

May, 1940

**THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES**

**REPORT OF THE COMMITTEE ON ADMIRALTY
AND AVIATION.**

To the Maritime Law Association of the United States:

Your Committee has considered a proposed bill to enact the Aviation Salvage at Sea Convention of 1938 into statute law in the United States. This bill has been worked up by the American Bar Association Section on International and Comparative Law, through a Committee of which your Chairman has been a member. The proposed bill is submitted herewith, each section being accompanied by a statement of its source and a brief commentary. Your Committee has suggested a number of minor changes which are incorporated in the annexed pages.

The bill raises three questions of policy on which your Committee has firm views. With the exception of these three points, your Committee finds that the bill is proper and suitable and favorable to maritime interests.

FIRST POINT

The bill, following the Convention, provides a wholly new indemnity for life salvage of persons in aircraft independently of the possible salvage of property. In Section 7(3) it provides that when a vessel is assisted by an aircraft, the same life salvage indemnity shall be payable by the shipowner to the aircraft. The argument of those who made the Convention is that if shipowners are to be indemnified for out-of-pocket for saving life from aircraft in accordance with a new system, it is only fair, turn and turn-about, that if aircraft happen to render the same sort of service to ships, the same system should apply against the ship in favor of the aircraft.

Your Committee thinks this is quite unnecessary. When an airplane falls into the ocean, there is commonly no property salvaged and a separate indemnity for life salvage is entirely suitable. But when a ship is in trouble there is commonly ample property salvage and the existing system of recognizing simultaneously life salvage with the property salvage is adequate and well settled and valid. The existing system works in favor of an aircraft owner like any other salvor. It is therefore unnecessary to invent a new system in favor of aircraft as against ships.

SECOND POINT

The Convention applies not only to shipowners, but also to what the French call "armateurs," or ship-managers, and this results in complicated phraseology. Your Committee recommends that the Act should apply only to shipowners. They can make any contract they find suitable with their ship-managers or owners *pro hac vice* or charterers to be exonerated from or reimbursed for their liabilities under the Convention. It is unnecessary and not suitable to embody such provisions in the Act.

THIRD POINT

Your Committee recommends that the Act, if adopted, should be the general law of the United States. The Convention only requires that the system which it creates should be the law in situations where persons of different nationalities are concerned. The Convention as such does not require the United States to make its principles the domestic law of the United States. Your Committee feels that if the system is good at all, it is good for all cases and recommends that the bill, if approved, should be approved as a general Act applicable to all situations coming before our courts.

FOURTH POINT

The bill provides, in Section 14, following the Convention, that baggage and mail matter in aircraft are excluded from obligation to pay salvage. Your Committee understands this was the cause of great controversy. When the matter was discussed by this Association before the American delegation went to the Brus-

sels Conference, this Association favored making baggage and mail matter in aircraft subject to salvage. In fact, very little material in aircraft is salvable except baggage and mail matter under present conditions. Your Committee understands that the American delegation urged this view strongly and that it was brought to an open vote in the Conference and that the American view was voted down. While the Committee still feels that the immunity of baggage and mail matter is an error, there seems nothing that can be done about it at present unless the entire Convention is to fail.

Your Committee feels that the error of this point may presently be demonstrated when valuable baggage and mail matter are allowed to be lost because possible salvors refrain from taking risks to save them, knowing that they will not be compensated. If such situation should occur, reform on this point will be indicated.

The bill also provides in Section 4, following the Convention, that the obligation exists when a vessel is in the course of a voyage "or ready to depart." Your Committee regards the expression "or ready to depart" with disfavor but understands that the American objection was voted down at the Conference. The objection to the phrase is that it is vague. There is no fixed criterion for determining when the vessel is "ready to depart." The obligation, such as it is, is much softened by the next phrase, that the obligation only exists if it is reasonably possible for the vessel to render useful aid. Your Committee does not consider that this point is sufficiently important to warrant opposition to the Convention as a whole.

Subject to the foregoing, your Committee is favorably impressed with the bill and recommends that it be endorsed by the Association. Italy has started the ball rolling by ratifying the Convention, the first nation to do so.

Respectfully submitted,

ARNOLD W. KNAUTH, *Chairman*

BURTON H. WHITE

WILLIAM E. COLLINS

JOS. F. LULEY

ROBERT W. WILLIAMS

May 1, 1940

PROPOSED BILL

With Sources and Commentary

**To Enact the Aviation Salvage at Sea Convention into
Statute Law in the United States.**

Edition of April 4, 1940, after revision by Committee of the
International and Comparative Law Section, American
Bar Association.

For submission to spring meeting of the Section in May, 1940.

BE IT ENACTED, etc.

SECTION 1. AIRCRAFT BOUND TO AID PERSONS AT SEA.

Sources: 1938 Convention, Article 2(1), unaltered.

Comment: "Otherwise provided herein" refers to Sections 3, 4
and 19. The practical limits of airplane ability to
assist are safeguarded by this Section and by Sec-
tions 3 and 4; naval craft, etc., are excluded by
Section 19.

Section 1. Except as otherwise provided herein, every person
exercising the functions of a commander on board an aircraft is
bound to render assistance to everybody who is at sea in danger
of being lost, in so far as he can do so without serious danger to
the aircraft, its crew, its passengers, or other persons.

SECTION 2. VESSELS BOUND TO AID PERSONS IN AIRCRAFT AT SEA.

Source: 1938 Convention, Article 2(2), altered by expressing
the extent of the duty in the words of Article 2(1)
instead of by a cross-reference.

Comment: The same duty was created by the 1910 Maritime Sal-
vage Convention, 37 U. S. Stat. 1670, Art. 11, and
1912 Salvage Act, 37 U. S. Stat. 242, 46 U. S.
Code 728, and further regulated by the Safety of
Life at Sea Convention, 1929, Art. 45, 50, U. S.
Stat. 1121. The text would not be affected by a
repeal of the Stand-By Act of 1890, U. S. Code,
Title 46, Sections 367, 368.

Section 2. Every master or person in charge of a vessel is
bound to render assistance to everybody who is at sea in danger
of being lost in an aircraft or as the consequence of accident to an
aircraft, in so far as he can do so without serious danger to his

vessel, its crew, its passengers, or other persons, *provided*, however, that this obligation shall not diminish obligations imposed upon him by other laws and conventions now or hereafter in force.

SECTION 3. ASSISTANCE DEFINED.

Source: 1938 Convention, Article 2(3). The words "or person in charge" are added from 46 U. S. Code 728.

Comment: Assistance is a novel rule, not known to the common law; hence a definition is necessary.

Section 3. For the purpose of this Act, assistance means any help which may be given to a person at sea in danger of being lost, even by the mere giving of information, regard being had to the differences in conditions controlling maritime navigation and air navigation.

SECTION 4. NO OBLIGATION UNLESS ON A VOYAGE.

Source: 1938 Convention, Article 2(4), unaltered.

Comment: There is no intention to place a duty on owners or commanders of aircraft and vessels not in actual operation on a voyage.

Section 4. The obligation of assistance shall exist only when an aircraft or a vessel is in the course of a voyage or ready to depart, and only if it is reasonably possible for it to render useful aid.

SECTION 5. OBLIGATION CEASES, WHEN.

Source: 1938 Convention, Article 2(5), unaltered.

Comment: The rule agrees with that stated for vessels by the Safety of Life at Sea Convention 1929, Art. 45, 50 U. S. Stat. 1121.

Section 5. The obligation of assistance ceases when the person bound thereby has knowledge that assistance is being rendered by others under similar or better conditions than it could be by himself.

SECTION 6. OWNER'S LIABILITY FOR VIOLATION OF OBLIGATION.

Source: 1938 Convention, Article 2(6), unaltered.

Comment: The Maritime Salvage Convention 1910, Article 11, 37 U. S. Stat. 1670, contains the same provision in substantially the same language. See *Warschauer v. Lloyd Sabaudo*, 1934 A. M. C. 51, 6 F. Supp. 433.

Section 6. No liability shall rest with the vessel or aircraft or its owner, manager or operator, as such, by reason of contravention of the foregoing provision except in the case where such owner, manager or operator has expressly forbidden its observance.

SECTION 7(1). LIFE SALVAGE INDEMNITY.

Source: 1938 Convention, Article 3(1), unaltered.

Comment: This is a departure from the maritime law as stated by the Maritime Salvage Convention, 1910, Article 9. It expresses a modern rule on which the Conference reached general agreement.

Section 7(1). Assistance rendered pursuant to the obligation defined in the preceding sections gives a right to an indemnity in respect of expenses justified by the circumstances and of losses suffered in the course of the operations.

SECTION 7(2). ASSISTANCE WITHOUT OBLIGATION.

Source: 1938 Convention, Article 3(2), unaltered.

Comment: The same principle is found in the Maritime Salvage Convention, 1910, Article 2(2).

Section 7(2). If the assistance was rendered in the absence of any obligation to do so, the person rendering it shall have no right to indemnity unless he has obtained a useful result by saving persons or by contributing thereto.

SECTION 7(3). WHO SHALL PAY.

Source: 1938 Convention, Article 3(3). The provision as to shipowners is omitted. The second sentence is new.

Comment: The Convention uses general terms, which the bill restates in specific terms. Ship lives, when saved by airplanes, are a basis of salvage awards as under the Salvage Act of 1912, 46 U. S. Code 729.

Section 7(3). When an aircraft is assisted indemnity shall be payable by the operator of the aircraft. There shall be no recourse against the person whose life is saved.

SECTION 7(4)(i). LIMIT OF INDEMNITY PER LIFE SAVED.

Source: 1938 Convention, Article 3(4)(i), paraphrased.

Comment: The Convention provides an international standard of 125,000 gold francs of 65½ milligrams of 900/1000 fineness. The bill converts this into the nearest round figure of American money.

Section 7(4)(i). The indemnity shall not exceed the sum of \$3,500, lawful currency of the United States, for each person saved, or a total sum of \$3,500 if no rescue has been effected.

SECTION 7(4)(ii). GENERAL LIMIT OF INDEMNITY.

Source: 1938 Convention, Article 3(4)(ii) and Article 3(4)(iv), combined and paraphrased.

Comment: The Convention provides overall limits for aircraft operators of 500,000 gold francs and for shipowners the "laws and conventions in force." The bill translates these limits for aircraft operators into \$35,000 (10 lives saved) and for vessel owners into the American statutes, which are R. S. 4281-4289, 46 U. S. Code 181-189.

Section 7(4)(ii). In any case, the obligation of the aircraft operator shall be limited to the sum of \$35,000 and the obligation of the owner of the vessel shall not exceed his liability for maritime salvage as the same is now or may hereafter be limited by the statutes relating to the limitation of a shipowner's liability.

SECTION 7(5)(a). LIFE SALVAGE BY SEVERAL SHIPS OR AIRCRAFT.

Source: 1938 Convention, Article 3(5)(a), unaltered.

Comment: No comment.

Section 7(5)(a). Where assistance has been rendered by several vessels or aircraft, and the total sum of the indemnities due exceeds the limit fixed in the foregoing paragraph (4), a proportional reduction of the indemnities payable to the life salvors shall be made by the court.

SECTION 7(5)(b). NOTICE OF CLAIM.

Source: 1938 Convention, Article 3(5)(b), adapted.

Comment: No comment.

Section 7(5)(b). The persons who have rendered assistance must in such case give notice of their claims to the party who is bound to pay the indemnity within a maximum period of six months from the day of the assistance. The commencement of suit shall be equivalent to notice.

SECTION 7(5)(c). PAYMENT OF INDEMNITIES.

Source: 1938 Convention, Article 3(5)(c), unaltered.

Comment: No comment.

Section 7(5)(c). When this period has expired, the payment of the indemnities may be proceeded with; parties who have allowed this period to expire without taking action to enforce their rights or giving notice of their claims may not exercise their rights except in respect of any balance which may not have been distributed.

SECTION 8(1). PROPERTY SALVAGE—BASIS OF REMUNERATION.

Source: 1938 Convention, Article 4(1)(a) and (b), unaltered.

Comment: The basis is that well settled by American admiralty law for salvage of ships and ship cargoes. It is internationally fixed for ships by the Maritime Salvage Convention, 1910, Article 8. The only difference is that the bill limits salvage awards to persons in ships or aircraft; the general admiralty law gives salvage to persons who may happen to be on shore, such as lighthouse keepers.

Section 8(1). In case of salvage of an aircraft at sea in danger of being lost or of the property on board the same, a salvor by vessel or aircraft shall be entitled to remuneration assessed on the basis of the following considerations:

(a) First, the measure of success obtained, the efforts and the dangers of the salvors, the danger run by the salvaged aircraft, 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, if any, of the salvor's equipment;

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

SECTION 8(2). NO SALVAGE REMUNERATION UNLESS BENEFICIAL RESULT.

Source: 1938 Convention, Article 4(2), unaltered.

Comment: The Maritime Salvage Convention, 1910, Article 2(2), has the same provision, and it expresses the settled American admiralty law.

Section 8(2). No remuneration is due if the services rendered have no beneficial result.

SECTION 8(3). LIMIT OF PROPERTY SALVAGE—TO VALUE SAVED.

Source: 1938 Convention, Article 4(3), unaltered.

Comment: The Maritime Salvage Convention, 1910, Article 2(3), has the same provision, and it expresses the settled American admiralty rule.

Section 8(3). In no case shall the sum to be paid exceed the value of the property salvaged at the conclusion of the operations of salvage.

SECTION 8(4). RIGHT TO SALVAGE NOT AFFECTED BY OWNERSHIP OF AIRCRAFT OR VESSELS—"SISTER SHIPS."

Source: 1938 Convention, Article 4(4), unaltered.

Comment: The Maritime Salvage Convention, 1910, Article 5, has the same provision. It is important, to preserve rights both of insurance companies and of seamen and aviator-employees. Congress has enacted it as to vessels: 46 U. S. Code 727.

Section 8(4). Remuneration is due notwithstanding that the aircraft or the vessels belong to the same operator or to the same owner or manager.

SECTION 8(5). DIVISION OF REMUNERATION AMONG SEVERAL SALVOR SHIPS OR AIRCRAFT.

Source: 1938 Convention, Article 4(5), unaltered.

Comment: The Maritime Salvage Convention, 1910, Article 6, makes a similar provision; and it expresses the settled American admiralty rule.

Section 8(5). In case of salvage by several vessels or aircraft, the remuneration shall be divided among the salvors on the bases established in paragraph (1) of this Section.

SECTION 9. SIMULTANEOUS SALVAGE OF LIFE AND PROPERTY.

Source: 1938 Convention, Article 5, paraphrased.

Comment: As the indemnity for life salvage is new, this correlative provision is also new.

Section 9. In case indemnities and remuneration are payable by reason of Sections 7 and 8 of this Act, the court shall make an equitable apportionment upon the basis and within the limits of said Sections of the expense incurred and losses suffered.

SECTION 10. APPORTIONMENT OF REMUNERATION.

Source: 1938 Convention, Article 6, paraphrased.

Comment: The Convention sets up a general standard of the "law of the flag"; the bill entrusts the apportionment to the court. The Maritime Salvage Convention, 1910, Article 6, has the same provision, and the bill expresses the settled American admiralty rule.

Section 10. The apportionment of the remuneration among the operator and other persons in the service of each salvaging aircraft shall be determined by the court.

SECTION 11. COMBINED SALVAGE OF LIFE AND PROPERTY.

Source: 1938 Convention, Article 7, unaltered.

Comment: The Maritime Salvage Convention, 1910, Article 9, states the same rule. See *The Shreveport*, 1930 A. M. C. 1310, 42 F. (2d) 524 (E. D., So. Car.).

Section 11. In case of assistance to persons together with salvage of property, the salvors of human life are entitled to a fair share of the remuneration awarded for the salvage of property, without prejudice to the right to indemnity which they acquire under Section 7.

SECTION 12(1). PROHIBITION OF SALVAGE.

Source: 1938 Convention, Article 8(1), unaltered.

Comment: The Maritime Salvage Convention, 1910, Article 3, states the same rule, and it expresses the settled American neutrality rule.

Section 12(1). No indemnity or remuneration is payable if the assistance was rendered or salvage effected in spite of the express and reasonable prohibition on the part of the vessel or aircraft to which services were rendered.

SECTION 12(2). AUTHORITY OF COURT TO REDUCE OR DENY REMUNERATION.

Source: 1938 Convention, Article 8(2), unaltered.

Comment: The Maritime Salvage Convention, 1910, Article 8, has the same provision, and it states the settled American admiralty rule.

Section 12(2). The court may reduce or deny the indemnity or the remuneration if it appears that the salvors have, by their fault, rendered the salvage or assistance necessary, or increased the loss, or have been guilty of theft, receiving stolen goods, or other acts of fraud.

SECTION 13(1). WHO SHALL PAY PROPERTY SALVAGE REMUNERATION.

Source: 1938 Convention, Article 9(1), paraphrased.

Comment: This provision is novel, and expresses the desire of air transport companies to keep control of goods entrusted to them for transportation. It limits the present right of vessel carriers to abandon cargo and leave the cargo to settle its own salvage claims.

Section 13(1). The remuneration due for the operations of salvage shall be payable by the owner or operator of the salvaged aircraft or owner of the salvaged vessel, *provided*, however, that the obligation of the owner of the vessel may be limited in accordance with the statutes now or hereafter enacted relating to the limitation of a shipowner's liability.

SECTION 13(2). RECOURSE OF AIRCRAFT OPERATOR.

Source: 1938 Convention, Article 9(2), unaltered.

Comment: The cargo is ultimately liable for its own salvage charges. Vessel owners' rights are governed by the present law.

Section 13(2). The owner or operator of the aircraft has a right of recourse against the owners of goods for such part of the remuneration as pertains to the salvage of such goods; *provided* that such recourse shall be denied or reduced if it appears that the salvage of the goods has been rendered necessary by an act of the operator of such a nature as to render him responsible to the owners of such goods.

SECTION 13(3). RIGHT OF GOODS OWNER TO SETTLE HIS OWN SALVAGE CHARGES.

Source: 1938 Convention, Article 9(3), unaltered.

Comment: This enables the goods owner to assert and protect his own interest.

Section 13(3). The owner of the goods may, in every case, on payment of that part of the remuneration which relates to the salvage of his goods, or on giving good security for its payment, obtain delivery of the goods by the operator and the vacation of any arrest which may have been effected.

SECTION 14. PROPERTY IMMUNE FROM SALVAGE.

Source: 1938 Convention, Article 10, unaltered.

Comment: The opinion that mails, baggage and property on the person should not be liable to pay salvage was strongly in the majority. The U. S. delegation was voted down on this clause.

Section 14. Neither the personal effects or baggage of the crew or passengers, nor articles transported under the regime of postal conventions or of agreements relating to the postal service, are included in the property, either for the purpose of calculating the remuneration or in respect of the recourse to be exercised.

SECTION 15(1). TIME FOR SUIT—TWO YEARS.

Source: 1938 Convention, Article 11(1), unaltered.

Comment: The Maritime Salvage Convention, 1910, Article 10, fixes the same limit. So does 46 U. S. Code 730.

Section 15(1). Indemnity and remuneration actions must be brought within two years from the day on which the operations of assistance or salvage are terminated.

SECTION 15(2). TIME FOR SUIT FOR RECOURSE—ONE YEAR.

Source: 1938 Convention, Article 11(2), unaltered.

Comment: The system set up by Section 13(1) and (2) necessarily requires a time limit.

Section 15(2). The recourse of the operator against the owners of goods is limited to one year from the date of the payment of the remuneration for salvage.

SECTION 15(3). INTERRUPTIONS AND SUSPENSIONS OF THE TIME FOR SUIT AND RECOURSE.

Source: Tariff Act of June 17, 1930, §621.

Comment: The Convention states that the local law shall regulate this matter. As there is no general Federal law on the point, the proposed Act must state the proper rule.

Section 15(3). The time of the absence from the United States of the person, aircraft, vessel or other property subject to suit for indemnity, remuneration or recourse, or of any concealment of such person, aircraft, vessel or other property shall not be reckoned within the foregoing periods of limitation.

SECTION 16. SALVAGE AGREEMENTS SUBJECT TO CONTROL OF COURT.

Source: 1938 Convention, Article 12, unaltered.

Comment: The Maritime Salvage Convention, 1910, Article 7, has the same provision, and it is the settled American admiralty rule.

Section 16. 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 in an excessive degree too large or too small in proportion to the services rendered.

SECTION 17(1). JURISDICTION OF DISTRICT COURT.

Source: 1938 Convention, Article 13(1), paraphrased.

Comment: The Convention leaves it to each country to give jurisdiction to some local court. The expression "may be brought in admiralty" is the same as the Death on the High Seas Act, 1920, U. S. Code, Title 46, Section 761.

Section 17(1). Actions for indemnity or remuneration may be brought in admiralty in the United States District Court of the defendant's domicile or of the place where the operations of salvage were effected or wherever an attachment of the aircraft or of the cargo may be obtained.

SECTION 17(2). CO-OPERATION OF COURTS TO PREVENT LIMITATIONS OF LIABILITY BEING EXCEEDED.

Source: 1938 Convention, Article 13(2), unaltered.

Comment: While this is a novelty in American practice, it is becoming well settled in Europe under the Brussels Convention of 1923 relating to Limitations of Shipowner's Liabilities, and is also found in the Rome Aviation Surface Damage Convention of 1933, Article 11.

Section 17(2). If different salvors bring actions before courts situated in different countries, the defendant may, before each of them, put in a statement of the total amount of the claims made upon him, with a view to preventing the limits of his liability being exceeded.

SECTION 18. DEFINITION OF "OPERATOR OF AIRCRAFT."

Source: 1938 Convention, Articles 14 and 15, unaltered.

Comment: The same definition occurs in the Rome Aviation Surface Damage Convention of 1933, Article 5.

Section 18(i). Any person who has the right of disposal of, and who uses the aircraft for his own account shall be termed "operator of the aircraft."

(ii) If the name of the operator is not inscribed in the aeronautical register or on some other official document, the owner is deemed to be the operator until proof to the contrary.

(iii) Any person who, without having the right to dispose of the aircraft, makes use of it without the consent of the operator, shall be liable for the indemnities and remuneration, and the operator who has not taken the proper measures to avoid the unlawful use of his aircraft shall be liable jointly and severally with him, each of them being bound on the conditions and within the limits provided for in the foregoing Sections.

SECTION 19. GOVERNMENT VESSELS AND AIRCRAFT.

Source: 1938 Convention, Article 16, paraphrased.

Comment: While Congress might properly wish to extend the Suits in Admiralty (Public Vessels) Act of 1925 (46 U. S. Code 781) to aircraft, the proposed bill does not seek to so extend that Act.

Section 19. With the exception of the provisions of Section 17 relative to jurisdiction, this Act shall apply to government vessels and aircraft, other than naval, military, customs, coast guard and police vessels or aircraft, to which the rights and obligations resulting from the foregoing provisions shall not apply.

SECTION 20(1). SCOPE OF CONVENTION—WHEN ITS PROVISIONS APPLY.

Source: 1938 Convention, Article 17(1), paraphrased.

Comment: Several options are available. The minimum scope required by the Convention is that stated. The maximum scope would be to apply the Convention to all situations, domestic and foreign, brought before American courts. This would be proper if it is desired to adopt the Convention as local law. The Maritime Salvage Convention, 1910, Article 15, has a provision similar to the proposed text.

Section 20(1). The provisions of this Act shall be applied as regards all the persons interested when both the assisting or salv-

ing vessel and aircraft or the vessel or aircraft assisted or salvaged are registered in the territory of High Contracting Parties to the Convention for the Unification of Certain Rules Relating to Assistance and Salvage of Aircraft or by Aircraft at Sea, adopted and signed at Brussels in September, 1938.

SECTION 20(1). RECOMMENDED ALTERNATE:

The provisions of this Act shall be applied to all cases of assistance or salvage in respect of aircraft, their occupants and cargo, on the high seas or elsewhere on navigable waters of the United States.

NOTE: If the recommended alternate is adopted, Sections 20(2) and 20(3)(i) and (ii) will be superfluous. Section 20(3)(iii) will then become Section 20(2).

SECTION 20(2). DEFINITION OF TERRITORY, ETC.

Source: 1938 Convention, Article 17(2), unaltered.

Comment: No comment.

Section 20(2). The expression "territory of a High Contracting Party" includes every territory subject to the Sovereignty, Suzerainty, Protectorate, Mandate or authority of that High Contracting Party in respect of which the latter is a party to the said Convention.

SECTION 20(3)(i). RIGHTS OF ALIENS—RECIPROCITY.

Source: 1938 Convention, Article 7(3)(i), paraphrased.

Comment: The paraphrase is derived from the Suits in Admiralty (Public Vessels) Act of 1925, 46 U. S. Code 785, which expresses the same idea.

Section 20(3)(i). *Provided*, however:

That as regards interested persons who are nationals of a non-contracting state, no suit may be brought under this Act by a national of such non-contracting state unless it shall appear to the satisfaction of the court in which suit is brought that said government, under similar circumstances, allows nationals of the United States to sue in its courts.

SECTION 20(3) (ii). ALL PARTIES OF SAME NATIONALITY AS THE COURT.

Source: 1938 Convention, Article 17(3) (ii), paraphrased.

Comment: The Convention refrains from prescribing any rule when all the parties are of the same nationality as the court; the local law governs such cases. The bill might properly make the rules of the Convention local law of the United States, but the proposed text does not do so. See Section 20(2).

Section 20(3) (ii). *Further provided:*

That where all the interested persons are American citizens the said Convention shall not be applicable and the terms and conditions of this Act shall not govern.

SECTION 20(3) (iii). SALVAGE BETWEEN VESSELS GOVERNED BY SALVAGE ACT OF 1912.

Source: 1938 Convention, Article 17(3) (iii), paraphrased.

Comment: The Maritime Salvage Convention of 1910, the U. S. Salvage Act of 1912, and the general admiralty rules as between water-borne vessels are to be *unaltered* by the Aviation Salvage Convention and legislation.

Section 20(3) (iii). *Further provided:*

That where both vessels and aircraft are engaged in the same operation of assistance, this Act shall not apply to the relations between the vessels, which shall continue to be governed by the Maritime Salvage Convention of 1910, 37 Stat. at Large 1670, Maritime Salvage Act of August 1, 1912, U. S. Code, Title 46, Sections 727-731, both inclusive, as now in force or as the same may be hereafter amended, and the general principles of admiralty law.

SECTION 21. EFFECTIVE DATE.

Source: Original.

Section 21. This Act shall take effect three months after the date of its approval.

NOTE.—*Omissions:* The following Articles of the 1938 Convention are omitted from the bill because their provisions are not deemed necessary for compliance with the promise of Article 1 to

“take the necessary measures to put into effect the Rules established by this Convention”:

Article 1—Promise to legislate. The legislation itself performs the promise.

Article 3(4) (iii)—Standard of reference for conversion of currency values. An American Act is bound to provide for American money values, as this bill does.

Article 4(6)—Salvage service to vessel by aircraft. This is already remunerated by the law in its present shape.

Article 9(4)—Recourse of shipowner. The shipowner who pays salvage for cargo already has recourse; he collects his advances on delivering the goods.

Articles 18 to end—Ratifications, denunciations, etc. These do not belong in an Act of Congress.

NOTE.—*Translations*: The translation used is the June 1938 revised translation agreed to by Dr. A. W. Brown (British Treasury Solicitor) and A. W. Knauth (U. S. Citeja member) for the purpose of bringing the British and American translations of the official French text into harmony so far as possible; and has been recommended to the State Department in place of the preliminary translation printed in Treaty Information Bulletin and 1938 U. S. Aviation Reports. This revised translation is printed in 1939 U. S. Aviation Reports. Two other translations are in circulation. The earliest was released at the close of the Brussels Conference in September, 1938, and printed in Treaty Information Bulletin No. 111. The second, a revision of the first by the translation staff of the State Department, was annexed to the Report of the American Delegates.

The Convention has already been analyzed in Knauth, “The Aviation Salvage at Sea Convention of 1938,” *Air Law Review*, Volume X, page 146 (April, 1939), reprinted in New York University School of Law Contemporary Law Pamphlets, Series 1, No. 16. That analysis seeks to state the fact situation as to each section of the Convention. It is not a detailed argument for the bill. However, it is submitted that the result of the analysis amply indicates (1) that the Convention is sound, (2) that a bill enacting its provisions is constitutional, and (3) that a bill enacting its provisions is agreeable to existing conventions and statutes and principles of law prevailing in the United States.