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| **Salvage** |
| **Source:** MLA**Doc. No.:** 750**Date:** May 5, 2000**Committee:** [SALVAGE](http://www.mlaus.org/committee-profile.ihtml?id=280) **FORMAL REPORT OF THE COMMITTEE ON****SALVAGE**We had 26 persons in attendance, including the President, First Vice President, and Second Vice President of the Maritime Law Association.* SCOPIC-Shipowner's Casualty Representative.

Our very active session began with a presentation by Robert Umbdenstock on the SCOPIC (Special Compensation P&I Clause) addendum to Lloyd's Standard Form of Salvage Agreement. Bob has recently served as a Shipowner's Casualty Representative (SCR) pursuant to the SCOPIC clause. He is one of only two U.S. nationals designated by the Council of Lloyd's to serve in that capacity, out of a total of some 30 SCR's (predominantly from the U.K.). Bob explained the purpose and use of SCOPIC, the benefits of SCOPIC, the increased reliance on P&I Club input during salvage operations, and the increasing role of the P&I Clubs in salvage situations as a result of fundamental changes in the nature of salvage resulting from environmental concerns. We learned on Friday that Bob has been admitted as a non-lawyer member of the M.L.A., and I expect our new President will appoint him to become a regular member of our Committee. Welcome aboard, Bob.* + LOF 2000.

We next discussed the Lloyd's Standard Form of Salvage Agreement (LOF 2000). This project has been delayed as a result of the passing of Geoffrey Brice, Q.C., in November 1999. Each time in recent months that a "final draft" has been put in circulation amongst those who must approve it, the draft has come up for further amendment. We relayed the latest advice from International Salvage Union headquarters to the effect that its ultimate approval is "imminent." The LOF 2000 will be in a simplified BIMCO style format,*i.e*., a one-page "fill-in-the-blocks" document, backed up by several pages addressing security and procedural matters.* + - *Blackwall* Rules Update.

We discussed again *The Blackwall* Rules update by reference to the paper prepared by Mark Davis of Norfolk some two years ago. The conclusion reached at that time was that Article 13 of the 1989 Salvage Convention already incorporates applicable criteria from U.S. case law with respect to conventional salvage situations. There are, however, exceptions for archaeological salvage and perhaps liability salvage which could be addressed. Mark Davis reported at our May 3, 2000 meeting that he has received few comments on the paper, and none of the comments appeared to affect the substance of his report. One suggested the affirmative criteria as set forth in Article 13 might also be set forth in the negative, *i.e.*, to diminish an award where such criteria was not applicable-but that would seem already implied. Since the 1989 Convention is the law of this land, there would appear no immediate need to take further measures unless it would be to address the treasure/archeological salvage and liability salvage issues. However, the purpose(s) of the Marine Board's recommendation may still-and perhaps should-be accomplished through legislation (see discussion under next item).* + - * 1989 Salvage Convention.

Following up on a suggestion from outside our Committee, we have decided we may wish to draft implementing legislation for the 1989 Salvage Convention, even though such legislation may not be required. Professor David Sharpe pointed out that currently there is no U.S. statute on the books setting forth the terms of the 1989 Salvage Convention. Legislation would correct that deficiency, and at the same time take care of the concerns that gave rise to the need for updating *The Blackwall* Rules. The legislation may also be useful in connection with the long sought denunciation of the 1910 Salvage Convention and repeal of the Salvage Act of 1912, which incorporates the 1910 Salvage Convention. Denunciation of the 1910 Salvage Convention and repeal of the 1912 Salvage Act is essential to avoid risk of confusion in certain cases where the 1989 Salvage Convention would otherwise without doubt apply. Professor David Sharpe has agreed to chair a special subcommittee of the Salvage Committee in initiating efforts toward preparation of the proposed legislation. He will be assisted by Peter Hess, Mark Davis, and Professor David Bederman.* + - * + U.S. Open Form Salvage Contract.

The modified version of the U.S. Open Form Salvage Contract was passed out to the members with comments regarding reasons for the changes, primarily removing references to yacht or pleasure craft salvage, though the contract so far has been used primarily if not exclusively for yacht salvage.RMS Titanic.The matter of the RMS TITANIC came up for discussion once more, primarily this time with respect to proposed U.S. legislation which has the appearance of being the "stalking horse" for the UNESCO draft treaty on the Preservation of Underwater Cultural Heritage provisions. Mark Davis spoke at length, objecting to this draft legislation as an abrogation of salvage law, departure from uniformity, lack of constitutionality, and for other reasons. He noted that no commercial interests were involved in preparing this draft legislation. It was noted that this makes it appear the U.S. government is already laying the foundation for adoption of the UNESCO draft treaty, effectively rendering marine salvage illegal in some circumstances. Mr. Dorsey noted that whatever happens with UNESCO, we still must be concerned with what our own government may do.UNESCO Draft Treaty.Committee Vice Chairman Bill Storz gave a brief update on the status of the UNESCO draft treaty, noting that the U.S. has taken by far the most reasonable position by involving John Kimball, who heads the MLA study group on this draft treaty, and others with some commercial interests. He noted that the British delegation is beginning to hear from its maritime bar, so it may be that things are beginning to swing in favor of a better understood convention. This may result in changes to the draft convention that will put it in accord with current law, and supplant its current disregard for commercial interests. John McMahon of Charlotte took strong issue with the way the MLA is dealing with the UNESCO draft treaty, suggesting that we may have caused an unfavorable reaction from those involved with the draft treaty. President McCormack addressed this point, noting that the Maritime Law Association's position on the draft treaty has been published, has been made a part of the record, has been approved by the Officers and Directors of the Association, and no negative reports on the M.L.A.'s position have been forthcoming from the membership."Abandonment" of Wrecks.We addressed the*Central America*and the *Islander*cases, primarily with respect to the issue of "abandonment" for purposes of determining whether the salvor has a lien against the property rescued or whether he is owner. The Maritime Law Association has been asked to file and amicus brief with the Supreme Court in favor of a petition for certiorari on the issue of abandonment, and has been approached by others saying there is no conflict amongst the Circuits and no reason for the Supreme Court to hear this issue. Disagreements were expressed on these two positions, and very specific questions were asked by Bill Dorsey with regard to each case, suggesting reasons why certiorari perhaps should not be requested. The issue of whether the M.L.A. should become involved rests with the Officers and the Board of Directors of the MLA, and no recommendation is forthcoming from the Salvage Committee. We nonetheless listened to the arguments on both sides.We adjourned somewhat late, without covering our full agenda. Some of the discussions held during the course of the meeting continued thereafter for a period.Respectfully submitted,James T. Shirley, Jr., Chair |