

รายการอ้างอิง

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ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ה. חוק המאחד.

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF
LAW RESPECTING ASSISTANCE AND SALVAGE AT SEA,
SIGNED AT BRUSSELS, SEPTEMBER 23, 1910

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the German Emperor, King of Prussia, in the name of the German Empire; the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, etc. and Apostolic King of Hungary, for Austria and Hungary; His Majesty the King of Spain; the President of United States of America; the President of the French Republic; His Majesty the King of Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; the President of the United States of Mexico; the President of the Republic of Nicaragua; His Majesty the King of Norway; Her Majesty the Queen of the Netherlands; His Majesty the King of Portugal and the Algarves; His Majesty the King of Roumania; His Majesty the Emperor of All the Russia; His Majesty the King of Sweden; the President of the Republic of Uruguay;

Having recognised the desirability of determining by agreement certain uniform rules of law respecting assistance and salvage at sea, have decided to conclude a Convention to that end, and have appointed Plenipotentiaries who, having been duly authorised to that effect, have agreed as follows:

Article 1

Assistance and salvage of seagoing vessels in danger, of any things on board, of freight and passage money, and also services of the same nature rendered by seagoing vessels to vessels of inland navigation or vice-versa, are subject to the following provisions, without any distinction being drawn between these two kind of service, and in whatever waters the service have been rendered.

Article 2

Every act of assistance or salvage which has had a useful result gives a right to equitable remuneration.

No remuneration is due if the services rendered have no beneficial result.

In no case shall the sum to be paid exceed the value of the property saved.

Article 3

Persons who have taken part in salvage operations notwithstanding the express and reasonable prohibition on the part of the vessel to which the services were rendered, have no right to any remuneration.

Article 4

A tug has no right to remuneration for assistance to or salvage of the vessel she is towing or of the vessel's cargo, except where she has rendered exceptional service which cannot be considered as rendered in fulfilment of the contract of towage.

Article 5

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

Article 6

The amount of remuneration is fixed by agreement between the parties, and, failing agreement, by the court.

The proportion in which the remuneration is to be distributed amongst the salvors is fixed in the same manner.

The apportionment of the remuneration amongst the owner, master and other persons in the service of each salving vessel shall be determined by the law of the vessel's flag.

Article 7

Every agreement as to assistance or salvage entered into at the moment and under the influence of danger may, at the request of either party, be annulled, or modified by the court, if it considers that the conditions agreed upon are not equitable.

In all cases, when it is proved that the consent of one of the parties is vitiated by fraud or concealment, or when the remuneration is, in proportion to the services rendered, in an excessive degree too large or too small, the agreement may be annulled or modified by the court at the request of the party affected.

Article 8

The remuneration is fixed by the court according to the circumstances of each case, on the basis of the following considerations: (a) firstly, the measure of success obtained, the efforts and deserts of the salvors, the danger run by the salvaged vessel, by her passengers, crew and cargo, by the salvors, and by the salving vessel: the time expended, the expenses incurred and also the value of the property exposed to such risks. due regard being had to the special appropriation (if any) of the salvors vessel for salvage purposes; (b) secondly, the value of the property salvaged.

The same provisions apply for the purpose of fixing the apportionment provided for by the second paragraph of Article 6.

The court may deprive the salvors that the salvors have by their fault rendered the salvage or assistance necessary or have been guilty of theft, fraudulent concealment or other acts of Fraud.

Article 9

No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of the national laws on this subject.

Salvors of human life who have taken part in the services rendered on the occasion of the accident giving rise to salvage or assistance, are entitled to a fair share of the remuneration awarded to the salvors of the vessel her cargo and successories.

Article 10

A salvage action is barred after an interval of two years from the day on which the operations of assistance or salvage terminate.

The grounds upon which the said period of limitation may be suspended or interrupted are determined by the law of the court where the case is tried.

The High Contracting Parties reserve to themselves the right to provide, by legislation in their respective countries, that the said period shall be extended in cases where it has not been possible to arrest the vessel assisted or salvaged in the territorial waters of the State in which the plaintiff has his domicile or principal place of business.

Article 11

Every master is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost.

The owner of a vessel incurs no liability by reason of contravention of the above provision.

Article 12

The High Contracting Parties, whose legislation does not forbid infringements of the preceding Article, bind themselves to take or to propose to their respective Legislatures the measure necessary for the prevention of such infringements.

The High Contracting Parties will communicate to one another as soon as possible the law or regulations which have already been or may be hereafter promulgated in their state for giving effect to the above provision.

Article 13

This convention does not affect the provisions of national laws or international treaties as regard the organisation of service of assistance and salvage by or under the control of public authorities, nor, in particular, does it affect such laws or treaties on the subject of the salvage of fishing gear.

Article 14

This Convention does not apply to ships of war or to Government ships appropriated exclusively to a public service.

Article 15

The provision of this Convention shall be applied as regards all person interested in either the assisting or salving vessel or the vessel assisted or salvaged belongs to the State of the High Contracting Parties, as well as in any other cases for which national laws provide.

Provided always that-

1. As regard persons interested who belong to a non- contracting State the application of the above provisions may be made by each of the contracting State conditional upon reciprocity.
2. Where all the persons interested who belong to the same State as the court trying the case, the provisions of the national law and not of the Convention are applicable.
3. With out prejudice to any wider provisions of any national laws, Article 11 only applies as between vessel belonging to the States of the High Contracting Parties.

Article 16

Any one of the High Contracting Parties shall have the right, three years after this convention comes in to force, to call for a fresh Conference with a view to possible amendments , and particularly with a view to extend , if possible, the sphere of its application.

Any Power exercising this right must notify its intention to the other Powers, through the Belgian Government, which will make arrangements for convening the Conference within six month.

Article 17

States which have not signed the present Convention are allowed to accede to it at their request. Such accession shall be notified through the diplomatic channel to the Belgian Government, and by the latter to each of the Governments of the other Contracting Parties; it shall become effective one month after the despatch of such notification by the Belgian Government.

Article 18

The present Convention shall be ratified.

After an interval of at most one year from the date of which the Convention is signed, the Belgian Government shall place itself in communication with the Government of the High Contracting Parties which have declared themselves prepared to ratify the Convention, with a view to decide whether it should be put into force.

The ratification shall, if so decided, be deposited forthwith at Brussels, and the Convention shall come into force a month after such deposit.

The Protocol shall remain open another year in favour of the States represented at Brussels Conference. After this interval they can only accede to it in conformity with the provisions of article 17.

Article 19

In the case of one or other of the High Contracting Parties denouncing this Convention, such denunciation shall not take effect until a year after the day on which it has been notified to the Belgian Government, and the convention shall remain in force as between the other Contracting Parties.

In witness whereof , the Plenipotentiaries of the respective High Contracting Parties have signed this Convention and have affixed thereto their seals.

Done at Brussels, in single copy, September 23, 1910.



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ข.

International Convention on Salvage, 1989

Chapter 1 - General Provisions

Article 1 Definitions

For the purpose of this Convention:

- (a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) Vessel means any ship or craft, or any structure capable of navigation.
- (c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents
- (e) Payment means any reward, remuneration or compensation due under this Convention.

- (f) Organization means the International Maritime Organization.
- (g) Secretary-General means the Secretary-General of the Organization

Article 2

Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating 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, 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 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 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 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 2 - Performance of Salvage Operation

Article 8

Duties of the Salvor and of the Owner and Master

1. The salvor shall owe a duty to the owner of the vessel or other property in danger:
 - (a) to carry out the salvage operations with due care;
 - (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;
 - (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
 - (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger ; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable
2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:
 - (a) to co-operate fully with him during the course of the salvage operations;
 - (b) in so doing, to exercise due care to prevent or minimize damage to the environment; and
 - (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

Article 9

Rights of Coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to

protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

Article 10

Duty to Render Assistance

1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
2. The 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 negotiating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of salvaging life or property in danger as well as preventing damage to the environment in general.

Chapter III - Right of Salvors

Article 12

Condition 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 salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

Article 13

Criteria for the Fixing Reward

1. The reward shall be fixed with the view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are present 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 the 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 the other equipment intended for salvage operation;
- (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 interested 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 defense.

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 special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.
2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.
3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1 (h), (I) and (j).
4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.
5. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.
6. Nothing in this article shall effect any right of recourse on the part of the owner of the vessel.

Article 15

Apportionment Between Salvors

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.
2. The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

Article 16

Salvage of Persons

1. No remuneration is due from person whose lives are saved, but nothing in this article shall effect the provisions of national law on this subject.
2. A salvor of human life, who has taken part in the service 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

Service Rendered Under Existing Contracts

No payment is due under the provision of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Article 18

The Effect of Salvor's Misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

Article 19

Prohibition of the 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 cost, has been duly tendered or provided.

Article 21

Duty to Provide Security

1. Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and cost of the salvor.

2. Without prejudice to paragraph 1, the owner of the salvaged vessel shall use his best endeavours to ensure that the owner of the cargo provide the satisfactory security for the claims against them including interest and cost before the cargo is released.
3. The salvaged 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 the 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 claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.

3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

Article 24

Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

Article 25

State-Owned Cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings in rem against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognized principles of international law.

Article 26

Humanitarian Cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

Article 27

Publication of Arbitral Awards

States parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

Chapter V - Final Clauses

Article 28

Signature, Ratification, Acceptance, Approval and Accession

1 This Convention shall be open for signature at the Headquarters of the organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for 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 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 may be convened by the Organization.

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 amend.

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 Depository to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 34

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE AT LONDON this twenty-eight day of April one thousand nine hundred and eight-nine.

จุฬาลงกรณ์มหาวิทยาลัย

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 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 salvaged 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 ACCEPTED 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 international publicizing and wide implementation of the Convention is of the marine environment, 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, course or symposia;
- (b) that the 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 plementation of the Convention; and

(c) the Organization to notify Member States of any communication it may receive under paragraph II (a).



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ก.

LOF 1995

LLOYD'S

STANDARD FORM OF
SALVAGE AGREEMENT

(APPROVED AND PUBLISHED BY THE COUNCIL OF LLOYD'S)

NO CURE - NO PAY

On board the

Date.....

IT IS HEREBY AGREED between Captain +.....
for and on behalf on the Owners of the “.....” her
cargo freight bunkers stores and any other property thereon (hereinafter collectively called “the
Owners”) andfor and on behalf of.....
(hereinafter called “the Contractor”*) that:-

1. (a) The Contractor shall use his best endeavours:-

- (i) to salve the “.....” and/or her cargo freight bunkers stores and any
other property thereon and take them to #.....or to such other place as may

hereafter be agreed either place to be deemed a place of safety or if no such place is named or agreed to a place of safety and

(ii) while performing the salvage services to prevent or minimize damage to the environment.

(b) Subject to the statutory provisions relating to special compensation the services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay."

(c) The Contractor's remuneration shall be fixed by Arbitration in London in the manner hereinafter prescribed and any other difference arising out of this Agreement or the operations thereunder shall be referred to Arbitration in the same way.

(d) In the event of the services referred to in this Agreement or any part of such services

(e) The security to be provided to the Council of Lloyd's (hereinafter called "the Council") the Salved Value(s) the Award and/or any Interim Award(s) and/or any Award on Appeal shall be in #.....currency.

(f) If clause l(e) is not completed then the security be provided and the Salved Value(s) the Award and/or Interim Award(d) and/or Award on Appeal shall be in Pounds Sterling.

(g) This Agreement and Arbitration thereunder shall except as otherwise expressly provided be governed by the law of England, including the English law of salvage.

PROVISIONS AS TO THE SERVICES

2. *Definition:* In this Agreement any reference to "Convention" is a reference to the International Convention on Salvage 1989 as incorporated in the Merchant Shipping (Salvage and Pollution) Act 1994 (and any amendment thereto). The terms "Contractor" and "services" / "salvage services" in this Agreement shall have the same meanings the terms "salvor(s)" and "salvage operation(s)" in the Convention.

3. *Owner Cooperation:* The Owners their Servants and Agents shall co-operate fully with the Contractor in and about the salvage including obtaining entry to the place named or the place of safety as defined in clause 1. The Contractor may make reasonable use of the vessel's machinery gear equipment anchors chains stores and other appurtenances during and for the purpose of the salvage services free of expense but shall not unnecessarily damage abandon or sacrifice the same or any property the subject of this Agreement.

4. *Vessel Owner Right to Terminate*: When there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Convention Article 13 the owners of the vessel shall be entitled to terminate the services of the Contractor by giving notice to the Contractor in writing.

PROVISIONS AS TO SECURITY

5. (a) The Contractor shall immediately after the termination of the services or sooner notify the Council and where practicable the Owners of the amount for which he demands security (inclusive of costs expenses and interest) from each of the respective Owners.

(b) Where a claim is made or may be made for special compensation, the owners of the vessel shall on the demand of the Contractor whenever made provide security for the Contractor's claim for special compensation provided always that such demand is made within two years of the date of the termination of the services.

(c) The amount of any such security shall be reasonable in the light of the knowledge available to the Contractor at the time when the demand is made. Unless otherwise agreed such security shall be provided (i) to the Council (ii) in a form approved by the Council and (iii) be persons firms or corporations either acceptable to the Contractor or resident in the United Kingdom and acceptable to the Council. The Council shall not be responsible for the sufficiency (whether in amount or otherwise) of any security which shall be provided nor for the default or insolvency of any person firm or corporation providing the same.

(d) The owners of the vessel their Servants and Agents shall use their best endeavours to ensure that the cargo owners provide their proportion of security before the cargo is released.

6. (a) Until security has been provided as aforesaid the Contractor shall have a maritime lien on the property salvaged for his remuneration.

(b) The property salvaged shall not without the consent in writing of the Contractor (which shall not be unreasonably withheld) be removed from the place to which it has been taken by the Contractor under clause 1(a). Where such consent is given by the Contractor on condition that the Contractor is provided with temporary security pending completion of the voyage the Contractor's maritime lien on the property salvaged shall remain in force to the extent necessary

to enable the Contractor to compel the provision of the security in accordance with clause 5 (c).

(c) The Contractor shall not arrest or detain the property salvaged unless:-

(I) security is not provided within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the termination of the services or

(ii) he has reason to believe that the removal of the property salvaged is contemplated contrary to clause 6(b) or

(iii) any attempt is made to remove the property salvaged contrary to clause 6(b).

(d) The Arbitrator appointed under clause 6 or the Appeal Arbitrator(s) appointed under clause 13.(d) shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or part of any expenses reasonably incurred by the Contractor in:-

(I) ascertaining demanding and obtaining the amount of security reasonably required in accordance with clause 5.

(ii) enforcing and/or protecting by insurance or otherwise or taking reasonable steps to enforce and/or protect his lien.

PROVISIONS AS TO ARBITRATION

7. (a) Whether security has been provided or not the Council shall appoint an Arbitrator upon receipt of a written request made by letter telex facsimile or in any other permanent form provided that any party requesting such appointment shall if required by the Council undertake to pay the reasonable fees and expenses of the Council and/or any Arbitrator or appeal Arbitrator(s).

(b) Where an Arbitrator has been appointed and the parties do not proceed to arbitration the Council may recover any fees costs and/or expenses which are outstanding .

8. The Contractor's remuneration shall be fixed by the Arbitrator appointed under clause 6.5 Such remuneration shall not be diminished by reason of the exception to the principle of 'no cure-no pay' under Convention Article 14.

REPRESENTATION

9. Any party to this Agreement who wishes to be heard or to adduce evidence shall nominate a person in the United Kingdom to represent him failing which the Arbitrator or Appeal Arbitrator(s) may proceed as if such party had renounced his right to be heard or adduce evidence.

CONDUCT OF THE ARBITRATION

10. (a) The Arbitrator shall have power to:-

(I) admit such oral or documentary evidence or information as he may think fit

(ii) conduct the Arbitration in such manner in all respects as he may think fit subject to such procedural rules as the Council may approve

(iii) order the Contractor in his absolute discretion in the whole or part of the expense of providing excessive security or security which has been unreasonably demanded under clause 5 (b) and to deduct such sum from the remuneration and/or special compensation

(iv) make Interim Award(s) on such terms as may be fair and just

(v) make such orders as to costs fees and expenses including those of the Council charged under clauses 10(b) and 14(b) as may be fair and just.

(b) The Arbitrator and the Council may charge reasonable fees and expenses for their services whether the Arbitration proceeds to a hearing or not and all such fees and expenses shall be treated as part the costs of the Arbitration.

(c) Any Award shall (subject to Appeal as provided in this Agreement) be final and binding on all the parties concerned whether they were represented at the Arbitration or not.

INTEREST & RATES OF EXCHANGE

11. *Interest:* Interest at rates per annum to be fixed by the Arbitrator shall (subject to Appeal as provided in this Agreement) be payable on any sum awarded taking into account any sums already paid:-

(I) from the date of termination of the services unless the Arbitrator shall in his absolute discretion otherwise decide until the date of publication by the Council of the Award and/or Interim Award(s) and

(ii) from the expiration of 21 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of publication by the Council of the

Award and/or Interim Award(s) until the date payment is received by the Contractor or the Council both dates inclusive.

For the purpose of sub-clause(ii) the expression "sum awarded" shall include the fees and expenses referred to in clause 10(b)

12. *Currency Correction:* In considering what sums of money have been expended by the Contractor in rendering the services and/or in fixing the amount of the Award and/or Interim Award(s) and/or Award on Appeal the Arbitrator or Appeal Arbitrator(s) shall to such an extent and in so far as it may be fair and just in all the circumstances give effect to the consequences of any change or changes in the relevant rates of exchange which may have occurred between the date of termination of the services and the date on which the Award and/or Interim Award(s) and/or Award on Appeal is made.

PROVISIONS AS TO APPEAL

13. (a) Notice of Appeal if any shall be given to the Council within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the publication by the Council of the Award and/or Interim Award(s).

(b) Notice of Cross-Appeal if any shall be given to the Council within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after notification by the Council to the parties of any Notice of Appeal. Such notification if sent by post shall be deemed received on the working day following the day of posting.

(c) Notice of Appeal or Cross-Appeal shall be given to the Council by letter telex facsimile or in any other permanent form.

(d) Upon receipt of Notice of Appeal the Council shall refer the Appeal to the hearing and determination of the Appeal Arbitrator(s) selected by it.

(e) If any Notice of Appeal or Cross-Appeal is withdrawn the Appeal hearing shall nevertheless proceed in respect of such Notice of Appeal or Cross-Appeal as may remain.

(f) Any Award on Appeal shall be final and binding on all the parties to that Appeal Arbitration Whether they were represented either at the Arbitration or at the Appeal Arbitration or not.

CONDUCT OF THE APPEAL

14. (a) The Appeal Arbitrator(s) in addition to the powers of the Arbitrator under clauses 10(a) and 11 shall have power to:-

(i) admit the evidence which was before the Arbitrator together with the Arbitrator's notes and reasons for his Award and/or Interim Award(s) and any transcript of evidence and such additional evidence as he or they may think fit

(ii) confirm increase or reduce the sum awarded by the Arbitrator and to make such order as to the payment of interest on such sum as he or they may think fit

(iii) confirm revoke or vary any order and/or Declaratory Award made by the Arbitrator.

(iv) award interest in any fees and expenses charged under paragraph (b) of this clause from the expiration of 21 days (exclusive of Saturdays and Sundays or other days observed a general holidays at Lloyd's) after the date of publication by the Council of the award on Appeal and/or Interim Award(s) on Appeal until the date payment is received by the Council both dates inclusive.

(b) The Appeal Arbitrator(s) and the Council may charge reasonable fees and expenses for their services in connection with the Appeal Arbitration whether it proceeds to a hearing or not and all such fees and expenses shall be treated as part of the costs of the Appeal Arbitration.

PROVISIONS AS TO PAYMENT

15. (a) In case of Arbitration if no Notice of Appeal be received by the Council in accordance with clause 13.(a) the Council shall call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs thereof realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount awarded to him together with interest if any. The Contractor shall reimburse the parties

concerned to such extent as the Award is less than any sums paid on account or in respect of Interim Award(s).

(b) If Notice of Appeal be received by the Council in accordance with clause 13, it shall as soon as the Award on Appeal has been published by it call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs thereof realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount awarded to him together with interest if any. The Contractor shall reimburse the parties concerned to such extent as the Award on Appeal is less than any sums paid on account or in respect of the Award or Interim Award(s).

(c) If any sum shall become payable to the Contractor as remuneration for his services and/or interest and/or costs as the result of an agreement made between the Contractor and the Owners or any of them the Council in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs thereof realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the said sum.

(d) If the Award and/or Interim Award(s) and/or Award on Appeal provides or provide that the costs of the Arbitration and/or of the Appeal Arbitration on any part of such costs shall be borne by the Contractor such costs may be deducted from the amount awarded or agreed before payment is made to the Contractor unless satisfactory security is provided by the Contractor for the payment of such costs.

(e) Without prejudice to the provisions of clause 4(c) the liability of the Council shall be limited in any event to the amount of security provided to it.

GENERAL PROVISIONS

16. *Scope of Authority:* The Master or other person signing this Agreement on behalf of the property to be salvaged enters into this Agreement as agent for the vessel her cargo freight bunkers stores and any other property thereon and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.

17. *Notices:* Any Award notice authority order or other document signed by the Chairman of Lloyd's or any person authorized by the Council for the purpose shall be deemed to have been duly made or given by the Council and shall have the same force and effect in all respects as if it had been signed by every member of the Council.

18. *Sub-Contractor(s):* The Contractor may claim salvage and enforce any Award or agreement made between the Contractor and the Owners against security provided under clause 5 or otherwise if any on behalf of any Sub-Contractors his or their Servants or Agents including Masters and members of the crews of vessels employed by him or by any Sub-Contractors in the services provided that he first provides a reasonably satisfactory indemnity to the Owners against all claims by or liabilities to the said persons.

19. *Inducements prohibited:* No person signing this Agreement or any party on whose behalf it is signed shall any time or in any manner whatsoever offer provide make give or promise to provide demand or take any form of inducement for entering into this Agreement.

INTERNATIONAL CONVENTION ON SALVAGE 1989

Article 1

Definitions

(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

Article 8

Duties of the Salvor and of the Owner and Master

1. The salvor shall owe a duty to the owner of the vessel or other property in danger :
 - (a) to carry out the salvage operations with due care;
 - (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;
 - (c) whenever circumstances reasonably require, to seek assistance from other salvors;
 and
 - (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger, provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable
2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor.
 - (a) to co-operate fully with him during the course of the salvage operations;
 - (b) in so doing, to exercise due care to prevent or minimize damage to the environment;and
 - (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so

Article 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;



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ประวัติผู้เขียน

นายวิศักดิ์ ส้วนไพศาลนนท์ เกิดที่จังหวัดกรุงเทพมหานคร เมื่อวันที่ 7 ธันวาคม พ.ศ. 2512 สำเร็จการศึกษาชั้นมัธยมจากโรงเรียนวัดนวลนรดิศ จังหวัดกรุงเทพมหานคร และสำเร็จการศึกษาชั้นอุดมศึกษาจาก คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย เมื่อปีการศึกษา 2534 ปัจจุบันทำงานอยู่ที่ บริษัทบูรพาพลาสติก จำกัด



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย