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| **Salvage** |
| **Source:** MLA**Date:** October 19, 2001**Committee:** [SALVAGE](http://www.mlaus.org/committee-profile.ihtml?id=280) **FORMAL REPORT OF THE COMMITTEE ON****SALVAGE**The Fall meeting of the Salvage Committee of the Maritime Law Association was held on October 17, 2001 from 11:00 AM to 12:00 PM at the Hotel del Coronado in Coronado, California. Nine people attended the meeting.Richard Buckingham, the Committee's Secretary, gave a useful summary of recent cases. Other topics included responder immunity, and the role of a Salvage Master during complex salvage operations. James Shirley provided some helpful insights on the basis of his past experience as a Salvage Master.Copies of recent articles concerning utilization of Lloyd's new Open Form Salvage Agreement (LOF 2000) and the new SCOPIC Clause 2000 (Special Compensation P&I) were distributed. SCOPIC can be incorporated into the LOF and is used to provide adequate remuneration for salvors on the basis of prearranged rates when potential salved values are low or nonexistent.SCOPIC encourages salvors to undertake operations when there is a threat of pollution damage (which might be prevented by the salvor's intervention) but no real prospect for a conventional salvage award. SCOPIC is intended to improve upon the Special Compensation provisions of Article 14 of the Salvage Convention 1989. It will avoid some of the shortcomings that were revealed during litigation involving that Article. These included the determination of the salvor's expenses (especially the fair rate allowed for equipment and personnel), and the triggers for special compensation (threat of damage to the environment in coastal or inland waters or areas adjacent thereto).We discussed the draft UNESCO Convention on the Protection of Underwater Cultural Heritage (hereafter UCH). In particular, we discussed the version of the Convention prepared during the Fourth Meeting of Governmental Experts, held in Paris from July1-8, 2001. This version of the draft is scheduled for submission to the General Congress of UNESCO for approval within the next 30 days.The draft Convention, in general, allows States Parties to regulate activities "directed at" UCH. "Directed at" is a defined term, which means "activities having underwater cultural heritage as their ***primary*** purpose and which may, directly or indirectly, physically disturb or otherwise damage underwater cultural heritage." Art. 1 ¶ 6 (emphasis added). The inclusion of the word "primary" should help limit the draft Convention's effect on ordinary maritime operations, unless they involve "treasure" salvage.Cables and pipelines placed on the seabed are not considered UCH. Art. 1 ¶ 1(b). Other installations, placed on the seabed, and still in use are also not considered UCH. Art. 1 ¶ 1(c). The definition of UCH otherwise remains broad, and includes "all traces of human existence having a cultural, historical or archeological character which have been partially or totally underwater, periodically or continuously, for at least 100 years . . . ." Art. 1 ¶ 1(a).The law of salvage and finds are not expressly outlawed but are significantly constrained by the draft Convention. Salvage operations must be authorized by a competent authority. Art. 4 § (a). This might not be a neutral court applying the maritime law of salvage and finds, but could be a government agency or executive that is unsupportive of such operations.More importantly, any activity relating to UCH shall not be subject to the law of salvage or finds unless it is in full conformity with the Convention, and "ensures that any recovery of the underwater cultural heritage achieves its maximum protection." Art. 4 §§ (b), (c). It will be difficult to undertake traditional salvage operations in conformity with the Convention, as the irretrievable dispersal of UCH is deemed incompatible with its protection. Also, UCH "shall not be traded, sold, bought or bartered as commercial goods." *See* Art. 33 & Rule 2 of the Annexed Rules.The Convention will substantially increase the jurisdiction of a Coastal State over its Continental Shelf. Coastal States will have the right to authorize or prohibit activities directed at UCH in those areas. Art. 10 ¶ 2.Articles 11 and 12 concern reporting, notification, and protection of UCH in the Area (the seabed beyond the limits of national jurisdiction). The Director General of UNESCO shall invite all States Parties, which have declared an interest in particular UCH, to consult on its protection in the Area. A State Party will be appointed to serve as the Coordinating State for such consultations. Art. 12 ¶ 2. This Coordinating State has a primary role in granting all necessary authorizations for activities directed at UCH in the Area. Art. 12 ¶¶ 4, 5.Mr. Patrick Griggs, President of the Comité Maritime International, wrote the Director General of UNESCO on September 10, 2001 to express the CMI's position on the draft Convention. He stated that there are fundamental problems with it, and he could "see no possibility that the CMI would be able to support the Draft Convention in its current form."These problems include the possible inconsistency of the Convention with the Law of the Sea Convention, greatly expanded Coastal State jurisdiction over shipwrecks on the Continental Shelf, an over-broad definition of Underwater Cultural Heritage (which includes property without historic, cultural or archeological***significance***), and the possible use of Article 4 to restrict legitimate salvage operations.We closed the Committee meeting by noting how much passion and controversy this somewhat obscure draft Convention has generated over the last three years. It is still not clear whether the United States will accede to this Convention and sign it. The Salvage Committee will continue to monitor developments, as there is no doubt that the Convention would seriously limit and perhaps effectively eliminate any salvage of historic shipwrecks.Respectfully submitted,William T. Storz, Chair |