

DOCUMENT No. 230.

December, 1936.

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SALVAGE AS BETWEEN VESSELS
AND AIRCRAFT

REPORT

ON THE PRELIMINARY DRAFT OF A CONVENTION FOR THE
UNIFICATION OF CERTAIN RULES RELATING TO
ASSISTANCE AND SALVAGE OF AIRCRAFT OR BY
AIRCRAFT AT SEA.

(C. I. T. E. J. A. DOCUMENT 319).



THIS REPORT, WHICH WAS WRITTEN DURING THE DAYS
AFTER HIS UNTIMELY DEATH, IS INSCRIBED
TO THE MEMORY OF

WILLIAM J. DEAN
1891-1936

A CAREFUL, WISE AND IMAGINATIVE LABORER IN THE TWISTED
VINEYARDS OF PRIVATE INTERNATIONAL LAW.

SALVAGE AS BETWEEN VESSELS AND AIRCRAFT.

REPORT

*on the Preliminary Draft of a Convention for the Unification of
Certain Rules relating to*

ASSISTANCE AND SALVAGE OF AIRCRAFT OR BY AIRCRAFT AT SEA.

To the Members of the Maritime Law Association:

A serious alteration in the international law of salvage is proposed. A new text of the (draft) Air Salvage at Sea Convention has just been published by the C. I. T. E. J. A. (Citeja Document 319). This new text differs greatly from the text published in 1933 (Comité Maritime International, Bulletin 97). Briefly, the Citeja's 1933 text was strictly limited to salvage of aircraft, aircraft cargo, and persons in aircraft; it made no change in the law as to ships, and in fact expressly provided that if persons in aircraft assist a vessel, "the conditions upon which this assistance shall be rendered and remunerated shall be determined by the same rules as though salvage had been rendered by one ship to another." In other words, the 1933 text provided that in a mixed situation involving aircraft and vessels, the maritime law and the Maritime Salvage Convention of 1910 should control.

The new (draft) convention provides precisely the reverse. If adopted, it would set up the principle that the new convention shall apply to all interested parties whenever either a salvor ship or aircraft, or a salvaged ship or aircraft flies the flag of a government which ratifies the new text. In other words, vessels shall all be brought under the new Air Salvage Convention whenever an aircraft plays a part—however minor—in the salvage situation, as either salvor or salvee. The consequence would be that the Maritime Salvage Convention of 1910, now the law in the United

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States, the whole British Empire and seventeen other leading maritime countries, would thereafter only govern salvage situations in which no aircraft plays any part at all.

The second point of the greatest fundamental importance is that the new text apparently seeks to shift the theory of salvage from its present basis as a personal service rendered to persons and property, to a new basis as an affair merely between ships and ship-owners. It is proposed that hereafter salvors are to be, not individual persons generally, but only shipowners and aircraft operators. In seeking to accomplish this the new text seems to destroy the present salvage rights of individuals, including those of ship masters and the crews of vessels. The purpose appears to be quite deliberate, for there are two alterations in the phraseology of the statement of the basis of salvage remuneration in Article 4, which is in every other respect an exact copy of Article 8 of the 1910 Salvage Convention. In furtherance of this purpose to shift the basis of salvage from individual salvors to property owners, the "sister-ship" clause (Article 5) has been omitted; and the "application of provisions" clause (Article 15) has been wholly recast. This is a far-reaching change; and if it is to be made, its purpose and scope should be thoroughly understood.

The 1933 text was examined in 1934 by a Sub-Committee of the Comité International Maritime, which Sub-Committee gave it a certain degree of approval subject to a number of recommendations which have not been heeded in the new (draft) convention. The 1936 text has never been submitted to the Comité Maritime International, nor to any other maritime body. It differs so widely from the 1933 text, and cuts so much more deeply into the existing body of maritime salvage law, that the approval given to the 1933 text can not be in any sense regarded as an approval of the 1936 text. Furthermore, the Comité's consideration of the 1933 text was, as will hereinafter be pointed out, had without the participation of either English or American delegates, and has never come before a full meeting of the Comité. American maritime organizations have already expressed themselves in opposition to the 1933 text, in its 1935 form. It seems certain that the same organizations will feel much more hostile to the 1936 text which is now newly disclosed, for it repeats and emphasizes all the points

towards which American criticism has already been directed, and seeks to subordinate the existing international salvage law of the great established shipping services of the world to a new system devised in favor of the new-born aviation services.

The present program of the Citeja, it is understood, is to present the new (draft) Air Salvage at Sea Convention to a Diplomatic Conference in May, 1937, to be accepted and signed by all participating governments, and subsequently ratified and put into effect.

It happens that the Comité Maritime International is also now planning a meeting for May, 1937; and both meetings are expected to be held in Paris. An opportunity to bring about a forceful expression of maritime opinion is therefore likely to occur.

The purpose of this report is to indicate the startling effect of the proposed convention on maritime interests, and to state the modifications requisite in order to relieve the aviation interests without disturbing the maritime interests.

The basic difficulty is the fact that salvage is traditionally limited to vessels and vessel cargoes and freights; hence an aircraft, not being a vessel (Air Commerce Act, section 7(a)) is not a subject of salvage, nor is its cargo. *Watson vs. RCA-Victor Co.*, 50 Lloyds List Law Rep. 77, 1935 A. M. C. 1251. The British Parliament has reversed that decision and solved the difficulty rather simply by enacting that an aircraft is hereafter to be regarded as a vessel for salvage purposes (Air Navigation Act, 1936, 26 Geo. 5 & 1 Edw. 8, ch. 44; 5th schedule, amending section 11 of the Air Navigation Act, 1920). Annex 5. If the American Congress were to enact a similar law, a suitable local result could be achieved. (A proposed text is printed herewith, Annex 8). But the effect on private international law would be distressingly complicated whenever a salvage service has been rendered by parties of different national allegiances on the high seas. The old confusion of maritime salvage laws brought about the general adoption of the Maritime Salvage Convention of 1910 (37 Stat. 1658). Confusion of air salvage laws seems bound to force an ultimate agreement on salvage of aircraft at sea. The leading American and British interest in overseas aviation already amply justifies a strong effort to bring about a suitable convention text at the present time.

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The work on this text, up to date, has been done without direct co-operation of either shipowners, shipmasters, or marine underwriters, or of admiralty lawyers from England and America. The work of the Citeja, which is a quasi-governmental body, is organized without representation of the marine underwriters and shipowners as such. The "American Section" now has four members. The "American Advisory Committee," which has never met, consists of some twenty persons nominated, upon the invitation of the State Department, by various organizations interested in the development of private international air law; thus far, very few have taken any active part in the various pending situations. The Maritime Law Association is the only organization in this group which may be said to represent the shipping industry.

A description of the organization and work of the Citeja will be found in 6 *Journal of Air Law* 84 (1935).

The Citeja, under the leadership of Professor Georges Ripert of France as Reporter and M. Wolterbeek-Müller of Holland as Chairman of the Third Commission, has been working on this convention for several years. On October 2, 1933, a text was prepared at a meeting in London; its principles as they affect maritime shipping have already been stated, and the text is printed herewith (Annex 2). The Citeja thereupon consulted the Comité International Maritime, which set up a Sub-Committee "to formulate any views, suggestions and proposals they might deem advisable." The Sub-Committee met in Paris on April 29, 1934. No American was invited to attend; the two British members were unable to attend. The British Maritime Committee filed an (unsigned) report urging two of the criticisms which are still directed at the text; these were unheeded. The Belgian, Italian, Dutch, Portuguese and Yugoslavian Maritime Law Associations sent memoranda with various suggestions. The Sub-Committee's report, together with the memoranda, was printed in March, 1935 (Comité Bulletin 97). There was a good deal of discussion of the 1910 Salvage Convention, but, curiously, no mention at all of the Safety of Life at Sea Convention, London, 1929, which provides, in Article 45, very precise conditions for the regulation of the obligation to deviate from the ship's course in order to save life at sea. The report made two explicit criticisms and recommendations: that the salvor of goods should have a remedy only

against the owners of the salvaged goods, and that the salvage remedy should be limited by the value of the goods saved and not by the value of the aircraft before the accident. Only the latter recommendation has been heeded in the new text.

The matter has never come before a full meeting of the Comité, which has not met since 1933. It should, obviously, be placed on the Agenda for the next meeting, and no action should be taken by the Citeja until the Comité has had full opportunity of debate.

In the interval, the Citeja has been elaborating and reworking the text, until by a series of gradual alterations the matter has reached its present form, which seriously threatens the present basis of all maritime rights and duties in the matter of salvage. A detailed examination of the text is therefore required, in order to understand the new proposals. Such an analysis is submitted herewith, section by section. Annex 1. It is believed that this sufficiently demonstrates that the new (draft) convention is not acceptable to maritime ship-owning and underwriting interests. In that belief, and with the earnest desire to assist in relieving the aviation interests from their present unsatisfactory state in respect of salvage, a proposed (draft) international air salvage at sea convention and a proposed aircraft salvage Bill for federal enactment have been drawn and are printed herewith. Annex 7 (Convention); Annex 8 (Bill). For purposes of comparison, the following documents are also reproduced: the Brussels Maritime Salvage Convention of 1910, complete (Annex 3), the Safety of Life at Sea Convention, London, 1929, Article 45 (Annex 4), and the new British Air Navigation Act, 1936, salvage provisions (Annex 5).

When the State Department sent delegates to the Tenth Session of the Citeja in 1935, I had become interested in this convention and alarmed as to its provisions, and gave them a brief memorandum, which they put forward, but without result. I then wrote an article on the subject, which the Columbia Law Review kindly printed (vol. 36, page 224); this was circulated at the meeting of the Citeja's committees in February, 1936, at which time Professor Ripert took the position that salvage is a matter between ships—a conception wholly foreign to English and American admiralty law, which considers salvage as a personal service. Subsequently the modifications of the convention proposed in the Co-

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lumbia Law Review article were endorsed, with some expansion and modification, by resolutions passed by the Maritime Law Association, the American Bar Association, the New York Board of Underwriters, the San Francisco Board of Marine Underwriters, and the Admiralty Committee of the Bar Association of the City of New York (Annex 6). These resolutions were sent to the State Department, which sent delegates to the Eleventh Session of the Citeja recently held in Berne. Our views, however, continue to be unheeded, and the text now adopted still embodies all the points towards which our criticism has been directed, namely:

1. it creates a new system for salvage of vessels, persons and cargoes when an aircraft happens to be present as a salvor;
2. it imposes a new obligation on shipowners to pay life salvage and, at least in the first instance, the salvage awards granted in respect of the cargo;
3. it grants immunity of baggage, personal possessions, parcels post and general mail matter from any obligation to pay salvage;
4. it gives an S. O. S. from an aircraft a different legal meaning and effect from an S. O. S. from a vessel;
5. it limits indemnity for life salvage efforts, requested by S. O. S., to the shipowner's out-of-pockets, without rewarding the master and crew for skill, speed and courage;
6. there is no effective limit to the obligation (newly to be imposed on shipmasters) to turn off their courses and search for fallen aircraft which have sent out an S. O. S.

RECOMMENDATIONS.

The following action is recommended:

1. Appointment of a special committee of three, with authority to act in co-operation with other organizations and, if desirable, to become part of a more general committee representing other interests.
2. Invitation of other American organizations representing maritime interests, especially shipowners, ship operators and marine underwriters, to co-operate in this matter.
3. Invitation of similar British and Dominion organizations to co-operate.

4. Preparation and transmission of a suitable report to the State Department.

5. Request that the State Department include delegates representing maritime interests in the next American delegation sent to the Citeja meeting, and arrangements for including the salvage convention on the agenda of such meeting.

6. Preparation and transmission of a suitable report to the Senate Committee on Commerce, the House Committee on Merchant Marine, the Bureau of Air Commerce, and suitable aeronautical associations, with a view to securing the enactment of an Air Salvage at Sea Statute.

Respectfully submitted,

ARNOLD W. KNAUTH.



ANNEX 1.

INTERNATIONAL TECHNICAL COMMITTEE OF
AERIAL LEGAL EXPERTS.*Comité International Technique D'Experts Juridiques Aeriens.*

DOCUMENT 319.

October 3, 1936.

*Translation Released November 25, 1936.**Preliminary Draft of Convention for the Unification of Certain
Rules relating to*

ASSISTANCE AND SALVAGE OF AIRCRAFT OR BY AIRCRAFT AT SEA.*

Text adopted by the International Technical Committee of Aerial Legal Experts during its Eleventh Session at Berne, Switzerland, in September, 1936.

NOTE: The passages which impose duties on shipmasters and shipowners in respect of aircraft are set in italics. The passages which alter the existing law when a vessel and its cargo and passengers are themselves the subjects of a salvage service are set in blackface.

Comment: The convention has heretofore been entitled *Convention relating to Assistance to and Salvage of Aircraft*. The present title reveals that the text also relates to salvage *by* aircraft, but does not adequately disclose that the text deals largely with the duties and obligations of vessels, shipmasters and shipowners.

ARTICLE 1. AGREEMENT TO LEGISLATE.

The High Contracting Parties agree to take the necessary measures to put into effect the rules established in this Convention.

Comment: The scope of the convention is stated in Article 14.

*The original text is in French. See Note concerning the translation.

ARTICLE 2. LIFE SALVAGE.

(1) *Aircraft Bound to Aid Persons at Sea.*

Any person exercising the functions of commanding officer aboard an aircraft shall be bound to render assistance to any person who is at sea in danger of being lost, insofar as the aircraft can, without serious danger to itself, its crew, passengers or other persons, go to the scene with the possibility of rendering useful aid.

Article 2 (1). Comment: This binds all aircraft to go to a vessel which sends out an S. O. S. The 1910 Maritime Salvage Convention laid down the rule that assistance must be given to persons *found* at sea—*trouvée en mer*. (Art. 11). Literally, these words—*trouvée en mer*—do not require a vessel to deviate from her course. The words have never been construed by a court. The memorandum of the British Maritime Committee (Bull. 97, p. 31) considers that they impose a broad general “duty to render assistance to persons who are in danger at sea.” The Paris Subcommittee (Bull. 97, p. 6) was “of the opinion that the obligation to assist persons who, at sea, are on board an aircraft in danger of being lost, is already laid upon ships’ captains under Article 11 of the Brussels International Salvage Convention of 1910. * * * Article 11 is couched in general terms.” The meaning of Article 11 has become largely academic, because Article 45 of the Safety at Sea Convention, London, 1929 (printed herewith, Annex 4), has superseded it almost everywhere. It is submitted that the purpose of Article 2 (1) and (2) would be best achieved by adopting the precise language of the Safety Convention 1929, Article 45, expanding it to include “aircraft commanders” and “aircraft” in each instance, thus promoting uniformity of law and text as far as possible.

(2) *Ships Bound to Aid Persons in Aircraft at Sea.*

Every ship captain shall be bound, under the circumstances contemplated in paragraph (1), to render assistance to any person who is at sea in danger of being lost in an aircraft or as the consequence of damage to an aircraft.

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Comment: See comment to Article 2 (1). The Paris Subcommittee and the Belgian and Italian Maritime Associations considered that this provision merely duplicates the Salvage Convention of 1910. It appears to state the rule of the Safety at Sea Convention, Article 45, in an abbreviated and indirect form.

(3) *No Obligation Unless on a Voyage or Ready to Depart.*

Such obligation shall not exist unless the aircraft or the ship is

1. *in the course of a trip or*
2. *ready to depart.*

(3). Comment: This provision was not in the 1933 text. Neither the 1910 Convention nor the Safety Convention, Article 45 (1) and (2) excuses a vessel which is in port from answering a call of distress if the circumstances make it reasonable for her to go. It seems quite illogical to require a vessel in a port to go to sea to aid a distressed vessel, but to excuse her from going to aid a distressed aircraft. It is submitted that any ship or aircraft which can go, should go. The rule should in both cases be the same. This sub-section should either be deleted, or be extended to all vessel situations in the Safety Convention 1929.

(4) *Obligation Ceases, when.*

The obligation of assistance shall cease when the person who is under such obligation has notice that assistance is assured by others under similar or better conditions than it could be by himself.

Comment: The provisions of the Safety Convention, Article 45, (3) and (4) cover this same point in clearer and more positive terms. The rule as to release from the obligation should be identical, regardless of whether the persons in distress are on a vessel or an aircraft. It is confusing to have two rules, differing slightly.

The Italian, Dutch and Portuguese Maritime Law Associations expressed themselves as opposed to the provisions of the 1933 text, Art. 1 (2), which left it to the shipmaster to decide whether he was "satisfied" that assistance was being given by some one else; the text has accordingly been modified so that a master continues obligated until he receives a notice.

(5) *Penalties.*

The national legislations shall determine the penalties designed to insure the execution of this obligation, and the High Contracting Parties shall communicate to each other, through diplomatic channels, the texts of such laws.

(6) *Owner's Liability for Violation of Obligation.*

No liability can rest with the owner or the armateur of the ship, or the operator of the aircraft, as such, by reason of failure to discharge such obligation, except in the case where he has ordered the person bound to render assistance not to render it.*

Comment: The analogous provision in the 1910 Salvage Convention (Art. 11) does not contain the final clause, beginning with the word *except*.

ARTICLE 3. LIFE SALVAGE INDEMNITY.

(1) *Aid Rendered Pursuant to Obligation—Indemnity Based on Expenses and Losses, Although No Useful Result.*

Any assistance rendered in discharge of the obligation contemplated in the foregoing article shall call for an indemnity based on

- 1. the expenses justified by circumstances*
- 2. as well as the damage suffered in the course of the operations.*

Comment: The present maritime law does not know this sort of an indemnity, which is a complete legal novelty. The familiar maritime remedy provided by the 1910 convention, Article 11, is also contained in this new convention in Article 5. The new convention thus proposes *two concurrent indemnities* for a single life-salvage service:

* This French word is not here translated for reasons stated in the comment to Article 12.

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Article 3 (1)—expenses and losses, paid by the shipowner, and

Article 5—a share in the property salvage award. The text does not explicitly state who is to receive either the salvage indemnity nor the remuneration. The context seems to indicate that no one but the shipowner can receive salvage. This is more fully discussed under Article 4 (5). The Belgian memorandum pointed out the need of clarifying this point. It asks: (page 30)

“To whom is this indemnity payable? Is it to the crew, the operator, or the owner? To each of them, or only to one of them?”

The present text does not indicate any answer to these questions.

Example A. A large liner deviates to rescue one person from an aircraft. The aircraft operator (not the owner nor the rescued person) is liable to the owner of the liner for expenses and losses up to \$8,300 (125,000 gold francs).

Example B. An aircraft deviates to a large liner in distress and brings about the rescue of 1,000 persons. The vessel owner and armateur are liable to the aircraft operator for expenses and losses up to \$8,300,000 (125,000 gold francs per person).

Query: If the lives are saved by a combination of the service of the aircraft and the service of a surface vessel, does the surface vessel share the aircraft fund?

If this new convention is to regulate the affairs of ships as well as of aircraft, it is obviously necessary to reconcile Article 3 (1) with Article 9 (par. 2) of the 1910 Maritime Salvage Convention.

It is submitted that if life salvage is to be paid for at all, the reward should consider skill, speed and courage of the master and crew. The 1910 Maritime Salvage Convention does not limit life salvors to mere out-of-pocket. Thus in the *Shreveport*, 1930 A. M. C. 1310, the Spanish SS. *Aldecoa* rescued the crew and the award was \$5,000, 4/5ths to her owners and 1/5 to her crew; while the *Mariners Harbor* salvaged the hull and cargo after arduous efforts, resulting in various personal awards for special skill, and \$25,000 divided 2/5ths to her crew and 3/5ths to her owners and charterers. Plainly the *Aldecoa* received much more than her owner's out-of-pockets for the life salvage. Under the proposed aviation convention, the crew of a vessel which saves lives of avia-

tors apparently get nothing; this seems entirely unfair, if they exhibit courage and skill.

(2) *Aid Without Obligation—Indemnity Based on Expenses and Losses, if Useful Result Achieved.*

If the assistance was rendered in the absence of any obligation to do so, the assister shall have no right to an indemnity unless he has obtained a useful result by saving persons or by contributing thereto.

Comment: This provision seems to be applicable in only two situations:

Example A: an aircraft or vessel finds someone in distress along her course, without an S. O. S. or other message, and consequently without any obligation to deviate to assist.

Example B: An aircraft or vessel in an airport or harbor and not ready to depart, and hence excused from going by Article 2 (3), nevertheless heeds an S. O. S. and goes to the rescue. For this service, if successful, the owner may collect his out-of-pocket, but the crew get nothing for speed, courage and skill. It is difficult to evaluate in advance the significance of these provisions. It may indeed sometimes be desirable to deter aviators, who have no other occupation at the moment, from flying to the scene of an accident in fine weather at the expense of the owner of the aircraft or vessel in peril. But in stormy weather, fog and darkness, when accidents are most likely to occur, is it wise to discourage ships and aviators from starting out on the chance of a rescue?

(3) *Who Shall Pay.*

The indemnity shall be payable by the operator of the aircraft assisted or by the owner or the armateur of the ship assisted.

Comment: This is a wholly novel provision. Heretofore, life salvage has been payable, if at all, out of the proceeds of property saved from the same peril. British Merchant Shipping Act, 1894, sec. 544; U. S. Salvage Act, 1912, 37 Stat. 242.

The text does not suggest whether the owner and armateur

of the vessel are to be jointly or separately liable, nor whether either may have contribution from the other. These points need not be clarified if the word *armateur* is dropped, as suggested under Article 12.

Assuming that this novel provision is desirable and suitable for aviation, and that aircraft operators will eventually agree in desiring to be placed under this obligation in order to encourage the saving of the lives entrusted to their aircraft, there is absolutely no present basis for supposing that it is desired or sought by any responsible body in the shipping industry. The Paris Sub-Committee approved it only in respect of aircraft. The British and Belgian memoranda plainly stated that it was not the maritime law; and at that stage the text did not propose to change the law for vessels. It cannot be thought that the saving of lives from the *Vestris*, the *Philippar* or the *Morro Castle* would have taken any different or more successful course if the rescuing vessels had known that they could collect their out-of-pockets from the owners of those unfortunate vessels up to the sum of \$8,300. per life saved.

If this new liability is imposed, it will have to be covered by suitable insurance. The nature of this coverage—whether tacked onto hull or liability policies—and the necessary premium rates, do not appear to have been considered at all up to the present. The underwriters who might cover the risk have not yet been consulted.

If the risk is insured, it must be considered whether the underwriter will incur direct liability to life salvors under the English Third Parties (Rights against Insurers) Act or under the New York Insurance Law, section 109. This was pointed out by the Belgian memorandum in 1934; but the present draft does not indicate that any answer has been found.

(4) (a) *Limit of Indemnity per Life Saved.*

The said indemnity cannot exceed the sum of 125,000 francs per person saved and, if no persons have been saved, the sum total of 125,000 francs.

Comment: This was proposed by the Belgian memorandum in 1934; the amount is identical with that specified for passenger

lives in the Warsaw Convention of 1929 relating to Air Carriers, and for injuries to third parties in the Rome Convention of 1933, relating to damage done by Aircraft to persons and property on the surface of the earth. The Belgians proposed it as a *minimum* value to be available if the aircraft were worth less; but in its present form it is a *maximum* even if the aircraft is worth more.

The par of exchange is the French gold franc of 1935. Art. 3 (4-d). At present values, the equivalents are \$8,300 U. S., or £1,670 Sterling.

(4) (b) *Additional Limitations of Indemnity—Shipowners.*

Furthermore, the owner or armateur of the ship shall not be liable beyond the limits fixed by the laws and conventions in force with respect to his liability.

Comment: This superimposes a general reference to the ship-owners' limitation of liability laws which may be in effect in the place where the life-salvor seeks to recover his indemnity. It is by no means clear whether the life-salvage indemnity is to be ranked with other claims against the usual limitation fund, or whether the life-salvage indemnity ranks alone against a second fund, equal in amount to the usual fund. A question of this sort was asked by the Belgian Association in 1934. The present text does not suggest any answer.

(4) (bb) *Additional Limitations of Indemnity — Aircraft Operators.*

And the aircraft operator shall not be liable beyond the value of the aircraft, such value being determined on the basis of 250 francs per kilogram of weight of the aircraft, by weight being understood the weight with the total maximum load as shown on the certificate of airworthiness or on any other official document.

Comment: This value works out at about \$7.50 per lb., or \$7,500. for a small two-seater airplane weighing 1,000 lbs. This results in quite a large liability fund for larger aircraft, such as are likely to go to sea. A 25-ton airplane would have to provide a

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fund up to \$375,000. The British memorandum of 1934 proposed adding the pending freight to the fund, but this has not been done; the fund seems adequate in amount without adding the freight.

In the 1933 draft, the aircraft owner was allowed to apply the aircraft limitation value to the aggregate of his salvage liabilities: the aircraft itself, the lives, and the cargo. This was vigorously condemned by the four leading Maritime Law Associations—Belgian, British, Dutch and Italian—in their memoranda. The Belgians put it tersely:

“We fail to understand why the owners of a cargo of gold in bullion, the whole of which has been salvaged, should have the right to limit the salvage indemnity due by them to the value of the aircraft before the accident.”

The provision is now retained only for life-salvage. But there are still difficulties, which are discussed under Article 4 (5).

(4) (c) *Aggregate Limit of Liability for Life Salvage.*

However, the limit of the operator's obligation shall not be greater than two million francs.

Comment: The clause limiting the whole obligation to not over two million francs was added to the text in 1936. Hence the Paris Sub-Committee did not have an opportunity to comment on it. The provision of an over-all top limit of salvage liability is desirable. It seems reasonably clear that this limit applies only to the life-salvage indemnity of expenses and losses. The omission of the words *owner* and *armateur* seems to indicate that this over-all limit is granted only to aircraft operators. There is no explanation why this limit is not equally granted to owners and armateurs of ships.

(4) (d) *Standard of Value—Rate of Exchange.*

The amounts fixed in this paragraph shall be considered as referring to the French franc containing 65½ milligrams of gold of a standard of fineness of 900/1000. It may be converted into each national currency in round numbers.

Comment: The standard described was that prevailing in France between 1924 and 1936.

(5) *Salvage by Several Ships or Aircraft.*

In case there has been assistance *by several ships* or aircraft, and the total sum of the indemnities due exceeds the limit fixed in the foregoing paragraph, a proportional reduction of the indemnities shall be made.

Article 3 (5) Comment: This provision indicates that if even one aircraft is present in a salvage service involving several vessels, the entire matter shall be regulated according to this new aviation convention and not according to the 1910 Maritime Salvage Convention. Article 14 confirms this view. The want of harmony between the two conventions would seem to make it quite impossible to apportion a life-salvage award under both conventions at the same time. One or the other must prevail; or else both must now be harmonized. The new convention must therefore be treated as a fundamental attack upon the existing 1910 Maritime Salvage Convention.

(6) *Operator's Liability Where Use of Aircraft Unauthorized.*

Any person who, without having the right to use an aircraft, uses the same without the consent of the operator, shall be bound to pay the indemnity, and any operator who does not take the necessary measures to avoid such wrongful use of his aircraft shall be jointly and severally liable with him, each one of them being bound within the conditions and limits of this article.

Comment: There is no provision about the unauthorized use of vessels. Yet ships, both small and large, can be and often are used without the authority of their owners. In the past few months, many Spanish vessels have been at sea without the consent or authority of their owners. If it is fair to exonerate the non-consenting owner of an aircraft, is it not equally fair to exonerate the non-consenting owner of a ship?

ARTICLE 4. PROPERTY SALVAGE.

(1) *Who Shall Receive Salvage.*

In a case of assistance and salvage of aircraft or of property on board aircraft, a ship or aircraft which shall have rendered assistance shall be entitled to remuneration to be determined on the following basis:

Comment: This passage seems to make it plain that salvage, under this new convention, will be paid to ships or aircraft (and their owners) and not to the men who do the actual work of salvage—This is more fully discussed under Article 4 (5).

The corresponding passage of the 1910 convention merely provides that “the remuneration is fixed by the court, according to the circumstances of each case, on the basis of the following considerations.” Article 15 says that the (1910) convention applies to *all persons interested (tous les intéressés)*; the emphasis is on persons, not on ships.

Basis of Remuneration.

(a) First, the measure of success obtained, the efforts and the deserts of the salvors, the danger run by the salvaged aircraft, by its passengers, crew and cargo * and by the salvaging aircraft or vessel, the time expended, the expenses incurred and losses suffered, and the risks of liability and other risks run by the salvors, and also the value of the property exposed to such risks, due regard being had, the case arising, to the special adaptation of the salvor's equipment;

(b) Second, the value of the property salvaged.

Comment: The foregoing rule is applied to salvages of ships by aircraft by subsection (5) hereinafter.

The foregoing text is an exact duplication of Article 8 of the 1910 Maritime Salvage Convention with *one important omission*—it omits (at the point indicated by an asterisk) the words “and by the salvors” (in the French original “*et par les sauveteurs*”). In other words, “the personal danger run * by the salvors” (in the French text, “*le danger couru . . . par les sauveteurs*”) is no

longer to be considered as an element in fixing a salvage award. This seems to mean that there is to be no further reward to individuals for personal courage. That plainly proposes a fundamental break with the historic conception of salvage.

It is, of course, true that the modern predominance of steamers and motorships, and the organization of professional salvage companies, has had the result that Lord Justice KENNEDY'S "exceptional allowance" of salvage to shipowners has become a rather general rule. The crew's share nowadays is seldom over a quarter or a third. In the past fifteen years only one case has been noted where a crew—that of a small tugboat, exhibiting extraordinary personal heroism—has been given a share of over 50% of a salvage award. Perhaps the time has come to shift the whole basis of salvage from the human salvor plus his employer's ship or other equipment, to the incorporated shipowner plus his employees. If so, the same change should be made at once in the 1910 Maritime Salvage Convention, for the rule, whichever it is, should and indeed must be uniform everywhere.

No evidence or argument has been presented for changing the rule of the 1910 Convention. No government has asked for a new conference to revise that convention. Hence the old rule, which now prevails almost everywhere, should not be changed.

(2) *Simultaneous Salvage of Life and Property.*

In the case where indemnity or remuneration shall be due both for the salvage of persons and for assistance or salvage of the aircraft or of the articles on board, an equitable allocation shall be made upon the bases and within the limits of Articles 3 and 4, of the expenses incurred and the damages suffered.

Comment: Example: Ship A picks up 20 persons from an aircraft. Ship B picks up the aircraft cargo consisting of gold, money, stocks, bonds, motion picture films, and saves one of the engines. Ship A's expenses are \$10,000; ship B's expenses are \$5,000. These expenses are to be "equitably allocated." There should be no difficulty in doing so, if there is not money enough to go around. Sub-section (5) of this Article 4 seems to apply the same rule, *mutatis mutandis*, when aircraft (alone or with vessels) accomplish a salvage of maritime property.

*Draft Convention, Annotated***(3) *Limit of Property Salvage—to Value Saved.***

The remuneration can never exceed the value of the property salvaged at the conclusion of the operations of assistance and salvage.

Comment: The 1910 convention provides the same thing in Article 2 (par. 3). The provision is satisfactory.

(4) *Division of Remuneration Among Several Salvor Ships or Aircraft.*

In case there has been assistance or salvage by *several ships* or aircraft, the remuneration shall be divided among them on the bases established in paragraph one of this article.

Comment: The new convention does not contain a *sister-ship* provisions such as is found in the 1910 Maritime Salvage Convention, Article 5. The Netherlands Association proposed the inclusion of that clause in 1934; and its desirability seems obvious.

(5) *Salvage Services Rendered by Aircraft to Ships.*

The same rules shall apply in case of assistance and salvage of a vessel or its cargo by an aircraft, in which case the owner or armateur of the ship is reserved the right to avail himself of the limit of liability fixed for him by the laws and conventions in force.

Comment: This provision wholly reverses the text of 1933, Article 2 (2). Hence it was never even considered by the Paris Sub-Committee nor by the various national maritime law associations which prepared memoranda, because it was not contained in the text (Annex 2) submitted to them for comment. See the comment on Article 14.

There appears to be a fundamental difference of opinion about the scope of the 1910 Maritime Salvage Convention and about the nature of salvage services, and the character of the parties who are entitled to receive salvage awards. At the meeting of the Citeja Third Commission in February, 1936, Professor Ripert stated that the 1910 Maritime Salvage Convention is interpreted to apply

only if two ships are concerned. This seems to imply that it has no application if the salvor does not happen to be in a salving ship; it seems to overlook Article 15, which states that the convention applies to persons (*les intéressés*). If he meant that, in the future, the Air Salvage Convention is intended to take over the whole field of salvage at sea, except when only two ships are concerned without any aircraft present, then his statement confirms the view that the new convention is a challenge to the older one of 1910. If on the other hand he meant that, in his view, the theory of maritime salvage is limited to relations between two ships, then it is submitted that the English and American maritime law of salvage is firmly settled to the contrary. It is submitted that a salvage service rendered by persons in aircraft to vessels, vessel-cargoes and persons in or ex-vessels, are today and always have been entitled to remuneration under the 1910 Salvage Convention, or at least under the traditional English and American case law. Lord Justice KENNEDY on "The Law of Civil Salvage" (second edition, 1907), says, at page 123:

"Every act of effectual assistance if it is done voluntarily to save that which is at the time in danger is of the nature of salvage,"

and catalogues many different forms of service, many of which do not involve the use of an independent vessel by the salvor, as for example: the piloting or navigating into safety the ship which is in danger or distress, the setting in motion, fetching or bringing of assistance to a ship in danger or distress, the protection or rescue of a ship or her cargo or the life on board of her from plunderers—a service which may be rendered on board the ship, by one who is not a member of the crew; the extinction of a fire on board the ship—a service often performed by passengers when the ship is at sea or by passers-by when the ship is moored; the removal of a ship or cargo from a place where it is in imminent danger of catching fire—a service frequently performed by persons on land who board a moored ship and remove her from the vicinity of the fire on the land; the saving by purchase from the enemy of a captured ship and the bringing of her to her home port for the purpose of restoring it to her owners; the saving of a ship from an impending collision—a service usually performed by

someone on board who is not bound by duty as a member of the crew.

At page 71 Lord Justice KENNEDY also says:

“The court of admiralty as a general rule makes two requirements of those who claim to rank as salvors: (1) that they have been *personally engaged* in the service in respect of which they claim reward, (2) that they have undertaken the services at volunteers.”

He quotes Sir CHRISTOPHER ROBINSON in the *Thetis*, 3 Hagg. 14, 41, as saying:

“Salvage in its simple character is the service of those who recover property from loss or danger at sea, render to the owners, with the responsibility of making restitution, and with a lien for their reward. *It is personal in its primary character, at least; * * * for by whom can the service be said to be ostensibly performed but by those who recover the thing? * * * the Court looks primarily to the actual salvor. * * * There is no principle of constructive assistance in civil salvage.*”

At page 73 he points out that an exception, however, is made in favor of the owners of the salving vessel, and quotes Lord STOWELL in the *Vine*, 2 Hagg. 1, 2:

“It is the general rule that a party not actually occupied in effecting a salvage service is not entitled to a salvage remuneration. The exception to this rule, that not infrequently occurs, is in favor of owners of vessels which, in rendering assistance, have either been diverted from their proper employment or have experienced a special mischief occasioning the owners some inconvenience and loss, for which an equitable compensation may reasonably be claimed.”

Whether the existing law should be changed has already been discussed under Article 4 (1).

Whatever the law may be in other countries, it is firmly settled in the British Empire and in the United States that *salvage is paid primarily to persons for their services, and not to shipowners for the diversion of their ships*. The proposal of a system based on the view that salvage is payable primarily to the owners of ships and aircraft therefore requires the most serious attention. The adoption of a differing system seems sure to lead to great compli-

cations in situations where a ship is liable for salvage service in part to an aircraft and in part to persons on other ships, or to persons on neither a ship nor an aircraft. The debates and reports on the new convention do not indicate that these possibilities have been adequately explored, nor that they have ever been considered by the owners of ships and by marine underwriters.

The provision allowing a shipowner to limit his salvage liability for property salvage under national laws may be considered in three aspects:

- his interest in life salvage of persons in his ship;
- his interest in his own property, the ship and her freight;
- his interest as bailee of his cargo.

The life-salvage matter has already been dealt with under Articles 2 and 3.

The shipowner's interest in his ship and freight is not capable of further limitation under the United States statutes, because our laws (see Maritime Law Association Document 196) measure the owner's whole liability (other than for life) by the value of the ship and freight after the accident. The German law is to the same effect.

In other countries, where the owner limits to £8 a ton (as in the British Empire) or to not exceeding £8 a ton (as in the 1925 Limitation Convention countries*), the proposed provision would apparently mean that the shipowner's salvage liability could never exceed those values.

Example A: A vessel of 5,000 tons, with a limitation value, at £8, of £40,000, is in peril and is saved by a tug under the guidance of an aircraft. If the salvage award exceeds £40,000 (a most unlikely event), the shipowner may limit the award to £40,000.

Example B: The same vessel, after the salvage, reaches port with an actual value of only £5,000. If in England, the owner still has to respond up to £40,000. If in France or some other

* Belgium	France	Portugal
Brazil	Italy	Spain
Denmark	Netherlands	Sweden
Finland	Norway	

convention country, he may limit (as in the United States and Germany) to the actual value, namely: £5,000. But of course the salvage award cannot exceed the salvaged value, Article 4 (3). Hence the reservation of the right to limit seems illusory.

The Belgian memorandum of 1934 suggested another possible interpretation (page 27), namely, that "the owner of the aircraft (and/or ship) may be called upon to pay for the salvage of persons an indemnity equal to the value of the aircraft (and/or ship) before the accident, and, in addition to this, if the aircraft (and/or ship) is salvaged, an indemnity for its salvage."

It is at least uncertain whether the award for salvage of the ship is to be lumped with all other liens and ranked against the limitation fund, or whether there are to be two—or possibly three—funds, each measured by the maritime limitation laws: one fund for life-salvage (Article 3), one for ship-property salvage (Article 4) and the third for all ordinary maritime lienors. Such a result would be most distressing for shipowners, and would force them to use every possible device to avoid using aircraft in situations involving any possibility of salvage. This would be socially disadvantageous.

There remains the possibility that the shipowner is liable for the salvage awards on account of his cargo, and may limit his liability against that eventuality. The 1933 text, as already stated, did in fact propose exactly that. The Paris Sub-Committee objected to it, and it seems fairly clear that the 1936 text has abandoned the idea. To prevent any uncertainty, however, it is suggested that there should now be an unequivocal statement from the Citeja that there is no longer any intention to impose on shipowners a liability for cargo salvage awards.

ARTICLE 5. COMBINED SALVAGE OF LIFE AND PROPERTY.

In case there has been both assistance and salvage of persons and of property, the one who has saved persons shall be entitled to a fair share of the remuneration granted for the salvage of the property, without prejudice to the right to an indemnity which he has under Article 3.

Comment: This provision is analogous to the 1910 Conven-

tion, Article 9 (par. 2). But under the 1910 convention the life-salvor's *entire* recovery is out of the property salvage. Whereas under this Aviation convention, the life-salvor would first recover his out-of-pocket from the owner and/or operator of the wrecked ship or aircraft, and then come in on the property salvage for an extra award, based on his courage, skill, speed, and success. To that extent the new convention goes beyond the existing law. See comment on Article 3 (1). The new proposal is not unattractive. The need of revising the present salvage law has been repeatedly urged by laymen since the *Vestris* disaster in 1928, where the facts suggested that the Captain may have delayed his S. O. S. in the hope of obtaining the needed assistance from a sister-ship.

ARTICLE 6. PROHIBITION OF SALVAGE—REDUCTION OF
REMUNERATION.

(1) *Right to Prohibit Salvage Service.*

No indemnity or remuneration shall be due if the assistance was rendered or the salvage effected in spite of express and reasonable prohibition to do so by the one who was assisted or salvaged.

Comment: The 1910 convention, Article 3, is analogous, and the proposition is sound.

(2) *Right of Court to Reduce Remuneration if Salvor Negligent.*

The court may reduce or disallow the indemnity or the remuneration if it appears that the person who performed the operation of salvage or assistance, through his negligence, rendered the salvage or assistance necessary, or has increased the damage.

Comment: The 1910 convention, Article 8, par. 3, has a somewhat similar, but broader provision. The Italian memorandum and the Paris Sub-Committee expressly recommended the use of the 1910 text; it should be noted that Article 10 gives the court control of inequitable salvage agreements.

ARTICLE 7. WHO SHALL PAY SALVAGE AWARDS.

(1) **The remuneration due for the operations of assistance or salvage shall be payable by the operator of the assisted aircraft or the owner or the armateur of the assisted ship.**

(2) *Recourse of Aircraft Operators.*

The operator of the aircraft shall have a recourse against the owners of goods for such part of the remuneration as pertains to assistance and salvage of such goods.

(3) *Recourse of Shipowners.*

The recourse of the owner or of the armateur of the ship against owners of goods shall remain subject to maritime rules.

Comment: This was emphatically opposed by the British, Belgian, Italian and Dutch memoranda; and the Paris Sub-Committee took a positive stand against this article. Nevertheless, it is still retained in the text.

This provision appears to mean that the shipowner or operator is always primarily liable to salvors of cargo, and, after he has paid the salvors, is entitled to seek reimbursement from the cargo owners. Nothing is said about the possession of the cargo. If the shipowner pays the cargo salvage, he ought to get possession of the cargo. But why should the cargo be given to the shipowner? The shipowner does not necessarily have any interest whatsoever in the cargo, and the adjustment of cargo salvage ought to be attended to by the salvor and the cargo owner and his cargo underwriters, without requiring the intervention of the shipowner who may have no interest therein. Of course, if the shipowner wishes to act as bailee for the cargo, that situation should not be forbidden (KENNEDY, page 210), but after the vessel is a total loss and the voyage is broken up, there is no necessity or logical reason why the shipowner or ship operator should be injected into the direct relations between cargo salvors and cargo owners. The provision that shipowners shall have recourse against cargo owners "subject to maritime rules" is hardly a satisfactory way of stating the subrogation rights of a bailee of the cargo.

ARTICLE 8. PROPERTY IMMUNE FROM SALVAGE.

Neither the personal effects and baggage of the crew and passengers, nor articles transported under the regime of postal conventions, are to be included in the property, either for purposes of calculating the remuneration, or with regard to the recourse to be exercised.

Comment: This was not in the 1933 text and has not been considered by maritime interests. Some of these exclusions have been customary (KENNEDY, page 59) in various countries, but this is the first attempt to insert all or any of them in an International Convention text. The American law is not in accord with these provisions. The 1910 Maritime Salvage Convention does not so provide.

One result of this provision would seem to be that if baggage on a ship is salvaged through the combined efforts of another ship and aircraft, the baggage might be liable for salvage to the other ship but not to the aircraft.

Shipowners should also consider that most of the property in aircraft is likely to consist of personal property, baggage, and postal matter. When a ship renders salvage service to an aircraft, a large part of the value in the aircraft is, therefore, proposed to be immune from salvage. This seems quite wrong.

ARTICLE 9. TIME FOR SUIT, ONE YEAR.

(1) Indemnity and remuneration actions must be brought within one year from the end of the operations of assistance.

(2) The method of calculating the limitation period, as well as the causes of suspension and interruption of such period, shall be determined by the law of the court before which the case is brought.

Comment: The 1933 text limited the time to two years.

The 1910 Maritime Convention also limits the time to two years. One year seems unreasonably short. No reason has been advanced for shortening the period from two years to one. The two year provision should be restored.

ARTICLE 10. SALVAGE AGREEMENTS SUBJECT TO CONTROL OF COURT.

Any agreement for assistance and salvage entered into at the time and under the influence of danger may, at the request of one of the parties, be annulled or modified by the court, if it considers that the terms thereof are not equitable, and particularly when the remuneration is excessively large or small and out of proportion with the services rendered.

Comment: This provision is taken from the 1910 Maritime Convention.

Article 6 (2) gives the Court the right to reduce or disallow awards to salvors who are negligent in creating the situation of peril or in performing the salvage service.

ARTICLE 11. JURISDICTION OF SALVAGE SUITS.

(1) To hear indemnity or remuneration actions the following authorities shall have jurisdiction, in the territory of each one of the High Contracting Parties, at the option of the plaintiff:

1. the judicial authorities of the defendant's domicile,
2. those of the place where the operations of assistance and salvage were effected and,
3. if there has been an attachment of the aircraft or of the cargo salvaged, the judicial authorities of the place of such attachment.

Comment: English and American members of the Comité have been uniformly opposed to jurisdictional clauses. French members on the whole have strongly advocated such provisions. It is self-evident that jurisdiction can be had in situations 1 and 3. There seems little reason for the second unless the property is attached there, in which event the third applies.

The Anglo-Saxon sentiment is undoubtedly opposed to the inclusion of this article.

The 1910 Convention has no analogous provisions.

(2) *International Co-operation of Courts to Prevent Limitations of Liability Being Exceeded.*

If different salvors bring actions before courts situated in different countries, the defendant may, before each one of them, submit a statement of the total amount of the claims and money due, with a view to preventing the limits of his liability from being exceeded.

Comment: This novel and useful provision allows the defendant who is sued by different salvors in different countries on account of the same salvage to produce statements to the various courts of the aggregate claims allowed, so that his aggregate liability under the Convention may not be exceeded.

It contemplates international co-operation between the Courts. A similar provision is found in the Brussels Convention of 1925 relating to Limitation of Shipowners' Liabilities, and is now in effect in France and nine other important European maritime countries.

A similar article in the Rome Convention, Article 11, has resulted in the inclusion of such a provision in the British Carriage by Air Act 1932 (2nd schedule (4)). The principle appears to have possibilities of great usefulness.

ARTICLE 12. DEFINITION OF "EXPLOITANT."

Any person who has the right to use an aircraft and who uses it for his own account shall be termed the exploitant of the aircraft. In case the name of the exploitant is not recorded on the aeronautic register or any other official document, the owner shall be deemed to be the exploitant subject to proof to the contrary.

The French text reads: Est qualifiée exploitant de l'aéronef toute personne qui en a la disposition et qui en fait usage pour

son propre compte. Au cas où le nom de l'exploitant n'est pas inscrit au registre aéronautique ou sur tout autre pièce officielle, le propriétaire est réputé être l'exploitant jusqu'à preuve du contraire.

Comment: The 1933 text imposes all the rights and duties with respect to aircraft upon the *exploitant*, which the British Maritime Committee then translated as *operator*. All of the National Associations at that time called on the Citeja to define the word *exploitant* more precisely.

The 1933 text did not deal with ships and shipowners, except to say that services rendered to persons on ships should be remunerated according to the salvage laws applying to ships. Consequently the word *exploitant* was not at that time used in any respect in relation to ships and shipowners.

The 1936 text has defined the word "*exploitant*" in relation to *aircraft* in the text quoted above. This definition corresponds to that found in the Rome Aviation Convention relating to damage to persons and property on the surface of the earth, Article 5. That definition has been much criticized in aviation circles and is not thought to be adequate.

The 1936 text uses the word "*armateur*" in relation to *ships and ship-owning and ship-operating*, and repeats the defect of 1933 by failing to define its meaning. The entire text must be unsatisfactory to shipping interests until the words employed are properly defined in terms familiar to the shipping industry and with well-settled meanings in maritime law.

Exploitant is a French commercial term which is not thought to have been used heretofore in connection with shipping. The French word for a shipowner is *propriétaire* (Ripert, Droit Commercial, Chapter 2). The *propriétaire* is also called *armateur*. (Ripert, Sec. 753. See also Danjon et Leparneur, Manuel de Droit Maritime (2nd ed., 1929) section 10.) A bare-boat charterer who "mans, victuals and supplies the ship" in the American statutory phraseology, or who "manages and navigates the ship" in the British statutory phraseology, is also called an *armateur*, and is called a *fréteur*. A charterer is an *affréteur*. A charter of a ship manned by a crew is a *Charter Armé*. A time charter is a *charter pour le voyage*. A carrier is a *transporteur*. All of these

expressions are found in the index of Ripert, Droit Commercial. But the word *exploitant* is nowhere found in Professor Ripert's index. Nor is it found in the exhaustive digests of maritime law published in connection with M. Leopold Dor's *Revue de Droit Maritime Comparé*, nor in Witcomb et Tiret's *Dictionnaire des Termes de Marine*. The basic difficulty is that the French define the *armateur* as the person who derives the profits, whereas the Americans and the English think of the corresponding *owner pro hac vice* as the person who directs and pays the bills for manning, victualing, managing and navigating the ship. The profit may be split several ways between shipowners, managers, freighters and brokers, to such an extent that the definition of *armateur* in terms of profits may become quite vague. Giving directions and paying the bills, on the contrary, is usually concentrated in one agency. This was pointed out to the Second Commission of the Citeja at its meeting in February, 1936, and the construction of an agreed technical vocabulary in French, English, German and Italian was proposed so as to minimize the confusion being produced by the use of indefinite expressions; this was taken under consideration by Professor Cogliolo, the Italian Reporter of the Second Commission, who is in charge of a draft convention on the hiring or chartering of aircraft.

It is fairly obvious that the word *exploitant* is used in the 1936 air salvage text in the sense of the English word *operator*, although the British Maritime Association indicated in 1934 that it ought to be translated as *charterer by demise*, "to include the classes of persons who would be covered by the provisions of section 9, subsection 4, of the Maritime Conventions Act, 1911," which states that "This Act shall apply to any persons other than the owners responsible for the fault of the vessel as though the expression 'owner' included such persons, and in any case where, by virtue of any charter or demise, or for any other reason the owners are not responsible for the navigation and management of the vessel, this act shall be read as though for reference to the 'owners' there were substituted reference to the charterers or other persons for the time being so responsible."

The American and British difficulty with the word *armateur* is that it does not precisely fit into their schemes of limitation of ship-owners' liability. No person can limit his liability unless he is

Draft Convention, Annotated

either actually the owner (*propriétaire*) or the demise charterer (*charter à coque nue*) or owner *pro hac vice*. Substantially the same thing is true in Great Britain. Consequently the use of the word *armateur* and the word *operator* is quite useless from the point of view of shipowners and ship operators.

The Brussels Convention of 1925 relative to Limitation of Shipowners' Liability had to deal with this identical problem, and it was solved by the use of the single expression "*propriétaire du navire*" (shipowner). It then provides in Article 10 that the right to limit shall be extended to "*l'armateur non-propriétaire ou l'affrètement principal*" (the non-owning company or the principal chartered owner), who is liable for any of the classes of lien-claims against which a shipowner may limit his liability. This language was carefully chosen by fully empowered delegates of shipowners, marine insurance underwriters and representatives of the Admiralty Bar, for the particular purpose of adapting the Convention to the terminology and legal thought of all countries, whether under the Roman and Civil Law or under the English Admiralty and Common Law. After ten years, there is still no reason to suppose that the phraseology so carefully chosen in the 1925 Limitation Convention is not suitable for the purpose. The 1925 Limitation Convention is now in satisfactory operation as the law in France and in nine other European countries. Its method and phraseology should be adopted.

The solution therefore is to strike out the word *armateur* wherever it occurs in connection with ship-owning and operating, and to concentrate all the rights and duties in relation to ships upon the owner. The settled statutory and case law of the British Empire and the United States and Article 10 of the Brussels Limitation Convention, relating to the extension of the owners' rights and liabilities to bare-boat charterers and owners *pro hac vice* will then take care of armateurs, bare-boat charterers, etc., etc., according to the well-settled rules.

ARTICLE 13. APPLICATION OF CONVENTION TO GOVERNMENT SHIPS AND AIRCRAFT.

This Convention shall apply to government ships and aircraft, including military, customs and police ships or aircraft, with reservation of the provisions of Article 11 relating to jurisdiction and, as regards military, customs and police ships or aircraft, with reservation of the provisions of Article 2 relating to the obligation of assistance and salvage.

Comment: Government ships and aircraft are relieved from the obligation to answer the S. O. S. and go to the scene where persons are in danger.

The 1910 Salvage Convention (Art. 14) is not applied to government ships in public service. Since 1910, however, there has been a strong swing away from sovereign immunity for government vessels. The Safety at Sea Convention, 1929 applies to all public vessels except ships of war. The proposed text conforms to this tendency, and is desirable.

ARTICLE 14. SCOPE OF CONVENTION—WHEN ITS PROVISIONS APPLY.

The provisions of this Convention shall be applied with respect to all interested parties when either

1. the assisting or salvaging ship or aircraft or
2. the assisted or salvaged ship or aircraft

belong to a government of one of the High Contracting Parties or is registered therewith.

Comment: The foregoing statement of the scope of the Convention—which was not contained in the 1933 text at all and hence was not considered by the Paris Sub-Committee—fully proves the argument heretofore advanced that the 1936 Air Salvage Convention is intended wholly to supersede the 1910 Maritime Salvage Convention in all mixed salvage situations where both ships and aircraft are concerned. The 1910 Convention would thereafter apply only to situations relating exclusively to ships, with no air-

Draft Convention, Annotated

craft present as either a salvor or a salvee. At the present time, with some 20,000 ships sailing the high seas and not more than 200 aircraft regularly engaged in crossing the high seas, this may not seem important. But the small number of aircraft, passing at very high speeds, already cover a relatively large mileage as compared with the ships and with the number of aircraft increasing, as they are sure to do, it will soon be a major question whether, in mixed salvages concerning aircraft and ships, the ships shall follow the aircraft or the aircraft shall follow the ships. A decision on this fundamental matter of policy is now required. This decision should be made after the fullest consideration by the interests concerned, most especially by the shipowners and the marine insurance underwriters.

Note Concerning Translation.

The texts are in French and the difficulties of translation are not to be underestimated.

The 1933 text here presented is that prepared by the British Maritime Committee. Comité Bulletin 97, p. 13.

The 1936 text here presented is that prepared by the State Department with the following exceptions.

1. No effort has been made to translate the word *armateur* in relation to shipowners and operators for reasons set forth in the discussion of Article 12.

2. Article 4 (1) is like the 1910 Convention, Art. 8. Hence the translation of Art. 8 found at 37 Statutes at Large 1671 has been adopted.

The State Department translators have suggested a slightly different text having the same general meaning.

3. In Article 5 and Article 11 (2) slight changes from the State Department translation are indicated to clarify the text.



ANNEX 2.

DRAFT CONVENTION, 1933

as submitted to the International Maritime Committee
Paris Sub-Committee, 1934

by the

INTERNATIONAL TECHNICAL COMMITTEE OF EXPERTS
ON AERIAL LAW

C. I. T. E. J. A.

Draft-Convention on Salvage of Aircraft as prepared
by the third Citeja Committee London,
2nd October, 1933.*

ART. 1.—(1) In cases where persons in an aircraft are in danger of being lost or are in danger by reason of damage to the aircraft, every Captain or Pilot of aircraft and every Captain of a ship is bound to render assistance in so far as he is able to reach the place where such persons or aircraft are, without serious danger to himself, his crew and his passengers so long as there is a possibility of rendering useful assistance.

(2) This obligation ceases when such Captain or Pilot is satisfied that assistance is being rendered by others in more favourable conditions than those under which he himself could render such assistance.

(3) National laws will determine the penalties to which any persons who ignore such obligation shall be subject.

(4) No penal or civil responsibility can rest upon the owner or operator (*exploitant*) of the ship or aircraft by reason of his noncompliance with such obligation.

ART. 2.—(1) Every Captain or Pilot of aircraft must render assistance to any person in peril on a ship at sea or being in peril in consequence of damage to a ship.

* Translation of the British Maritime Committee, as printed in Comité Bulletin 97.

1933 Draft

(2) The conditions upon which this assistance shall be rendered and remunerated are to be determined by the same rules as though salvage had been rendered by one ship to another.

ART. 3.—(1) Every aircraft or ship which has rendered assistance has the right to be indemnified in respect of expenses and damage sustained in the course of such operations.

(2) If the assistance was rendered spontaneously and without any obligation to do so, the salvor shall only be indemnified where a useful result has been achieved by salvaging goods or persons or in contributing to the salvage.

ART. 4.—Where there has been salvage of goods the salvor has the right to salvage remuneration, the amount of which shall be fixed according to the following principles:

(a) The expenses, costs and risks run by the salvor, the damage which he has sustained; the value and, when material, the particular destination of the salvor; the danger run by the salvaged person or property and the difficulties of salvage.

(b) The value of the property salvaged.

ART. 5.—Where both persons and goods have been salvaged, he who has salvaged the persons has the right to a proportion of the remuneration granted to the salvor of the goods.

ART. 6.—The indemnity or remuneration above referred to shall be due in every case from the operator (*exploitant*) of the aircraft, subject however to his right to recover contribution from the shipper of goods where such goods have been salvaged. Such indemnity or remuneration shall not exceed the value of the aircraft before the accident.

ART. 7.—An action for indemnity shall be brought within two years from the date when the salvage services terminated.

ART. 8.—Any agreement relating to assistance or salvage, made in circumstances of danger, may, upon demand by either party, be annulled or modified by the judicial authority in respect of the remuneration promised when the terms of such agreement are not equitable.

ART. 9.—This Convention is applicable to state aircraft even when appropriated to the public service.

ANNEX 3.

BRUSSELS CONVENTION OF 1910.*
for the unification of certain rules relating to the
SALVAGE OF VESSELS AT SEA.
37 U. S. Statutes at Large 1670.

ARTICLE 1.

Services applicable to seagoing and inland navigation alike.

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 to each other by seagoing vessels and vessels of inland navigation are subject to the following provisions, without any distinction being drawn between the two kinds of service and in whatever waters the services have been rendered.

ARTICLE 2.

Remuneration.

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 salvaged.

ARTICLE 3.

Prohibition.

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

ARTICLE 4.

Tugs.

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 services which can not be considered as rendered in fulfilment of the contract of towage.

* List of ratifying countries given at page 2411.

ARTICLE 5.

Vessels of same owner.

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

ARTICLE 6.

Amount of remuneration.

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 among the salvors is fixed in the same manner.

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

ARTICLE 7.

Modification of agreements.

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

Annulment, etc.

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.

Basis of remuneration.

The remuneration is fixed by the court, according to the circumstances of each case, on the basis of the following considerations: (a) First, the measure of success obtained, the efforts and the 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 losses suf-

ferred, and the risks of liability and other risks run by the salvors, and also the value of the property exposed to such risks, due regard being had, the case arising, to the special adaptation of the salvor's vessel: (b) second, the value of the property salvaged.

The same provisions apply to the apportionment provided for by the second paragraph of article 6.

Authority of court.

The court may reduce or deny remuneration if it appears that the salvors have by their fault rendered the salvage or assistance necessary, or have been guilty of theft, receiving stolen goods, or other acts of fraud.

ARTICLE 9.

Persons rescued.

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

Share of salvors of life.

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 accessories.

ARTICLE 10.

Limitation of actions.

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

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.

Right of extension reserved.

The High Contracting Parties reserve to themselves the right to provide by legislation in their respective countries that the said periods shall be extended in cases where it has not been possible to arrest the vessel assisted or salvaged in the territorial waters of

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the State in which the plaintiff has his domicile or principal place of business.

ARTICLE 11.

Assistance to be rendered.

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

Owner not liable for failure.

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

ARTICLE 12.

Legislation to be proposed.

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 measures necessary for the prevention of such infringements.

Notification of laws.

The High Contracting Parties will communicate to one another, as soon as possible, the laws or regulations which have already been or may be hereafter promulgated in their States for the purpose of giving effect to the above undertakings.

ARTICLE 13.

Public organization, etc., not affected.

The convention does not affect the provisions of national laws or international treaties as regards the organization of services 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.

Ships of war, etc.

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

ARTICLE 15.

Application of provisions.

The provisions of this convention shall be applied as regards all persons interested when either the assisting or salving vessel or the vessel assisted or salvaged belongs to one of the contracting States, and in any other cases for which the national laws provide.

Provided always, that:

Noncontracting States.

1. As regards persons interested who belong to a noncontracting State the application of said provisions may be made subject by each of the contracting States to the condition of reciprocity.

Application of national law.

2. Where all the persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the convention are applicable.

Restriction as to Article 11.

3. Without prejudice to any wider provisions of any national laws, article 11 only applies as between vessels belonging to the States of the High Contracting Parties.

ARTICLE 16.

Future conferences.

Any one of the High Contracting Parties shall have the right three years after this convention comes into force to call for a fresh conference with a view to seeking such ameliorations as may be brought therein, and particularly with a view to extending, if possible, the sphere of its application.

Notification.

Any power exercising this right must notify its intention to the other powers, through the Belgian Government, which will see to the convening of the conference within six months.

ARTICLE 17.

Acceptance of non-adhering countries.

States which have not signed the convention are allowed to

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adhere to it on request. Such adhesion shall be notified through the diplomatic channel to the Belgian Government and by the latter to each of the other Governments. It shall become effective one month after the sending of the notification by the Belgian Government.

ARTICLE 18.

Ratification. Official notification of signing.

The convention shall be ratified.

After an interval of at most one year from the day on which the convention is signed, the Belgian Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the convention with a view to deciding whether it is expedient to put (it: sic) into force.

Deposit of ratification.

The ratification shall, if so decided, be deposited forthwith at Brussels, and the convention shall come into force a month afterwards.

The protocol shall remain open another year in favor of the States represented at the Brussels Conference. After this interval they can only adhere to it on conforming to the provisions of Article 17.

ARTICLE 19.

Denunciation.

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

Signatures.

In witness whereof the plenipotentiaries of the respective High Contracting Parties have signed this convention and have affixed their seals thereto.

Done at Brussels, in a single copy, the 23rd September, 1910.

[Here follow signatures.]



The 1910 Salvage Convention originated with the Comité Internationale Maritime. It has been ratified or adhered to, and is now in effect in, the following countries:

Germany, Austria (pre-war Empire), Belgium (and colonies), Brazil, Denmark (excluding overseas possessions), United States of America, France (and colonies), Great Britain (including the Dominions, the Irish Free State, and the pre-war colonies, but not Egypt), Greece, Hungary, Italy (including pre-war colonies), Japan (including Chosen (Korea) and Taiwan (Formosa)), Mexico, Norway, Netherlands (excluding colonies), Portugal (including colonies), Rumania, Russia (pre-war Empire), Sweden.

ANNEX 4.

SAFETY OF LIFE AT SEA CONVENTION, LONDON, 1929.

ARTICLE 45.

49 U. S. Statutes at Large —.

Distress messages. Procedure.

1. The master of a ship on receiving on his ship a wireless distress signal from any other ship, is bound to proceed with all speed to the assistance of the persons in distress, unless he is unable, or in the special circumstances of the case, considers it unreasonable or unnecessary to do so, or unless he is released under the provisions of paragraphs 3 and 4 of this Article.

2. The master of a ship in distress, after consultation, so far as may be possible, with the masters of the ships which answer his call for assistance, has the right to requisition such one or more of those ships as he considers best able to render assistance, and it shall be the duty of the master or masters of the ship or ships requisitioned to comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress.

3. A master shall be released from the obligation imposed by paragraph 1 of this Article as soon as he is informed by the master of the ship requisitioned, or, where more ships than one are requisi-

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tioned, all the masters of the ships requisitioned, that he or they are complying with the requisition.

4. A master shall be released from the obligation imposed by paragraph 1 of this Article, and, if his ship has been requisitioned, from the obligation imposed by paragraph 2 of this Article, if he is informed by a ship which has reached the persons in distress, that assistance is no longer necessary.

5. If a master of a ship, on receiving a wireless distress call from another ship, is unable, or in the special circumstances of the case considers it unreasonable or unnecessary to go to the assistance of that other ship, he must immediately inform the master of that other ship accordingly, and enter in his log-book his reasons for failing to proceed to the assistance of the persons in distress.

6. The provisions of this Article do not prejudice the International Convention for the unification of certain rules with respect to Assistance and Salvage at Sea, signed at Brussels on the 23rd September, 1910, particularly the obligation to render assistance imposed by Article 11 of that convention.

Ratified by the President, July 7, 1936.

Effective November 7, 1936.

The 1929 Safety of Life at Sea Convention originated with the invitation of the British Government. It has been ratified or adhered to, and is now in effect in, the following countries:

Germany, Argentina, Australia, Belgium (and colonies), Brazil, Bulgaria, Canada, China, Danzig, Denmark (excluding overseas possessions), Egypt, Esthonia, United States of America, Finland, France (including colonies), Great Britain (including all crown colonies, territories under mandate and possessions), Hungary, Iceland, India, Irish Free State, Italy (and colonies), Japan (including Chosen (Korea), Taiwan (Formosa) and Kwantung), Netherlands (including colonies), New Zealand, Norway, Panama, Poland, Portugal (including colonies), Spain (including colonies), Sweden, Union of Soviet Socialist Republics.

ANNEX 5.

Passages from the British Air Navigation Act, 1936, amending the Air Navigation Act 1920 as to salvage of aircraft and their cargoes at sea, to read as follows:

“ 11.—(1) Any services rendered in assisting, or in saving life from, or in saving the cargo or apparel of, an aircraft in, on or over the sea or any tidal water, or on or over the shores of the sea or any tidal water, shall be deemed to be salvage services in all cases in which they would have been salvage services if they had been rendered in relation to a vessel; and where salvage services are rendered by an aircraft to any property or person, the owner of the aircraft shall be entitled to the same reward for those services as he would have been entitled to if the aircraft had been a vessel.

“ The preceding provisions of this sub-section shall have effect notwithstanding that the aircraft concerned is a foreign aircraft, and notwithstanding that the services in question are rendered elsewhere than within the limits of the territorial waters adjacent to any part of His Majesty's dominions.

“ (2) His Majesty may by Order in Council direct that any provisions of any Act for the time being in force which relate to wreck, to salvage of life or property or to the duty of rendering assistance to vessels in distress shall, with such exceptions, adaptations and modifications, if any, as may be specified in the Order, apply in relation to aircraft as those provisions apply in relation to vessels.

“ (3) For the purposes of this section, any provisions of an Act which relate to vessels laid by or neglected as unfit for sea service shall be deemed to be provisions relating to wreck, and the expression “ Act ” shall be deemed to include any local or special Act and any provisions of the Harbours, Docks, and Piers Clauses Act, 1847, as incorporated with any local or special Act, whenever passed.”

NOTE: The Irish Free State has enacted the same provisions in the Irish Air Navigation Act, 1936.

ANNEX 6.**RESOLUTIONS ADVOCATING MODIFICATIONS OF
THE TEXT OF 1935.**

THE MARITIME LAW ASSOCIATION OF THE UNITED STATES.

Annual Meeting, May 8, 1936.

WHEREAS, the International Technical Committee of Experts on Air Law has proposed a Draft Convention concerning salvage operations at sea, in which aircraft may be concerned, and the same has been considered by the Aviation and Admiralty Committee of this Association, be it

RESOLVED that the Maritime Law Association of the United States, while approving the general principles expressed in the proposed Convention, urgently recommends that the following six points in the said Convention shall be reconsidered with a view to their amendment in the respects indicated:

1. Elimination of provisions as to salvage services rendered by aircraft to vessels, vessel cargoes and freights, the same being already adequately covered by law.
2. Cargo to pay the salvor directly for the salvage service, instead of through the carrier, who has no interest therein. The Convention should provide a maritime lien or a lien in the nature of a maritime lien directly upon all aircraft property, aircraft cargo and aircraft freight to which salvage services are rendered at sea by persons, aircraft and vessels.
3. The definition of 'cargo' to include all property in the aircraft, specifically baggage, personal possessions, parcel post and general mail matter.
4. An S. O. S. under the Aviation Salvage at Sea Convention to have precisely the same legal meaning and effect as an S. O. S. under the Maritime Safety at Sea Convention, London, 1929, Section 45.
5. Reward of successful lifesaving efforts, requested by S. O. S., should consider speed, skill and courage in rendering or attempting to render the service as well as out-of-pocket expenses.

6. The obligation to search for fallen aircraft should be limited to such as the circumstances require, within the reasonable discretion of each ship master or aircraft pilot concerned.

The Secretary is directed to forward the foregoing resolution to the State Department and to seek the co-operation of the Admiralty Committee of the American Bar Association, the Admiralty Committee of the New York City Bar Association, the Boards of Marine Underwriters of New York and San Francisco and the American Steamship Owners' Association in respect thereof.

AMERICAN BAR ASSOCIATION.

Annual Meeting, August 27, 1936.

RESOLVED, that the American Bar Association, while approving the general principles expressed in the proposed draft convention relating to operations of salvage and assistance at sea as between aircraft and vessels, recommends that the draft of said convention, as proposed by the International Technical Committee of Aerial Legal Experts at its meeting at The Hague on September 24-27, 1935, be reconsidered with a view to amendment in the following six respects: (1) elimination of provisions as to salvage services rendered by aircraft to vessels, vessel cargoes and freights; (2) direct payments of salvage by cargo interests to salvors; (3) the definition of cargo to include all property in the aircraft; (4) the S. O. S. of an aircraft to have the same legal meaning and effect as an S. O. S. from a vessel under the Safety at Sea Convention, 1929, section 45; (5) reward of successful life-saving effort, requested by S. O. S., to consider speed, skill and courage, as well as out-of-pocket expenses; (6) the obligation to search for fallen aircraft to be limited to such as circumstances require within the reasonable discretion of the shipmasters and pilots concerned.

BOARD OF UNDERWRITERS OF NEW YORK.

Meeting of June 11, 1936.

WHEREAS, the co-operation of the Board of Underwriters of New York has been asked in the matter of the proposed Draft Convention concerning salvage operations at sea, in which aircraft may be concerned and,

American Resolutions

WHEREAS, an opportunity has been afforded the Board to consider the resolution adopted by the Maritime Law Association of the United States on this subject at its Annual Meeting on May 8th, 1936, be it

RESOLVED that the Directors of the Board of Underwriters of New York endorse in full the resolution adopted by the Maritime Law Association of the United States at its Annual Meeting on May 8th, 1936, including amendments to the Convention in accordance with the six points expressed by the Maritime Law Association (as per copy attached) ; further, that copies of this resolution be forwarded to the State Department and to the Maritime Law Association.

BOARD OF MARINE UNDERWRITERS OF SAN FRANCISCO.

Meeting of July 14, 1936.

WHEREAS, the cooperation of the Board of Marine Underwriters of San Francisco, Incorporated, has been asked in the matter of the proposed Draft Convention concerning salvage operations at sea, in which aircraft may be concerned and,

WHEREAS, an opportunity has been afforded the Board to consider the resolution adopted by the Maritime Law Association of the United States on this subject at its Annual Meeting on May 8th, 1936, be it

RESOLVED that the Directors of the Board of Marine Underwriters of San Francisco, Incorporated, endorse in full the resolution adopted by the Maritime Law Association of the United States at its Annual Meeting on May 8th, 1936, including amendments to the Convention in accordance with the six points expressed by the Maritime Law Association (as per copy attached) ; further, that copies of this resolution be forwarded to the State Department and to the Maritime Law Association.

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK.

Committee on Admiralty Law.

Report of May, 1936.

Your Committee has considered the proposed International Convention for the unification of certain rules relating to assistance and salvage of aircraft or by aircraft at sea, being Document 276 of International Technical Committee of Aerial Legal Experts, and held a joint meeting with the Committee on Aeronautics of this Association and discussed various objections to the proposed Convention. The Committee, while approving the general principles expressed in the proposed convention believe that only the provisions below specified come within their jurisdiction and that any other subjects should be dealt with by the aeronautical Committee.

Your Committee recommends that the following changes be made in the draft convention:

(a) Elimination of provisions as to salvage services rendered by aircraft to vessels. (Such salvage is already governed by the Salvage Convention, London, 1929, and the United States Salvage Act, U. S. Code, Title 46, Section 727, etc.)

(b) The cargo of the airship should pay the salvor directly for salvage services rendered to it instead of the airship being liable or its owner being liable therefor. A lien should be given upon all aircraft property, cargo and freight to which salvage services are rendered at sea by aircraft vessels and other persons. This would accord with the maritime law.

(c) The definition of air cargo should include all property in the aircraft, including baggage, personal possessions, parcel post and general mail matter. No reason is conceived why these should be exempt.

(d) The S. O. S. under the Convention should have the same legal meaning and effect as an S. O. S. under the maritime salvage at sea convention, London, 1929, Section 45.

It is obvious that there should not be two meanings of an S. O. S.

(e) In rewarding successful life saving efforts requested by S. O. S., speed, skill and courage in rendering or attempting to render the service, as well as out-of-pocket expenses, should be considered.

American Resolutions

(f) The provisions governing duty to render services or search for fallen aircraft should be reconsidered and further clarified and limited. Expenses of obligatory search should not exceed the limit of liability of the operator of the aircraft which has requested the service by S. O. S.

(g) The limitations on the jurisdiction of proceedings to recover salvage should be left to the laws of the several countries where proceedings are brought. It is thought wise for the Convention not to attempt to regulate such procedural matters in the various countries.

ANNEX 7.**DRAFT OF PROPOSED AIR SALVAGE AT
SEA CONVENTION.***

New York, December, 1936.

**ARTICLE 1. SCOPE OF CONVENTION—WHEN ITS PROVISIONS
APPLY.**

(1) The provisions of this Convention shall be applied with respect to all interested parties

A. when and only when

1. an aircraft in distress, and from which a person is assisted or property is salvaged, belongs to a government of one of the High Contracting Parties or is registered therewith, and

2. either the salvor (not being employed in respect of any aircraft or vessel) is a national of one of the High Contracting Parties, or the aircraft or vessel utilized in the salvage service belongs to a government of one of the High Contracting Parties or is registered therewith;

B. in any other cases for which the national laws provide.

(2) All other rights and duties relating to salvage and assistance at sea, of every other description whatsoever, shall continue to be governed by the Convention for the Unification of Certain Rules relating to Assistance and Salvage signed at Brussels on 23rd September, 1910, the Convention for Safety of Life at Sea signed at London on 31st May, 1929, and by the national laws.

Provided always, that:

Noncontracting States.

1. As regards persons interested who belong to a noncontracting State the application of said provisions may be made subject by each of the contracting States to the condition of reciprocity.

Application of national law.

2. Where all the persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the convention are applicable.

*NOTE: Wherever a provision is derived from an existing Convention, the source is indicated by the year of that Convention.

*Proposed Text**Restriction.*

3. Without prejudice to any wider provisions of any national laws, article 2 only applies as between aircraft and vessels belonging to the States of the High Contracting Parties.

Source: 1910, Article 15.

ARTICLE 2. LIFE SALVAGE.

Distress messages. Procedure.

1. The commander of an aircraft or the master of a ship on receiving on his aircraft or ship a wireless distress signal from any other aircraft or ship, is bound to proceed with all speed to the assistance of the persons in distress, unless he is unable, or in the special circumstances of the case, considers it unreasonable or unnecessary to do so, or unless he is released under the provisions of paragraphs 3 and 4 of this Article.

2. The commander of an aircraft or the master of a ship in distress, after consultation, so far as may be possible, with the commanders of the aircraft and the masters of the ships which answer his call for assistance, has the right to requisition such one or more of those aircraft or ships as he considers best able to render assistance, and it shall be the duty of the commander or commanders of the aircraft and the master or masters of the ship or ships requisitioned to comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress.

3. A commander or master shall be released from the obligation imposed by paragraph 1 of this Article as soon as he is informed by the commander of the aircraft or the master of the ship requisitioned, or, where more aircraft or ships than one are requisitioned, all the commanders and masters of the aircraft and ships requisitioned, that he or they are complying with the requisition.

4. A commander or master shall be released from the obligation imposed by paragraph 1 of this Article, and, if his aircraft or ship has been requisitioned, from the obligation imposed by paragraph 2 of this Article, if he is informed by an aircraft or a ship which has reached the persons in distress, that assistance is no longer necessary.

5. If a commander of an aircraft or a master of a ship, on

receiving a wireless distress call from another aircraft or ship, is unable, or in the special circumstances of the case considers it unreasonable or unnecessary to go to the assistance of that other aircraft or ship, or, having gone, to continue the search, he must immediately inform the commander or master of that other aircraft or ship accordingly, and enter in his log-book his reasons for failing to proceed to the assistance of the persons in distress, or for discontinuing the search.

6. The provisions of this Article do not prejudice:

(a) the International Convention for the unification of certain rules relating to Assistance and Salvage at Sea, signed at Brussels on the 23rd September, 1910, particularly the obligation to render assistance imposed by Article 11 of that convention.

Source: 1929, Article 45.

(b) the International Convention for Safety of Life at Sea, signed at London on the 31st May, 1929, particularly the obligation to render assistance imposed by Article 45 of that Convention;

(c) Any national legislation enacted for the purpose of securing the enforcement of either of the Conventions aforesaid, or for the purpose of applying their principles to situations to which the said Conventions do not apply.

(7.) *No Obligation Unless on a Voyage or Ready to Depart.*

Such obligation shall not exist unless the aircraft or the ship is

1. in the course of a trip or
2. ready to depart.

Source: 1936, Article 2 (3).

[It is proposed that sub-section (7) should be dropped.]

(8) *Penal Legislation to Be Proposed.*

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 measures necessary for the prevention of such infringements.

Source: 1910, Article 12.

(9) *Owner's Liability for Violation of Obligation.*

The owner of the ship, or the operator of the aircraft, as such, incurs no liability by reason of contravention of the foregoing obli-

Proposed Text

gation, except in the case where he has ordered the person bound to render assistance not to render it.

Sources: 1910, Article 11 and 1936, Article 2 (b)

ARTICLE 3. LIFE SALVAGE INDEMNITY—PERSONS SAVED
FROM AIRCRAFT.*

(1) *Aid Rendered Pursuant to Obligation—Indemnity Based on Expenses and Losses, Although No Useful Result.*

Any assistance rendered to any person who is at sea in danger of being lost in an aircraft or as the consequence of damage to an aircraft in discharge of the obligation contemplated in the foregoing article shall call for an indemnity based on

1. the expenses justified by the circumstances.
2. the damage suffered in the course of the operations.
3. the skill, courage and speed of the salvors.

Sources: 1936, Article 3 (1) and Article 2 (2). Cf. Article 5.

(2) *Aid Without Obligation—Indemnity Based on Expenses and Losses, if Useful Result Achieved.*

If such assistance was rendered in the absence of any obligation to do so, the assister shall have no right to such indemnity unless he has obtained a useful result by saving persons who are at sea in danger of being lost on an aircraft or as the consequence of damage to an aircraft, or by contributing thereto.

Source: 1936, Article 3 (2).

(3) *Who Shall Pay.*

Such indemnity shall be paid by the operator of the aircraft assisted.

Source: 1936, Article 3 (3).

(4) (a) *Limit of Indemnity per Life Saved.*

The said indemnity cannot exceed the sum of 125,000 francs per person saved and, if no persons have been saved, the sum total of 125,000 francs.

(4) (b) *Additional Limitation of Indemnity.*

And the aircraft operator shall not be liable beyond the value of the aircraft, such value being determined on the basis of 250 francs

* Organizations representing aviation are still uncertain whether to support the life salvage provisions.

per kilogram of weight of the aircraft, by weight being understood the weight with the total maximum load as shown on the certificate of airworthiness or on any other official document.

(4) (c) *Aggregate Limit of Liability for Life Salvage.*

The aircraft operator's total liability for life salvage shall not be greater than two million francs, in all.

(4) (d) *Standard of Value—Rate of Exchange.*

The amounts fixed in this paragraph shall be considered as referring to the French franc containing 65½ milligrams of gold of a standard of fineness of 900/1000. It may be converted into each monetary system in round figures.

Source: 1936, Article 3 (4).

(5) *Salvage by Several Salvors.*

In case there has been assistance by *several* salvors, whether in ships or aircraft, or elsewhere, and the total sum of the indemnities due exceeds the limits fixed in the foregoing paragraph (4) (a), (b), (c) and (d), a proportional reduction of the indemnities shall be made.

(6) *Operator's Liability Where Use of Aircraft Unauthorized.*

Any person who, without having the right to use an aircraft, uses the same without the consent of the operator, shall be bound to pay the indemnity, and any operator who does not take the necessary measures to avoid such wrongful use of his aircraft shall be jointly and severally liable with him, each one of them being bound within the conditions and limits of this article.

Source: 1936, Article 3 (6).

(7) *Persons Rescued.*

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

Source: 1910, Article 9.

(8) *Persons not in Aircraft.*

Any assistance rendered to any other person (not being a person in an aircraft or a person in danger as a consequence of damage to an aircraft) who is at sea in danger of being lost shall

Proposed Text

be indemnified or remunerated, if at all, in accordance with the provisions of the International Convention for the unification of certain Rules relating to Assistance and Salvage at Sea, signed at Brussels on the 23rd September, 1910, and in accordance with the provisions of national laws.

ARTICLE 4. SALVAGE OF AIRCRAFT PROPERTY.

(1) *Remuneration.*

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.

Source: 1910, Article 2.

(2) *Basis of Remuneration.*

The remuneration is fixed by the court, according to the circumstances of each case, on the basis of the following considerations: (a) First, the measure of success obtained, the efforts and the deserts of the salvors, the danger run by the salvaged aircraft, by its passengers, crew and cargo, by the salvors and by the salvaging aircraft or vessel, the time expended, the expenses incurred and losses suffered, and the risks of liability and other risks run by the salvors, and also the value of the property exposed to such risks, due regard being had, the case arising, to the special adaptation of the salvor's vessel, aircraft, or equipment: (b) second, the value of the property salvaged.

The same provisions apply to the apportionment provided for by the fifth paragraph of Article 3.

Source: 1910, Article 8.

(3) *Amount of Remuneration.*

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 among the salvors is fixed in the same manner.

The apportionment of the remuneration among the owner, commander, master, and other persons in the service of each salv-

ing aircraft and vessel is determined by the law of the flag of such aircraft or vessel.

Source: 1910, Article 6.

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

Source: 1910, Article 2.

(4) *Division of Remuneration Among Several Salvor Ships or Aircraft.*

In case there has been assistance or salvage by several salvors, ships or aircraft, the remuneration shall be divided among them on the bases established in paragraph one of this article.

Source: 1936, Article 4 (4).

(5) *Lien on Property Saved.*

National laws may provide a maritime or similar lien in favor of salvors extending to the property salvaged, or may extend thereto the principles of the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, as amended and signed at Brussels on the 10th April, 1926.

ARTICLE 5. COMBINED SALVAGE OF LIFE AND PROPERTY.

In case there has been both assistance and salvage of persons and of property, the 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 aircraft, its accessories and cargo, due allowance being made for any indemnity which they receive under Article 3.

Source: 1936, Article 5, and 1910, Article 9.

ARTICLE 6. PROHIBITION OF SALVAGE—REDUCTION OF REMUNERATION.

(1) *Right to Prohibit Salvage Service.*

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

Source: 1910, Article 3.

Proposed Text(2) *Right of Court to Reduce Remuneration if Salvor Negligent.*

The court may reduce or deny indemnity or remuneration if it appears that the salvors have by their fault rendered the salvage or assistance necessary, or have increased the damage, or have been guilty of theft, receiving stolen goods, or other acts of fraud.

(3) *Annulment, etc.*

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 excessive degree too large or too small, the agreement may be annulled or modified by the court at the request of the party affected.

Sources: 1910, Articles 7 and 8; 1936, Article 6.

ARTICLE 7. WHO SHALL PAY SALVAGE AWARDS.

(1) The remuneration due for the operations of assistance to persons who are at sea in danger of being lost in an aircraft or in consequence of damage to an aircraft shall be payable by the operator of the assisted aircraft.

(Note: The opinion of American aircraft operators and their underwriters should be especially sought concerning this provision.)

(2) *Recourse of Aircraft Operators.*

The operator of the aircraft shall have a recourse against any person whose act, neglect or default caused or contributed to the situation necessitating the service of assistance or salvage.

In the event of the death of such person, the right of action shall survive and be enforceable against his estate.

(3) *Owners, etc., not liable for Cargo Salvage.*

Neither a shipowner nor an operator of aircraft shall be liable for salvage awards against any property not owned by him or of which he is merely the bailee for transportation or otherwise, unless such liability is expressly assumed by a salvage agreement or a salvage or general average bond.

ARTICLE 8. PROPERTY IMMUNE FROM SALVAGE.

All property in an aircraft, excepting only the personal effects worn by, or on the persons of, the commander, crew and passengers, shall be liable for salvage.

ARTICLE 9. TIME FOR SALVAGE SUIT, TWO YEARS.

(1) A salvage action is barred after an interval of two years from the day on which the operations of assistance or salvage are terminated.

(2) 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.

(3) *Right of extension reserved.*

The High Contracting Parties reserve to themselves the right to provide by legislation in their respective countries that the said periods shall be extended in cases where it has not been possible to attach the aircraft assisted or salvaged in the territory of the State in which the plaintiff has his domicile or principal place of business, provided that this delay shall not exceed three years from the day on which the operations of assistance or salvage are terminated.

(4) *Time for Action in Recourse, One Year.*

Actions in recourse are barred after an interval of one year from the date of the judgment or decree upon which such action in recourse is asserted.

Source: 1910, Article 10.

ARTICLE 10. SALVAGE AGREEMENTS SUBJECT TO CONTROL OF COURT.

Every agreement as to assistance or salvage entered into at the moment and under the influence of danger can, at the request of either party, be annulled or modified by the court if it considers that the conditions agreed upon are not equitable, and particularly when the remuneration is excessively large or small and out of proportion with the services rendered.

Sources: 1910, Article 7 and 1936, Article 10.

(2) *International Co-operation of Courts to Prevent Limitations of Liability Being Exceeded.*

If different salvors take proceedings in the courts of different States, the defendant may, before each court, require account to be

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taken of the whole of the claims and debts, so as to ensure that the limit of liability be not exceeded.

The national laws shall determine questions of procedure and time limits for the purpose of applying the preceding rules.

Source: 1925, Limitation of Liability Convention, Article 8.

ARTICLE 11. ATTENDING VESSELS OR AIRCRAFT.

An attending vessel or aircraft has no right to remuneration for assistance to or salvage of the aircraft she is attending or of the aircraft's cargo except where she has rendered exceptional services which can not be considered as rendered in fulfilment of the contract of attendance.

Source: 1910, Article 4 (relating to Tugs and Tows).

ARTICLE 12. DEFINITIONS.

“EXPLOITANT” OR OPERATOR.

Any person who has the right to use an aircraft and who uses it for his own account shall be termed the operator of the aircraft. In case the name of the operator is not recorded on the aeronautic register or any other official document, the owner shall be deemed to be the operator subject to proof to the contrary.

Source: Rome, 1932, Article 4 (2) and (3).

COMMANDER. Any person exercising the functions of commanding officer aboard an aircraft shall be deemed to be the commander of such aircraft.

Source: 1936, Article 2 (1).

ARTICLE 13. APPLICATION OF CONVENTION TO GOVERNMENT SHIPS AND AIRCRAFT.

This Convention shall apply to government ships and aircraft, including military, customs and police ships or aircraft, [with reservation of provisions relating to jurisdiction and], as regards military, customs and police ships or aircraft, with reservation of

the provisions of Article 2 relating to the obligation of assistance and salvage to persons.

Source: 1936, Article 13.

Note: If the jurisdictional provisions are dropped, the words in brackets should be dropped also.

ARTICLE 14. AIRCRAFT OR VESSELS OF SAME OWNER.

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

Source: 1910, Article 5.

ARTICLE 15. PUBLIC ORGANIZATION, ETC., NOT AFFECTED.

The convention does not affect the provisions of national laws or international treaties as regards the organization of services 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.

Source: 1910, Article 13.

ARTICLE 16. LOCAL JURISDICTION AND PROCEDURE.

Nothing in the foregoing provisions shall be deemed to affect in any way the competence of tribunals, modes of procedure, or methods of execution authorised by the national laws.

Source: 1910, Article 16.

ARTICLE 17. AGREEMENT TO LEGISLATE.

The High Contracting Parties agree to take the necessary measures to put into effect the rules established in this Convention.

Notification of laws.

The High Contracting Parties will communicate to one another, as soon as possible, the laws or regulations which have already been or may be hereafter promulgated in their States for the purpose of giving effect to the above undertakings.

Sources: 1936, Article 1 and 1910, Article 12.

ARTICLE 18. FUTURE CONFERENCES.

Any one of the High Contracting Parties shall have the right three years after this convention comes into force to call for a fresh conference with a view to seeking such ameliorations as may be brought therein, and particularly with a view to extending, if possible, the sphere of its application.

Source of this and remaining Articles: 1910, Articles 16-19.

Notification.

Any power exercising this right must notify its intention to the other powers, through the — Government, which will see to the convening of the conference within six months.

ARTICLE 19. ACCEPTANCE OF NON-ADHERING COUNTRIES.

States which have not signed the convention are allowed to adhere to it on request. Such adhesion shall be notified through the diplomatic channel to the — Government and by the latter to each of the other Governments. It shall become effective one month after the sending of the notification by the — Government.

ARTICLE 20. RATIFICATION—OFFICIAL NOTIFICATION OF SIGNING.

The convention shall be ratified.

After an interval of at most one year from the day on which the convention is signed, the — Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the convention with a view to deciding whether it is expedient to put into force.

Deposit of ratification.

The ratification shall, if so decided, be deposited forthwith at —, and the convention shall come into force a month afterwards.

The protocol shall remain open another year in favor of the States represented at the — Conference. After this interval

they can only adhere to it on conforming to the provisions of Article 19.

ARTICLE 21. DENUNCIATION.

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 — Government, and the convention shall remain in force as between the other Contracting Parties.

Signatures.

In witness whereof the plenipotentiaries of the respective High Contracting Parties have signed this convention and have affixed their seals thereto.

ANNEX 8.

Proposed Federal Bill to Amend the Air Commerce Act, 1926, with respect to Salvage of Aircraft at Sea.

Section 1. Section 7a of the Air Commerce Act of 1926 (49 U. S. Code, 1934 ed., sec. 177) is hereby amended to read as follows:

“(a) The navigation and shipping laws of the United States, including any definition of “vessel” (or “vehicle”)* found therein, and including the rules for the prevention of collisions, shall not be construed to apply to seaplanes or other aircraft, *except in the following instances:*

i. *Any services rendered in assisting, or in saving life from, or in saving any aircraft or the cargo or apparel of an aircraft in, on or over the sea or any tidal water, or on or over the shores of the sea or any tidal water, whether within or beyond the limits of the territorial waters of the United States, its districts, territories or possessions, or on the Great Lakes, or on any inland waters within the admiralty and maritime jurisdiction of the United States, shall be deemed to be salvage services in all cases in which they would have been salvage services if they had been rendered in relation to a vessel, her apparel, cargo, freights, and the persons on board, notwithstanding that the aircraft concerned may be a foreign aircraft, and notwithstanding that the services in question are rendered elsewhere than within the limits of the territorial waters of the United States.*

ii. *Where salvage services are rendered by persons in an aircraft to any property or person within the admiralty and maritime jurisdiction of the United States in respect of maritime salvage, the salvors and the owner of the aircraft shall be entitled to the same remedies and reward for those services as they or he would have been entitled to if the aircraft had been a vessel, notwithstanding that the aircraft may be a foreign aircraft and notwithstanding that the services in question are rendered elsewhere than within the limits of the territorial waters of the United States.*

Section 2. *This Act shall take effect immediately.*

*FOOTNOTE: none of the Navigation or Shipping laws refer to “vehicles.”