

## **Report on the IWG's on Salvage Convention meeting held in London on 13<sup>th</sup> May 2011**

A new meeting of the International Working Group on the 1989 Salvage Convention took place in London at 9.30am on Friday 13<sup>th</sup> May 2011 at the premises of Holman Fenwick & Willan, Friary Court, 65 Crutched Friars.

The following matters were suggested for discussion by the Chairman of the IWG, Stuart Hetherington:

1. Responses to the first questionnaire
  
- 2.(a) Responses to the second questionnaire
  
- (b) Note summary of responses to Places of Refuge questionnaire
  
3. ISC Circular dated 8 April 2011 related to the amendments to the LOF 2000 (LOF 2011) and to the Lloyds Standard Salvage Arbitration (LLSA) clauses and changes to SCOPIC
  
4. Paper of John Kimball on the Brice Protocol
  
5. Archie Bishop's proposed reforms to Articles 13 and 14 from Buenos Aires
  
6. Nic Gooding's proposed reforms to Articles 13 and 14 from Buenos Aires
  
7. General Discussion.

The meeting was presided over by the Chairman of the IWG Stuart Hetherington. Mans Jacobsson, Archie Bishop, Viggo Bondi and Diego Chami attended the meeting. Jorge Radovich was excused as he had obligations that kept him in Buenos Aires.

The Chairman thanked all the attendees for being there and stated that the idea was to consider where we were going from now in the lead up to the CMI 2012 Beijing Conference. He stated that the format for the Beijing Conference would be different from the one held in the Buenos Aires Colloquium in 2010. Therefore, there will be no presentations of papers but an introductory report on the different subjects to be discussed would be prepared by the IWG for the NMLAs, letting the delegations express views and decide on each issue. Crucially it would need to be decided by the delegates whether the CMI should draft a new Convention on salvage, or a Protocol amending the 1989 Convention, or just present a report to the IMO of the work carried out by the CMI.

The Chairman also mentioned that before the Beijing Conference, the IWG should aim, by about March next year, to prepare a document or documents to send to the NMLAs for discussion. It is likely that the material will contain the pros and cons of the on-going discussion of the changes sought to the Convention by the ISU in order to inform the NMLAs so that they can express their wishes at the Beijing Conference.

The discussion then ensued on the following topics:

**Responses to the first questionnaire:**

In italics are the questions and comments on the First Questionnaire, followed by the discussions at the meeting of the IWG.

**Geographic scope of environmental damage (art. 1.d, of the 1989 Salvage Convention):**

The main questions posed concerned the geographic scope in which the environmental damage should occur in order to fall within the scope of the Convention. They were:

*1.2. Do you consider that the words emphasized above in the definition contained in Article 1 (d) of the Salvage Convention ("in coastal or inland waters or areas adjacent thereto") should be deleted?*

*1.3. Alternatively do you think words such as those used in the other Conventions which have been quoted above (e.g. "where ever such damage may occur"/"exclusive economic zone"/"territorial sea") should replace those words in Article 1 (d) of the Salvage Convention?*

According to the present text, the environmental damage should occur "*..in coastal or inland waters or areas adjacent thereto...*". A large majority of NMLAs favour the extension to territorial waters and to the exclusive economic zone in line with other existing international conventions, i.e. in territorial waters but also in the Economic Exclusive Zone in accordance with international law, or if a State has not established such a zone, in an area beyond and adjacent to the territorial sea of the State, determined by that State in accordance with international law and extending not more than 200 nautical miles from the base lines from which the breadth of its territorial sea is measured.

Some NMLAs supported the extension to "wherever such damage may occur", which is also the ISU proposal. Very few supported no change. However, it was recalled that at the work that led to the Diplomatic Conference of the 1989 Salvage Convention, the CMI chose the vague

expression "...in coastal or inland waters or areas adjacent thereto..." in order to avoid speculative claims<sup>1</sup>. Mans Jacobsson remarked that this has not been a major problem in practice.

**Definition of environmental damage: the word "substantial" (art. 1(d) of the 1989 Salvage Convention):**

1.4. *Have there been any reported cases in your jurisdiction in which the word "substantial" (which is contained in Article 1 (d) of the Salvage Convention), as used in that definition, has been interpreted?*

1.4.1 *If so, could you please provide a copy of this decision?*

1.4.2 *If there have been no such cases in your jurisdiction do you think it likely that the word "substantial" could create difficulties of interpretation?*

1.5 *Do you think that where an incident occurs that could give rise to dangers to navigation (for example a loss of containers at sea) would be covered by the definition in Article 1(d) (i.e. do you think it would be held in your jurisdiction to come within the meaning of the words "or similar major incidents"?)*

1.5.1 *If you think there is a risk that such incidents may not be covered by the definition in Article 1(d), do you think that the definition should be widened?*

1.5.2 *If so, can you suggest any wording that you think might be appropriate?*

As regards this subject and whether to retain or delete the word "substantial", a slight majority of NMLAs were in favour of keeping "substantial" or replacing it by a similar concept or were in favour of excluding minor cases. Other NMLAs were in favour of deleting the word substantial because of possible interpretation problems or inconsistency.

**Dangers to navigation (art. 1,d, of the 1989 Salvage Convention):**

1.5 *Do you think that where an incident occurs that could give rise to dangers to navigation (for example a loss of containers at sea) would be covered by the definition in Article 1(d) (i.e. do you think it would be held in your jurisdiction to come within the meaning of the words "or similar major incidents")?*

1.5.1 *If you think there is a risk that such incidents may not be covered by the definition in Article 1(d), do you think that the definition should be widened?*

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<sup>1</sup>The Travaux Préparatoires of the Convention on Salvage, 1989, CMI, P. 113, Antwerp, 2003

1.5.2 *If so, can you suggest any wording that you think might be appropriate?*

The issue therefore, which was raised in the Questionnaire, concerned the likely interpretation to be given by Courts to the words "dangers to navigation". Once again it was noted that a majority of NMLAs did not consider this to be an issue that needed change. It was also noted that the ISU concerns in this regard had been raised by a casualty involving a log carrier which was unlikely to be a major source of danger to the environment.

**Salvage by public authorities (article 5 of the 1989 Salvage Convention):**

*Article 5 in the Salvage Convention 1989 provides as follows:*

*"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."*

The questions posed were:

*2.1. Can public authorities pursue claims for salvage in your jurisdiction?*

*2.1. If they cannot, do you think it would improve their position if Article 5 paragraph 3 was deleted or amended?*

A large majority of NMLAs were in favour of not making any changes in art. 5 of the Convention and that the provisions of Art. 5 should remain unchanged. Some NMLAs answered that public authorities can pursue claims for salvage only in case they render services beyond their duties. Other NMLAs answered that public authorities cannot pursue claims for salvage in cases where the services were carried out by the military or by the navy, or that public authorities were just entitled to cost recovery.

**Provision of cargo security in container ships (art. 13.2. of the 1989 Salvage Convention):**

*Article 13 of the Salvage Convention 1989 establishes the “Criteria for Fixing the Reward”. Paragraph 2 of Article 13 provides as follows:*

*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 defense.*

*4.1. Comment*

*In recent years the salvage of container ships, which continue to grow in size, has given rise to problems in collecting security from cargo interests. Thousands of interests are often involved and it can take months to collect security. Often it is not obtained at all. Further, even when security is provided, cargo often remains unrepresented and has to be given notice of a pending arbitration, an award, and an appeal of an award, causing considerable expense and delay. It has been suggested that the problem could be solved if, in container ship cases, ship owners were responsible for the provision of cargo security.*

*4.2. Has your jurisdiction made any provision, as provided for in Article 13 paragraph 2 for the payment of a reward by one of the interests referred to in the opening sentence of this paragraph?*

*4.3. Do you think it would be appropriate to specify in this Article that in containership cases the vessel only is responsible for the payment of claims (and therefore would be responsible for the provision of security) subject to a right of recourse against the other interests for their respective shares?*

It was noted that the large majority of NMLAs were of the opinion that no change was necessary and the salvor had the remedies to enforce its claim, namely a lien on the property. Some NMLAs answered that the salvage reward should fall on the salvaged interest and there was no such provision stating that a reward should be paid by one of the property interests. NMLAs did however recognize that it was an issue which should be considered by CMI. In some countries the shipowner can be proceeded against. Italy informed that even though there was not such a provision, their jurisprudence was generally of the view, under the 1910 Salvage Convention, that the owner of the salvaged vessel is bound to pay the whole of the salvage reward, and has a recourse action against the owners of the cargo. Such is also the solution according to the Dutch legislation (art. 566. Book 8, Netherlands Civil Code).

Some NMLAs were of the opinion that if the rule were to be amended, it should include all cargo ships, not only container vessels.

At the meeting, it was mentioned that recently, as regards this subject, the following changes were approved and published by Lloyd's to its Standard Salvage and Arbitration Clauses of the Lloyd's Standard Form of Salvage Agreement:

*Special Provisions*

*These Special Provisions shall apply to salvaged cargo insofar as it consists of laden containers.*

*13 The parties agree that any correspondence or notices in respect of salvaged cargo which is not the subject of representation in accordance with Clause 7 of these Rules may be sent to the party or parties who have provided salvage security in respect of that property and that this shall be deemed to constitute proper notification to the owners of such property.*

*14 Subject to the express approval of the Arbitrator where an agreement is reached between the Contractors and the owners of salvaged cargo comprising at least 75% by value of salvaged cargo represented in accordance with Clause 7 of these Rules, the same agreement shall be binding on the owners of all salvaged cargo who were not represented at the time of the said approval.*

*15 Subject to the express approval of the Arbitrator any salvaged cargo with a value below an agreed figure may be omitted from the salvaged fund and excused from liability for salvage where the cost of including such cargo in the process is likely to be disproportionate to its liability for salvage.*

It was mentioned that the problem might be solved if the shipowner was liable in circumstances in which he releases the cargo without obtaining guarantees from the consignees. However, in some countries the shipowner was not entitled to withhold the cargo and that such a provision would be just a shift of the burden of obtaining security from the salvor to the shipowner. The point was made that it was not a shift of the burden of obtaining security from the salvor to the shipowner but just making the shipowner liable for not obtaining guarantees.

Viggo Bondi emphasized that the answer of a country such as Denmark should be taken into account, considering the importance of its container ship fleet. However, it was pointed out that all the NMLAs answers should be considered.

As a conclusion it was agreed that IWG member, Archie Bishop, will draft a text regarding the issues not picked up by the Lloyd's Standard Salvage and Arbitration Clauses, with a view to seeking to simplify procedures and ameliorate costs.

**Publishing the awards (art. 27 of the 1989 Salvage Convention):**

In relation to art. 27 of the Salvage Convention 1989 which provides regarding publication of arbitral awards that: “States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases”, the question posed was whether NMLAs considered that article 27 should be amended to reflect the position achieved by the Lloyds Salvage Group.

The majority of the answers received from the NMLAs to the first questionnaire stated that an amendment was not necessary taking into account that publishing the awards was a parties’ matter or an arbitrators matter. Other NMLAs were in favour of encouraging the publication of awards, with the parties' agreement, or only a summary or stated that it could be issued subject to the opposition of the parties or that it was a matter of national law.

The issue has been addressed by Lloyd’s and the following changes were introduced to the LOF 2011 and to the Lloyd's Standard Salvage and Arbitration Clauses:

***Lloyd's Standard Form of Salvage Agreement (lof 2011)***

*3 Awards. The Council of Lloyd's is entitled to make available the Award, ~~or Appeal Award~~ and Reasons on [www.lloydsagency.com](http://www.lloydsagency.com) (the website) subject to the conditions set out in Clause 12 of the LSSA Clauses.*

*4 Notification to Lloyd's. The Contractors shall within 14 days of their engagement to render services under this agreement notify the Council of Lloyd's of their engagement and forward the signed agreement or a true copy thereof to the Council as soon as possible. The Council will not charge for such notification.*

***Lloyd's Standard Salvage and Arbitration Clauses***

**Awards**

- 12.1** *The Council will ordinarily make available the Award or Appeal Award and Reasons on [www.lloydsagency.com](http://www.lloydsagency.com) (the website) except where the Arbitrator or Appeal Arbitrator has ordered, in response to representations by any party to the Award or Appeal Award, that there is a good reason for deferring or withholding them. Any party may make such representations to the Arbitrator provided a written notice of its intention to do so is received by the Council no later than 21 days after the date on which the Award or Appeal award was published by the Council and the representations themselves are submitted in writing to the Arbitrator or Appeal Arbitrator within 21 days of the date of the notice of intention..*
- 12.2** *Subject to any order of the Arbitrator or Appeal Arbitrator the Award, or Appeal Award and Reasons will be made available on the website as soon as practicable after expiry of the 21 day period referred to in clause 12.1.*
- 12.3** *In the event of an appeal being entered against an Award the Award and Reasons shall not be made available on the website until either the Appeal Arbitrator has issued his Appeal Award or the Notice of Appeal is withdrawn subject always to any order being made in accordance with clause 12.1.*

Mans Jacobsson noted the distinction between what the parties might agree by way of private contract (for example Lloyds Open Form) and what might be prescribed by a Convention, although the fact that Lloyds had made recent changes might be indicative of what industry now required.

**Creating an environmental salvage award (art. 14 of the 1989 Salvage Convention):**

*5.2 Do you consider that consideration should be given to amending article 14 in order to create an entitlement to an environmental award? (It is recognized that there are "political" issues involved as to who would pay for such an award but the IWG would be interested to know whether your NMLA would be in favour of an investigation of this issue. It is also recognized that if you answer this question in the affirmative, consequential changes may need to be made to definition of damage to the environment" in Article 1(d), to Article 13, Article 15 and Article 20.)*

A slight majority of NMLAs were against creating an environmental salvage reward mainly because it was said that it would disrupt the Montreal compromise and such a change would damage the structure of the 1989 Convention or lead to uncertainty. It was also answered that there was no need for a change, taking into account that the salvor would get a reward through articles 13 and 14 of the 1989 Salvage Convention and that the environmental salvage has the opposition of the shipowners & the P I Clubs.

At the IWG discussion Viggo Bondi expressed the opinion that the introduction of an environmental salvage award would lead to uncertainty, in the absence of a mechanism for calculating such an award and it would breach the Montreal Compromise.

In favour of the environmental reward it was stated that in the UK avoiding liability would be considered in assessing the reward, (as mentioned by Michael Howard at the ISC meeting in May 2010) but there would not be a specific remuneration in such a case. It was then suggested by Viggo Bondi that if that was the case there would be no need for reform. The Australian decision was referred to by the Chairman in which Tamberlin J had said that such matters are taken into account and "inform the award".

Archie Bishop then referred to the fact that SCOPIC had had to be introduced because the provisions in Article 14 did not work. The deficiencies in the present Convention are highlighted by the need for SCOPIC.

**The amendments to arts 13 and 14 proposed by Archie Bishop**

The proposal is the following:

Article 13 - Delete Article 13.1(b)

Insert new Article 13.1(j): *"Any award under the revised article 14."*

Insert Article 13.4: *"For the avoidance of doubt no account shall be taken under this article of the skill and effort of the salvor in preventing or minimising damage to the environment"*.

Article 14.1

14.1 *"If the Salvor has carried out salvage operations in respect of a vessel which by itself or its bunkers or its cargo threatened damage to the environment he shall in addition to the reward to which he may be entitled under Article 13, be entitled to an environmental award. The environmental award shall be fixed with a view to encouraging the prevention and minimisation of damage to the environment whilst carrying out salvage operations, taking into account the following criteria without regard to the order in which they are presented below.*

*(a) any reward made under the revised Article 13*

*(b) the criteria set out in the revised Article 13.1(b) (c) (d) (e) (f) (g) (h) and (i)*

*(c) the extent to which the salvor has prevented or minimised damage to the environment and the resultant benefit conferred.*

14.2 *An environmental award shall not exceed the amount of the ship owner's limitation fund under the CLC 1992, the HNS Convention 1996, the Bunker Convention 2001, or the 1996 LLMC Protocol or their respective successors, whichever may be appropriate to the circumstances of the case.*

14.3 *For the avoidance of doubt, an environmental award shall be paid in addition to any liability the shipowner may have for damage caused to other parties.*

14.4 *Any environmental award shall be paid by the shipowners.*

14.5 *If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any environmental award due under this article.*

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

First of all it was mentioned that the present art. 14 of the 1989 Salvage Convention considers the threat to the environment only by the vessel and the cargo and that the amendment proposal also includes the bunkers.

As regards the criteria of art. 14.1. c): *"the extent to which the salvor has prevented or minimised damage to the environment and the resultant benefit conferred"*, one opinion was expressed to the effect that there may be no "resultant benefit to the environment" for example where there was pollution in mid Atlantic.

Regarding the draft of art. 14.2. it was mentioned that the limitation system was complicated and the limits might be too high and that it would be a better and simpler solution stating a limit of x SDR per gross ton of the vessel involved as the one suggested in Nic Gooding's paper in Buenos Aires: *"US\$180 per GT with a minimum limit of US\$3,600,000 (the limit of a vessel of 20,000 GT) and a maximum limit of US\$25M (the limit of a vessel of 138,889 GT); the tonnages relate closely to the CLC 1992 limit tonnages as amended by STOPIA"*. Mans Jacobsson suggested deletion of any reference to "fund" and insertion of words such as "whichever Convention is applicable" since the constitution of a limitation fund was not compulsory under the Bunkers Convention and the LLMC.

It was also suggested that the figures in the proposed Article 14.2 should be SDRs and the words "whichever is the less" could be inserted.

The inclusion of a minimum limit was discussed and it was mentioned that it was included in order not to have very low limits in case of small vessels.

Another proposal was to erase from art. 14.3. the words: *"For the avoidance of doubt..."*, which were not considered sufficiently accurate to be included in an international convention.

It was said that obviously the P & I Clubs were not happy with the draft of art. 14.4. but that the main issue is whether the environmental salvage proposed will protect the environment or not. It was also said that the concern was certainty and that if the limits of art. 14.2. were low, some certainty could be achieved.

It was suggested that the word "shipowners" in article 14.4 of the proposal should be amended to "shipowner".

A proposal was raised as to the IWG drafting an "industry agreement" by which the salvors agree to invest a certain percentage of any environmental salvage award in equipment and training on environmental salvage. It was however queried whether this would be a matter best left to industry and not placed in an international convention. It was suggested that the insertion of such a provision might open up the Convention to a much wider debate which no-one would like and, of course, was in any event a danger which would result from any proposals to reform the Convention.

Archie Bishop was asked to consider whether a new text of his proposed Article 14.2 could be prepared to deal with the limitation concerns expressed by shipowners and P and I Clubs; and insurers will be asked to produce a text to reflect their suggestions, made through Nic Gooding, at the Buenos Aires Colloquium last year.

**Life salvage (art. 16 of the 1989 Salvage Convention):**

6.2. *Do you consider that the wording of this Article (article 16) should be amended to ensure that any life salvage claims against property are made directly against a property owner rather than the salvor?*

As regards the question whether life salvage should be directed against the property rather than against the salvor, half of NMLAs answered that no change was needed. The other half, answered that the claim should be conducted against the property rather than against the salvor.

At the meeting, it was explained that directing the claims against the salvor could create problems for the property salvor if it was not involved in the life salvage, as is often the case. It should be considered that awards under articles 13 or 14 of the 1989 Salvage Convention would only include the work and expenses incurred by the salvor itself and not by someone out of his control, such as the life salvor. Therefore, the property salvor should share with the life salvor the award that has not taken into consideration the life salvage.

On the other hand, it was also mentioned that directing life salvage claims against the property, would be creating an award for life salvage, which is already a legal duty of the captain and a crime in case of omission. The duty under UNCLOS and SOLAS to protect life was referred to. However, it was agreed that the life salvor might be entitled to a cost recovery or a liability claim against whoever put the life in danger.

It was recalled that at the debate in the Diplomatic Conference that led to the 1989 Salvage Convention, the ISU's proposal that life salvage claims should be directed against the property salvaged or, if there is no property, against the shipowner, received no support<sup>2</sup>. It was decided at the IWG that this was a matter which should be debated at the Beijing Conference. Archie Bishop will draft a suggested amendment for the next meeting.

**Cooperation (art. 11 of the 1989 Salvage Convention):**

Art. 11. regarding co-operation, reads:

*A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the 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.*

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<sup>2</sup>The Travaux Préparatoires of the Convention on Salvage, 1989, CMI, P. 428, Antwerp, 2003.

3.2 *Has your country ratified the Salvage Convention 1989?*

3.2.1 *If so has it enacted any legislation or regulation to give effect to Article 11?*

3.2.2 *If so, please supply a copy, if possible with translation into English or French.*

3.2.3 *Do you think this Article should be amended to refer to the IMO Guidelines on Places of Refuge (Resolution A.949(23)) Adopted in December 2003?*

The main question posed was whether this article should be amended to refer to the IMO Guidelines on Places of Refuge (Resolution A.949 (23)) Adopted in December 2003. The prevailing opinion was that Article 11 should not be amended. It was however noted that the EU has given some weight to the IMO Regulations but it was pointed out that it is difficult to incorporate recommendations in a Convention and the CMI Instrument on Places of Refuge is intended to deal with this issue.

**John D. Kimball's comments on the Brice Protocol:**

Once the analysis of the answers of the NMLAs to the First Questionnaire was over, the IWG began discussing John D. Kimball's comments on the Brice Protocol.

This issue, in which UNCLOS, the Nairobi Convention on Removal of Wrecks and the UNESCO Underwater Heritage Convention are involved, was the next subject addressed by the IWG.

John D. Kimball's comments mention that the protection and preservation of objects of historical, cultural or archaeological significance could be taken into account in granting a salvage award. He mentioned that the First Report of the IWG on UCH recommended the CMI to support the Brice Protocol as a means of embracing the context and spirit of articles 149 and 303 of UNCLOS and that IMO take steps to amend the 1989 Salvage Convention to include it.

However, the Convention on the Protection of Underwater Cultural Heritage was adopted and entered into force after being ratified by 37 countries and the Brice Protocol was not promoted. According to article 4 of the UCH Convention activities relative to underwater cultural heritage covered by the Convention shall not be subject to the law of salvage, unless three requirements are met: i) the activity is authorized by the competent authorities; ii) is carried out in full conformity with the UCH Convention and iii) ensures that any recovery of the underwater cultural heritage achieves its maximum protection.

At the meeting it was recalled that art. 30, d) of the 1989 Salvage Convention enables any State to reserve the right not to apply the provisions of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.

The Brice Protocol makes the following few amendments to the 1989 Salvage Convention:

In art. 1, include the following definitions:

*"Historic wreck" means a vessel or cargo or artefacts relating thereto including any remains of the same (whether submerged or embedded or not) of prehistoric, archaeological, historic or other significant cultural interest".*

*"Damage to the cultural heritage" means damage to historic wreck including damage or destruction at the salvage site of any significant information relating to the wreck or in its historical and cultural context".*

Regarding the Criteria for fixing the reward, includes the following in art. 13:

*"in the case of historic wreck, the extent to which the salvor has":*

*"protected the same and consulted with, co-operated with and complied with the reasonable requirements of the appropriate scientific, archaeological and historical bodies and organizations (including complying with any widely accepted code of practice notified to and generally available at the offices of the Organization".*

*"complied with the reasonable and lawful requirements of the governmental authorities having a clear and valid interest (for prehistoric, archaeological, historic or other significant cultural reasons) in the salvage operations and in the protection of the historic wreck or any part thereof, and"*

*"avoided damage to the cultural heritage".*

Related to the effect of salvor's misconduct of art. 18, includes: *"In the case of historic wreck, misconduct includes a failure to comply with the requirements set out in Article 13 paragraph (k) or causing damage to the cultural heritage".*

Regarding reservations, includes in art. 30: when the property involved is: *"historic wreck" (delete maritime cultural property of prehistoric, archaeological or historic interest) "and is wholly or in part in the territorial sea (including on or in the seabed or shoreline) or wholly or in part in inland waters (including the seabed and shoreline thereof)".*

It was queried whether the Brice Protocol undermines the UCH Convention. There was discussion as to whether a new protocol could address issues dealt with in other conventions. John Kimball will be requested to prepare a report on this issue for the CMI Beijing 2012 Conference.

#### **Responses to the Second Questionnaire:**

Subsequently, the IWG considered it to be disappointing that some countries in which there are reports of cases in which salvors have not been sufficiently compensated, did not answer the

Second Questionnaire. The conclusion, to date, is that there is not much empirical evidence of salvage operations in which the salvors have not been properly remunerated.

So, it was said that for the time being, the lack of statistics might not justify the ISU's concerns. As regards ITOPF statistics, the number of cases and quantities of oil spilt are decreasing. However, it was also said that it was not easy for the NMLAs to answer the Second Questionnaire.

It was commented that nowadays salvors no longer perform salvage services only, but also towage, wreck removal among many other services. However, it was answered that this issue does not imply that salvors should not be properly compensated for the salvage services they render. Indeed, it was added that salvors do a lot to protect the environment and that they are not properly compensated for that. It was answered that salvors have SCOPIC to be properly compensated. However, regarding SCOPIC, it was mentioned by Archie Bishop that the system is only a safety net. It does not reward salvors.

Moreover, it was recalled that, even though, SCOPIC rates were increased in 2011, they do not have an element of profit. It was added that the proof that the 1989 Salvage Convention calls for amendment is that art. 14 was replaced by SCOPIC. A proposal was made that an element of profit should be included in art. 14, and the problems created by the House of Lords finding in the "Nagasaki Spirit" case, would be solved.

A question was posed whether an amendment to the 1989 Convention was justified just to protect an industry. However, if salvors run out of business because of lack of remuneration, the environment will be at stake.

It was also commented that art. 13.1. b) includes as a criterion for fixing the reward the skill and efforts of the salvors in preventing or minimizing damage to the environment, which is paid by the property underwriters who do not cover such a risk.

It was decided that the following steps will be taken:

1. An informal meeting of the members of the IWG who will attend the Oslo Seminar and the Annual CMI Assembly in September 2011 might take place there;
2. Archie Bishop will draft a text regarding the issues not picked up by the Lloyd's Standard Salvage and Arbitration clauses related to container ships;
3. Archie Bishop will draft a new text of art. 14.2 in relation to limitation and of art. 16 related to life salvage;

4. The Chairman will seek to prepare the first draft of what is intended to be put before delegates at the Beijing Conference in 2012 prior to the Oslo meeting of the Executive Council and Assembly in September 2011;
5. Nicholas Gooding will also be asked to draft a text of his environmental proposal;
6. NMLAs will be encouraged to answer the Second Questionnaire.

Finally, Archie Bishop and Holman Fenwick & Willan, should be thanked for hosting the IWG meetings.