 should entail a claim by the life salvor for a fair share of the salvage reward for the vessel or other property.

**Report on the Work of the 57th Session (Document LEG 57/12)**

Article 14-Salvage of persons\textsuperscript{162}

8. The Norwegian delegation introduced its proposal contained in document LEG 57/3/6 to add an additional paragraph to article 14 to read as follows:

“Nothing in this Convention shall prevent a Contracting State from introducing national regulation in respect of salvage of persons, granting life salvors rights and remedies in addition to those granted by the Convention.”

9. The delegation stated that in its view greater emphasis should be given to the question of compensation to life salvors in order to encourage life salvage. The delegation considered that it would be unfair to make the life salvor bear the cost of his endeavours. Moreover this would be unsatisfactory since potential life salvors would be discouraged from undertaking life salvage operations if they were not assured of reasonable compensation for such operations. The availability of compensation was particularly important where no property had been salved; an appropriate provision should be made for the life salvor to be compensated for his expenses in such cases.

10. In response to a question, the Norwegian delegation explained that its proposal was intended to permit any Contracting State to apply its own domestic law to cases involving life salvors and that such application should not be limited to the nationals of Contracting States. In the view of the delegation the draft convention, like the 1910 Convention, only set out the minimum rights which Contracting States would be obliged to grant to life salvors, but would not prevent Contracting States from granting more rights under national law.

11. One observer delegation expressed support for the Norwegian proposal. However, many delegations objected to the inclusion of the proposed new paragraph. They felt that such a provision would jeopardize the uniformity of the new salvage regime. It was further pointed out that the scope of the proposed paragraph was not clear, since article 14 already allowed for a life salvor to be paid a fair share of the compensation for a salvage operation. Moreover, article 14 as drafted reflected long-established principles which had stood the test of time and which should not be changed without very clear justification. It was also emphasized that article 14, as currently drafted, applied to cases of life salvage rendered on the occasion of an accident giving rise to salvage, whereas the proposed new paragraph could be applicable even in the absence of any “salvage operations” as defined in article 1. In addition, one delegation questioned the view that the new convention was intended merely to establish minimum rights which could be raised by individual Contracting States.

12. There was not enough support in the Committee for the proposal of the Norwegian delegation, and the Committee decided to retain draft article 14 without change.

13. In respect of paragraph 2, one delegation suggested that the word “salvage” be replaced by the phrase “the operations referred to in article 12.1.” The delegation considered that this change would clarify the text.

\textsuperscript{162} Article 3-5 of the CMI Draft was renumbered Article 14 by the IMO Secretariat.
14. Several delegations were, however, of the opinion that this alteration would involve more than a drafting change and would have substantive implications which were unsatisfactory. In particular it was pointed out that, with that alteration, paragraph 2 would no longer be applicable to the salvage operations covered by article 11. The provision would therefore become too restrictive.

15. The delegation proposing the amendment agreed to withdraw it for the time being.

**Document LEG 58/12-Annex 2**

**Article 13. Salvage of persons**

1. No remuneration is due from the 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.

**Consideration of the Draft Convention on Salvage**

**Note by the Secretariat**

**Article 13. Salvage of persons**

(CMI draft, art 3-5, 1910 Convention, art. 9, paragraph 1)

76 It was stated that paragraph 1 should be read together with article 7, paragraph 1 which provided for the duty of the master to render assistance to any person in danger of being lost at sea. (LEG 52/4, annex 2).

77 In respect of paragraph 2 (which re-stated article 9, paragraph 2, of the 1910 Convention), an addition was made to make it clear that the life salvor should have a share of any compensation for preventing or minimizing damage to the environment under the proposed article 10, (paragraph l,(b)) and article 11 (paragraph 1). (LEG 52/4, annex 2).

78 Doubts were expressed as to whether a salvor of human life would be remunerated if there was no property salved. It would appear that if there were no reward, there would be no share for a life salvor. The CMI observer confirmed that this was the case, but that if the article 11 “safety net” came into play and the principal salvor was paid special compensation, then the salvor of life would have a share. He might also recover his own reasonable expenses. (LEG 54/7 - paragraphs 96, 97).

79 A proposal was made to the effect that a salvor of life, unless he was a servant, agent or sub-contractor of the property salvor, should pursue his claim directly against the salved property and not the salvor who salved that property. Since life salvage was not an element for assessing the reward under article 10, paragraph 1, it would be unfair if the property salvor had to pay the life salvor when that salvage was not considered in assessing the property salvor’s reward. This proposal was not adopted on the grounds that it would imply merely another way of ensuring a separate reward for life salvage, to which many members of the Committee had opposed in an earlier discussion. (LEG 54/7 - paragraphs 98, 99).
The Chairman. There is one proposal on article 13. The International Salvage Union has submitted a document, WP/21, and first proposed a new article 13, paragraph 2. May I ask the observer delegation of the International Salvage Union to introduce that proposal.

ISU. Thank you, Mr. Chairman. The reason we have introduced this proposal, Mr. Chairman, is not because we are opposed to life salvors, or opposed to life salvors being remunerated for their services. We feel that under the present wording in the text of article 13(2) something is slightly amiss in that it refers to a salvor of human life being entitled to a fair share of the remuneration being awarded to the salvor for salvaging the vessel or other property, etc. The problem we see is that very often the life salvor and the property salvor will be two entirely different parties, and we do not see why a life salvor’s claims should be channelled through the property salvor, or indeed why the property salvor should have anything to do with the life salvor’s claims unless, of course, they are one and the same party. This becomes particularly relevant, Mr. Chairman, in respect of any award made under article 11. That award relates to a salvor’s expenses and the definition of a salvor’s expenses makes no reference to the claims of a life salvor. On the face of it, it might be simple to amend the definition of salvor’s expenses and bring in the claims of life salvors, but we do not see this as the right way to go about it. We believe that a claim by a life salvor should be directed against the property salvor or, if there is no property, than against the shipowner, and it is for that reason that we have offered an alternative wording in WP/21. I would hope that there would be some support for our proposals. Thank you, Mr. Chairman.

The Chairman. Is there any Governmental delegation which seconds that proposal? It is apparently not the case. I am sorry I cannot open the debate on that. If no Governmental delegation seconds your proposal, I have no right to open the debate. I am sorry. That proposal is no longer relevant. I take it that you will not come back to that proposal when we vote formally on article 13?

ISU. If there is no support for it, Mr. Chairman, then we will withdraw it.

(163) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).

(164) Document LEG/CONF.7/CW/WP.21
Submission by the International Salvage Union (ISU)
With reference to the submission of I.S.U. as contained in LEG/CONF.7/12 it is proposed that Article 13(2) should read:
“In the event of any vessel or property being salved a salvor of human life shall be entitled to remuneration for his services from the owners of the salvaged property. In the event of any services being rendered for which an award is made under Article 11, a salvor of human life shall be entitled to remuneration for his services from the owners of the vessel.”
25 April 1989
Document LEG/CONF.7/VR.170

The Chairman. We come then to article 13. We have no proposal on article 13. Can I take it that the Committee agrees on this proposal by consensus? O.K. Than I take it that we have agreed upon article 13 by consensus. Article 13 has been adopted by consensus.

Draft Articles agreed by the Committee of the Whole (Document LEG/CONF.7/CW/5)

Article 16. Salvage of persons

1. No remuneration is due from the 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 payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

International Conference
Plenary Session 28 April 1989

Text examined and approved by the Drafting Committee (Document LEG/CONF.7/DC/5)

Article 16. Salvage of persons

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

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

Document LEG/CONF.7/VR.228

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.

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Art. 3-7. Services Rendered According to Existing Contracts

No remuneration is payable under the provisions of this Convention to the extent that the services rendered do not exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81

Art. 3-6. Services rendered under existing contracts

No payment is due under the provisions of this Convention to the extent that the services rendered do not exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Montreal Draft
Document LEG 52/4-Annex 1

Art. 3-6. Services rendered under existing contracts

CMI Report to IMO
Document LEG 52/4-Annex 2

This is a general restatement of the principle in the 1910 Convention, Art.4. As mentioned above, the rule forms part of the important principle under which a salvage service must be voluntary to give right to the remedies of the Convention.

IMO
Legal Committee
Report on the Work of the 54th Session (Document LEG 54/7)

102. The CMI observer stated that the broadening of article 4 of the 1910

(165) The text of this Article has been left unvaried.
Convention reflected recognition of the current trend whereby salvage operations involved the use of devices other than tugs.

103. One delegation considered that the provision went too far and preferred to retain the text of article 4 of the 1910 Convention. Other delegations, however, pointed to the merit of providing for more operations than towage by referring to escort boats the services of which should not be governed by the draft Convention.

104. One delegation stated that the matter was a clear instance of circumstances which should be arranged contractually.

105. Another delegation stated that many forms of service could be excluded from salvage payments under the draft Convention - pilotage, diving and offshore support vessels among them. The provision was desirable and should stay.

Report on the Work of the 57th Session (Document LEG 57/12)

Article 15. Services rendered under existing contracts

166 The Australian delegation proposed that an additional paragraph be inserted in article 15 as follows:

"No payment is due under the provisions of this Convention for services undertaken solely for the purposes of self-preservation."

17. One delegation supported this proposal but several delegations were opposed to it. These delegations felt that there was no need for the addition and that, in any case, the proposed provision was not really related to the substance of article 15. They also considered that the matter would be best left to determination under national law. It was noted in this connection that the proposed convention was not intended to constitute an exhaustive codification of salvage law, and it seemed doubtful whether it was appropriate to deal with this particular question in the proposed convention.

18. The Committee decided not to include the provision.

Document LEG 58/12-Annex 2

Article 14. Services rendered under existing contracts

Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 14. Services under existing contracts (CMI draft, art. 3-6, 1910 Convention, art. 4)

80 It was pointed out that this article broadened the principle contained in article 4 of the 1910 Convention. The representative of the CMI stated that this broadening reflected recognition of the current trend whereby salvage operations involved the use of devices other than tugs. (LEG 54/7 - paragraph 102).

(166) Article 3-6 of the CMI Draft was renumbered Article 15 by the IMO Secretariat.

(167) The text of this Article, renumbered Article 14, has been left unvaried.
International Conference
Committee of the Whole 25 April 1989
Document LEG/CONF.7/3

Article 14. Services rendered under existing contracts

Document LEG/CONF.7/VR.170

The Chairman. We come then to article 14. We have no proposal on article 14. Can I take it that we agree upon that article by consensus. OK. Article 14 has been adopted by consensus.

Draft Articles agreed by the Committee of the Whole
(Document LEG/CONF.7/CW/5)

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.

Plenary Session 28 April 1989

Text examined and approved by the Drafting Committee
(Document LEG/CONF.7/DC/5)

Article 17. Services rendered under existing contracts

Document LEG/CONF.7/VR.228

The President. Article 17. No remarks – approved.

(168) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).

(169) The Drafting Committee has approved the text approved by the Committee of the Whole. The Article has been renumbered Article 17.
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 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.

CMI
Report by the Chairman of the International Sub-Committee
Document Salvage 5/IV-80

VII. LIABILITY OF SALVORS

1. The liability rules must be such that the salvor is not discouraged from carrying out salvage operations because of liability risks.

2. The 1976 Limitation Convention is thought to provide an adequate system for the limitation of the liability of salvors, cf. art. 1 § 3. Claim arising in connection with salvage operations are subject to limitation (art. 2 § 1), and the salvor operating from a ship is entitled to limit liability on the basis of the ship’s tonnage. For other salvors a special limit has been fixed (art. 6 § 4).
In order to ensure the widest possible application of this system the salvor’s right to limit liability as provided in the 1976 Convention should be confirmed in a new salvage convention.

3. As mentioned supra IV.1.b any remedy for the recovery of the cost of preventive measures also allows recovery of compensation for further loss or damage caused by the preventive measures. The liability for such loss or damage may be channelled to the shipowner or other person liable in order that the salvor may be protected from claims from third parties. However, a provision like the 1969 Convention art. III (4) does this only where the salvor may be considered as an agent of the owner, and in practice it may not be of great help to the salvor. Likewise, art. III(5) of this Convention preserves any recourse action the owner may have against the salvor.
In Scandinavian legislation implementing the 1969 Convention the salvor is given added protection. He is liable towards a third party or the owner only if he has acted wilfully or with gross negligence.
Consideration should be given to the question whether a salvage convention should contain similar provisions, channelling the liability for loss or damage subject to a regime of strict liability such as the 1969 Convention or the future convention on other hazardous substances to the person liable under the regime concerned.

4. With respect to other cases the question arises whether the liability of salvors vis-à-vis third parties or the ship and cargo should be determined by ordinary tort law or modified, for instance so as to be based on some serious fault. A special problem is whether the salvor should be liable for damage caused during salvage operations directed by government authorities.
Article 3-8. The Effect of Salvors’ Negligence

A salvor may be deprived of the whole or a part of the remuneration payable 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.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81
Art. 3-7. The effect of salvor’s misconduct

A salvor may be deprived of the whole or part of the remuneration 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.

Montreal Draft
Document LEG 52/4-Annex 1
Article 3-7. The effect of salvor’s misconduct

This rule is based on the principle expressed in the 1910 Convention, Art.8, paragraph 3. 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.

CMI Report to IMO
Document LEG 52/4-Annex 2

This rule is based on the principle expressed in the 1910 Convention, Art.8, paragraph 3. 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.

IMO
Legal Committee
Report on the Work of the 54th Session (Document LEG 54/7)

106. The ISU proposed a new wording of the article (document LEG 53/3/1, pages 17-18) on the grounds that much of the article was unnecessary and also that no salvor could possibly expect payment under the draft Convention if he were guilty of fraud or dishonest conduct.

107. One delegation supported the proposal of the ISU but others preferred the CMI wording.

108. Of these, one delegation observed that the insurance industry considered the phrase “or more difficult” an important one since there were cases of salvors making salvage operations more difficult rather than less.

109. In answer to a question as to whether article 3-2.1 might be sufficient to serve the purposes of article 3-7, the CMI observer stated that article 3-2 was not regarded as enough. It was important to stress that some actions amounted to misconduct.

(170) The text of this Article has been left unvaried.
110. The ISU observer stated that this part of the provision was too wide in scope and could give rise to vexatious counterclaims.

Report on the Work of the 57th Session (Document LEG 57/12)

Article 16. The effect of salvor’s misconduct

21. The Committee decided to retain the phrase “to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part” in the draft convention, without any square brackets.

22. One delegation suggested that the words “or more difficult” be deleted. However, the suggestion was not supported.

23. In the consideration of article 16, one delegation reverted to the question of the limitation of the liability of the salvor. The delegation recalled that the Committee had previously decided to delete a provision (article 25) which had dealt with the right of the salvor to limit his liability. It pointed out that article 16 dealt only with the salvor’s misconduct and accordingly that the draft convention, as it stood, left open a number of questions relating to liability. Among the questions left open were:

(a) the liability of the salvor where, as a result of his misconduct, the owner of the ship or of the property salved had suffered damage and the damage exceeded the remuneration otherwise due to the salvor; and

(b) the right of the salvor to limit his liability, and the circumstances in which this right of limitation could be lost.

24. The delegation indicated that it might submit a written proposal on the subject at a later stage.

25. The Chairman pointed out that the question raised under (b) above was dealt with in the 1976 Convention on Limitation of Liability and in other conventions and national law relating to the limitation of liability of shipowners.

Document LEG 58/12 Annex 2

Article 15. The effect of salvor’s misconduct

Consideration of the Draft Convention on Salvage
Note by the Secretariat

Article 15. The effect of salvor’s misconduct
(CMI draft, art. 3-1. 1910 Convention, art. 8, paragraph 3)

81 Also in this case, it was noted that this rule substantially widened the scope of the principle expressed in the 1910 Convention, (article 8, paragraph 3). Although the Committee decided to retain the CMI wording, the opinion was expressed in the sense that the provision was too wide in scope and could give rise to counterclaims (LEG 54/7-paragraphs 106 to 110).
Article 15. The effect of salvor’s misconduct

The Chairman. Thank you. I have no proposal on article 14 in my notes, but we have received a proposal on article 15 submitted by France in document 7/24174. May I ask the French delegation to introduce that proposal.

France. Thank you, Mr. Chairman. Article 15, Mr. Chairman, is an important one. Indeed, it indicates that in some cases the fault of the salvor may be a serious one which will deprive him of the totality or part of the reward, either because of a fault or because he is guilty of fraud or other dishonest conduct, and we believe that one should add to this the case where the salvor has not fulfilled his duty to avoid or limit damage to the environment. So we include the present text as regards the taking away of the reward in the case of fraud, neglect or dishonest conduct, but we would add a few words “or if the salvor has failed in his duty to avoid or minimize damage to the environment”. We do believe it is very serious indeed that a salvor who might have taken measures in order to avoid or minimize damage to the environment did do so deliberately, and then would ask for a reward for his salvage operations whereas the environment had called for certain measures which he did not take. So it is a very serious fault and we believe that this new convention should punish this. We should not only punish faults in relation to the salvage of property but also a fault due to the fact that avoiding damage to the environment was not carried out. Thank you, Mr. Chairman.

The Chairman. Well the floor is open for comment. Who wants to speak in favour of that proposal. The Syrian delegation seconds the French proposal. Poland, do you want to speak on that. No fine. Well the floor is open. Australia you have the floor.

Australia. Thank you, Mr. Chairman, simply to say our delegation would support the French proposal. Thank you.

The Chairman. Canada.

Canada. Thank you Mr. Chairman. Likewise we could support this proposal. It seems to be a clarification of the text. Thank you Mr. Chairman.

The Chairman. I thank you. The Federal Republic of Germany.

(173) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).

(174) Document LEG/CONF.7/24
Federal Republic of Germany. My delegation would like to associate itself with the previous speakers. Thank you.

The Chairman. I thank you. USSR.

USSR. Thank you, Sir. I quite simply wish to ask Mr. Douay one question. I want to clarify his proposal with reference to article 11. As we see it, what we are talking about is the very same thing. Therefore, if there is a need at all, why are we repeating in article 15 what we have already, perhaps we have missed something. If then article 11, subparagraph 5 deals with the problem why repeat it here. I would be very grateful if Mr. Douay could explain this for us. Thank you.

France. Mr. Chairman, it is true that paragraph 5 of article 11, in the case of the salvor who has been negligent, has not minimized damage to the environment shall be deprived of the whole or part of any payment due under this article, and I repeat, under this article. That is to say, the special compensation which is due for expenses carried out in order to protect the environment or the additional compensation which may be due to him for that purpose. But in our proposal we go further. What we are proposing covers not the compensation referred to in article 11, but the whole or part of the payment which is due to him, so the payment which could be due to him pursuant to article 10 as well as to article 11. Here, we wish to sanction or punish a salvor who has wilfully focused his attention on the salvage of property and with a “no cure-no pay” salvage contract, this would bring him some advantages whereas, at the same time, he has neglected to take the necessary measures, most elementary measures in fact, for the protection of the environment; and we believe that in that case it is not all, because there the punishment would be going a bit further, but at least part of the reward which he would normally have to receive pursuant to article 10, should not be paid to him. The difference, therefore, between article 15 and paragraph 5 of article 11, is that this refers to the whole reward and the special compensation and not to the special compensation alone for the protection of the environment. This punishment would be all the more effective because it would penalise a salvor who has done nothing at all for the protection of the environment and, through his neglect, he may have even let further damage occur to the environment, purely and simply because he devoted all his attention to the salvage of property, whereas he could have shared out his efforts between salvage of property and protection of the environment. We believe that he should be penalized in that case and for reasons of fairness he shouldn’t receive the same remuneration or the same reward as the salvor who has saved, and salved, both property and protected the environment, thank you Mr. Chairman.

The Chairman. Thank you, USSR may I ask you whether you are satisfied by this explanation. I thank you. The next speaker, Cuba.

Cuba. Thank you Mr. Chairman. On several occasions my delegation in this committee has indicated the importance of the protection of the environment. And therefore supports the proposal put forward by the distinguished delegation of France. Thank you very much.

The Chairman. I thank you. The delegation of the United Kingdom.

United Kingdom. Mr. Chairman, it is probably my fault, or our fault, not to have focused on this proposal before. Now that we look at it we do have this difficulty with it; it obviously is intended to operate, and operate only, between the salvor and the salved property. If one then looks at article 6, subparagraph 1, that sets out the duties owed by the salvor to the salved property, and this is of course, concerned with the duty

Article 18 - The effect of salvor’s misconduct
under (c), if one then goes to paragraph 10 “Criteria for assessing the award” in 10.1(b) the award of course reflects the skill and efforts of the salvors in preventing or minimizing damage to the environment. Given those two references it seems to us at present that the introduction of this amendment would create uncertainty, it would penalize one of the duties referred to in article 6.1 by creating a specific sanction for one of them, when there are no sanctions for the others. And secondly, it overlaps in a sense with what is already covered by article 10.1(b) by creating a special sanction for one duty under paragraph 6.1 and one of the factors under paragraph 10.1 which are to be taken into account in deciding upon the award; it seems to us that this amendment would create uncertainty. Thank you Mr. Chairman.

The Chairman. I thank you. The next speaker, Greece.

Greece. Thank you Mr. Chairman. Just to associate myself with those who have spoken in favour of the French proposal.

The Chairman. I thank you. The next speaker, the delegation of Ireland.

Ireland. Thank you Mr. Chairman. This delegation while it has some sympathy for the French proposals, is afraid that it may be counter productive to the whole question of salvage and it might be that if there was a provision here salvors would be less likely to hurry out to an incident because they would be in the position of sustaining nothing but a loss for their efforts. So, Mr. Chairman, recognizing that the efforts of the salvor to salvage a ship and its cargo is in itself likely to avoid pollution, even though there is pollution, we are reluctant to do anything to upset that balance. It might be Mr. Chairman, that if this proposal is to find support here, administrations in a State where there has been a pollution incident, after the event, when they are doing nothing but cleaning up from the unwanted, and unintended, pollution they may not be able to see the salvage for the pollution, so for these reasons and for the reasons which have already been referred to we would vote against this proposal. Thank you Mr. Chairman.

The Chairman. I thank you. Next speaker is the delegation of Côte d’Ivoire.

Côte d’Ivoire. Thank you Mr. Chairman. We support the French proposal.

The Chairman. Thank you, Denmark please.

Denmark. Thank you Mr. Chairman. For the reasons expressed by Ireland and the United Kingdom we don’t think that this proposal is productive. I think that, indeed, it might be counter productive. Thank you very much.

The Chairman. I thank you. Next speaker the delegation of Sweden.

Sweden. Thank you Mr. Chairman. I raised my card when you intended to take an indicative vote on that. Oh, sorry I overlooked you. Salvage Union.

Salvage Union. Thank you Mr. Chairman. As one of the parties most closely involved as this will effect our payment, I think it is only right that I should say something. I would entirely endorse the remarks made by the distinguished delegate of Ireland. Part of the aim of this convention is to encourage salvors and to ensure a speedy response by salvors. That will not happen if we have amendments like this. There are a number of other parts in the convention where our reward can either be reduced or avoided altogether and this is going too far. Thank you Mr. Chairman.

The Chairman. I thank you. Next speaker the delegation of Sweden.

Sweden. Thank you Mr. Chairman. I raised my card when you intended to take an indicative vote. My question to you is whether that would be possible before we have discussed article 10 and 11. My problem, Mr. Chairman, lies, in fact, on the problem...
already touched upon by the distinguished representative of the USSR, in that he points to paragraph 5 of article 11, whereby the special compensation could be reduced if the salvor has been negligent and thereby failed to prevent and minimize damage, while in the proposed new wording of Article 15, in the French proposal in LEG/CONF.7/24 seems to put a strict liability on the salvor in that failure, no matter whether he has been negligent or not, would lead to the reduction of whole or part of the payment due under this Convention. So there seems to be an interlinkage between this proposal and what we have in Article 11(5) which I think we cannot overlook. Thank you.

**The Chairman.** Thank you. The Delegation of the United States of America.

**United States.** Thank you. Mr. Chairman. Just to say that my delegation can support the French proposal with the possible suggestion in the first line to amend the phrase “the whole or part of the payment” to read “the whole or part of any payment”. Thank you, Sir.

**The Chairman.** The Delegation of the United States, could you please repeat your proposal.

**United States.** Yes, Sir. In the first line of the French proposal in LEG/CONF.7/24 under Article 15, there is a reference to “the payment due under this Convention”. Perhaps it may be more correctly phrased “any payment due under this Convention”.

**The Chairman.** Thank you. France, is that amendment acceptable? Only yes or no.

**France.** Mr. Chairman, in so far as it is more explicit, I would agree the present French text means that this change is not necessary but if it helps with the English text, we could certainly go along with that proposal. Thank you.

**The Chairman.** Thank you. Are there any other speakers? Tugowners Association.

**Tugowners Association.** Thank you Mr. Chairman. We would just briefly like to support the comments made by the delegate from the International Salvage Union. Thank you, Mr. Chairman.

**The Chairman.** Thank you. We have heard the further proposal by Sweden to postpone the decision on this Article. Democratic Yemen - then I will try to sum up. Democratic Yemen, please, the floor.

**Yemen.** Thank you very much Mr. Chairman. This is very briefly to support the French proposal as slightly amended by the United States of America. Thank you.

**The Chairman.** Thank you. We heard the proposal made by Sweden to postpone a decision until we have taken up Articles 11 and 12. What is the feeling of the Committee on that? I am entirely in your hands on this. The Netherlands.

**Netherlands.** Thank you Mr. Chairman. I would like to support that proposal and if it is not carried I would like to say that the remarks of Mr. Göransson of Sweden are quite pertinent. There are different measures used here and in Article 11 so may be then you could ask the Drafting Committee to make some changes as to the French proposal. Thank you very much.

**The Chairman.** Thank you. Finland.

**Finland.** Mr. Chairman, if you are going to decide that we postpone then I have nothing to say but otherwise I must say that I also see the close link between Articles 10 and 11 and this Article. Thank you, Mr. Chairman.
The Chairman. I was just going to say... but I have one other speaker. Islamic Republic of Iran.

Iran. Thank you Mr. Chairman. This Delegation would like to support the proposal made by the distinguished delegate of Sweden.

The Chairman. Thank you. I was just going to say that I would like to propose to you that in accordance with the proposal made by Mr. Göransson from Sweden that we postpone a decision on this point and take a decision in the context of the debate on Articles 10 and 11. Is that acceptable? Ok, fine.

25 April 1989
Documents LEG/CONF.7/VR.163-165

The Chairman. You will remember that we have postponed a decision on article 15 and we decided to take a decision on article 15 in the context with our debate on articles 10 and 11. So it is time to come back to that article, we have a proposal which has already been discussed in document 7/24 submitted by France. You will remember that we had a lengthy debate on that proposal and Sweden has proposed after the discussion, to postpone any decision and to make an attempt to bring in line the French proposal with the wording contained in articles 10 and 11, and it is now time to finish our work on article 15. May I ask delegations whether they have an idea about the possibility to bring the proposal made by France in line with the text of articles 10 and 11 or are the delegations now ready to accept the French proposal as it stands. No opinion at all. I can of course, immediately proceed to a vote on the proposal by France but I had hoped delegations would make use of the time and draft something on that proposal made by France. Spain you have the floor.

Spain. Thank you Mr Chairman. In our view, article 11 in its first paragraph refers to compensation which has to be received by the salvor or the person carrying out the salvage operations when he has carried out operations with the vessel, which due to the nature of its cargo is a threat to the environment. Paragraph 2 of this article refers to the compensation to be received by the person who, intervening with the vessel which has a cargo which can damage the environment, has managed to reduce it or eliminate this threat so the proposal of the French delegation in article 15 would be in contradiction with paragraph 1 of article 11.

The Chairman. Thank you. We already had a lengthy debate on that. Several delegations were able to support the French proposal, a number of delegations were against, and we have the following problem which has been brought up during our first round of discussion that article 11, paragraph 5, contains already a clause of a similar nature in respect of article 11 and France has argued as I remember, during our debate that article 10 does not contain a corresponding provision and for that reason, in general article 15 should refer to that problem. I hope I have reflected your statement properly M. Douay. We have now to decide whether that proposal by France should be included in article 15 or not and whether the wording is acceptable or should be brought in line with the wording used in article 11, paragraph 5. That was the idea (I understand) of the delegation of Sweden. Is that correct Sweden?

Sweden. Thank you Mr Chairman. What I said the other day was just pointing to the fact that there would be a contradiction between this proposal and what we have in article 11, paragraph 5. I did not make any comments on how that contradiction should be corrected or eliminated.
The Chairman. France.

France. Thank you Mr Chairman. Indeed, when my delegation suggested the amendment to article 15, which applies to the effect of salvors misconduct, we suggested adding to the fault or neglect of the salvo and fraud or dishonest conduct another provision which is the fact of having not done his duty with respect to reducing or eliminating damage to the environment. So the salvo could be deprived of any payment if he has not attempted to limit or eliminate damage to the environment. That was the substance of our proposal. In the course of the debate, it was pointed out that article 11 contained a provision in paragraph 5 which have this same purpose; because this paragraph says “if the salvo has been negligent and has therefore failed to prevent or minimize damage to the environment, he may be deprived of whole or part of any payment.” But I would point out that the provision in paragraph 5 of article 11 only refers to the special compensation for environment protection. Our proposal goes further, in article 15 our proposal says that the salvo may be deprived of the whole or part of the payment which covers article 10 and article 11. The purpose here is to sanction a special situation, that in which the salvo has made an effort to salve property and under article 10 he could receive the maximum amount of the reward, that is to say the value of the vessel and the cargo, because he has done all he could to salve the vessel and the cargo, but by so doing, he totally neglected taking even elementary measures with the view to protecting the environment. In other words, he has earned the totality of his reward by salving property which certainly is his duty and also his interest of course, but due to his negligence he has failed to take the necessary steps and he has allowed damage to the environment to develop and we believe that in that case the salvo should be punished, should be sanctioned. He is therefore no longer entitled to the special compensation under article 11 and paragraph 5 of article 11 is of no help to us. He will have earned his total reward under article 10, and he will keep that without any concern for what he will have done to the environment. He will gain nothing, he will lose nothing for that. We therefore believe that article 15 in our proposal covers all the payments which could be made pursuant to articles 10 and 11 and this would probably make it possible to sanction, at least in part in the example I gave, a salvo who may have salved the whole property but did nothing with a view to protecting the environment. He will have earned all he was entitled to under article 10, but neglecting measures in order to protect the environment and therefore, without any reference to article 11. In that case, he should be sanctioned and his reward should be diminished accordingly, due to the fault he had committed. Thank you, Mr. Chairman.

The Chairman. Mr. Douay, you would accept that in article 11, paragraph 5, we have already a provision and that article 15 would cover the same problem. That would mean we have the same rule twice in the Convention on article 11 at least. Not article 10, but article 11.

France. Yes, Mr. Chairman, that is true. The proposal of article 15 will cover paragraph 5 of article 11 but it also covers article 10. It is a much broader proposal. Thank you, Mr. Chairman.

The Chairman. You would, Sir, accept that article 11, paragraph 5 is retained. Thank you. The next speaker is the delegation of the United Kingdom.

United Kingdom. Mr. Chairman, we consider the present text to be satisfactory, indeed logical and correct. It refers to two groups of factors which may reduce the salvo’s award. The first is comprised in the words “fault or neglect on his part” and that, of course, includes a failure to deal with the specific duties concerning the
environment. The second factors are quite new “fraud or other dishonest conduct”. Now what this amendment would do, as I think we have pointed out earlier, is to single out, in the context of the general words “fault or neglect on his part”, which are quite satisfactory, one particular duty which is already referred to in other parts of the Convention, whereas other duties also referred to in other parts of the Convention would not be in article 15, and that we consider to be unsatisfactory, and it would create uncertainty. The duty to the environment is referred to in articles 6(1)(c), 10(1)(b) and 11(5), and we therefore think that it would be illogical to single it out for special reference in this general article 15 and would prefer the text as it stands. Thank you, Mr. Chairman.

The Chairman. Thank you. The Islamic Republic of Iran.

Iran. Thank you, Mr. Chairman. With regard to the proposal made by France, we are of the view that there are some points we should make. First of all, we think that this provision made by France will constitute a disincentive to the undertaking of salvage operations by salvors and, as we have seen in the Amoco Cadiz disaster, the cause of that disaster was the delay in salvage operations and we wonder why France, who suffered most of that disaster, suggests such a proposal which will certainly constitute a disincentive. In the second place, we think that the risks run by the salvors in engaging in salvage operations in regard to tankers or ships which have pollutant cargo, as I can say, and the risks run by them in such cases will go up because they might not be successful in preventing damage to the environment and so they would be deprived of the whole of the reward and also the special compensation. So we think that this also is an adverse effect of this proposal. Thirdly, as stated in paragraph 1 of article 11, any salvage operations undertaken in regard to a vessel which, by itself and its cargo, is a threat of damage to the environment, the salvors who have taken such salvage operations will be entitled to get this special compensation, but with this proposal of France, not only is the salvor deprived of this special compensation which is a kind of encouragement for them to engage in respect of ships which have dangerous cargoes on board, and this makes another drawback to their proposal. Thank you, Mr. Chairman.

The Chairman. I thank you. The next speaker is the delegation of Democratic Yemen.

Democratic Yemen. Thank you, Mr. Chairman. This delegation believes that, or fails to understand, where the contradiction arises between item 5 of article 11 and the proposal to amend the existing article 15. We believe that, in fact, they complement each other, whereby paragraph 5 of article 11 deals with the situation where the salvor has failed to prevent or minimize damage to the environment. The new proposal is dealing with a situation whereby his action has caused more damage or made the situation even more serious. We have been talking extensively on the point of encouraging salvors and expressions such as “feather-bedding” the salvors has been used, and I think correctly in some cases. It is a good thing to encourage salvors to attempt the salvage operations in all conditions of weather, but this delegation also believes that it is necessary to make the salvor aware that, should his actions cause more damage to the environment, he will be liable to some sort of penalty and the French paper has proposed that he should forfeit all his due fees under this Convention. We believe that this proposal is fair and we support it. Thank you, Mr. Chairman.

The Chairman. I thank you. The delegation of Japan.

Japan. Thank you Mr Chairman. This delegation would like to fully associate itself with the view expressed by the distinguished delegate of the United Kingdom. At least
it shall minimize the duplication of the provisions for the same purpose in the single
convention.

**The Chairman.** There is perhaps time to proceed to an indicative vote. United States.

**United States.** Thank you Mr Chairman. We too would associate ourselves with the views expressed by the distinguished delegate of the United Kingdom that existing articles address the obligation of the salvor with respect to the environment and article 15 sets forth the sanction that should be imposed if he fails in those obligations.

**The Chairman.** Are we ready for an indicative vote on the French proposal contained in document 7/24 page 2, to replace article 15 by a new wording proposed in that document. Who is in favour of the French proposal contained in document 7/24 to include a new wording for article 15 in our convention, please raise your cards. Who is against that proposal please raise your cards. The result of the vote is: 9 in favour, 34 against. May I ask the French delegation whether that delegation would insist on a formal vote or you would withdraw it. France.

**France.** Mr Chairman. We will not insist of course. We only believe that many delegations may not have clearly understood the sense of my proposal with the view to sanctioning the salvor who had made no effort in order to preserve the environment and has merely salved property.

_Draft Articles agreed by the Committee of the Whole (Document LEG/CONF.7/CW/5)_

**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._

_Text examined and approved by the Drafting Committee (Document LEG/CONF.7/DC/5)_

**Article 18. The effect of salvor’s misconduct**

_Plenary Session 28 April 1989
Document LEG/CONF.7/VR.228_

**The President.** Article 18. No remarks – approved.

(175) The Drafting Committee has approved the text approved by the Committee of the Whole. The Article has been renumbered Article 18.
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.

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Art. 3-9. Prohibition by the Owner 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 remuneration under the provisions of this Convention.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81

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 remuneration under the provisions of this Convention.

Montreal Draft
Document LEG 52/4-Annex 1

Article 3-8. Prohibition by the owner or public authorities

Services rendered notwithstanding the express and reasonable prohibition of the owner or an appropriate public authority shall not give rise to payment under the provisions of this Convention.

CMI Report to IMO
Document LEG 52/4-Annex 2

This is a restatement of the principle expressed in the 1910 Convention, Art. 3. The rule, 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 operations.
IMO
Legal Committee
Report on the Work of the 54th Session (Document LEG 54/7)

111. For the purpose of clarity, the ISU proposed inserting "of the vessel" after "owner" in this article. One delegation proposed, also for clarity, that the words "or reasonable request for the termination of salvage operations" be inserted after "prohibition".

112. Another delegation stated that since the suggested rewording amounted to a form of "prohibition" they were unnecessary.

113. Some delegations considered that the element of reasonableness, already mentioned in respect of prohibitions was sufficient to meet any concern by salvors. The Committee recognized the value of clarifying the matter covered by this provision and it was agreed that article 3-8 should be re-examined and a revised wording adopted. One delegation thought that a useful addition would be the words "Such prohibition may be expressed at any time".

Legal Committee
Report on the Work of the 57th Session (Document LEG 57/12)

Article 17. Prohibition by the owner or master [of the vessel]176

26. The Committee had an extensive exchange of views on the need and desirability of the bracketed words "of the vessel". In particular, the Committee discussed whether the right to prohibit a salvage operation should be given only to the owner or the master of the vessel or whether the owner of other property which was being salved could also have the right to prohibit a salvor from rendering assistance to his property.

27. Several delegations felt that the owner of the property should be entitled to prohibit a salvage operation in respect of his property in certain clearly specified circumstances. This was particularly so when the salvage operation was directed at the property only and not at a vessel. These delegations considered that in such cases, it seemed essential that the owner of the property involved should be able to prohibit further services to that property.

28. Furthermore, some of these delegations noted that there would be no risk of a conflict between the instructions of the owner or the master of the vessel and those of the owner of other property since the draft stated clearly that only "reasonable" prohibitions could be made: a prohibition which was unreasonable in any particular situation could be disregarded by the salvor.

29. Several delegations, on the other hand, were of the opinion that the right to prohibit salvage operations should be restricted to the owner or the master of the vessel, and that such right should not be extended also to the owner of other property. Some of these delegations felt that the test of whether the prohibition was reasonable or not would not always prevent conflict of instructions since it was possible that contradictory instructions from the owner or the master of the vessel and the owner of the property might both be claimed to be "reasonable".

(176) Article 3-8 of the CMI Draft has been renumbered Article 17 by the IMO Secretariat.
30. Some of the delegations which favoured a restriction of the right to prohibit to the owner or the master of the vessel and pointed out that the definition of “vessel” in article 1(a) included any “structure capable of navigation”. In their view it was unlikely that there would be floating property which could not qualify as a “vessel”. Other delegations, however, pointed to substances such as wood and to floating containers which would not qualify as “vessel”, as defined.

31. The Committee concluded that a solution of this problem depended, to a considerable extent, on the definition of the term “salvage operation” which would finally be adopted in the convention. If the term were 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 the rendering of services, where such services are directed solely to his property and that property is outside a vessel. However, only the owner or the master of the vessel would have the right to prohibit salvage in respect of the vessel and any other property still on board the vessel.

32. The Committee agreed, therefore, to retain the words “of the vessel” in brackets, pending a decision on the final texts of the definitions in article 1. The Committee decided to amend the title of the article to read “Prohibition by the owner or master of the vessel”, also subject to a final decision to be taken at the Committee’s next session. The second sentence of the article was deleted.

Report on the Work of the 58th Session (Document LEG 58/12)

66. The Committee had before it a proposal by the delegation of China to refer also to the “master” of a vessel and to “other property not permanently and intentionally attached to the structure” in article 17. In the view of that delegation, it was important also to give the owner of property the right to prohibit the rendering of services by a salvor.

67. There was considerable support in the Committee for the principle underlying the Chinese proposal. Doubts were, however, expressed in respect of its wording and, in the light of the discussion, a revised text was submitted to the Committee which reads as follows:

“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.”

68. A number of delegations were of the opinion that the proposed text constituted an improvement and expressed their support for it.

69. Other delegations expressed a preference for the original text. One delegation pointed out, in this connection, that the proposed wording did not make it clear that the master or shipowner would not have the authority to prohibit salvage in respect of “other property”.

70. One delegation emphasized that this problem had been created by distinguishing and separately defining “vessel” and “property”. In its view, it was difficult to envisage what could constitute vessel and “property”. One delegation pointed out, in this connection, that the proposed wording did not make it clear that the master or shipowner would not have the authority to prohibit salvage in respect of “other property”.

71. One delegation suggested that this problem had been created by distinguishing and separately defining “vessel” and “property”. In its view, it was difficult to envisage what could constitute vessel and “property”. One delegation pointed out, in this connection, that the proposed wording did not make it clear that the master or shipowner would not have the authority to prohibit salvage in respect of “other property”.

72. Another delegation suggested that the matter might be solved by including a reference to the definition of “property” contained in article 1(c).
In an indicative vote, 14 delegations expressed a preference for the basic text while 17 delegations preferred the revised text. The Committee, accordingly, decided to insert the text reproduced in paragraph 66 above in the draft convention.

**Document LEG 58/12 Annex 2**

**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.

**Consideration of the Draft Convention on Salvage**

**Note by the Secretariat**

Article 16. Prohibition by the owner or master of the vessel (CMI draft, art. 3-8. 1910 Convention art. 3)

The Committee agreed to introduce an amendment to the CMI draft in order to give the owner of property the right to prohibit the rendering of services by a salvor.

**International Conference**

**Committee of the Whole 21 April 1989**

**Document LEG / C O N F.7/3**

Article 16. Prohibition by the owner or master of the vessel

The Chairman. Then we come to Article 16. Here we have three proposals. One proposal submitted by Italy in working paper 4, another proposal submitted by the Federal Republic of Germany in working paper 16, and there is a proposal made by Hong Kong in working paper 26. May I first ask Italy to introduce working paper 4.

(--177) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).

(--178) Document LEG / CONF.7/CW/WP.4 Proposal submitted by Italy Article 16 Article 16 deals with the matter of the persons entitled to refuse the salvage offer. In particular, with regard to the vessel and the property on board, this power is granted to the owner and the master of the vessel.

In the opinion of this delegation, problems could arise if the attitude of the owner is different from the attitude of the master. In order to solve these problems, the power to prohibit the salvage service should be conferred on the master of the ship only.

According to the law of many maritime countries, the master is qualified as the head of the maritime adventure. He is therefore the representative by law not only of the shipowner, but also of the owners of the property on board the vessel.

The position of the owner of the ship is quite different. It seems conceivable, in fact, to qualify him as the representative of the owner of the goods carried when he enters a salvage contract, according to article 4.2.
**Italy.** Thank you Mr. Chairman. We are somewhat concerned about the content of Article 16 since it grants the right to refuse the salvage service to the master of the vessel and to the owner. The approach is questionable, in the opinion of this Delegation, since problems could arise if the attitude of the owner is different from the attitude of the master. To solve these problems the power to prohibit the salvage service should be given to the master of the ship only. We would point out in this respect that according to the law of many maritime countries the master is qualified as the head of the maritime adventure. As a consequence he represents by law not only the shipowner but also the owners of the property on board the vessel. The position of the owner of the ship is different. It seems conceivable to qualify the master as the representative of the goods carried when he enters a salvage contract, as per Article 4(2). In such a case, he adopts a positive and active attitude to face the dangerous situation. On the contrary, in prohibiting the salvager’s services it is hard saying that the owner of the ship acts on behalf of the owner of the property involved. This is especially true if the master who certainly is in a better position than the owner of the ship to evaluate the danger for the vessel and the property on board is in favour of accepting the salvage offer. For the above-mentioned reasons we conclude that only the master of the vessel should be entitled to prohibit salvage service. On the drafting side, the amendment we have submitted is very simple. Two words should be deleted and Article 16 should read as in working paper 4. Thank you.

**The Chairman.** Thank you. I would like to propose that we first take up this proposal of Italy. Is there any delegation which wants to speak in favour of that proposal? Spain.

**Spain.** Yes, I want to say a few words in support of the Italian proposal if I may. Thank you, Mr. Chairman. We decidedly support the proposal put forward by Italy. We do indeed believe that the master of the vessel is the one who is in the best position to decide whether or not the assistance offered to him should be refused. If other people can take that same decision, this could complicate the situation because the master could decide one thing and the owner another. The 1910 convention refers to vessels and says nothing as to the persons, and all this would indicate that we are referring to those who are on board or on the site where the casualty has occurred. For these reasons, we believe that the Italian proposal is a very helpful contribution to this
convention. We would also point out that, in this organisation, there is Resolution No. A/4439 of 1979 in which governments are invited to take measures with a view to protecting the master in fulfilment of his activities with a view to maritime safety and the protection of the environment, guaranteeing that the master will not be limited by the owner or charterer in the taking of decisions which, according to his professional view, would be necessary. Because of this, we believe that the proposal submitted by Italy is in line with the recommendations of this Organisation. Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker is the delegation of France.

France. Thank you, Sir. My delegation also strongly supports the proposal which has been put forward by Italy. Like Italy, we feel that only the master is in a situation to make a judgment about the position of the ship and is the only one who can be considered responsible for preventing an assistance operation. This is a very serious responsibility which stems from all the master's prerogatives as to how the ship shall be navigated and how the ship shall be handled, and quite simply the shipowner has nothing to do with such matters. Like the Amoco Cadiz, for example, many occasions have arisen when a request for assistance did not emanate from the master on the instructions of the owner who opposed intervention for too long. Someone in Chicago cannot really judge what happens off the French coast, so it is indispensable to allow the master to take this serious undertaking alone. If he decides to prohibit intervention in the salvage operation, that is his prerogative, but it is a very serious responsibility. I do not think the Italian proposal changes the basic text very much. I find it somewhat amusing; how can one ask for authorisation; how can the owner of a property refuse assistance when the property in question is not on board a ship and which has not been on board the ship? Where does the property come from? Does it fall from heaven like the gentle rain? What is important in respect of ships is that only the master is entitled to take this serious step, and for this reason we support Italy's basic proposal. Thank you.

The Chairman. Thank you. The next speaker is the delegation of Ireland.

Ireland. Thank you, Mr. Chairman. This delegation would like to support the Italian proposal. However, notwithstanding this support, this delegation feels that perhaps there is still something rather awkward or wrong with this article such as has already been addressed in the two working papers which are yet to be introduced. Mr. Chairman, subject to what may become of the further debate on this and on any explanations which arise, as we have indicated, we support the Italian proposal. Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker is the delegation of Poland.

Poland. Thank you, Mr. Chairman. We must object to the submission of Italy and their amendment, because account has to be taken of situations when the master and crew have already left the vessel and the vessel with cargo on board is still in danger and when the owner is on the spot. This must be taken into consideration. Thank you, Mr. Chairman.

The Chairman. Thank you. The next speaker is the delegation of the United Kingdom.

United Kingdom. We were going to mention the same point as has been mentioned by Poland. One can get cases where the master and crew have abandoned the vessel for various reasons or have been taken off a vessel in distress, and there may be an incompetent salvor in situ that the owner may want to change. We would prefer
to keep the present text although we do see that very rarely this might give rise to difficulties. Thank you, M r. Chairman.

The Chairman. Thank you. The next speaker is the delegation of Japan.

Japan. Thank you, M r. Chairman. A s I said yesterday, if the vessel is in danger, the decision as to whether or not a salvage operation should be undertaken is taken on the judgment of the shipowner, based mainly upon the commercial judgment of her insurer. Therefore the shipowner should have the right to prohibit the rendering of salvage services. Consequently, this delegation cannot support the Italian proposal.

The Chairman. Thank you. We meet again at 9.30 M onday morning and the first speaker will be the Comité Maritime International. We will continue this debate until the coffee break, when we shall discuss articles 10, 11 and 15. The meeting is adjourned.

24 April 1989
Documents LEG/CON F.7/VR.130-134

The Chairman. We interrupted on F riday our debate on article 16 and we are still have a list of speakers, So, first speaker is the Comité Maritime International (C MI), M r. Nielsen.

C MI. Thank you Mr. Chairman. I raised my card already on Friday to express the concern of the C MI with respect to the proposal submitted by Italy, that was Working Paper 4. The C MI is of the opinion that it should be solely considered whether this proposal made by Italy is something we can go along with. We do not feel this is a case. Some speakers on F riday already mentioned that in cases of abandoned vessels, it is not sufficient to let the master have the right to say no to the salvor. You must also give the right to the owners, after all the owners of the goods or of the vessel should be entitled to say yes or no to proposals from any salvor even amateur salvors to do something with their vessel. In many cases where, for instance, stranded vessels are left without crew on board and where owners should be protected against incidental salvors if they want to do something. And it is my submission, if we accept the Italian proposal, we will leave it into a very uncertain area what to do with such vessels. And, however, it is not only the abandoned vessels which is our concern but also many other cases where the vessel still has its master on board. In the modern days of telecommunication, it is, I believe, fair to say, that apart from the very urgent matters, where the lives of those on board are in danger, the master will almost always consult his owner via radio, via telefax, via telex. Such means of communication are on board those modern vessels. W hat to do if he has an emergency where he needs a salvor? A nd they will work out in full agreement between the master and the owner what to do. Very often the parties will deem it fit to let the owner take over, to let the owner find the best salvor, to let the owner negotiate with him the terms on which he should do his work and that will be in the best interest both of the owners and of the master and all those others on board the ship. T he owners, after all, may be very much better fit, and with means to find the best salvors. If the owners do not have the right themselves to say no, they are not in a position effectively to do this job. F inally, in the very rare cases, which I understand the Italians have in mind, where there is a disagreement between the owners and the master, I am of the opinion that such a disagreement will be very often kept between the owners and the master and if the master has got instructions from his owner, he should not do this and that and he nevertheless does it. I would believe that the text as it stands presently will be sufficient to solve our
problem. One last word with respect to the Amoco Cadiz which was mentioned by distinguished French delegate: in that case I believe, there was no disagreement between the owner and the master. That was that the master wanted to discuss this with the owner or to have the owners approval before he engaged salvors. So in that case, even if we had a provision – that is the one submitted in the proposal by Italy – it would not have helped even if the master was the only one who had the right to say no in that case; he would still have preferred, I believe, to consult his owner and we would have ended up in exactly the same situation. Thank you Mr. Chairman.

The Chairman. I thank you. Is there any other delegation who wants to take the floor on this point? Sweden, you have the floor.

Sweden. Thank you Mr. Chairman. Hoping to set a standard for our proceedings I would be very brief. I will just join Mr. Nielsen in what he has said. For the reasons so well expressed by him, this delegation are not in a fortunate position of being able to support the Italian proposal. On the contrary we would like to join those who already last week spoke against it. Thank you.

The Chairman. I thank you. Italy. You have the floor, delegation of Italy.

Italy. Thank you Mr. Chairman. Before tackling this problem, I would like to express my regret for the circumstances which have prevented me being here so far. I was in another international forum and I was not able to follow your works which you are conducting so efficiently. In a spirit of co-operation and collaboration which my country has tried to represent, so I would like to make some further suggestions. The problem we have before us is a problem of conflict – a conflict is between two parties – the owner on the one hand, the master on the other. If the master is not on board or the crew is not on board, there is no problem. And in that case, quite obviously, it is the owner who has the possibility of refusing. So I think the Italian proposal could be changed with a small word saying that: When the master is not on board or the crew is not on board, it is quite obvious that it is the owner who can refuse. But if there is a conflict we must find the way of solving this. We must find a system which does away with this conflict and in our view, the master is the one who is closest to the danger the vessel is running and so he is the person best qualified to assess the situation and give an opinion. That is the spirit of the Italian proposal. But if the Committee of the Whole believes that this is not very important argument it might be helpful, nevertheless, to find a few words which could solve the sort of conflict we have before us. And if another solution can be found, we would be ready to withdraw our proposal. Thank you Mr. Chairman.

The Chairman. I thank you. Can I take it that the delegation of Italy is going to amend its own proposal. Is that correct, my understanding?

Italy. Yes, in the sense I have just explained. Thank you.

The Chairman. You should give us the wording so that we can take it into consideration because it is too late to submit a paper on that. Could you give us the wording and read it out in dictation speed for the benefit of the Committee? Yes (Italy) you have the floor.

Italy. Excuse me, Mr. President, could we submit our proposal after the tea break.

The Chairman. I am afraid, that would be too late. We have to come back today to article 10 and 11, since as you know, some amendments have not yet been discussed and we have to take a decision on substance of that article. And we have also to come
back to the proposed article 6(b) and to discuss a new proposal which has been worked out by a Working Group. I would have preferred to finish at least the first reading of the remaining articles, that means 16 to 23, this morning. You might have the possibility to come back to your new idea this afternoon when we have the opportunity to take formal decisions; then you may submit a document and we can vote formally on that submitted document, but I would prefer at this stage to take an indicative vote on the proposal as it stands in working paper No. 4. Then you may come back to that during the formal decision and submit your document and we can vote formally on your new amendment, that is the possibility, but without additional debate. That would only mean that I give the floor to your delegation, perhaps one speaking in favour and one against, and then vote. Is that acceptable?

**Italy.** Thank you, Mr. Chairman. Of course I apologise for my English, which is not very good, and I could submit an indicative amendment to our text referring to the amendment with the suggestion of some English-speaking delegations, but perhaps we could add, in the second line of article 6 as we proposed, after the words “prohibition of the master of the vessel” the words “or in his absence, of the owner of the vessel”. We think that this way the situation of the ship having been abandoned by the crew, could be saved. If I can add only a few words to what has previously been said about our proposal I would only like to stress that in our opinion our provision takes care also of the situation of some difficulties in identifying the owner of the vessel. You know that the practice of bareboat chartering is spreading more and more and in some cases we think that could create problems in identifying the owner of the vessel and so the person who has the power to prohibit the salvage operation. I was present some weeks ago at a CMI meeting on the subject of bareboat chartering and I expressed my doubts on this point on the problems concerning the identification of the owner of the vessel, especially for the purposes of salvage agreements. I did not have a really precise answer to my question, for many speakers were in favour of identifying him as the bareboat charterer, but in this case we have not a system of publicity concerning bareboat charterers and so that could create problems in the identification of this person. For the moment, I thank you, Mr. Chairman.

**The Chairman.** I thank you. Does it mean that we can, in our indicative vote, base on the text as now amended? Is it your purpose that we should have an indicative vote on the text which you have now amended? Is that correct? Yes. I thank you. So I will read the text again slowly, so that the interpreters can follow and give the text in all the other languages. I will read only the first half of article 16, where the amendment has to be included. “Service rendered notwithstanding” – that is the old text, Ladies and Gentlemen. But I will read it in order to ensure that you see the link. “Services rendered notwithstanding the express and reasonable prohibition of the master” and now comes the inclusion: “or in his absence the owner of the vessel or the owner of any property”, and so on. Is the text as proposed clear? France and Spain and all the other languages – you have the text in your language. O.K. Well, Denmark.

**Denmark.** Thank you, Mr. Chairman. Like Mr. Foti, I was not able to be here for three days, but am happy to be back. We have a viewpoint just expressed by Sweden and CMI that we should stick to the text as it stands. I have two problems with the amendment of the proposal just mentioned by Italy. If you keep in the question of bareboat and the problem of owner, I think it is a general problem not related to this, and I cannot in fact see that there are any problems. If you will check the argument from the Italian paper where there is a problem, mainly where there is a different attitude between the master and the owner, and you cannot find the owner, I have to
see how the difference can exist. In any case, I would prefer the text as it stands for the reasons just mentioned. Thank you, Mr. Chairman.

The Chairman. I thank you. I would hesitate to embark on a new debate on this amended article but I would allow at least one speaker in favour and one against, in respect of the new version. France, you are the speaker in favour, I suppose. Fine, you have the floor.

France. Thank you, Mr. Chairman. Indeed we are entirely satisfied with this amendment. It does indeed reflect the sense of the Italian proposal which we have supported, as a matter of fact. We had always indicated very clearly that the master and the master alone could assess the situation because he was on the spot. To evaluate the danger he is in charge of navigation and, in principle, he alone can prohibit the salvor from carrying out the salvage operations. But we believe that the new words represent a very satisfactory compromise, introducing the owner of the vessel because the master may not be there, the master may have disappeared, the master may not be on board and in that case, it is perfectly natural that the owner of the vessel should be able to express this prohibition. Also, the owner of any property. I do not think we should go into the charter business. We do believe that the term “owner” is sufficient in order to cover charterers and any other situation, which is why we would entirely support the text put forward by Italy with the amendment you have just indicated. Thank you, Chairman.

The Chairman. Democratic Yemen, you also wanted to speak in favour? That has been done. I will now ask whether a delegation wants to speak against that amendment. Now we are discussing only that amendment. We have discussed the proposal as such. Is there no delegation which wants to speak against it? USSR.

USSR. Thank you, Sir. In order to help you, Sir, in order to get to the indicative vote as quickly as possible, we would like to state that we are against this proposal as such. Thank you.

The Chairman. Thank you for helping me. That means that now we can proceed to the indicative vote. We will vote on the new text in WP/4, page 2, as amended by the delegation of Italy. Who is in favour of the proposal of the delegation of Italy to replace the present article 16 in the basic text by the proposal contained in WP/4, as amended? Please raise your cards. Thank you. Who is against that proposal? Please raise your cards. Thank you. May I ask the delegation of Italy whether that delegation has the intention to insist on a formal vote when we come to that stage of our debate. Italy, you have the floor.

Italy. Of course not, Mr. Chairman. Certainly not. Thank you.

The Chairman. The proposal has been withdrawn and is no longer relevant. We have on article 16 two other proposals made by the Federal Republic of Germany and Hong Kong. Both proposals of minor standing are more of a drafting nature. May I first ask the Federal Republic of Germany to introduce WP/16.

Germany. Thank you, Mr. Chairman. You are perfectly right, it is also our view

(179) Document LEG/CONF.7/CW/WP.16
Submission by the Federal Republic of Germany
Article 16 should read:
that our proposal as well as the proposal of the distinguished delegation of Hong Kong is of a purely drafting nature. Let me only add one sentence. We fully agree to the substance of what had been in the present draft of the Legal Committee of the IMO, added to the original draft of the CM. What has been added was this phrase “or the owner of any other property which is not and has not been on board the vessel”. I myself understand this language but when we asked for comments in our country on the present draft convention, there were distinguished institutions who commented on it in a way that said the addition was not understandable to them and should therefore be removed. We feel somewhat supported and encouraged by the fact that even the delegation of Hong Kong, where English is an official language, had some difficulties with the present wording, so we fully support the substance of the present draft but we would like to have it put into language that gives a clearer indication of the basic idea of this provision, so if you would kindly refer this proposal to the Drafting Committee. Thank you.

The Chairman. I now give to floor to Hong Kong to introduce WP/26180.

Hong Kong. Thank you, Mr. Chairman. We were slightly confused by the language of article 16 as it was drafted and we are not entirely sure whether what we have proposed is, in fact, a re-draft because we are not sure what the sense was or intent was behind the original but it does seem to us that so far as the second half of the clause is concerned, which relates to property, that this covers property in a number of situations and it appears to fall into four categories: property that is and was on board the ship at the time of the salvage service is being rendered, property that was on board the ship but has fallen off it – maybe a container that has fallen off prior to the arrival of the salvage tug; the third category of property might be part of the ship’s apparel, such as an anchor that has been separated from the ship, and finally there might be property that has nothing to do with the ship at all and be just lying on
the sea-bed and might be an item of a pipeline or something like that. So what we tried
to do in our draft was to assume that the prohibition should only be given to the last
three categories. In other words, the owner of property was not allowed to prohibit in
the case where salvage services were already under way to ship and cargo, and where
that cargo was on the ship. If we are correct in our assumption that that was the
intention behind the original draft, then we would suggest that our new draft in
WP/26 would cover that eventuality perhaps a little more neatly. Thank you very
much, Mr. Chairman.

The Chairman. Thank you. We can perhaps have a short exchange of views but
not a long debate on this point. First speaker, United Kingdom.

United Kingdom. Thank you, Mr. Chairman. We would entirely support the
Hong Kong proposal in WP/26 and in any event we would respectfully suggest that
the word “other” in the present text should come out anyway, because we have
consistently referred separately to vessel and property. The word “other” can only
refer to the vessel. That would be inconsistent with what has been done in many other
provisions. Thank you, Mr. Chairman.

The Chairman. Thank you. Is there another delegation? Islamic Republic of Iran.

Islamic Republic of Iran. Thank you, Mr. Chairman. This delegation approves
the wording made by Hong Kong in their proposal in working paper 26 but we think
the heading proposed by the Federal Republic of Germany is much better, of course
without the word “reasonable”.

The Chairman. Thank you. The delegation of France.

France. Mr. Chairman, in principle we could support these two proposals which
are similar, however, like the UK, as a matter of fact we do prefer the draft proposed
by the delegation of Hong Kong.

The Chairman. Thank you. Another delegation. Can I take it that in principle the
Committee would accept a redrafting as proposed either by Hong Kong or by the
Federal Republic of Germany, and that we leave it to the Drafting Committee to make
the decisions which might be appropriate in this context? Denmark.

Denmark. Thank you, Mr. Chairman, it is more a question. The distinguished
delegate of Hong Kong, if I have understood his proposal rightly, if you take the basic
text it is still the master of the ship who takes the decision if the cargo has been on
board the ship, but if I read the text in the new proposal, you exclude the captain’s
decision concerning all property whether it has been on board or not on board. If that
is the case, if you exclude the captain, that is our main principle in the whole article
here, that he should take the decision on property which has been on board. If that is
the case, then I am sorry to say that we are not able to agree.

The Chairman. Thank you. Japan.

Japan. Thank you, Mr. Chairman. This delegation would like to support the view
just expressed by the distinguished delegate from Denmark.

The Chairman. Any other speaker? Hong Kong.

Hong Kong. Just to clarify that particular point from the distinguished delegate
from Denmark. It was intended to cover by this amendment, property that was on
board and still on board at the time of the service but not property that subsequently
or prior to the service had fallen off it, in other words, containers that had floated away
and were lying apart from the ship, so the owner of the property still has control over the master and over the property that is still on board the ship at the time of the salvage service. Thank you.

The Chairman. Thank you. That gives me the impression that you have changed the substance of the basic draft, your explanation clearly indicates that, in my opinion, because the basic draft tries to cover both situations, giving the authority to the master to act even for the property which has been on board and is no longer there, and you restrict that authority of the master, as I understood it, to the cargo which is still on board, only to that part of the cargo, am I correct, Hong Kong?

Hong Kong. That is correct, Mr. Chairman.

The Chairman. That means you have changed the substance of the basic draft and we have to make a decision on this substantive point. Democratic Yemen.

Democratic Yemen. Thank you, Mr. Chairman. You have very clearly explained and the distinguished delegate of Hong Kong has confirmed that there is a very substantial and in fact dangerous situation to the article as it stands. We could be faced with a situation where a container containing a very dangerous substance floating away from the ship, the master is in a position to give orders to salvage that container yet he has not the authority to do so. We would like to express our position very strongly against this amendment. Thank you.

The Chairman. Greece has the floor.

Greece. Very briefly, Mr. Chairman, thank you very much. Having listened very carefully, as we always do of course, to the various proposals, we have come to the conclusion that we must stick to the main text, the original text. Thank you very much.

The Chairman. Norway.

Norway. Thank you very much, Mr. Chairman. Just to be brief, we are also very concerned about this new proposal that has been introduced to change the substance and we fully agree to what my colleague from Yemen has just said, and my colleague from Denmark.

The Chairman. Thank you. China.

China. Thank you, Mr. Chairman. We also think that the original text should be left unchanged.

The Chairman. I thank you. Federal Republic of Germany. On your own proposal?

Federal Republic of Germany. I shall only take the floor for a second time because we are now on a discussion on substance which was not aimed at by my delegation. I would like fully to join the view taken by the distinguished delegate of Democratic Yemen, and our effort was only to make very very clear the position which the Legal Committee of IMO had taken in substance, and so we still would like to have it redrafted in a way, probably in a completely different form from which we proposed, but redrafted in a way that everybody on its face can really discover the substance of this provision. Thank you.

The Chairman. Delegation of Hong Kong.

Hong Kong. Thank you, Mr. Chairman. Our intention was never to change the substance of this text but to try to clarify it, and it was a misunderstanding of the
intention, and perhaps if we were to change the wording in the third line of our proposal to add in the words “salvage services to property that has not been on board the vessel”, maybe that would clarify that particular point.

The Chairman. Well, I have the impression you go back to the basic text and I would like to ask you whether, in this case, in the light of this amendment, it is really necessary to consider your proposal as a drafting improvement. I have now some doubts because, especially your last formulation, with respect to the basic text, and we have to be very careful in making these drafting amendments, only drafting amendments which are really necessary should be included into the text, and when you are going to propose some additional amendment which is very close to the basic text, then we have to take into consideration whether it would not be better to stick to the basic draft. This is my question which I would like to ask you. Hong Kong, you have the floor.

Hong Kong. Thank you, Mr. Chairman. Our only point was that the original draft is very difficult, if not impossible to understand or to interpret for those people who have not been involved in the discussions in the committee up to this stage, and laymen outside this illustrious forum have had great difficulty in explaining it, or discussing it, or interpreting it, and some change is, we felt, necessary. Thank you, Mr. Chairman.

The Chairman. Would you please give us now the new proposed wording, you said that something could be added perhaps to make it sure that even the cargo which is no longer on board is covered, could you please give us this new wording which you had in mind. Hong Kong, you have the floor.

Hong Kong. Thank you Mr. Chairman. I think I would change the original draft as follows: “Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel, or in the case of salvage services to property that has not been on board the vessel (of) the owner of the property shall not be obliged to payment under this Convention”. Thank you.

The Chairman. Thank you. The Committee is invited to consider this amendment. The next speaker is Cuba. Cuba, you have the floor

Cuba. Thank you, Sir. We have two proposals before us – one of them emanates from the Federal Republic of Germany and we support that. Our delegation believes that the text is not sufficiently clear. Now the Hong Kong proposal in our view makes the interpretation more difficult and partly denies the principle which they had indicated themselves at the outset, so we would like to indicate our full support to the proposal put forward by the delegation of the Federal Republic of Germany, and our disagreement with the Hong Kong proposal. Thank you, Mr. Chairman.

The Chairman. Argentina.

Argentina. Thank you, M r. Chairman. My delegation goes along with the Cuban approach. It is necessary, indeed, to clarify that the owner of the property, or the prohibition of the owner of the property, should only refer to property which is not, or has not been, on board the vessel. Any clarification of the text should enable this to emerge. The German text contributes to this and we support it, it being understood that in the drafting Committee an effort will be made to make the text clearer. Thank you, M r. Chairman.

The Chairman. I thank you. United Kingdom.

United Kingdom. Thank you, M r. Chairman. We respectfully continue to
support the Hong Kong amendment as now amended and we cannot, with great regret, support the German text in working paper No. 16. As the distinguished delegate from Germany himself recognised, there are difficulties there linguistically. One cannot talk about property appurtenant to cargo – it is not an expression I have ever heard and I am not sure what it means. The amended Hong Kong text is totally clear to us and we would respectfully support it if any change is to be made. Thank you, Mr. Chairman.

The Chairman. I thank you. I now call on the observer delegation of the Comité Maritime International (CMI) for a short statement.

CMI. That will have to be very short, Mr. Chairman. It was on an entirely different point raised in the first United Kingdom intervention where it was suggested to delete the word “other” in the second line. I respectfully refer this to the drafting Committee, I think, because in our view, it should not be deleted. We always use this word in other parts of the Convention, particularly in paragraph (a) of article 1. Thank you, Mr. Chairman.

The Chairman. Well that proposal of the United Kingdom has not been supported and so presently we have no possibility to refer that to the drafting Committee unless we take a decision on it. I would like to propose that we now take a decision. The delegation of Hong Kong has now amended the proposal in working paper No. 26 to make sure that no change in substance is made, and he explains that this was not the intention of his delegation. So we have only to vote on the drafting problems and we have two proposals in front of us. The proposal of Hong Kong, which comes in my opinion now after that amendment very close to the basic text, and the proposal of the Federal Republic of Germany. I will take the vote in three stages. First, I will ask for preferences, and then we will take an indicative vote on the question of whether the proposal which is preferred by the Committee should be submitted to the drafting Committee – yes or no. Well, the first question is who would prefer the drafting proposal, as amended in working paper No. 26 submitted by Hong Kong? Please raise your cards. I thank you. Who would prefer the proposal made by the Federal Republic of Germany? Please raise your cards. I thank you. That means in case we refer a drafting proposal to the drafting Committee, we would have to submit the proposal made by Hong Kong, but we will now decide on the question whether the basic text should be left unchanged or should be amended by the proposal of Hong Kong. Denmark. O.K. Who is in favour of redrafting (it is only a drafting point now, not a point of substance) the present article 16 in the present text by the proposal made by Hong Kong, contained in working paper No. 26? Please raise your cards: 18. Thank you. Who is against that redrafting? Please raise your cards. Thank you. The result of the vote is 18 in favour of redrafting and 23 against. That means we will not refer a drafting proposal to the drafting Committee. That means we have finished the debate on article 16.

25 April 1989
Document LEG/CNF.7/VR.170-171

The Chairman. Article 16. There is no proposal on article 16. Can I take it that the Committee agrees on article 16?

The Chairman. Article 16 again. Can I take it that we adopt article 16 by consensus? Article 16 is adopted.
Plenary Session 28 April 1989

TEXT EXAMINED AND APPROVED BY THE DRAFTING COMMITTEE
(Document LEG/CONF.7/DC/5)

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.

Document LEG/CONF.7/VR.228


(181) The text of this Article has been left unvaried.
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. 4-1. Maritime lien

4-1.1. Nothing in this Convention shall affect the salvor’s maritime lien under any international convention or national law.

In most States the salvors will have a maritime lien or a similar right over the salved ship and its cargo. With respect to the salved vessel this is provided in the International Conventions for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1926, Art. 2.3., and 1967, Art. 4.1-(V). 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.

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.

In most jurisdictions maritime liens cannot be enforced if satisfactory security has been provided. However, the CMI considers it practical to have an express rule to this effect in the new convention.

4-1.3 The salved property shall not without the consent of the salvor be removed from the port of 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.

This rule entitles the salvor to retain the possession of the salved property or to prevent it from being removed until he has obtained security. The rule is considered important in cases where there is no maritime lien or no practical way of obtaining the authorities’ assistance to enforce a maritime lien in time, e.g. during a holiday. There is already a similar rule in the legislation of some states.

IMO
Legal Committee
Report on the Work of the 54th Session (Document LEG 54/7)

114. The Chairman asked the CMI observer if a maritime lien was intended in respect of special compensation, and the observer replied that article 4-1 was a statement that the draft Convention would not have any effect on a maritime lien for salvage.

115. One delegation proposed inserting the words “existence of a” between “the” and “salvor’s” in the text and this was agreed to be a desirable addition.

116. After a discussion of the system of maritime liens and its relation with arrest of ships, it was concluded that this provision was a simple reference to the system of liens by way of exclusion, and the matter should be left as stated.

117. Paragraph 3 was queried as a private law provision and its drafting criticized. It was agreed that it was intended to be a private law provision rather than public law in character, and was intended simply to give the salvor a right to prevent removal of the salved property without security.

118. The ISU observer mentioned that the provision in paragraph 3 was taken from LOF 80 which had the same guarantee.
119. One delegation asked if the provision was needed if a maritime lien protected the salvor, and the CMI observer explained that if a vessel were to depart for a jurisdiction where the lien could not be enforced the lien would be of little value.

120. It was agreed that paragraph 3 would be re-examined.

Report on the Work of the 57th Session (Document LEG 57/12)

Article 18. Maritime lien

33. In respect of paragraph 1 it was pointed out that the words “existence of a” were inappropriate since the intention of the article was to exclude completely all questions relating to the salvor’s maritime liens. The Committee accordingly agreed to delete those words.

34. Some delegations proposed the deletion of paragraph 3 of this article. Several delegations, however, were opposed to a deletion of the paragraph and the Committee decided to retain paragraph 3. The Committee recognized, however, that the provision might more suitably be placed in another article or even be made a separate article.

35. One delegation suggested that reference be made to “commercial property” rather than merely to “property”. This suggestion was not accepted by the Committee.

Report on the Work of the 58th Session (Document LEG 58/12)

73. The Committee agreed to move the text of existing paragraph 3 to article 19 as a new paragraph 3.

Document LEG 57/12 Annex 2

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.

3. .......................................................... 183

Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 17 - Maritime lien

(CMI draft, art. 4.1)

83. Reference was made to the fact that in most States the salvors would have a maritime lien or a similar right over the salved ship and its cargo. With respect to the salved vessel, it was pointed out that this was provided in the International Conventions for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1926, article 2.3. and 1967, article 4.1(V). (LEG 52/4, annex 2).

(182) Article 4-1 of the CMI Draft has been renumbered Article 18 by the IMO Secretariat.

(183) Paragraph 3 of Article 17 has been moved, with amendments, to Article 21.
International Conference
Committee of the Whole 25 April 1989
Document LEG/CONF.7/3

Article 17. Maritime lien

Document LEG/CONF.7/VR.171

The Chairman. Article 17. We have no proposal on article 17. Can I take it that the Committee agrees on that article? Article 17 is adopted by consensus.

Draft Articles agreed by the Committee of the Whole (Document LEG/CONF.7/CW/5)

Article 17 - Maritime lien

International Conference
Plenary Session 28 April 1989

Text examined and approved by the Drafting Committee (Document LEG/CONF.7/DC/5)

Article 20 - Maritime lien

Document LEG/CONF.7/VR.228


(184) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
(185) The text of this Article has been left unvaried.
(186) The Drafting Committee has approved the text approved by the Committee of the Whole. The Article has been renumbered Article 20.
ARTICLE 21
Duty to provide security

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

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

3. The salved vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor’s claim against the relevant vessel or property.
time after a request has been made, the salvor is entitled to bring any claim for
remuneration payment due under this Convention directly against the insurer of the
person liable in which case the liability of the insurer shall be determined as if the claim
in respect of the remuneration had been brought by 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 the 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.

Report by the Chairman of the International Sub-Committee
Document Salvage-19/III-81

9. Claims and actions. The provisions of this chapter are intended to facilitate the
enforcement by the salvors of the rights under the Draft Convention. Art. 4-1 assumes
that the claims of the salvors will be secured by maritime liens, but from a practical
point of view, security efficiently provided by the person(s) liable or the insurer(s) is of
greater importance. Hence, Art. 4-2(1) imposes a duty on the person liable to provide
security upon request, and also a duty on the shipowner, in cases where he has no
liability for payments by cargo interests, to use his best endeavours to ensure adequate
security from cargo owners.

In order to provide a sanction against breach of the duties to provide security, it
has been suggested in art. 4-2(3) that, in cases of failure to meet the request, the salvors
may bring an action directly against the insurer of the person liable. This remedy may
be of importance for the salvor in cases where his right to payment exceeds the value
of the property salved and thus, sufficient security may not be obtained by arrest of the
property salved. Art. 4-2(3) makes clear that the direct action is only an enforcement
remedy. The claim of the salvor is materially in exactly the same position as if brought
against the person liable, and the insurer has the same liability as if the claim was
brought by the insured person. The brackets around art. 4-2(3) show that consensus
was not reached on this provision.

Montreal Draft
Document LEG 52/4-Annex 1

Article 4-2. Duty to provide security

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.

2. Without prejudice to paragraph 1 of this Article, 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. 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. 4-2. Duty to provide security

4-2.1. Upon the request of the salvor a person liable for a payment due under provisions of this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.

From a practical point of view security provided by the person liable or his insurer is of great importance; hence this article imposes a duty on the person liable to provide security upon request.

As mentioned above, the draft convention does not provide who shall be liable to pay salvage rewards according to Art. 3-2. Once, however, a person is liable according to national law or Art. 3-3 he has a duty under the draft convention to provide security.

4-2.2. Without prejudice to paragraph 1 of this Article, the owner of the 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.

This rule has special application in the jurisdictions where the owner of the ship involved in a casualty is not liable for salvage remuneration due from the cargo. The Sub-Committee’s draft to the Montreal Conference contained a third paragraph of Art. 4-2 in which it was proposed that in cases of failure to meet the request to produce security the salvors may bring an action directly against the insurer of the person liable. For practical reasons this provision was not adopted by the Montreal Conference.

86. The salvage industry considered the problem of security on cargo being exacted in consequence of a salvage operation as particularly grave, and expressed satisfaction at the provision of Article 4-2.1.

13. Under this article the Committee discussed the meaning of “satisfactory security” as well as the question of the salvors right to arrest cargo in the absence of satisfactory security.

14. One delegation queried whether what constituted “satisfactory security” was to be determined by specific criteria to be included in the convention, or was to be left for determination by courts and tribunals. It was generally considered that unless agreement was reached between the Parties as to the quantum of “satisfactory security”, the determination would be by the judge or by the arbitrator.

15. The representative of the International Salvage Union (ISU) renewed the proposal of the Union, in document LEG 55/3/1, that the salvor should be provided

(187) Article 4-2 of the CMI Draft has been renumbered Article 19 by the IMO Secretariat.
with security for both hull and cargo. The ISU believed that long delays would be saved if the shipowner were liable for security for both hull and cargo, especially where there were several owners of cargo on the ship which was the subject of salvage.

16. Although some delegations expressed sympathy for the ISU position, the Legal Committee favoured the text in the CMI draft which was similar to the relevant provisions in paragraph 4 of LOF 1980. That provision did not actually impose a duty on the shipowner to compel cargo owners to provide security. However, if the owner of the salved vessel released cargo to the consignee without seeking satisfactory security from the cargo owners for possible claims against them, such an owner might not be considered “as having used his best endeavour” as required under paragraph 2 of article 19.

17. One delegation pointed out that the owner of the salved vessel should not have to provide security for cargo, since it was always possible for the salvor to benefit from the maritime lien referred to in article 18. The salvor could, in such a case, arrest the ship under paragraph 3 of that article, until satisfactory security had been put up.

18. The question was raised whether a cargo owner could be a “person liable” under article 19.1. If a cargo owner was not a person liable, could a ship containing cargo be seized by a salvor? The general view of the Committee was that article 19.1 did not exclude cargo owners from its application. In any event, it was possible for a ship to be arrested when the owners of cargoes thereon had not provided satisfactory security, if national legislation so provided.

Report on the Work of the 57th Session (Document LEG 57/12)

36. The Committee noted a statement by the representative of the CMI that paragraph 1 had been based on wishes expressed by professional salvors. Salvors faced special problems and it seemed therefore justifiable to place them in a somewhat more favourable position than other claimants.

37. In spite of reservations raised by some delegations with respect to this paragraph, the Committee decided to retain it in the draft convention.

38. Some delegations suggested the deletion of paragraph 2. They felt that the provision would put a duty on the owner of the vessel which the owner might not always be able to fulfil. They noted that in some cases it would be very difficult for the owner to ascertain who the “owners of the cargo” were, and it would therefore not always be possible to obtain satisfactory security from such owners.

39. Several delegations and observers, however, supported the retention of the provision. They noted that a similar provision in Lloyd’s Open Form 80 had proved of great benefit in practice. They did not agree that the burden on the owner of the vessel would be unduly heavy since the owner was required merely to “use his best endeavours” to ensure that the cargo owners provided satisfactory security.

40. One delegation furthermore suggested that some of the concerns expressed could be met by replacing the words “owner of the cargo” with the words “the persons entitled to the cargo”. The delegation also suggested that the words “to them” might be added at the end of the paragraph, to make it clear that the release envisaged is a release of the cargo to the owners by whom security has been provided.

41. The Committee agreed to retain the paragraph without change.
Report on the Work of the 58th Session (Document LEG 58/12)

Article 19. Paragraph 3

72. The Committee agreed to move the text of existing paragraph 3 to article 19 as a new paragraph 3.

Document LEG 58/12 Annex 2

Article 18 - Duty to provide security

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

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

3. The salved 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.

Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 18 - Duty to provide security (CMI Draft, art. 4-2)

84 Under this article the Committee discussed the meaning of “satisfactory security” as well as the question of the salvors right to arrest cargo in the absence of satisfactory security. It was generally considered that unless agreement was reached between the Parties as to the quantum of “satisfactory security”, the determination should be made by the judge or by the arbitrator. (LEG 55/11 - paragraphs 13, 14).

85 A proposal was made to the effect that the salvor should be provided with security for both hull and cargo; long delays would be saved if the shipowner were liable for security for both hull and cargo, especially where there were several owners of cargo on the ship which was the subject of salvage. Although some delegations expressed sympathy for this position, the Legal Committee favoured the text in the CMI draft which was similar to the relevant provisions in paragraph 4 of LOF 1980. That provision did not actually impose a duty on the shipowner to compel cargo owners to provide security. However, if the owner of the salved vessel released cargo to the consignee without seeking satisfactory security from the cargo owners for possible claims against them, such an owner might not be considered “as having used his best endeavours” as required under paragraph 2 of this same article. (LEG 55/11 - paragraphs 15, 16).

86 One delegation pointed out that the owner of the salved vessel should not have to provide security for cargo, since it was always possible for the salvor to benefit from the maritime lien referred to in article 17. The salvor could, in such a case, arrest the ship under paragraph 3 of that article, until satisfactory security had been put up. (LEG 55/11 - 17).

87 The question was raised whether a cargo owner could be a “person liable”
under paragraph 1 of this article. If a cargo owner was not a person liable, could a ship containing cargo be seized by a salvor? The general view of the Committee was that paragraph 1 did not exclude cargo owners from its application. In any event, it was possible for a ship to be arrested when the owners of cargoes thereon had not provided satisfactory security, if national legislation so provided. (LEG 55/11 - paragraph 18).

88 It was agreed that paragraph 3 was intended to be a private law provision rather than public law in character, and was intended simply to give a salvor a right to prevent removal of the salved property without security. LEG 54/7 - paragraph 117).

International Conference
Committee of the Whole 25 April 1989
Document LEG/C/ON F.7/3

Article 18. Duty to provide security

Document LEG/C/ON F.7/VR.171

The Chairman. Article 18. We have no proposal on article 18. Can I take it that the Committee agrees by consensus on that article? I thank you. Article 18 is adopted by consensus.

Draft Articles agreed by the Committee of the Whole
(Document LEG/C/ON F.7/CW/5)

Article 18-Duty to provide security

Text examined and approved by the Drafting Committee
(Document LEG/C/ON F.7/DC/6)

Article 21-Duty to provide security

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

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

3. The salved vessel and other property shall not without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor’s claim [against the relevant vessel or property].

Plenary Session 28 April 1989
Documents LEG/C/ON F.7/VR.228-230

The President. Article 21: I give the floor to the chairman of the drafting committee.

The Chairman of Drafting Committee. Thank you, Mr. President. In my list of

(190) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2) and submitted to the International Conference in Document LEG/CONF.7/3.

(191) The text of this Article has been left unvaried.
corrections which I gave earlier this afternoon, I forgot to mention in paragraph 3 the insertion of one word. That is, before the word “property” in the first line, please insert the word “other”, so that the first part of the sentence would read: “The salved vessel and other property ...” Thank you.

**The President.** Thank you. We are considering article 21, with the changes indicated, which are all contained in the third paragraph of article 21. These say the following: paragraph 3 - “The salved vessel and other property shall not without the consent of the salvor be removed from the port or place ...” and then further on you come to the second change: “for the salvor’s claim against the relevant vessel or property” and you will delete the square brackets. I give the floor to the delegation of Ecuador.

**Ecuador.** Thank you, Mr. President. I have a doubt. I do not know if I heard the correction of the Chairman of the Drafting Committee correctly, but I had the impression that the correction was in a sense in the first line.

**Cuba.** Thank you, Mr. President. We have the same opinion as the representative of Ecuador. We listened carefully the explanation which was being given by the Chairman of the Drafting Committee and we understood that it was to replace loss by these by “others”. We would ask the Chairman of the Drafting Committee to indicate whether this is correct or not. That is what we heard, Mr. President, but I will ask the Chairman of the Drafting Committee to indicate and give a final translation of how the first line would read.

**The President.** I give the floor to the Chairman of the Drafting Committee.

**The Chairman of the Drafting Committee.** Thank you, Mr. President. The Drafting Committee tried to use the same expressions throughout the draft as was concerned with the mentioning the vessel and the property next to each other. The problem was that in certain provisions, the property appeared only and it was of course understood that the vessel was included in that concept but in other provisions, the vessel was mentioned separately. Now the decision was taken that we should everywhere in the draft refer to the vessel and/or other property. It depends on the context. Now in this provision we omitted inserting the word “other” so that is all that I wish to correct here. We should mention here the salved vessel and other property. Thank you very much.

**The President.** Thank you very much. So that is cleared up. Paragraph 3 would read as follows: “The salved vessel and other property shall not without the consent of the salvor be removed from the port” and so on, and then at the end, delete the square brackets as I indicated before. The delegation of Sweden.

**Sweden.** Mr. Chairman, I have no problem understanding the reasons for the Chairman of the Drafting Committee, that is a consistent amendment. The problem I think that could come up here, however, lies with the fact that we have a further qualification and that is that we talk of salved vessel. So here we run a risk of inserting only the “other property” that it could give the impression that we are talking not only of salved other property, but any kind of property. So I just would like to ask whether it was not considered in the Drafting Committee to add “other property salved”. This is I think, Mr. President, a problem that the Drafting Committee came upon in other articles, for instance article 13, the same problem was there and that was another solution was chosen that was to talk of the salvor of the vessel and other property, and I think that expression was chosen to overcome the difficulties which the draft now
The proposed could create. I would humbly suggest, Mr. President, that we also add the word “salved” after the word “property” to make it perfectly clear that it is only of course other property salved that you are referring to. Thank you.

**The President.** Thank you. The delegation of the Democratic Yemen.

**Democratic Yemen.** Thank you, Mr. President. When I asked for the floor, I was just going to put a question in relation to the explanation given by the distinguished Chairman of the Drafting Committee, that wherever the words “vessel and property” appear together, they should be “other property”. I was going to ask what is the position with the last line. Should it be again the relevant “vessel” or “other property” or should it remain “property” by itself. Having the floor with regards to the comment made by the distinguished delegate from Sweden, the understanding of this delegation in this case is that the word “salved”, which comes before vessel and other property belongs to the two, because we are talking about the removal of either vessel or the property, and therefore that removal concerns the vessel or the property which has been salved. Because if we introduce the word “salved” before “other property” it means that we may have to make the same introduction of that word in many other articles and paragraphs, which we have already dealt with. Thank you, Mr. President.

**The President.** Thank you, Sir. The Chairman of the Drafting Committee. The representative of the Netherlands.

**Chairman of the Drafting Committee.** Thank you, Mr. President. I am grateful to the representative of the Democratic Republic of Yemen that pointed out that the wording as suggested was meant to include the word “salved” also with respect to the “other property”. It is a matter of English but if there is some doubt with the delegates, we might of course follow the suggestion made by Sweden. The Drafting Committee wished to apply the word “salved” to both vessel and property, and in suggesting the present text we thought it would be superfluous to repeat the word “salved” but if there is doubt, we should repeat it. With respect to the remark made on the last part of the sentence, it was not deemed necessary to use again the word other property but of course there is no objection whatsoever to repeat again, but we thought that mentioning it first and then referring to the word “property” again would make it sufficiently clear that it was the other property already mentioned. Thank you very much.

**The President.** Thank you, Sir. The distinguished delegation of Egypt.

**Egypt.** “The vessel or any other salved property”, that is my proposal in respect of paragraph 3. “The vessel or any other salved property”.

**The President.** Thank you very much. Could I ask the Chairman of the Drafting Committee what he finally proposes so that we can approve paragraph 3 of this article.

**The Chairman of the Drafting Committee.** Thank you. Taking into account the suggestion made by the distinguished delegate of Egypt, I think that the best solution would be to say “the salved vessel and other salved property”. Thank you.

**The President.** Having heard the new wording of paragraph 3, if there are no further comments. Sorry, the distinguished delegation of France.

**France.** Thank you, Sir, we thank God that with the French language we don’t have any problems, it is much more elegant and light and provides no problems with the precisions which have been necessary in the English text. Thank you, Sir, in French if we had to repeat things as we do in English it would be absolutely horrific so can we...
keep the French text which is a lady language, can we leave things alone. Thank you.

The President. Thank you very much, Sir, the distinguished delegation of the United Kingdom.

United Kingdom. Mr. President, I can assure the distinguished French delegate that this delegation is perfectly happy with the original text subject to the addition of the word “other” alone which was an oversight, being left out. We don’t need to repeat “salved” in our view. Thank you.

The President. Thank you very much, Sir, the distinguished delegate of Ireland.

Ireland. Thank you Mr. Chairman, I join with the United Kingdom delegation in their last remark, but, Mr. Chairman, I would go a step further and I would say that we could also live with an English text even without the word “other” but if the word other is in the French text, well, then we will be happy to have this included. Thank you Mr. Chairman.

The President. Thank you, Sir, the text of article 21, paragraph 3 should read as follows: “the salved vessel and other property shall not without the consent”, and so on. If there are no further remarks, article 21 is approved.

Article 21-Duty to provide security

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

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

3. The salved vessel and other property shall not without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor’s claim against the relevant vessel or property.
ARTICLE 22
Interim payment

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

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

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I
Art. 4-3 [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 [security or other] terms as may be fair and just according to the circumstances of the case.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81
Art. 4-3. 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.

Report by the Chairman of the International Sub-Committee
Document Salvage-19/III-81
Art. 4-3 on interim payment is inspired by present arbitral practice.

Montreal Draft
Document LEG 52/4-Annex 1

Article 4-3. Interim payment

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 the security provided under Article 4-2 shall be reduced accordingly.
CMI Report to IMO 
Document LEG 52/4-Annex 2

This provision is new. It improves the salvors’ cash flow and is considered to be of some importance. It is inspired by present arbitral practice.

IMO 
Legal Committee 
Report on the Work of the 52nd Session (Document LEG 52/9)

87. This provision was criticized as requiring payment on account without sufficient assurance that such an interim payment would be reimbursed to the extent that a final award was less than the payment. It was recommended that this matter be left to courts and tribunals and omitted from the draft convention, but one delegation considered it a positive and desirable measure.

Report on the Work of the 55th Session (Document LEG 55/11)

Article 20-Interim payment

19. The representative of the CMI explained that this article was intended to facilitate salvage and was based on LOF 1980 and the practice of arbitral tribunals. The provision in the article was favoured by salvors because salvage operations sometimes involved large expenditures.

20. One delegation pointed out that the provision in paragraph 15(a) of the LOF 1980, requiring the contractor to reimburse the parties concerned to such extent as the final award was less than the interim award, had been omitted.

21. Some delegations considered that a similar addition was needed in article 20. Some other delegations did not consider it necessary, since judges or arbitrators would ensure that any necessary reimbursement would be made, even without the additional words suggested.

22. One delegation objected to a provision on interim payment. In its view such a provision could call into question the impartiality of the judge or arbitrator, since the award could not be properly quantified until all the facts had been considered. Whilst security might be given, it was not desirable to request a judge or arbitrator to order payments to a claimant before a final award had been made.

23. Some delegations, however, considered the provision to be useful. They pointed out that the provision had been a valuable feature of LOF 1980 and had been applied without difficulty, especially in cases where salvors had incurred exceptional expense. The provision did not suggest that the judge or arbitrator would arrive at an award before all the evidence had been received. One delegation noted that the provision stated that the court or arbitrator “may order” the payment. The decision was therefore discretionary, and the judge or arbitrator was free not to require an interim payment if he considered that this would not be fair and just.

(192) Article 4-3 of the CMI Draft was renumbered Article 20 by the IMO Secretariat.
24. One delegation suggested that an interim payment would not be appropriate in cases of special compensation under article 12. Where no property had been salvaged and no funds were available in respect of environmental damage, a court or arbitral tribunal should not be empowered to order interim payment to a salvor.

25. One delegation considered that article 20 would require States Parties to the proposed convention to ensure that their courts and tribunals would have the power to order interim payments. Another delegation considered that, as presently drafted, the provision was an enabling provision which gave to courts and tribunals a discretionary power, but it did not impose any obligation on parties to the convention to grant this power.

26. The representative of the CMI observed that the inclusion of article 20 was intended to oblige States Parties to the prospective convention to give the power to their courts and tribunals to make such interim payments. If this was not clear, the article would need to be reworded to make it clear. With regard to interim payment in respect of special compensation, the CMI did not consider such interim payment to be inappropriate, since it was likely that owners might be under an obligation to pay special compensation even in the case of the total loss of the vessel.

27. The Committee decided that article 20 would need to be re-examined in order to deal with the doubts about its application and interpretation.

Report on the Work of the 57th Session (Document LEG 57/12)

42. A number of delegations were opposed to the retention of this article, pointing out that it could be counter-productive. They also noted that such a provision would amount to an interference in the domestic procedural rules of States. It was also pointed out that the principle of the provision was, in any case, applied in many jurisdictions, and it was therefore not necessary to include it specifically in the present context. Some of these delegations stated that the provision would be less objectionable if its application were restricted to arbitration proceedings.

43. Other delegations and observers, on the other hand, expressed support for the article. They stated that experience had shown that there was a practical need for such a provision. In their view payment on account was justified, particularly when the salvor had incurred substantive expenditure. Moreover, they felt that, since it was agreed that the principle in the article was already applied under the laws of many States, there would be no objection to the inclusion of that principle in the proposed convention whose objective was international uniformity.

44. The Committee decided to retain the article.

Report on the Work of the 57th Session (Document LEG 57/12)

Article 19-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 18 shall be reduced accordingly.

The Chairman. Article 19. We have no proposal on article 19. Can I take it that we adopt that article by consensus? Article 19 is adopted.
Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 19 - Interim payment

89 The novelty of this rule was emphasized. The representative of the CMI explained that this article was intended to oblige State Parties to give the power to their courts and tribunals to make interim payments. The position in the article was favoured by salvors because salvage operations sometimes involved large expenditures. Under these circumstances, the provision would improve the salvors’ cash flow situation. (LEG 55/11 - paragraphs 19 to 25).

90 One delegation objected to a provision on interim payment. In its view such a provision could call into question the impartiality of the judge or arbitrator, since the award could not be properly quantified until all the facts had been considered. Whilst security might be given, it was not desirable to request a judge or arbitrator to order payments to a claimant before a final award had been made. (LEG 55/11 - paragraph 22).

91 Some delegations, however, considered the provision to be useful. They pointed out that the provision had been a valuable feature of LOF 1980 and had been applied without difficulty, especially in cases where salvors had incurred exceptional expense. The provision did not suggest that the judge or arbitrator would arrive at an award before all the evidence had been received. One delegation noted that the provision stated that the court arbitrator “may order” the payment. The decision was therefore discretionary, and the judge or arbitrator was free not to require an interim payment if he considered that this would not be fair and just. (LEG 55/11 - paragraph 23).

International Conference
Committee of the Whole 25 April 1989
Document LEG/CONF.7/3
Article 19-Interim payment

193 TEXT EXAMINED AND APPROVED BY THE DRAFTING COMMITTEE
(Document LEG/CONF.7/DC/6)

Article 22-Interim payment

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

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

Plenary Session 28 April 1989
Document LEG/CONF.7/VR.230

The President. We now turn to document LEG/CONF.7/DC/6, article 22. If there are no remarks, approved.

(193) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
ARTICLE 23
Limitation of actions

1. ANY ACTION RELATING TO PAYMENT UNDER THIS CONVENTION SHALL BE TIME-BARRED IF JUDICIAL OR ARBITRAL PROCEEDINGS HAVE NOT BEEN INSTITUTED WITHIN A PERIOD OF TWO YEARS. THE LIMITATION PERIOD COMMENCES ON THE DAY ON WHICH THE SALVAGE OPERATIONS ARE TERMINATED.

2. THE PERSON AGAINST WHOM A CLAIM IS MADE MAY AT ANY TIME DURING THE RUNNING OF THE LIMITATION PERIOD EXTEND THAT PERIOD BY A DECLARATION TO THE CLAIMANT. THIS PERIOD MAY IN THE LIKE MANNER BE FURTHER EXTENDED.

3. AN ACTION FOR INDEMNITY BY A PERSON LIABLE MAY BE INSTITUTED EVEN AFTER THE EXPIRATION OF THE LIMITATION PERIOD PROVIDED FOR IN THE PRECEDING PARAGRAPHS, IF BROUGHT WITHIN THE TIME ALLOWED BY THE LAW OF THE STATE WHERE PROCEEDINGS ARE INSTITUTED.

CMI
Draft prepared by the Working Group
Document Salvage-12/IX-80, Annex I

Article 4-4.-Limitation of actions

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.

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

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

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.

Draft submitted to the Montreal Conference
Document Salvage-18/II-81

Article 4-4. Limitation of actions

(194) The text of this Article has been left unvaried.
Report by the Chairman of the International Sub-Committee
Document Salvage-19/III-81

Art. 4-4 retains the two-year time bar of the 1910 Convention art. 10. Paragraphs 2-4 are modelled on corresponding provisions e.g. in the 1968 Visby Protocol to the 1924 Brussels Bill of Lading Convention.

Montreal Draft
Document LEG 52/4

Article 4-4. Limitation of actions

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.

This provision retains the two year time-bar of the 1910 Convention, Art. 10.

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.

These paragraphs are modelled on corresponding provisions in modern maritime law conventions, e.g. the 1968 Protocol to the 1924 Bills of Lading Convention.

It is made clear that the limitation period may be extended by declaration to the claimant, which is a widespread practice. Further, a practical rule is given concerning the time-bar with relation to actions for indemnity and, finally, it is stated that limitation under this article is governed by the law of the State where the action is brought, a rule which corresponds very well with Art. 1-2.1. concerning the application of the draft convention.

(195) The text of this Article has been left unvaried.
88. An observation was made that paragraph 4 permitted different time-bars in different jurisdictions, and that such provisions for limitation should be uniform and binding.

Report on the Work of the 55th Session (Document LEG 55/11)

Article 21-Limitation of actions

28. No comments were made with regard to paragraph 1 of this article.

29. On paragraph 2 (extension of the limitation period), one delegation questioned whether indefinite extension of the period should be permitted. The representative of the CMI explained that the provision was intended to give the discretion to extend the limitation period to the person against whom a claim is made, and not to the claimant. In some countries there were doubts as to whether such periods could be extended, and the article was intended to clarify that several extensions of the period could be made, at the respondent's discretion. The provision was in the interest of the claimant and there was, therefore, no need to restrict its application to cases where the claimant had agreed to an extension of time granted by the defendant.

30. One delegation suggested the addition of the words “for that claim” after “period” in paragraph 2. This was to make it clear that the limitation period was not reopened for other potential respondents. It was suggested that this addition might be unnecessary, since the action referred to in 2 was the same as that in paragraph 1.

31. Two delegations, while recognizing that paragraph 2 did not affect the right of the claimant to go to court or to arbitration at any time, nevertheless considered that the extension of the limitation period solely by the declaration of the person against whom the claim was made, was not acceptable. These delegations suggested that paragraph 2 should be amended to read:

“This period may, however, be extended if the parties so agree after the cause of action has arisen.”

The Committee was unable to consider this proposed amendment at the current session.

32. With regard to paragraph 3, the Committee noted that some complications might be foreseen, since a salvor might institute claims under another convention, for example in respect of preventive measures. It was therefore suggested that the provision be examined in terms of possible provisions on recourse actions under other compensation regimes which might have different periods of limitation.

33. The question was raised why paragraph 3 provided for an action for indemnity, but not a counter-claim.

34. The Committee decided to re-examine paragraph 3 in its future discussion of the draft convention.

(196) Article 4-4 of the CMI Draft was renumbered Article 21 by the IMO Secretariat.
35. With regard to paragraph 4, one delegation wondered whether it was intended to prevent a State Party to the prospective convention from providing, in its national law, for suspension, interruption and extension of limitation periods. The general view of delegations was that the paragraph did not have that purpose, but was intended to provide a general rule that the lex fori would be the applicable law. It was noted that difficulties sometimes arose in determining whether a reference to the law of the State included conflict of laws rules under that law, and the provision was intended to clarify which law would govern all matters relating to limitation action under article 21.

36. One delegation considered that more flexibility was needed in this matter and that paragraph 4 appeared to be too detailed and definitive. In its view a simpler provision, such as the one in article 10 of the 1910 Convention, would be preferable. That article included a provision stating that:

“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.”

37. One delegation emphasized that there would be no need for paragraph 4 if the laws of all countries provided that limitation of action was a matter of procedural law. However, since the law relating to limitation was considered to be substantive law in some jurisdictions, paragraph 4 was a reasonable and necessary provision in order to ensure that a uniform rule for the choice of law would be applied under the convention.

Report on the Work of the 57th Session (Document LEG 57/12)

45. The Australian delegation proposed the insertion of a new paragraph 2bis as follows:

“Contracting States may provide, by legislation in their respective countries, that the period of limitation shall be extended in cases where it has not been possible to arrest the vessel assisted [or a sister ship] in the territory of a State which has jurisdiction under this Convention.”

46. The delegation explained that this provision was in the 1910 Convention and it felt that it would be desirable to retain it also in the new convention.

47. Several delegations felt, however, that the omission of the provision would be a desirable step forward towards greater uniformity and harmonization and would remove an element of uncertainty. Reference was made in this context to the 1968 Convention on Bills of Lading and the 1967 Convention on Maritime Liens and Mortgages, which also had omitted such a provision.

48. The Committee did not agree to include the proposed new paragraph.

49. On the proposal of the United Kingdom delegation, the Committee agreed to delete the second sentence of paragraph 3 and the entire paragraph 4.

Report on the Work of the 58th Session
Document LEG 58/12-Annex 2

Article 20 - Limitation of actions

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.

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

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

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. 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.

Consideration of the Draft Convention on Salvage
Note by the Secretariat
Article 20 - Limitation of actions
(CMI draft, art. 4-4. 1910 Convention, art. 10)

92 No comments were made with regard to paragraph 1 of this article, which retains the two years' time bar of the 1910 Convention, article 10. (LEG 55/11 - paragraph 28)

93 On paragraph 2 (extension of the limitation period), one delegation questioned whether indefinite extension of the period should be permitted. The representative of the CMI explained that the provision was intended to give the discretion to extend the limitation period to the person against whom a claim is made, and not to the claimant. In some countries there were doubts as to whether such periods could be extended, and the article was intended to clarify that several extensions of the period could be made, at the respondent's discretion. The provision was in the interest of the claimant; there was, therefore, no need to restrict its application to cases where the claimant had agreed to an extension of time granted by the defendant. (LEG 55/11 - paragraph 29).

94 With regard to paragraph 3, the Committee noted that some complications might be foreseen, since a salvor might institute claims under another convention, for example in respect of preventive measures. It was therefore suggested that the provision be examined in terms of possible provisions on recourse actions under other compensation regimes which might have different periods of limitation. The Committee agreed to delete the last sentence of the paragraph contained in the CMI draft (LEG 55/11 - paragraph 32, LEG 57/11 - paragraph 49).

95 Equally, the Committee agreed to delete paragraph 4 of the CMI draft which established that all matters relating to limitation of action under this article should be governed by the “lex fori”. (LEG 57/11 - paragraph 49).

International Conference
Committee of the Whole 24 April 1989
Document LEG/CONF.7/3
Article 20 - Limitation of actions197

(197) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
The Chairman. We have no proposals on articles 17, 18 and 19 but we have a proposal on article 20 made by France in document LEG/CONF.7/1138. France, would you be kind enough to introduce that proposal?

France. Yes, thank you, Sir. In this document the French delegation has made clear its preference that the possibility of prolonging the limitation period be not merely a matter of declaration to the claimant but rather by agreement between the Parties. The text proposed is as follows: “The limitation period may be extended at any time by agreement between the person against whom a claim is made and the claimant”. However, the basic reason why we put this forward is that we feel the best way of dealing with the limitation period is the one proposed, but we are not by the same token, against the text in article 20, paragraph 2 thereof if instead of claimant which we have in the French text, we have the French word “demandeur”; it might be a drafting question for revision in the case of this paragraph.

The Chairman. I understand that the French delegation has no intention to change the substance and it is also my impression that your proposal in fact does not change anything in that article so we can consider that as a drafting amendment. What is the opinion of the committee on that drafting amendment? USSR.

USSR. Thank you, Sir. Mr Chairman, it is possible that the French proposal as we understand it, is merely a drafting point. I think Mr Douay knows this very well but I think many delegations in the room do know also that this paragraph which we now have today before us, in article 20, was already approved in many other international instruments and at the time it was a compromise between those countries whose legislation does not give this right to extend the limitation period. This is certainly the case with the USSR legislation, so we would request the retention of article 20, paragraph 2, as it now stands. First of all because it has been approved in other international conventions.

The Chairman. Is there any delegation which supports this drafting amendment made by France. Is there any delegation seconding it. That gives us the right to vote on it. Who is in favour of that drafting amendment proposed by France in document 7/11 on page 4? Please raise your cards. Who is against that proposal? Please raise your cards. The result of the indicative vote is: 4 in favour; 25 against. May I ask if the delegation of France would come back to that proposal when we formally vote on the remaining articles? France you have the floor.

France. Certainly not, Sir. I merely wanted to recall that I indicated that I wanted the English text and the French text to be aligned. We have in English, the person against whom the claim is made etc. and we have by declaration to the claimant in the

---

Observations by the Government of France

Article 20

It would be preferable that the limitation period should not be extended simply by a declaration to the claimant, but rather by agreement between the parties. Paragraph 2 might thus be reworded to read as follows:

“The limitation period may be extended at any time by agreement between the person against whom a claim is made and the claimant”.

(198) Document LEG/CONF.7/11
French text it is the creditor basically so in fact the French text ought to be brought into line with the English text, which is the main thrust of our argument. Thank you.

The Chairman. Thank you. That means the proposal in document 7/11 is no longer relevant.

25 April 1989
Document LEG/CONF.7/VR.171

The Chairman. Article 20. There is no proposal on article 20. Can I take it that we adopt that article by consensus? Argentina.

Argentina. Thank you, Mr. Chairman. On article 20, paragraph 3, I would like to point out that the Spanish version should be looked at carefully so as to align it with the English and French versions. There are small drafting points which should be taken into consideration by the Drafting Committee. Thank you, Mr. Chairman.

The Chairman. Thank you. The Chairman of the Drafting Committee has taken note of that intervention. Can I take it that article 20 is adopted by consensus? Yes? Article 20 is adopted.

Draft Articles agreed by the Committee of the Whole (Document LEG/CONF.7/CW/5)

Article 23-Limitation of actions

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

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

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

Plenary Session 28 April 1989

Text examined and approved by the Drafting Committee (Document LEG/CONF.7/DC/6)

Article 23-Limitation of actions

The President. Article 23, no remarks, approved.

(199) The Drafting Committee has approved the text approved by the Committee of the Whole. The Article has been renumbered Article 23.
ARTICLE 24
Interest

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

CMI
Draft submitted to the Montreal Conference
Document Salvage-18/II-81
Art. 4-6. Interest

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.

2. Interest shall in any event commence to run when the request referred to in paragraph 1 of Art. 4-2 has been made.

Montreal Draft
Document LEG 52/4
Article 4-6. Interest

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.

2. Interest shall in any event commence to run when the request referred to in paragraph 1 of Art. 4-2 has been made.

CMI Report to IMO
Document LEG 52/4-Annex 2

This provision on interest leaves the matter to the lex fori. The Sub-Committee had proposed to the Montreal Conference a further provision that interest should commence to run upon the request for security according to Art. 4-2. This proposal was not adopted.

IMO
Legal Committee
Report on the Work of the 57th Session (Document LEG 57/12)
Article 24. Interest

71. No observations were made on article 23.

(200) Article 4-6 of the CMI Draft was renumbered Article 22 and then Article 23 by the IMO
**International Conference**

**Committee of the Whole**

**DRAFT ARTICLES AGREED BY THE COMMITTEE OF THE WHOLE**

*(Document LEG/CONF.7/CW/5)*

**Article 22. Interest**

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

---

**Plenary Session 28 April 1989**

**TEXT EXAMINED AND APPROVED BY THE DRAFTING COMMITTEE**

*(Document LEG/CONF.7/DC/6)*

**Article 24. Interest**

Document LEG/CONF.7/VR.230

The President. Article 24, approved.

---

Secretariat. This Article was approved without any amendment by the Legal Committee and, after having been renumbered again Article 22, was submitted to the International Conference in Document LEG/CONF.7/3.

(201) The Drafting Committee has approved the text approved by the Committee of the Whole. The Article has been renumbered Article 24.
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.

Legal Committee
Report on the Work of the 58th Session (Document LEG 58/12)

44. The United States delegation submitted a revised version of its proposal submitted to the Committee's last session (LEG 57/12, paragraph 118) for a new subparagraph (f) to read as follows:

“(f)to property owned or shipped by a State for governmental and non-commercial purposes whether on board a vessel described in subparagraph (c) or a commercial vessel;”

45. The United States delegation explained that the intention of this proposal was to ensure that not only vessels, but also other shipped property which had a governmental, non-commercial purpose, would be immune from legal process and that the State would not be subjected to suit against its will in a foreign forum. In particular, the provision would, for example, ensure that such property would not be subject to retention in another State Party under article 18(3) of the draft convention, that it would not be subject to article 4(2) regarding salvage contracts concluded on behalf of the owner of the property, that it would not be subject to the requirement to provide satisfactory security in respect of claims for salved property (article 19 of the draft convention) as well as interim payments (article 20). The delegation had taken account, in the revised text, of the observations made at the Committee's last session and the text had been brought more closely in line with the wording contained in the 1926 Convention on Immunity of State-Owned Ships. The exemption as proposed would cover property on board a Government-owned as well as a commercial vessel.

46. Several delegations expressed doubts about the proposal. Some of these suggested that the application of such a provision would create serious practical difficulties, in particular for the salvor who might not be able to identify among various cargoes that cargo which benefited from the immunity in question. Problems might also arise with regard to obtaining compensation in respect of property which may be salved but which in fact was immune. Some delegations also felt that the term “property” was too far-reaching and that the exemptions should be limited to “cargo”.

(202) This new sub-paragraph (f) was meant to be added to draft Article Y, excluding warships from the scope of application of the Convention, proposed by the German delegation at the 58th Session. Supra, page 131 and 132.
47. Other delegations, however, while also expressing doubts about the wording of the proposal were in favour of the principle of providing for immunity of State-owned non-commercial cargo. Reference was made in this context to the solution adopted in respect of warships in the 1967 Protocol to the 1910 Salvage Convention.

48. Several delegations welcomed, in this connection, a suggestion that the problem could be solved by providing not for a total exemption of the cargo in question from the scope of the convention but by specifying those particular provisions of the convention which should not apply to State-owned non-commercial cargo. This would ensure that, with some exceptions, the convention would, *grosso modo*, still apply to such cargo. In the light of this suggestion, the following text was submitted by the United States delegation to the Committee for consideration:

"Additional paragraph
Cargo owned by a State or carried on board either a vessel described in article 2.2(c) or on a commercial vessel for a governmental and non-commercial purpose shall not be seized, arrested or detained under any legal process whatsoever nor under any legal process *in rem* nor under any provision of this Convention. Unless otherwise agreed, any State with an interest in such cargo shall be immune from suit on any claim under this convention except in the competent court or tribunal of such State. Consistent with these principles, such cargoes and the State owners thereof shall not be subject to or be affected by articles 3, 17, 18, 19, 20, 21, 22."

49. Several delegations expressed the view that the principle underlying this proposal was an important one and that it should be retained in the draft convention. Most of these delegations felt, however, that in its present form, the provision would not be suitable for insertion in the draft text and needed careful examination before a decision on its adoption could be taken.

50. In respect of the first sentence, one delegation felt that the extension of the exemption to all State-owned non-commercial cargo was too broad.

51. A number of delegations expressed doubts about the meaning and scope of the second sentence and its relationship to the provisions of the 1926 Convention on Immunity of State-Owned Ships, in particular articles 3 and 2 thereof.

52. With regard to the last sentence, several delegations suggested that the number of articles to be excluded seemed to be too substantial and needed detailed consideration.

53. In the light of the discussions, the Committee agreed that the text proposed could not be included in the draft convention. The Committee agreed, however, that a text reading as follows should be submitted to the diplomatic conference in an annex to the basic conference documentation:

"Cargo owned by a State and carried on board either a vessel described in article Y.1 or on a commercial vessel for a governmental and non-commercial purpose shall not be seized, arrested or detained under any legal process whatsoever nor under any legal process *in rem* nor under any provision of this Convention. Consistent with these principles, such cargoes and the State owners thereof shall not be subject to or be affected by articles [3, 17, 18, 19, 20, 21, 22]."

**Consideration of the Draft Convention on Salvage**

*Note by the Secretariat*

ANNEX: Proposal on a provision on State-owned cargoes

108 It was explained that the intention of this proposal was to ensure that not
only vessels, but also other shipped property which had a governmental, non-commercial purpose, would be immune from legal process and that the State would not be subjected to suit against its will in a foreign forum. (LEG 58/12 - paragraph 45)

109 Several delegations expressed the view that the principle underlying this proposal was an important one and that it should be retained in the draft convention. Most of these delegations felt, however, that in its present form, the provision would not be suitable for insertion in the draft text and needed careful examination before a decision on its adoption could be taken. (LEG 58/12 - paragraph 49).

110 In respect of the first sentence, one delegation felt that the extension of the exemption to all State-owned non-commercial cargo was too broad. With regard to the last sentence, several delegations suggested that the number of articles to be excluded seemed to be too substantial and needed detailed consideration. (LEG 58/12 - paragraphs 50, 52).

111 In the light of the discussions, the Committee agreed that the text proposed could not be included in the draft convention. The Committee agreed, however, that the proposal should be submitted to the diplomatic conference in an annex to the basic conference documentation. (LEG 58/12 - paragraph 53).

International Conference
Document LEG/CONF. 7/3

Proposal for a provision on State-owned cargoes

At its fifty-eight session (October 1987), the Legal Committee of the organization considered a proposal for the inclusion of a provision on State-owned cargoes in the draft Convention on Salvage as follows:

“Cargoes owned by a State and carried on board either a vessel described in article 25.1 or on a commercial vessel for a governmental and non-commercial purpose shall not be seized, arrested or detained under any legal process whatsoever nor under any legal process in rem nor under any provision of this Convention. Consistent with these principles, such cargoes and the State owners thereof shall not be subject to or be affected by articles [3, 4.2, 16, 17, 18, 19, 20, 21]”.

The Committee did not agree to the inclusion of such a provision in the draft articles. However the Committee agreed that the proposal should be submitted to the diplomatic conference for consideration.

Committee of the Whole 19 April 1989
Document LEG/CONF.7/V R.67a-77

The Chairman. On Article 25 we have a proposal from the United States in Document 7/13\(^{203}\) and we have a proposal submitted by Spain in working paper No. 10\(^{204}\). I would first like to ask the United States Delegation to introduce its proposal.

United States. Thank you, Mr. Chairman. Our fundamental concern here is the

\(^{203}\) Supra, page 161 note 75.

\(^{204}\) Supra, page 162 note 76.
unintended impact which the present Draft Convention may have on application of sovereign immunity principles with respect to both vessels and cargoes that are Government owned and engaged in non-commercial activity. This concern is most sensitive as regards Government owned non-commercial cargoes being carried on commercial vessels. To illustrate, according to existing Article 4(2) the master of such private vessel may enter into a contract binding a State owner of such cargo to arbitration in a foreign forum and in the absence of specific agreement concerning jurisdiction the State would be subject to suit in any forum set forth in Article 21. Moreover, the State would be required to post security and the master and salvor would presumably not release the cargo in the absence of such security, according to Article 18. Additionally, the Government owned cargo would be subject to a maritime lien pursuant to Article 17 and the State owner could be liable for interim salvage payments pursuant to Article 19 and interest payments pursuant to Article 22 in an amount determined by a foreign court. Article 25(1) of the present draft states that the Convention shall not apply to warships or to other vessels owned or operated by a State Party and being used exclusively on Government non-commercial service. We recognize that this approach is very similar to that in the 1910 Convention yet, in our view, there are compelling reasons for a departure from this model. In the first instance, while the phrase “Government non-commercial service” in Article 25 has fairly broad acceptance in international law, this test is inconsistent with that applied in some nations. More importantly, while the Article 25 approach may have been satisfactory some 80 years ago owing to the limited scope of the 1910 Convention, the present draft convention contains numerous provisions. For example, Article 17, 18, 19, 21 and 22 which were not part of the 1910 Convention and which today have significant implications for sovereign immunity. Briefly stated, the existing Article 25 could afford salvage claimants a basis for asserting that even though certain Government owned non-commercial property would otherwise be immune from detention or requirements to post security according to the law of the forum, the State owner’s ratification of the 1989 Salvage Convention constituted an implicit waiver of that immunity. This, we feel, may present serious concerns for a number of States. While the Legal Committee did not reach agreement concerning this issue, the Committee thought it appropriate to annex an amended version of a proposal by the United States to the draft Articles for the Diplomatic Conference. Since submitting that earlier proposal, we have given careful study to this matter in an effort to develop a more broadly accepted alternative approach. In recognition of the evolving nature of sovereign immunity, we now propose that a general reference to the relevant international law standards be incorporated for purposes of implementing the Convention with respect to Government owned property entitled to sovereign immunity. One approach would be the proposal set forth in the annexed conference paper 13. The principle feature of this proposal is its use of a reference to the phrase “accepted principles of international law” as the determinant for excluding certain vessels from Convention application altogether and certain such cargoes from the application of specific Convention Articles unless of course the State owner decides otherwise. We fully recognize that the phrase “entitled to sovereign immunity under accepted principles of international law” is not without ambiguity. But then, neither is the phrase “Government non-commercial services”. In both instances, a lex fori will determine the application of these phrases under that State’s national law of sovereign immunity. The form of construction, however, does not lend itself as readily to the judicial interpretation that by ratifying the Salvage Convention a State Party implicitly waived the sovereign immunity otherwise respected by that forum. In our view, by
clarifying that implementation of the Convention with respect to Government owned cargoes is subject to “accepted principles of international law” the amended article would ensure that the Convention is not used as a basis for abridging sovereign immunity principles. Moreover, the qualification “unless the State owner agrees otherwise” at the outset of the proposed new paragraph takes into account the specific treaty obligations of States Parties to the 1926 Convention on the immunity of State owned ships. This same qualification which is similar to the existing option provision in Article 25(1) also affords States the flexibility of applying the Convention to their otherwise immunity Government cargoes if they so choose. In advancing this proposal we wish to emphasize our view that the fundamental issue is one of reconciling the principles of sovereign immunity with certain provisions of the Convention, not whether Government owners should pay for salvage services rendered in respect of such cargoes. As a major shipper of such cargoes the United States recognizes an obligation to pay for salvage services rendered thereto and has established formal procedures for payment of such claims. We simply wish to ensure through adoption of our proposal or an alternative proposal with similar effect that the 1989 Salvage Convention in essence remains neutral with respect to sovereign immunity issues. In other words that it is clear that ratification of the draft Convention by a State in no way constitutes a waiver of any sovereign immunity otherwise applicable to its vessels or cargoes.

**Mexico.** Thank you, Mr. Chairman. With respect to Article 25 and the proposal put forward by the United States, the Delegation of Mexico supports the United States proposal but the explanation is very clear. The idea is to avoid any misinterpretation with respect to the term where a State has non-commercial purpose and this is solved thanks to the explanation that this cargo is covered by sovereign immunity under accepted principles of international law. That is much clearer and defines the position more clearly and this is why the Delegation of Mexico agrees with this proposal put forward by the United States. Thank you very much, Mr. Chairman.

**The Chairman.** So we can leave paragraph 2 for the moment and now discuss paragraph 3. That means, the proposal of the United States to include a new paragraph 3 in article 25. The United States has already introduced that proposal. The floor is open for discussion. Who wants the floor to make a comment on this point? Ecuador.

**Ecuador.** Thank you, Mr. Chairman. My delegation can support the proposal put forward by the United States.

**The Chairman.** The delegation of Mexico.

**Mexico.** Thank you, Mr. Chairman. For the same reasons we indicated for paragraph 1, we can also support paragraph 3. However, we consider that the reference to sovereign immunity is very significant with regard to these cargoes and also the reference to principles of international law are particularly important. Thank you, Mr. Chairman.

**The Chairman.** The delegation of the USSR.

**USSR.** Mr. Chairman, thank you. We could express our support for the United States proposal regarding paragraph 3, with the comments made earlier regarding paragraph 1 of the same article regarding the word “accepted” to make it very clear. Thank you.

**The Chairman.** I understand that the new wording would also be included in paragraph 3. That means, as a consequence, when we include the new wording in
paragraph 1 we have to use the same wording in paragraph 3; in paragraph 2 also - in all three paragraphs. That is my understanding from what you have just said. China.

China. Thank you, Mr. Chairman. The Chinese delegation can support the opinion expressed by the United States in paragraph 3, but the wording can be further improved or adjusted. Thank you.

The Chairman. The new wording of paragraph 1 then? O.K. That is the understanding. The Netherlands.

Netherlands. Thank you, Mr. Chairman. To our regret, we cannot support the United States proposal with regard to paragraph 3. We think that this matter should be left to the developments which are going on now in the International Law Committee which is also dealing presently with immunity of government-owned cargoes. We have in particular some problems with the exclusion of certain articles of the Convention as you see in the last part of the proposed wording, such as articles 4(2), 17, 18, 19, 21 and 22. We could accept eventually a more general way with respect to immunity under international law. But we doubt whether that would also include, for instance, article 4, paragraph 2, where we are dealing with the authority of the master to conclude an agreement on salvage also on behalf of the cargo. We can see some difficulties when, for instance, on a general cargo ship, there are two consignments of government cargo and for the rest many hundreds or thousands of consignments of privately owned cargo, and where, in any way, in such a situation the master will have to conclude a salvage contract for instance on the basis of Lloyd’s open form, and then afterwards the government in question could say: I’m not bound by that contract and we will see whether or not we are going to pay and what amount. I think that would be a straight discrimination between the different cargoes. I can accept of course that the normal rules on immunity of government property are being respected. I think that is already the case now. But this goes, in my view, much further than is necessary under the accepted principles of international law. I could, for instance, accept that a government would not accept any jurisdiction of a foreign court. I think that is acceptable but with regard, for instance, to article 4(2) and also with regard to interim payments, my delegation has severe doubts whether that should be the line to follow in this Convention. Thank you.

The Chairman. I thank you. I understood that you could live with a more general wording but not with all the articles which have been mentioned in the last part of the article. May I ask the delegation of the United States whether that delegation is flexible in this regard. The United States, you have the floor, Sir.

United States. Thank you, Mr. Chairman. This is indeed part of the discussions that are going on among several delegations and we welcome further consultation with all interested delegations, including the delegation of the Netherlands.

The Chairman. The next speaker is France.

France. Thank you, Mr. Chairman. If the two first paragraphs of article 25 do not give rise to particular difficulties, though in paragraph 1 we prefer the text of the draft which is more explicit, which covers vessels belonging to a State or operated by it and used for commercial services, we prefer that text. But as regards paragraph (3), we wonder if this paragraph should indeed be included, first of all for the reasons just explained by the distinguished delegate for the Netherlands. Indeed, when a cargo is involved for which the immunity of jurisdiction of a State can be invoked, the master of a ship will ask for assistance, can only pass it on behalf of the owner of that cargo.
and only regards the immunity pertaining to that cargo. This immunity is covered by
the Brussels Convention of 24 May 1926 and its additional protocol, which aside from
State ships refers to vessels chartered by States and cargoes carried by these ships. But
here we are referring to cargoes owned by a State without any indication as to whether
the cargo is carried by vessels benefiting from immunity themselves as State vessels. So
it seems to us that there is an extension of this immunity with respect to the 1926
Convention. And we believe that this matter of immunity must be settled in the scope
of this Convention of 1926 and the Protocol, and there is no need here outside and
beyond the provisions of paragraph 1 and 2 of this Convention. It does not appear
useful for us to include in this present Convention any provision on immunity of
cargoes, whether carried by ships benefiting from immunity or not. And like the
delegate of the Netherlands, we believe that this might entail complications. Indeed, if
the whole of the Convention were not to apply to these cargoes and under these
conditions we cannot accept this provision. Thank you, M r. Chairman.

The Chairman. I thank you. The next speaker on my list is Hong Kong.

Hong Kong. Thank you, Mr. Chairman. As another like-speaking delegation, we
also congratulate your appointment to the Chair. Now on the proposed article 25.3 as
a drafting matter only, it seems that the proposed paragraph may have been
unnecessary and could perhaps be incorporated by a simple amendment in article
25.1. The express inclusion of cargo in article 25.1 may meet the concern behind the
United States proposal. Further it seems to be unnecessary to specifically exclude
articles 4.2 and 17, 18, 19, 21 and 22, since it appears that these would be automatically
excluded by the words “this Convention shall not apply” and variations of national
choice will arise from the words “unless the State otherwise decides”. Thank you, Mr.
Chairman.

The Chairman. I thank you. The next speaker on my list is the delegation of Sweden.

Sweden. Thank you, Mr. Chairman. Well I can be very brief, since we heard that
consultations are going on to try find a solution which could be acceptable to all and
we are happy to hear that and we should perhaps then await the outcome of those
consultations. I just raised my card to indicate the Swedish delegation faces the same
difficulties with the proposal like the last speakers, especially we could associate
ourselves with what has been said by the distinguished representatives of the
Netherlands and France, and also the distinguished observer or associate member of
Hong Kong. We would also have particular difficulties with the exclusion of certain
articles and we are not quite sure what effect that exclusion would have. So Chairman
if a solution could be found that could eliminate those difficulties we would be quite
happy to give our support to this proposal. Thank you.

The Chairman. I thank you. The next speaker on my list is Spain.

Spain. Thank you, M r. Chairman. My delegation would like to thank the
delegation of the United States for the very convincing explanation they have given us
with regard to the concerns they have which has prompted them to put forward this
amendment. We have heard around the room that there are difficulties on the part of
some delegations to accept the United States proposal. And we, who in principle
understand the difficulties and would be ready to support the proposal, we would
nevertheless like to say that in strict terms we cannot accept it because we consider it
too broad. However, I would like to clear up all possible confusion by saying that it
seems to us that the United States in no way are trying to do away with the possibility
that the State should pay for the salvage. The problem is to prevent the cargo enjoying
sovereign immunity through seizure as seen by a court. If this is the case, we would suggest a possible solution which could make it much clearer and specify that in actual fact the cargoes cannot be detained but the State owning the cargo will give security not by means of legal security but by a written statement from the sovereign State addressed to the court involved stating that these cargoes cannot be subject to seizure or arrest but that the government takes all responsibility for paying at the end of the case what would be necessary. With this sort of amendment my delegation could perfectly well accept the proposal of the United States and I insist the matter is not a request to a sovereign State to present a financial security, a banking security or anything of that kind. It is just a matter in the Convention of referring to the obligation to send a written statement through the court ensuring that at the end of the proceedings the government will be ready to pay their necessary costs whatever they may be. My delegation has prepared an amendment to the text of the United States but I don’t know if I should read it out here, or if you think that it might be better for us to submit it in writing. But in any case the text would be rather short and would enable other delegations to take a look at it immediately. We are trying to find a satisfactory solution for all, and I’m in your hands, if you want we can read out our proposal. Thank you Mr. Chairman.

The Chairman. I would say you may read it out. For the benefit also of those delegations who negotiate already on a new text, please read it.

Spain. I will do it and I will do it slowly. One would delete the following words “unless the State owner consents” those words would be deleted. And instead we would say the following “at the explicit request of the State owner and provided it undertakes to pay the costs which where relevant shall apply” and the rest of the text would remain unchanged, in other words “no provision of this Convention shall” etc. Thank you Mr. Chairman.

The Chairman. To make it quite sure Mr. Zimmerli will read the text in English.

Mr. Zimmerli. “At the explicit request of the State owner and provided it undertakes to pay the costs which, where relevant, shall apply” and then if I understand correctly, the text carries on “no provision of this Convention shall” etc.

The Chairman. May I ask the United States whether they would be ready to take into consideration this proposal.

United States. Thank you Mr. Chairman, we certainly will take this into consideration and we would like to just announce to any interested delegations that a meeting of interested States for consultations on this issue will take place immediately following the completion of our session this afternoon, in a meeting room to be designated by the Secretariat.

The Chairman. I thank you. Spain would you be ready to take part in that negotiation, and assuming you are not satisfied by the new text I would like you then immediately to submit your proposal to the Secretariat if available tomorrow afternoon, when we come to the formal votes. Would that be acceptable? You may participate this evening, perhaps the United States are able to include you if the other delegations participating in that meeting could agree to that. OK, then you are satisfied, if not please hand over your text to the Secretariat to make it sure that we have it available tomorrow afternoon. I thank you. Well the observer delegation of ACOPS has asked for the floor. No, that was an error. Well I have no other speakers on my list, I would like to propose that we follow the same procedure as we have
already decided with regard to paragraph 1. We take no decision at this time and we postpone the decision until tomorrow afternoon, in the hope that at that time a new text is available that would mean that we would formally vote immediately on that new text. Is that acceptable to the United States. Admiral Vorbach is that acceptable?

United States. Yes thank you Mr. Chairman, that is acceptable.

Draft Articles agreed by the Committee of the Whole (Document LEG/CONF.7/CW/4)

Article 25 - State-owned vessels and cargoes

1. Without prejudice to article 3, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled 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 of this article, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

3. 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 to sovereign immunity under generally recognized principles of international law.

Plenary Session 28 April 1989

Text examined and approved by the Drafting Committee (Document LEG/CONF.7/DC/6)

Article 25. State-owned vessel and 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.

Document LEG/CONF.7/VR.230

The President. Article 25, approved. France.

France. Thank you, Sir, very briefly, article 25 might delay the adoption of this text, but in the Committee of the Whole I was not the only person to say so, but in French law an action in rem in respect of the cargo interest has no sense whatsoever. Any proceedings in rem against non-commercial cargoes makes no sense in French law but some delegations wanted to have the in rem proceedings trying to pretend that such proceedings do not exist in certain legislation.

The President. Thank you, Sir. We consider article 25 to be approved as it is, therefore.

(205) The first two paragraphs of draft Article 25 have been moved into a separate article, Article 4 - State owned vessels.
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.

United States. A related yet distinct issue of concern has come to light during our conference preparations. Among the many international relief programmes there are certain programmes involving donations of humanitarian cargoes to private charitable organizations who then distribute them to those in need worldwide. Since there are cases in which the donating State does not hold title to these cargoes during shipment, such cargoes would not come within the scope of sovereign immunity and therefore might be subject to delays owing to salvors detaining them as security for payment. In some unfortunate instances this may be unavoidable. But in those in which the donor nation voluntarily undertakes to pay for salvage services in respect of such cargoes, it would seem that a way should be found to protect such cargoes from unnecessary delay. We have proposed therefore one possible approach in our conference paper 13 which contains a proposal for a new Article 25 bis to the effect that the draft Convention shall not 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. This approach would minimize the possible delays associated with delivery of humanitarian cargoes most often agricultural food products, but would do so only in those instances where a State had affirmatively stepped forward and obligated itself to pay for salvage services in respect of such cargoes. In our view, this change would have a positive benefit from a humanitarian standpoint without adversely impacting the interests of salvors or ship owners. Thank you, Mr. Chairman.

Document LEG/CONF.7/VR.77-VR.78

The Chairman. Well, we come then to article 25bis a proposal of the United States. The United States have already introduced that proposal. You will find the proposal also in document 7/13 on page 3. That proposal has already been introduced and the
floor is open for comments. Who wants to comment on that proposal. The Committee is looking very tired this afternoon I must say. Is there any delegation which wants to support that proposal of the United States. Ireland, would you like to make a comment.

Ireland. Thank you Mr. Chairman. First to show support because it is a humanitarian provision and, secondly, to make a suggestion that perhaps the text is a little bit vague and if there is to be support for the proposal, and it is to go forward, it might be useful to introduce a provision on how the payment might be made. It might be that something like article 17 would be of some use in that regard. That’s all I’d like to say Mr. Chairman.

The Chairman. Thank you. The next speaker is the delegation of Switzerland.

Switzerland. Thank you, Sir, article 25bis is something we find essential for our Convention. I would myself consider it obvious, but sometimes the obvious is not always accepted; therefore we would like to support this proposal about article 25bis and its inclusion. Thank you.

The Chairman. There is no other speaker on this point? The Netherlands.

Netherlands. Thank you Mr. Chairman. We have some difficulties with article 25bis. In the first place it is a very vague article. It speaks of cargoes donated by States, now we should realise actually that what could happen are cargoes on board a ship and the carrier and ship owner will only see from the bills of lading who has any right to that cargo for the delivery of the cargo, and from the ship’s papers it may not appear actually that these cargoes have been donated by States. But even if the State turns up there is in fact no specific relation between that State and the ship owner, so I can foresee that this could give rise to all kinds of legal complications: furthermore, although we have a certain sympathy for the general tendency of this proposal on humanitarian grounds, we think that it could go rather far. If a problem would arise I think then the State could in fact if necessary either give a written guarantee that they will pay and that I think would be accepted. So we are not very happy with this vague provision which we can foresee could give rise to uncertainty in practice. Thank you very much.

The Chairman. Thank you, Sir. Is there any other Delegation... Perhaps first we can have another speaker and then you may reply. The Delegation of the Marshall Islands.

Marshall Islands. Thank you, Mr. Chairman. The Marshall Island Delegation would like again to associate itself to the article proposed by the United States. Then Mr. Chairman, we would like to ask the Drafting Committee to clarify some language to make it clear what the humanitarian cargo is as stated by the Netherlands Delegation.

The Chairman. Well, Mr. Sturms, as the Chairman of the Drafting Committee, will be very happy to give you that clarification. I believe that would overburden the Drafting Committee a little. We here in this room who are in this informal consultation have to find out what the proper text is. The United States has asked for the floor at this stage perhaps I will give you the floor, Sir. You may give us the clarification.

United States. Thank you very much, Mr. Chairman. Indeed, in response to the concerns of the Delegation of the Netherlands and the Marshall Islands, we intend that the determination of whether or not the cargo constitutes humanitarian cargo and whether the guarantee is satisfactory would be determined by the lex fori. A court with competent jurisdiction is empowered to consider the nature of the cargo, the quality of the guarantee and thus fashioned to release rapidly cargo to its humanitarian purpose. I hope that may be of some benefit to the delegations that have spoken on this issue. One further clarification in response to earlier observations regarding the fact that the
issue of sovereign immunity is under consideration in other bodies. Indeed, as I have
stated earlier, our intention is simply to retain the neutral status of the question of
sovereign immunity in this Convention, so that the Convention does not affect that law
either one way or the other. I hope that the results of our consultations will be successful
in retaining that objective, or to attain that objective without offending those who
would suggest that this is properly a matter for others to consider. Thank you, Mr.
Chairman.

The Chairman. Thank you. The next speaker will be the Delegation of Liberia.

Liberia. Thank you, Mr. Chairman. My Delegation supports the concept
contained in Article 25 bis as proposed by the United States Delegation but we wonder
perhaps whether this issue could not be dealt with under the Article dealing with State
owned cargo. Thank you.

The Chairman. Thank you, Madam. The United States, you have heard this idea,
could you comment on that?

United States. Thank you, Mr. Chairman. We appreciate the support of the
Delegation of Liberia. In our country the experience is that the cargoes of wheat and
other foodstuffs are donated to a charitable organization and thus at the time they are
en route are no longer State owned cargoes. Nevertheless, in order to obtain the
objective of providing these foodstuffs and other supplies to their intended objective it
is our practice to make available the guarantees of the United States, the donor, to
assure that the cargo moves rapidly to its destination. So moving it to the Article dealing
with State owned cargoes would not fit these circumstances. With respect to the issue
earlier of what is a humanitarian cargo and whether or not the guarantees are
satisfactory, this can also be determined between the parties that are involved to their
satisfaction as well as to the satisfaction of any court that might have jurisdiction. Thank
you, Sir.

The Chairman. Thank you. May I ask the Delegation of Liberia whether their
delegation is satisfied by that explanation. Thank you, Madam. Are there any other
speakers on this? If not, I think this question is ripe for an indicative vote. There was a
remark made by Ireland to include something on payment. Ireland, do you insist on
that or can we proceed to an indicative vote without further drafting on this point, or
is it very serious?

Ireland. It is not very serious, Mr. Chairman.

The Chairman. Thank you. Then my question is, who is in favour of the United
States proposal contained in Document 7/13 on page 3 for a new Article 25 bis? Please
raise your cards. Thank you. Who is against that proposal? One Delegate is hesitating
because of his humanitarian cargo. (Laughter) One brave delegation. The result of the
vote: in any event, there is a majority in favour of your proposal. It seems to be that
without further drafting, we can then take a formal vote tomorrow afternoon on this
proposal. Thank you.

Document LEG/COUN/7/V/079

United Kingdom. A clarification, Sir about humanitarian cargo, article 25bis, as
we understood what you were saying you do not anticipate any change in the text before
a definitive vote is taken. That's not our understanding, we are I think in discussions
with the United States delegation about the text which we arc not happy about at the
moment. In particular we would say that the article should be turned round so as to
ensure the release of such cargoes, but not the prohibition against arrest and detention.
We understood, I hope I’m right in saying, that the United States delegation is sympathetic to consider that, whereas we would find ourselves in difficulties if we immediately had to take a definitive vote on the text as it stands. Thank you Sir.

The Chairman. Well, in that case I must say the Chairman has been badly informed. I understood the United States has no intention to accept any kind of proposal, no proposal has been made in fact during our debate, and that was the reason that we immediately proceeded to an indicative vote. You have of course the possibility to submit a working paper for tomorrow afternoon and, Sir Michael, we can then vote on your working paper but the text as it is contained in the document of the United States stands now for a final vote.

United Kingdom. Of course, Sir, yes. Mr. Chairman I’m very conscious of the time there is no real difficulty here. I think that what I’m trying to say Mr. Chairman is that there is a possibility of improving the drafting of the article and we would like that to be taken into account tomorrow before the final vote is taken. Thank you Mr. Chairman.

The Chairman. The only possibility is now that you submit a UK paper; there is no other possibility and we can vote on the UK paper tomorrow afternoon.

21 April 1989
Document LEG/C ON F.7/VR.119

The Chairman. Document 7/13, on page 3 you will find that proposed article 25 bis on humanitarian cargoes. Who is in favour of that proposal? Please raise your cards. Who is in favour of 25 bis? Humanitarian cargoes. Who is against? Abstentions? The result of the vote is: 36 in favour, 5 against, 6 abstentions. That means we have adopted the new article bis. That is all for the moment. Gentlemen, I kept you somewhat longer. I expect you back at 11.45, to allow you to drink your coffee. The meeting is adjourned.

Draft Articles agreed by the Committee of the Whole (Document LEG/C ON F.7/C W/4)

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.

Plenary Session 28 April 1989

Text examined and approved by the Drafting Committee (Document LEG/C ON F.7/D C/6)207

Document LEG/C ON F.7/VR.230

The President. Article 26, approved.

(207) The Drafting Committee has approved the text approved by the Committee of the Whole. The Article has been renumbered Article 26.
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.

CMI
Draft submitted to the Montreal Conference
Document Salvage-18/II-81

[Article 4-7. Publication of arbitral awards
Contracting States shall take the measures necessary to make public awards made in salvage cases.]

Report by the Chairman of the International Sub-Committee
Document Salvage-19/III-81

Art. 4-7, on which consensus has not yet been reached, 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. The need for adequate information on arbitral practice was recognized by the Sub-Committee, but there were different views as to whether the appropriate remedy was the one proposed in art. 4-7.

Montreal Draft
Document LEG 52/4-Annex 1

Article 4-7. Publication of arbitral awards

1. Contracting States shall take the measures necessary to make public awards made in salvage cases encourage, as far as possible and if need be with the consent of the parties, the publication of arbitral awards made in salvage cases.

CMI Report to IMO
Document LEG 52/4-Annex 2

This rule 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 the actual legal position, and the extent to which international uniformity is in fact achieved cannot be appreciated. Therefore the need for adequate information on arbitral practice was recognized by the CMI. There were, however, different views as to the appropriate remedy. The Montreal Conference preferred the rather vague rule of the draft convention to a duty to make arbitral awards public, mainly on the ground that privacy is often an important part of the advantages of arbitration and that all commercial parties involved felt it appropriate and reasonable to retain the right to keep arbitral decisions private if they so wish.
IMO
Legal Committee

Report on the Work of the 52nd Session (Document LEG 52/9)

94. It was suggested that this provision could be useful, but some doubts were voiced, since it was not clear what obligation was imposed on particular governments. It was proposed that the Convention should contain a provision stating directly that contracting States should take necessary measures to make arbitral awards in salvage cases public. It would be impractical to include such a provision and in many instances such awards were kept secret unless the parties agreed to publication. In view of the disagreement on public policy the matter was recommended for further attention.

Report on the Work of the 55th Session (Document LEG 55/11)

Article 24. Publication of arbitral awards

55. Some delegations reiterated their opposition to the provision. Arbitral awards were not usually made public and the Contracting State could have no interest in encouraging or discouraging their publication. This viewpoint was supported by several other delegations.

56. One delegation considered that the principle of the article was sound, but that it should be reworded as follows:

“Contracting States shall, as far as possible, encourage publication of arbitral awards in salvage cases if national law so allows.”

57. One delegation stated that article 24 was a matter of mere encouragement of publication and the consent of the parties was not necessary for such encouragement. This delegation also suggested a rewording of the article to provide that:

(i) Contracting States shall encourage, as far as possible, the publication of awards in salvage cases;

(ii) nothing in this Convention requires or authorizes the publication of any award without the consent of the Parties.

58. The representative of the CMI observed that the article represented a compromise; it was first drafted as a duty, but objection to this led to its present form of drafting.

59. Some delegations considered that it should not be included in the Convention, or at best was irrelevant. If it were retained it would have to be made conditional on the consent of the parties. In this connection some delegations pointed out that arbitration was often resorted to because of the secrecy of the proceedings and the results. They considered that the provision, even if amended, would be inappropriate in a treaty and could have little effect on the present practice with regard to the publication of arbitral awards.

60. One delegation preferred an even stronger provision for the article. Much useful information could be derived from arbitral awards. The further the exercise of salvage moved into the public domain, the more interest could be expected in published information about the claims made and the awards handed down. Such publication might assist in the settlement of many claims.

(208) Article 4-7 of the CMI Draft was renumbered Article 24 by the IMO Secretariat.
61. In view of the division of opinion on the provision, it was decided to retain it in square brackets for further consideration.

Report on the Work of the 57th Session (Document LEG 57/12)

72. The Committee considered a proposal by the United Kingdom to delete article 24. Also considered was a proposal by the delegation of Australia to amend the article to read as follows:

“Publication of awards”

“Contracting States shall encourage, as far as possible, the publication of awards in salvage cases. However, nothing in this Convention requires or authorizes the publication of any such award without the consent of the Parties thereto.”

73. Some delegations supported the proposal to delete the article. They felt that the provision was unnecessary and would be of little practical use since it did not impose a firm obligation on Contracting States. One of these delegations furthermore had doubts as to how a State could actually implement the provision in its national law. It was also pointed out that the provision would introduce an undesirable additional burden on States. Furthermore, it was suggested that the provision could put in question the confidentiality of arbitration proceedings and could be read to require the publication of awards without the consent of the parties to the case. Finally, reference was made to the experience under the 1924 Bills of Lading Convention. Although this Convention did not contain such a provision, a large number of awards under the Convention had nevertheless been published.

74. Many delegations, however, were in favour of retention of the provision. They stated that even though it did not impose a specific obligation on States Parties, the provision would serve a practical purpose by encouraging the publication of arbitration awards. They noted that publication of arbitral awards would only occur with the consent of the parties to the case; therefore there was no risk that the confidentiality of any particular proceedings would be jeopardized.

75. With regard to the proposal by Australia, some delegations expressed their doubts on its acceptability. In particular it was pointed out that the text as proposed appeared to suggest that even the publication of decisions of courts would be subject to the consent of parties to the cases. Such a provision would not be satisfactory.

76. In the light of the views expressed, the Committee decided to retain the article without change. It was, however, agreed to leave the text in square brackets.

Report on the Work of the 58th Session (Document LEG 58/12)

88. The Committee considered a proposal to simplify the text by deleting the phrase “as far as possible and if need be with the consent of the parties”.

89. Several delegations expressed objections to this suggested change and indicated that such a deletion would make the article quite unacceptable to them. Several delegations were in favour of the basic text since the article was not couched in mandatory terms. Some other delegations suggested that, for that very reason, the matter should not be included in an article at all and could be dealt with more appropriately in a resolution.

90. The Committee agreed to retain the article in the text without brackets.
Article 23. 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.

Consideration of the Draft Convention on Salvage

Note by the Secretariat

Article 23 - Publication of arbitral awards

(CMI Draft, art. 4.7)

102 It was explained that this rule recognized the fact that most decisions on matters of salvage were arbitral awards. This meant that, in practice, it was often difficult for the parties to ascertain the actual legal position, and the extent to which international uniformity was in fact achieved, could not be appreciated. Therefore, the need for adequate information had been recognized by the CMI (LEG 52/4 - annex 2).

103 Some delegations supported a proposal to delete the article. They felt that the provision was unnecessary and would be of little practical use since it did not impose a firm obligation on Contracting States. One of these delegations furthermore had doubts as to how a State could actually implement the provision in its national law. It was also pointed out that the provision would introduce an undesirable additional burden on States. Furthermore, it was suggested that the provision could put in question the confidentiality of arbitration proceedings and could be read to require the publication of awards without the consent of the parties to the case. Finally, reference was made to the experience under the 1924 Bills of Lading Convention. Although this Convention did not contain such a provision, a large number of awards under the Convention had nevertheless been published. (LEG 57/12 - paragraph 73).

104 Many delegations, however, were in favour of retention of the provision. They stated that even though it did not impose a specific obligation on States Parties, the provision would serve a practical purpose by encouraging the publication of arbitration awards. They noted that publication of arbitral awards would only occur with the consent of the parties to the case; therefore there was no risk that the confidentiality of any particular proceedings would be jeopardized. (LEG 57/12 - paragraph 74).

105 In the light of the views expressed, the Committee decided to retain the article without change. (LEG 57/12 - paragraph 74, LEG 58/12 - paragraph 90).

International Conference
Committee of the Whole 24 April 1989
Document LEG/C O N F.7/3

Article 23. Publication of arbitral awards

(The Chairman. We come now to article 23. On article 23 we have a proposal

(209) The text of this Article is that approved by the Legal Committee at its 58th Session (Document LEG 58/12-Annex 2).
made by the delegation of France. May I ask the French delegation to introduce that proposal? France, you have the floor to introduce your proposal in document 7/11210.

**France.** Mr. Chairman, thank you. The French proposal is very simple, although we accept the principle of publishing arbitral awards, we want to say that if in any case, if there is a publication of an award which is in no way an obligation at the moment, the publication must as a necessity be carried out with the assent of parties, because indeed, if parties have had recourse to arbitration it means that for good reasons they have done this, that is, to avoid publication of any judicial decision, and an arbitral award is something which essentially concerns the parties involved. In our view, therefore, an arbitral award may not be published except if the parties have agreed. It is for this reason that we propose, in the text of article 23, the deletion of the words “if need be”. It seems to us that this is a good idea, we approve of the text, but in every case the consent of the parties would be required in the case of publication of awards. Thank you.

**The Chairman.** I see the proposal submitted by the Federal Republic of Germany, I would like to ask the delegation of the Federal Republic of Germany to introduce working paper 17211.

**Federal Republic of Germany.** Thank you, Mr. Chairman. The proposal made by our delegation in working paper 17 is aimed only at clarifying the situation because the text as presently drafted might lead to a misleading construction, so that one might get the impression that States should not be encouraged to favour publication of court judgments in contrast with awards made by arbitrators, and by introducing our proposal we pick up a proposal which had been made already during the discussions of the Legal Committee of IMO, a proposal by Australia, made in document LEG/56, working paper 5, so that was the fifty-sixth session. And this proposal at that time did not meet with the approval of the Legal Committee because one was somewhat in fear that one might construe a provision as drafted then by the Australian delegation, or by our delegation, might lead to the misleading understanding that there would be the consent of the parties necessary to have a publication of court decisions. But we think that this fear is not justified because, well, if one would follow the line of the distinguished French delegation, the words “if need be” would be deleted anyway. But even if the words “if need be” should remain in the text this would only be relevant for those cases where really there might be a need, and those are the cases of awards by arbitrator, so we would prefer a language of article 23, so that States parties should

(210) Supra, page 241 note 102.
(211) Document LEG/CONF.7/CW/WP.17
Submission by the Federal Republic of Germany
Article 23 should read:

“Article 23
Publication of awards
States Parties shall encourage, as far as possible and if need be with the consent of the parties, the publication of ________ awards _________ in salvage cases.”

The provision, as presently drafted, applies only to arbitral awards. This does not mean, however, that court judgments in salvage cases should not be published. The publication of court judgments is a long-standing practice in most countries. In this respect there may be no need for encouraging States to have court decisions published. Nevertheless, Article 23 should be drafted in a more general way in order to rule out any misleading construction a contrariis.
be encouraged to favour the publication of salvage awards in any case, even though we see that the substance of article 23, lies with rewards awarded by arbitrators. Thank you.

**The Chairman.** Thank you. I understand Mr. Schrock, that your proposal is more or less of a drafting nature. Is that correct?

**Federal Republic of Germany.** You could say so, yes.

**The Chairman.** But the proposal of France is a matter of substance and we will take up that proposal. Who wants to speak on the French proposal? You may also refer perhaps to the proposal made by the Federal Republic of Germany. That saves times, perhaps. The first speaker on my list is the Islamic Republic of Iran. You have the floor, Sir.

**Islamic Republic of Iran.** Thank you, Mr. Chairman. This delegation is of the view that it is essential that the arbitral awards be publicised only with the consent of the parties, so we support the proposal made by the distinguished delegate of France as to the deletion of the words “if need be”.

**The Chairman.** Thank you. The delegation of Japan.

**Japan.** Thank you, Mr. Chairman. This delegation would like to state that my Government does not like such obligation to encourage the publication of arbitration awards in case when it is not necessary, therefore this delegation cannot support the French proposal.

**The Chairman.** Thank you. The delegation of Zaire.

**Zaire.** Thank you, Mr. Chairman. The delegation of Zaire supports the French proposal, particularly bearing in mind that before there is a consent there is an encouragement in so far as possible, which means that certain ground work must be done before this is achieved. So the words “if need be” do not seem very helpful and we agree with France that that part of the sentence should be deleted. Thank you.

**The Chairman.** The delegation of Greece.

**Greece.** Thank you, Mr. Chairman. We are in favour of the principle but we are also in favour of the French proposal so we think that words “if need be” are not necessary.

**The Chairman.** France you have already introduced that proposal. Do you want to speak again on it?

**France.** Yes on the proposal of FRG Mr Chairman, because the name is not the same as the French one. At your request we are discussing both at the same time and I think we should make a clear distinction between the proposal of France and that of the FRG. We are not talking only about the arbitral award where in every case we require the consent of contracting States. On the other hand, we are entirely in agreement with the principle of the proposal submitted by the FRG for we feel that it is a good idea for States to encourage not only the publication of arbitral awards but even any decisions of the courts. The text does not mention the latter, we thought that was something which did not need specifying because whatever the court decides is always made public. It is a well known principle, but for the reasons made clear by the FRG, we see no difficulty at all in speaking about publication of decisions of Courts. The French text is not quite clear but it could go to the drafting committee but we certainly agree with the principle of the FRG’s proposal but let us be careful, Sir, our
proposal if it were to be combined with that of the FRG, if need be, would apply only to arbitral awards and not to court decisions as proposed by the FRG. So there again we do not want to waste time but I think we might have a drafting problem to be dealt with elsewhere. In conclusion however, I can state that we agree to the FRG’s proposal subject to the efforts of the drafting group as regards the French language and of course we would retain our own proposal making it clear that deleting the words “if need be” would apply only to arbitral awards and that I feel could be dealt with by the Drafting Committee.

The Chairman. Thank you. I am not sure whether we can refer that at this stage to the Drafting Committee especially because of the combination of your proposal with the proposal of the Federal Republic of Germany means that we have to take substantial decisions. Mr Douay, you would then prefer if we include the FRG proposal to have perhaps two sentences. One sentence on arbitral awards where you would request on the agreement of the parties and another sentence on the court awards where this agreement of the parties is not necessary. Did I understand you correctly? France you have the floor.

France. Mr Chairman. You are absolutely right; that is exactly what I was saying. I think we can combine everything in one sentence that is why I was suggesting it goes to the Drafting Committee. We could say Contracting States shall encourage in so far as possible, the publication of court decisions and with the agreement of the parties of arbitral awards made in salvage cases. One sentence you have the FRG proposal and the French proposal in one package but I do not think we need to waste time on it. I merely want to make it clear that the two proposals could be combined; the proposal to publish court decisions along with arbitral awards but on the other hand the French proposal would be included for arbitral awards alone to require the consent of parties.

The Chairman. I believe the problem is now clear. I have a long list of speakers on this point. I had hoped that we could finish very quickly with that question but it seems we have to continue after the coffee break. The meeting is adjourned for coffee break. Ladies and gentlemen, the meeting is called to order.

The Chairman. The first speaker is the delegation of the Federal Republic of Germany.

Federal Republic of Germany. Thank you Mr. Chairman. I take the floor for the second time only to indicate that again, as it was the case in the past, we have two somewhat competing propositions between the French and the German delegations and in the light of the discussions which we have followed very carefully, we would rather withdraw our proposal on the understanding that if, in article 23, the headline, the heading is publication of arbitral awards, that provision does not touch on the publication of court decisions that is to say that is a subject of States how they deal with this aspect. That does not mean that court judgements should not be published, is not stringent construction of the provision. So we leave it now entirely to the French delegation to discuss their proposal, whether amend it or not. Anyhow, we would, for the sake of the acceleration of the procedure, simply withdraw the proposal set out in Conference Paper LEG/CONF.7/CW Working Paper 17. Thank you.

The Chairman. I thank you very much for your co-operation. In fact it was never the intention to cover by this article court decisions. We cannot interfere with that procedure. Every State has its own procedure in publishing court decisions and we should not deal with that problem in this Convention. Only arbitral awards are a special case, which should be dealt with because they are normally not published and
it was the intention to say something about that and at least to make a recommendation or to say to encourage States that also these arbitral awards should be published. That was the intention – the only intention of this article – it was never the intention to interfere with the internal procedure followed by the various States in respect of court decisions. I hope that is now clear and we have only to deal with the French proposal; that simplifies the situation, I think. The next speaker on my list is Denmark.

**Denmark.** Thank you Mr. Chairman. It is one of those clauses which we have been talking about again and again and reached very little because it is a resolution and of course as local editor of Law of Port in Denmark I can be in favour of this clause. But I would say we can leave it as it stands and it would in no way harm if we agree upon the French amendment. Thank you Mr. Chairman.

**The Chairman.** I thank you. Yugoslavia.

**Yugoslavia.** Thank you Mr. Chairman. Our intervention is meaningless now. Thank you, Sir.

**The Chairman.** I thank you. USSR.

**USSR.** Thank you Mr. Chairman. I do not wish to delay you either on this very simple matter. The problem is, and I am referring to institutional arbitration. Certain arbitration rules make it possible to take different decisions. Arbitral awards very often may deal with confidential matters, particularly under private law. And the parties involved are not very inclined to see these awards being published. The situation may not be the same in the case of an arbitral award related to salvage operation. In my country all the arbitrators dealing with these maritime cases look with great interest at the decisions which have been published relating to salvage operations and awards and all they come to encourage the publication in English of decisions taken in relation to salvage operations based on the decisions of our arbitrators. That is why we would favour the basic text. However, in order to allow for either of the two solutions and, therefore, exclude the words “if need be” as suggested by France. But not only that, and we could go even further and delete the other words “with the consent of the parties” and we would just say Contracting State to encourage as far as possible the publication of arbitral awards made in salvage cases and that would be all. In this way, each party, each arbitrator, according to the rules which apply in his country, can take a decision. If it is necessary to have the consent, it will be asked for. If not, it will not be asked for. But in any case, in principle, we would favour the basic text. Thank you very much.

**The Chairman.** I thank you. May I ask the delegation of the USSR what is the intention of that delegation to make a formal proposal to delete the words which have now just been quoted. USSR, you have the floor, Mr. Ivanov.

**USSR.** Thank you Mr. Chairman. Yes, Chairman, we are perfectly ready to make this proposal formally. That is to say to exclude, not only “if need be”, as suggested by Mr. Douay, but also delete the words “with the consent of the parties”. So our text would read as I indicated before. I think we can have a perfectly clear text. Thank you.

**The Chairman.** I thank you. That is a very simple proposal, the deletion of these words and we should take that into consideration. I will read again the text after all these deletions to make it clear what has been proposed. “Contracting States shall encourage as far as possible”. Now comes the first deletion: “and if need be” proposed by France. That is excluded. So we continue “as far as possible” and then we delete “with the consent of the parties” and we would continue “the publication of arbitral
awards made in salvage cases”. I read it again: “Contracting States shall encourage as far as possible the publication of arbitral awards made in salvage cases”. That would be the version, if both proposals – the French proposal and the USSR proposal – are accepted. So I hope the proposal is clear. And I give the floor to the next speaker, Saudi Arabia.

Saudi Arabia. Thank you Chairman. The text in the draft Convention is a very correct and acceptable one and we would prefer it to remain as it is. You have proposed following the amendments suggested by France and the Soviet Union, a text which is quite a good one. However, we would prefer the original text which is in the draft Convention.

The Chairman. The next speaker, Ireland.

Ireland. Thank you Mr Chairman. Mr Chairman, nearly everything we wanted to say has already been said, but perhaps it would be useful to recall a little bit of the history of this article. Since I was not there I cannot recall the history but I can perhaps guess what was happening in the earlier committee and somebody must have wanted a form of words expressing the desire that arbitral awards would have a greater circulation and then everybody started putting in phrases which they felt encouraged this desire until we have an article which has three or four encouragements all said in a different way. Now Mr Chairman, we are beginning to dismantle it. For the reasons that have already been covered by some of the earlier speakers, we would prefer to leave it alone at this stage.

The Chairman. The next speaker, the delegation of the United States.

United States. Thank you Mr Chairman. My delegation has long maintained that if the public had knowledge of awards in cases which may have a bearing on awards in similar cases, that knowledge would encourage settlement by the parties affected. Hence we find ourselves in agreement with the view of the Soviet Union that the existing text is acceptable to my delegation; however, we would also support their proposal to delete the phrase “and if need be” with the consent of the parties.

The Chairman. The next speaker is France. Is that to comment on the proposal of the USSR I suppose.

France. Yes Mr Chairman. On the one hand we appreciate the fact that the Soviet Union delegation should agree with ours that is to say to delete the words “if need be” which means that the publication of arbitral awards will always require the consent of the parties. But in its proposal the delegation of the Soviet Union made an addition to delete “with the consent of the parties” and this would be going directly against the French proposal and it would also be going against the basic text of the Convention because in that case it would mean that States shall encourage as far as possible the publication of arbitral awards. We stick to our proposal. We do believe that if there is to be a publication of the arbitral awards, we need the consent of the parties. So we are in favour of deleting only the words “if need be” but we want to keep the words “with the consent of the parties”.

The Chairman. I still have a long list of speakers. Just to announce that it is my intention to proceed to an indicative vote on all these amendments. I now give the floor to the delegation of Sweden.

Sweden. Thank you Mr Chairman. This delegation could live with the present text. It could accept the French proposal and I see also the logic of the proposal by the
distinguished representative of the USSR which as we understand it, fully covers also what has been proposed to be deleted. The publication can only be encouraged as far as possible and if consent of the parties is required, you could not go any further. So we certainly see the logic in that proposal made by the USSR but we are quite flexible, but we think that the minimum approach suggested by the USSR would fully cover what we now have in the text.

The Chairman. I thank your flexibility but I must say that it is not easy for the Chair to identify the positions of delegations if delegations say we can accept everything that is proposed. So finally we have to come to an indicative vote to get a clear picture. Democratic Yemen, is the next speaker.

Democratic Yemen. Thank you Mr Chairman. It has been very ably explained what is the background for this proposal by the distinguished delegate of Ireland. I cannot remember which position he took but the explanation was very clear to me in that the idea of this article is to encourage the publication it is not imposing a mandate, it is not obliging a publication but encouraging it. The proposal submitted by the distinguished delegate of the Soviet Union in my view is the clearest and least complicated and therefore this delegation would like to support that proposal.

The Chairman. The next speaker, Republic of Korea.

Republic of Korea. Thank you Mr Chairman. In brief, my delegation supports the proposal put forward by the USSR.

The Chairman. Delegation of Brazil.

Brazil. Thank you Chairman. My delegation considers that the French proposal and the Soviet proposal are quite different from one another and we would prefer to keep in the text the mention of the consent of the parties. We would be in agreement with the deletion of “if need be” because this is perhaps open to controversy, the concept is not clear, but it is our considered opinion that the consent of the parties is a concept that should be kept within this formulation. So if we have an indicative vote on this we would prefer to have both proposals submitted to the Assembly separately.

The Chairman. We will vote on both proposals separately. Greece.

Greece. Thank you Chairman. I am sorry to say that all the teething troubles that have erupted in the last half hour before the tea break originate from the fact that in spite of some objections, this draft has included a text that is fit for a resolution. When you draft an international instrument, you very seldom put words like encourage; either you do this or you don’t do that. You may leave the decision to the Government (and there you use the word “may”) or you may compel the State party to do something (you use the word “shall”) and the result is what you see now. But I am not going to recriminate only; I agree with the proposal made by the distinguished representative of Brazil. The two proposals are entirely different, we do believe that if we cannot check this out and put it in a resolution, then the best thing would be to have separate votes. In so far as this delegation goes, it’s in favour of the French proposal. We do not believe that any State should be encouraged to get into confidential items and compel everybody to pass them on. If you delete the question of the consent of the parties, then you are open to leakages or whatever, and then we would not like an arbitration award which was published in my country to be leaked to another country and then published in another publication. Therefore, in our view, the French proposal is the one that this country is going to support.
The Chairman. Thank you. I have on my list the delegation of Italy, and I hope we can then conclude the debate. Italy, you have the floor, Sir.

Italy. Thank you, Mr. Chairman. I will be very brief in order to underline the fact that Italy agrees with the French proposal. Thank you, Mr. Chairman.

The Chairman. Thank you. We will proceed with the vote in the following manner. We will first vote on the French proposal. If the Committee agrees to that proposal, we can vote on the proposal of the USSR. If the proposal made by France to delete the words “if need be” is not accepted, the proposal of the USSR would become meaningless and we cannot vote on that. Is that correct? Mr. Ivanov, let us assume “if need be” is kept in the text and the Committee is not ready to accept that, then I read it with these words and with the deletion of your words, it would mean that the text reads: “and if need be the publication of arbitral awards”. Let us assume your proposal would have been accepted. That is the reason why I start with the French proposal. In my opinion, your proposal depends to a certain extent on the decision with regard to the French proposal. USSR, you have the floor, Sir.

USSR. Thank you, Sir. I think the answer is No. I think you have misunderstood me. I am not correcting the French proposal simply because it exists. If there was no French proposal, then our delegation would vote in favour of the original draft text, so if we reject the French text, we would prefer to vote in favour of the basic text. Thank you, Sir.

The Chairman. I tried to understand you and this was just what I explained. If we reject the French proposal to delete the words “if need be”, your proposal becomes either meaningless or your preference would be to stay with the basic text – that is the same result, Mr. Ivanov. Is that acceptable that we first vote on the French proposal and then you can see what you may decide on your proposal? In any event, the rejection or refusal of the French proposal means that your proposal is meaningless. Well, France is it on this procedure? We have closed the debate, Mr. Douay. You nevertheless want to take the floor?

France. Certainly, Sir. I think the vote is based on the following. Do delegations require the consent of parties when an arbitral award is published or not? The basic text does not require it and the Soviet proposal deletes the requirement, but if according to France, we delete “if need be”, then we should vote on whether you are in favour or against the consent of parties for publication of arbitral awards. So you are faced with the basic text with “if need be” or the Soviet proposal. It seems clear to me, Sir, thank you.

The Chairman. That is what I had just explained that I am going to proceed in the way that you have now repeated. Well, we come to the vote. First we vote on the French proposal to delete the words “if need be”. Who is in favour of that deletion. Please raise your cards. I thank you. Who is against that proposal? Please raise your cards. I thank you. The result of the vote is 31 in favour and 7 against. That means we can now vote on the USSR proposal. Is that acceptable, Mr. Ivanov? Do you insist now on it?

USSR. No, Sir. There is no need to vote because the result is clear. Thank you, Sir.

The Chairman. Mr. Ivanov, we have just deleted the words “if need be” but nevertheless you would not insist on a vote on your proposal. O.K. Well, the delegation does not insist, so we cannot vote on that unless another delegation has a wish to reintroduce the USSR proposal. The Seychelles.
Seychelles. Mr. Chairman, my delegation would like to put this proposal formally to the floor.

The Chairman. A proposal originally put forward by the USSR, yes? O.K. Well, who is in favour of the deletion of the words “with the consent of the Parties” as proposed now by the Seychelles? Please raise your cards. Thank you. Who is against that proposal? The result of the vote is 10 in favour and 30 against, which means that that proposal has not been adopted. We have only adopted the French proposal to delete the words “if need be”. Is the text now clear? We now have a text that reads: “Contracting States shall encourage, as far as possible, and with the consent of the Parties the publication of arbitral awards”, and so on. Liberia.

Liberia. Thank you, Mr. Chairman. Mr. Chairman, we regret to make this request but we are not very clear on the vote that was just taken and would like the indicative vote to be taken again. Our source of confusion was that we did not get the reading quite clearly. Our understanding was that we were voting on the phrase “and if need be with the consent of Parties” was supposed to be deleted, but I did not get that full reading from you, when you put the matter to the vote.

The Chairman. I am sorry. I clearly said that we will first vote on the French proposal, and I said the French proposal would mean to delete the words “if need be” and we voted on that and there was a great majority in favour of that deletion. Then we came to the next vote, the proposal made now by the Seychelles to delete the following words “with the consent of the Parties” and this proposal has not been adopted by the Committee, which means that these words are kept in the text. There is no need, in my opinion, to repeat the voting procedure. Liberia.

Liberia. Mr. Chairman, was that Seychelles wholly adopted the proposal made by the USSR, and their proposal was that the entire phrase “and if need be with the consent of the parties” should have been deleted. What I understood we voted on here was the deletion of only the phrase “with the consent of the parties”.

The Chairman. In the second vote, yes. I repeat it; we voted first on the French proposal to delete the three words “if need be” and there was an overwhelming majority in favour of that proposal. Consequently we have deleted these words from the text. And then we came to the second proposal, originally made by the USSR, but they did not insist on a vote on that. Now Seychelles has re-introduced it, and that proposal was to delete the words “with the consent of the parties”. We voted on that and that proposal has not been adopted. There were 10 in favour and 30 against. I do not see any need to repeat the voting. It was quite clear, unless the Committee feels that there was a confusion but I do not think so. We have clearly indicated that we first voted on the French proposal and then on the proposal re-introduced by the Seychelles.

Seychelles. Mr. Chairman, when one looks at the Soviet proposal, the consequence would have been the deletion of “and if need be with the consent of the parties”, and this was the basis of the Seychelles proposal. Thank you.

The Chairman. I am sorry. We have had two proposals. We had the French proposal to delete “if need be” and that has been adopted. We could not again vote on these words which were already deleted in accordance with the first vote. We could not come back to these words. That is impossible from a procedural point of view. We had only to vote on the remaining words “with the consent of the parties”. That was the only possibility. There is no other possibility. The other three words have already
been deleted in accordance with the first vote on the French proposal, and that is the Situation. Yes, the Secretary-General.

**The Secretary-General.** Thank you, Mr. Chairman. This second vote proceeded on the basis that the French proposal had been finally accepted and, therefore, there was no need to vote on that part again – “if need be” – in other words, the Committee, when it voted on the Seychelles proposal, was voting on the text as already amended by the French proposal. That was the position and therefore it was an amendment to the French proposal, as it were. In other words, the French proposal was finally settled. That, Mr. Chairman, is as I understand it, and that having been done, it was for the Committee to decide whether to re-open the whole thing but the Committee did not agree to re-open.

**The Chairman.** The main problem is that we cannot vote on words which have already been deleted and which are not in the text. Ladies and gentlemen, there is a problem. By voting on the French proposal we deleted these words. They were no longer there, and how can we vote on words which are no longer in the text? Liberia.

**Liberia.** Thank you, Mr. Chairman. We accept your ruling and proceed with the work. I do not think we should hold it up any more.

**The Chairman.** Well, Islamic Republic of Iran, is that on the procedure, because we have finished with the substance. Yes, you have the floor, Sir.

**Islamic Republic of Iran.** Thank you, Mr. Chairman. This delegation is of the view that, according to Rules of Procedure of the conference, it would be more convenient to first vote on the proposal made by USSR because it was the farthest removed from the main text, and if the vote had not a positive result then we would again vote on the proposal made by France. That would make things very easy and there would be no confusion. Thank you.

**The Chairman.** Voting first on the proposal originally made by the USSR means the text would no longer be a readable text. Please take the text and delete first the words “with the consent of the parties”. What does it mean: “...and if need be the publication of arbitral awards“?

**The Secretary-General.** Mr. Chairman, I beg to apologize. My own view would be that the USSR proposal was a complete proposal in itself and that was to delete the words “and if need be with the consent of the parties”. That total phrase was intended to be deleted, and what the distinguished delegate of Iran says is that was furthest removed from the original text, that according to the Rules of Procedure that would have been put to the vote first. If that was not accepted, then the French proposal would have been put to the vote and that confusion would have been avoided. Thank you, Sir.

**The Chairman.** May I ask the USSR to explain the proposal of their delegation. This is the last attempt to clarify the situation, and then we may vote on the procedure. You may over-rule my ruling. I stay with my ruling.

**USSR.** Thank you, Sir. We thought, and as far as we can follow up other statements from other delegations, our proposal is very clear cut. We suggested to delete the following words: “if need be with the consent of the parties”. That is the USSR proposal, so that the entire article would read as follows: “Contracting States shall encourage, as far as possible, the publication of arbitral awards made in salvage cases”. That is our original proposal. If necessary we will re-introduce it, and if in
In accordance with the Rules of Procedure it has to be voted on first, then let us vote on that before we get down again to the original French proposal. Thank you.

The Chairman. I must say that in this case I understood wrong. I understood your intention was only to propose the words “with the consent of the parties”, and speaking in favour of the French proposal so that we had two proposals before us, and for that reason I proceeded in the manner I proposed. I will then try to clarify the situation with regard to the procedure. Democratic Yemen, please.

Democratic Yemen. Thank you, Mr. Chairman. In fact, when we spoke in favour of the proposal by the Soviet Union, we spoke on the understanding that the whole sentence as has been read recently by the USSR delegate was proposed. I think the main confusion factor, at least to me, was when the Soviet delegation withdrew their insistence for further voting, because I think there was no basis for such withdrawal. Having understood now that the Soviet Union have actually confirmed my recent understanding, I am in agreement with the view expressed by the delegate of the Islamic Republic of Iran that the voting should be first on the Soviet proposal. Thank you, Sir.

The Chairman. Well, this is a consequence of discussing oral proposals. This is a warning and shows clearly that one should be very careful in voting on proposals which have not been submitted in writing to make that clear. If it is apparently the wish of several delegations to repeat the voting procedure exceptionally I will do that and I will do that without voting on the ruling which I have given, I withdraw my ruling just to give way to an immediate procedure. The normal procedure would have been that the Committee has to overrule the ruling of the Chair, but I withdraw my ruling so the way is free for a repetition of the whole procedure and now we have clarified the whole text of the USSR proposal, we will first of course vote on that, and I ask the Committee depending on the outcome, in any event, we have also to vote on the French proposal if that proposal of the USSR is not accepted. The proposal submitted by France remains in these circumstances pending, is that clear? No complaints after the vote again. Fine. The question is now, who is in favour of deletion of the following words, I read these words: “and if need be with the consent of the parties”? Please raise your cards. Thank you, Who is against? Thank you. The result of the vote is 10 in favour, 34 against. We have consequently to vote again on the French proposal, to delete only the words “if need be”. Who is in favour of the deletion of these words? Thank you. Who is against that proposal? Please raise your cards. Thank you. The result of the vote is 33 in favour of deletion of these words, 8 against. That means we have the same result. We have now a text from which we excluded the words “if need be”, the rest of the text remains unchanged. We have had that result already before. That means we have finished with article 23, we have already taken up the remaining articles from 24 to 25.

25 April 1989
Document LEG/CONF.7/VR.171

The Chairman. We have on article 23 to decide on the wording. We have made by an indicative vote a decision and we have now to vote formally on that proposal. You will remember that was the decision where we had all that procedural trouble and I hope that will not start again. To make it quite sure, may I ask the delegation of the USSR whether the proposal of that delegation should be put to the vote? Thank you. We have only to deal with the French proposal to delete the words “if need be”. We have to decide upon three words: “if need be”. Who is in favour of the deletion of
these three words? Please raise your card. Who is against the deletion of these three words? Please raise your card. Abstentions? The result of the vote is 38 in favour of the deletion, 2 delegations against and 10 abstentions.

**United States.** Mr. Chairman, just a point of order. I believe in our actions just now on article 23 we voted on the issue of the words “if need be” but I do not recall you voting on acceptance of the entire article.

**The Chairman.** Thank you. Can we turn just for a moment to article 23. Can I take it that article 23, as amended, is accepted by consensus, or is there a delegation which wants to have a vote on it? That is not the case. That means that article 23, as amended, is adopted by consensus.

**Draft Articles agreed by the Committee of the Whole (Document LEG/CON F.7/CW/5)**

Article 23. Publication of arbitral awards

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

**Text examined and approved by the Drafting Committee (Document LEG/CON F.7/DC/6)**

Article 27. Publication of arbitral awards

Plenary Session 28 April 1989

Document LEG/CON F.7/VR.230

**The President.** Article 27, as it is here, the distinguished delegation of Sweden.

**Sweden.** Mr. President, in order not to start another lengthy debate may I just, with your kind permission, ask the distinguished Chairman of the Drafting Committee whether it is on purpose, the word “awards” is being used both here in the heading and in the text. While in the other provisions reference is made to rewards. I have no proposal whatsoever, I just would seek clarification on this point. Thank you.

**The President.** Thank you, Sir, chairman of the Drafting Committee has the floor.

**Chairman of Drafting Committee.** Thank you Mr. Chairman. The drafting committee struggled with that question and it was made clear that an award is a decision and a reward is an amount, and that principle has been followed throughout the draft. That is the reason, thank you.

**The President.** Distinguished delegation of the United Kingdom.

**United Kingdom.** Mr. President, we entirely agree an award is correct in article 27.

**The President.** Thank you, Sir. If there are no further remarks article 27 is approved.

---

(212) The Drafting Committee approved the text approved by the Committee of the Whole.
ARTICLE 28
Signature, ratification, acceptance, approval and accession

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

2. States may express their consent to be bound by this Convention by:
   (A) signature without reservation as to ratification, acceptance or approval; or
   (B) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
   (C) accession.

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

IMO DRAFT FINAL CLAUSES
Prepared by the IMO Secretariat
Document LEG/CON F.7/4

Article ... - Signature, ratification and acceptance

1. This Convention shall be open for signature at the Headquarters of the Organization from ___________ to ___________ 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.

International Conference
Committee on Final Clauses 25 April 1989
Document LEG/CON F.7/V.R.173

The Chairman. The main task before this Committee is to agree on the final clauses which are presented in draft by the Secretariat of the Organization in document LEG/CON F.7/4213, and I would propose that we go articles one by one. I

(213) The individual draft final clauses prepared by the IMO Secretariat will be found under the relevant article.
would like to draw your attention to the second document LEG/CONF.7/5 is closely connected with the first article on signature ratification and acceptance and also closely related to the denunciation article. I would suggest that we start with document 7/4, the first article and when we finish paragraph 3, we go into document 7/5 and deal with the proposal there which is suggested to be paragraph 4 of the first article. Seeing no disagreement to that proposal I would ask the Secretariat to introduce the first article.

The Secretary. Thank you Mr Chairman. I would like to suggest that for the convenience of the Committee, you may wish to number provisionally the articles and I would suggest that the article on signature should be article (a), the article on entry into force should be article (b), the article on denunciation should be article (c), the article on revision and amendment to be article (d), the article on depository should be article (e) and the article on languages to be article (f).

(214) Document LEG/CONF.7/5
Draft Final Clauses
Note by the Secretariat
1 The draft final clauses for the draft convention on salvage which had been prepared by the Secretariat (document LEG/CONF.7/4) were considered by the Legal Committee at its sixtieth session (October 1988).
2 In the discussion of the Committee it was noted that the draft provision relating to denunciation would not appear to permit a Contracting State to denounce the convention prior to the entry into force of the convention. The delegation which raised the matter felt that this could create problems for States if, after having ratified the convention, it became clear that the convention was not likely to enter into force in the near future. In such a situation a Contracting State should be able to denounce the convention, if it wished to.
3 In this connection the suggestion was made that, prior to the entry into force of the convention, the issue would be one of the withdrawal of the consent of the State to be bound, and not the application of the provision on denunciation, which would only become applicable after the convention itself had entered into force. Furthermore, it was noted that the question of the withdrawal by a State of its consent to be bound by a treaty which had not yet entered into force appeared to be best settled by reference to depositary practice and general treaty law, rather than on the basis of the interpretation of the terms of a convention which was not yet in force.
4 It was, however, noted by some delegations that the denunciation of a convention which was not yet in force might be necessary in some cases. It was also pointed out that the absence of clear and generally accepted international law rules on the subject had, in the past, created problems for some States.
5 Accordingly the Legal Committee requested the Secretariat to consider the possibility of including some draft provisions in the final clauses of the salvage convention to deal with the problem. In this connection, the suggestion was made that a provision might be included to state that instruments of denunciation deposited before the entry into force of the convention would become effective from the date of entry into force of the convention, and would not be subject to the normal one-year delay period.
6 In accordance with the request of the Legal Committee and in the light of the views expressed in the Committee, the Secretariat has prepared an additional draft provision regarding the withdrawal of the consent of a State to be bound by the convention prior to the entry into force of the convention. The new provision to be added to the draft article (A), Signature, ratification, acceptance, or approval would read as follows:

4. A state which has expressed its consent to be bound by this Convention may withdraw
The Secretary. Mr Chairman, with regard to article (a) the article has been based on previous articles of this nature. There is only one slight difference in that in paragraph 2, we have used the expression “may express their consent to be bound”. This is not entirely new, the same expression was used for the Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation adopted last year in Rome and it had been found that it is a very convenient and neat expression which avoids the need to repeat the expressions “ratification acceptance, approval or accession” in the various articles where those expressions would otherwise have been used. There is only one thing I would like to call attention to, that is the heading of article (a), it should in fact be “signature, ratification, acceptance approval and accession”. I think it is useful to have all those expressions as the heading.

The Chairman. May we take the first point which is the proposal of the Secretary of this Committee regarding the change to the heading by adding the words “approval and accession”. Do we approve that addition? Is there any objection to that addition to the heading. No objections. So the new heading of the first article provisionally called article (a) is: “Signature, ratification, acceptance approval and accession”. If we go into the first paragraph of this article, we will note that there are some blanks which we need to fill. “This Convention shall be open for signature at the headquarters of the Organization, from _______ to ________ and shall thereafter remain open for accession”. Are there any proposals for the dates that are to be filled in these blanks. I have a suggestion from the Secretariat that it should be from 1 July 1989 to 30 June 1990, that is 12 months. Is that proposal acceptable to this Committee or are there any counter proposals? Shall I assume that it is so approved. It is so, therefore paragraph 1 of this article is approved with the insertion of the dates 1 July 1989 in the first empty space and 30 June 1990 in the second empty space. The second paragraph of this article is quite conventional as Dr Mensah has suggested and it has been used in previous conventions such as the Convention on the Law of Treaties 1969 and also the Convention which has just been mentioned by Dr Mensah. Are there any objections to this paragraph as presented in the document? The United States.

United States. Thank you Mr Chairman. I would not call it an objection but a comment. We noted that in fact in the Rome 1988 document the text that was used in the first part which states that “States may express their consent” was used but we would prefer the text that was used in the previous conventions such as SOLAS 74 in that it was a simpler text and merely read “States may become Parties by: a, b, c”. Our suggestion then would be that instead of these texts presented to us which reads: “States may become Parties by:”

The Chairman. The Secretary would like to explain a point on this.
**The Secretary.** Thank you Mr Chairman. I just want to recall that in fact this was the proposal that was before put forward but in the discussions some delegations objected by saying that this is not quite correct because the State which signs the convention and which ratifies may not be a party because if the convention is not in force the State cannot be a party and of course in the older days we used these expressions without too much care but following the entry into force of the Vienna Convention on the Law of Treaties, some delegations in fact suggested this. I do not think that is a question of substance. It is entirely up to the Conference to decide whether to have one or the other because there are precedent for either but I just wanted to explain that the reason why in Rome it was decided to use this expression was that some delegations felt that it was not strictly speaking, correct to say that a State could become a party by signing or by ratifying.

**The Chairman.** In fact there is not much difference as far as the substance of these different proposals. However, in view of the explanation that has been given to us by Dr Mensah as a result of the Convention on the Law of Treaties 1969, I would like to ask the distinguished delegate from the United States if he would like to press for his proposal to be a formal proposal. The United States decline their right to speak. Having agreed that the beginning of paragraph 2 should remain as it is, are there any further comments on paragraph 2 of this article? There are none. Do I take it that we approve that paragraph 2 of this article as a whole? We go now to paragraph 3 and I would like to ask for any comments on this paragraph. Cyprus.

**Cyprus.** Thank you, Mr. Chairman. Just an observation. We refer here to the Secretary-General and in the first paragraph to the Organization. If we look in the definitions, these terms are not defined. I wonder whether it would be advisable to introduce these terms as definitions in article 1 of the convention so we have a clear picture of what is going on, or to qualify these terms in these paragraphs and carry them further downwards. Thank you.

**The Chairman.** Thank you. I think that is dealt with in provisional article (a) which is? I would ask the Secretariat to comment on that point. Mr. Mensah.

**Mr. Mensah.** Thank you, Mr. Chairman. Yes, in fact there is a proposal to be put before the Drafting Committee to have in the article of definitions in article 1 a definition of the Organization and of the Secretary-General, so I think this point will be reported to the Drafting Committee as reinforcing the proposal already before them.

**The Chairman.** Thank you. So we understand from the Secretariat that it is already being dealt with by the Drafting Committee and we will ensure that that is reflected in our request to the Drafting Committee to take that into consideration. Are there any more comments or observations on paragraph 3? There are none. Do I take it that we approve paragraph 3 as laid down in this document? It is so done. Thank you very much. Now, ladies and gentlemen, I would like to refer you to the other document, which is document LEG/CONF.7/5, which has on page 2 a proposal to add a fourth paragraph to this article under discussion. Since this point has been discussed at length during the meetings of the Legal Committee, I would like Mr. Mensah to kindly explain to us the background to this new proposal.

**Mr. Mensah.** Thank you, Mr. Chairman. The background to this document was the discussion in the Legal Committee when the Committee discussed the draft article on denunciation. The point was made that with the article the way it was drafted, a State which deposited an instrument in respect of the convention would not be able to
denounce the convention if, as was hoped, the convention did not enter into force for a very long period of time. It was explained in the Legal Committee that, as far as the Secretariat was concerned, the question would not be one of denunciation, but rather whether it would be possible for a State in such a situation to withdraw the instrument which it had deposited in the event that the convention did not meet the requirements for entry into force for a very long time. But some delegations felt that something in the convention making this clear would be helpful, and the Secretariat was therefore requested to consider a suitable draft for submission to this conference. We have examined the matter and we feel that it will not be possible legally to provide in the article on denunciation that denunciation can take effect before the entry into force of the convention because that would, in fact, not be legally possible. We therefore felt that if the conference felt it wanted to do anything at all on that subject, perhaps the most appropriate and least objectionable course would be to state in clear terms what we in the Secretariat view to be the position; that it would be possible for a State which deposits an instrument to withdraw that instrument before the conditions for entry into force of the convention have been met. This, of course Mr. Chairman, is a question on which there is no agreement. It is a question which has not been addressed hitherto in any major diplomatic conference, and therefore the Secretariat does not submit it as a proposal but merely as a suggestion in case the conference decided to address that particular question on this occasion. Thank you, Mr. Chairman.

**The Chairman.** Thank you Dr. Mensah for that very clear explanation regarding the reasons behind this proposal, and also the reasons for introducing it in the first article (a) if the Committee approves such introduction. I will invite comments on this point and the first speaker is the delegation of Japan.

**Japan.** Thank you Mr. Chairman. With regard to the paper 7/4\(^{(216)} \) especially article (a) and article (c) and also with regard to the withdrawal idea, that idea which is presented by the Secretariat in the paper 7/5, I wish to express our opinion on these two matters. We are now discussing to adopt the better text agreeable to all States. If once we adopt the Convention by consensus or even by a great majority, we should make effort for its entering into force. In other words, at this stage what we should do is co-operation or effort for the entering into force as soon as possible by all States. However, the draft text of paragraph 4 by the Secretariat on the paper 7/5 is based on the assumption of long delays of entering into force of the Convention. Otherwise there would be no need for a possibility to permit a State to withdraw its consent to be bound by it. Because after quick entry into force, the provision of denunciation is applicable to this case. Therefore, bearing in mind the effort to be made by all States, I do oppose the inclusion of the drafted text of paragraph 4 and I strongly support the ordinary text of 7.4 as it is. Of course, I do not want to rule out the possibility of long delay of entering into force. As a matter of fact, if it is the case, I wish to suggest some idea or provision to the effect that the Organization may convene a conference for revision by State Parties or State interested, say five years or so after its adoption. Thank you, Mr. Chairman.

**The Chairman.** Thank you very much, distinguished delegate of Japan. Your idea is quite clear and your reasons for opposing this additional paragraph are, I think, understood by this Committee. However, one point that the Secretariat has made and

\(^{(216)}\) See text at p. 516.
I would like to come back to it, is that the Secretariat are not proposing it as something essential but to deal with the fears that have been expressed by some delegations during the previous deliberations. It is our hope that the Convention will come into force as soon as possible, and therefore there will no need for this point. You have also suggested a new provision may have to be made in case the Convention does not come into force within a short time. I would ask you if possible to prepare some draft in case the Committee would like to come back to it, but for the time being I would like to ask for any further comments with regards to the retention or deletion of this paragraph as proposed in 7/5. The United Kingdom.

United Kingdom. Thank you, Mr. Chairman. This delegation has no very strong feelings about the text proposed in 7/5. We do, however, have some sympathy with what the Japanese delegation has just said, and our sympathy arises really in the following circumstance: sometimes a State when proposing to ratify and seeing what its law is likely to be in the near future, takes account of which States have or have not ratified before and the likelihood of the date when it should come into force. Now, if it decides to ratify and, say, ten States have previously ratified so that there is a chance of it coming into force, and then one of those ten States withdraws, it finds itself not quite in the position that it thought it might be. That would be my only slight reason for having some doubt about the Secretariat’s text but as I say, we have no very strong feelings. Thank you, Mr. Chairman.

The Chairman. Thank you very much, Madam. Do I take it that the United Kingdom are supporting Japan in the fact that this paragraph is not necessary?

United Kingdom. Yes, Mr. Chairman, we think it is not really.

The Chairman. Thank you very much, Madam. We have now two delegations who have spoken against the inclusion of this paragraph as proposed in document 7/5. I would like to ask if there are any delegations who would support the inclusion of this paragraph? So there are no delegations who wish to support this paragraph, therefore it is, if I understand the Committee correctly, the wish of the Committee not to take the proposal on. It is so. May I ask further if the distinguished delegate from Japan would like to pursue his previous suggestion that a new paragraph should be introduced to deal with situations where the Convention may take a long time to be ratified and come into force. M r. Chebat.

Japan. Yes thank you Mr. Chairman. Of course we are now satisfied with the deletion of the draft text suggested by the Secretariat so I do not want to propose that new provision. Thank you Mr. Chairman.

The Chairman. Thank you very. Therefore, we have finished discussing Article (a). May I ask you if we can approve the Article as a whole now. No opposition. It is so adopted. Thank you.

27 April 1989
Document LEG/CONF.7/V R. 200

The Chairman. I will give you an indication of the work that has been carried out so far and the work of this Committee is in relation to two documents, document LEG/CONF.7/4, which is the document containing the draft final clauses, and another document LEG/CONF.7/5. When discussing the first article, article (a), there was a change in the heading, which was approved by the Committee; the heading now reads as follows: “Signature, ratification, acceptance, approval and accession”, so
there is the addition of the words: “approval and accession” at the end of the heading. In the first paragraph we have filled the blanks with the following dates. “This Convention shall be open for signature at the Headquarters of the Organisation from 1 July 1989 to 30 June 1990”. There were no further changes. This article was adopted.

**Draft Final Clauses agreed by the Committee on Final Clauses**  
(Document LEG/CONF.7/FC/2)

**Article A. Signature, ratification, acceptance, approval and accession**

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

2. States may express their consent to be bound by this Convention by:
   (a) signature without reservation as to ratification, acceptance or approval; or
   (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
   (c) accession.

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

**Text examined and approved by the Drafting Committee**  
(Document LEG/CONF.7/DC/6)

**Article 28. Signature, ratification, acceptance, approval and accession**

**Plenary Session 28 April 1989**  
**Document LEG/CONF.7/VR.230**

The President. We come now to chapter 5 Final Clauses. And I submit to your attention Article 28. If there are no remarks, it is approved.

---

(217) The Drafting Committee has approved the text approved by the Committee on Final Clauses. The Article has been renumbered Article 28.
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.

IMO
Draft Final Clauses
Prepared by the IMO Secretariat
Document LEG/CONF.7/4

Article b-Entry into force

1. This Convention shall enter into force following the date on which 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 after the date of expression of such consent.

International Conference
Committee on Final Clauses 25 April 1989
Document LEG/CONF.7/VR.173

Article b-Entry into force

The Chairman. Now Article (b) on page 2 concerns the entry into force and again we have some blanks to fill both in paragraph 1 and paragraph 2 regarding the requirements or the dates for entry into force. Paragraph 1 reads: “This Convention shall enter into force...” Then we have to put the period following the date on which so many States have expressed their consent to be bound by it. May I ask for any proposal to fill these gaps or would you like us to put a proposal from the Chair and the Secretariat? No proposals coming. Shall we follow the example which has been followed by several Conventions which have been passed lately namely, the Search and Rescue, the Suppression of Unlawful Acts and the CLC, whereby the required period is 90 days and the number of States 15. Therefore paragraph 1 would read as follows: “This Convention shall enter into force 90 days following the date on which 15 States have expressed their consent to be bound by it.” May I have any comments on this proposal please? No comments. Yes, Greece.

(218) This Article was numbered (b) by the Committee but the text prepared by the IMO Secretariat was left unvaried.
Greece. Thank you Mr. Chairman. As it is the first time of taking the floor in this Committee on Final Clauses, we would like to congratulate you on your election and I am sure you will cope with this delicate matter with your very well known efficiency. I do not have any objections to the numbers suggested so far, Mr. Chairman, but I should like to know if it was discussed or not in the little committee the question of gross tonnage. In some other Conventions we used to say that the number of Countries representing a gross tonnage, a minimum gross tonnage or the whole capacity would ratify the Convention and then the Convention could enter into force internationally. I do not know if this is exact now and the reasons. Of course, I can understand why it is not the case in the terrorist Convention but here at least there are arguments in favour. Thank you Mr. Chairman.

The Chairman. Thank you very much for your kind words. It is true what you have stated that many Conventions require a certain limit of tonnage as well as a certain number of Countries. For example, the SOLAS 1974 and MARPOL 73/78. However, with regards to your question as to whether the Legal Committee has discussed this in detail, I think Dr. Mensah is best suited to answer that question. Dr. Mensah.

The Assistant Secretary-General. Thank you Mr. Chairman. The answer to the question is that as far as I recall the Legal Committee did not discuss the question of the qualification and I can only speculate as to why. In this connection, Mr. Chairman, I think I should recall that even in the case of some of the technical Conventions there have been places where the number was just an absolute number without any tonnage conditions. I refer, Mr. Chairman, to the Search and Rescue Convention to which you yourself made reference and also to the Safe Containers Convention. But for the Legal Conventions that have been adopted, the Civil Liability Convention did have a specification about the number of Countries with a million tons of tanker tonnage. The Limitation of Liability Convention did not have any tonnage requirements and therefore when they left our Committee my assumption is they assumed that it was of a similar nature to those other Conventions which did not have a tonnage requirement. The short answer is that this was not discussed; the draft was put to them more or less in this form and the question of tonnage was not mentioned in the Legal Committee.

The Chairman. Thank you very much, Dr. Mensah. I have three speakers on my list and I will give the floor first to the distinguished delegate of the Netherlands.

Netherlands. Thank you Mr. Chairman. We would like a little lower figure in paragraph 1, than the mentioned 15; we are thinking of 10. Also, we would not like to have another qualification in this Article. Thank you very much.

The Chairman. Thank you very much. The distinguished delegate of the United States of America.

United States. Thank you Mr. Chairman. We would agree with the 90 days. We would support the suggestion of the Netherlands that the number of Countries be reduced to 10. We would agree with Dr. Mensah that the issue of tonnage was not discussed in the Legal Committee and if not for that reason alone because I have just run over some logic in my mind, we would not support the addition of a tonnage issue here. Thank you, Sir.

The Chairman. Thank you very much. The distinguished delegate of the United Kingdom.

United Kingdom. Thank you Mr. Chairman. Our only query about the insertion
of 90 days is that I think it is one year required for denunciation of the 1910 Convention. And I wondered, therefore, whether the insertion of 90 days here might cause inconvenience to States. As to the number of States that would be required to ratify, we also would prefer a lower number. We had thought of a number rather less than ten as a matter of fact, but I think that ten would be a good number. As to the insertion of the gross tonnage figure, on the whole we would be opposed to that on the basis that while it is suitable for Conventions where you have, for example, a certification system that has got to be fairly widely accepted by States, it seems to us that the size of the tonnage bound by the Convention when it first comes into force, as it were, is not so material in a civil law Convention such as this and therefore we would oppose its introduction in this case.

The Chairman. Any other observations? China.

China. On this article, we do not have any strong opinion on the number of Countries. We could accept the number of ten. But as for the 90 days, we should take into account the characteristic of this Convention. This Convention would require that the member Countries should consider some more matters which are related to the signing of contracts and other related matters, so we consider this 90 days' period too short. I have studied some other similar Conventions where a period of 1 year is required. So maybe we should have a longer period of time than 90 days.

The Chairman. Italy.

Italy. Mr. Chairman, we have no particular proposal on this. We can even go along with the proposal made by the Secretariat, that is to say, 90 days and 15 States. Of course, if there is a majority for a lower number, we could go along with that too, and we could accept, therefore, a lower figure if there is a majority wishing that.

The Chairman. I'll give the floor now to the distinguished delegate from Sweden.

Sweden. Thank you, Mr. Chairman. We too believe that a figure of 15 would be on the high side. A lower number, as has been suggested 10, we think would be approximately right. We would not like a tonnage requirement introduced in this context. As has been pointed out, there are precedents where we don’t have this kind of requirement. We all want this Convention to enter into force as soon as possible and not to have this requirement would be more conducive to an early entry into force. As regards the time to be set out – that is, 90 days or one year – what has been pointed out by the UK delegation is important in this context. We should go for one year in order not to create complications in relation to the other Convention.

The Chairman. No further observations? The United States.

United States. Thank you, Mr. Chairman. If I may just interject this. It is an inappropriate time but in a way it is related. After we finished the second paragraph of this article, it was this delegation's intention to suggest that a new paragraph be added which read something like this: “As between Parties to both instruments, this Convention shall supersede the 1910 Salvage Convention”, using its full name. I am not sure if that eliminates the one year problem or not.

The Chairman. Thank you very much. I think we will deal with that when we finish with paragraphs 1 and 2. We will then see if there is acceptance to your proposal by the Committee. We will proceed with paragraphs 1 and 2 and then we will come back to your proposal, if you don't mind. The reason for introducing the 90 days and 15 States from the Chair is just to start the discussion really, because there was no proposal
coming from the floor and once that proposal was introduced we received several proposals. First, there are three States who have supported the 90 days and three who have suggested 12 months. But I don't think that any of the speakers have very strong feelings regarding the 90 days. With regard to the number of States required, the majority of States who have spoken prefer ten States to be the limit for entry into force. I would just like to point out that should the ten States who ratify the Convention – if we accept the number as ten – are those States who own the main salvage companies, there will be no problem, but we have to think of a situation where probably we get ten ratifications from States who own not a single salvage company between them. So that has to be probably considered, but obviously the Committee is at liberty to take whatever decision it sees fit. I'll give the floor to the distinguished delegate from Greece.

**Greece.** Thank you, Mr. Chairman. I am sorry to be asking for the floor again, but I would just like to comment on your last words, to which I fully subscribe. Here in this room we are only a few Countries from the whole assembly of the Conference and I think the number of ten is very small. This number could make a family Convention, not a Convention for the shipping community. That is why I suggest 20 Countries at least, and I think that a final decision should be taken at the assembly or at least in the Committee of the Whole - I don’t know which is the correct place, but anyway in a body where more Countries are present.

**The Chairman.** Thank you very much. We have a proposal by the distinguished delegate from Greece that the number of States should be 20 instead of the proposed figure of 15 by the Chair and ten by some delegations. I'll give the floor to the distinguished representative of Saudi Arabia.

**Saudi Arabia.** Thank you, Mr. Chairman. In article (b) you have proposed that the number of days should be 90. Some Countries proposed that it should be 12 months and then there was a discussion on the number of Countries. The Greek proposal was in respect of the number. We should take into consideration the state of the Countries - are they big Countries, small Countries, do they have salvage companies or not? We believe we should take into consideration the number of Countries and also the tonnage. We could say this Convention should enter into force after 12 months following the date on which 15 States and we should here specify the gross tonnage of these 15 Countries. Thank you Mr. Chairman.

**The Chairman.** Thank you very much the delegate from Saudi Arabia. With regard to the tonnage requirement it has been explained by the secretary of this committee that the point was not taken during the discussion at the Legal Committee because of the nature of this convention itself. The distinguished representative of Greece had suggested an alternative, in other words a way of compromising the fact that no tonnage has been suggested, by increasing the number of States that are required to ratify the Convention before it can enter into force. May I ask you if you would agree with the proposal of the distinguished delegate of Greece or another proposal instead of introducing the tonnage criteria again. Saudi Arabia.

**Saudi Arabia.** Thank you Mr. Chairman. I propose that we should mention the maximum tonnage if the number of Countries is less than 15 then we should specify the tonnage of these Countries. Thank you Mr. Chairman.

**The Chairman.** The distinguished delegate of Spain.

**Spain.** Thank you Mr. Chairman. My delegation also supports the Greek proposal that the number of Countries be 20. We do believe that this convention will
have a very wide acceptance and if you have a reduced number at the outset this would not be a very good idea. Thank you very much.

The Chairman. May I ask you if possible also to comment on the period, the 90 days or the 12 months, it will help the chair very much as delegates could also specify their preference. Thank you, Spain.

Spain. The 90 day deadline would be satisfactory for us.

The Chairman. The delegate of Finland.

Finland. Thank you Mr. Chairman. Just to indicate that we are in favour of a rather low figure in the number of Countries and that 10 Countries is sufficient to us. We don’t see any relevance over tonnage figures in this connection because there are many other factors then which should be taken into account if we are going to find some specifications the Countries should fulfil before the ratification. This would be taken seriously. What comes to the number of days is a little difficult to decide on that matter before we know how the US proposal is treated, because if US proposal is accepted then the 90 days will be sufficient. But on the other hand if it is rejected then we are also in favour of one year. Thank you Mr. Chairman.

The Chairman. Thank you very much. I give the floor now to the representative of the German Democratic Republic.

German Democratic Republic. Thank you Mr. Chairman. Mr. Chairman, Dr. Mensah drew our attention on the International Convention on Maritime Search and Rescue 1979 in the relationship between both conventions we would feel that the importance of the Search and Rescue Convention is higher. Therefore we would support the proposal which was made by the Secretariat, all the figures. On the other hand we do not like any reference to tonnage requirements, thank you.

The Chairman. Thank you very much. The delegate of France.

France. Thank you Mr. Chairman. Insofar as the number of States is concerned for the entry into force of the convention we would also like this figure to be as low as possible to allow the convention to come into force as soon as possible, and here we could go along with the proposal of 10 States, or possibly 12 which was the case for the 1976 Convention on Limitations Liability. As for the tonnage as the UK delegation said I don’t think that this is called for in a private law convention. This is different in other Conventions where you are dealing with specifications on vessels where smaller States would be penalized. This does not appear justified in this instance. As for the time period before coming into force, the 90 days suggested by the Secretariat, I don’t believe this would be any real difficulty for those States parties to both Conventions, that is to say the 1910 and the new one. The Vienna Convention on the Law of Treaties says somewhere that when States are parties to two conventions dealing with same subject it is the most recent one which has a priority so the 90 day deadline could be accepted here without any difficulty. Thank you Mr. Chairman.

The Chairman. The distinguished delegate of Japan has the floor now.

Japan. Thank you Mr. Chairman. I support the 20 States simply taking into account the point raised by you Mr. Chairman. As far as the period is concerned 12 months is preferable to us because it takes at least 12 months to prepare domestic legislation. Thank you.

The Chairman. Thank you very much. The distinguished delegate of the United Kingdom.
United Kingdom. Thank you Mr. Chairman. This delegation in its earlier intervention stated its view that it wished that there would be a small number of States to bring this convention into force. We think that this is particularly important as this convention seeks to encourage the saving of life, the protection of property and the protection of the environment. Three aims I think which we should wish to encourage in the world. Mr. Chairman therefore we consider that the figure of 10 is the maximum figure acceptable to us we would prefer a smaller figure. We have already commented on the relevance of tonnage, we also feel that there is no way in which we can devise a formula which would relate to salvage capacity. Therefore Mr. Chairman we can accept 10, but we accept that maximum figure reluctantly. Mr. Chairman may I turn to the point raised by Finland, we certainly would wish the opportunity to consider the United States proposal but we are concerned that this may not solve the denunciation problem fully because it would not govern a ratifying State's obligations to a non-contracting State. In that case Mr. Chairman as we are a party who ratified the 1910 Convention we would have to state at the moment that our preference is for one year, but we would certainly be happy to consider any means by which that could be reduced to 90 days. Thank you Mr. Chairman.

The Chairman. Thank you very much. Well, distinguished delegates, we have had quite a wide discussion on that paragraph and various opinions have been expressed and in fact as far as the tonnage part of it is concerned, only one delegation has expressed a wish, or have proposed formally, the introduction of gross tonnage, that is the delegation of Saudi Arabia, and I think it would be best to deal with that point first and ask if there is any support for the inclusion of a formula of tonnage as a requirement for the entry into force. Is there any support for it; Greece is supporting this. Now I think that the best way to go about it is to put the proposal to the vote formally and ask for delegations in favour of the proposal of Saudi Arabia to include – obviously we haven’t got a formula of tonnage but we are going to vote on the idea of introducing this formula. Since it has only a limited support may I ask those in favour of introducing tonnage into the formula of entry into force to raise your cards please. Will those against the introduction of tonnage please raise their cards? Are there any abstentions on this point? The vote is 2 in favour; sixteen against, and 1 abstention. Therefore the tonnage problem has now been dealt with, and there are still two points to be settled before the coffee break. If we take into consideration, first, the period that is required, several delegations have spoken in favour of the 90 day limit and almost the same number have spoken in favour of the 12 month limit. I think that once a decision is taken on the period, it will make the position of delegations easier to decide on the number of States that are required to ratify before the convention comes into force. The original proposal from the Chair is 90 days, and the counter proposal is one year, or 12 months. I think it is in order to vote on the 12 months. If that is successful, then that will be the period that will be recommended to Plenary. If that fails, then the 90 days proposal will be adopted. Is that in order? I see no objections. May I ask those delegations in favour of inserting 12 months in the first line as a requirement for the entry into force to raise their cards? Will those delegations against the 12 months please raise their cards? Are there any abstentions? The result of the vote is: 11 for the proposal, and 5 against, with 3 abstentions. Therefore, this committee has decided that, in the first line, we will insert the period 12 months. In regard to the second figure, which is the requirement for the number of States that should ratify the convention before it comes into effect, there are three figures that have been mentioned by various delegations. There is the figure of 15 States proposed by the Chair; a majority of Countries have spoken in favour of 10 States, and also a substantial number have favoured a figure of 20 States. I think that 15
is half way between 10 and 20, and since those for the more relaxed entry requirements have won the first ballot, which is 12 months instead of 90 days, I would ask first for a vote on the figure of 10 States. Will those delegations who favour ratification by 10 States to make the convention come into force, please raise their cards? Will those against the proposal, please raise their cards? Are there any abstentions? Those in favour of introducing the figure of 10 States are 9, and those against are 6, with 3 abstentions. Therefore the proposal which has been adopted by this committee is to introduce the figure 10 in the second blank in line 2 of paragraph 1.

Secretary of the Committee. Thank you, Mr. Chairman. Please forgive me for intervening at this stage, but in view of the numbers of delegations in favour, against or abstaining, you may perhaps consider putting the figure 10 in square brackets just to indicate that there was a substantial number who were not quite ready to go along with it. The Plenary can then deal with it. Thank you, Mr. Chairman.

The Chairman. The delegation of the United States has the floor.

United States. Thank you, Mr. Chairman. We thank the Secretary for his intervention, but we would like to indicate clearly that we do not support this suggestion. We think it was a good idea, but we hope that the Committee and the Chairman would elect not to take it up. Thank you.

The Chairman. Thank you. The delegation of the United Kingdom has the floor.

United Kingdom. Thank you, Mr. Chairman. We support the concern of the United States regarding the proposal put forward by the Secretary. Although we appreciate its having been put forward, we cannot possibly support it. Thank you.

The Chairman. Thank you. Instead of inserting the figure between square brackets, this will be reflected in the report of this committee to the Plenary and then any delegation who wishes to raise this point again is at liberty to do so. The delegate of Spain has the floor.

Spain. Thank you, Mr. Chairman. In view of the explanation that you have just given, I give up my right to the floor. Thank you.

The Chairman. Are there any further speakers on this paragraph? None. We therefore adopt the first paragraph of article (b) to read as follows: “This convention shall enter into force 12 months following the date on which 10 States have expressed their consent to be bound by it.” May we go to the second paragraph? The delegate of Saudi Arabia has the floor.

Saudi Arabia. Thank you, Mr. Chairman. Before we leave article (b), you said earlier that you would consider first 10 Countries, then 15 Countries, and then 20 Countries, i.e. the number of States which have to be stated in the second line of article (b). Thank you.

The Chairman. May I call this Committee to order please. We have finished discussions on paragraph 1 of article (b) and now we have paragraph 2 and we have also a blank to fill. We have already agreed on a period of 12 months in the first paragraph and we would like to propose like we previously did that the same figure should be included in paragraph 2, so that the blank would be filled with a figure of 12 months. May I have any observations on that proposal please. The United Kingdom.

United Kingdom. Thank you Mr. Chairman. This delegation supports that proposal. Thank you Mr. Chairman.
The Chairman. Thank you very much. May I ask if there is any objection to the inclusion of 12 months in that blank. There is no objection. Therefore paragraph 2 of this article would read as follows “for a State which expresses its consent to be bound by this Convention after the conditions for entering into force thereof have been met, such consent shall take effect 12 months after the date of expression of such consent”. Before I ask you to approve the article as a whole, there are two things outstanding. One of them is the expression “12 months”. If you look at article (c) in the third paragraph there is the mention of one year, and I am wondering whether we should – we obviously have to use one or the other of these two expressions and I would ask for preferences of one year or 12 months in order to be the same expression throughout.

The United Kingdom. Thank you Mr. Chairman. I think we would favour the use of the expression one year throughout. Thank you.

The Chairman. Thank you very much. I understand that that is the expression which is normally used in other Conventions, so in the first paragraph of article (b) we will have one year, and also in the second paragraph we will have one year. Now the second point that is still outstanding with article (b) is a suggestion by the distinguished representative of the United States to introduce a third paragraph and I would ask him to introduce such a paragraph. United States.

United States. Thank you Mr. Chairman. As mentioned earlier, we would suggest that a third paragraph be entered here in article (b) which would read something like this: “as between Parties to both instruments, this Convention shall supersede the 1910 Salvage Convention”. I will read it again “as between Parties to both instruments, this Convention shall supersede the 1910 Salvage Convention”, the full title. We feel that this clarifies the relationship between the two treaties and will provide greater clarity. Thank you Sir.

The Chairman. Thank you very much. First I would read what I have written to make sure that I have got the exact wording proposed by the United States. It is as follows: “as between Parties to both instruments, this Convention shall supersede the 1910 Salvage Convention”. Thank you very much. Now I have had some consultations during the coffee break regarding this point and my understanding is as follows: the first is that as proposed by the United States this paragraph will only apply to Countries who are party to both Conventions, that is the 1910 and the 1989 Conventions, and therefore it will have no benefit or relationship to Countries who are not party to both Conventions. The second point which I would like to mention, and this has been touched upon by the delegates of Finland and the United Kingdom, is that since there is a sufficient period and we have now approved the period to be twelve months, there is really no need for such a clause or a paragraph to be included because it is for granted obviously that each State is sovereign to declare its denunciation of any Convention that it is party to and, therefore, the States will have enough notification since the period is 12 months, they will have a good indication of when the Convention is going to come into force and will have the necessary time to denounce the previous Convention. Having said that I would like to ask the Committee if there is any support for the proposal of the United States for inclusion of this paragraph in article (b). Before I give the floor to delegates, I would like to mention another point, that normally such a paragraph or article to regulate the position between two States is in the gist of articles and not in the final articles. That is the normal thing, as I understand, but that should not prevent us from taking a
decision if the Committee agrees, and referring it to the Drafting Committee to put it wherever they see fit if necessary. The Secretary would like to – no, thank you. So the floor is open for any comments on this proposal. Nobody would ask for the floor. May I ask if there is any support for the inclusion of this paragraph in article (b). There is no support, therefore this paragraph will not be included in article (b) and article (b) will consist of two paragraphs as has been discussed and agreed. May I now ask you for the approval the whole of article (b) as discussed and agreed. 

Greece. Thank you Mr. Chairman. It was not my intention to intervene and to interrupt you here and now, but as I think, and please correct me if I am not correct, that the ten States in paragraph 1 has not been put in brackets and it goes to the Plenary as ten, I have to reserve my Government's position regarding the whole article (b). Thank you.

The Chairman. Thank you very much. It is the case that the figure ten is not in brackets because it has been approved by the majority of those present and voting. However, I have also stated that it will be reflected in our report and we will also reflect in our report that the delegation of Greece reserves its position on article (b), mainly for the fact that they are not satisfied with the figure ten. Is that correct? Thank you very much. Therefore the article (b) is approved by this Committee, with the reservation by the delegation of Greece. Thank you.

27 April 1989
Document LEG/CONF.7/VR.200

The Chairman. The second article which we provisionally numbered as article (b) on page 2 was also adopted and we had the blanks filled. In the first line of the first paragraph we have decided on a one-year figure. Therefore it is: “This Convention shall enter into force one year following the date...”. Then, as far as the number of States is concerned, the figure that was accepted was 10 so: “following the date on which 10 States have expressed their consent to be bound by it”. In the third line of the second paragraph we have also accepted as one year, so the second paragraph reads: “For a State which expresses its consent to be bound by this Convention after the date of expression of such consent”.

Draft Final Clauses agreed by the Committee on Final Clauses
(Document LEG/CONF.7/FC/2)

Article 29. Entry into force

1. This Convention shall enter into force one year after the date on which ten 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.

Text examined and approved by the Drafting Committee
(Document LEG/CONF.7/DC/6)

Article 29. Entry into force

(219) The Drafting Committee has approved the text approved by the Committee on Final Clauses. The Article has been renumbered Article 29.
Plenary Session 28 April 1989
Document LEG/CONF.7/VR.230-238

The President. Article 29. In article 29 there is a document, an amending document, suggested by Cuba, Mexico, Kuwait and Ecuador, and I am referring to document CONF.7/WP.220. Could I ask the delegations concerned to introduce this document so we can then consider it. I give the floor to the distinguished delegate of Cuba.

Cuba. Thank you Mr. President. My delegation together with other distinguished delegates heard yesterday in the Committee on Final Clause, realize that if we are not in agreement in the draft with regard to Articles B and D which have now become Articles 29 and 32. These deal with very important aspects such as the entry into force of this convention and its revision and amendment respectively. We believe that the principle of universality which is traditional in international law has not been taken into account and it is also traditional in this Organization because the proposal that the consent of 10 States would allow the Convention to come into force, which represents only 7% of the member States, denies this very principle of universality. Therefore, we suggest that the entry into force should require the consent of 25 States who would be bound by it. The revision and amendment would be at the request of 10 States Parties, or one-third of the States Parties, whichever is the higher figure. This is what you find in document CONF.7/WP.2 submitted jointly by Mexico, Ecuador and Cuba. Thank you very much, Mr. President.

The President. The distinguished delegate of Brazil.

Brazil. Thank you, Mr. President. We support the proposed amendments presented by Cuba, Mexico, Kuwait and Ecuador. Thank you.

The President. Thank you. Denmark.

Denmark. Thank you, Mr. President. I am very sorry that I now have some problems. The Queen does not trust me too much so I am allowed to come here and sign the Final Act. When I was asked to have the Convention words ready for her, I had to go to the Parliament and explain in depth what was going on and why it was going on. I had to explain to the Parliament that half an hour ago I supported a very important resolution from some States and I supported it, maybe not in length, more in depth. The whole idea behind this resolution was that it was a very important additional factor for the protection of the marine environment, and as it was stated by

(220) Documents LEG/CONF.7/WP.2
Amendments proposed by Cuba, Mexico, Kuwait and Ecuador

Paragraph 1. This Convention shall enter into force one year after the date on which 25 States have expressed their consent to be bound by it.

Paragraph 2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of 10 of the States Parties or one third of the States Parties, whichever is the higher figure.
one of the supporters, it was very important that it come into force very quickly. My experience may not be as long as Mr. Perrakis, but it is long enough for me to have participated in several diplomatic conferences, either in the home country of Mr. Perrakis in 1974, where we decided upon the very important Passengers’ Convention and where we decided that 10 States were sufficient to create the uniformity. What has happened since 1974? I think it is only half a year to go when it comes into force. That was a lot of years. In 1976, I had the pleasure to participate in a similar conference in London concerning limitation of liability. It is a very important Convention which has lots to do unfortunately even with environment problems because it is the only Convention to take care of the poor victims. There we decided about 12 States and that came into force in about ten years or more than ten years. So I am really in trouble here. How can I go to explain to my Parliament that I, on the one hand while in favour of this very important resolution and at the same time should accept that this time I would double the time of entry into force in conformity with what we have done with the very important instrument? Thank you, Mr. President.

The President. Thank you, Sir. Distinguished delegate of Uruguay.

Uruguay. Thank you, Mr. President. I would like to go along with what has been proposed by the Delegations of Cuba, Mexico, Kuwait and Ecuador just supported by the distinguished delegate of Brazil. All of us here in this Plenary have supported the rapid adoption of this document and in order to give universality to the adoption of this document, we should not wish to delay it by even one day. What we are doing here is to restate what we have been saying. That is to say, the fact that we trust the rapid implementation of this Convention and that all the States who are here will certainly support this. In no way would I wish that the Secretary-General and the experts would show that out of the States member of IMO and the States present here say one thing and then they go away and do something else. I think we should do what we did in many other Convention. Consider its full importance and give it effect when the States ratify it, this does not even represent two twelfths of the member States or 50% plus one of the members. The number 25 could be acceptable as a reasonable figure and this will certainly in no way delay the implementation of this Convention. Thank you.

The President. Thank you, Sir. The distinguished delegate of the Democratic Republic of Korea.

Democratic Republic of Korea. Thank you, Mr. President. We support the proposal made by the four Countries and supported by other Countries. Thank you. In addition, in Article 72, it says that when 21 Countries have expressed their consent, then it will enter into force. We therefore support the proposal made by Cuba, Mexico, Kuwait and Ecuador. Thank you.

The President. Thank you, Sir. Distinguished Delegation of Greece.

Greece. Thank you, very much, Mr. President. I should like to make a comment to this august body which you chair, Sir. Just to say that during the first meeting of Committee of the Whole on Final Clauses, there was a very restricted number of States participating and some elements that it is not my duty to mention here. That is why there was a very small majority of 10 in favour and six against, with nine abstentions. I’m sorry, there were 9. I think it is the prerogative of States not participating in this Committee of Final Clauses to put in front of us this paper which I can fully support. As regards the remarks of the distinguished delegate from Denmark, I can assure him that the resolution which we have approved one or two hours ago, I don’t remember, says that considering it desirable that as many States as possible or something like that...
should become Parties to the Convention, so it is a proposal, I think, in conformity with the resolution. Thank you, Mr. President.

**The President.** Thank you Sir. Distinguished delegate of Liberia.

**Liberia.** Thank you, Mr. President. At this juncture, we are a little bit confused by the procedures. We see here that indeed a decision was taken in respect of the articles 32 and, I believe, 28 or 29. We thought that all we were supposed to be doing here now at this stage was to approve the document, through various articles, and proceed from there. We understand that certain delegations may not have been present, if that is what I gather from the intervention of the distinguished representative of Greece, when the Committee of the Whole met to consider the Final Clauses. But I do recall, I believe it was yesterday, that these articles were voted upon here and they were passed, with the result as we have in the draft document DC.6. So at this point we are completely confused that a new proposal at this very late stage is being presented. We no not question the rights of the State to do so. We only question the procedure and if it is the decision of this body that we should indeed give consideration to the document WP.2 and disregard the previous decision of the Committee, we have no objections. I would just propose that, if that is to be the case, in the interest of time, let us just put the matter to a vote and proceed, because we are completely out of time. I presume that today is the last day and unfortunately some of us have to catch flights in a very short time from now. So if the matter could just be put to a vote and would proceed, and leave the extended debate. I think we have heard all the reasons and we know just about all the reasons why these various speakers have been presenting.

**The President.** Thank you very much, Sir. I would appreciate it if the nine delegates who have asked for the floor would be as brief as possible so that we can come to a decision as soon as possible and solve the problem we are dealing with. The Netherlands.

**Netherlands.** Mr. President, I will try to be as brief as possible, but this is an important article and we have grave difficulties, I must say, with the proposal made by Cuba and other delegations. It will delay the entry into force for a considerable time and we have long experience with Conventions which, even with a smaller number, have taken some ten years to come into force. I don’t think that such a large number is really necessary for the proper functioning of this new Convention. This is a lex fori Convention which can easily be applied even if a small number of States were a Party to it. There are several reasons for a speedy entry into force and I think that especially the North Sea region will consult next year on this specific item, and I am quite convinced that they will urge that the Convention in any way for this region will enter into force as soon as possible because the protection of the environment is of the utmost importance. It would ask many States to introduce national legislation based on this new Convention already before it has entered into force. You would urge us to do so, Mr. President, and I think that would not be the proper way to follow, but we would not have any other choice. Therefore, Mr. President, we very much stick in fact to the number which we find in the basic text of article 29, that is, ten States may cause the Convention to enter into force. Thank you very much, Mr. President.

**The President.** Thank you very much, Sir. Peru.

**Peru.** Thank you, Mr. President. Just in order to firmly support the amendments proposed by the delegations of Cuba, Mexico, Kuwait and Ecuador.
The President. Thank you, Sir. Delegation of the United States of America.

United States. Thank you, Mr. President, I will be very brief. We support the text that is proposed in articles 29 and 32. Earlier when I supported the resolution proposed by Argentina, Ecuador and Mexico, I noted particularly its provision that this Convention recognized that entering into force of the Convention will represent an important additional factor for the protection of the marine environment. What is that factor? The factor is that as soon as this Convention enters into force for those States that are Parties to the Convention, those regions of our planet will be subjected to the enhanced provisions for incentives to coming to the aid of vessels in distress that are part of this Convention. That action would result in a safer environment, even if it comes into force for the ten States that are proposed in article 29, the entire planet benefits from that action and those States that chose not to become affiliated with this Convention, may so do so. If we were to substitute 25 in our Convention, then it would be indeed a long waiting process before we would see this come into force and we would all be the worse for that experience. Thank you, Sir.

The President. Thank you, Sir. The distinguished delegate of Panama.

Panama. Thank you very much, Mr. President. I will be brief I would just like to add myself and endorse the amendment proposed by the distinguished delegation of Cuba, Mexico, Kuwait and Ecuador. Thank you, Mr. President.

The President. The United Kingdom.

United Kingdom. Mr. President, thank you. The United Kingdom supports the views expressed by Denmark, Holland and the United States and the present text in articles 29 and 32. Whatever is said, it is a fact of life that the higher the number of States mentioned in article 29, paragraph 1, the longer will be removed the entry into force of this Convention. I think we really all know that and if we put a high number there, an unusually high number in our view, as in the view of the distinguished delegate of Holland, we have similar figures before us, then the wrong message will go out to the world about the degree to which this international conference has cared about the protection of the environment. Accordingly we support the present text fully. Thank you, Mr. President.

The President. Thank you, Sir. The distinguished delegate of Zaire.

Zaire. Thank you, Sir. Could I nevertheless point out that I do appreciate the efforts of the authors of the amendment, Ecuador, Mexico, etc. but may I also point out to them that we have a question with this amendment. I do not see any problem if when the signature time arrives, we could arrange that the entry into force could happen next year. Once the signature is done, let us have the 15 minimum number of States. Let us be realistic, if we want this Convention to come into force, if we have the 6, which is the basic figure I do not see what the number is important for, as regards the effectiveness of the Convention. I am in favour of 10, who can sign very rapidly and then the Convention can enter into force. Thank you.

The President. Thank you. The distinguished delegate of Morocco.

Morocco. Thank you very much, Mr. Chairman. We also support the proposal by Mexico, Kuwait, Ecuador and Cuba. Thank you very much, Mr. Chairman.

The President. Thank you. The distinguished delegate of Finland.

Finland. Thank you, Mr. Chairman. Only to say that we fully share the views expressed by the distinguished delegates of Denmark, Netherlands, United States and...
the United Kingdom. If this figure 25 is accepted by the majority of this Conference, we may have a formal success of this Conference, but in practice we are creating a Convention which will never enter into force actually, because the practice previously shows that it takes about one year per country this entry into force and if we have 25 Countries, we will have 25 years to wait until this enter into force. M r. Chairman, no resolution can save this Convention. Thank you, M r. Chairman.

The President. Thank you. T he delegate of I reland.

Ireland. Thank you M r. Chairman. T his delegation would like to associate itself with those other distinguished delegations that are satisfied with the present text of articles 29 and 32. Thank you, M r. Chairman.

The President. Thank you. M alaysia.

Malaysia. Thank you M r. Chairman. Like all other distinguished delegates, we are also very concerned with the maritime safety and the protection of the environment. N evertheless, all the hard work that has been done here for two weeks, and all the number of years to come to this Convention, and we have today, I still feel that the number of ten is rather low for this Convention, and therefore I support the proposal made in document 7/W P.2. Thank you.

The President. Thank you. T he Federal Republic of G ermany.

Federal Republic of G ermany. Thank you M r. Chairman. I myself am not taking part in the discussions and the Committee on F inal Clauses, and therefore I would like to take the advantage to take the floor just to indicate that my delegation fully supports what has been said in the Plenary by the distinguished delegations of Denmark, Holland, the United States of America, the United Kingdom, Finland and Ireland. We would wish that this Convention will come into force as soon as possible, and we strongly believe when it will come into force that this certainly will be an incentive for other States also to become a member of this Convention. Thank you very much.

The President. Thank you. T he delegation of Saudi A rabia.

Saudi Arabia. Thank you M r. Chairman. Everybody knows that the international community is longing for this Convention, longing for it to enter into force as soon as possible. As far as the number of Countries is necessary, as we see in CON F.7/W P.2, this is rather high. Perhaps we could increase the number of 10, as we see now in article 29. So that it could be between 10 and 20. In article 32, M r. Chairman, I do not think we should change anything at all. Thank you.

The President. Thank you very much. T he delegate of the Islamic Republic of Iran.

Iran. Thank you, M r. President. T he first thing on behalf of my delegation I want to stress is that we are not against the entering into force of the Convention as soon as possible. W hat our counsel is that this number 10 is very low and also the number six in article 32 is also very low. W e are afraid that because their procedures for accession to this convention in regard of the developing Countries is very slow, the number 10, 10 States, would soon enter this Convention into force I can say not later than two years from but this is not our custom. O ur custom when these 10 States ratify the Convention and the Convention enters into force after that with the provision of article 32, they will certainly by the request of six States request their conference to be held and at that conference we are sure the first thing they will amend is that famous percentage, and so this is our concern that when the developing Countries have not
even ratified the Convention, this Convention is amended specially that part before they even accede to this Convention. Thank you, Mr. Chairman.

**The President.** Thank you. The Soviet Union.

**USSR.** Thank you, Mr. President. Our delegation entirely shares the concerns which have been expressed by a large number of States which consider that the Convention which we should adopt today should come into force as soon as possible. At the same time, however, we share the concern of those States who have proposed certain things. Of course, we are creating a very unusual international instrument. We know that many conventions take a long time to come into force. We realise that our convention, this one, is not a convention which should take a long time to come into force. Therefore, certainly in this case we should try and meet the concerns of the Latin American Countries. We also realise that the figure of 25 is rather too high. Therefore, we support the compromise proposal which we have heard today already. May we propose that 15 would be the number of States required for entry into force. I think this would meet the concerns of the cargo interests, and would ensure the immediate entry into force of our convention. Thank you.

**The President.** Thank you. Yugoslavia, Indonesia and France still wish to speak. Yugoslavia.

**Yugoslavia.** Thank you, Mr. President. With due regard to the amendment of 25 Countries, we cannot support it. If we sent a messenger somewhere it looks to us a little absurd to build the wall or put any other obstacles on his way to prevent him from getting there. If we wish fast and urgent effects of this international act, we must let it operate as soon as possible. That is why our delegation will support the existing text. Thank you.

**The President.** Thank you. Indonesia.

**Indonesia.** Thank you, Mr. President. We would like to stay longer, but we are afraid that the Secretary-General would not provide us dinner. This delegation would therefore like to propose a compromise number. May we propose the number of 18. Thank you.

**The President.** Thank you. France.

**France.** Thank you, Mr. President. Let us be realistic. There is no convention adopted under maritime law in IMO and precedingly by the CMI which requires a number of ratifications so high as that proposed by what we have before us. Recent conventions, however, such as the 1976 London (LLMC) Convention, required 12 States, and it took ten years for it to come into force. The Athens Convention required 10 States to ratify, and it took 12 years to come into force. Whether we ask for 20 or 25 States, this time it would take a very long time for entry into force. If we want it to come into force rapidly, let us have a sufficient number but a low enough number to make it possible - ten would do. Otherwise, hypothetically, we will be saying that we are not in any hurry to have this Convention come into force. Let us be realistic. Thank you.

**The President.** Thank you. The last speaker is the Congo.

**Congo.** Thank you, Mr. President. We understand the concerns of all delegations here present, and so as to arrive at a compromise we would accept the proposal of the USSR. Thank you.

**The President.** I will turn to the delegation of Cuba. In the submission, paragraph 1, article 29. Would they agree with a compromise on 15 States having expressed their consent and be bound by it.
Cuba. Thank you Mr. President, we would like to take this opportunity, since you have given me the floor, to make two brief comments, first of all my delegation, in view of the work which was going on could not take part in the works of the Committee on Final Clauses. However, when we did participate along with other delegations, at that time, we did indicate our interest in discussing this proposal, and we were told this has already been agreed and it would not be discussed once again. That was the reply we obtained and that is why we prepared this text in writing with the support of Mexico, Ecuador and Kuwait. Just in order to explain what had happened, we don’t wish to delay anyone, we don’t want anybody to stay without dinner and we wouldn’t want the interpreters to have to suffer because of us. We would also like to add that my delegation as well as the Government I am representing are highly interested in the coming into force of this Convention. And just another comment, the hypocrite is not somebody who puts something in writing, but it’s something that somebody thinks but doesn’t say aloud. We think that the figure of 25 States which a group of States have suggested is insignificant in view of the number of members which this organization has and really ten States would only be 7% and we would not reflect our concern. Six States could call a new meeting, we are not in a position to amend this because the very principle which was violated, the principle of universality must be respected. And the States who put this forward agree with the draft resolution where it was clearly said when it was presented that we want this to come into force, and you must believe us. But it should come into force respecting the very important principle of universality, therefore, we stick to our proposal of 25 States and 10 States in order to make any amendment or one-third whichever figure is the highest. Thank you Mr. President.

The President. Thank you, Sir, I will put the matter to a vote, first of all we will vote for the approval of paragraph 1 as it is. We will vote first on the amendment, that is to say, instead of 10 States we will vote on 25 States as proposed by the joint proposal of Cuba, Mexico, Ecuador and Kuwait. Democratic Yemen.

Democratic Yemen. Just a point of clarification Mr. President before we proceed to voting. As the amendment which has been proposed and supported which is the 25 figure is not carried, will the other proposal which has been put to the floor and also supported which is the 15 States be put to the vote or will we take it that as the 25 is defeated stick with the 10. We would like a clarification on that before we vote, thank you.

The President. Thank you, the Secretary-General will explain this point.

The Secretary-General. This is a question of substance and under rule 32 of the rules of procedure for decisions of conference have to be taken by two-thirds majority. The first question which the President has put to you is who are the delegates who are in favour of 25, if that is carried by two-thirds majority that is settled, if it is not carried by two-thirds majority then automatically the previous one is not approved, that proposal also has to be put to vote, so after a decision has been made on the first proposal then the second proposal which is 15 which has been supported, that would then be put to vote, because that is removed from 10 and if that is not accepted then 10 would be, so we proceed to work now on the first proposal which is substitute 25 for 10 in paragraph 1 of article 29.

The President. In view of the time we will vote asking those who are in favour of
changing the figure of 10 to 25 as in the proposal, who would be in favour of 25. Please raise you cards. So 16 in favour. A point of order, delegation of Uruguay.

Uruguay. Just a clarification, Chairman, I don’t understand what we are changing, it is not a decision which was taken in the plenary. Must we have a two-thirds majority or are we just voting a majority.

The President. We are following the rules laid down in article 32, which requires a two-thirds majority of those present and voting. Now those against the proposal. 34 against. Abstentions 6. The result of the vote is: 16 for, 34 against, 6 abstentions. So the proposal is not carried. As was suggested in the course of the discussion, we will now vote for 15 States for the entry into force. This was proposed in the Conference in the course of the discussion, so please raise your cards. Those in favour of 15 States: 31. Those against the proposal of 15 States, please raise your cards: 22. Abstentions, please raise your cards: 3. The two-thirds majority was therefore not achieved. We will now vote on the original proposal of ten States as in paragraph 1 of article 29. Those in favour of keeping article 29, paragraph 1, as it is, that is to say, with ten States, please raise your cards: 32 in favour. Those against the proposal of ten States for the entry into force: 24 against. Those who abstain, please raise your cards: 4 abstentions. The result of the vote is: 32 in favour, 24 against, 4 abstentions. So that is rejected, because there is no two-thirds majority, and so the number of ten is not approved either. The United States.

United States. Mr. President, as regards the impasse that we find ourselves in, might I propose the number 12 as a possible figure that we could arrive at.

Delegate. Thank you, Mr. President. With the same spirit that prompted the USA to speak, we would also like to suggest the number 13. Thank you.

The President. The United Kingdom.

United Kingdom. Thank you, Mr. President. To us, 13 can be a terribly unlucky number. Can we therefore support the proposal made by the distinguished delegate of the United States for 12.

The President. The distinguished delegate of Bulgaria.

Bulgaria. Thank you, Sir. On a point of order. How has this happened? We have had a vote, we had 67 delegations taking part. I thought we had 66 delegations physically present since many people have already left, could you explain that? Is there some mysterious person here?

The President. Thank you very much. We get a total of 60, 60 the maximum. The distinguished delegate of Japan.

Japan. Thank you, Mr. President. This delegation supports the figure of 12.

The President. The Soviet Union.

USSR. Thank you, Sir. Quite honestly, could I appeal to all delegations who have made new proposals – we are really on the margin, 12, 13 – could somebody please support the proposal which we made: 15. I think is, if possible, the best idea. It would eliminate the horrible threat, 13, which apparently is an unlucky number. Could I ask the USA to agree with that? Could we vote on 15, which I hope will be acceptable to everyone, even to Japan.

The President. The United Kingdom.

United Kingdom. Thank you. I think we have to look at the decision on article 29.
and the decision on article 32 as a package. I think that there is concern among some States that there might be pressure from a limited number of States for early revision of this Convention, and therefore perhaps for a limited number of States upsetting the careful compromise that was agreed with respect to what is now article 14, and was originally article 11. I think, that the best way of meeting these concerns would be to provide for a reasonable figure for entry into force to meet the concerns of those who want the Convention to enter into force early, but also to ensure that there is a relatively high figure in article 32 to ensure that amendment will not take place very rapidly. I would have thought that there would be some room for discussion around those figures, but I would certainly contend that a figure of 12 in article 29 a figure of say 8 and one fourth would give the necessary security to those – this is in article 32 – would give the necessary feeling of security to those who do not want rapid amendment of this convention by a small number of States. Thank you.

The President. Thank you. Federal Republic of Germany.

Federal Republic of Germany. My delegation would support the number of 12 as the delegations of Japan and the United Kingdom have proposed. Thank you.

The President. Thank you. Malaysia.

Malaysia. Thank you, Mr. President. My delegation would like to support the second round proposal, although it is the same number of 15, of the USSR. Thank you.

The President. Thank you. Cuba.

Cuba. Thank you, Mr. President. My delegation would like to point out to those who are concerned that we are not flexible that we would like to prove that we are. We are in a position to withdraw our proposal. Instead of 13 we could accept the Soviet Union proposal of 15. Thank you.

The President. Thank you. United States

United States. Thank you, Mr. President. We can support the proposal for 12 as revised by the United Kingdom delegation, which would include a package that would also keep the figure at 8 and one fourth in article 32. We believe that, since the number 15 has already been voted on and rejected, this proposal ought not to be reviewed again. Thank you.

The President. Thank you. Mexico.

Mexico. Thank you, Mr. President. We would like to support the Cuban proposal which is a proposal in fact made by the Soviet Union and in article 29 we would have 15 and in article 32 we could have 8 and one quarter as proposed by the United Kingdom. This is the whole package. Thank you.

The President. Thank you. Liberia.

Liberia. Thank you, Mr. President. We support the proposal by the United Kingdom delegation for the figures 12 and 8. Thank you.

The President. Thank you. The Soviet Union.

USSR. Thank you, Mr. President. I understand that, having heard what the United States has just said, 15 has just been ruled out. Therefore, can I make another proposal: in article 29 we leave 15, and in article 32 we could have 10. Again it is a package proposal. 15 and 10 in the respective articles 29 and 32. Perhaps other delegations will be happy with that. Thank you.
The President. Thank you. India.

India. Thank you, Mr. President. In consideration of the length of time we have talked about this, the apprehension of those delegations who feel that the convention would be amended even before they had time to think about it, would it be possible at this late stage to mention a figure of 25 before the amendment could be made. That is the total acceptances. The convention would not be amended before a total of 25 acceptances have been received and then the present figure is alright. I put this question to the four delegations who proposed 25, and then we can come down on the number because otherwise I do not think that any other proposal will get a two thirds majority. Thank you.

The President. Thank you. I will put forward a combined proposal of various figures for the two articles we are dealing with. For Article 29, the proposal is 15, and for article 32 a figure of 8, with one quarter. I shall repeat those figures; for article 29, we will put to the vote a figure of 15 States, and for article 32, we will put to the vote a figure of 8 State parties or one quarter of States parties. I must apologise to those who have asked for the floor, but unfortunately for reasons of time, and hopefully because we are close to a solution thanks to the combined proposal on articles 29 and 32, we will vote right away, and I apologise to Indonesia Canada, Denmark, Democratic Yemen, Ecuador, and others. We need sufficient time to vote. Will those in favour of 15 States in article 29, and 8 States or one quarter in article 32 please raise your cards? (49) Will those against the motion please raise your cards? (1) Are there any abstentions? (8) So the result of the vote is 49 in favour, 1 against, 8 abstained. A total of 58 voting. With this figure of 49 for the proposal is carried. In Article 29(1), instead of 10 States we would have 15 States. In Article 32(2), instead of 6, 8 States or one-fourth of the States Parties. If there are no further remarks, Article 29, as amended, is approved. Are there any further remarks? Article 29 is approved.

Text adopted by the Conference

Article 29. Entry into force

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

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.
ARTICLE 30
Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply the provisions of this Convention:
   (A) when the salvage operation takes place in inland waters and all vessels involved are vessels of inland navigation;
   (B) when the salvage operations take place in inland waters and no vessel is involved;
   (C) when all interested parties are nationals of that State;
   (D) when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.

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

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

PARAGRAPHS 1(A) AND 1(B)

CMI
Montreal Draft
Document LEG 52/4-Annex 1

Art. 1-2. Scope of application
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.
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.
IMO
Legal Committee
Report on the Work of the 53rd Session (Document LEG 53/8)

39. Some delegations considered that subparagraph (a) which excluded the application of the convention to cases where all the vessels involved were vessels of inland navigation might be in contradiction to Article 1-1 where salvage operations within the scope of the convention included operations in inland waters. These delegations doubted the need for subparagraph (a). Other delegations considered that the sub-paragraph should be retained so as not to impose on inland water craft rules intended for application to seagoing vessels. One delegation suggested that this provision might be modified to give an option to States to apply the convention to salvage operations in inland waters, if they so wished. Another delegation which favoured deletion of the subparagraph pointed to the wide scope of the definition of “vessel” and queried whether a separate inland navigation regime was really needed.

Report on the Work of the 55th Session (Document LEG 55/11)

121. With regard to paragraph 2, it was agreed that the provision in 2(a) would be considered again at a later date.

Report on the Work of the 57th Session (Document LEG 57/12)

99. The Committee considered a proposal by the United Kingdom delegation to replace existing subparagraph (a) with a provision stating that the convention shall not apply “to operations in inland waters not involving seagoing vessels”. This had to be considered in the context of another proposal by the same delegation to replace the existing lead-in (chapeau) with the following text:

“However, the Convention shall not apply, except where otherwise provided by national law of the Contracting State:”

100. A number of delegations expressed support for this proposal. They felt that the provision was clearer than the existing text in that it based the determination of the applicability of the convention or otherwise primarily on whether the salvage operation took place in “inland waters” or not, rather than on the type of vessel involved. Under the amended text, an “inland navigation vessel” would still be covered by the convention if it was involved in salvage operations in the territorial waters of a State. The type of vessel would only be of relevance where the salvage operation in question took place in inland waters. Some of the delegations stated that the definition proposed by the United Kingdom was preferable for the additional reason that it would result in a wider scope of application for the convention since the exclusion clause proposed was narrower in scope. Some of these delegations also drew attention to the ambiguity implied in the term “vessel of inland navigation”. They noted that this could be understood as referring to a vessel engaged in inland navigation or alternatively to a vessel constructed for inland navigation.

101. Several other delegations, however, expressed a preference for the provision as originally prepared by the CMI. They felt that it was undesirable to refer to the concept of “inland waters” in the proposed convention, since the meaning of the extent of “inland waters” differed from State to State. One delegation noted that the text in the CMI draft corresponded to the relevant provisions in the 1910 Convention which also extended to the scope of application to assistance and salvage in “whatever waters” such services have been rendered.
102. Several delegations expressed reservations in respect of both the United Kingdom proposal and the original text. These delegations felt that both texts contained ambiguities and could lead to unsatisfactory results in practice.

103. One delegation proposed that the following wording be added to the text of subparagraph 2.2(a):
   “except for those cases where the salvage operations take place in sea waters”.

104. The question was raised whether the convention would be applicable to salvage operations in the Great Lakes. The Canadian delegation noted in this regard that the Great Lakes were considered as internal waters in the legislation of his country.

105. There was not sufficient support for the United Kingdom proposal and the Committee decided to retain the text of subparagraph 2.2(a) unchanged.

Report on the Work of the 58th Session (Document LEG 58/12-Annex 2)

Article 24 (article X in the report of the Legal Committee’s 58th session – LEG 58/12)

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 vessels of inland navigation;
   (b) when all interested parties are nationals of that State;
   (c) whenever 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.

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

International Conference
Committee of the Whole 18 April 1989
Document LEG/CON F.7/3

Article 24 - Reservations

United States. Thank you, Mr. Chairman. Regarding the issue of where salvage operations must take place, to be covered by the convention, we agree in large part with the observations made by the distinguished delegate of Canada, and we would note that the original paper 52/4 in the choice of its words and in the explanation for that specified that it was the intention that that language would apply to the Great Lakes.
We have similar concerns expressed about large bays and rivers, we think that the environmental incentives that are built in ought to apply to those bodies of waters as well as those which are “at sea”. So we find the reservation system currently in Article 24 an acceptable compromise.

19 April 1989
Document LEG/CONF.7/VR.50

The Chairman. Good morning ladies and gentlemen. Before we come to our main item, I give the floor to the United Kingdom for a short announcement.

United Kingdom. Thank you Mr. Chairman. I am referring to the close vote yesterday on article 1(a) to say that if that remains the position on article 1(a) then the United Kingdom would have to submit that article 24(a) should be amended to enable if you so wish to make a reservation in line with what was proposed by the United Kingdom and France yesterday on article 1(a). Meanwhile, may we offer our services to any delegation who would consider co-operating in amending either 1(a) or 24(a) on the lines proposed yesterday. Thank you Mr. Chairman.

The Chairman. Well I thank you. Any delegation interested in drafting of such an article should contact the United Kingdom. France on the same point.

France. Yes, Chairman. Of course we share the view which has just been put forward by the representative of the UK. Like he does, we do believe that if article 1, paragraph (a) on the definition of salvage were to be adopted as it is in its present state, and we have some fears after yesterday’s vote, this would mean that we would have a convention which would be so called maritime but would apply to any operation with a view to recovering any property in any type of waters, in lakes, in rivers. Any sort of object which had fallen into the waters could give rise to maritime salvage and this is absolutely unthinkable. So if the text were maintained in its present state, we will have to extend the reservation indicated in article 24(a). However, after these two statements made by the UK and French delegation, we would hope that delegations would consider what considerable extension of the Convention that would mean. If article 1(a) stays as it is, I would ask them to review their position so that we can come back to avoid the consideration of the amendment which was put forward by the UK and France. This would have the merit of allowing the scope of the Convention to be really something maritime because you will have a salving or a seagoing vessel.

(222) Document LEG/CONF.7/CW/WP.22
Submission by the delegation of the United Kingdom
Amendment to Article 24
This proposal is put forward for consideration only if the joint proposal of the delegations of the United Kingdom and France in WP.11 is not adopted.
Alternative 1
Replace sub-paragraph 1(a) by the following:
(a) to salvage operations in inland waters except where at least one sea-going vessel is involved.
Alternative 2
Amend the existing text of paragraph 1(a) to read:
(a) when all vessels involved are vessels of inland navigation or when no vessel is involved and the salvage operations take place in inland waters.
The Chairman. We cannot reopen the debate on that article. I just gave the floor to the United Kingdom to make that announcement and any delegation interested in the new draft of article 24, subparagraph (a) can contact the United Kingdom. We cannot start with a new debate, I am sorry. Could you accept that? Is it O.K.? Fine, thank you.

21 April 1989
Documents LEG/CNF.F.7/VR.113-115

The Chairman. We come then to article 24. Here we have several proposals. I would like to propose that article 24, paragraph 1 that we deal with the various subparagraphs and each paragraph separately and finally vote on the text as a whole of paragraph 1. Is that acceptable? First subparagraph (a) we have received a new proposal by the United Kingdom and I would like to ask the delegation of the United Kingdom to introduce that proposal.

United Kingdom. Thank you Mr. Chairman. This is a proposal which has been worked out together with France who I think has the full support of France in the way in which I am about to explain. As you see in working paper 22222, two alternatives have been offered to deal with: the, if I may say so, somewhat absurd situations which would apply despite the present reservation, and without again talking about diamond rings being dropped in lakes, or in bath tubs, since there are also other non-navigable waters, the best illustration to give of what would presently be covered by this Convention unless 24(a) is extended, is the simple example of a car or a lorry falling into a river or canal and being picked out by another vehicle that tows it out, or by a crane; that would be within the present Convention because it only excludes or only gives the right to exclude cases “when all vessels involved are vessels of inland navigation”. In my example, there would be no vessel involved. Therefore no vessel of inland navigation but although the basic text would exclude all cases where vessels of inland navigation are involved, it would, we say quite illogically, not exclude cases where a vehicle is, for instance, towed or lifted out of a canal, lake or river. That is the purpose of the amendment of the reservation to ensure that the Convention does not produce that result. Quite frankly, we would have the utmost difficulty since we have to pass these matters through Parliament, if the Convention is ratified, in convincing Parliament that the law of salvage has to be applied to such a situation. I think, quite frankly, we would be laughed at. It is for that purpose that Working Paper 22 has been introduced. Looking at the two alternatives, which are there, in the hope and expectation that one will appeal to two-thirds majority but we would say it is better to concentrate on the second one, since it makes a lesser alteration to the text and that is the one that we wish to put forward. Alternative 2, would amend the existing text by adding to the words “when all vessels involved are vessels of inland navigation” the words “or when no vessel is involved and the salvage operations take place in inland waters”. And if you imagine the example of the crane lifting the car out of the river, you will see that all that these words do is to entitle any country not to apply the Convention to such situations. We sincerely hope that this will be adopted by the necessary majority. Thank you Mr. Chairman.

The Chairman. I thank you, Sir. Since that is a new text, I would allow questions for clarification. Ireland, do you have a question to the delegation of the United Kingdom.

Ireland. Thank you Mr. Chairman. Mr. Chairman, I wanted to speak on this paper, not as a matter of clarification, but just to indicate that we would hope that the
conference would prefer the first of the two versions which we feel is the clearer text. We feel that the second alternative could create the confusion, which it hopes to avoid for those States adopting it as a reservation because by enabling a Member State to opt out of the very problem that it has believed would exist it would mean that those States, which do not opt out are intending the Convention to apply to all those objects such as a lorry or a car or something that fell into an inland water. So Mr. Chairman, we would like to indicate our preference for those reasons. Thank you Mr. Chairman.

The Chairman. Well, from a procedural point, it is a bit difficult – the delegation of the United Kingdom has put on a vote only alternative 2. If you have the wish that you also vote on alternative 1, you have to introduce that alternative formally as your proposal. That would be the only possibility from a procedural point of view. We can of course informally act, that if another proposal which I have to make, I can put aside the formal procedure and act more informally and ask first for preferences indicatively. That is a possibility if the Committee agrees to that procedure but that is outside the formal voting procedure to make that clear. Well, Federal Republic of Germany, it is O.K. fine. USSR.

USSR. Thank you Sir. We would prefer to follow the proposal put forward by yourself. Because, like Ireland, we would be prepared to support the first alternative. But at the moment, we find that the first and best approach would be to follow your own proposal. Thank you.

The Chairman. I thank you. Spain, is that on the same point.

Spain. Yes Sir. I refer to alternative 1. We rather like this idea but in this alternative, we do have some questions to raise. I am referring to salvage operations in internal waters. When we say internal waters, this would mean not the sea, to put it bluntly. In the UNCLOS Convention we have internal waters defined as those between the low tide line and the coast. These are not maritime waters. That is the definition. If this is the case, then certainly we would like to have more clarification. Perhaps, however, the Drafting Committee could deal with the problem. Thank you.

The Chairman. May be it is a problem of translation. I do not know whether you have the Spanish text before you. In the English text, we have inland waters. May be even that is a wrong term but I think we can submit that question to the Drafting Committee. May I ask the delegation of the United Kingdom whether you would be ready to follow the proposed informal procedure.

United Kingdom. Yes, Mr. Chairman. Thank you.

The Chairman. I thank you. Well, informally I will ask you for preferences - alternative 1 or 2. Who has a preference for alternative 1? Please raise your cards. Thank you. Who has a preference for alternative 2? Sorry, would you please raise your cards again. It is very closed, I must say. I thank you. The result of this informal vote is nineteen (19) in favour of alternative 1. Twenty-one (21) in favour of alternative 2. That means we have to put on the vote alternative 2. That is what has been originally proposed by the United Kingdom. Acceptable. O.K. We come now to the formal vote - on alternative 2 in Working Paper 22. If that text is adopted, that text would replace the present article 24, paragraph 1, subparagraph (a). Who is in favour of the alternative 2 in working paper 22? Please raise your cards. Thank you. Who is against that alternative? I thank you. Abstentions? Thank you. The result of the vote is 26 in favour, 2 against, 5 abstentions. That means the text as contained in working paper 22, alternative 2, has been adopted and has replaced subparagraph (a).
IMO
Legal Committee
Report on the Work of the 53rd Session (Document LEG 53/8)

40. It was noted that this provision was taken from the 1910 Convention. Some delegations suggested that it should be deleted. The CMI representative explained that the provision was based on the principle, adopted in the early Brussels conventions, that there should be a “foreign element” in the situations to which uniform international rules of substantive law were to be applied. If the Committee considered that this principle was no longer valid, it might decide to delete the subparagraph.

41. It was pointed out that where salvage of ships and cargoes was to be covered by the new convention, there could be difficulty in ascertaining who were the “interested” parties. Difficulties might also occur where only one of a great number of interested parties was not a national of the State where proceedings had been brought.

42. Some delegations felt that there was good reason to retain the subparagraph. They did not believe that there was any need to apply international law to situations in which the parties concerned were all nationals of the State where proceedings were brought. A majority of the Committee, however, considered that the subparagraph would be difficult to interpret and apply and, therefore, supported its deletion.

43. The Committee agreed, however, that it was too early to decide on this matter.

Report on the Work of the 55th Session (Document LEG 55/11)

122. Paragraph (b) was objected to by one delegation so far as it obliged a State to deny its own nationals the benefits of the Convention. This delegation considered that the provision might be reworded to make its provision optional.

123. Several delegations found it difficult to accept this provision as mandatory and one delegation proposed that article 15.3 of the 1976 Limitation Convention might be considered as an alternative to the present provision.

124. The Legal Committee decided to examine this provision at a later date in the light of proposals which might be submitted.

PARAGRAPH 1(D)

International Conference
Committee of the Whole
17 April 1989
Document LEG/CON/F.7/VR.15

France. Our concern is very different. We are concerned by the fact of excluding from the scope of application of the Convention what we refer to as “maritime cultural property”. This is property representing an archaeological or an historical interest. I am referring to property which is often at the bottom of the sea, in deposits for instance, or these can either be wrecks or archaeological findings or even prehistorical elements and we do not believe that salvage operations should take place as in the case of a vessel or any floating remains or any other property. This prehistorical, archaeological or historical property should be manipulated very carefully. The operation should take
place under the guidance of the authorities responsible for protecting this type of property. Operations should be carried out very cautiously and they should not be treated as any type of property or any type of vessel which is the object of a salvage operation. So our purpose is to exclude from the scope of this Convention what we define as “maritime cultural property”. So in Article 1(c) we would just add that property means any property other than maritime cultural property and this for the reasons I have just explained. Maritime cultural property being of a completely different nature because of the archaeological, prehistorical or historical interest as compared with other types of cargo which could give rise to salvage operations. This is why we want to exclude them purely and simply. Thank you, Mr. Chairman.

Spain. As for the cultural property, the French definition seems very important to us and it should be carefully considered in view of the special characteristics of the archaeological property and the legislation that protects archaeological and historical property. We could reconsider this but we would consider favourably an exclusion of this type.

18 April 1989
Documents LEG/CONEF.7/VR.21-33

Netherlands. We could also accept, in principle, the proposal made by the French delegation with respect to cultural property. We agree that cultural property normally would not fall under the normal salvage operations and should not fall under the scope of the convention. Of course we realise that to protect cultural property much more has to be dealt with and I know that there are certain projects, not very much in progress, to protect cultural property which were left at the sea-beds and you will find it worth. We can agree with the French proposal, in principle, subject to further drafting by the Drafting Committee.

Denmark. Then we come to property and there we have the French proposal and there I have a question because in the French proposal you propose there that maritime cultural property should especially be mentioned. I asked myself if we compare that with a salvage operation and the question is danger; let me take an example in Stockholm they have the famous old ship *Vasa*, some of you may have seen it that is why I can tell you it is worth to see. But was that intentional? I could see the tourist industry in Stockholm they were truly in danger because they earn a lot of money after they have salvaged it. Thank you Mr. Chairman.

The Chairman. Thank you. May I ask the French delegation whether that delegation wants to answer the question. I would give you the right to reply.

France. Thank you Mr Chairman. What we meant by cultural heritage and cultural property were archaeological objects of historical interest which might be on the seabed in deposits after a maritime casualty. On board a ship there might be objects of cultural interest, of historical interest or archaeological interest and we want this property to be preserved and we don’t want removal from the seabed except under the conditions monitored and authorized by the competent authority for such matters. If we leave a salvor alone to act freely, who uses every resource available to him to salvage property and has the sole responsibility then the situation is totally different. We can understand that the salvor should be free to act when it is a matter of salvaging a ship or property on board it, but on the other hand, if we are faced with the case of property which is on the seabed, in the form of a deposit, after a casualty at sea, and there are viable objects involved which are of cultural or historical interest,
we don’t want the salvor to act with the same freedom as he does for saving a ship at risk. In principle, the salvor should be prohibited from touching these objects of historical interest, the competent authorities should monitor the operations so that the lifting of this property will be carried out in conditions to safeguard the integrity of this archaeologically interesting property. There should be a special regime for wrecks which are of archaeological or historical interest rather than the present convention which, quite naturally, leaves the salvor completely free to operate as he sees fit with his available resources to salvage goods at risk. The situation is quite different and that is why we want to make this exclusion of maritime cultural property from the draft Convention. Thank you.

The Chairman. Thank you. The question is of course whether that cannot be done more properly by a public law. I ask myself whether we are able to prevent the salvor from salving this property by this Convention. This Convention I am afraid cannot prevent a salvor to touch upon such properties that is my opinion but nevertheless, it can be useful to exclude in addition to public law provisions this salvage operations from this Convention, that is a different point, but the main problem lies in the public law area. That is my feeling. Well, is Denmark satisfied by the explanation of France?

Denmark. No Mr Chairman, I am more satisfied with your explanation. Thank you.

The Chairman. Well, we come then to you, you have to reply.

Denmark. Thank you, Sir. I would be very brief. The essential thrust and purpose of our change is that maritime cultural property be excluded from the scope of application of the Convention. We have made a proposal which proposes this exclusion in the definitions and article 1. There is another method of doing this however. We could quite easily in another article say that this property is excluded and we would be satisfied by using article 24 adding on to the reservations an indication that maritime cultural property is excluded from the scope of application of the Convention. It would arrive at the same results, the essential point at issue is that the Convention with all that it authorizes for salvage should not apply to this property which requires special protection which would result from national legislation of course. What we really want is for a salvor not to be able to invoke the Convention to carry out searches on the seabed as he wishes. That is removing archaeological and similar property claiming that he is rendering assistance to property at risk. He could do this under the present Convention, we don’t want him to be able to do so, but I repeat there is another way of getting round the problem, that is to exclude cultural property under a different article because the Convention applies to all sorts of properties and that is the difficulty. At the moment we thought the simplest approach was to exclude one type of property in the definitions but if this is not satisfactory to certain delegations, then we could carry out this exclusion procedure under article 24. If States do not want to make the exclusion then they don’t have to. Its even simpler. Thank you.

The Chairman. Thank you. Whether this should be placed in article 1 or 24 can be decided later. Delegations should refer to the problem as such whether the Convention should cover this kind of property or not.

Canada. I then turn to some of the other observations that have been made. First of all with respect to cultural property. We have not had much time to consider that proposal but at first sight, it does seem to us to make some sense. I do not comment at the moment on the method by which it should be dealt with, that is to say whether it
should be dealt with as part of the definitions or as part of the reservations, but at first sight it seems to us to be a sensible exclusion.

**China.** The third point concerns the opinion put forward by the French delegation, that is whether this convention should be applicable to cultural properties. We believe that there might be some cultural properties carried on board a ship as a kind of cargo. If this convention could not be applicable to such cargo, then this would affect the salvor’s decision whether to provide assistance to such kind of ship. From the viewpoint of protecting the historical cultural relics of mankind, we think we should not exclude cultural property from the definition of property in this convention. That is my opinion, and thank you, M r. Chairman.

**Italy.** As for the French suggestion, with a view to excluding maritime cultural property, the Italian delegation has some sympathy with this form of words and we await the further development of this discussion before giving our definitive view. Thank you, M r. Chairman.

**Ecuador.** Thank you M r Chairman. As this is the first time I am taking the floor in this Committee. I would like to congratulate you and the two Vice-Presidents for your election. Like the distinguished delegate who spoke before me, we will give our preference in the indicative vote and I would just like to put a question to the distinguished delegate of France with regard to a maritime cultural property referred to in paragraph 2. Though in principle we support the French proposal, in the definition of the maritime cultural property in the Spanish text, you have the words “fondo del mar”. These are words which have economic implications. This is where you find mineral deposits and I don’t know whether this is the real meaning the French delegation wishes to give to the word. Thank you M r Chairman. I would like him to give us some explanation on his use of that word.

**The Chairman.** Thank you. Could you answer this question but would you concentrate on this question only. You are on the list of speakers and I will call on you later.

**France.** Thank you Chairman. In the definition of cultural property which is to be found in our document 7/24 because our proposal consists first of all in defining the property excluding maritime cultural property and after that there was a suggested definition for maritime cultural property and this definition which is to be found in document 7/24 refers to maritime cultural property which means any site, wreck, remains or generally any property of historical, archaeological and pre-historical interest. So from this definition it would appear clearly that we are not excluding cargoes which are being carried which was a point of concern to many delegations. It must be a site or a wreck which are to be found at the bottom of the sea. The term “site” is the appropriate technical term in order to designate a site or a place where certain objects are located, having a historical or other interests. So these are objects or artefacts which are buried on the seabed. They are lying there. They are in a site at the bottom of the sea. That’s what it actually means. Thank you Mr Chairman.

**The Chairman.** We ask the delegation of Ecuador if he is satisfied?

**Ecuador.** Yes sir. Give us the floor. The explanation is satisfactory but it seems to me that its translation is not adequate. You should not use the words “fondo del mar” in the Spanish text. Thank you Chairman.

**The Chairman.** The Secretariat has taken note of that remark.

**Japan.** This delegation has some doubt whether to include the provision regarding the item of cultural property proposed by the French delegation in this
Convention, based mainly upon the views expressed by you, Mr. Chairman, and upon the view expressed by the distinguished delegate of China in this regard. It is necessary that such matters at least should be dealt with under the provisions of article 24 and not under the article 1 definition provisions. Thank you, Mr. Chairman.

**France.** Mr. Chairman, as regards the proposal of France on the definition of maritime cultural property, at your request and having been asked by several delegations about it, I have made clear precisely what is meant by this concept. I refer to objects which have archaeological or historical interest which somehow have sunk into the sea and are often half buried in the subsoil of the sea which is why we have this definition, as I reminded you, in 7/24 which would be added to the definition in Article 1, in order to make explicit this concept of maritime cultural property. In the text of 7/24 there is a definition of the word “property” which has the phrase “with the exclusion of maritime cultural property” and further on we had to add subparagraph (f) which would define maritime cultural property. As it appears in 7/24, maritime cultural property means any site, wreck, remains or generally any property of prehistorical, archaeological or historical interest which meets the various questions raised and thus makes it possible to exclude this property which might be carried as cargo on board ship. That is not maritime cultural property, they could be objects of historical or other interest being carried by sea but they are not what we mean here by maritime cultural property. I think matters are now clear and that the exclusion of this property does not in any way affect anything being carried on board ship and does not change the draft convention on this point, it merely reserves the possibility for a State to monitor and generally control a search for or digging up of property which is either in the sea or half buried in the seabed.

**Brazil.** Also on item (c) you have found most useful the proposal by the French delegation and document **CONF.7/24** regarding maritime cultural property. In our view the proposed definition of maritime cultural property is useful and should be included in the text of the convention. We think that some consideration should be given to the question raised by the Chinese delegation regarding cultural property transported in vessels subject to salvage operations.

21 April 1989
Document **LEG/C ON F.7/VR.115**

**The Chairman.** We come then to proposals on a new subparagraph (d) which would now become (c) because (c) has been deleted, but I put it to the vote as subparagraph (d). It is up to the Drafting Committee then to change that accordingly. We have one proposal submitted by Spain in working paper 19 and of course France. We will take up first the Spanish proposal in working paper 19. Who is in favour of a new subparagraph (d) as proposed by Spain in working paper 19? Please raise your cards. Thank you. Who is against that proposal? Thank you. Abstentions? One. The result of the vote is 9 delegations in favour, 25 against and one abstention. That means the proposal has not been adopted. We come then to the proposal submitted by France in working paper 23. Who is in

---

(223) Document **LEG/CONF.7/CW/W P.23**  
Proposal by France  
Article 24  
Add the following new subparagraph (d) to paragraph 1:  
“(d) when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.”
favour of that proposal? Please raise your cards. Who is against? Thank you. Abstentions? Thank you. The result of the vote is 25 in favour, 13 against, 10 abstentions. That means the proposal has been adopted and has to be included accordingly in article 1.

The Chairman. We have now to vote on paragraph 1 of article 24 as a whole, as amended. Who is in favour of that amended paragraph 1? Please raise your cards. I thank you. Who is against? No delegation is against. Abstentions? I thank you. The result of the vote is 45 delegations in favour, no delegation is against and no abstentions. That means paragraph 1, as amended, has been adopted.

PARAGRAPHS 2 AND 3

International Conference Committee of the Whole  21 April 1989 Document LEG/CONF.7/VR.115

The Chairman. We come then to paragraph 2. We have no proposals on paragraph 2. Can I take it that the Committee is ready to adopt that paragraph 2 as it stands in the basic text, by consensus? It seems to be the case that we have adopted paragraph 2 by consensus. We have no proposals on paragraph 3. Can I take it that the Committee agrees by consensus on that paragraph 3 of the basic text? It seems to be the case, which means we have adopted paragraph 3 as it stands in the basic text by consensus. It seems to me it is not necessary to vote on the article as a whole, we have a very clear result with regard to paragraph 1 and the other paragraphs have been adopted by consensus.

DRAFT ARTICLES AGREED BY THE COMMITTEE OF THE WHOLE (DOCUMENT LEG/CONF.7/CW/4)

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 vessels of inland navigation or when no vessel is involved and the salvage operations take place in inland waters;
   (b) when all interested parties are nationals of that State;
   (c) whenever the property is permanently attached to the sea-bed for hydrocarbon production, storage and transportation;
   (c) when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.

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

3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General of the International Maritime Organization (hereinafter referred to as “the Organization”). Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General of the Organization (hereinafter referred to as “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 all vessels involved are vessels of inland navigation or when no vessel is involved and the salvage operations take place in inland waters;
   (a) when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
   (b) when the salvage operations take place in inland waters and no vessel is involved;
   (c) when all interested parties are nationals of that State;
   (d) when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.

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

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

Plenary Session 28 April 1989
Document LEG/CONF.7/VNR.230

The President. No remarks, approved.
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.

IMO
Draft Final Clauses
Prepared by the IMO Secretariat
Document LEG/CONF.7/4

Article ... - Denunciation

1. This Convention may be denounced by any State Party at any time after the expiry of ... ... ... 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.

IMO
Legal Committee
Report on the Work of the 60th Session (Document LEG 60/12)

117. With regard to the question of denunciation, one delegation noted that the relevant draft provision did not appear to permit the possibility of denunciation of the convention by a Contracting State prior to the entry into force of the convention. The delegation stated that this could create problems for States which ratified the convention but found out that there were no realistic prospects of the convention entering into force in the near future. Such States should be able to denounce the convention even though it would not have entered into force.

118. In this connection, it was suggested that, prior to the entry into force of the convention, the issue would be one of the withdrawal of the consent of the State to be bound rather than denunciation of the convention. It was also suggested that the question of the withdrawal by a State of its consent to be bound by a treaty not yet in force appeared to be a question of depositary practice and general treaty law, and not a question of the interpretation of a particular convention.
119. It was, however, noted by some delegations that the denunciation of a convention which was not yet in force might be necessary in some cases, and that the absence of clear and generally accepted international law rules on the subject had, in the past, created problems for some States. For this purpose, the Secretariat was requested to consider the possibility of some draft provisions in the Final Clauses of the salvage convention to deal with the problem. In this connection, the suggestion was made that a provision might be included to state that instruments of denunciation deposited before the entry into force of the convention would become effective from the date of entry into force of the convention, and would not be subject to the normal one-year delay period.

International Conference
Committee on Final Clauses 25 April 1989
Document LEG/CON/F.7/VR.180-181

Article (c). Denunciation

The Chairman. We move now to article (c) which is concerning denunciation and this article again has one blank to be filled in the first paragraph and this Convention may be denounced by any State Party at any time after the expiry of ____ from the date on which this Convention enters into force for that State. And, if I may be allowed, we would like to suggest a period of one year, though I unofficially heard from some delegations that they would prefer a longer period. Some mention three years and some even five years. So though I am tentatively just to open the discussion on this paragraph suggesting one year, I would like to open the floor for any proposals to be made. There are no proposals. May I ask you if you approve the proposal of the Chair first?

France. Thank you, Sir. On this paragraph 1, I might have made a proposal but it would go rather further than your own. Indeed, it seems to me that it would also be desirable to delete the final phrase and say “this Convention may be denounced by any State Party at any time”. Indeed, we should not forget that even if a State has decided to denounce the Convention, the Convention remains in force for one year after that denunciation. So anyone wanting to say that they do not want the Convention any more is dogbound for a further year. The final result I would see is that for any State two years of minimum duration would mean that for the State it would take so long to not be further bound by the provisions of the Convention. Therefore I do not want any minimum date included. Thank you.

The Chairman. Thank you very much, Madam. We have a proposal now by the distinguished delegate of France proposing that we should delete all the rest of paragraph 1 after the word “time”, so that it reads as follows:

“This Convention may be denounced by any State Party at any time”.

The distinguished delegate of the United Kingdom.

United Kingdom. Thank you Mr. Chairman. Though the proposal made by the distinguished delegate of France has certain attractions, I fear it may be superficial and I fear it may indeed tend to cast aside the difficulties that several States may have in assuring the orderly alteration of their legislation in the event that another State Party

(224) This Article was numbered (c) by the Committee but the text prepared by the IMO Secretariat was left unvaried.
denounces the Convention. Certainly, on the United Kingdom practice, we would have to prepare certain statutory instruments to amend what is known as our States Party Orders to ensure that as of a certain date the treaty relations provided for under our law excluded a State that had in fact denounced the treaty. We therefore support your proposal, Mr. Chairman, that the period should be one year. We consider this a minimum and a highly appropriate minimum at that. Thank you Mr. Chairman.

The Chairman. Thank you very much. The distinguished Delegation of China.

China. Thank you Mr. Chairman. My comment is similar to what the British delegate said. We think it is necessary to notify the State Parties about the denunciation of any party. This takes some time and I think one year is the least. Thank you.

The Chairman. Are there any other speakers who wish to contribute?

Japan. Thank you Mr. Chairman. I fully understand the point made by France but just from the procedural point of view it needs the point made by the United Kingdom; I support the measure. Thank you Mr. Chairman.

The Chairman. Thank you very much. I understand you are supporting the one year limit. Thank you. Any other speakers on this point? Now we have two proposals, one of them easy; the one year limit and three Delegations have spoken in favour, and the Delegation of France have introduced a proposal to delete any reference to any limitation of time to give States the right to denounce the Convention at any time that they wish, bearing in mind that such denunciation will only take effect after the passing of one year from the date of denunciation. I propose that we start first with the proposal of France and ask if there is any support for this proposal. There is no such support for this proposal. France? Thank you. So we have now a proposal which is supported by several delegations and it is to insert one year in the blank space in paragraph 1. May I ask if there is any objection to that proposal? There is no objection therefore this paragraph I take it that it is approved by unanimity? Thank you, it is so. Now paragraph 2 of this Article reads: “Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General” and we have already dealt with the point of definition of the Secretary-General. I think that is a straightforward paragraph. Are there any objections to this paragraph? No objections. Do I take it is adopted as written in this document? It is so. Thank you very much. Paragraph 3 says “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.” I do not know why they have decided to fill this gap but anyway it is filled and I would like to know if there is any objection or any observations on this paragraph? Shall we adopt it unanimously? It is so adopted. Thank you. May I now ask you to approve Article (c) on denunciation as a whole? It is so adopted. Thank you very much.

27 April 1989
Document LEG/C ON F.7/VR.201

The Chairman. We have also dealt with article (c) regarding denunciation and it was accepted after filling the blank in paragraph 1, with the period of one year. So paragraph 1 reads: “This Convention may be denounced by any State at any time after the expiry of one year from the date on which this Convention enters into force for that State”. There was no change in the other two paragraphs.
DRAFT FINAL CLAUSES AGREED BY THE COMMITTEE ON FINAL CLAUSES
(Document LEG/CONF.7/FC/2)

Article (c). 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.

Plenary Session 28 April 1989
Document LEG/CONF.7/VR.238

Article 31. Denunciation

The President. No remarks, approved.

(225) The Drafting Committee has approved the text approved by the Committee on Final Clauses. The Article has been renumbered Article 31.
ARTICLE 32
Revision and amendment

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

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

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

IMO
DRAFT FINAL CLAUSES
Prepared by the IMO Secretariat
Document LEG/CONF.7/4

Article (d) - Revision and amendment

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

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

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

International Conference
Committee on Final Clauses 25 April 1989
Document LEG/CONF.7/VR.181

Article (d). Revision and amendment

The Chairman. We go now to Article (d) concerning the revision and amendment and this article consists of three paragraphs. The first paragraph is a simple enough paragraph. I see Japan's card raised. Do you want to come in now at this moment? Thank you.

Japan. Thank you Mr. Chairman. I just wish to make a brief comment or amendment or this Article (d). First of all, I wish to express my concern with the

(226) This Article was numbered (d) by the Committee but the text prepared by the IMO Secretariat was left unvaried.
definition of these two words “revision and amendment”. In this Convention there are no definitions of the difference between these two words. Furthermore, in paragraphs 1 and 2 of this article, both “revision” and “amendment” are used, but in paragraph 3 only the word “amendment” is used. In other words, there is no consistency between paragraphs 1, 2 and 3. On the other hand, the word “revision” is too broad compared with the word “amendment”. In my opinion, the word “revision” is not appropriate for a legal instrument. So, to sum up my comment, the word “revision” is redundant. Therefore, I propose that “revision” be deleted, leaving only “amendment”.

The Chairman. Thank you very much, distinguished delegate of Japan. I was going to ask the Committee to go through the article paragraph by paragraph, but this comment is very relevant because it concerns the three paragraphs and it would be appropriate, I think, before we discuss the article paragraph by paragraph, to ask the Committee to comment on the proposal by the distinguished delegate of Japan which, as I understand it, is the deletion of the word “revision” from the title of the article and then deleting it also from paragraphs 1 and 2, so that only the words “amending” and “amendment” appear in this article. May I ask for any views or comments from the floor? The United Kingdom.

The United Kingdom. Mr. Chairman, we certainly agree that, on the face of it, the use of both of these terms appears to make one of the terms redundant. We would be slightly concerned, however, to agree to this proposal without first taking the Committee’s view on whether in fact there are situations in which a revision of one of the figures in this particular Convention may be appropriate. For example, here, I refer to the figure for the mark-up contained in article 11, paragraph 2, of the present Convention. It is possible that there may be proposals that this figure should be revised upwards and if that is going to be catered for I think it is appropriate to use the term “revision”. If it is not intended to cater for such, then of course the term “amendment” is appropriate.

The Chairman. I give the floor first of all to the United States.

The United States. Thank you, Mr. Chairman. We actually would like to hear the Secretariat speak on this, but thinking back to the 78 Protocol to MARPOL and SOLAS, I remember that the 78 MARPOL was a complete revision of SOLAS – and that is a different use of the word “revision” – but that the 78 Protocol to SOLAS was an amendment to a protocol, and it is confusing because the way the United Kingdom delegation just used it was the opposite of what I remember. So it appears there might be need for the two terms, but I would ask, through you, Sir, the Secretariat to help us.

The Chairman. Thank you very much. I was concerned to be confused, but I am glad that an English speaker is confused as well, so I think it will be appropriate to ask. Would Italy like the floor before we receive some explanation from the Secretariat? O.K., Italy, you have the floor.

Italy. The view of the Italian delegation is that for us “revision” is rather too general which would merely imply revising the entire Convention, but as regards “amendment”, a partial change, a partial modification, could be envisaged which would not touch the entire Convention. That is our view, I don’t know how the Secretariat feels about it, but perhaps it might be possible for everyone, including my delegation, to find out what the Secretariat feels about it.

The Chairman. That is an entirely different understanding of the meaning of “revision” from that given by the distinguished delegate of the United Kingdom, from
which I understood that “revision” concerns a limited action such as the revision of a paragraph in article 11, whereas your understanding probably coincides with that of the United States, in that revision is a more general exercise, I think it will be appropriate for us to ask the Secretariat who have followed these discussions throughout to enlighten us on the “revision” and “amendment” problem.

Mr. Mensah. Thank you, Mr. Chairman, In the first place, the Secretariat does not have the right to feel about proposals before the Committee. I do not have any feelings, but I think it is a very complicated situation. In the first place, the expressions “amendment” and “revision” have been used in a number of legal conventions for a very long time. In the second place, I think the practice in the Organization would seem to suggest that there is need for both expressions. In 1984 it was plain that the Civil Liability Convention was being revised and not amended. In 1976, in fact, the Conventions to revise the Athens and the CLC and the Fund were called revision Conventions. If you recall, Mr. Chairman, in 1984 the Legal Committee had to deal with the question of which countries could participate in the Diplomatic Conference to revise the Fund Convention and the Legal Committee recommended, and the Conference accepted, a compromise which enabled States which were not Parties to participate in the decision-making process but subject to a qualification. Certainly my understanding - I don't think I can even speak for the Secretariat - is that a revision would be a wide-ranging set of amendments to the Convention and an amendment would be changes to particular parts of the Convention without changing the basic characteristic. Therefore, if, in fact, the view of the Committee were to be that these two changes may be necessary and could be provided for, then I think it would be desirable to have both terms in. However, if you were to follow the proposal of the distinguished delegate of Japan and use only “amendment”, then I would respectfully suggest that paragraph 1 would not be quite appropriate, because the idea of using the expression “amendment” only in paragraph 3 was that, when it is a “revision”, States will be entitled to express their consent to be bound de novo – as happened in 1984. When, however, it is an “amendment”, then States which are Parties remain Parties and they will then indicate their consent to be bound only by the amendment. At that point, it is relevant to talk of a State which comes in when the amendment has entered into force. If it is a revision, then that particular provision will not be applicable. So, therefore, if you decided to use only “amendment”, then you would not meet the conditions for the “revision” because if it is an amendment, then by the law of treaties it should only be for the States which are Parties. Therefore paragraph 2 will be the one applicable. I hope I have made myself clear, Mr. Chairman.

The Chairman. Thank you very much. It is clear, but not understandable to me. Anyway, I think that the delegation of Japan, when they intervened and suggested that we delete the word “revise” or “revision”, gave a reason behind that intervention, and that is that there is a conflict between paragraphs 1 and 2 and paragraph 3, whereby the word “revision” appears in paragraphs 1 and 2 but not in paragraph 3. I have also listened carefully to Dr. Mensah regarding the revision whereby maybe a conference will be held for revising the convention and therefore parties will be able to express their opinions during such a conference whereby an amendment is different. Paragraph 2 stipulates that a conference may be called for an amendment or revision – not just a revision. Perhaps it would be appropriate to add the word “revision” to paragraph 3 and therefore have the three paragraphs in line with each other. Paragraph 3 would then read as follows: “Any consent to be bound by this convention expressed after the date of entry into force of any amendment or revision to this
convention shall be deemed to apply to the convention as amended.” I will put that up for discussion, but first the delegation of the United Kingdom would like to take the floor.

**United Kingdom.** Thank you, Mr. Chairman. In the light of the Assistant Secretary-General’s very lucid explanation of the reason for the use of these words, the United Kingdom would suggest that we would retain the terms in the title and in the body of the text. We would wish to consider and reserve our position on the proposal you have made regarding the insertion of the word “revision” in paragraph 3 because, of course, the revision of a convention could provide, under the terms used by the Assistant Secretary-General, a rather extensive revision and may effectively mean that one has a situation where one has two treaties. Therefore, it may be wrong at this stage for us to seek under paragraph 3 to bind a State to an extension revision in the same way as we may bind them to a minor amendment. Thank you, Mr. Chairman.

**The Chairman.** Thank you. That has given us a different view of the understanding of the United Kingdom’s delegation on the inclusion of the word “revision”. I think the situation is much clearer. In the light of these explanations, may I ask if the delegation of Japan would like to continue with its proposal to delete the words “revision” and “revised” from this article?

**Japan.** Thank you, Mr. Chairman. Japan is not and English-speaking country, but having heard the explanation made by the United Kingdom, I still propose the deletion of “revision” because at the first intervention I explained the inconsistency between one, two and three. Now the words “revision” and “revised” are added in paragraph 3. It means that revision is not necessary. That is why I wish to insist for the deletion of the word “revision”. There are no separate meanings – just the repetition of the words “revision” or “amendment”. In my opinion, if we delete “revision” from all three paragraphs there will be no problems in the interpretation of them. Thank you.

**The Chairman.** The next speaker is the delegation of Sweden.

**Sweden.** Thank you, Mr. Chairman. I would like to observe that the draft text of article (d) has been modelled on a corresponding article in the Convention for Limitation of Liability for Maritime Claims. Exactly the same words have been used there, and we think that as they were acceptable to countries in that context, they will be acceptable in this context as well. There is a distinct difference between “revision” and “amendment”, which is that a revision would aim at a much more extensive changing of the contents of a convention or a similar instrument than an amendment. It might result even in a new instrument which would replace the revised instrument. If that is so, that is an explanation for the fact that paragraph 3 does not make reference to “revisions” but only to “amendments”. We think this is logical and in keeping with the 1976 Limitation Convention. Thank you, Mr. Chairman.

**The Chairman.** Do I understand that you are against deleting the words “revised” and “revision”?

**Sweden.** Yes, Mr. Chairman.

**The Chairman.** Thank you. The next speaker is the delegate from Finland.

**Finland.** Thank you, Mr. Chairman. For the reasons explained by Dr. Mensah and the distinguished delegates of the United Kingdom and Sweden, we fully support the text as it stands now. Thank you.
The Chairman. Thank you. The next speaker is the delegate from the United States.

United States. Thank you, Mr. Chairman. We support the text as it stands, although we have sympathy with the Japanese difficulty in understanding it. Thank you.

The Chairman. Thank you. The next speaker is the delegate from Italy.

Italy. The Chairman. Thank you, Mr. Chairman. The Italian delegation supports the text as it is and the explanations you gave are quite sufficient and certainly are in line with the position I am facing now. Thank you.

The Chairman. Thank you. May I ask at this stage if there is any delegation who wishes to speak in support of the proposal by Japan? There is no support; therefore the proposal to delete the words “revision” and “revised” from article (d) is not carried through. May we return to article (d) and go through it paragraph by paragraph? Are there any comments on paragraph 1? There are no comments, so paragraph 1 reads: “A conference for the purpose of revising or amending this convention may be convened by the organisation.” May I take it that this paragraph is approved as drafted? It is so. Paragraph 2 of this article has a blank to be completed and also square brackets to be removed. The paragraph now reads: “The Secretary-General shall convene a conference of States parties to this convention for revising or amending the convention at the request of ... of the States parties or one third of the States parties whichever is the higher figure.” The Secretary has the floor.

The Secretary. Thank you, Mr. Chairman. I think that the text as it is now does not quite give to the Committee all the choices that are available. In previous texts, we had either one modelled on this form, or another without the requirement for an absolute number but only a proportion. It is therefore possible for this Committee to consider whether it wishes to have only a proportion – one third, one quarter or whatever – or whether it wishes to have a combination of an absolute number, plus a proportion. Properly presented I think we should have put “at the request of the [...] of the States Parties” also in square brackets so that you would have seen that the permutations and combinations were more than just two. I thought I would explain that. The Secretariat is not suggesting that you must of necessity have both a number and a proportion. You can decide to have both of them or you can decide to have just a proportion, as has happened in other Conventions. Thank you, Mr. Chairman.

The Chairman. Thank you very much. I give the floor to China.

China. Thank you Mr. Chairman. I have just listened to the explanation given by the Secretariat. This Delegation proposes that we use the percentage, which is much better. In the CLC Convention, in the Fund Convention, and in the Limitation Convention we have similar articles there. At the end of this paragraph we have a phrase “whichever is the higher figure”. Even based on this phrase we could see that one criterion would be quite enough so we would support a single way. We could delete the blank there, we would only use at the request of one-third of States Parties, that would be quite enough. Thank you, Mr. Chairman.

The Chairman. Thank you very much. I will read China’s proposal as I understand it. Their proposal which is in conformity with the other alternative which the Secretariat has proposed reads as follows: “The Secretary-General shall convene a conference of the State Parties to this Convention for revising or amending the Convention at the request...” – then it depends whether we take what the delegate has
said directly, and I listened to him in English, or what the interpreter said. The delegate said, I think: “At the request of not less than one-third of the state Parties” – or it could be “at the request of one-third of the State Parties”. The distinguished delegate of China confirms that it should be: “at the request of not less than one-third of the State Parties”. The United Kingdom, please.

**United Kingdom.** Thank you Mr. Chairman. The United Kingdom Delegations considers that we need to look at this paragraph at the various times in which the Convention will be in force, or as the Convention enters into force. If we take the figure of 10 in Article (b)(1) then I think it seems fairly unreasonable if we have that small figure, that say four States would be able to require a revision of the Convention. So while there is a small number of States, I think there is some benefit in ensuring that there cannot be over rapid amendment of the Convention. On the other hand, once the Convention has secured the large numbers of States which we all hope will ratify the Convention then it may be very difficult to ensure that you can achieve an amendment using the one-third formula. However, I think we have to balance both and I think the most appropriate course of action is to provide say, using the figure of 10 contained in Article (b)(1), that we insert the figure 5 – that is “5 of the State Parties into...” and delete the square brackets around the expression “one-third of the” in the existing text. Mr. Chairman, we may in time find one-third is a very difficult number to achieve to amend the Convention, but we consider it appropriate to have both of these measures to ensure, at least in its early years, the Convention had some continuity. Thank you Mr. Chairman.

**The Chairman.** Thank you. May I point out before I give the floor to any distinguished delegate that we have at the moment two proposals on the floor: one by the distinguished delegate of China requiring that only a proportion of States is required: and another one by the United Kingdom requiring both a figure, a number of States and a proportion – and he has proposed five States and one-third. May I point out here that when it comes to the convening of the conference, the five figure will not have any meaning if there are more than 15 States Party to this Convention because we will still have to require one-third because it says “whichever is a higher figure”. So I will open the floor for discussion on this point and I would like you to indicate your preference for either the proposal of China or the United Kingdom unless, obviously, you have any other figure in mind that you would like to propose. The United States.

**United States.** Thank you, Sir. I will answer your questions and add a bit more confusion. We would agree with five suggested by the United Kingdom. We would suggest that a 25% figure – one-fourth – might be more appropriate than one-third. In either case we think that if the Chinese proposal is accepted we would like to see 25% and we think that with the British proposal of 5 and 25% would be more appropriate. If I have to select one, I would side with the United Kingdom in this issue. Thank you, Sir.

**The Chairman.** Thank you very much. So, we have a third proposal which is slightly different by proposing one-quarter instead of one-third. Any other delegates who wish to contribute on this? I think it is necessary that I should hear some more opinions on that. The Netherlands.

**Netherlands.** Thank you Mr. Chairman. We would like to have a figure of 5 with the States and the deletion of the square brackets, so to have the inclusion of one-third of the States. Thank you.
**The Chairman.** Thank you very much. Kuwait.

**Kuwait.** Thank you Mr. Chairman. I believe it would be preferable to have a third of countries as we see submitted to us in this text. Thank you very much.

**The Chairman.** Thank you very much. May I ask you if you are supporting the proposal of China whereby there will be no requirement for a number of States – only one-third – or whether you support the proposal of the United Kingdom where it is five States and one-third?

**Kuwait.** I believe that the Chinese proposal was that it should not be less than a third, but I believe it should be a third of States Parties, without specifying five countries or any other number of countries. Thank you Mr. Chairman.

**The Chairman.** I have five Delegations on the list of speakers, Finland, Italy, Sweden and Greece, so I will give them in that order as requested. Finland, please.

**Finland.** Thank you Mr. Chairman. We do not see a very big difference between the proposal made by the distinguished delegates of China and the United Kingdom because the United Kingdom proposal means that in the earlier stages you need five and in the Chinese proposal you need four. There is only a difference of one country. On the other hand, this one-third requirement might be rather difficult if we have some 60 or 70 States Party to this Convention. Therefore, Mr. Chairman, I feel certain sympathy to the proposal of the distinguished delegate of the United States so that we have a figure 5 and then we only have a one-quarter requirement in the latter part of the paragraph. Thank you Mr. Chairman.

**The Chairman.** Thank you very much. The distinguished delegate of Italy.

**Italy.** Mr. Chairman, I was about to make the same remark as regards the various proposals. It is a choice between four and five and we do not see much difference with regard to the number of countries. We would prefer the proposal by China. We do not believe it is a very good idea to allow five States to require a revision of the Convention.

**The Chairman.** Sweden.

**Sweden.** Thank you Mr. Chairman. We agree with the proposals made by the US and supported by Finland. Thank you.

**Delegate.** In consistency with our proposal of article (b), where you will well remember, we liked a figure higher than 10. We would like to see the figure of 7 instead of 5, and one-third as you have suggested. Thank you.

**The Chairman.** Thank you. France.

**France.** Thank you Mr. Chairman. For our part we would prefer one-third of the States Parties without mentioning a specific figure because between 4 and 5, the difference is very slight. Thank you Mr. Chairman.

**The Chairman.** Thank you very much. Any other speakers on this point. None.

So between those who have spoken with regards to the proposal by China there are three countries in support, that makes them four, and with regards to the UK proposal, there are two in support and there are two in favour or three in favour of the US proposal. Now there is only one delegation which has proposed a figure of 7 States, and that is Greece and I would ask if there is any support for that proposal. There is support from – is that supporting or would you like to speak. Yes.

**Cyprus.** We agree with the UK proposal, it must be a combination of a number
of States, and proportion in the first stages of the amendment of the Convention, but
our understanding is that it is a request to change the Convention and the proposed
article of the amendments does not stipulate anything about when these amendments
would be entered into force and what ratifications are required. And we wonder
whether this was left out in the proposal of the Secretariat had any purpose because it
leaves it entirely to the Conference and we make the Conference amending the
Convention at the beginning with a small number of States participating and we have
an awkward situation. We wonder whether before finalizing our decision on this point
whether we should address the question of entering into force of amendments to this
Convention. And we would appreciate it if we had the use of the Secretariat on their
proposal. Thank you, Mr. Chairman.

The Chairman. Thank you very much. We are almost at the end of our working
day and I was hoping that we will finish this article before we adjourned. I think we
can ask the Secretariat for a brief answer on that question, then we will adjourn our
discussion and take a decision on this subparagraph probably after a chance has been
given to delegations to consult among themselves regarding the various figures that
have been proposed and we will take it first thing on Thursday afternoon, but before
we adjourn may I ask the Secretary to make a brief answer to the distinguished
delegate of Cyprus.

The Secretary. Thank you Mr. Chairman. I think the answer to that could in part
be done by reference to articles 20 and 21 of the Convention of 1976, Limitation of
Liability Convention, but 20 is very similar as the distinguished delegate of Sweden
said to what we have here. This revision and amendment, with three paragraphs. But
article 20 deals with the change altering the amount specified in the article, the
limitation amount, and that provides an amendment and it provides a procedure for
the amendment and it gives the requirement for the adoption of the amendment.
Therefore, for this article which was dealing with revision, amendment of a general
nature, there have not been any precedent in the past providing in legal treaties
procedure for the adoption. But in the case of a specific amendment, which was not of
a wide ranging nature, then there is a provision for dealing with that particular aspect.
If it were felt that something along those lines should be done for any particular
 provision of the present Convention, then we have the precedent of 1976. But this was
based on the assumption that the Conference would assume that the kind of
amendments or revisions would be along the lines of 1969 Civil Liability. Mr.
Chairman, whilst I have the floor my I just by way of information explain that when in
1976 the Organization convened a revision conference for Athens and the Civil
Liability Convention of 1969, the resultant instruments were protocols, they were
protocols which were completely different from the parent instruments and which
required ratification and acceptance or accession, as opposed to merely accepting an
amendment. Thank you Mr. Chairman.

The Chairman. Thank you very much, Dr. Mensah. I hope this explanation is
satisfactory to the delegation of Cyprus and with that we will adjourn our meeting and
we will meet again on Thursday afternoon at 2.30 p.m. Thank you very much.

27 April 1989
Document LEG/CONF.7/VR.201-204

The Chairman. We started discussing article (d) on revision and amendment and
the first paragraph was adopted as is in the draft and we have stopped our work when
we reached paragraph 2, but we have already carried out quite a discussion on that paragraph and to give you an idea about the way that discussion was going at that stage when we closed the meeting, is that ten States have spoken and given proposals for filling the gap on this paragraph. There were four States who preferred to have no figure at all in the blank and just to stipulate a proportion of the States party to this Convention which is one third to amend the Convention. There were five delegations who preferred to have the figure 5 in that blank; one delegation preferred to have the figure 7. Whether it is going to be one third or more or less, the majority of States preferred the figure one third, three States have spoken in preference of the figure one quarter. We stopped our deliberations at that point and now the floor is open for any further proposals or comments on paragraph 2. The United Kingdom.

United Kingdom. Thank you Mr Chairman. In the light of the discussion that we had at the last meeting of this committee, on paragraph 2 of article (d), may the United Kingdom propose what may be regarded as a compromise and that is that we should include a figure and an amount but that the figure should be six of the States Parties or one quarter of the States Parties whichever is the higher figure.

The Chairman. There was a previous proposal from the United Kingdom for a figure of five and one third and now we see that there is a new proposal which I understand replaces the previous proposal and that is the figure six and one quarter. May I have any comments on that or any other proposal new or previous proposal. Greece.

Greece. Thank you Chairman. Just to accept the compromise which was proposed by the United Kingdom.

The Chairman. The United States.

United States. Thank you Chairman. As you know we preferred the figure five but we would go along with the compromise. Thank you Sir.

The Chairman. France.

France. Thank you Mr Chairman. Likewise we could accept this sacrifice: six or one third.

The Chairman. May I point out that the proposal is six and one quarter and not one third. Did you say one quarter? Thank you. Therefore he supports the proposal of the United Kingdom. Finland.

Finland. Thank you Mr Chairman. We support the proposal five and one quarter but we are ready to accept the six and one quarter.

The Chairman. The Federal Republic of Germany.

Federal Republic of Germany. My delegation too would go along with the proposal put forward by the distinguished delegate of the United Kingdom.

The Chairman. Sweden.

Sweden. Thank you Mr Chairman. This delegation supports the UK proposal.

The Chairman. Any further speakers. China.

China. Thank you Mr Chairman. We originally suggested that we only give a proportion in this paragraph and without any absolute figure. Now as a compromise we can accept the suggestion made by the UK.

The Chairman. Liberia.
Liberia. Thank you Mr Chairman. The delegation of Liberia would also support the compromise proposed by the United Kingdom.

The Chairman. Cuba.

Cuba. Thank you Mr Chairman. We first of all would like to congratulate you for your election and refer to the criteria of my delegation not only in respect to article (d) on revision and amendment but of course is closely linked to the other articles which preceded and particularly the one on entry into force. We understand that one third of the States Party is a correct figure, however, we would wish to state that since 66 States took part in this conference, we came to agree that only 10 and now 6 States can enable the entry into force of a convention of this type. We do consider that this aspect which was somewhat skipped over, should be analysed more carefully and those here present, do not represent more than 10% of the countries which in compliance with the suggestion made as regards the entry into force, not only would the decision of the others be somewhat overlapped, but in fact even four or five countries would make it possible to revise the Convention pursuant to article (d). We do not wish to put forward any new proposal; that is not our purpose, but we do believe that if from 66 delegations we were to follow the majority criteria, that would mean 34 States which would represent in fact a majority who have to approve the entry into force. However, there seems to be practically consensus for a custom in this Organization to approve instruments of this type, and so our proposal would be that no less than 25 States should make possible the entry into force of a convention and, therefore, in relation directly with article 10 where one-third of twenty-five should be those who could enable a revision or amendment of this convention so that, in actual fact, there is some fairness in this Organization. Thank you, Mr Chairman.

The Chairman. Thank you. Just to point out one small thing. It will not be possible for four or five countries to be able to amend this convention if we agree on the figure six, because six is minimum. If we adopt the British proposal of six or one quarter and it so happened that the quarter is less than six, then the requirement would be for six because it carries on to say “whichever is the higher figure”. However, I understand your argument and I am sure everybody has listened to you and we will see what the comments of the rest of this Committee are. I will give the floor to the distinguished delegate of Italy.

Italy. Thank you, Mr Chairman. Before stating my position on this point I would first of all like to thank the French delegation and the delegations who supported my nomination and the consensus expressed by the Assembly on my name. It is the first time that I am taking part in these works, so I am particularly grateful and I hope that I will be able to be very active in my future participation. As regards this article, we would support the proposal put forward by the United Kingdom.

The Chairman. Cyprus.

Cyprus. Thank you, Mr Chairman. Just to say that we support the United Kingdom proposal. One thing we would the authors of the paper to clarify is whether they envisage a two-tier system with respect to calling a revision conference. One is by express request to the Secretary-General by the State Parties and which is set out in article 2 and by article 1 where they suggest that the Organization, the Assembly or the Council can call a revision conference if it be deemed necessary. Thank you, Mr Chairman.
The Chairman. Thank you. Dr. Mensah would like to speak. Can you confirm his point? This is confirmed by Dr. Mensah. Thank you, Cyprus. Mexico.

Mexico. Thank you, Mr. Chairman. We would like to support the statement made by the distinguished delegation of Cuba and, in order to be in line with what they have pointed out, article (d), second paragraph, should say “at the request of ten States Parties or one-third of the States Parties, whichever is the higher figure”. That is more correct in order to be in line with the statement made by the Cuban delegation. Thank you.

The Chairman. Thank you. We see that your proposal is for ten States or one-third, which ever is the higher. It goes some way towards the Cuban proposal but is not exactly the same and we would like to hear the United Kingdom.

United Kingdom. Mr. Chairman, can I request your advice on this debate. A formal decision of this Committee has been taken on article (b) and the amount in article (b), and I think it is in the context of that amount that we should consider the appropriate figures to put in paragraph 2 of article (d). I think that the points that have been raised both by the distinguished delegates of Cuba and the distinguished delegate of Mexico are, in fact, points which are best treated in the Plenary. As I understand it the Committee had made a formal decision on article (b). Thank you, Mr. Chairman.

The Chairman. Thank you. It is quite correct that we are not re-negotiating or discussing article (b) at this Committee. I have already stated previously that a decision has been taken, but in my report to the Plenary I will indicate that there have been some objections and a formal abstention on that article. However, I think delegations have the right to state their views and the Committee is not obliged to take up their point of view if the majority of the Committee says that is not so. Ladies and gentlemen, as I have indicated at the beginning of this debate, there were several proposals on the floor and now the United Kingdom has introduced a new proposal which is closer than any other proposal to the previous ones which have been indicated. It has received the support of eleven speakers so far and there are no other proposals that the Chairman can see which have received a similar or near enough support. Therefore, I think in order to finish the discussion on this item I will have to put this to the vote and ask those who are in favour of including the figure “6” and the proportion “one quarter” in paragraph 2 to raise their cards. Those against? Any abstentions? The result of the vote is 31 in favour of the proposal, 6 against and 2 abstentions. Therefore paragraph 2 of article (d) will read as follows:

“The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention at the request of 6 of the States Parties or one-quarter of the States Parties, whichever is the higher figure”.

Now, may I go to paragraph 3 and ask if there are any comments on that paragraph? Japan.

Japan. Thank you, Mr. Chairman. I do not want to re-open the debate on the issue discussed already, but still I have some problem on the difference between the revision and the amendment. So just for clarification about paragraph 3 only, I wish to ask some small questions. As you may know very well, we adopted already the text as it stands – paragraph 3 of this article. If I am correct, under paragraph 1 (paragraph 2) of this article, the Conference can revise or amend the Convention, but if the Conference just revised the Convention, not to amend it, in this case there are no differences to the Convention, as revised in paragraph 3. Paragraph 3 mentions only
the case of amendment, not revision. So, I wish to ask the Secretariat, through you, Mr. Chairman, as follows. In the case only of revision, whether paragraph 3 covers the case of revision only, or should be interpreted otherwise. Thank you, Mr. Chairman.

**The Chairman.** Thank you very much, and I confirm that the Japanese delegation had introduced this question during the last meeting. There were some explanations given and, in fact, we even went through what the revision means and we went through the spectrum from the revision being a minor thing to being a major revision of the Convention, with probability or the possibility of almost a new instrument. However, to satisfy the distinguished delegate from Japan, I will ask the Secretariat to try and explain this point.

**Secretariat (Dr. Mensah).** Thank you, Mr. Chairman. Mr. Chairman, just as you said, article (d), paragraph 3 is dealing with a situation where the Conference, when it is convened, may be a Conference to revise or a Conference to amend, but the Conference will decide on what it wants to do. If the Conference adopts an amendment to the Convention, then that amendment will be put to the States Parties to the Convention. States Parties to the Convention may or may not accept the amendment, but the Convention remains as it is and the Parties remain as they were. However, if the Conference decides to revise the Convention to the point where, as in the past, it adopts a Protocol, then that Protocol is put to, and there may be two positions. Is it a Protocol to the Convention? Only States which are Parties to the Convention will be able to accept the Protocol. If it is a Protocol relating to the Convention, then it will be open for all States to accept the Protocol, in which case they become Parties to the Convention as amended by the Protocol, but it is only in the case where the Conference adopts an amendment, that the amendment will apply to States who become Parties to the Convention thereafter. If it adopts the Protocol, then the Protocol itself becomes liable to be accepted and States will never be bound by the Protocol unless they actually express the wish, or through the procedure specified, become Parties to the Protocol. So therefore, it is a deliberate provision in paragraph 3, that it refers only to the case of amendment and does not refer to cases of revision and this has been, as I explained at the last meeting, the pattern which has been followed in all the IMO Conventions, starting from 1969 Civil Liabilities through to the Convention which was adopted in Rome last year. Thank you, Mr. Chairman.

**The Chairman.** Thank you very much, Dr. Mensah. May I ask the distinguished delegate of Japan if the explanation is clear and acceptable to him.

**Japan.** Thank you, Mr. Chairman. I do not want to prolong the debate, but I was just concerned about the definition of the difference between the two terms, so please let me make the example of other Conventions. As far as I know, the other Conventions, for example, CLC 1969 and the 1971 Funds Convention just mention paragraphs 1 and 2, no mention about paragraph 3. There are only paragraphs 1 and 2 – we can accept no change but in this Convention only paragraph 3 is mentioned. That is why I have some confusion over this – it is still not clear. Thank you, Mr. Chairman.

**The Chairman.** Thank you very much. I obviously leave the bulk of the answer to Dr. Mensah but it is my opinion that if we delete paragraph 3, there will be no article in this Convention to deal with the situation of the new States which joined the Convention after some amendments have already been introduced. I believe it is necessary that we have something in the Convention to show us what the situation is with regard to countries who join later, after the Convention has come into force and
after some amendments have already been introduced, but I will ask Dr. Mensah to see if he could answer that particular part of the question. Thank you.

Secretariat (Dr. Mensah). Thank you, Mr. Chairman. I just want to say that there is a similar provision in the 1976 Limitation of Liability Convention, article 20. Also, Mr Chairman, I wish to refer to the CLC 1969, and the provision to which the distinguished delegate of Japan is referring, is in fact, contained in that Convention, but in a different place – it is in article 14, paragraph 2. It says “the instrument of ratification acceptance, approval or accession deposited after the entry into force of an amendment of the present Convention with respect to all existing Contracting States, or after the completion of all measures required for the entry into force of the amendment with respect to those Contracting States, shall be deemed to apply to the Convention as modified by the amendment”. That is a similar provision to this one but it is in a different place. But in the 1976 Limitation of Liability Convention, in article 20, it is exactly as it is here in paragraph 3. Thank you, Mr. Chairman.

The Chairman. Thank you very much, Dr. Mensah, and I think with that explanation I see that my friend from Japan is nodding his head that he is satisfied. I give the floor now to the distinguished delegate of Brazil.

Brazil. Thank you, Mr. Chairman. I apologise for coming in rather late in the discussion, but my delegation was not present at the previous meeting of the Committee and I have been rather overtaken by the efficiency of our work this morning. I would therefore just like to observe that the remarks made by the delegations of Cuba and Mexico concerning the relationship between “entry into force” and “amendment” deserve our attention and my delegation may want to take them up again at the end of Plenary. Thank you.

The Chairman. Thank you very much. As I have indicated during the opening of the work of this Committee, probably the fact that not many delegations participated, could be due to the fact that we did not announce - or the Secretariat did not announce - the convening of such a meeting. However, I have already indicated that a formal reservation has been submitted by Greece and that will be indicated in my report to the Plenary and obviously, any delegation is at liberty to raise that again when the Plenary discusses these articles. Are there any further comments on paragraph 3 of this article? Do I take it that we approve this paragraph unanimously? Thank you very much, May I ask you now to approve article (d) as a whole. It is so adopted. Thank you very much.

DRAFT FINAL CLAUSES AGREED BY THE COMMITTEE ON FINAL CLAUSES (DOCUMENT LEG/CONF.7/FC/2)

Article (d). Revision and amendment

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of six States Parties, or one fourth of the States Parties, whichever is the higher figure.
3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.
Plenary Session 28 April 1989
Document LEG/C.ON F.7/VR.238

Article 32. Revision and amendment

The President. Article 32, with the amendment in paragraph 2, 8 States instead of 6. If there are no further remarks, it is approved.228

Text adopted by the Conference

Article 32. Revision and amendment

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of eight States Parties, or one fourth of the States Parties, whichever is the higher figure.
3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

(227) The Drafting Committee has approved the text approved by the Committee on Final Clauses. Article (d) has been renumbered Article 32.
(228) See the debate on Article 29, supra, pages 534-543.
1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
   (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
      (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
      (ii) the date of the entry into force of this Convention;
      (iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
      (iv) any amendment adopted in conformity with Article 32;
      (v) the receipt of any reservation, declaration or notification made under this Convention;
   (b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.
3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.
be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

International Conference
Committee on Final Clauses 27 April 1989
Document LEG/C ON F.7/V R. 204-205

Article (e). Depositary

The Chairman. We are going to the last article, which is article (e), regarding the deposition of this Convention and may I ask for any comments on the little paragraph 1. No comments. Is it adopted unanimously? It is so. Thank you. We go into paragraph 2, and I will ask for any comments from the floor on paragraph 2. Sweden. Thank you.

Sweden. Thank you Mr. Chairman. Looking at the order which has been used apparently for the draft of this article that is the 1976 Convention, I see there might be something missing. In subparagraph (a), probably there should be a provision to make clear that information to be provided by the Secretary-General should include also information about any amendment adopted in conformity with article (d). That would be a provision corresponding to article 22, subparagraph (2)(b)(iv) in the 1976 Convention. So I would propose a new subparagraph (iv), and (iv) to be renumbered as (v), to read “any amendment adopted in conformity with article (d)”. Thank you Mr. Chairman.

The Chairman. Thank you very much. I was just wondering whether to ask the Secretariat if there is any reason for the non inclusion of such a subparagraph. Because if there is no such reason, it is a very reasonable proposal which I would like to read and see what the Committee feels about it. First, may I ask the Secretariat if there is any particular reason why that has not been included in the original draft. I understand that the Legal Committee, sort of overlooked this subparagraph and that there is really no particular reason why it should not be included in this article. And if that is the case, may I read to you now the proposal of Sweden on a new subparagraph (iv), which would read as follows: “Any amendment adopted in conformity with article (d)”. Obviously, the numbering of this article is provisional and there will be proper numbering by the Drafting Committee. The United Kingdom.

United Kingdom. Thank you Mr. Chairman. This delegation supports the proposal made by the distinguished delegate of Sweden. Thank you Mr. Chairman.

The Chairman. Thank you very much. This proposal is supported. May I ask if there are any objections instead of support? No objections. It is so adopted then. Are there any further comments on paragraph 2? No further comments on paragraph 2. Therefore, paragraph 2 is adopted after the introduction of a new subparagraph (iv) which I have just read, and which is the proposal by the distinguished delegate of Sweden, supported by the UK and accepted unanimously by the Committee and the existing subparagraph (iv) would be renumbered as subparagraph (v). Now we are going to paragraph 3, and I would like to ask for any comments on that paragraph.

(229) This Article was numbered (e) by the Committee but the text prepared by the IMO Secretariat was left unvaried.
There are no comments. Do I take it that it is acceptable to all delegations present here? If it seems to be the case, therefore, paragraph 3 is also adopted. May I ask you now to adopt article (e) as a whole as amended? It seems to be the case, article (e) is, therefore, adopted unanimously, as amended in paragraph 2. Thank you very much.

Ireland. Mr. Chairman, please forgive me for intervening at this stage, since you moved on to article (e) on the subject of the depository, I just wanted to get a clarification. A new subparagraph (iv) has been introduced that any amendment adopted in conformity with article (d) should be notified by the Secretary-General to all other States. The clarification, I would like to ask you is that: have we made the necessary revision of the first paragraph to reflect the fact that we have introduced subparagraph (iv) that any amendment should also be deposited with the Secretary-General so that he may go on to carry out the function in the next paragraph.

The Chairman. Thank you very much the distinguished delegate of Ireland. I understand from the Secretariat that amendments are not normally deposited. Yes, the distinguished delegate of Ireland.

Ireland. I beg your pardon Mr. Chairman. In the 1984 Civil Liability Convention, such a provision was made.

The Chairman. I will give the floor to the Secretary to answer that question.

The Secretary (Mr. Mensah). Thank you Mr. Chairman. That is precisely the point relevant to the question raised by the distinguished delegate of Japan. The 1984 Convention in effect adopted a new and as may be recalled, the Conference called it the 1984 Protocol, so it had to have a depositary. In the case of an amendment, the amendment does not have a depositary of its own because it is still linked with the parent convention.

The Chairman. Is that satisfactory?

Draft Final Clauses Agreed by the Committee on Final Clauses (Document LEG/CONF.7/FC/2)

Article (e) - Depositary

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
   (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization of:
      (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
      (ii) the date of the entry into force of this Convention;
      (iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
      (iv) any amendment adopted in conformity with article 32;
      (v) the receipt of any reservation, declaration or notification made under this Convention;
   (b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.
3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for
registration and publication in accordance with Article 102 of the Charter of the United Nations.

Plenary Session 28 April 1989
Document LEG/CONF.7/VR.238

Article 33. Depositary

The President. Article 33, a brief word to the distinguished delegate of Japan.

Japan. Of course I will be brief. My intervention is not to reopen the matter which is adopted now but briefly to clarify Japan’s position on Article 32. As a fault at this stage. In paragraph 1 and 2, the words “revising” and “amending” are used. However, in paragraph 3 only the word “amended” or “amendment” is used. It therefore appears that there is no consistency between paragraph 3 and the other paragraphs. Mr. President, the definition of these are not clear in the Convention. From the viewpoint of consistency and in order to avoid such needless confusion over definition, my delegation proposed in the Committee of the Final Clauses either to delete the word “revisions” both in paragraphs 1 and 2, or to add the words “revises” and “revision” to paragraph 3. Otherwise it is not clear. However, to my regret the original text was adopted without this finally in this conference therefore my delegation wishes to state our position on this article. Finally, my delegation believes it is a common understanding that the concept of amendment and amending in paragraph 3 includes that of revision to be made in the conference as mentioned in paragraph 1 and 2. My delegation kindly wish this statement to be noted by the conference. Thank you, Mr. President.

The President. Thank you. It will be noted and entered into the record. Article 33 is approved.

(230) The Drafting Committee has approved the text approved by the Committee on Final Clauses. Article (e) has been renumbered Article 33.
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.

International Conference
Plenary Session 28 April 1989
Document LEG/CONF.7/VR.238

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.

The President. Article 34 is approved.
International Conference
Plenary Session 28 April 1989
Document LEG/C ON F.7/VR.210-219

Title of the Final Act

The President. Côte d’Ivoire had a comment on the very title of the document, so this is the time to make relevant comment.

Côte d’Ivoire. I was saying earlier on that the Committee of the Whole had rejected the inclusion of a reference to “sauvetage” in the Convention. This was a proposal submitted by France and Saudi Arabia and this was rejected, but it so happens that the word “sauvetage” appears in the French text only231. I do not think this is the case in the Spanish and the English text, and we would like the document to be harmonized and in line with the other linguistic versions.

The President. Thank you, very much. We will take due note of this mistake which will be corrected. The delegate from the Netherlands.

Netherlands. Thank you, Mr. President. I am speaking as Chairman of the Drafting Committee to explain that the Drafting Committee did this on purpose, did this deliberately. We were informed by the member of the Drafting Committee which took care of the French language, it was the French delegate, that it was for the purposes of the French language impossible to use only one word reflecting the English word “salvage” and it was decided that only for the purpose of the French text, in the title and in the preamble, the words “assistance et sauvetage” would both be mentioned. I suspect that in all the other languages their word for salvage would be the only word appearing in the text of the convention and in the title. Thank you very much.

The President. Thank you very much, Sir. I would like to ask the delegate of Côte d’Ivoire if he is satisfied with the explanation given by the Chairman of the Drafting Committee.

Côte d’Ivoire. Thank you, Mr. President. I am not satisfied with the explanation and I would like the French text to be aligned to the versions in the other languages. We understand what was said, but the word “assistance” for us is sufficient, in order to reflect the contents of this convention.

The President. Thank you very much, Sir. I give the floor to the delegation of France.

(231) In the French text approved by the Drafting Committee the title of the Convention was “Convention Internationale sur l’Assistance et le Sauvetage”. What actually appeared in the French text only was the word “assistance”, rather than the word “sauvetage” which is the word appearing in the English text (“salvage”) and in the Spanish text (“salvamento”).
France. Mr. President, I regret that our colleague from Côte d’Ivoire did not come to see us so that we could have given him an explanation which is purely linguistic. I understand his concern which is to bring the various versions in line, in the various languages, this is highly desirable. But this depends on the fact that the word “salvage” has an equivalent meaning in French. From the little English I know, I understand that the word “salvage” is used both for assistance to the vessel and salvage of property and the salvage of people. In French, on the other hand, the word “assistance” can only apply to the ship. It is therefore necessary, since in the convention there is a provision on human life at sea to refer to the “sauvetage des personnes”, salvage of people, and as the convention also applies to property, property which could be other than the vessel and not necessarily property even on board the vessel, we can only refer to “sauvetage des biens”, salvage of property. You cannot speak of “assistance des biens”, assistance to property. This is why French is more complicated than English, with the one word “salvage”, English solves the two problems which apply to the vessel and to property and persons, but in French, concerned as we are with trying to be specific, “assistance” has a more specific meaning and only refers to vessels. But the convention does not only apply to vessels, hence the need to use these two words in French in order to translate the single English word “salvage”. Thank you.

The President. The delegation of Saudi Arabia.

Saudi Arabia. I am sorry, Mr. President, I do not want to repeat what the delegate of France has said, but as far as the word “salvage” is concerned, it is enough to look at the word “salvage” which means salving ships, wrecks or salving something void of life, whereas assistance is something which is proffered to a person or an animal or a plant which is alive. Therefore, Mr. President, and as you know, we have this convention, the draft convention, which contains a number of references to the saving of life at sea, to the saving of people at sea, there is a particular article which pertains to this, and not only one article, but certainly a number of articles do reflect this. Therefore we support what we have said previously, and we believe that it is necessary to add the word “assistance” to the title of the convention so that it will be the international convention on salvage and assistance. Thank you.

The President. Thank you, Sir. The delegation of Congo.

Congo. Thank you Mr. President. Mr. President, we will not come back to the vote in the Committee of the Whole, which was rejected, the inclusion of the word “sauvetage” in the text of the Convention, and we insist on the fact that we must align the French text because, in fact you can assist property and people in French and if the word “sauvetage” were added in the title of the Convention, then we would have to go back to our vote on the matter. Thank you, Mr. President.

The President. Thank you, Sir. The delegation of Morocco.

Morocco. Thank you, Mr. President. We do not agree on two words in the title either. We would like it to be the same in the English and French versions; otherwise we will be having difficulties. Thank you Mr. President.

The President. Thank you very much. Zaire.

Zaire. Thank you, Mr. President. We are an international conference and we are adopting an international Convention. As in the case of the adoption of previous conventions, I believe that harmonisation of terminology is extremely important. We can understand and accept the French explanation which can easily be understood by
us who are present today, but for the readers in the future who were not present at this Conference, there may be a problem. How can they solve this difficulty when they realise that the title of the Convention is not the same in English, in Spanish and in French? But rather than to come back on the vote which took place in the Committee of the Whole, I believe that Zaire's proposal would be to place an asterisk and a footnote in the French version, in order to give France's explanation which will then apply not only to this Conference but for future generations who will read this Convention. For many of the French-speaking but non-French countries, our parliaments will be adopting this Convention and our parliamentarians will need this explanation on how to title this Convention before it is accepted. Thank you Mr. President.

The President. The delegation of France.

France. Thank you, Sir. I think the idea of harmonisation must respect the linguistic concerns as it comes through in translation. It is not the first time that one word is translated by two words in other languages. This is a constant preoccupation. In one language a single word might need two, or sometimes three, words in other languages. So, if we have to follow the suggestion made by our distinguished colleague from Zaire to remain correct in French, we would have to say “assistance et sauvetage” and there would need to be a footnote with an asterisk, to explain that salvage is what the English would have. We could do that, I think, and I repeat for correct French, unfortunately I am sorry, we need two expressions: “assistance et sauvage” and this is not anything against harmonization. Also, I do not think we need to come back to the vote which took place in the Committee of the Whole. The vote, in fact, was essentially based on the English text which I think did not bother anyone in Spanish. I think that in Arabic there was no particular problem, although Egypt did take the floor to have the two words. In French there was a linguistic problem only, and in the drafting Committee it was agreed that we should have a proper translation into French of the English expression “salvage”. Thank you.

The President. Thank you very much. The German Democratic Republic.

German Democratic Republic. I am speaking as Chairman of the Committee of the Whole. I would like to confirm the explanation given by France. We have, in fact, voted in the Committee of the Whole on the English text and we referred then the decision to the drafting Committee and we did ask the drafting Committee to bring in line the other languages with the decision of the Committee of the Whole. The drafting Committee was totally free to act and to find the proper word for the title in other languages. I thank you.

The President. Thank you. Seychelles.

Seychelles. Thank you, Mr. Chairman, I wish to propose that rather than adding these two words in the French and Arabic languages, in the definition interpretation section of the Convention this be explained that “sauvetage” means salvage and “assistance” means assistance for these two languages. Thank you, Mr. Chairman.
The President. Thank you Sir. Democratic Yemen.

Democratic Yemen. Thank you, Mr. President. It is my understanding that at this stage we are only dealing with the purely linguistic problem which the French have raised. We are not dealing with the substance of the matter. If that is the case, I would like to make it very clear that there is no difficulty whatsoever in the Arabic language. We are very happy with the word “salvage” which has got a very clear meaning in the Arabic language. I think the distinguished delegate for Saudi Arabia has made it very clear that his proposal concerns the substance contained in the Convention and he believes that, because there is more than one reference to assistance, then the name of the Convention, in all languages, should be “salvage and assistance at sea”. But as the Conference at this stage is not discussing the substance but only language problems, then there is no difficulty in the Arabic language and the word “salvage” as it appears in English is completely acceptable to us.

The President. The Secretary-General would like to make a statement.

The Secretary-General. While the point raised is a very important one, I submit that this is not particularly relevant with reference to the heading of this paper, because this refers to Final Act of the International Conference on Salvage 1989. This Conference was convened as the International Conference on Salvage, that is part of the history, so it is not possible to change this because of what has happened. The invitation went out in respect of an international conference on salvage. When you later come to the name of the convention itself, that will be the time to determine whether any change should be made and that would be on page 6232 of the document before you, so this will give you sometime to reflect further. They can proceed with the consideration and when we come to that point on page 6 this can be duly examined again. If that is acceptable, then we can proceed further.

The President. Thank you Sir. I would like to say if there can be an agreement with the statement made by the Secretary-General in this way we can proceed further and use our time better in analysing the various paragraphs of the document submitted. Thank you very much.

The text that follows in bold type is that approved by the Plenary Session. The text approved by the Drafting Committee is added only where in the text approved by the Plenary Session some changes have been made.

1 In accordance with Article 2(b) of the Convention on the International Maritime Organization, the Council of the Organization decided, at its fourteenth extraordinary session in November 1987, to convene an international conference to consider the adoption of a new convention on the law of salvage. This decision was endorsed by the Assembly of the Organization at its fifteenth regular session by resolution A.633(15) of 20 November 1987 on the work programme and budget for the fifteenth financial period 1988-1989.

2 The Conference was held in London, at the Headquarters of the International Maritime Organization, from 17 to 28 April 1989.

3 Representatives of 66 States participated in the Conference, namely the representatives of:

(232) Reference is made to paragraph 18, infra, page 585.
The following States sent an observer to the Conference:

- Romania

Hong Kong, an Associate Member of the International Maritime Organization, sent observers to the Conference.

A representative of the following body of the United Nations attended the Conference:

- Office of the United Nations High Commissioner for Refugees (UNHCR)

The following two intergovernmental organizations sent observers to the Conference:

- International Oil Pollution Compensation Fund (IOPC FUND)
- Arab Federation of Shipping (AFS)
The following 19 non-governmental international organizations sent observers to the Conference:

- International Chamber of Shipping (ICS)
- International Union of Marine Insurance (IUMI)
- International Maritime Committee (CMI)
- International Association of Ports and Harbors (IAPH)
- Baltic and International Maritime Council (BIMCO)
- Latin American Shipowners Association (LASA)
- Oil Companies International Marine Forum (OCIMF)
- European Tugowners Association (ETA)
- International Shipowners Association (INSA)
- Friends of the Earth International (FOEI)
- International Association of Drilling Contractors (IADC)
- International Salvage Union (ISU)
- Oil Industry International Exploration & Production Forum (E & P Forum)
- International Association of Independent Tanker Owners (INTERTANKO)
- International Group of P and I Associations (P and I)
- International Union for Conservation of Nature and Natural Resources (IUCN)
- Advisory Committee on Pollution of the Sea (ACOPS)
- International Life-Boat Federation (ILF)
- International Association of European General Average Adjusters (AIDE)

His Excellency, Dr. Francisco Kerdel-Vegas, Head of the delegation of Venezuela, was elected President of the Conference.

The Vice-Presidents elected by the Conference were:

- Rear Admiral F. Lazcano (Chile)
- Mr. Meng Guangju (China)
- Mr. S. Rosadhi (Indonesia)
- Dr. H. Tanikawa (Japan)
- Mr. M.M.R. Al-Kandari (Kuwait)
- The Rt. Hon. Lord Justice Kerr (United Kingdom of Great Britain and Northern Ireland)
- Mr. G.G. Ivanov (Union of Soviet Socialist Republics)
- Rear Admiral J.E. Vorbach (United States of America)
- Citoyen Tito Yisuku Gafudzi (Zaire)

The Secretariat of the Conference consisted of the following officers:

- Secretary-General: Mr. C.P. Srivastava
- Executive Secretary: Mr. T.A. Mensah
- Deputy Executive Secretary: Mr. C.H. Zimmerli,
  Senior Deputy Director, Legal Affairs and External Relations Division

The Conference established a Committee of the Whole with the mandate to consider the draft articles for a Convention on Salvage. The Conference also established a Committee on Final Clauses with the mandate to consider the draft final clauses of the Convention.
13 The Drafting Committee established by the Conference was composed of representatives from the following nine States:

- China
- Egypt
- France
- Mexico
- Netherlands
- United Kingdom of Great Britain and Northern Ireland
- Union of Soviet Socialist Republics
- United States of America

14 A Credentials Committee was appointed to examine the credentials of representatives attending the Conference. The Committee was composed of representatives from the following States:

- Congo
- Ecuador
- Malaysia
- Poland
- Switzerland

15 The officers elected for the Committees were as follows:

- Committee of the Whole:
  - Chairman: Prof. Dr. N. Trotz (German Democratic Republic)
  - Vice-Chairmen: Mr. A. Popp (Canada), Mr. K. Kone (Côte d’Ivoire)

- Drafting Committee:
  - Chairman: Mr. W.W. Sturms (Netherlands)
  - Vice-Chairmen: Mr. J.-P. Béraudo (France), Dr. J. Eusebio Salgado y Salgado (Mexico)

- Committee on Final Clauses:
  - Chairman: Captain S.A.H. Yafai (Democratic Yemen)
  - Vice-Chairmen: Mr. R. Foti (Italy), Mr. I. Maku (Nigeria)

- Credentials Committee:
  - Chairman: Mr. V. Ngayala (Congo)
  - Vice-Chairman: Ms. Halimah Ismail (Malaysia)

16 The Conference used as the basis of its work:

- Draft articles for a Convention on Salvage, prepared by the Legal Committee of the Organization;
- Draft final clauses for the Convention on Salvage, prepared by the Secretariat of the Organization.

17 Also before the Conference were a number of documents, comments and observations, including proposed amendments, submitted by Governments and interested organizations in relation to the draft Convention.

As a result of its deliberations based on the reports of the Committee of the Whole, the Committee on Final Clauses and other committees, the Conference adopted the:

**International Convention on Salvage, 1989**

As far as the French text of this Final Act and of the above-mentioned Convention is concerned, the Conference decided that the term “assistance” means “l’assistance aux navires et le sauvetage des personnes et des biens”.

**Text examined and approved by the Drafting Committee**

Document LEG/C ON F.7/D C/2

---

As a result of its deliberations based on the reports of the Committee of the Whole, the Committee on Final Clauses and other committees, the Conference adopted the:

International Convention on Salvage, 1989

The President. We have come back to the title and I would like to hear the views of Côte d’Ivoire.

Côte d’Ivoire. Thank you, Sir. On behalf of the Côte d’Ivoire we have heard what the Secretary-General has said and I do not know whether to speak now. Regarding my delegation, we would insist that we should retain in the Convention the idea that we have a salvage convention, that is obvious. A delegation earlier suggested something about the interpretation rules.

The President. Thank you Sir. There is no problem as the Secretary-General explained in the interpretation of the English word and the corresponding Spanish version. The only problem we have is with the French language. I give the floor to the Secretary-General.

The Secretary-General. Mr. President, the question before the conference now is the following; in so far as the English name (or the English version of the name) of the Convention is concerned there is no problem; nor is there a problem about the Spanish version. In regard to the French version, the Drafting Committee has given a text which has two words, and to that objections have been raised by a number of delegations. They want only one word to be retained, as I understand, and that view has been supported by several delegations. The distinguished delegate of France has reiterated his view in regard to the French version, so the limited point before the conference now is, what should be the heading of the French version of the convention? The distinguished representative of France has a view, other delegations have another view, and that is the point now before the Conference for decision. Perhaps, Mr. President, you may wish to know whether the point of view of the distinguished representative of France in regard to the French version is shared by any other delegation. That would indicate what is the view of the Conference. Thank you, Mr. President.

The President. Thank you, I submit to the opinion of the Conference the opinion put forward by France, in order to see if their position is confirmed and supported by the other French-speaking countries.

Egypt. This is a very important question, Sir. What we are really trying to deal with is the English language as a working language; we know that, of course, Sir. But the text being submitted in the official languages of this Organization would not imply total harmonization between English and other languages, Arabic in my case. If in one
language, for example, there was an expression which has no exact equivalent in English but would imply two expressions, one might wonder whether one should abide by a single English expression in application of the text of the Convention in other Countries where we have a different mother tongue than English. It is not a matter of translation from one language to another, certainly not, Sir. It is a bit more than that. We cannot have a single expression in all languages: surely we are looking at the sense we are aiming at. What is the concept to apply in law when this Convention, or any other convention for that matters, will be in force, and certainly entry into force and enforcement will be the same thing in all Countries. A tribunal will not necessarily refer to the summary records of this meeting. Indeed, what they will do is interpret the text as the language itself indicates. “Salvage” means certain things in Arabic this is true. But if Arabic or other languages require more than one word than the English word “salvage” to explain what salvage means, then it is logical to me the sense must be expressed. O.K., in English you have one word. Lucky you. You have “salvage”. You have only one word, but in other languages we might need at least two. I have heard the Secretary-General – it is a matter of history, certainly a matter of the history of inviting countries to come to this conference – but these countries certainly are here to adopt the sense of decisions in their own language. I supported Saudi Arabia in the Plenary, for example, and I agreed that we need “assistance” and “salvage” in Arabic under this heading because the two expressions are rather more extensive than the single expression in English, “salvage”. However, it would seem that among Arabic-speaking countries we are not entirely in agreement on “assistance”; Saudi Arabia insists on the proposal made in Plenary. I have heard contradictory views. However, could I express my agreement now with Saudi Arabia. In French, for example, we have the two expressions, then certainly, in this meeting, could I request that Arabic would have the same double expression. Thank you, Sir.

**The President.** Thank you, Sir. With regard to the terms and the disagreement which exists now, I invite you to reconsider the matter over the lunch interval. Let us hope that over lunch, until 2.30 p.m., the differences of views may be ironed out so as to facilitate the progress of our conference after 2.30 p.m. Is it a point of order?

**France.** Thank you, Sir. To make life easier, may I express the wish that all our French-speaking colleagues would remain for five minutes in the room. We will have a brief meeting. I am sorry our Belgian colleague is not here. I discussed the question with him and obviously he shared the views, or rather, the desires of my delegation; but all the other French-speaking delegations remain for a few minutes to try to make life a bit easier for all of us. Thank you.

**The President.** So, as indicated by the French delegation, we will ask the French-speaking delegations to stay on and discuss this problem and we will start again at 2.30 p.m. Thank you very much. Meeting adjourned.

**France.** Thank you, Sir. We are very sorry indeed, Sir, to have delayed somewhat the work of this meeting for a quite linguistic problem which is only a matter of the French language. In this area, Sir, as in other areas I might point out in the United
Nations and in States the majority prevails. Certainly we must find a compromise in order to be able to have a solution to the problem. My delegation did not accept this compromise. In one sense France is the queen of the French-speaking delegations, but on the other hand, we are only one of a large family of French speaking delegations. Therefore, Sir, we have accepted as regards France - with a few regrets for the French language - a compromise which would mean the following: in 18 bis - or rather to put it more clearly, we would have an 18 bis in the Final Act which would read as follows:

“As regards the French text of this Final Act and the Convention the conference decided that the expression ‘assistance’ - assistance in French - would cover simultaneously assistance to vessels and saving property and human lives”.

This text will appear in all languages and mainly it concerns the French language. I think it might also be of interest to the Arabic language but I think our Arabic colleagues would make this addition if they so desire. So it is a request from the French Delegation - that when the text of the Convention appears, because as we know in all legal texts we find the text of the Convention alone without the Final Act. Most lawyers would not normally publish the Final Act. So perhaps we could refer back to the publisher of the text and say that this point could be made quite clear. We feel that it should be made clear that assistance in French would cover salvage of vessels but also saving persons and property. I hope we can count on the efficiency and the good will which we know very well - the spirit of IMO - to make this very clear in the publication of the text of the Convention. I think that the best answer to this small problem which I think has cost us a lot of valuable time. Thank you, Sir.

The President. Thank you very much to the delegation of France for your desire to find a solution following the difficulty we were in at the end of this morning's meeting. Your proposal will be taken into consideration in the form in which you presented it, so that it will be suitably reflected in the text indicating the two meanings in French as a reflection of the word “salvage” in English. So the double meaning of salvage and assistance would be reflected. Now I would like to give the floor to the distinguished delegate of Côte d’Ivoire.

Côte d’Ivoire. Thank you, Sir. Could I remind Mr. Douay of the French Delegation of the fact that all here are sovereign States. We all know that and the persons representing these States are free human beings. I do not want to go on about that problem. Mr. Douay might perhaps recall that. The French language, and I think France should accept that persons who are not French by nationality can speak the same language, we have our own home countries. It may not be a question of a language being imposed on countries but certainly certain people speak other languages. That is my beginning. To come back to the question we are concerned with, Sir, may I say we do not want to create problems for the Conference, we do not want to waste time, of course. I think everyone should make their best efforts to arrive at a safe harbour for this Conference. We do not want to waste time, we understand the problem, but our intention should not be lost and we do not want to run counter to what in fact exists. The proposal made by Mr. Zimmerli is a compromise solution which we can accept. We agree, therefore, and we hope that France has accepted this compromise. In other words, there will be an 18 bis, which would cover the question of assistance in French. That is all I want to say, Sir. Thank you very much.

The President. Thank you very much to the distinguished delegate of Côte d’Ivoire and thank you for trying so actively to find a solution to this problem. I now give the floor to the distinguished delegate of Democratic Yemen.
Yemen. Thank you very much, Mr. President. I hope also that this intervention will clear the way for this Conference to carry on with its main work. We have had a very short meeting for the Arab Delegations and as you realize those present in this Conference represent Arab countries from every part of the Arab world from North Africa, West-North Africa, the South, the Gulf, everywhere, and we have come to a very quick conclusion that as far as the Arab language is concerned, there is no problem whatsoever as regards the meaning of the word “salvage” in Arabic. In fact, the word as translated in Arabic is even clearer than the English text where it clearly means that it is the salvage of life or property. So in that respect we agree that there is no problem as far as the Arabic language is concerned. However, there may be a delegation who wished to take up the matter of substance and it is not my position to speak for any such delegation. May I also say that we are very glad that the other problem with the French-speaking countries has been resolved and we would like to support any proposal which will enable this Conference to finish its work expeditiously and unanimously. Thank you, Mr. President.

The President. Thank you very much, Sir. I give the floor to the distinguished delegate of Saudi Arabia.

Saudi Arabia. Thank you Mr. Chairman. Mr. President, I would like before I start to refer and say that the Arabic language, our beautiful language, is not a weak language, and we believe that our language is very dear to us, very wealthy and rich. In the Arabic language we can use one word and this word could have several meanings and also this word could have several synonyms, like French and English and other languages. However, Mr. Chairman, in this context my delegation has dealt in this Conference with some very important issues. One of the most important issues which we have dealt with was contained in WP.1. This paper, WP.1\(^{233}\), contains our definition of the words “salvage operations”. We have also referred in this paper to article 7 and the duty to provide assistance. Moreover, we have also dealt with other articles which refer to the duty of providing assistance to persons. In short, we have dealt with this Convention in details. This Convention is concerned with salvage not inland but at sea and the concept of salvage as we understand it is to salvage solids or things and we believe that the word “salvage” should not be used in respect of persons. This word “salvage” could be used in the context of persons but in very limited conditions. We believe that this word “salvage” be used in respect of dead bodies and dead bodies should be either buried or burnt. And from the humanitarian point of view we could call this operation “salvage”. As regards the “assistance”, it has a different meaning, and we believe the word “assistance” would reflect this Convention and would also reflect the salvage of ships and the protection of the environment. Therefore, we believe it is not right to use the word “salvage” in respect of the Convention. The word “assistance”, as I have said earlier, is to provide help and to rescue the environment before danger strikes. And as we know the danger is great. Therefore, my delegation has proposed that we should refer to assistance and that the title should be amended to include the word “assistance”. As regards the comments of the delegation of France, we have listened carefully to the comments of the delegation of France and if other Arab countries agree to adopt the French proposal, i.e. in respect of article 18bis, I believe that the proposal of France would solve our problem. And thank you very much, Mr. President.

\(^{233}\) Supra, page 43 note 14.
The President. Thank you very much, Sir. It seems to me that with the clear explanation given by the Secretary-General this morning, by way of clarification, the various proposals we heard this morning plus the proposal just put forward by the distinguished delegate of France, I think we can reach a consensus, that is to say, the French version would reflect the true meaning of “assistance” and “salvage” and from what I heard, this would also be satisfactory for the views of the distinguished delegate of Saudi Arabia. So with your permission, I will consult for a moment with the Secretary-General. I give the floor to the Secretary-General.

The Secretary-General. Thank you, Sir. Mr. President if we can deal with the proposal of the distinguished representative of France first. As I understood the distinguished representative of France was saying that he would abide by the majority view that the name in the French language of this Convention may be brought into line with the English version, that is, using one word, but the situation may be clarified by the insertion of a new paragraph in the Final Act, 18 bis, with the text that he explained. These are the proposals he made which were acceptable to the distinguished representative of Côte d’Ivoire and there was no dissenting voice. If this is right, then perhaps the Conference may wish to explain whether that proposal is acceptable by consensus, and if that is acceptable, then this point can be deemed to be settled. That is the point before the Conference and perhaps the Conference may indicate whether everyone agrees. That seems to be the case. Then, as far as the Arabic version is concerned, two views have been expressed – one by the distinguished representative of Democratic Yemen saying that the text as it stands gives rise to no problems and nothing further need to be done. The distinguished representative of Saudi Arabia has expressed another view that in his opinion there is a problem but that he would like the problem to be resolved on the same lines as has been done in the case of the French language. This is the proposition before these two. Perhaps some more interventions would clear up that matter as well.

The President. I give the floor to the distinguished delegate of Democratic Yemen.

Yemen. Thank you very much, Mr. President. Just a point of clarification. When I spoke I was not speaking as the delegate of Democratic Yemen only, but on behalf of all the representatives of all the delegations of all the Arab countries except one.

The Secretary-General. Thank you, Mr. President. Perhaps the distinguished representative of Saudi Arabia may wish to indicate whether in that situation he would like his statement to be recorded in the records of the Conference.

The President. Thank you, Sir. The distinguished delegate of Saudi Arabia.

Saudi Arabia. Thank you, Mr. President. I find myself in this position now, that is, this conflict that we have, and so I would like to record my reservation exactly as you had proposed. Thank you, Mr. President.

The President. Thank you. In order to continue with the approval of the Act, there will be an article 18 and then an article 18 bis as proposed, and then we will move on to article 19.

19 The Conference also adopted a Common Understanding concerning articles 13 and 14 of the International Convention on Salvage, 1989 which is contained in attachment 1 to this Final Act.
The Conference also adopted a common understanding concerning the interrelationship between articles 13 and 14 of the International Convention on Salvage, 1989 which is contained in attachment 1 to this Final Act.

The President. If there are no further remarks, article 19 would be approved. There is a remark on article 19. The delegation of Uruguay.

Uruguay. Thank you, M. President. I hope you will excuse my ignorance on this topic, but I would like to point out that all the articles of one Convention have a link with each other from the first to the last. I don’t know why this explanation in article 19 would seem superfluous. Could I have an explanation? Thank you very much.

The President. Before giving the explanation to the delegate of Uruguay, I give the floor to the distinguished delegate of Mexico.

Mexico. Thank you, Mr. President. I would like to draw attention to the fact that we are discussing paragraphs of the Final Act and not articles. I would like to explain this because there might be some confusion. In the second place, my delegation very clearly asked that there be included, on the basis of the Vienna Convention on Treaty Law, the explanation that the articles of a treaty should be seen as a whole and not only two articles, 13 and 14, and exclusively should be interpreted in this manner. So I think this is the source of the confusion which affected the distinguished delegate of Uruguay and this is why we must also support him. Thank you, Mr. President.

The President. Thank you very much. I give the floor to the representative of the German Democratic Republic as Chairman of the Committee of the whole.

Chairman of the Committee of the Whole. I thank you, Mr. President. I would like to draw the attention of the Plenary to the fact that paragraph 19 does not refer to the interrelationship between articles 13 and 14, but that paragraph refers to the Common Understanding which is to be adopted and in this context, we have to mention articles 13 and 14 because the title of that Common Understanding refers also to these two articles. The draft Common Understanding, as adopted by the Drafting Committee, is contained in document LEG/CONF.7/DC/3. Thank you, Sir.

The President. Thank you very much, Sir. I would like to ask the distinguished delegate of Uruguay whether he is satisfied with the explanation which has just been given and also taking into consideration the substance of document 7/DC/3.

Uruguay. Yes, I entirely agree as to the difference between the articles of the Convention and the paragraphs of the Final Act. But I don’t understand why, in the Final Act, we do have this paragraph. I still don’t understand that. Thank you, Mr. President.

(234) Document LEG/CONF.7/DC/3
Common Understanding concerning the interrelationship between Articles 13 and 14 of the International Convention on Salvage, 1989.
In fixing an award under article 10 and assessing special compensation under article 11, the tribunal is under no duty to make an award under article 10 up to the maximum value of the salved property before assessing the special compensation to be paid under article 11.
The President. Thank you very much. I give the floor to the Chairman of the Committee of the Whole.

Chairman of the Committee of the Whole. Thank you, Mr. President. I understand that the Final Act has to reflect the adoption of this Common Understanding which is to be attached to the Final Act, so if there is an attachment of this kind, we have to make reference in the Final Act and if we make that reference, we have to use the title of that Common Understanding. That title includes a reference to articles 13 and 14, which seems to me to be the reason for the inclusion of article 19, and that is apparently the reason why the Secretariat has drafted this article. Thank you, Mr. President.

The President. Thank you. United States of America.

United States. I should just like to state that the process that is being followed here is the same as was used in the 1974 Athens Convention, with a reference to the understanding in the Final Act. Thank you, Mr. President.

The President. Thank you for your remarks. I give the floor to the Secretary-General.

The Secretary-General. Thank you. I want to add to the explanation, but I would request that in paragraph 19 the two words “common understanding” could begin with capital letters because it would then merely refer to a fact, namely, that a common understanding had been agreed and is attached. It refers to a particular document which is attached to the Final Act. I hope I am clear in that. The heading of the document referred to by the President, LEG/CONF.7/DC/3 is the Common Understanding, and that is the paper which is to be attached to the Final Act. This paragraph does no more than merely explain the fact. Thank you, Mr. President.

The President. Thank you. The distinguished delegate of Mexico.

Mexico. Thank you, Mr. President. May I suggest that, in paragraph 19, we could put the text as it appears in document 7/DC/3 instead of giving the explanation here. It is perfectly clear and there is no need to go into any further discussion. I think that, by using the text of DC/3, we would solve the problem and there would be no need to seek any other solution. Thank you, Mr. President.

The President. Thank you. The distinguished delegate of Zaire.

Zaire. Thank you, Mr. President. We would support this suggestion. Paragraph 19 gives an answer to a question which is not, in fact, asked. The question seems to be implied because before giving a common understanding you must realise that there is a difference in approach, a difference of views. I think we could say a word explaining why we have to have a common understanding with references to articles 13 and 14. Perhaps we could add at the beginning of the paragraph a few words such as “in view of differences in interpretation, the Conference adopted a common understanding concerning the interrelationship between articles 13 and 14”. This is just a proposal. Thank you.

The President. Thank you. Following the proposal put forward by the distinguished delegate of Mexico, and with reference to document 7/DC/3 on the common understanding, the sentence would read: “It is the common understanding of the Conference that, in fixing the award, the tribunal ...”. I do not know these few words will solve the problem. I give the floor to the distinguished delegation of Mexico.

Mexico. No, Mr. President. That is not exactly our intention. Our intention is to
remove everything there is in paragraph 19 and just include the text. Why have an extra document if there was an understanding. In other words, reproduce in paragraph 19 exactly the text of DC/3. We do not need paragraph 19 as it is here, and we avoid the problem which arises. Thank you, Mr. President.

The President. Thank you. The suggestion is to include as paragraph 19 the draft common understanding as contained in document LEG/CONF.7/DC/3. The proposal would be to include it as paragraph 19, indicating that this is a common understanding of the Conference and as such it was adopted and approved. Are there any comments? I give the floor to the distinguished delegate of Cuba.

Cuba. Thank you, Mr. President. My delegation entirely supports the proposal by the distinguished delegate of Mexico. We suggest that this is a solution which not only reflects the basic problem, but it also avoids an attachment to this document which is why we suggest that this proposal be endorsed. Thank you.

The President. Thank you. The distinguished delegate of the United Kingdom.

United Kingdom. Thank you, Mr. President. In the discussions that led up to this Common Understanding, there was an agreement that this Common Understanding would, in fact, be attached as an annex to the eventual Convention. I think the problem we are having here is one concerning the use of the word “interrelationship” in paragraph 19 – at least that was the starting point made by the distinguished delegate of Uruguay. May I propose, and I think it is essential to remember that this was part of a carefully negotiated package, that we remove the word “interrelationship” from both paragraph 19 and from the title of document LEG/CONF.7/DC/3, that is “Draft understanding concerning the interrelationship”, and in fact have that as “Draft common understanding concerning articles 13 and 14 of the International Convention on Salvage”. What is important is that this was a compromise of which an annex to the Convention was an essential part. If we remove the word “interrelationship”, I think we may then overcome the difficulties envisaged under the Vienna Convention. Thank you.

The Chairman. Thank you very much distinguished delegation of the UK. Distinguished delegate of the Uruguay. We would like to know your views on the proposals both the proposal put forward by the distinguished delegate of Mexico and that put forward by the distinguished delegation of the UK.

Uruguay. M.r. President this delegation would like to save time for the Conference and therefore we should take the solution presented by Mexico which solves the problem as a whole. Thank you Mr. Chairman.

The Chairman. The distinguished delegate of the USSR.

USSR. Sorry, Sir, could I remind you that over two weeks we have been discussing certain decisions which now we must approve. Could I remind you, Sir, M.r. Chairman that at our first meeting we adopted the Rules of procedure. I do understand the spirit of IMO which has prevailed and I do realize that we cannot adopt all articles by consensus. Therefore, Sir, may I say, reminding ourselves of that, can I remind you of those cases when we cannot with delicate problems such as a packet of compromises on certain articles. We’ve had cases where we’ve had to disagree and put the whole matter to a vote, we haven’t achieved a consensus here. I’m sorry to have to remind you of this. I don’t want to disrupt the spirit of IMO, could I please say that the entire Convention, all the articles and all the package of consensus cannot be achieved in toto. Thank you.
The Chairman. Thank you very much, distinguished delegation of the Soviet Union. I give the floor to the Chairman of the Committee of the whole. The GDR.

Chairman of the Committee of the Whole. I thank you. Mr. President, I would like to confirm that we took a decision on an attachment, the question was raised during the meeting of the Committee of the Whole, that there should be an attachment to the Convention, or an attachment to the Final Act. And when we decided that it should be an attachment to the Final Act than it is at least a decision of the Committee of the Whole. The plenary is of course free to take another decision but since we had a majority for that in the Committee of the Whole I found it useful to remind the plenary that we have taken already a decision on this point. I thank you, Sir.

The Chairman. Thank you very much. I give the floor to the Secretary-General.

The Secretary-General. Thank you Mr. President. These are matters again where we have to invoke our IMO spirit. I would like to recall evidence that already we have a precedent here, the 1974 Athens Convention, where a similar common understanding was adopted and the fact that the common understanding was adopted was duly recorded in the Final Act. We have that precedent, we have the decision of the Committee of the Whole and I would beg of the Conference to approve of this in that spirit. It has been done also in another convention, namely International Convention on Limitation of Liability for Maritime Claims. This is how IMO has been working, there are two International Conventions before you where a common understanding has been referred to in the Final Act. The Final Act is no more than a record of your decisions and if you so decide it would be merely a paragraph to record that decision. I would beg of you to accept the same kind of arrangement which has already been accepted by two previous Diplomatic Conferences without any problem whatsoever, so Mr. President, I would appeal so that we get on with our work that what we have been doing in the past perhaps we might continue. And I repeat this has created no problem for anybody. Thank you Mr. President.

The Chairman. Thank you very much Mr. Secretary-General. Distinguished delegate of Mexico.

Mexico. Thank you Mr. President. I would like to draw attention to the fact that this Plenary of the conference is sovereign and contains any decision taken in any committee, that's why we confirm our position and in any case we will ask for a vote. Thank you very much Mr. President.

The Chairman. Thank you very much. The distinguished delegate of Uruguay.

Uruguay. Thank you Mr. President. I am sorry that I gave rise to this lengthy discussion. The words of the Secretary-General are reflected in the common understanding contained in DC.3 but that is not what we are discussing, we are discussing article 19 of the Final Act, as we don’t agree with this draft. We support Mexico in the spirit of IMO, we are ready to consider this solution suggested by the UK, in the sense of amending article 19, but we can’t say more than that at this stage. Thank you.

The Chairman. Thank you very much, Sir, I would point out that in the working document LEG/CONF.7/DC/3 the title had been changed and would become Draft Common Understanding Concerning Articles 13 and 14 of the International Convention on Salvage, 1989. And a correction was made in paragraph 19 along the same lines, deleting from paragraph 19 the reference to the interrelationship at the end of the first line and the beginning of the second. For the French Delegation, I will
repeat a little bit more speedily what I said before. In document CON F.7/DC.3 the following change was suggested: the title would be “Draft Common Understanding Concerning Articles 13 and 14 of the International Convention on Salvage, 1989”. In paragraph 19 of the Final Act, we would delete the words “the interrelationship between”. Paragraph 19 would then read:

“The Conference also adopted a Common Understanding concerning articles 13 and 14 of the International Convention on Salvage, 1989 which is contained in Attachment 1 to this Final Act.”.

I would therefore ask the distinguished delegate of Mexico whether he can agree with this proposal so as to make progress.

Mexico. Thank you, Mr. President. We can accept your proposal. It seems to us that it does solve a problem and we would like to indicate that we also are imbued with the spirit of this Organization which is very important for our country. Thank you, Mr. President.

The President. Paragraph 19, as amended, is submitted for your attention. That is to say the Conference also adopted a Common Understanding concerning articles 13 and 14 of the International Convention on Salvage, 1989, which is contained in attachment 1 to this Final Act. If there are no remarks on that, I give the floor to distinguished delegate of Uruguay.

Uruguay. Mr. President, this delegation would like to support and indicate that it now understands the text of paragraph 19. Thank you.

The President. Article 19 is approved.

20 The Conference further adopted the following resolutions:
- Resolution requesting the amendment of the York-Antwerp Rules, 1974
- Resolution on international co-operation for the implementation of the International Convention on Salvage, 1989
These resolutions are contained in attachments 2 and 3 to this Final Act, respectively.

21 This Final Act is established in a single original text in the Arabic, Chinese, English, French, Russian and Spanish languages which is to be deposited with the Secretary-General of the International Maritime Organization.

22 The Secretary-General shall send certified copies of this Final Act with its Attachments and certified copies of the authentic texts of the Convention to the Governments of the States invited to be represented at the Conference, in accordance with the wishes of those Governments.

The President. I now submit for your attention paragraph 20. No remarks? I would remind you that we have square bracket in paragraph 20, the resolution on international co-operation for the implementation of the International Convention on Salvage, 1989, which is in document 2 and 3. We will go on now and come back to paragraph 20 to deal with these two attachments. Paragraph 21: if there are no comments, paragraph 21 is adopted. I now submit for your attention paragraph 22. No remarks? Adopted.

(235) The debate that preceded the approval by the Committee of the Whole of the draft Resolution requesting the amendment of the York-Antwerp Rules 1974 is published after the text of the draft resolution. Infra, page 596.
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 14.236

(236) The travaux preparatoires of the Common Understanding are published supra, at pages 403-417.
ATTACHMENT 2

Resolution requesting the amendment of the York-Antwerp Rules, 1974

THE INTERNATIONAL CONFERENCE ON SALVAGE, 1989,

HAVING ADOPTED the International Convention on Salvage, 1989,

CONSIDERING that payments made pursuant to article 14 are not intended to be allowed in general average,

REQUESTS the Secretary-General of the International Maritime Organization to take the appropriate steps in order to ensure speedy amendment of the York-Antwerp Rules, 1974, to ensure that special compensation paid under article 14 is not subject to general average.

International Conference
Committee of the Whole 24 April 1989
Document LEG/CONF.7/VR.157

United Kingdom. Mr. Chairman, in document LEG/CONF.7/22, the United States Delegation proposed a new paragraph 6 for Article 11 which was to read: “The total compensation under this article shall not be subject to the general average process.” In the informal consultation group there was no difference of opinion that special compensation under Article 11 should not be subject of general average. There was, however, disagreement on how best to deal with this point. It was eventually concluded that the most appropriate course of action would be for the conference to ask the CMI to proceed as a matter of urgency with the amendment of the York/Antwerp rules to exclude compensation under Article 11 from general average. The text of a possible conference resolution is on the second page of working paper 28. M r. Chairman, as I have said already, the meetings of the informal consultation group involved the discussion of strongly held and firmly held views. M r. Chairman, it is hoped that the acceptance by the Committee of the whole of the proposals

(237) Document LEG/CONF.7/CW/WP.28 (page 2)

Resolution adopted by
The International Conference on Salvage, 1989
The States represented at the Conference.
CONSIDERING that payments made pursuant to article 11 are not intended to be allowed in general average.
REQUESTS the Secretary General to invite the International Maritime Committee to amend as a matter of priority the York-Antwerp Rules, 1974, to ensure that special compensation paid under article 11 is not subject to general average.
contained in working paper 28 would allow us to conclude speedily our discussions on Articles 10 and 11 and allow us to put these articles which represent the heart of our Convention in place. Thank you Mr. Chairman.

**The Chairman.** Thank you. Any other statements?

**USSR.** Thank you, Sir. I have taken the floor not to say that we need instructions on the question and not, either, in order to strike a false note in this approach which seems to be emerging. Can I express, however, some misgivings which have not disappeared during our listening to this discussion when we look at the proposals which are before us. Let us start with the most simple thing – the resolution proposed to us. It seems to us that this question is quite clear, indeed, it is necessary to make appropriate changes to these rules. However, I am not entirely convinced that at a Diplomatic Conference it is appropriate for us to make such an urgent request to the CMI on this matter. Perhaps if we want to do something at all the simplest thing might be to address ourselves to the Secretary-General so that he can take the appropriate steps, make contact with the appropriate international NGOs; and find a solution to the problems. This doesn't mean that we have no respect for the CMI. Indeed, we are members of it. We participate in its work. However, we do feel that our conference would find it more appropriate to take a different solution.

25 April 1989
**Document LEG/CONF.7/VR.160**

**The Chairman.** Yesterday, one delegation has pointed out that it would perhaps be more advisable not to refer to the International Maritime Committee but to make a general reference. Is that the general feeling of the Committee? Is the Committee of the opinion that the resolution of the present wording could be accepted? Is there a delegation which is against the present wording and which would prefer a change of the present wording. Greece.

**Greece.** Yes. This delegation supports the proposal made yesterday by the Soviet Union and we would like the text of the resolution amended accordingly. Thank you.

**The Chairman.** I thank you. Well, then it would be possible, it is not necessary to draft that and we can leave that to the Drafting Committee, perhaps. We would say that the Secretary-General is invited to take the appropriate steps and to ask competent international organizations to revise the York-Antwerp Rules – just only to put forward the idea. Would that be an acceptable idea? And we can then ask the Drafting Committee to make the final draft. Is that acceptable? No. The Netherlands.

**Netherlands.** I think that when the Committee of the whole instructs the Drafting Committee, it should do it by way of clear decisions and I think that you run the risk that there will be raised quite a discussion in the Drafting Committee on what is actually the heart of the decision. I would suggest that those delegations who have made this proposal – well any way the USSR – and Greece which has supported the proposal, should first come up with some wording, in any way, to show what it really means. Otherwise, I think, I am a bit in the dark and I do not think that the Drafting Committee can choose the proper wording. Thank you Mr. Chairman.

**The Chairman.** I thank you. May I ask the delegation of the USSR and Greece whether they have an appropriate text to be included, instead of the present wording? Could you read the text, Mr. Ivanov? No. **Greece.** Thank you Mr. Chairman. I must say, I have not got it but I do not think...
that would be complicated. As a matter of fact, what I would have liked would have been to have a resolution which would say: “Request the Secretary-General of the Organization to take the appropriate steps in order to ensure the speedy amendment of the York Antwerp Rules 1974”. Nothing else, nothing more. Thank you.

The Chairman. I thank you. Mr. Zimmerli will read out the text as proposed.

Mr. Zimmerli. “Request the Secretary-General of the International Maritime Organization to take the appropriate steps in order to ensure speedy amendment of the York Antwerp Rules 1974” and I think the rest of the text will carry on. Thank you.

The Chairman. Is that acceptable – the text? USSR, could you accept that? Greece, O.K. The Netherlands, is that text O.K. for you, Sir. Yes, the Netherlands.

Netherlands. This changes, in fact, what was proposed in the text of the resolution actually that it should be made clear that you are going to approve that special compensation paid under article 11, is not subject to general average and that now that has been lost in the text proposed by the Greek delegation.

The Chairman. Text after the comma, “to ensure that special compensation is paid and” O.K. Mr. Zimmerli has not read it but he just said that we can continue with the rest of the text. That means “to ensure that special compensation paid under article 11 is not subject to general average” is kept in the text. Is that O.K.? Fine. Any other complaints on the text or is it now an acceptable version of the resolution. I thank you.
Resolution on international co-operation for the implementation of the International Convention on Salvage, 1989

The International Conference on Salvage, 1989,

in adopting the International Convention on Salvage, 1989 (hereinafter referred to as “The Convention”),

considering it desirable that as many States as possible should become Parties to the Convention,

recognizing that the entry into force of the Convention will represent an important additional factor for the protection of the marine environment,

considering that the international publicizing and wide implementation of the Convention is of the utmost importance for the attainment of its objectives,

I recommends:

(a) that the Organization promote public awareness of the Convention through the holding of seminars, courses or symposia;

(b) that training institutions created under the auspices of the Organization include the study of the Convention in their corresponding courses of study.

II requests:

(a) Member States to transmit to the Organization the text of the laws, orders, decrees, regulations and other instruments that they promulgate concerning the various matters falling within the scope of application of the Convention;

(b) Member States, in consultation with the Organization, to promote the giving of help to those States requesting technical assistance for the drafting of laws, orders, decrees, regulations and other instruments necessary for the implementation of the Convention; and

(c) the Organization to notify Member States of any communication it may receive under paragraph II(a).

International Conference
Plenary Session 28 April 1989
Document LEG/CONF.7/VR.219

The President. I would draw your attention to the document LEG/CONF.7/WP.1, Approval of the Final Act and any instrument, recommendation, resolution resulting from the works of this Convention. This is a
document presented by the distinguished Delegations of Argentina, Ecuador and Mexico. I would ask one of these three delegations to introduce this document. The distinguished delegate of Mexico.

Mexico. Thank you, Mr. President. This document, LEG/CONF.7/W P.1, is presented by the president of the Delegation of Mexico and submitted jointly by the delegations of Argentina, Ecuador and Mexico. This document contains a proposal pertaining to a draft resolution of this conference with a view to setting up an instrument of international co-operation covering various objectives. The first of these is the publicising of this International Convention of 1989. It is well-known that this Convention updates the 1910 Convention which is widely known by the international maritime community. In the second place, we would like member States to be aware of how other States have legislated nationally with a view to implementing the Convention. For some States it would be sufficient to know what other States have done in order to accelerate their own process.
Art. 1-1 Definitions

1. Salvage operations means any act or activity undertaken to assist a vessel or other property in danger in navigable waters.

2. Preventive measures means salvage operations undertaken reasonably or diligently or with due care in order to prevent that, as a result of the danger to the vessel or other property, damage to third parties may be caused, or to minimize such damage, including further loss or damage caused by such operations.

3. Vessel means any ship, craft, or other structure capable of navigation including any ship, vessel, or such structure which is stranded, left by the crew, or sunk.

4. Property means any property in danger in navigable waters including however, the freight for the cargo of the vessel.

5. Salvage of liability means:
   alt. 1. Salvage operations which prevent the escape of oil, chemical; gaseous, or other hazardous cargos which may cause damage to the environment and thereby demonstrably have the effect of avoiding or minimizing liability for such damage.
   alt. 2. Salvage operations which prevent oil, chemical, gaseous, or other hazardous cargos causing damage to the environment third Parties and thereby demonstrably have the effect of avoiding or minimizing liability for such damage.
   alt. 3. Salvage operations which prevent damage to person or property being caused to third parties, and thereby, demonstrably have the effect of avoiding or minimizing liability for such damage.

6. Damage to the environment means damage by pollution or contamination to coastal areas, or to air, land or waters adjacent thereto, or to life therein.

7. Remuneration means any reward or compensation due under the provisions of this Convention.

Note: In the definition of “salvage operations” reference to voluntariness has been deleted because it was thought that this problem had been adequately addressed by the provisions of arts. 1-3(3) and 3-7.

Art. 1-2 Scope of application

1. This Convention shall apply whenever judicial or arbitral proceeding relating to matters dealt with in this convention are brought in a contracting state. The Convention may also be applied whenever the vessel to which assistance is rendered or the vessel undertaking the salvage operations belongs to a contracting state.

2. However, the Convention shall 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 operation exclusively on government non-commercial services.]

Note: Considerations may be given to give this provision effect only to liens in such vessels.

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

Art. 1-3 Salvage operations controlled by Public Authorities

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.

2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the 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 remedies provided for in this Convention shall be determined by the law of the state where such authority is situated.

Note: It was decided to retain the salvors' right against the ship, vessel or other property even where the salvage was directed by public authority in an attempt to preserve the system of private salvage settlements which was outlined in the President's report (paragraph II. 2ff. p.4a) and generally supported at the first meeting of the international subcommittee. It was generally felt that if the primary right were to be one against the public authority, leaving the authority to its right of recourse against the shipowner, this would lead in time to a system of publically organized salvage, with appropriate provisions for recourse against the salved interests, which would be against the interest of the maritime community.

Art. 1-4 Salvage operations according to contract.

1. This Convention shall apply to any salvage operation performed under contract save to the extent that the contract otherwise provides expressly or by implication. (However, the provisions of arts. ... shall apply even if the contract contains any stipulation which is inconsistent therewith or derogates therefrom).

2. The master shall have authority (at all times) to conclude contracts for salvage operations on behalf of the owner of the vessel and of property thereon.

Art. 1-5 Invalid contracts or terms.

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

Note: i) The chapeau of this article does not refer to a contract for salvage operations deliberately so as to allow the nature of the contract to be characterized after the event in the cases considered.

ii) It was thought unnecessary to provide that the parties could agree to remuneration after the event or that courts could invalidate an agreement for reasons of domestic law other than those mentioned in the text, since these results would follow in any event.
CHAPTER II – PERFORMANCE OF SALVAGE OPERATIONS

Art. 2-1 Duty of the owner and master

The owner and master of a vessel in danger shall take timely and reasonable action to arrange for salvage operations and/or preventive measures.

They shall also cooperate fully with the salvor and shall use their best endeavours to save the vessel and property thereon and to avoid damage to [third parties] [the environment].

Art. 2-2 Duty of the salvor

1. The salvor shall use his best endeavours and shall carry out the salvage operations and preventive measures with due care. The salvor shall whenever reasonably required arrange for assistance from other salvors available.

2. The salvor may not reject an offer of assistance made by another salvor unless he can reasonably expect to complete unassisted the salvage operations successfully within a reasonable time, or the capabilities of the other salvor are inadequate.

Art. 2-3 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 at sea in danger of being lost.

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

3. The owner of a vessel incurs no liability under this Convention by reason of the failure of the master to comply with his duty under this article.

Art. 2-4 Cooperation of contracting states

A contracting state shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or provision of facilities to salvors, take into account the need for cooperation between salvors and public authorities in order to ensure 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 – THE REMUNERATION OF SALVORS

Art. 3-1 Useful result as a condition for reward

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

2. [Salvage of liability shall be considered as a useful result]. [Salvage operations which prevent or minimize damage to [the environment] [third Parties] shall be considered to have had a useful result].

3. Except as otherwise provided in this Convention no remuneration is due under this convention if the salvage operations have no useful result.
A rt. 3-2 The amount of the reward

1. The reward shall be fixed with a view to encouraging salvage operations and on the basis of the services rendered, the value of the property saved and the damage to [the environment] [third Parties] avoided.

2. When considering the services rendered the following factors shall be taken into account
   a) the nature and degree of the danger,
   b) the extent to which a useful result has been obtained,
   c) the promptness of the services rendered,
   d) the efforts of the salvors, 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 use of vessels or other equipment intended for salvage operations,
   g) the state of readiness and efficiency of the salvors’ equipment and the value thereof.

3. The reward [in respect of the property salved] may not exceed the value of the property salved [save in cases where damage to the environment [and liability therefore] have been avoided].

4. [However the amount awarded because damage to the environment [and liability therefore] have been avoided may not exceed an aggregate amount of... units of account for each ton of the ship’s tonnage, but not less than... units of account].

Note: For the definition of ton and unit of account, see the 1976 Limitation Convention Arts. 6(5) and 8. However, some other method of limitation could be employed.

A rt. 3-3 Compensation for preventive measures.

1. The salvor is entitled to compensation for preventive measures [taken in respect of a vessel carrying oil as cargo in bulk] even if such measures have had no useful result.

The compensation shall be fixed so as to give the salvor a fair rate for equipment and personnel used as well as reimbursement for expenses reasonably incurred.

Note: The use of the words employed in the second sentence is not intended to shut out the notion that, in view of the efforts of the salvor, “a fair rate” may, at the discretion of the court, be fixed higher than an ordinary daily rate.

2. When fixing the amount of such compensation the use of equipment or personnel or expenses incurred by the salvor shall not be taken into account to the extent that adequate compensation has been given by any reward according to art. 3-2.

3. The owner of the vessel is liable for the compensation due under this article. However, this shall not prejudice any right of recourse of the owner against any third parties who may be liable to pay compensation in respect of such preventive measures.

4. Contracting States shall adopt the measures necessary to give the salvor the right to avail himself of any remedy in respect of preventive measures provided for in international convention or national law.

A rt. 3-4 Apportionment among the salved interests

Any party may request that the reward be apportioned for the purpose of determining the part payable by each of the salved interests. Such apportionment shall be made on the basis of the criteria in art. 3-2.
Art. 3-5 Apportionment among salvors

1. The apportionment of a reward among salvors shall be made on the basis of the criteria contained in art. 3-2.

2. The apportionment among the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of the 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 salver and his employees.

Art. 3-6 Salvage of persons

1. A salver of human life, who has taken part in the salvage operations, is entitled to a fair share of the reward.

[2. In any event a salver who has taken part in the salvage operations and has saved or attempted to save human life, is entitled to compensation fixed in accordance with the criteria contained in art. 3-3.]

Art. 3-7 Services rendered according to existing contracts

No remuneration is payable under the provisions of this Convention to the extent that the services rendered do not exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Art. 3-8 The effect of salvors' negligence

A salver may be deprived of the whole or a part of the remuneration payable 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 salver has been guilty of fraud or other dishonest conduct.

Art. 3-9 Prohibition by the owner 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 remuneration under the provisions of this Convention.

CHAPTER IV – CLAIMS AND ACTIONS

Art. 4-1 Maritime lien

The salver shall have a maritime lien on property salved for his remuneration under the provisions of this Convention. The salver may not maintain his lien on the property salved when adequate security for his claim, [including costs and interest] has been given.

Art. 4-2 Duty to provide adequate security

1. Upon the request of the salver a person liable to pay remuneration under the provisions of this Convention shall provide adequate security for the claim [including costs and interest] of the salver.

2. The owner of the salved vessel shall use his best endeavours to ensure that the owners of the cargo provide adequate security for the claims against them [including costs and interest] before the cargo is released.
3. [If adequate security has not been provided within a reasonable time [14 consecutive days] after a request has been made, the salvor is entitled to bring any claim for remuneration under this Convention directly against the insurer of the person liable, in which case the liability of the insurer shall be determined as if the claim in respect of the remuneration had been brought by the person liable].

Art. 4-3 [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 [security or other] terms as may be fair and just according to the circumstances of the case.

Art. 4-4 Limitation of actions

1. Any action relating to remuneration 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.

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

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

4. Without prejudice to the preceding paragraphs all matters relating to limitation of action are governed by the law of the State where the action is brought.

Art. 4-5 Jurisdiction

[1. An action for remuneration 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 of the remuneration has been given,
   e) the place where the salvage operations took place].

2. With respect to ships 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.

CHAPTER V – LIABILITY OF SALVORS

Art. 5-1 Limitation of liability

A contracting State shall adopt legislation necessary to 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.

Note: This provision is intended to cover the situation where a contracting State is not a party to the 1976 Convention or has not implemented that Convention in its national legislation.

Art. 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] [by preventive measures] and for which the shipowner or other person in whose interest the salvage operations are carried out is liable.
Art. 1.1. Definitions

1. Salvage operations means any act or activity undertaken to assist a vessel or property in danger in whatever waters the act or activity takes place.
2. Vessel means any ship, craft or structure capable of navigation, including any vessel which is stranded, left by its crew or sunk.
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.
4. Damage to the environment means substantial physical damage by pollution, explosion, contamination, fire or similar major incidents in coastal or inland waterways areas.
5. Payment means any reward, remuneration or reimbursement due under the provisions of this Convention.
6. Owner of the goods means the person entitled to the goods.

Art. 1-2. Scope of application

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.
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 operation exclusively on governmental non-commercial services,
   d) to removal of wrecks.

Art. 1-3. Salvage operations controlled by public authorities

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.
2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the 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 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

1. This Convention shall apply to any salvage operation unless the contract otherwise provides expressly or by implication.

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

Art. 1-5. Invalid contracts or contractual terms

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.

CHAPTER II. – PERFORMANCE OF SALVAGE OPERATIONS

Art. 2-1. Duty of the owner and master

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 endeavours to avoid or minimize damage to the environment.

2. The owner of a vessel or property salved and brought to a place of safety shall accept redelivery when reasonably requested by the salvors.

Art. 2-2. Duties of the salvor

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 avoid and minimize damage to the environment.

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. 2-3. 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 at sea in danger of being lost.
2. The contracting States shall adopt the measures necessary to enforce the duty set out in the preceding paragraph.

Art. 2-4. Co-operation of contracting States
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.

Chapter III. Rights of Salvors

Art. 3-1. Conditions for reward
1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owners.

Art. 3-2. The amount of 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 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 salver,
   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 salver’s equipment and the value thereof.
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 operation.

Art. 3-3. Reimbursement of salver’s expenses and entitlement to a special reward
1. If the salver 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 might occur, or to minimize such damage, the salver is entitled to
compensation payable by the shipowner equivalent to the salvor’s expenses as herein defined.

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. “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.

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.

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.

Art. 3-4. Apportionment between salvors

1. The apportionment of a reward between salvors shall be made on the basis of the criteria contained in art. 3-2.

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.

Art. 3-5. Salvage of persons

1. A salvor of human life, who has taken part in the salvage operations, is entitled to a fair share of any payment due under this Convention.

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. 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.]

4. Provided always that any recovery under paragraphs 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.

5. The payment due under paragraphs 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.

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, 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

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

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.

2. Without prejudice to paragraph 1 of this article, 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. 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 the 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

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.

Art. 4-4. Limitation of actions

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.

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

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

4. Without prejudice to the preceding paragraphs all matters relating to limitation of action are governed by the law of the State where the action is brought.

Art. 4-5. Jurisdiction

[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.]

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.

3. Nothing in this article constitutes an obstacle to the jurisdiction of a contracting State for provisional or protective measures.

Art. 4-6. Interest

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.

2. Interest shall in any event commence to run when the request referred to in paragraph 1 of art. 4-2. has been made.

[Art. 4-7. Publication of arbitral awards

Contracting States shall take the measures necessary to make public awards made in any salvage case.]
Art. 5-1. Limitation of liability

A contracting State shall 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 Marine Claims.

Note: This provision is intended to cover the situation where a contracting State is not a party to the 1976 Convention or has not implemented that Convention in its national legislation.

Art. 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.]
Art. 1.1. Definitions

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.

2. Vessel means any ship, craft or structure capable of navigation, including any vessel which is stranded, left by its crew or sunk.

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.

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.

5. Payment means any reward, remuneration, compensation or reimbursement due under the provisions of this Convention.

Art. 1-2. Scope of application

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.

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. 1-3. Salvage operations controlled by public authorities

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.

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
1. This Convention shall apply to any salvage operations save to the extent that the contract otherwise provides expressly or by implication.
2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel and of property thereon.
3. Nothing in this article shall affect the application of the provisions of article 1-5.

Art. 1-5. Invalid contracts or contractual terms
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. 2-1. Duty of the owner and master
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 endeavours to prevent or minimize danger to the environment.
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.
3. The owners of vessel or property salved and brought to a place of safety shall accept redelivery when reasonably requested by the salvors.

Art. 2-2. Duties of the salvor
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. 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. 2-3. 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 the preceding paragraph.

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

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.

Chapter III – Rights of Salvors

Art. 3-1. Conditions for reward

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

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

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

Art. 3-2. The amount of 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 salver,
   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 salver’s equipment and the value thereof.
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 operation.

Art. 3-3. 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 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.

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.

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 operation, taking into consideration the criteria set out in paragraph 1(g), (h) and (i) of 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 3-2.

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.

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

Art. 3-4. Apportionment between salvors

1. The apportionment of a reward between salvors shall be made on the basis of the criteria contained in article 3-2.

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.

Art. 3-5. Salvage of persons

1. No remuneration is due from the 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.
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

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.

Art. 4-2. Duty to provide security

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.

2. Without prejudice to paragraph 1 of this article, 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.

Art. 4-4. Interim payment

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 the security provided under article 4-2 shall be reduced accordingly.

Art. 4-4. Limitation of actions

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.

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

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

Art. 4-5. Jurisdiction

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.

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.

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.

Art. 4-6. Interest

1. The right of the salvor to interest of 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.
Art. 4-7. Publication of arbitral awards

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.

CHAPTER V - LIABILITY OF SALVORS

Art. 5-1. Limitation of liability

1. 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.
DRAFT ARTICLES FOR A CONVENTION ON SALVAGE
Document Leg 57/3-Annex 1

CHAPTER I – GENERAL PROVISIONS

Article 1 (1-1)
Definitions

For the purpose of this Convention:

(a) Salvage operations means any act or activity undertaken to assist a vessel [or its cargo whether still aboard the vessel or not] or any [other] property in danger in whatever waters the act or activity takes place.

(b) Vessel means any ship, craft or structure capable of navigation, including any vessel which is stranded, left by its crew [or sunk].

(c) Property [means any property not permanently and intentionally attached to the shoreline which is in danger and] includes freight 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, [explosion,] contamination, [fire] or similar major incidents.

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

Article 2 (1-2)
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.

[2. However, this 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 operation exclusively on governmental non-commercial services;

d) to removal of wrecks [undertaken by direction of a State or otherwise requested by national law];

[e) whenever the property is permanently attached to the sea-bed for hydrocarbon, production, storage and transportation.]]

Article 3 (1-3)
Salvage operations controlled by public authorities

1 This Convention shall not affect any provisions of national law or an international convention relating to salvage operations by or under the control of public authorities.
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 (1-4)
Salvage contracts

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

2 The master [and owner] shall have authority to conclude contracts for salvage operations on behalf of the owner of the vessel and of property thereon.

3 Nothing in this article shall affect the application of article 5.

Article 5 (1-5)
Invalid contracts [Contractual terms]

A contract or any terms thereof may be annulled or modified if:
(a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
(b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

Chapter II - Performance of Salvage Operations

Article 6 (2-1)
Duty of the owner and master

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 [also] use their best endeavours to prevent or minimize danger to the environment.

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.

3 The owner of vessel or property salved and brought to a place of safety shall accept redelivery when reasonably requested by the salvors. [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.]

Article 7 (2-2)
Duties of the salvor

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. 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 article 6.2; provided, however, that the amount of his reward shall not be prejudiced should it be found that such intervention was not necessary.

Article 8 (2-3)
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 (2-4)
Co-operation of contracting States

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.

CHAPTER III - RIGHTS OF SALVORS

Article 10 (3-1)
Conditions for reward

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

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

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

Article 11 (3-2)
The amount of 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 salving the vessel, property and life, and 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.

2 The reward under paragraph 1, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the value of the property salved at the time of the completion of the salvage operation.

Article 12 (3-3)
Special compensation

1 If the salvor has carried out salvage operations [or any other operations made with a view to preventing or minimizing damage to the environment] 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 [and from the owner(s) of her cargo] equivalent to his expenses as herein defined.

2 If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the compensation payable by the owner to the salvor under paragraph 1 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 article 11.1, but in no event shall it be more than [doubled].

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 operations and a fair rate for equipment and personnel actually and reasonably used in the salvage operations, taking into consideration the criteria set out in article 11.1(g), (h) and (i).

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.

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.

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

Article 13 (3-4)
Apportionment between salvors

[0] [A salvor may make an agreement in respect of the salvage reward, or failing agreement, have the reward assessed by a court or tribunal. Any agreement made by him shall be on behalf of and binding upon all his servants and agents and subcontractors and their servants and agents, including members of the crews of
vessels employed by him in the salvage operations. Any claim by the servants, agents or subcontractors of a salvor for a share in the reward shall be made direct to the salvor. Any claim by the servants or agents of a subcontractor for a share in the reward shall be made direct to that subcontractor.

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.

Article 14 (3-5)
Salvage of persons

1. No remuneration is due from the 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.

Article 15 (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.

Article 16 (3-7)
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 (3-8)
Prohibition by the owner or master

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. [Such prohibition may be expressed at any time].

Article 18 (4-1)
Maritime lien

1. Nothing in this Convention shall affect the [existence of a] 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 19 (4-2)**

**Duty to provide security**

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

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

**Article 20 (4-3)**

**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 19 shall be reduced accordingly.

**Article 21 (4-4)**

**Limitation of actions**

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

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

3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted. However, the time allowed shall not be less than ninety 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. 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.

**Article 22 (4-5)**

**Jurisdiction**

1. Unless the parties have agreed to the jurisdiction of another court or to arbitration, an action for payment under 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.

[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 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.

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 23 (4-6)

Interest

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

[Article 24 (4-7)

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.]
DRAFT ARTICLES FOR A CONVENTION ON SALVAGE
Document Leg 58/12

CHAPTER I – GENERAL PROVISIONS

Article 1
Definitions
For the purpose of this Convention:
(a) Salvage operations 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, craft or structure capable of navigation.
(c) Property means any property not permanently and intentionally attached to the shoreline and includes freight 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.

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 3
Salvage operations controlled by public authorities
1. This Convention shall not affect any provisions of national law or an 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
Salvage contracts
1. This Convention shall apply to any salvage operations save to the extent that the contract otherwise provides expressly or by implication.
2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.
3. Nothing in this article shall affect the application of article 5 nor duties to prevent or minimize damage to the environment.

Article 5
Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if:
(a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
(b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

Chapter II - Performance of Salvage Operations

Article 6
Duty 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 save the vessel or other property in danger;
   (b) to carry out the salvage operations with due care;
   (c) in performing the duties specified in subparagraphs (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 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;
   (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 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.

* This article was numbered as article 8 in the annex to document LEG 58/4, following the decision of the Legal Committee, at its fifty-seventh session, to combine the principle of the previous article 7 into the present article 6 (LEG 57/12, paragraph 135).
Article 8  
(article 9 in the annex to document LEG 58/4)  
Co-operation of contracting States

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.

CHAPTER III - RIGHTS OF SALVORS

Article 9  
(article 10 in the annex to document LEG 58/4)  
Conditions for reward

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

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

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

Article 10  
(article 11 in the annex to document LEG 58/4)  
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 salver;
   (d) the nature and degree of the danger;
   (e) the efforts of the salvors in salving the vessel, property and life, 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 salver’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 amounts shall be borne by the property interests in proportion to their value. Nothing in this article shall prevent any right of recourse or 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 11
(article 12 in the annex to document LEG 58/4)
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 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.

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 the 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 ...].*

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 operations, taking into consideration the criteria set out in article 11.1(g), (h) and (i).

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.

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.

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

Article 12
(article 13 in annex 1 of document LEG 58/4)
Apportionment between salvors

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.

Article 13
(article 14 in the annex of the document LEG 58/4)
Salvage of persons

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

* In the draft convention prepared by the CMI, the phrase at the end of this paragraph was “but in no event shall it be more than doubled”.

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.

**Article 14**
(article 15 in the annex to document LEG 58/4)

*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**
(article 16 in the annex to document LEG 58/4)

*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**
(article 17 in the annex to document LEG 58/4)

*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**
(article 18 in the annex to document LEG 58/4)

*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 18**
(article 19 in the annex to document LEG 58/4)

*Duty to provide security*

1 Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
2 Without prejudice to paragraph 1, the owner of the salved vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.

3 The salved 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 19
(article 20 in the annex to document LEG 58/4)
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 18 shall be reduced accordingly.

Article 20
(article 21 in the annex to document LEG 58/4)
Limitation of actions

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

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

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

Article 21
(article 22 in the annex to document LEG 58/4)
Jurisdiction

1 Unless the parties have agreed to the jurisdiction of another court or to arbitration, an action for payment under 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 or place 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.

Article 22
(article 23 in the annex to document LEG 58/4)
Interest

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

Article 23
(article 24 in the annex to document LEG 58/4)
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 24
(article X in the report of the Legal Committee's 58th session – LEG 58/12)
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 vessels of inland navigation;
   (b) when all interested parties are nationals of that State;
   (c) whenever 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.

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

Article 25
(article Y in the report of the Legal Committee's 58th session – LEG 58/12)
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

* Renumbered following the deletion of the previous paragraph 2 by the Legal Committee (LEG 58/12, paragraph 87).
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 that State 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.

APPENDIX

Proposed text for an additional provision.*

“Cargoes owned by a State or carried on board either a vessel described in article Y.1 or on a commercial vessel for a governmental and non-commercial purpose shall not be seized, arrested or detained under any legal process whatsoever nor under any legal process in rem nor under any provision of this Convention. Consistent with these principles, such cargoes and the State owners thereof shall not be subject to, or be affected by, articles [3, 4.2, 17, 18, 19, 20, 21, 22].”

* At its fifty-eighth session the Legal Committee was not able to agree on the inclusion of this proposed text in the draft Convention. The Committee, however agreed that the above text should be submitted to the Diplomatic Conference in an annex to the basic conference document (LEG 58/12, paragraphs 48 to 53).
Chapter I – General Provisions

Article 1
Definitions

For the purpose of this Convention:

(a) Salvage operations 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, 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, compensation or reimbursement due under this Convention.

Article 2
Scope of application

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

2. 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 3
Salvage operations controlled by public authorities

1. This Convention shall not affect any provisions of national law or an 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
Salvage contracts

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

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

3. Nothing in this article shall affect the application of article 5 nor duties to prevent or minimize damage to the environment.

Article 5
Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if:

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

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

Chapter II - Performance of Salvage Operations

Article 6
Duty 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 duties specified in subparagraphs (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 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;

(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 6bis

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 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 8
Co-operation of contracting States

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.

Chapter III - Rights of salvors

Article 9
Conditions for reward

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have no useful result.
3. This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owners.

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 vessel and of the other 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 salver;
   (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 service 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 must be made by all
property interests in proportion to their 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 share as determined in accordance with the first sentence. 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 salved property.

Article 11
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 failed to earn a reward
under article 10 at least equivalent to the special compensation assessable in
accordance with this article, he shall be entitled to special compensation from the
owner of that vessel equivalent to his expenses as herein defined.

2 If, in the circumstances set out in paragraph 1, the salvor by his salvage operations
has prevented or minimized damage to the environment, the compensation payable by
the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of
the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just
to do so and bearing in mind the relevant criteria set out in article 10, paragraph 1, may
increase such compensation further, but in no event shall the total increase be more
than 100% of the expenses incurred by the salvor.

3 “Salvor’s expenses” for the purpose of paragraphs 1 and 2 means the out-of-
pocket expenses reasonably incurred by the salvor in the salvage operation and a fair
rate for equipment and personnel actually and reasonably used in the salvage
operations, taking into consideration the criteria set out in article 10.1(h), (i) and (j).

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.

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.

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

Article 12
Apportionment between salvors

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 servants.

Article 13
Salvage of persons

1 No remuneration is due from the 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.

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 18
Duty to provide security

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

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

3. The salved 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 19**

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 18 shall be reduced accordingly.

**Article 20**

Limitation of actions

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

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

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

**Article 21**

Jurisdiction

(DELETED)

**Article 22**

Interest

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

**Article 23**

Publication of arbitral awards

Contracting States shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.
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 vessels of inland navigation or when no vessel is involved and the salvage operations take place in inland waters;
   (b) when all interested parties are nationals of that State;
   (c) when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.
2 Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
3 Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General of the International Maritime Organization (hereinafter referred to as “the Organization”). Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General of the Organization (hereinafter referred to as “the Secretary-General”), the withdrawal shall take effect on such later date.

Article 25
State-owned vessels and cargoes

1 Without prejudice to article 3, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled 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 of this article, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.
3 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 to sovereign immunity under generally recognized principles of international law.

Article 25bis
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.
1 In accordance with Article 2(b) of the Convention on the International Maritime Organization, the Council of the Organization decided, at its fourteenth extraordinary session in November 1987, to convene an international conference to consider the adoption of a new convention on the law of salvage. This decision was endorsed by the Assembly of the Organization at its fifteenth regular session by resolution A.633(15) of 20 November 1987 on the work programme and budget for the fifteenth financial period 1988-1989.

2 The Conference was held in London, at the Headquarters of the International Maritime Organization, from 17 to 28 April 1989.

3 Representatives of 66 States participated in the Conference, namely the representatives of:

Algeria        Ireland
Argentina      Israel
Australia      Italy
Bahamas        Japan
Barbados       Kiribati
Belgium        Kuwait
Brazil         Liberia
Bulgaria       Malaysia
Canada         Marshall Islands
Chile          Mexico
China          Morocco
Colombia       Netherlands
Congo          Nigeria
Côte d’Ivoire  Norway
Cuba           Panama
Cyprus          Peru
Czechoslovakia  Poland
Democratic People’s Republic of Korea  Portugal
Democratic Yemen  Republic of Korea
Denmark         Saudi Arabia
Ecuador         Seychelles
Egypt           Spain
Finland         Sweden
France          Switzerland
Gabon            Tunisia
German Democratic Republic  Turkey
Germany, Federal Republic of
Ghana
Greece
Hungary
India
Indonesia
Iran (Islamic Republic of)

THE TRAVAUX PREPARATOIRES OF THE 1989 SALVAGE CONVENTION 643

Final Act of the International Conference on Salvage, 1989
4 The following States sent an observer to the Conference:
   Romania

5 Hong Kong, an Associate Member of the International Maritime Organization, sent observers to the Conference.

6 A representative of the following body of the United Nations attended the Conference:
   Office of the United Nations High Commissioner for Refugees (UNHCR)

7 The following two intergovernmental organizations sent observers to the Conference:
   International Oil Pollution Compensation Fund (IOPC Fund)
   Arab Federation of Shipping (AFS)

8 The following 19 non-governmental international organizations sent observers to the Conference:
   International Chamber of Shipping (ICS)
   International Union of Marine Insurance (IUMI)
   International Maritime Committee (CMI)
   International Association of Ports and Harbors (IAPH)
   Baltic and International Maritime Council (BIMCO)
   Latin American Shipowners Association (LASA)
   Oil Companies International Marine Forum (OCIMF)
   European Tugowners Association (ETA)
   International Shipowners Association (INSA)
   Friends of the Earth International (FOEI)
   International Association of Drilling Contractors (IADC)
   International Salvage Union (ISU)
   Oil Industry International Exploration & Production Forum (E & P Forum)
   International Association of Independent Tanker Owners (INTERTANKO)
   International Group of P and I Associations (P and I)
   International Union for Conservation of Nature and Natural Resources (IUCN)
   Advisory Committee on Pollution of the Sea (ACOPS)
   International Life-Boat Federation (ILF)
   International Association of European General Average Adjusters (AIDE)

9 His Excellency, Dr. Francisco Kerdel-Vegas, Head of the delegation of Venezuela, was elected President of the Conference.

10 The Vice-Presidents elected by the Conference were:
   Rear Admiral F. Lazcano (Chile)
   Mr. Meng Guangju (China)
   Mr. S. Rosadhi (Indonesia)
   Dr. H. Tanikawa (Japan)
   Mr. M.M.R. Al-Kandari (Kuwait)
   The Rt. Hon. Lord Justice Kerr (United Kingdom of Great Britain and Northern Ireland)
   Mr. G.G. Ivanov (Union of Soviet Socialist Republics)
   Rear Admiral J.E. Vorbach (United States of America)
   Citoyen Tito Yisuku Gafudzi (Zaire)
11 The Secretariat of the Conference consisted of the following officers:
   Secretary-General Mr. C.P. Srivastava
   Executive Secretary Mr. T.A. Mensah
   Deputy Executive Secretary Mr. C.H. Zimmerli,
   Secretary General of the Organization
   Assistant Secretary-General
   Deputy Executive Director, Legal Affairs and External Relations Division

12 The Conference established a Committee of the Whole with the mandate to consider the draft articles for a Convention on Salvage. The Conference also established a Committee on Final Clauses with the mandate to consider the draft final clauses of the Convention.

13 The Drafting Committee established by the Conference was composed of representatives from the following nine States:
   China       Spain
   Egypt       United Kingdom of Great Britain and Northern Ireland
   France      Mexico
   Mexico       Union of Soviet Socialist Republics
   Netherlands United States of America

14 A Credentials Committee was appointed to examine the credentials of representatives attending the Conference. The Committee was composed of representatives from the following States:
   Congo       Poland
   Ecuador     Switzerland
   Malaysia

15 The officers elected for the Committees were as follows:
   Committee of the Whole:
   Chairman: Prof. Dr. N. Trotz (German Democratic Republic)
   Vice-Chairmen: Mr. A. Popp (Canada)
     Mr. K. Kone (Côte d’Ivoire)
   Drafting Committee:
   Chairman: Mr. W.W. Sturms (Netherlands)
   Vice-Chairmen: Mr. J.-P. Béraudo (France)
     Dr. J. Eusebio Salgado y Salgado (Mexico)
   Committee on Final Clauses:
   Chairman: Captain S.A.H. Yafai (Democratic Yemen)
   Vice-Chairmen: Mr. R. Foti (Italy)
     Mr. I. Maku (Nigeria)
   Credentials Committee:
   Chairman: Mr. V. Ngayala (Congo)
   Vice-Chairman: Ms. Halimah Ismail (Malaysia)

16 The Conference used as the basis of its work:
   - draft articles for a Convention on Salvage, prepared by the Legal Committee of the Organization;
   - draft final clauses for the Convention on Salvage, prepared by the Secretariat of the Organization.
17 Also before the Conference were a number of documents, comments and observations, including proposed amendments, submitted by Governments and interested organizations in relation to the draft Convention.

18 As a result of its deliberations based on the reports of the Committee of the Whole, the Committee on Final Clauses and other committees, the Conference adopted the:

   International Convention on Salvage, 1989

   As far as the French text of this Final Act and of the above-mentioned Convention is concerned, the Conference decided that the term “assistance” means “l’assistance aux navires et le sauvetage des personnes et des biens”.

19 The Conference also adopted a Common Understanding concerning articles 13 and 14 of the International Convention on Salvage, 1989 which is contained in attachment 1 to this Final Act.

20 The Conference further adopted the following resolutions:
   - Resolution requesting the amendment of the York-Antwerp Rules, 1974
   - Resolution on international co-operation for the implementation of the International Convention on Salvage, 1989

   These resolutions are contained in attachments 2 and 3 to this Final Act, respectively.

21 This Final Act is established in a single original text in the Arabic, Chinese, English, French, Russian and Spanish languages which is to be deposited with the Secretary-General of the International Maritime Organization.

22 The Secretary-General shall send certified copies of this Final Act with its Attachments and certified copies of the authentic texts of the Convention to the Governments of the States invited to be represented at the Conference, in accordance with the wishes of those Governments.

   IN WITNESS WHEREOF the undersigned* have affixed their signature to this Final Act.

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

* Signatures omitted.
ATTACHMENT 1

Common Understanding concerning Articles 13 and 14 of the International Convention on Salvage, 1989

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.

ATTACHMENT 2

Resolution requesting the amendment of the York-Antwerp Rules, 1974

THE INTERNATIONAL CONFERENCE ON SALVAGE, 1989,

HAVING ADOPTED the International Convention on Salvage, 1989,

CONSIDERING that payments made pursuant to article 14 are not intended to be allowed in general average,

REQUESTS the Secretary-General of the International Maritime Organization to take the appropriate steps in order to ensure speedy amendment of the York-Antwerp Rules, 1974, to ensure that special compensation paid under article 14 is not subject to general average.

ATTACHMENT 3

Resolution on international co-operation for the implementation of the International Convention on Salvage, 1989

THE INTERNATIONAL CONFERENCE ON SALVAGE, 1989,

IN ADOPTING the International Convention on Salvage, 1989 (hereinafter referred to as “The Convention”),

CONSIDERING IT DESIRABLE that as many States as possible should become Parties to the Convention,

RECOGNIZING that the entry into force of the Convention will represent an important additional factor for the protection of the marine environment,

CONSIDERING that the international publicizing and wide implementation of the Convention is of the utmost importance for the attainment of its objectives,

I RECOMMENDS:
(a) that the Organization promote public awareness of the Convention through the holding of seminars, courses or symposia;
(b) that training institutions created under the auspices of the Organization include the study of the Convention in their corresponding courses of study.

II REQUESTS:

(a) Member States to transmit to the Organization the text of the laws, orders, decrees, regulations and other instruments that they promulgate concerning the various matters falling within the scope of application of the Convention;

(b) Member States, in consultation with the Organization, to promote the giving of help to those States requesting technical assistance for the drafting of laws, orders, decrees, regulations and other instruments necessary for the implementation of the Convention; and

(c) the Organization to notify Member States of any communication it may receive under paragraph II(a).
INTERNATIONAL CONVENTION ON SALVAGE, 1989

THE STATES PARTIES TO THE PRESENT CONVENTION,

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

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

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

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

HAVE AGREED as follows:

CHAPTER I - GENERAL PROVISIONS

Article 1
Definitions

For the purpose of this Convention:
(a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
(b) Vessel means any ship or craft, or any structure capable of navigation.
(c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
(d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
(e) Payment means any reward, remuneration or compensation due under this Convention.
(f) Organization means the International Maritime Organization.
(g) Secretary-General means the Secretary-General of the Organization.

Article 2
Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.
Article 3
Platforms and drilling units

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

Article 4
State-owned vessels

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

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

Article 5
Salvage operations controlled by public authorities

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

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

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

Article 6
Salvage contracts

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

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

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

Article 7
Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if:

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

(b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.
CHAPTER II - PERFORMANCE OF SALVAGE OPERATIONS

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

1. The salvor shall owe a duty to the owner of the vessel or other property in danger:
   (a) to carry out the salvage operations with due care;
   (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;
   (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
   (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:
   (a) to cooperate fully with him during the course of the salvage operations;
   (b) in so doing, to exercise due care to prevent or minimize damage to the environment; and
   (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

Article 9
Rights of coastal States

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

Article 10
Duty to render assistance

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

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

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

Article 11
Co-operation

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

CHAPTER III - RIGHTS OF SALVORS

Article 12  
Conditions for reward

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner.

Article 13  
Criteria for fixing the reward

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:
   (a) the salved value of the vessel and other property;
   (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
   (c) the measure of success obtained by the salver;
   (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 salver's equipment and the value thereof.
2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salved values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.
3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salved value of the vessel and other property.

Article 14  
Special compensation

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

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

3. Salvor’s expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).

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

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

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

Article 15
Apportionment between salvors

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

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

Article 16
Salvage of persons

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

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

Article 17
Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.
Article 18
The effect of salvor’s misconduct

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

Article 19
Prohibition of salvage operations

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

CHAPTER IV - CLAIMS AND ACTIONS

Article 20
Maritime lien

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

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

Article 21
Duty to provide security

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

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

3. The salved vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor’s claim against the relevant vessel or property.

Article 22
Interim payment

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

2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.
Article 23
Limitation of actions

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

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

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

Article 24
Interest

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

Article 25
State-owned cargoes

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

Article 26
Humanitarian cargoes

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

Article 27
Publication of arbitral awards

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

CHAPTER IV - FINAL CLAUSES

Article 28
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
   (a) signature without reservation as to ratification, acceptance or approval; or
   (b) signature subject to ratification, acceptance or approval, followed by
       ratification, acceptance or approval; or
   (c) accession.

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

Article 29
Entry into force

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

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

Article 30
Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval
   or accession, reserve the right not to apply the provisions of this Convention:
   (a) when the salvage operation takes place in inland waters and all vessels
       involved are of inland navigation;
   (b) when the salvage operations take place in inland waters and no vessel is
       involved;
   (c) when all interested parties are nationals of that State;
   (d) when the property involved is maritime cultural property of prehistoric,
       archaeological or historic interest and is situated on the sea-bed.

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

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

Article 31
Denunciation

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

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

3. A denunciation shall take effect one year, or such longer period as may be
   specified in the instrument of denunciation, after the receipt of the instrument of
   denunciation by the Secretary-General.
Article 32
Revision and amendment

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of eight States Parties, or one fourth of the States Parties, whichever is the higher figure.
3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

Article 33
Depositary

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
   (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
      (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
      (ii) the date of the entry into force of this Convention;
      (iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
      (iv) any amendment adopted in conformity with article 32;
      (v) the receipt of any reservation, declaration or notification made under this Convention;
   (b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.
3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 34
Languages

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

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

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

* Signatures omitted.
**APPENDIX I**

**ARTICLES NOT ADOPTED**

**Jurisdiction**

*CMID Draft (Document LEG 52/4)*

Article 4-5. Jurisdiction

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.

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.

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.

*Legal Committee Report on the Work of the 52nd Session (Document LEG 52/9)*

89. In respect of Article 4-5.1 a recommendation was made that the place of arrest of a sister ship should be mentioned in the Article in a sub-paragraph (f), and that cargoes be referred to as well as vessels in Article 4-5.2, in the opening line.

90. It was observed that the Article could cause difficulty and that the need for uniformity in respect of jurisdiction was not beyond doubt. The practice under the 1910 Convention had not shown that there were serious problems which required such complex treatment. In this connection, it was suggested that the Article should be deleted.

91. The intention of 4-5.1 was queried, in particular as to whether the list was exclusive and whether it was the intent of the drafters that jurisdiction could be set aside by contract under Article 1-4.1.

92. The CMI representative observed that not all salvage was under contract and
that this Article was a choice of a range of places where salvors could seek payment through a lawsuit. It could be helpful. Other jurisdictions would not, however, be excluded, and arbitration could be brought more widely.

Report on the Work of the 55th Session (Document LEG 55/11)

Article 22. Jurisdiction

38. It was noted that paragraph 1 of article 22 had no equivalent in the 1910 Convention.

39. Some delegations considered that paragraph 1 was desirable and useful, while others wanted it to be deleted. The representative of the CMI explained that, with the exception of the opening phrase of the paragraph which permitted the parties to agree to a jurisdiction not listed in (a) to (e), the list of jurisdictions in the paragraph was intended to be exhaustive, and States Parties to the convention would not be able to confer competence upon courts in places other than those listed. However, the provision would also not oblige a State to confer competence on any courts situated in any of the listed places.

40. Some delegations did not agree with the suggestion that paragraph 1 should prevent the broadening of jurisdiction in respect of claims if local laws so permitted. One delegation suggested the inclusion of a provision to state that such broadening of jurisdiction would be permitted. Another delegation suggested that there should also be a specific provision requiring all States Parties to recognize the competence of the courts situated in any of the places listed in the paragraph.

41. The delegation explained that without such an obligation there might be a situation in which the courts of a State Party did not have competence by virtue of local legislation. In that case a salver might choose to bring his claim before the court of a State Party only to be told that the court did not regard itself as competent. Other delegations agreed that it was necessary to ensure that the competence of the courts of States Parties to the convention would be guaranteed.

42. Some delegations proposed that “the place of arrest of a sister ship” should be included in the list of places in the paragraph. The observer of the ISU supported this proposal. He pointed out that the salver might find the arrest of a sister ship the only means of acquiring security for his claim.

43. Another delegation suggested that the Committee might consider including the place where salvage operations related to the protection of the environment of that place and, secondly, a place where such operations took place, being within an exclusive maritime resource zone of a party. The same delegation suggested that subparagraph (e) would be more precise if it designated “a place” rather than “the place” or referred to the place where the salvage operations “first commenced”.

44. One delegation suggested that the entire provision be deleted. It observed that salvage was very closely linked with the arrest of sea-going ships and the proposed revision of the 1952 Brussels Convention on the Arrest of Sea-going Ships might be inhibited by this provision. Other delegations were in favour of retaining the paragraph. One such delegation pointed out that salvage could take place on the high
seas and, in the absence of contract provision between the parties, it would be desirable to include some direction with regard to jurisdiction.

45. Another delegation considered that the article appeared to oblige the court of a non-contracting State to accept a claim against a vessel only because that vessel was registered in a State Party to the convention. A court in such a non-contracting State would be under no general obligation to accept jurisdiction in respect of such a claim.

46. There was a division of opinion with regard to the desirability of a provision to include the place of the arrest of a sister ship. Some delegations had no objections to such a provision, but others found it inadmissible. In this regard it was noted that due account would have to be taken of the link between such a provision and the provision of article 3 of the 1952 Arrest Convention.

47. There was also a divergence of views on the need for paragraph 2 of article 22.

48. One delegation suggested that paragraph 2 may be ambiguous where vessels are used for mixed purposes. It was suggested that the paragraph be amended so that the paragraph applied to vessels being used for commercial purposes at the time salvage operations commenced or at the time the cause of action arose. Furthermore, the same delegation raised the issue of whether execution over a vessel could only be made if at the time of arrest the vessel was being used for commercial purposes and whether claims of sovereign immunity should be disallowed for State-owned commercial cargo.

49. Some delegations proposed deletion of the provision, since they considered that questions of State immunity should either be dealt with by a convention dealing specifically with the subject or left to the laws of individual States. They felt that the inclusion of such a provision, in the opinion of one delegation, could dissuade some States from becoming Parties to the salvage convention. It was pointed out that the matter of sovereign immunity was under study in the International Law Commission.

50. The representative of the CMI observed that the purpose of the provision was to protect the salvor, since many State-owned vessels were used for commercial purposes. Although there was a convention on the immunity of State-owned vessels in commercial service, not many States were Parties to it. The CMI considered that this provision protected salvors and broadened the salvage regime. The 1969 Civil Liability Convention (CLC) had such a provision and it was felt that the reason for that provision applied also to the prospective salvage convention. This view was shared by some delegations and by the ISU.

51. One delegation, however, considered that 1969 CLC was a special case. Oil tankers were not often used in commercial service by Governments. Moreover, this delegation pointed out that the provision did not deal with cargo. Cargo was often more valuable in the context of salvage claims than the vessel itself.

52. In view of the division in the Committee on the provision, it was decided to put paragraph 2 into square brackets for later consideration.

53. In answer to a question the representative of the CMI explained that the first sentence of paragraph 3 was intended to state that the possibility of a salvor to avail himself of any of the jurisdictions listed in paragraph 1 would not be prejudiced. One delegation also recalled that a purpose of the provision was to secure the right of a litigant to acquire security in property located in one country when the cause was to be litigated in another country. One delegation sought confirmation that while
paragraph 3 enabled provisional or protective measures to be taken in more than one State, the substantive claim could only be dealt with in a single State. In answer, the representative of the CMI stated that there was no intention of drafting paragraph 3 to vary the jurisdictions provided in paragraph 1.

Legal Committee
Report on the Work of the 57th Session (Document LEG 57/12)

50. One delegation noted that the 1910 Convention did not contain a provision on jurisdiction, and that some States could not support a provision which explicitly recognized jurisdiction over the place of arrest of a sister ship of the salved ship. For this reason the delegation proposed that the list in paragraph (1) of the article should be made open-ended or, alternatively, that the article be deleted altogether.

51. The United States introduced its proposal, in document LEG 57/3/8, for the addition of a new paragraph (f) to paragraph 1. The new paragraph would read: “where otherwise permitted by national law”.

52. The United States delegation said this text would provide flexibility to cover the concerns of those States who desired “sister ships” included and those who did not desire them to be included. The article would then provide a minimum list of circumstances which would determine jurisdiction under the convention, but with the right given to Contracting States to add to the list.

53. Several delegations stated that they would prefer deletion of the article to an open-ended jurisdiction clause.

54. One delegation reiterated its preference to delete the whole article in view of the difficulties which the article posed for many delegations. The delegation specifically mentioned the unacceptability of paragraph 2.

55. One delegation observed that conventions drafted in recent years had typically included a provision on jurisdiction on the basis of an increasing recognition of the need for such protection.

56. Another delegation stated that there could be difficulty for some States to ratify a convention which gave discretion to other States Parties to expand the conditions for jurisdiction. This delegation could therefore only support an article which included an exhaustive list of jurisdictions.

57. Several delegations emphasized that an exhaustive list which restricted the conditions required for jurisdiction would serve as a safeguard for the interests of Parties involved and would also promote harmonization of national legislation on the subject. These objectives would be undermined if the article permitted States to expand the list of possible jurisdictions.

58. The observer from the International Salvage Union stated that a provision on jurisdiction was necessary, particularly since the object of the new convention was to standardize the law internationally.

59. There was not sufficient support for the proposal of the United States.

60. One delegation proposed that the exhaustive nature of the article could be underlined by the addition of the word “only” in paragraph 1, so that the paragraph would provide that an action for payment under the convention “may, at the option of the plaintiff, only be brought in a court ....” as specified in the list in the paragraph. This proposal was not accepted.
61. The delegation of Australia summarized its proposals to amend article 22 contained in document LEG 57/3/Add.1. One drafting amendment, to clarify the meaning of paragraph 1, was adopted by the Committee. The amended text reads:

“Unless the Parties have agreed to the jurisdiction of another court or to arbitration, an action for payment under 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:”

62. The second proposal by the delegation of Australia was for the addition of a new paragraph 1bis, to provide an explanation of the place where salvage operations took place for the purposes of paragraph 1(e). According to the delegation of Australia, the proposed text would take account of rights of coastal States recognized by the 1982 Convention on the Law of the Sea.

63. One delegation supported this proposal. However, several delegations could not support the proposal. In the opinion of these delegations, the public law provisions of the 1982 Convention on the Law of the Sea dealing with the sovereign rights of coastal States were not appropriate for incorporation in a private law convention. In response, the delegation of Australia observed that this was a question of jurisdiction relating to places where salvage operations took place and was, therefore, appropriate for inclusion regardless of the private law nature of the draft convention.

64. There was not sufficient support for the proposal and the Committee did not agree to include it in the draft convention.

65. The third proposal by the delegation of Australia was for the addition of a new paragraph 1ter, which would require Contracting States to ensure that courts within their judicial systems have jurisdiction in all the circumstances listed in paragraph 1.

66. Several delegations questioned the need for the proposed new paragraph. One delegation stated that the obligation would be implicit in the ratification of the convention.

67. Some delegations stated that in their view the proposed paragraph was technical in nature, and its addition would be useful. They felt that the convention would be much better if it placed an explicit obligation on Contracting States to give courts jurisdictional competence for the circumstances listed in paragraph 1.

68. This proposal did not receive sufficient support in the Committee.

69. The last proposal of the delegation of Australia under article 22 was the addition of the words “at the time the cause of action arose” after the words “commercial purposes” in paragraph 2. There was no objection to the proposal and the Committee agreed to make the addition proposed. It was agreed to keep this paragraph in square brackets.

70. The Committee decided to keep the text of article 22 unchanged apart from the amendments referred to in paragraphs 62 and 70. However it was agreed that the whole article should be placed in square brackets in order to draw attention to the difference of opinion in the Committee regarding the principle of the article. The text of this article would be reconsidered in order to obtain a drafting which would be generally acceptable.
74. Noting that the whole of article 22 on jurisdiction was in brackets, the Committee decided to consider first whether to retain or delete the article.

75. Several delegations were in favour of retaining the article. These delegations were of the opinion that the provision would prevent forum shopping, would bring about a desirable harmonization of the rules regarding jurisdictional clauses and would ensure greater legal certainty on the question of jurisdiction. Reference was also made in this context to the precedent set by the 1978 Hamburg Rules (article 21).

76. Several other delegations were against the retention of an article on jurisdiction. They suggested that the lack of an equivalent clause in the 1910 Convention had not created any practical problems and that such a provision was therefore superfluous.

77. One of these delegations suggested that, in the light of the experience gained under the 1910 Convention, the only matters which needed to be regulated were situations where a salvage claim was closely linked to another claim and the two could not be easily separated; for such cases it seemed important to include a provision compelling States to submit to jurisdiction.

78. One delegation drew attention to the close connection between this article and paragraph 1 of article 2 and suggested that if the Committee were to delete article 22, the result could be a lack of clarity as to the applicability of the convention. That delegation felt that if article 22 were deleted, the contents of article 2(1) would have to be re-examined. This delegation also noted that under some of the jurisdictional clauses specified in article 22.1 the actual applicability of the convention could in fact only be determined a posteriori.

79. In an indicative vote, the Committee decided by 19 to 10 votes to retain the text of the article and to delete the brackets.

Paragraph 1

80. In subparagraph (b) the Committee agreed to insert after “port” the words “or place” so as to make the text coherent with article 19(3).

81. Some delegations suggested to refer in subparagraphs (b) and (c) not just to “property” but rather to “the vessel or property”. It was suggested that this was desirable since article 1 contained definitions for each of these terms. One of these delegations also pointed out that since the draft convention’s primary objects were vessels, it would not be satisfactory to refer in subparagraphs (b) and (c) solely to “property”.

82. Other delegations felt that this issue was not restricted to this article and referred to other provisions in the draft convention where similar problems seemed to arise. Reference was made in this connection to articles 4(2), 9 and 11.

83. The Committee recognized that this matter needed further detailed examination. It was however felt that, at this stage, the Committee was not in a position to review the entire convention text to ensure complete consistency. In this connection, some delegations noted that this matter might be left to the drafting committee of the diplomatic conference.

84. The delegation of France protested at such an approach, which it said was
“lazy”, and considered that it was for the Legal Committee itself to finalize the text to be submitted to the diplomatic conference, if necessary by entrusting the task to a drafting group.

Paragraph 2

85. The observer of the IUMI recalled that this paragraph had been based on equivalent provisions contained in articles XI(2) and I(3) of the 1969 CLC Convention.

86. Several delegations proposed that the article be deleted. With respect to the first sentence, some of these delegations suggested that the matter was dealt with more appropriately by the 1926 Convention on Immunity of State-Owned Ships. With regard to the second sentence, one delegation recalled that that sentence had been included in the 1969 CLC Convention at its initiative. However, changes had occurred since 1969 with regard to the regime applicable to its transport enterprises and it had therefore no longer any need for that particular provision.

87. In the light of the views expressed, the Committee agreed to delete paragraph 2.

International Conference
Committee of the Whole 24 April 1989

Draft Articles prepared by the Legal Committee
(Document LEG/CONF.7/3)

Article 21. Jurisdiction

1. Unless the parties have agreed to the jurisdiction of another court or to arbitration, an action for payment under 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 or place 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.

2. 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.

Document LEG/CONF.7/VR.135-136

The Chairman. We come to article 21. Here we have a proposal submitted by Liberia and there is another proposal submitted by Hong Kong. We will first take up the proposal made by Liberia in document LEG/CONF.7/20. May I ask the delegation of Liberia to introduce that proposal.

Liberia. Thank you Mr Chairman. In view of the Liberian delegation, the present text of article 21 on jurisdiction is needlessly complex and could impede ratification to
the extent that it is in conflict with the established national law regarding jurisdiction over persons and over subject matter. Further, the article as drafted attempts to confer jurisdiction under the convention upon the courts of States whether or not these States are parties to the Convention. The Liberian delegation therefore, proposes the deletion of article 21. If it is thought desirable to have an article of admissible scope to deal with some of the matters contained in the draft text for the article, then the text contained in this working paper is proposed. Thank you Mr Chairman.

The Chairman. May I take it that in the first place you are proposing deletion and only if that deletion is not accepted you would come back to your proposal.

Liberia. Yes Mr Chairman.

The Chairman. So we have first to discuss and to decide upon the first proposal - deletion of the whole article 21. We should concentrate first on that. United Kingdom.

United Kingdom. Thank you Mr Chairman. You did not mention the proposal and perhaps it might be helpful if we explained our very problem before one decides on deletion or not. We would support deletion but we would like to explain the problem we have. Perhaps before that is decided even indicatively.

The Chairman. I would prefer first to debate or to decide on deletion and then your proposal may become irrelevant. You may refer already to your proposal when you speak on deletion. That is a possibility. We will formally take up your proposal later. Is that acceptable? USSR.

USSR. Thank you, Sir. Mr Chairman, having looked at article 21 and the purpose of which when the authors of this draft put it together we were always asking ourselves why today in the salvage convention was it decided to include such an article as we know there is a widespread practice in salvage operations, there are well known salvage contracts and it is a matter of knowledge that there are various conditions laid down and, as far as our salvors know, our professional salvors I mean, in recent time there has been no difficulty at all connected with jurisdiction. When we include today, therefore, a draft article on jurisdiction which provides for various approaches, particularly which could create difficulties for certain countries which from the very beginning have been Parties to the 1910 Convention, then we come to the conclusion that we fully share the views expressed by our distinguished colleague from Liberia. We also consider that those having previous practice in applying the 1910 Convention, for example, in salvage operations in general would argue against the need for including such a provision in our convention. If it is going to be included then, in the best possible case, this provision will produce nothing new but certainly quite simply create difficulties for participants in the 1910 Convention and make it difficult for them to become Parties to the new convention. For this reason we support the exclusion of this article. Thank you.

The Chairman. The next speaker, the delegation of the United States of America.

United States. Thank you, Mr. Chairman. My delegation also has difficulties with the current article in that the 1910 Convention did not include such a provision, and there now appears to be some question both domestically in our country and internationally as expressed in our discussions this morning as to whether such a provision is really necessary. Well, the CMI intent in drafting this article was to facilitate salvors access to ports. The article may be an obstacle to ratification for some States and thus prove inimical to salvors’ interests. Consequently, I support the views
expressed by the distinguished delegate of Liberia and echoed most recently by the distinguished delegates of the Soviet Union and the United Kingdom, who all favour the deletion of this article. Thank you, Sir.

The Chairman. Thank you. The delegation of the United Kingdom.

United Kingdom. Thank you, Mr. Chairman. As the distinguished delegate of the United States has said, we do favour the deletion of this article for the reasons that have already been given. However, it may assist the Conference if I also briefly explain the problem, as you said I could, that we would have if this article were to remain in its present form or, I think, so far as we have had a look, in the suggested Liberian form. And that is the following. 54 States, including the United Kingdom, are Parties to the 1952 International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships. Article 2 of that Convention provides that ships may be arrested in respect of, amongst other things, salvage claims. Article 7 provides that the courts of the country where the arrest is made shall have jurisdiction if the claim is for salvage. That is article 7, 1(f). Article 3 provides that the claimant may arrest the particular ship in respect of which the claim arose, or a sister ship. This means that a State Party to the Arrest Convention must accept jurisdiction in a salvage claim if a sister ship is arrested. But our draft in article 21 does not allow sister ship jurisdiction. So it follows that a State ratifying the present convention with article 21 as it stands, would have to denounce the Arrest Convention, and in the case of the United Kingdom would also have to amend primary legislation in the form of the Supreme Court Act of 1981. I have to state that the United Kingdom would not be prepared to denounce the Arrest Convention. Sister ship arrest in salvage cases has been rare for obvious reasons, namely that the salvor has the particular ship in his possession, but it could be extremely useful in the case of an article 11 award under the new convention when there is no salved property. We are aware that States which do not accept sister ship arrest feel strongly against it and we do not wish to embarrass them by making it compulsory. We feel equally strongly in favour of sister ship jurisdiction. But that is really going to our amendment which does not now arise; if I may just say it, we have got a proposal to allow sister ship jurisdiction but not to require it. For the present our preference would be to delete the whole of article 21 for the reasons already given. Thank you, Mr. Chairman. Sorry I have been so long.

The Chairman. You were short, Sir Michael. I can assure you of that. The delegation of Canada.

Canada. Thank you, Chairman. I, too, can be brief. For the reasons that have been stated by the previous speakers, our preference would be for the deletion of this article. If it were to remain it would certainly have to be clarified, so for that reason we would prefer its deletion. Thank you, Chairman.

The Chairman. The delegation of the Federal Republic of Germany.

Federal Republic of Germany. We would like to associate ourselves with all the previous speakers and favour the deletion of this article. Thank you.

The Chairman. It seems we have a very clear situation. Can we come to an indicative vote on the proposal made by Liberia. Who is in favour of the deletion of article 21, the whole article? Please raise your cards. Who is against that proposal? No delegation against. Well, since... Chile.

Chile. You are now consulting us on those who are in favour of keeping article 21. Is that correct?
The Chairman. O.K. Thank you. The result of the vote is 27 in favour the proposal made by Liberia to delete the whole article 21, with 3 against. That means article 21 has been deleted and all other proposals on that article have become irrelevant. That means there is no need to discuss the British proposal or that made by Hong Kong.

25 April 1989
Document LEG/CONF.7/VR.171

The Chairman. We had a proposal to delete the whole article 21, we have already had an indicative vote on that and now we have to take a formal decision. Who is in favour of the deletion of article 21 as a whole? Please raise your card. Who is against the deletion? Please raise your cards. Abstentions? The result of the vote is 39 in favour of the deletion, 4 against, 8 abstentions. That means article 21 has been deleted by this decision.

Limitation of liability

CMI Draft (Document LEG 52/4)
Art. 5-1. Limitation of liability

1. 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 for Maritime Claims.

Legal Committee
Report on the Work of the 52nd Session (Document LEG 52/9)

95. One delegation considered that salvors should be given a right of limitation but there was general agreement that reference to the 1976 Convention was not appropriate. It was suggested, and widely supported, that this provision be deleted since it could cause difficulties to Parties to the 1957 Limitation Convention. National legislation might be permitted to prevail in this area as in others.

Report on the Work of the 55th Session (Document LEG 55/11)

Article 25 – Liability of salvors

62. One delegation supported by several delegations, suggested that the chapter title of the article be amended to read:

“Limitation of Liability of Salvors”

63. However, several delegations stated that while they favoured the granting of the right of limitation, they were not in favour of incorporating the 1976 Treaty by reference. They also pointed out that the provision would be without meaning since a

(241) Article 5-1 of the CMI Draft was renumbered Article 25 by the IMO Secretariat.
party to the 1976 Convention would be obliged to apply that Convention and a State
which was not a party would be under no such obligation and could apply its own
national law.

64. One delegation said that if the right of limitation was to be dealt with in the
convention, it would need to be further elaborated on and would need to address the
difficult question of whether the limitation should be tied solely to tonnage and not to
the value of salved property.

65. The observer of the ISU, suggested that the article be retained but made
mandatory by the substitution of the word “shall” for “may”. The observer pointed
out that salvors were, under certain salvage situations, precluded from limiting liability
at the present time. The provision of the 1976 Convention which gave salvors the right
to limitation of liability was most welcome; however, it would not affect parties to the
prospective salvage convention if they were not parties to the 1976 Convention unless
there were a mandatory provision in the salvage convention to that effect. The salvors
were faced with the possibility of large claims against them and needed the right to
limit their liability under the draft convention.

66. Some delegations considered the provision a useful one. The representative of
the CMI explained that the provision was intended as a benefit for the salvors. The
problem was that salvors in an increasing number of cases did not perform their
services from vessels (or with close relation to vessels). In such cases they did not have
the right to limitation. The 1976 Convention, however, had solved the problem
basically by providing that such salvors have a right of limitation as if they worked
from a tug of 1500 tons. The CMI considered this to be a considerable and increasing
problem not only to salvors but to commercial parties in general. It was likely that the
new salvage convention would be accepted by many States which did not accept the
1976 Convention and it was therefore strongly felt that the salvage convention should
include such a protection for salvors. At the start of CMI’s work the provision was
mandatory, but discussions within the CMI had shown that this might be an obstacle
to the acceptance of the new salvage convention by major maritime States. It had,
therefore, been formulated as a non-mandatory article. In merely incorporating the
1976 Convention by reference, the CMI has followed the model of LOF 1980
(paragraph 21).

67. One delegation which favoured retention of the article considered that it
would be a useful incentive, since not all parties to the prospective convention would
be parties to the 1976 Treaty. Moreover, there were modes of salvage which were not
wholly maritime, such as the use of helicopters and article 25 would have the effect of
extending the 1976 provisions to all salvors.

68. The Committee decided to delete the provision.

Report on the Work of the 58th Session (Document LEG 58/12)

New article on limitation of liability

91. The Committee gave consideration to a proposal by the Chinese delegation to
insert an additional article in the convention which would read as follows:
“A contracting State may give salvors a right of limitation equivalent in manner
and extent to the right provided for by other relevant international conventions
or national law.”
92. The Chinese delegation reiterated that, in its view, it would be important to state explicitly that salvors had a right to limit their liability.

93. The Committee recalled that an article on the question of the salvor's right of limitation had been included in the original draft Convention submitted by the CMI (article 5-1, renumbered article 25) but that at its fifty-fourth session, the Committee had decided not to retain the provision in the draft convention (document LEG 55/11, paragraphs 62 to 68).

94. One delegation expressed the view that it might be useful to indicate in the convention that salvors have a right to limit their liability. Several delegations doubted the need or the usefulness of such a provision. Reference was made in this context to article 3(a) of the 1976 LLMC Convention which excluded claims for salvage from the scope of the convention. It was also suggested that complications could arise for States Parties to the 1957 Convention if they wished to introduce such a concept of limitation of liability in their national law. Another delegation felt that inclusion of a provision on limitation of liability of salvors would not be appropriate since the draft convention did not deal with questions of the salvor's liability.

95. The Committee decided not to adopt the proposed article. However, in the light of the views expressed, it was suggested that the Chinese delegation might wish to submit a resolution on this issue to the diplomatic conference.

96. The text of the draft articles, as agreed by the Committee, is contained in annex 2 to this report.
Other proposals on public law aspects

96. The Legal Committee concluded its reading of the Articles of the CMI draft convention and proceeded thereafter to questions of public law as raised in Annex 1 and Annex 2 of document LEG 52/4/1. These contained the proposals of the delegations of France, Mexico and Uruguay (Annex 1) and the Federal Republic of Germany (Annex 2). The delegation of France spoke on behalf of the sponsors of the first proposal and the delegation of the Federal Republic of Germany introduced the second.

97. In addition to examining and discussing the proposals mentioned above, the Committee discussed the matter of how certain recommended measures of public law might be given formal treaty expression. There were several international instruments in force, including the 1910 Salvage Convention and the MARPOL 73/78 system, which contained, inter alia, measures of reporting and intervention which were related to the proposals in the two Annexes.

98. The discussion of the public law proposals is reflected below.

99. The delegation of Liberia indicated its strong belief that a convention on salvage must include provisions that co-operation, between flag and coastal States, from the time of the casualty to the conclusion of investigation or formal inquiry, be mandatory. It added that a document would be subsequently introduced to this effect by Liberia.

100. The Committee then heard a number of delegations which expressed interest in examining existing treaties with a view to deciding whether and how new and desirable public law proposals could be incorporated in them. If the prospect of using existing treaties proved impractical, new instruments might be considered to provide solutions. In particular, the Committee sought means of ensuring adequate treatment of:

(a) the reporting to coastal States of incidents posing serious threats of pollution or other damage;

(b) the right of coastal States to engage vessels to render assistance, even if such vessels were not involved in the casualty itself;

(c) the responsibility for compensating the salvor for services rendered at the behest of a State and for any damage caused to him by the operation.

101. It was suggested that, if the right to intervene in cases of environmentally dangerous casualties were to be made more specific, the 1969 Intervention Convention
should be studied with a view to its amendment and possibly that of the Protocol of 1973 thereto.

102. With regard to notification of casualties to coastal States, it was observed that the MARPOL Convention, 1973, included provisions in its Articles 8 and Protocol I for a mandatory system of reporting of incidents involving harmful substances.

103. Protection of the environment by public authorities contracting for and controlling salvage operations could possibly be incorporated in the 1969 Intervention Convention or the prospective revision of the 1910 Salvage Convention.

104. With respect to the exercise of the right of intervention under the 1969 Convention, it was observed that there was no clear need for any extension or amendment of that Convention. Changes should be made only if an omission could be perceived in the terms of the Convention, or experience should show a need for new provisions. Over nine years of experience had so far indicated no important gaps in its implementation.

105. The need for new measures of notification and information about potentially disastrous casualties was stressed, since it was on the basis of such information that States would take steps for intervention and mandatory salvage, if necessary. The concern was expressed that whatever vehicle was chosen for provisions of that kind they should be balanced, widely applicable and should allow salvors and shipowners to proceed with urgent protective measures while providing the authorities with the information needed and freedom of action which the public interest required.

106. Coastal States required greater certainty of being notified of significant risks from maritime casualties, but the view was expressed that the control of salvage vessels, as well as any provisions for the liability of States to salvors, required close and critical study.

107. It was generally accepted that existing treaty instruments would offer the ready-made means of perfecting procedures which might be in need of reform or extension. Which actual provisions would be adopted to that end would be for decision in the context of salvage and related issues and it would be important to take note of the practical aspects of salvage operations including the use of the non-professional salver.

108. Questions having been directed to the Secretariat regarding work presently underway in the Marine Environment Protection Committee of the IMO on the subject of notification procedures, the decisions taken at the twentieth session of M EPC and the outcome of studies in a Working Group of that Committee were described for the benefit of the Legal Committee. It was clear that the MARPOL notification procedures were very far-reaching, but that new measures of practical implementation were being worked out in the Working Group. The procedures were not expected to be limited to oil cargoes, but to cover bulk chemical cargoes after 2 October 1986 and packaged dangerous goods at a later time. The MARPOL 73/78 instrument was in force in 31 States and covered 71.72% of the world’s shipping. Mandatory guidelines for reporting could be expected to have been completed for the M EPC within a year. A shipmaster would be guided as to the events which should be reported to coastal States, and the list of such events was extensive and detailed in character.

109. Objection was voiced to the concept of making salvage compulsory, in particular where a salver sailed under a foreign flag. An alternative procedure would be for the threatened State itself to engage a salver but not to commandeer his ship or compel his salvage services.
110. Reference was made in the public law context to the rights of self-protection envisaged for coastal States by the United Nations Convention on the Law of the Sea, 1982, and it was pointed out that this referred to the right of the coastal State to require notification which was different from the notification and reporting system covered by the MARPOL instruments.

Salvage – Conclusions

111. The Committee concluded that the views expressed, and the suggestions made in the discussions would be helpful to Governments and organizations in their consideration of the CMI draft convention, and the proposals on public law aspects in document LEG 52/4/1.

112. In connection with the proposals on public law aspects, the Committee noted the provisions in respect of “Reports on Incidents Involving Harmful Substances” as contained in Article 8 of the 1973/78 MARPOL and in Protocol I to that treaty.

113. The Committee also noted the information provided to it on the work undertaken and in progress in the Marine Environment Protection Committee (MEPC) in respect of Guidelines on Mandatory Reporting System and Reporting Format under MARPOL 73/78. There was general agreement in the Committee that it would be inappropriate for the Legal Committee to deal with the subject of notification and reporting in the context of MARPOL 73/78. It was recognized that this was a matter within the legitimate competence of the MEPC, although the Legal Committee would remain ready to provide advice or assistance on questions of a legal nature as might be requested of it by the MEPC or other appropriate organs of IMO. As far as its own work on public law aspects was concerned, the Committee considered it essential that it should be organized in such a way as to avoid duplication with the work of MEPC and other IMO bodies. For this purpose the Committee requested that it be provided with timely and precise information on the nature and extent of the work being undertaken or contemplated in other bodies of IMO.

114. The Legal Committee noted the support given by some delegations for provisions of mandatory salvage, as well as the doubts and objections which had been expressed by some other delegations on the matter. It was noted in this connection that, while it might be necessary and useful for the coastal State to give instructions to ships within its jurisdiction, the concept of State-controlled salvage operations would need to be examined very carefully with a view to ensuring that any treaty provisions on the subject would receive the widest possible acceptance. A question was raised, for example, concerning the relationship between provisions on compulsory salvage and the position of salvage crews as subjects of compulsion under national law. It was also agreed in this context that the question of the compensation payable in respect of salvage services requested by State authorities would require careful consideration.

115. With regard to the form of instrument for dealing with the public law aspects of salvage, the general view in the Committee was that there was no need for a separate new convention but that any new provisions which might be deemed necessary could be adopted either in the form of a protocol to one of the existing IMO “public law” treaty instruments or, alternatively, within the framework of the prospective treaty on salvage which might be prepared by the Committee following its consideration of the CMI draft convention, whether as a new convention or as a protocol to the 1910 Convention.
116. The Legal Committee agreed that the question of salvage and related issues would be the main item on the agenda of its fifty-third session. At that session the Committee would give further consideration to the CMI draft convention and the proposals on public law aspects, including the comments and suggestions made during the discussions at the present session and any proposals on the subject which might be submitted to the fifty-third session by Governments and interested organizations.

117. To enable the fullest possible examination of such proposals prior to the session, Governments and organizations concerned were urged to submit any proposals to the Secretariat as soon as possible for circulation to participants at the fifty-third session, in accordance with the procedures for the submission of documentation to sessions of the Committee.

Legal Committee
Report on the Work of the 53rd Session
Document LEG 53/8

Public Law Aspects

82. The Committee held an extensive exchange of views on the public law aspects related to salvage. It based its discussions on a proposal relating to Article 1-3 put forward by the delegation of France, contained in document LEG 53/3/2(2), and on a proposal by the Government of the Federal Republic of Germany for an Optional Protocol to the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, outlined in document LEG 53/3/3(3).

83. In introducing his delegation’s document, the delegate of France explained that in the view of his government, the most appropriate instrument for introducing matters of a public law nature was the draft salvage convention itself. There seemed to be no justification to include those aspects in a separate instrument since they also related to the issue of salvage. He explained that the proposal was essentially in line with existing international law, with no more than a slight extension of the provisions of the 1969 Intervention Convention. Such an extension was fully in keeping with the Committee’s function of assisting in the gradual evolution and development of international law. He noted that, even without the provisions proposed, it was likely that, in an emergency, a coastal State would follow the procedure set out in his Government’s proposal.

84. The delegate of France stated that paragraphs 1 and 2 of his proposal were in line with the 1969 Intervention Convention. The requirement, in paragraph 3, for notification to the coastal State had a different objective from the notification requirements contained in, or envisaged for MARPOL 73/78. Paragraph 5 of his proposal did not constitute a fundamental innovation since there was a close link between the salvor and the salved vessel. A salvor could not be considered as a third party as far as the vessel in danger was concerned and it was therefore not unreasonable for the coastal States authority over the affected vessel to be extended to the vessel rendering assistance, where this was necessary to ensure the success of the operation.

(2) Annex 2, at page 691.
(3) Annex 3, at page 693.
85. The delegate of the Federal Republic of Germany, in introducing his Government's proposal, which had been submitted in a similar draft to the forty-sixth session of the Legal Committee, stated that it was intended to establish the right of a coastal State to require salvage vessels to render assistance to a vessel in danger. The protocol was intended to deal only with extreme cases, where the coastal State needed to act in order to avoid a catastrophe. It seemed more desirable to regulate the matter in the context of the 1969 Intervention Convention than to deal with it in the salvage convention which aimed at regulating the contractual relationship between the salvor and the parties for which assistance was being rendered. The draft protocol dealt with the measures which could be taken by the coastal State, the responsibility of the coastal State if it gave instructions to a salvage vessel, the compensation to which a salvor would be entitled in such a case, and the law applicable to the operation. In the view of the delegation, the adoption of a protocol to the 1969 Intervention Convention would make it unnecessary to insert a special notification provision, for the State could rely on the notification requirements in MARPOL 73/78. In answer to a question, the delegation explained that the term "optional" was merely used to emphasize that Contracting States to the Intervention Convention were not obliged to become parties to the Protocol.

86. A number of delegations questioned whether there was any need for the adoption of additional public law rules. In the view of some of these, no serious difficulties or inadequacies had been revealed in the application of the 1969 Intervention Convention. In the absence of any such proven need, they did not consider that the adoption of a new protocol would be called for. Other delegations considered it desirable to give serious consideration to the elaboration of new public law provisions to deal with these questions.

87. Many delegations felt that, if it were established that the existing regime regarding the rights of coastal States was not satisfactory, then any additional rules should be introduced by amending the Intervention Convention. They were of the opinion that it would not be desirable to burden the new salvage convention which was essentially a private law instrument, with more public law provisions than was absolutely necessary. In particular they felt that including such provisions in the Convention under consideration could render it less acceptable to many States. This would reduce the number of States ratifying the convention and thereby possibly delay its entry into force and wide application. Some delegations, however, felt that it would be difficult to make a clear distinction between private and public law aspects. In their view it might therefore be desirable to deal with all aspects of salvage in a single convention.

88. In respect of notification, many delegations referred to the provisions contained in MARPOL 73/78 on reports on incidents involving harmful substances, to the interim guidelines thereon adopted by the Assembly (resolution A.447(XI)) and the revision work with respect to Protocol 1 to MARPOL 73/78 and the guidelines currently under way in that Committee (MEPC 20/WP.7, MEPC 20/19, Section 10). They felt that the Legal Committee should first examine in detail the results of this work before elaborating any proposals of its own, in order to avoid duplication of work in the two Committees and possible contradictory provisions in the treaty instruments resulting from that work. Some delegations, moreover, were of the view that the Legal Committee was not really competent to consider this question since it was of a highly technical nature.
89. Other delegations, however, felt that MARPOL 73/78 dealt with problems which were different from those under discussion in the context of the salvage convention. It was, therefore, perfectly appropriate for the Legal Committee to consider these questions. Some delegations supported the proposals put forward in this respect by the French delegation in document LEG 53/3/2 as a basis for further consideration.

90. With regard to the question of “mandatory salvage” many delegations expressed the view that the proposals presented by the delegations of France and the Federal Republic of Germany involved a very radical extension of existing principles of international law. In particular they considered that the provisions which would entitle a coastal State to compel a foreign vessel which was not already rendering assistance to take salvage measures constituted a completely new and far-reaching concept which was not covered by existing international law.

91. They also questioned the practicality of the concept and doubted whether it would be feasible to request a master of a vessel to provide salvage services against his will. They noted that no evidence had been provided to show that such an extreme measure would be necessary. Moreover, it was suggested that the powers proposed to be entrusted to the coastal State vis-à-vis a foreign flag vessel seemed to be disproportionate to the possible danger that could be avoided and were not likely to be effective.

92. In the opinion of one delegation there was nothing in the optional draft protocol of the Federal Republic of Germany apart from the right to “commandeer” a foreign flag salvage vessel that was not covered by the 1969 Intervention Convention properly construed. Some delegations agreed with this viewpoint.

93. One observer delegation noted that the proposals left a number of questions unsolved in cases where two or more neighbouring coastal States were threatened. Particular reference was made to the difficulties which could arise from conflicting instructions received from different coastal States. Other questions which needed detailed examination related to the extent to which the coastal State could be held liable and to the entitlement of a “commandeered” vessel to receive remuneration for services rendered or compensation for damage suffered.

94. The Australian delegation noted that the proposal put forward by the delegation of the Federal Republic of Germany had made reference to a statement made by his Government at the time of ratification of the 1969 Intervention Convention and stated that the delegation did not necessarily agree with the conclusions which had been drawn by the delegation of the Federal Republic of Germany from that statement.

95. The Committee noted that most delegations had expressed keen interest in a revision of the law of salvage which would give appropriate emphasis to the protection of the environment, and recognized that such an emphasis would have significant public law implications. However, many delegations had questioned whether it was necessary to introduce new public law rules on the law of salvage. In the view of these delegations, the essential objective was to ensure the availability of requisite salvage vessels and equipment and the readiness of salvors to undertake salvage services in all appropriate cases; and this could best be facilitated by a revision of the rules relating to financial rewards and protection available to salvors, rather than the adoption of new public law rules. It was also noted that the majority of the Committee did not consider it necessary or acceptable to include in a convention on salvage significant rules on
public law. If any public law rules were required, they should be developed in a separate instrument. In this connection, note was taken of the view that the inclusion of public law provisions in an essentially ‘private law’ convention on salvage was likely to jeopardize the wide acceptability of such a convention and prevent the early entry into force of the convention.

96. The Committee noted that there was very little support for the concept of “mandatory salvage” in the sense that a coastal State would have the right to instruct or require a salvor to undertake salvage operations in the absence of a contract acceptable to the salvor. It was recognized that a coastal State might, in appropriate circumstances, find it necessary to intervene in salvage operations already under way within its jurisdiction, or operations posing serious threats to areas of its jurisdiction; but it was emphasized that any provision to permit or encourage a State to compel a foreign salvor to undertake salvage would be unjustified and unacceptable.

97. The Committee recognized that the question of notification to interested coastal States in respect of casualties and salvage operations was of importance in relation to the protection of the environment. It was, however, noted that work was under way in this area within the Marine Environment Protection Committee (MEPC), in the context of the notification requirements under MARPOL 73/78. The unanimous view of the Committee was that any work undertaken by the Legal Committee in this field should take due account of the work of the MEPC in order to ensure that there would be no duplication with that work. Furthermore, it was felt essential that delegations participating in the MEPC should be informed of the views and concern expressed by the Legal Committee so as to enable them to make contributions to the intersessional work carried out by the MEPC in respect of the revision of provisions on the reporting of incidents, on the basis also of the discussions within the Legal Committee.

98. The Committee also requested the Secretariat to collate the relevant documentation and information on the work of the MEPC in this area and make such documentation available to the Committee at its fifty-fourth session.

99. The Legal Committee noted the view which was expressed in the Committee that there was no need for new treaty provisions on the role of the State in salvage operations in situations where a State was entitled to intervene because a maritime casualty was posing grave and imminent danger to its coastal or environmental interests. In particular, this view suggested that the existing provisions in the 1969 Intervention Convention, the 1973 Intervention Protocol and the 1982 United Nations Convention on the Law of the Sea, provided an adequate legal basis for State intervention.

100. The Committee did not consider it necessary or possible to reach a conclusion on this view. It however agreed that an examination of the existing treaty and other legal principles was necessary in order to ascertain whether there was any need for improvement in the existing regime to achieve the objective which appeared to have been generally agreed. That objective was to ensure that a coastal State would have adequate authority and scope to take action to influence the course of salvage operations where protection of its environment or coastal interests was at stake.

101. The Committee was of the view that information from States and organizations, regarding experience acquired in the implementation of the 1969 Intervention Convention and related rules of law would be helpful to the Committee in its further consideration of this matter. Governments and international organizations
were therefore requested to send such information to the Secretariat as soon as possible, for circulation to other Governments and interested organizations sufficiently in advance of the fifty-fourth session of the Committee in March 1985.

**Legal Committee**

**Report on the Work of the 54th Session**

**Document LEG 54/7**

**Public law aspects**

122. The Committee reverted to a consideration of the public law aspects of salvage on the basis of views and information submitted to the Committee by the Federal Republic of Germany (LEG 54/4/5)\(^4\), France (LEG 54/4/1/Add.1)\(^5\), the United Kingdom (LEG 54/4/Add.1 and 2)\(^6\) and the United States (LEG 54/4/4)\(^7\). There was also a document by the Secretariat (LEG 54/4/1)\(^8\).

**Mandatory salvage**

123. The Committee held a detailed exchange of views on the need or desirability of introducing a system of mandatory salvage under which a coastal State would be entitled to compel a foreign vessel which was not already rendering assistance to take salvage measures in order to prevent damage to the environment of the coastal State.

124. Most delegations recognized that this power was not available to coastal States in either the 1969 Intervention Convention or the 1982 United Nations Convention on the Law of the Sea. Some delegations stated that to the extent that there was a gap in the conventional and customary international law on the subject, it would be appropriate to fill such a gap by a suitable amendment of the 1969 Intervention Convention. However, most delegations did not think that any practical need for the introduction of such provisions had been established. The information provided by the delegations of the United Kingdom and the United States on the measures taken by their authorities in dealing with incidents which posed threats to their environment had clearly shown that the existing regime was satisfactory. No examples of actual incidents had been given which suggested that there was any need for additional treaty law provisions in this respect.

125. Furthermore, a number of delegations stated that it would in fact be very difficult for a coastal State to compel the master or owner of a foreign ship to carry out salvage operations against his will. Experience had shown that well-equipped salvors were, as a rule, willing to engage in salvage operations, not least because of the potential financial rewards. Reference was made in this context to the special compensation proposed in the CMI draft Convention which would create an added incentive for salvors.

\(^4\) Annex 4, at page 697.
\(^5\) This document has not been found.
\(^6\) Annexes 5 and 6, at pages 701 and 702.
\(^7\) Annex 7, at page 703.
\(^8\) Annex 8, at page 705.
126. Some delegations were opposed to the introduction of new rules on mandatory salvage both on the basis of these practical considerations noted above and also on reasons of principle. They felt that such an extension of the 1969 Intervention Convention would constitute a completely new concept which was foreign to existing international law. The 1969 Convention itself was considered by some to constitute an exception to the normal rules of international law, but could be justified because it dealt with an exceptional problem. However, to compel ships in innocent passage and expose them to commandeering by a coastal State could not be justified on any grounds and would constitute an infringement of the principle of the freedom of the high seas.

127. Some delegations, furthermore, pointed out that the introduction of a system of mandatory salvage would also be disproportionate and illogical, especially when compared to the analogous provisions regarding the saving of human life (SOLAS 1974, chapter V, regulations 10 and 15), which left the sanction to the flag State. To give a greater power to the coastal State would imply that, for the protection of the environment, more far-reaching steps were justified than in respect of the protection of human life.

128. Two delegations, on the other hand, considered it highly desirable that treaty law provision on mandatory salvage be adopted. The document submitted by the Federal Republic of Germany had highlighted two possible situations which were clearly not covered by the 1969 Intervention Convention and which could only be dealt with adequately by the adoption of additional provisions to the 1969 Intervention Convention.

129. In the light of the discussions by the Committee on the question of mandatory salvage at the fifty-third session and at the current sessions of the Committee and the majority view which had emerged as a result of these discussions, the Committee decided that there was no need for provisions on mandatory salvage. The Committee further decided that the consideration of this issue should be considered as concluded and would not be re-opened unless new facts emerged which would render it appropriate to revert to the matter.

Scope of application of the 1969 Intervention Convention

130. A number of delegations pointed out that the adoption of the 1984 Protocols to amend respectively, the 1969 Civil Liability Convention and the 1971 Fund Convention, raised the question whether some of the other provisions of the 1969 Intervention Convention might need revision, particularly in respect of the adequacy of the term “related interests” in article I of this Convention. The Committee agreed to give further consideration to this matter in the light of any views and proposals that might be submitted to the Committee.

Ports of refuge

131. The Committee considered the question whether it would be appropriate to require States to establish “ports of refuge” which would be open to vessels in distress. The delegations which addressed this issue felt that experience had shown that such an advance determination of ports in general terms would not be satisfactory. In their view it would be better to direct vessels in distress into ports on a case-by-case basis and in the context of appropriate contingency plans.

132. Some observer delegations were of the view that contingency plans did not satisfactorily resolve all problems. Practical experience had shown that, in the absence
of appropriate ports of refuge, there was always the risk that local authorities would refuse entry into a particular port. It seemed important, therefore, that a central authority be designated on the national level which would be entitled to direct vessels in distress into appropriate ports.

133. The Committee agreed to revert to this matter during its third reading of the CMI draft Convention in the context of its consideration of article 2-4.

Remuneration and compensation

134. The Committee considered the question whether there should be a direct remuneration by a coastal State to a salvor who acted under the directives of that coastal State. The Committee decided to give further consideration to this and related issues in the context of its third reading of the draft Convention.

Status of the 1973 Intervention protocol

135. The Committee noted that of the 48 States which were Parties to the 1969 Intervention Convention, only 18 had become Parties to the 1973 Protocol thereto and decided to invite those Governments which were not Contracting States to give early consideration to the possibility of ratifying or acceding to the Protocol.

Notification requirements

136. The Committee gave further consideration to the question to what extent the requirements of notification of casualties to interested coastal States which were being elaborated by the Marine Environment Protection Committee (MEPC) and met also the particular requirements of coastal States in the context of salvage operations or whether additional or separate provisions would be necessary in this respect.

137. The Committee based its discussions on a document by the Secretariat summarizing the work done in IMO, particularly in the MEPC, in relation to the provision of Protocol I to MARPOL 1973/78 and associated guidelines. The material in the document was amplified by additional information given in the absence of the present Director of the Marine Environment Division by the Director of the Maritime Safety Division who was until recently the Director of the Marine Environment Division of the IMO Secretariat.

138. The Committee was of the opinion that duplication of rules and guidelines should be avoided and that it would not be desirable to establish a separate reporting system dealing exclusively with salvage. The Committee concluded that the provisions of Protocol I of the 1973/78 MARPOL Convention (once amended) and the draft Guidelines for Reporting Incidents Involving Harmful Substances would also meet the requirements of coastal States in respect of the reporting and notification of incidents involving salvage. The Committee noted in this context that there were currently 35 Contracting States to the 1978 MARPOL Protocol whose fleets constituted over 78 per cent of the world’s total merchant fleet tonnage.

139. The Committee was informed of various proposals regarding the amendments of Protocol I and the draft guidelines which had been or would be submitted to the MEPC (MEPC 21/11/2). These included proposals related to the scope of application to ships in respect of which incidents are to be reported (article 1.1 of Protocol I to MARPOL 73/78 and paragraph 2.1 of the draft Guidelines), to require the provision of supplementary reports (paragraph 4.3 of the draft Guidelines) and to
clarify the circumstance in which one could speak of a “probability of discharge” (article 2 of the Protocol and paragraph 2.2 of the Guidelines).

140. Several delegations made in this context a number of suggestions which they wished the MEPC to take into account when considering the amendments to Protocol I and the adoption of the Guidelines. In addition to the proposals referred to in the previous paragraph these included:

- a provision requiring not only the master of the vessel in distress to submit reports on the incident, but also the master of the vessel providing assistance to provide appropriate reports to the coastal State;
- a provision requiring the assisting vessel and the vessel being assisted to provide detailed supplementary reports on all aspects of the progress being made in respect of the salvage operations.

141. The Committee took note of these proposals and invited the MEPC to take into consideration the views expressed and the proposals made in the Legal Committee when considering Protocol I and the draft Guidelines. Governments were also invited to submit any other comments or suggestions to the MEPC which they considered would make the revised Protocol I and Guidelines more responsive to the requirements of reporting and notification as far as salvage operations were concerned. Governments were urged to ensure that such suggestion would be submitted to the MEPC at its twenty-first session so that they could be taken into account by the Committee in formulating the draft amendments to be circulated to Governments.

**Legal Committee**

**Report on the Work of the 55th Session**

**Document LEG 55/11**

Public law issues

126. With regard to public law matters the Legal Committee recalled the discussions at the fifty-fourth session on the extent to which notification requirements being discussed in the Marine Environment Protection Committee (MEPC) also met the requirements of coastal States in the context of salvage operations.

127. Governments were urged to submit proposals and suggestions to the MEPC in the context of the MEPC’s elaboration of new reporting requirements under MARPOL 73/78. The MEPC was also requested to take into consideration the suggestions made in the discussions at the Legal Committee’s fifty-fourth session.

128. The Committee was informed that its concerns were brought to the attention of the MEPC at its twenty-first session in April 1985 in document MEPC 21/11/7.

129. The MEPC appointed a Working Group to consider inter alia the obligation of a ship assisting or rendering salvage in an incident to make reports in accordance with the Protocol. On the recommendation of the Working Group, the MEPC decided that the mandatory reporting requirements of the amended Protocol 1 of MARPOL 73/78 should be extended to ships rendering assistance to a ship involved in an incident which involved harmful substances.

130. The discussions of the MEPC on the subject are recorded in paragraphs 11.16, 11.17, 11.24 and 11.25 of the report of the MEPC for its twenty-first session.
131. The amendments to Protocols of MARPOL 73/78, as agreed to by the MEPC, are contained in annex 15 of the Committee's report. In particular, reference may be made in this respect to a new paragraph 3 of article 1 which applies to the master of a ship engaged in or requested to engage in an operation to render assistance to or undertake salvage in an incident referred to in article 2 of the Protocol.

132. Certain Guidelines for Reporting Incidents were recommended by the MEPC to the Assembly for adoption in conjunction with the amended Protocol 1 to MARPOL 73/78. These Guidelines are reproduced in annex 16 to the MEPC's report. The parts relevant to salvage and assistance are paragraphs 5.1.8 and paragraph 6.

133. The Committee noted these developments and that the documents listed above have been distributed to all Member States of the Organization.

Legal Committee
Report on the Work of the 57th Session
Document LEG 57/12

Public law questions
Notification requirements in respect of incidents posing a threat of pollution

193. The Committee noted that a proposed amendment to Protocol I of MARPOL 73/78 which would have imposed certain notification requirements on a master engaged in or requested to engage in a salvage operation relating to a ship involved in an incident creating a threat of pollution, had not been adopted by the MEPC when adopting a revised text of Protocol I. However, the Committee noted that a text broadly similar to the proposed amendment had been included in section 6 of the “Guidelines for reporting incidents involving harmful substances”.

194. Some delegations expressed regret that the proposed amendment had not been adopted. These delegations felt that it would have been preferable to include the provision in question in Protocol I itself, as had been suggested by a number of Governments and supported by the Legal Committee. Some delegations which shared this view, expressed understanding for the reasons why it had not been possible to include the proposed amendments in Protocol I.

195. One observer delegation suggested that the section in question might be strengthened by linking it to the 1969 Convention on Intervention on the High Seas by adopting a Protocol thereto. However, one delegation doubted the feasibility of such a procedure by noting, inter alia, that the character and the scope of application of the 1969 Convention were completely different from those of the Guidelines.

196. The Committee took note of the decisions taken by the MEPC and expressed the hope that individual States would take the necessary steps to ensure that the Guidelines would be effectively implemented.
LEGAL COMMITTEE – 52nd session
Agenda item 4

IMO

CONSIDERATION OF THE QUESTION OF SALVAGE IN PARTICULAR
THE REVISION OF THE 1910 CONVENTION ON SALVAGE AND
ASSISTANCE AT SEA AND RELATED ISSUES

Note by the Secretariat

1. In deciding that its work on the question of salvage would be based on the draft convention prepared by the CMI, the Legal Committee noted the suggestion that the subject was related to the possible revision of the 1969 Intervention Convention. In particular, reference was made to certain proposals which had been made in the Legal Committee with regard to changes in the 1969 Convention to deal with:
   (a) the reporting to coastal States of incidents posing serious threats of marine pollution; and
   (b) the right of coastal States to engage vessels to render assistance, even if such vessels were not involved in the casualty itself.

2. In this connection special mention was made of two proposals, namely:
   (a) a proposal submitted to the Legal Committee at its fortieth session by the delegations of France, Mexico and Uruguay in document LEG XL/2/1.
   (b) a draft protocol submitted to the Legal Committee at its forty-fourth session by the delegation of the Federal Republic of Germany in document LEG XLIV/6.

3. The Legal Committee agreed to consider these proposals in connection with its work on the question of salvage. It was however pointed out that it would not be possible or advisable to take a decision on this aspect of the matter until the Legal Committee had been able to examine in more detail the method and plan of work, taking account of the time available.

4. For ease of reference, the proposals referred to in paragraph 2 above are annexed to this document. Annex 1 contains the proposal submitted by the delegations of France, Mexico and Uruguay in document LEG XL/2/1. Appended to the Annex is an extract from the report of the Legal Committee's fortieth session, summarizing the Committee's discussions on the proposal. Annex 2 reproduces the text of the proposal submitted by the delegation of the Federal Republic of Germany in document LEG XLIV/6*. Appended to it is an extract from the Report of the Legal Committee's forty-fourth session, summarizing the Committee's preliminary discussion on the proposal.

Action requested of the Legal Committee

5. The Committee is invited to take note of the information provided in this

---

* Subsequently withdrawn and replaced by new draft. See Annex 3 infra, at page 693.
Public law aspects

document and to take such action as it deems appropriate in determining the method and work plan to be adopted by it in relation to the subject of salvage.

* * *

ANNEX I

DOCUMENT LEG XL/2/1 OF 6 MARCH 1979
(Submitted to the Legal Committee at its fortieth session)

CONSIDERATION OF LEGAL QUESTIONS ARISING FROM THE “AMOCO CADIZ” DISASTER

Working paper presented by the delegations of France, Mexico and Uruguay

Draft articles resulting from informal consultation with several delegations which contain elements for the development of international law relating to intervention of coastal States

Article 1
1. Parties to the present Convention may take such measures beyond their territorial waters as may be necessary to prevent, mitigate or eliminate danger to their coastline or related interests from pollution or threat of pollution following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.
2. However, no measures shall be taken under the present Convention against any warship or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

Article II

For the purposes of the present Convention:
1. “Maritime casualty” means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo.1
2. “Ship” means:
   (a) any seagoing vessel of any type whatsoever; and
   (b) any floating craft, with the exception of an installation or device engaged in the exploration and exploitation of the resources of the sea-bed and the ocean floor and the subsoil thereof.
3. “Related interests” means the interests and resources of the coastal State within the areas under its jurisdiction, in accordance with International Law.
4. “Organization” means the Inter-Governmental Maritime Consultative Organization.

Article III2
1. To assist the coastal State to determine whether to take any measures pursuant to Article I, any ship carrying any substance listed in Annex I or any ship with bunker capacity exceeding ...

---

(1) This definition is understood to cover a very wide range of circumstances, for example, any damage affecting the manoeuvrability, floatability or stability of the ship.
(2) It may be desirable to specify in detail the matters to be notified such as:
   (a) an accident on board or to the ship, or fire on board; and
   (b) defects, if any, in the ship’s hull, main propulsion machinery, steering gear, anchors and cables, radar, compass or essential radiocommunication equipment.
tons, and suffering a maritime casualty within ... nautical miles of the base lines used for measuring the breath of the territorial waters or within the areas set out in Annex II, shall immediately notify the nearest coastal State.

2. Such notification shall be given by the best available means and shall include the particulars of the maritime casualty and the measures being taken or envisaged to remedy the consequences thereof.

3. Coastal States receiving the notification referred to in paragraph 1 of this Article shall transmit it immediately and by the best means available to:
   (a) neighbouring States that might be adversely affected by the accident;
   (b) the flag State of any ship involved in the maritime casualty; and
   (c) the Organization.

4. The ship shall at all times keep in contact with the nearest coastal State and shall promptly answer all requests for information from any coastal State which considers that it may be affected.

Article IV

1. Any salvor proceeding to a ship referred to in Article III, paragraph 1 shall notify the coastal State nearest to the maritime casualty of all relevant particulars including details of its position, estimated time to reach the ship, available equipment and any proposed measures for dealing with the maritime casualty.

2. Any salvor engaged in a salvage operation shall notify the coastal State nearest to the maritime casualty of all the available facts and the measures it intends to take.

3. Any salvor referred to in paragraphs 1 or 2 of this Article shall promptly answer all requests for information from any coastal State which considers that it may be affected by the maritime casualty.

Article V

1. A coastal State that determines that it is necessary to take measures pursuant to Article I shall first notify the ship(s) involved in the maritime casualty, the appropriate representatives of the flag State(s) and the salvor(s) referred to in Article IV.

2. A coastal State that determines that it is necessary to take measures pursuant to Article I may give such directions as it deems necessary and appropriate to the ship(s) and salvor(s) concerned and those ship(s) and salvor(s) shall take all reasonable and practicable steps to comply with these directions.

3. A salvor required to take measures pursuant to paragraph 2 of this Article shall be entitled to equitable remuneration. In the calculation of such equitable remuneration, regard shall be given inter alia to the expenses incurred and the risks involved.

Article VI

The owner(s) of the ship(s) involved in the maritime casualty shall be liable to pay the expenses and remuneration in respect of all measures taken pursuant to this Convention. However, a salvor which takes measures pursuant to the directions of a coastal State is entitled to ask the coastal State to remunerate him; in such a case, the coastal State shall be entitled to recover from the owner(s) of the ship(s) involved in the maritime casualty the amount of the remuneration paid to the salvor as well as the costs incurred directly by the coastal State.
APPENDIX

Salvage

31. The topic of salvage as a legal question arising from the “Amoco Cadiz” incident was discussed in the context of both public law and private law. The former aspect of the matter included salvage operations under the control of the coastal State and the remuneration of the salvor in respect of them, whilst the latter aspect was concerned with the incentive and reward for salvage and matters associated with the 1910 Brussels Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, as well as the form of the private contract of salvage.

32. The Committee agreed that it would itself deal with matters of public law, including the relations between the ship and the salvor, and between the intervening State and the salvor, and not refer them to the CMI.

35. The Committee generally considered that a clearer concept of the powers of the coastal State to intervene in cases of casualties like the “Amoco Cadiz” would have to emerge from the work on public law questions before the subject of salvage could properly be taken up.

34. In all aspects of the subject, the future work of the Committee could proceed with reference to the following documentation:

(1) the Secretariat study (LEG XXXVII/2);
(2) the report of the thirty-seventh session of the Legal Committee (LEG XXXVII/7);
(3) the working paper presented by the delegations of France, Mexico and Uruguay (LEG XL/2/1);
(4) the report of the fortieth session (LEG XL/5).

35. With regard to the private law aspects of salvage, the Legal Committee was informed that negotiations were under way in OCIMF and other areas of the private sector and it wished to record its satisfaction with this information and to encourage these negotiations. Furthermore, the Legal Committee decided that it would not at this stage take up matters concerned with the content of the private contract of salvage, although it would be grateful to be informed of the progress of negotiations concerned with that subject.

36. The representative of the International Salvage Union, representing the salvage industry, remarked that the extension of powers of the coastal State to intervene in the salvage operation should be accompanied by remuneration of the salvor, as well as provisions to relieve the salvor of liability for acts which he was compelled to undertake. It would benefit the salvor if new provisions of international law should compel a ship to accept salvage and assistance, but it could be a disincentive to the individual salvor if salvage operations could be pre-empted by the coastal State.

37. One of the delegations sponsoring working paper LEG XL/2/1 explained its intentions and replied to questions regarding the proposals, as follows:

(a) Any salvage vessel proceeding to salvage or assist a ship in distress would be obliged to inform the coastal State of its intentions and allow that State to decide what measures it might take. The coastal State would then inform the interested parties involved, including the ship in distress, the salvor and the flag State, of its intention to intervene. If a salvage contract had not been negotiated, the coastal State’s intervention - commencing immediately upon the announcement of intention to intervene - would render this contract unnecessary; but if a coastal State took charge of a salvage operation (by issuing detailed instructions), the contract would be nullified and the salvor would be remunerated on an equitable basis. If necessary the coastal State would be reimbursed part or all of the costs of salvage and in situations where the coastal State was in charge there would be no application of the rule “No Cure - No Pay”. The proper elements of equitable remuneration would, however, be worked out in greater precision and embodied in an international instrument and decided upon by the courts in the case of salvage awards determined judicially.

(b) A number of provisions would have to be considered, either in terms of uniform law or by the courts in individual instances, with regard to the remuneration of salvors, the recovery of costs of activities directed by the coastal State, the reimbursement for preventive measures and other financial questions.
Under this proposed system, the liabilities of the shipowner and salvor to the coastal State and vice-versa would be governed by appropriate international conventions and resolved either judicially or through arbitration and conciliation procedures provided in such conventions.

With regard to the question whether the effectiveness of salvage operations and the incentives to undertake them would be impaired by the proposed system, it was explained that remuneration on an equitable basis and without the requirement for successful outcome of the salvage would provide both reward and incentive for salvage operations, rather than impairing them.

In the context of these general explanations, as provided by the delegation mentioned in paragraph 37, a number of points were raised.

It was observed that the right of intervention conferred upon a coastal State was a right to defend the interests of that State against pollution from a vessel in distress. An intervention was therefore addressed to the ship suffering the casualty. Under the proposals for mandatory salvage operations, the intervention would not be addressed to the source of the pollution but to the salvage operator. Such measures appeared to one delegation to fall outside the scope of the 1969 Intervention Convention and its concept of proportionality. These circumstances, in the view of another delegation, warranted a change in the 1969 Convention. One delegation which considered that measures of intervention for the protection of a coastal State should be its last resort, pointed out that States do not generally compel private persons to perform functions of public enforcement unless the public authorities themselves were powerless to act. In the view of this delegation salvage companies required safeguards and the involvement of the flag State in situations of the kind proposed would be essential, as well as a system for compulsory settlement of disputes.

It was pointed out that public authorities are not always in a position to act swiftly or to inform themselves properly of situations involving emergencies.

In the course of the discussions it was suggested that there would be a need to preserve a commercially attractive environment for salvage operations and scope for the application of traditional contracts.

Some delegations drew attention to Article 13 of the 1910 Assistance and Salvage Convention dealing with salvage which is carried out “by or under the control of public authorities”. In addition, the 1910 Convention did not deal with the interests of third parties. Some delegations considered there was no need to amend the 1910 Convention. The work of OCIMF and other interested private groups would provide solutions to the contractual problems of salvage in its relation to State intervention.

Some delegations considered that even the definition of “salvor” in this context (i.e. whether it should be limited to professional salvors) might require examination. It would also be open to question whether a measure of intervention would impinge solely on the salvage vessel and her master, or on the whole salvage firm and all the units involved in an operation. Such operations were often of quasi-military character, involving a variety of equipment.

One delegation pointed out that the United Nations Conference on the Law of the Sea had elaborated certain principles of State responsibility in matters of pollution. One result of this might be that a State would find itself under an obligation to intervene in respect of a casualty threatening its coastline and that of other States. If it did not, it might be liable to other States.

In this connection, it was suggested by one delegation that a new international instrument on the subject might include a provision analogous to Article 11 of the 1910 Assistance and Salvage Convention, providing an obligation to protect the environment and co-operate with coastal States to that end.

The discussions within the Legal Committee on its initial consideration of document LEG XL/2/1 gave rise to a number of criticisms and comments. The Committee at this stage reached no conclusions on the subject.
LEGAL COMMITTEE – 53rd session
Agenda item 3

IMO

CONSIDERATION OF THE QUESTION OF SALVAGE, IN PARTICULAR
THE REVISION OF THE 1910 CONVENTION ON SALVAGE
AND ASSISTANCE AT SEA AND RELATED ISSUES

Proposal by the delegation of France

(1) Amendments to article 1.3 of the CMI’s draft convention on salvage.

Article 1.3 Salvage operations controlled by public authorities

1. A State may, following a maritime casualty, take such salvage measures as may be necessary to protect its coastline or related interests from pollution or threat of pollution.

2. Such measures may not be taken against any warship or other vessel owned or operated by a State and used, at the time in question, only on governmental non-commercial service.

3. In order to enable the coastal State to carry out the measures referred to in article 1.3.1, any vessel suffering a maritime casualty within [50] nautical miles of the base lines used for measuring the breadth of the territorial waters, shall immediately notify any coastal State which may be affected or threatened by the maritime casualty. Such notification shall include particulars of the measures being taken or envisaged to remedy the maritime casualty.

4. The vessel shall at all times keep in contact with the nearest coastal State or States, and shall promptly answer all requests for information from any coastal State which considers that it may be affected or threatened by the maritime casualty.

5. The measures referred to in article 1.3.1 may consist in giving directions to an assisting vessel, whether or not the vessel has been summoned by the vessel suffering the maritime casualty, and even if it is navigating beyond the territorial waters of the coastal State which is taking the measures, in order that it may undertake salvage and assistance operations and use appropriate means to prevent consequences harmful to the environment.

6. Any salvor summoned by a vessel suffering a maritime casualty shall immediately furnish the nearest coastal State or States with full information concerning the assistance operations which it intends to perform and the equipment available to it. It shall at all times keep in contact with such coastal State or States, and shall immediately answer all requests for information from any coastal State which considers that it may be affected or threatened by the maritime casualty or its consequences.
7. Every State shall ensure that vessels flying its flag comply with the obligations set out in articles 1.3.3 to 1.3.6.

8. A coastal State which has taken the measures set out in article 1.3.1 shall be liable for any damage caused by an assisting vessel which has complied with its instructions.

9. A salvor who has carried out salvage and assistance operations on the instructions of a coastal State shall be free to seek recourse against that State to secure the reimbursement of expenditure incurred in undertaking preventive measures, and compensation for any damage suffered in complying with the instructions of the coastal State, except in the case of a wilful or fraudulent act on his part.

10. A salvor who, on the instructions of a coastal State, has carried out preventive measures with a view to the preservation of the environment, may claim the special compensation specified under article 3.3. He may require the State in question to pay such compensation.

11. The coastal State shall be entitled to recover from the owner of the vessel involved in a maritime casualty the amount of the special compensation paid to the salvor, as well as the cost of reasonable measures taken to protect the environment.

---

(2) Amendments to article 3.3 of the CMI draft convention

Article 3.3 Special Compensation

1. A salvor who has rendered assistance to a vessel which, by itself or its cargo, caused or threatened to cause damage to the environment and who, in addition to measures to salve the vessel and its cargo, has carried out specific preventive measures to protect the environment, shall be entitled to special compensation on that account.

2. Such special compensation shall be payable to the salvor, whether or not he is entitled to the reward provided under article 3.2.

3. In order to receive this special compensation, the salvor must establish that the preventive measures to protect the environment were not taken solely in order to salve the vessel and its cargo. The reasonableness of these preventive measures must be assessed in the light of the environmental risk which has been caused, and the cost of the damage which has been prevented or minimized.

4. The salvor shall be entitled to the reimbursement of reasonable expenditure incurred in respect of preventive measures taken in accordance with the provisions of article 3.3.1. Such expenditure on preventive measures shall be subject to the shipowners' limitation of liability.

5. In addition, the salvor may receive compensation taking into account the nature and scale of the environmental risk caused, the efforts which have been made, the promptness of the service rendered and the efficacy and value of the equipment used.

6. If the salvor has prevented or minimized the environmental damage as a result of the preventive measures undertaken, the compensation he receives may be increased in the light of the success obtained.

7. In no circumstances may the special compensation exceed twice the value of the property salved.
CONSIDERATION OF THE QUESTION OF SALVAGE, IN PARTICULAR
THE REVISION OF THE 1910 CONVENTION ON SALVAGE
AND ASSISTANCE AT SEA AND RELATED ISSUES

DRAFT OPTIONAL PROTOCOL TO THE 1969 INTERVENTION
CONVENTION

Note by the Government of the Federal Republic of Germany

At its fifty-second session, the Legal Committee took note of the suggestion that its work on the question of salvage was related to the possible revision or amendment of the 1969 Intervention Convention. In this connection the Legal Committee again dealt with a draft protocol submitted to the Legal Committee at its forty-fourth session by the Government of the Federal Republic of Germany (LEG XLIV/6) with respect to the right of coastal States to engage vessels, in particular tugboats, to render assistance, even if such vessels were not involved in a maritime casualty.

As stated in the draft report of the Legal Committee on the work of its fifty-second session (LEG 52/W.2, paragraphs 116-118) the Legal Committee noted the support given by some delegations for provisions of mandatory salvage, as well as the doubts and objections which had been expressed on the matter. The Legal Committee generally saw no need for a separate new convention dealing with the public law aspects of salvage but was of the opinion that any new provisions which might be deemed necessary could be adopted either in the form of a protocol to the relevant “public law” treaty or, alternatively, within the framework of the prospective treaty on salvage. The Legal Committee agreed to deal with the question of salvage and related issues as the main item on the agenda of its fifty-third session.

Having for several years taken the initiative in the discussion on mandatory salvage the Government of the Federal Republic of Germany is of the opinion that it might be helpful to explain again its position on the matter in order to facilitate the forthcoming discussions. In the following, therefore, a summary explanation on the main points of the issue will be given.

From the discussions of the legal aspects arising from the Amoco Cadiz disaster it was clear that the legal framework relating to intervention by coastal States in cases of present or imminent danger of marine pollution needed to be reviewed and improved. The Government of the Federal Republic of Germany feels that the question of an extension of the right of coastal States to take measures on the high seas under the Intervention Convention should be considered in order to authorize coastal States to take measures also with respect to vessels not directly involved in the casualty. Such authorization should be restricted to cases of extreme urgency requiring measures to be taken immediately and where there is no other possibility to prevent harmful
consequences to the marine environment, the coastline or other related interests of coastal States as recognized under the Intervention Convention.

2 The Government of the Federal Republic of Germany wishes to make it very clear that measures taken by coastal States involving vessels flying another State’s flag will be an ultima ratio, especially when such measures are taken on the high seas. On the other hand, however, the conclusion of contracts under private law might be refused or be made subject to unacceptable conditions by a private salvor. In some very rare cases it cannot be excluded that the negotiations going on in order to reach agreement on the terms of a private salvage contract would delay the salvage operation so as to become ineffective. In such a situation only the “public law” approach seems to be appropriate as well as necessary.

3 The Government of the Federal Republic of Germany is fully aware of the fact that interventions on the high seas by a State involving a vessel flying the flag of another State are generally illegal under international law. This principle underlies many rules of international law relating to the freedom of navigation, both customary and conventional, and it is the most important rule for the exclusive jurisdiction of the flag State. On the other hand, in the development of the international law of the sea and with regard to the growing need for the protection and preservation of the marine environment it has been acknowledged that the interests of coastal States must be protected, too. The outcome of the Third United Nations Conference on the Law of the Sea is a very remarkable step in this direction. In particular, the possibility to establish a “special area” within the Exclusive Economic Zone, where national laws and regulations may be enacted in conformity with the general rules for such areas to be established by IMO under Article 211 paragraph 6 of the United Nations Convention on the Law of the Sea, goes to show that with regard to the protection of the marine environment the monopoly of the flag State is no longer existent. The importance of the principle of flag State jurisdiction, however, makes it essential to deal very carefully with any exception to that principle and, therefore, it is necessary to agree on such exceptions in clear terms on a conventional basis.

4 Although, as a general rule, international law does not authorize coastal States to take action against vessels flying the flag of another State, the “flag State” principle does not have the legal quality of ius cogens. Otherwise, the Intervention Convention, being the first conventional exemption from that general rule, could not have entered into force. An amendment to this convention in the manner mentioned above would follow the same line by adding a new exemption that would be recognized only by those States Parties to the Intervention Convention which, according to the relevant procedures, declare to be bound by such amendment. In order to achieve this solution, the Government of the Federal Republic of Germany proposes to amend the Intervention Convention by an Optional Protocol, which would be open for signature and ratification, on an optional basis, by the States Parties to the Convention. When signing or ratifying States would be free to make declarations in order to underline the general principle of flag State jurisdiction, to which the Optional Protocol would be an exemption.

The text of a Draft Optional Protocol to the 1969 Intervention Convention is attached to this Note as Annex I. Notwithstanding a number of minor editorial changes, this text is substantially the same as the earlier relevant submission by this Government (LEG XLIV/6).

5 When discussing the question of mandatory salvage it should be taken into consideration that under customary international law there exists a right of self-defence
for coastal States in cases of threat or damage to their coastlines or related interests. This right has been expressly recognized in Article 221 paragraph 1 of the United Nations Convention on the Law of the Sea. The Intervention Convention as amended by the Protocol of 1973 is a confirmation and specification of existing customary law. Insofar, the Government of the Federal Republic of Germany agrees with the declaration made by the Government of Australia on 5 February 1984 when ratifying the Intervention Convention, stating that the “right of a coastal State to intervene on the High Seas to protect areas under its jurisdiction is recognized under customary international law”.

A further specification of the right of coastal States to intervene on a conventional basis is left to the decision of sovereign States and may be undertaken irrespective of the views of States on the existence of any specific right to intervene under customary international law.

6 In the Federal Republic of Germany, the entry into force is imminent of national legislation conferring upon competent authorities the power to give orders to vessels not directly involved in a maritime casualty in cases of severe damage or threat to the marine environment. The Federal Government has taken this step in spite of being convinced that virtually every case would be solved by private contracts either between shipowners and salvors or in accordance with existing general agreements between the Federal Government and salvors. The reason for the Government's decision to introduce national legislation on mandatory salvage simply was to take all conceivable steps to close any possibly existing gap. It is now intended to invite Member States of the International Maritime Organization to examine the question of mandatory salvage with respect to international law, taking into consideration the proposal set out above.

7 With regard to the (mandatory) notification of casualties to coastal States (LEG 52/W.P.2, paragraphs 104, 115) the Government of the Federal Republic of Germany shares the Legal Committee's view that duplication with the work of the Marine Environment Protection Committee (MEPC) and other IMO bodies should be avoided. Under the terms laid down in the draft report of the Legal Committee on the work of its fifty-second session the Government of the Federal Republic of Germany holds that the work of MEPC in respect of Guidelines on Mandatory Reporting System and Reporting Format under MARPOL 73/78 should be carefully examined and existing drafts be amended as appropriate. The proposals by this Government concerning notification (LEG XLIV/6 of 17 October 1980 and LEG 52/4/1, Annex 2) will, therefore, be withdrawn.

Annex I

DRAFT

OPTIONAL PROTOCOL AMENDING THE INTERNATIONAL CONVENTION RELATING TO INTERVENTION OF THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES AS AMENDED BY THE PROTOCOL RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF POLLUTION BY SUBSTANCES OTHER THAN OIL, 1973

The Parties to the present Optional Protocol,

BEING PARTIES to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, done at Brussels on 29 November 1969, as amended by the
Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances Other Than Oil, 1973, done at London on 2 November 1973,

... HAVE AGREED as follows:

Article I
The Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, is amended as follows:

1. The following sentence 2 is added to the existing text of Article V paragraph 1:
   "Such measures may include instructions to a salvage vessel, which is voluntarily within a port or at an offshore terminal or within the internal waters or territorial sea of that State or is proceeding beyond the territorial sea to a ship involved in a maritime casualty, to render assistance or to carry out salvage operations, if in a case of extreme urgency requiring measures to be taken immediately there is no other possibility to prevent harmful consequences."

2. The following paragraphs are added to Article VI; the existing text becomes paragraph 1 of that Article:
   "2. Notwithstanding paragraph 1, the coastal State having taken measures pursuant to Article V, paragraph 1(2) shall be responsible for any damage caused by a salvage vessel as a consequence of complying with instructions of that State; any claim for compensation of such damage shall be directed exclusively against that coastal State.
   3. The salvor shall be entitled to compensation from the coastal State for any expenses incurred by himself and for any damage suffered by the salvage vessel. Any compensation paid to the salvor by the coastal State in accordance with this paragraph shall be deemed to be a compensation for costs of preventive measures.
   4. Without prejudice to contractual arrangements between the ship and the salvor, assistance and salvage operations carried out under instructions of the coastal State pursuant to Article V, paragraph 1(2) shall be deemed to be carried out under the law of the coastal State, and although the salvor has acted under such instructions he shall be entitled to avail himself of any remedy provided for by the law of that State against the ship, its cargo, and other interested parties. The salvor shall also be entitled to avail himself of any remedy available under the law of the coastal State with regard to the costs of preventive measures taken in the course of assistance or salvage operations."

3. The following sentence 2 is added to the existing text of Article VIII paragraph 1:
   "The same applies to any controversy arising from, and in connexion with, measures pursuant to Article V, paragraph 1(2),"

Article II - . . .
- Final Clauses -

Annex II

DECLARATION

MADE BY THE GOVERNMENT OF AUSTRALIA WHEN DEPOSITING THE DOCUMENT OF RATIFICATION OF THE 1969 INTERVENTION CONVENTION ON 5 FEBRUARY 1984

"Australia recalls the statement made by the Australian Delegation to the International Conference on Marine Pollution, 1973 which was in the following terms:

"... Australia believes that no coastal State would refrain from taking whatever action was necessary to protect areas under its jurisdiction from serious environmental damage and it believes that this right of a coastal State to intervene on the High Seas to protect areas under its jurisdiction is recognized under customary international law. In becoming a party to the Convention, Australia declares that it believes that it may still take action to protect areas and resources under its jurisdiction which is permitted under customary international law and which is consistent with the Convention."
IMO

CONSIDERATION OF THE QUESTION OF SALVAGE, IN PARTICULAR THE REVISION OF THE 1910 CONVENTION ON SALVAGE AND ASSISTANCE AT SEA, AND RELATED ISSUES

PUBLIC LAW ASPECTS OF SALVAGE OPERATIONS

Note by the Government of the Federal Republic of Germany

At its fifty-third session, the Legal Committee held an extensive exchange of views on the public law aspects related to salvage.

It based its discussions, inter alia, on a note by the Government of the Federal Republic of Germany (LEG 53/3/3) proposing an Optional Protocol to amend the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969. This proposal is aimed at enabling coastal States to take such measures as giving to a salvage vessel flying a foreign flag the instruction to render assistance or to carry out salvage operations in cases of extreme urgency, provided certain specific circumstances were given.

Furthermore, the Legal Committee took note of a proposal put forward by the delegation of France (LEG 53/3/2) relating to Articles 1 to 3 of the CMI Draft and dealing also with the question of “mandatory salvage” including obligations for notification and information to be made available to the coastal State in the course of a salvage operation.

In the view of the Government of the Federal Republic of Germany the discussions of the Legal Committee on the question of “mandatory salvage” have shown:

firstly – that the public law aspects of salvage are of great interest to many delegations, in particular with respect to the protection of the marine environment;

secondly – that, despite the fact that there was not very much support for the general concept of “mandatory salvage”, it emerged that the scope of application of the 1969 Intervention Convention is interpreted in different ways;

thirdly – that, although a majority of delegations seemed to prefer, as a matter of principle, the adoption of an amendment, if any, to the 1969 Intervention Convention rather than the insertion of rules relating to public law into a new civil law salvage convention, it was agreed that the public law aspects of salvage, being a “related issue”, should be discussed in the context of the deliberations on the revision of the 1910 Convention on Salvage.

Having regard to the outcome of its discussions, the Legal Committee stated that an examination of the 1969 Intervention Convention and of other principles of international law was necessary in order to ascertain whether there was any need for
improvement in the existing regime of salvage operations based on public law in order to achieve the objective which appeared to have been generally agreed by the delegations. That objective was to ensure that coastal States would have adequate authority and scope to take action to influence the course, or to assume the direction, of salvage operations where the protection of their marine environment or of other related interests was at stake.

In its work programme the Legal Committee noted that further thought should be given to the necessity for a protocol to amend the 1969 Intervention Convention. The Government of the Federal Republic of Germany upholds its proposal submitted to the Legal Committee at its fifty-third session. In addition, however, both in the light of the discussions held at that session and in order to facilitate forthcoming deliberations on the issue, it seems useful to set forth the view of the Government of the Federal Republic of Germany on some of the legal questions related to salvage operations.

It is appropriate to emphasize that the following conclusions will in no way prejudice the legal practice of the Federal Republic of Germany related to salvage operations but that they are merely intended to be a contribution to the discussion on the scope of application of the 1969 Intervention Convention. The idea is to find out whether delegations will be able to agree on some interpretations regarding the measures to be legally taken under Article I of the 1969 Intervention Convention.

The first case to be considered here is the situation where a salvage operation on the high seas is already under way, a contract exists between the salvor and the shipowner (or his representative), and such contract is governed by private law and covers the entire operation. Does the coastal State then have the right to intervene if in the course of such salvage operation measures are taken – either by the vessel(s) involved or by the salvor – which may cause danger to its coastline or other related interests? Article I, including “acts related to such a casualty”, seems to give an affirmative answer. So what kind of measures is the coastal State authorized to take in such a case? Again, Article I, referring to measures “as may be necessary” and interpreted within the limits of Article V, does allow the coastal State to take any proportionate and reasonably necessary measures in respect to any vessel directly involved in the salvage operation, including giving instructions to the salvor.

A variation of the above case is the situation where, under similar circumstances, no salvage contract exists between the shipowner and the salvor. While such a situation may be somewhat unrealistic, it is a fair assumption that the salvor begins carrying out the salvage operation before negotiations on the salvage contract have been completed. In such a case, too, Article I, which does not refer to those engaged in action following a marine casualty nor to contractual relations between them, allows the same interpretation with regard to the right of coastal States to intervene as that given in the first case.

In both cases set out above, the right of intervention of coastal States under the 1969 Intervention Convention vis-à-vis (a) vessel(s)/salvor(s) flying foreign flags is restricted to ships flying the flag of a State Party to that Convention.

A third case – and the most important one – is the situation where the salvage operation has not yet started owing to pending negotiations between the shipowner and the salvor on the terms of salvage while, at the same time, the threat or danger to the coastline and related interests of the coastal State is growing every minute. Does the coastal State have the right to intervene, then, provided its own possibilities for salvage measures are exhausted or inadequate? To answer the question, a differentiation between various conceivable ways of intervention seems helpful.
In the first place, the coastal State could simply offer to enter into a contract with the salvor instead, or on behalf, of the shipowner. This kind of “intervention” has little or no public law aspects in the sense dealt with here, so it may be left out of consideration.

The crucial question is whether the coastal State has the right to order the salvor to start the salvage operation, notwithstanding the fact that negotiations between the shipowner and the salvor are still pending or have failed for the time being. It seems to be questionable whether such an order may be legally given under the present wording of the Intervention Convention. One of the reasons for this conclusion is that the Intervention Convention, in its Article VI, does only stipulate an obligation to pay compensation if a State Party has taken measures in contravention of the Convention, i.e. the Convention does not provide for compensation with regard to measures taken in conformity with the Convention. Therefore, the consequence would be that a salvor did not have a claim for compensation against the coastal State even if he had been ordered to carry out a salvage operation, unless the State had acted in violation of the Intervention Convention. This result involved is unsatisfactory, even if the domestic law, whether civil or public, of the coastal State may provide for some compensation.

A fourth case – in fact, a variation of the third one – is the situation where the salvor is not yet engaged in the salvage operation at all. It may be assumed that a marine casualty has occurred on the high seas resulting in the threat of an oil disaster to the coastal State, with the salvor being the only one capable to take adequate measures. If the salvor is in a port, the internal waters, or the territorial sea of the coastal State – but not exercising the right of innocent passage – he may be ordered to take action and later be compensated under domestic law, irrespective of the flag the salvor is flying, provided the salvage operation takes place in the territorial waters of that State. If, however, the salvor is, say, a foreign-flag tugboat and sailing on the high seas, perhaps under a contract for another operation – then does the coastal State have the right under the Intervention Convention to order that salvor to take action?

An interpretation of the Convention in the light of the general principles of the international law of the sea appears to urge that the answer to this question is no. No State has any right to order a ship flying a foreign flag to take any action on the high seas without the explicit approval of the flag State. Leaving apart questions of enforcement (“commandeering” the vessel simply by ordering it, or by boarding and manning her?), the coastal State has no legal possibility under the Intervention Convention to take measures in the fourth case mentioned above. (Rights of coastal States with respect to self-defence or state of emergency are not discussed here; neither the right of enforcement by coastal States under Article 220 of the United Nations Convention on the Law of the Sea in cases of pollution from vessels in Exclusive Economic Zones.)

In cases of extreme emergency as a result of various and/or rare circumstances it may be desirable to establish a right for coastal States to take last-resort measures in order to protect their coastlines or related interests from environmental disasters.

As a general approach, the Government of the Federal Republic of Germany would prefer that the rights and obligations of coastal States be clearly defined even for such rather exceptional situations. Such definition may be easier to obtain through a common effort to establish an international instrument governing the matter than by interpreting the scope of customary international law relating to the issue.

As some of the cases mentioned demonstrate, there seems to exist a gap between the international law of intervention as laid down in the 1969 Intervention Convention and the possible needs of coastal States in extreme situations. To meet these needs, the
question of amending the Intervention Convention should be discussed. Only a limited contribution to the forthcoming discussion could be given in this paper. There are other questions relating to the public law aspects of salvage which might be dealt with. One example is the problem of lighter capacity, which often may be a more serious problem than the availability of tugboats. Especially in cases where a VLCC is likely to break after grounding lightering the vessel is the most important and the most urgent task to be done. Again, under the Intervention Convention there are questions left open as to which rights coastal States have in respect of measures relating to the requisition of lighter capacity under foreign flags.

As it was noted by the Legal Committee at its fifty-third session, coastal States need, as a basis for the measures to be taken, not only a first notification of a marine casualty but also further information, especially continual reports on salvage operations. In this regard, the work done within the Marine Environment Protection Committee (MEPC) in the context of the notification requirements under MARPOL 73/78 should be carefully examined by the Legal Committee, taking into consideration possible modifications or amendments which may be needed.
LEGAL COMMITTEE - 54th session
Agenda item 4

IMO

CONSIDERATION OF THE QUESTION OF SALVAGE, IN PARTICULAR THE REVISION OF THE 1910 CONVENTION ON SALVAGE AND ASSISTANCE AT SEA, AND RELATED ISSUES

Note by the Secretariat

1 In the course of its discussions on proposals on the role of the State in salvage operations, the Legal Committee agreed, inter alia, that an examination of the existing treaty and other legal principles was necessary in order to ascertain whether there was any need for improvement in the existing regime to ensure that a coastal State would have adequate authority and scope to take action to influence the course of salvage operations, where protection of its environment or coastal interests was at stake. The Committee was of the view that information from States and organizations, regarding experience acquired in the implementation of the 1969 Intervention Convention and related rules of law would be helpful to the Committee in its further consideration of this matter. Governments and international organizations were therefore requested to send such information to the Secretariat as soon as possible, for circulation to other Governments and interested organizations sufficiently in advance of the fifty-fourth session of the Committee.

2 In response to this request the following information has been provided by the United Kingdom:

There has been only one instance of the intervention powers provided for in the Convention being used by the United Kingdom authorities. This was in the ‘Christos Bitos’ incident in October 1978, when a salvage tug with the damaged oil tanker in tow was ordered to hold the ship in the Irish Sea for a cargo transfer operation rather than make for shelter. This intervention continued in force for the remainder of the operation in view of the grave and imminent danger of pollution of the coasts. In practice, however, all decisions were made by agreement among all the parties concerned.
CONSIDERATION OF THE QUESTION OF SALVAGE, IN PARTICULAR
THE REVISION OF THE 1910 CONVENTION ON SALVAGE
AND ASSISTANCE AT SEA, AND RELATED ISSUES

Note by the Secretariat

The following further information has been provided by the United Kingdom:

In addition to the case referred to in paper LEG 54/4/Add.1, which involved United Kingdom authorities giving instructions to those in control of a ship, there has been one other case where United Kingdom authorities intervened in a maritime incident in the sense of taking direct action. This was in the “Eleni V” incident of May 1978. On that occasion the forward section of the laden oil tanker was sliced off. The stern section was towed to Rotterdam as a conventional salvage operation but the bow section and its remaining cargo of heavy fuel oil could not be treated in the same way. Only a small part of the bow section was above water. Because of the threatened pollution from the remaining cargo and the impracticality of a pumping-out operation it was decided to tow the wreck to deeper water and blow it up. The owner’s agents did not object to this.
CONSIDERATION OF THE QUESTION OF SALVAGE, IN PARTICULAR
THE REVISION OF THE 1910 CONVENTION ON SALVAGE
AND ASSISTANCE AT SEA, AND RELATED ISSUES

Submission by the United States

At the 52nd and 53rd Sessions, the Legal Committee extensively discussed the scope of authority of a State to intervene on the high seas under international law, and raised questions regarding the experience of States in the exercise of intervention authority. This discussion was generated by a number of proposals relating to intervention. These proposals include requiring notification of incidents to the nearest coastal state, establishing the authority to commandeer salvage vessels, providing for salvor remuneration by the intervening state, and requiring the establishment of "ports of refuge", or "safe havens", for crippled vessels. During the discussion, there appeared to be differing views among the delegations regarding the scope of existing governmental authority under the 1969 Intervention Convention.

The consensus of the Committee appeared to be that any change to the Intervention Convention, or other instrument relating to the public law of salvage, should be made only in response to a need based upon experience. States were asked to describe their experience with the Intervention Convention. This paper will describe the United States’ experience with intervention, and will outline our view regarding the scope of authority under the Convention.

The Intervention Convention authorizes a coastal State to exercise control over a vessel presenting a grave and imminent danger to its coast from pollution or threat of pollution, to the extent necessary to eliminate the threat. This may extend to removal or destruction of the vessel. The State may also direct all salvage efforts, which includes directing the actions of salvors who are on-scene and offering assistance. The United States believes that this authority does not, and should not, include authority to commandeer foreign salvage vessels on the high seas.

Intervention has been defined as "detrimental action without consent". See LEG XXX/6, Annex IV. The United States has exercised intervention authority a number of times, both on the high seas under the Intervention Convention, and under domestic legislation which provides similar authority. A variety of measures have been employed, ranging from denial of entry to assuming control of a salvage operation, and, in some cases, to destruction of the vessel. Based upon our experience, the United States in general believes that the Intervention Convention provides adequate authority to a Coastal State to take action to protect its interests from pollution or threats of pollution on the high seas. We agree on the need to require incident notification to the nearest Coastal State, because that will better enable that State to make informed decisions regarding the exercise of its intervention authority. However,
in light of the current work on reporting requirements by the Marine Environmental Protection Committee, we believe that the Legal Committee should defer further consideration of such requirements until MEPC has completed its work. We do not view other changes to the Convention as either necessary or desirable. The United States cannot support requirements for States to establish ports of refuge.

The United States’ views regarding intervention are more fully explained in Annexes I-V. Annex I presents our view of the scope of authority under the Intervention Convention. Annex II describes the framework for intervention actions in the United States, and describes our intervention experience. Annex III discusses issues relating to remuneration and compensation. Annex IV discusses the imposition of reporting requirements. Annex V presents our view regarding proposals to require the establishment of ports of refuge.
1. At its fifty-third session the Legal Committee considered a number of proposals regarding “public law” aspects of salvage, with particular reference to the role of the coastal State in respect of salvage operations posing serious threat to areas of its jurisdiction, and the right of such a State to request information on such operations.

2. In respect of notification, many delegations referred to the provisions contained in MARPOL 73/78 on reports on incidents involving harmful substances, to the interim guidelines thereon adopted by the Assembly in resolution A.447(XI) and the revision work with respect to Protocol I to MARPOL 73/78 and associated guidelines currently under way in the Marine Environment Protection Committee. They felt that the Legal Committee should first examine in detail the results of this work before elaborating any proposals of its own, in order to avoid duplication of work in the two Committees and possible contradictory provisions in the treaty instruments resulting from that work.

3. Other delegations, however, felt that MARPOL 73/78 dealt with problems which were different from those under discussion in the context of the salvage convention. It was, therefore, perfectly appropriate for the Legal Committee to consider these questions.

4. At the end of its discussions, the Committee recognized that the question of notification to interested coastal States in respect of casualties and salvage operations was of importance in relation to the protection of the environment. It was, however, noted that work was under way in this area within the Marine Environment Protection Committee (MEPC), in the context of the notification requirements under MARPOL 73/78. The unanimous view of the Committee was that any work undertaken by the Legal Committee in this field should take due account of the work of the MEPC in order to ensure that there would be no duplication with that work. Furthermore, it was felt essential that delegations participating in MEPC should be informed of the views and concern expressed by the Legal Committee so as to enable them to make contributions to the intersessional work carried out by the MEPC in respect of the revision of provisions on the reporting of incidents, on the basis also of the discussions within the Legal Committee. The Committee also requested the Secretariat to collate the relevant documentation and information on the work of the MEPC in this area and make such documentation available to the Committee at its fifty-fourth session.

5. Pursuant to the request of the Legal Committee, the information on the relevant work of the MEPC and other bodies of IMO has been collated and is submitted to the Committee in the annex to this document and in the attachments to that annex.
Further information on the comments submitted by members in connexion with the intersessional work of the MEPC, and the decisions and conclusions of the MEPC thereon, will be made available to the Legal Committee in due course.

6. As requested by the Legal Committee, appropriate information will be submitted to the MEPC at its twenty-second session on the discussions in the Legal Committee with regard to notification to coastal States in respect of casualties and salvage operations. The MEPC will also be informed of the views and concerns expressed by the Legal Committee.

Action requested of the Committee

7. The Legal Committee is invited to take note of the information provided in this document and in the annex and attachments thereto.

ANNEX

SUMMARY OF THE WORK IN THE ORGANIZATION ON REPORTS ON INCIDENTS INVOLVING HARMFUL SUBSTANCES

1. The desirability of a system for the reporting of accidents involving significant spillages of oil was first raised in the Council and the Maritime Safety Committee in 1967 following the accident to the oil tanker “Torrey Canyon”. The discussions of the subject in the Maritime Safety Committee (MSC) resulted in the adoption of resolution A.147(ES.IV) “Reports on Accidents Involving Significant Spillages of Oil” by the Assembly at its fourth extraordinary session in November 1968 (attachment 1).

2. Following further incidents involving the spillage of dangerous substances into the sea from ships the MSC, at its twenty-fifth session in March 1972, adopted a resolution on reports on incidents involving dangerous goods as an interim measure and as an extension of resolution A.147(ES.IV). The resolution of the MSC was circulated to Governments by MSC/Circ.130 of 6 April 1972 (attachment 2).

3. The substance of the Assembly’s resolution A.147(ES.IV) and the MSC’s resolution of March 1972 were subsequently incorporated in the relevant provisions of MARPOL 73/78 viz. article 8 and Protocol I to the Convention dealing with reports on incidents involving harmful substances (attachment 3).

4. At its tenth session, the Marine Environment Protection Committee (MEPC) considered it desirable to establish a reporting system in respect of incidents involving harmful substances, to be implemented as an interim measure before the entry into force of MARPOL 73/78. Subsequently the MEPC developed the Interim Guidelines for Reporting Incidents Involving Harmful Substances. The purpose of the Guidelines was to enable coastal States to be informed without delay of any incidents involving pollution of the marine environment or the threat of such pollution, so that appropriate action might be taken.

5. During the course of the development of the Guidelines technical advice was sought from the Sub-Committee on Radiocommunications concerning the operational and technical communications aspects of the reporting system, particularly the radio frequencies to be used, and from the Sub-Committee on Ship Design and Equipment concerning the identification of damage, failure or breakdown of the ship, machinery or equipment which might give rise to damage, or threat of damage, to the marine environment.

(1) The attachments to this document, except Attachment 1, have not been reproduced.
6. The Interim Guidelines developed by the MEPC were adopted by the Assembly at its eleventh session on 15 November 1979 by resolution A.447(XI) (attachment 4). The Assembly recommended Governments to implement the Guidelines (within the framework of the 1954 Oil Pollution Convention, as amended in 1969, which was then in force) pending the establishment of a mandatory reporting system under MARPOL 73/78. It is to be noted that the Guidelines are also recommended for implementation in the context of the 1969 Intervention Convention and, presumably, also the 1973 Protocol to the 1969 Convention.

7. Following the entry into force of MARPOL 73/78 on 20 October 1983 the MEPC at its nineteenth session, commenced work on the development of a mandatory reporting system on incidents involving harmful substances. This work was based on documents prepared by the Secretariat for this purpose (MEPC 19/9, MEPC 19/WP.1) (attachment 5). The MEPC agreed that Protocol I to MARPOL 73/78 should be considerably simplified and technical details should be included in Guidelines which would supplement the provisions of Protocol I.

8. The MEPC, at its twentieth session, considered a revised draft of Protocol I and Guidelines, as recommended by a Working Group in MEPC 20/WP.7, annex 2 (attachment 6). The draft Guidelines incorporate the general principles for a ship reporting system as approved by the Assembly in resolution A.531(13) adopted at the thirteenth regular session November 1983 (attachment 7).

9. The conclusions and decisions of the MEPC at its twentieth session, as contained in the report of that session (MEPC 20/19, section 10) are reproduced in attachment 8 to this annex.

10. For the implementation of article 8 of MARPOL 73/78, the MEPC is preparing a list of authorities which receive and process reports. These are normally authorities responsible for marine emergency responses and execution of contingency plans.

11. Following recent occurrences of incidents involving the loss of packaged dangerous goods at sea, the MEPC developed Guidelines for reporting incidents involving dangerous goods in packaged form. These replace the Guidelines in MSC/Circ.130 as mentioned in paragraph 2 above. These Guidelines have been circulated to Governments by NSC/Circ.360 of 13 January 1984, with the recommendation that they be implemented pending the development of a comprehensive reporting mechanism. A copy of the circular is contained in attachment 9.

12. The MEPC will, at its twenty-first session (22-26 April 1985) give further consideration to the mandatory reporting system, as well as the means for implementing such a system, including the adoption of a revised Protocol I of MARPOL 73/78 by means of an appropriate amendment to MARPOL 73/78.
ATTACHMENT 1

RESOLUTION A. 147 (ES. IV)

REPORTS ON ACCIDENTS INVOLVING SIGNIFICANT SPILLAGES OF OIL

The Assembly,

For the purpose of promoting rapid action by the governments concerned in cases of significant spillages of oil following accidents,

Having in mind the recommendation of the Council of the Inter-Governmental Maritime Consultative Organization at its third extraordinary session,

Recommends to governments that they:

(a) require masters of all ships to report immediately through the channels which may be found most practicable and adequate under the circumstances, all accidents in which their ships are involved which have given or may give rise to significant spillages of oil. Such reports should, if possible, include details on the nature and degree of pollution, the movement of the oil slick and any other useful information as appropriate;

(b) appoint an appropriate officer or agency to whom such information may be referred. Such officer or agency would also be responsible for transmission of relevant details to all other governments concerned;

(c) ensure that any such reports received by any authority in the country be forwarded to such an officer or agency with all despatch;

(d) provide the Organization with information concerning the appointment of such officer or agency for circulation to governments.

26 November 1968
Agenda item 4
INDEX

STATEMENTS OF DELEGATIONS AND OBSERVERS

MATTERS SUBJECT OF THE STATEMENTS
STATEMENTS OF DELEGATIONS AND OBSERVERS

A
ACOPS: 117, 120, 240, 249, 287
Algeria: 261
Argentina: 41, 186, 260, 267, 356, 392, 457, 483
Australia: 117, 164, 244, 245, 255, 256, 257, 264, 268, 388, 436, 480

B
Belgium: 388
Brazil: 60, 140, 164, 259, 267, 313, 377, 391, 401, 414, 421, 530, 550, 569
Bulgaria: 537

C
Chile: 188, 201, 202
China: 57, 95, 140, 151, 169, 200, 277, 379, 395, 456, 491, 523, 555, 561, 565
CM: 9, 10, 11, 37, 41, 48, 60, 111, 113, 126, 154, 271, 289, 290, 323, 326, 332, 339, 344, 351, 378, 425, 450, 458, 474
Columbia: 267, 393
Congo: 535, 577
Côte d’Ivoire: 279, 363, 438, 576, 583, 585
Cyprus: 124, 261, 364, 517, 563, 566
Czechoslovakia: 81, 216, 262

D
Democratic Republic of Germany: 85, 117, 165, 356, 377, 390, 525, 578
Denmark: 56, 62, 63, 64, 83, 116, 148, 168, 169, 170, 198, 259, 308, 357, 374, 438, 452, 455, 506, 530, 547, 548

E
Ecuador: 102, 164, 267, 278, 386, 412, 413, 470, 490, 549
Egypt: 42, 398, 471, 583
E & P Forum: 47

F
Finland: 169, 280, 358, 385, 439, 525, 533, 560, 563, 565
Friends of the Earth Int.: 81, 83, 330

G

H
Hong Kong: 242, 251, 280, 389, 396, 454, 455, 456, 457, 492

I
IADC: 93
India: 539
Indonesia: 248, 257, 363, 535
International Chamber of Shipping: 332, 368
International Group of P&I Clubs: 339, 343, 366, 377
International Salvage Union: 251, 262, 331, 365, 373, 417, 418, 425, 428, 438
Intertanko: 330, 333, 337, 373, 379, 406
IOPC Fund: 49, 326, 334, 336, 360
Index

Iran: 65, 258, 307, 308, 313, 440, 442, 455, 504, 511, 534
Ireland: 102, 149, 152, 188, 198, 205, 257, 315, 393, 411, 438, 449, 472, 496, 497, 534, 544
Israel: 393
Italy: 58, 84, 95, 100, 104, 119, 188, 206, 267, 277, 305, 359, 362, 372, 439, 491, 496, 522, 532, 562, 576
IUMI: 329, 331, 342, 344
Japan: 59, 96, 104, 119, 133, 197, 203, 204, 242, 259, 266, 360, 382, 390, 442, 450, 455, 504, 518, 519, 525, 537, 549, 555, 560, 567, 568
Korea, People's Democratic Rep.: 364, 531
Korea, Republic of: 104, 197, 262, 385, 508
Kuwait: 118, 275, 279, 563
Liberia: 164, 268, 391, 497, 510, 511, 532, 538, 566
Malaysia: 197, 258, 279, 395, 534, 538
Marshall Islands: 165, 259, 496
Mexico: 99, 102, 120, 163, 199, 257, 267, 276, 343, 374, 387, 410, 413, 490, 538, 567, 588, 589, 591
Morocco: 533, 577
Netherlands: 54, 63, 82, 94, 104, 120, 132, 198, 205, 250, 260, 312, 313, 337, 362, 372, 439, 491, 496, 522, 532, 562, 576
Nigeria: 395
Norway: 145, 262, 359, 378, 426, 456
OCIMF: 6, 330, 336, 350, 378
Panama: 390, 401, 533
Peru: 392, 532
Poland: 52, 119, 199, 203, 204, 205, 206, 216, 237, 249, 250, 355, 449
Saudi Arabia: 46, 55, 59, 96, 97, 194, 196, 199, 202, 274, 275, 278, 279, 391, 507, 524, 527, 534, 577, 578, 586, 587
Seychelles: 216, 510, 572
Uruguay: 397, 531, 588, 590, 591, 592
Venezuela: 102, 257

Previous view  INDEX  CONTENTS
THE TRAVAUX PREPARATOIRES OF THE 1989 SALVAGE CONVENTION

Index

Y
Yemen: 58, 84, 87, 95, 100, 163, 196, 205, 245, 257, 278, 279, 393, 412, 439, 442, 471, 408, 512, 536, 578, 586, 587
Yugoslavia: 102, 213, 276, 359, 376, 391, 506, 534

Z
Zaire: 58, 59, 66, 86, 96, 118, 200, 277, 309, 392, 504, 533, 577, 589

MATTERS SUBJECT OF THE STATEMENTS

A
Amoco Cadiz: 4, 5, 6, 7, 9
Annulment of contracts: 209
Assistance: 41, 42, 43, 59, 76, 79, 82, 96, 576, 577, 583, 584, 586
Assistance et Sauvetage: 578, 579, 586

B
Bareboat charter: 199, 201
Best endeavours: 221, 222, 225, 227, 228, 231, 235

C
Capable of navigation: see “Ship”
Cargo: 62, 74, 96, 157, 158-160, 188, 189, 203
Charter: 199
Charterer: 245, 247
CLC 1969: 8
Coastal State: 5, 111, 112, 114, 254, 255, 258, 259, 261, 266, 268
Common Understanding: see “Special compensation”
Contingency plans: 284
Contract: 23, 24, 180, 209
Co-operation: 282
Craft: 74, 88
Cristal: 6
Criteria for fixing reward: see “Reward”

D
Damage to the environment: 115, 116, 117, 118, 119, 120
Denunciation: 553
Derelict: 78
Distress: 284, 285
Drilling rigs: see “Platforms”
Drilling units: see “Platforms”
Due care: 227, 232, 233, 235, 237, 238, 241
Duties of cargo owners: 20
Duties of salvor: 20
Duty of master: 219, 220, 221, 222, 232, 239, 243, 245, 270
Duty of owner: 219, 220, 221, 224, 226, 232, 239, 243, 245
Duty to render assistance: 270-281

E
EEZ: 114, 257
Entry into force: 521
percentage of States: 530, 537
period: 523, 525, 527, 528
number of States: 523, 524, 525, 526, 530, 531, 532, 533, 534, 535, 536, 538, 539
Existing contracts: 430
Expenses: 31
Explosion: 111, 112, 113

F
Fire: 111, 112
Freedom of contract: 183, 184, 186, 187, 207, 216
Freight: 52, 91, 92, 94, 96, 97, 99

G
Guarantee: 226

H
Humanitarian cargoes: 495
Helicopter: 46
Historical property: 95, 96, 100, 115, 116
INDEX

I
Immunity: 154-172, 202, 486-494
   general recognized principles: 489-491
Implementation of the Convention: 597
Inland navigation: 129, 130
Inland waters: 47, 50, 53, 54, 55, 57, 58, 59, 60, 61, 63, 64, 86, 102, 103, 104, 129
Interest: 484
Interim payment; 473-475
Intervention Convention: 7, 258, 260, 261, 262, 263, 264, 265
Intervention: 255, 258
Invalidity of contracts: 209, 210, 211

J
Jurisdiction: 660-669

L
Lex fori: 127, 128, 132, 134
Liability of salvor: 25, 32, 433
Liability salvage: 19, 109, 181, 297
Life salvage: 302, 303
Limitation of actions: 477-485
Limitation of liability: 669-671
L O F 1980: 183, 230, 243, 244, 323, 328

M
Mandatory rules: 182, 184, 207, 214, 215, 216
Mandatory salvage: 224
Maritime cultural property: 547-551
Maritime lien: 460-463
Master: 189, 190, 192, 196, 200, 202, 204
Misconduct: 433-443

N
Navigable waters: 44, 48, 50, 53, 54, 58, 86
No cure-no pay: 289, 291, 296, 297, 301
Non-commercial cargo: 157, 159, 162, 168, 169
Non-commercial services: 157, 158, 161, 164, 170
Non-commercial vessels: 157, 168, 171
Non-contractual salvage: 185
Non-maritime waters: 56

O
Operator: 191, 194, 195, 196, 198, 200,
<table>
<thead>
<tr>
<th>Index</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Salvage operations: 44, 46, 47</td>
<td>right of recourse: 322</td>
<td></td>
</tr>
<tr>
<td>Scope of application: 126-135</td>
<td>rule of interpretation: see “Common understanding”</td>
<td></td>
</tr>
<tr>
<td>Seabed: 95, 128, 129, 137, 138, 143, 147</td>
<td>safety net: 323</td>
<td></td>
</tr>
<tr>
<td>Sea-going ship: see “Ship”</td>
<td>salvor’s expenses: 321, 322, 352</td>
<td></td>
</tr>
<tr>
<td></td>
<td>other salved property: 471</td>
<td></td>
</tr>
<tr>
<td></td>
<td>person liable: 466, 467</td>
<td></td>
</tr>
<tr>
<td></td>
<td>removal of vessel: 470</td>
<td></td>
</tr>
<tr>
<td></td>
<td>satisfactory security: 466, 468</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ship: 51, 55, 57, 60, 68</td>
<td>State-owned cargo: 157, 159, 161, 167</td>
<td></td>
</tr>
<tr>
<td></td>
<td>abandoned: 85</td>
<td>State-owned vessels: 154-172</td>
</tr>
<tr>
<td></td>
<td>capable of navigation: 60, 72, 76, 81, 86, 87, 88, 98, 99, 100, 104</td>
<td>Stranded ship: 68, 75, 77, 80, 84, 85, 100</td>
</tr>
<tr>
<td></td>
<td>sea-going: 51, 52, 53, 57, 62, 63, 64</td>
<td>Structure: 53, 72, 86, 87, 88, 93</td>
</tr>
<tr>
<td></td>
<td>sunken: 68, 69, 70, 71, 72, 73, 74, 77, 78, 80, 82, 83, 84, 85, 86, 98, 99, 100, 101, 102, 103, 104, 105, 106</td>
<td>Sunken ship: see “Ship”</td>
</tr>
<tr>
<td>Shoreline: 91, 95, 98</td>
<td>Territorial sea: 105, 106</td>
<td></td>
</tr>
<tr>
<td>Signature of the Convention: 514-520</td>
<td>Tidal waters: 51</td>
<td></td>
</tr>
<tr>
<td>Special compensation: 31, 294, 318, 319, 321, 323</td>
<td>Tovalop: 6</td>
<td></td>
</tr>
<tr>
<td></td>
<td>common understanding: 295, 370, 401, 402, 403, 404, 405, 588-592</td>
<td>UNCLOS: 260, 280</td>
</tr>
<tr>
<td></td>
<td>fair rate: 322</td>
<td></td>
</tr>
<tr>
<td></td>
<td>funding of: 321</td>
<td></td>
</tr>
<tr>
<td></td>
<td>innocent cargo: 328, 329, 330, 339, 342</td>
<td>Validity of contracts: 181, 182</td>
</tr>
<tr>
<td></td>
<td>interrelationship: 590</td>
<td>Vessel: see “Ship”</td>
</tr>
<tr>
<td></td>
<td>LOF: 328, 330, 359, 386, 387</td>
<td>Warships: 128, 155, 156, 158, 166</td>
</tr>
<tr>
<td></td>
<td></td>
<td>York-Antwerp Rules: 594</td>
</tr>
</tbody>
</table>