
Co-operation in a Crisis Between Ships' Interests and Salvors: The Salvor's Perspective

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SYNOPSIS

Co-operation between the ship owner/underwriter and salvor is important for a successful salvage and should begin at the first notification of a casualty. Such efforts will go a long way towards mitigating the potential for pollution, environmental damage, vessel or cargo damage, crew injuries and loss of life. Today's salvages tend to be more expensive and technically complex compared to those in past years. This is due to the size of the vessels, values of the cargoes, external influences and governmental organisations. Coastal states are very proactive in protecting their waters, often becoming intimately involved in the aspects of the salvage. The salvor is often at the mercy of these influences, which ultimately translate to expenses for the ship owner/underwriter.

We will explore ways for the salvor and ship owner/underwriter to work closely together for a common goal. Some examples include contracting terms and conditions, dealing with authorities, attendance of the vessel, places of refuge and safe delivery. Success should be measured by a win-win for both parties.

INTRODUCTION

Co-operation between the ship owner, their underwriters, salvors and shore-based authorities is vital for a successful salvage and should begin at first notification of a casualty. Co-operative efforts, rather than conflict, will speed a response and go a long way towards mitigating the potential for environmental damage and pollution, damage to the vessel or its cargo and, most importantly, preventing loss of life or injury to the crew.

A timely response is essential. Any delay may mean losing a narrow window of opportunity to prevent pollution and gain a successful salvage. Unco-operative attitudes can hamper the salvage effort from the onset.

Today's salvages tend to be more expensive and technically complex compared to those in the past. This is, in large measure, due to the increased size of vessels, increased values of cargo and external influences such as demanding requirements from governmental organisations and their shoreside authorities. Coastal states are rightly proactive in protecting their waters and often become intimately involved in aspects of the salvage service. The salvor is often at the mercy of these influences which, ultimately, translate into additional expense for the ship owner and underwriters.

In this paper I will explore ways for the salvor, ship owners and underwriters to work closely together for a common goal. Some examples of areas where co-operation can be heightened include contracting terms and conditions, dealing effectively with authorities, attending the vessel, places of refuge and safe re-

delivery of the casualty. Success should be measured by whether it is a win-win situation for both parties.

I will also cover some of the essential features of the role of special casualty representative (or SCR). It is an extremely important role that all parties should keep in mind: although appointed by the owners, the SCR represents all salvaged interests, including property. His primary duty is the same as the salvor's duty, namely to use best endeavours to assist in the salvage of the vessel and the property aboard and, in so doing, to prevent or minimise damage to the environment.

CO-OPERATION AND TIMELY INTERVENTION

Lloyd's Open Form is still the most widely used salvage contract after more than a century of constant use. At its heart is the requirement of the salvor to use his 'best endeavours' to save the property and to prevent or minimise pollution damage while engaged in salvage operations. The Salvage Convention 1989 imposes a similar requirement. Best endeavours inherently require the salvor to co-operate with others: he cannot operate in isolation.

This must take place in a world that has adopted what is virtually a zero tolerance attitude to marine spills. Major spills are now a relatively rare occurrence, but they do still occur. Tanker industry statistics show that there are major oil spills from ship casualties every few years, somewhere around the globe. One of the salvor's main roles is to stop

this from happening by keeping pollutants in the ship and thereby preventing a vessel emergency from turning into a pollution catastrophe.

In short, we have seen the entire focus of salvage activity change over the past 25 years, with pollution defence now frequently taking priority over property salvage. That, of course, helps to reduce the liability of insurers. The cost of salvage seems very modest when compared to the eye-watering costs that a major spill will incur. But a key element in reducing property or liability claims is the timely involvement of salvage assistance.

The ISU conducts an annual survey of the amount of pollutants salvaged by its members. Over the 15 years to the end of 2009, ISU salvors have recovered nearly 16m tonnes of oils, chemicals and other pollutants from more than 3,000 ship casualties. This figure includes more than 12m tonnes of crude oil.

Taking 2009 as an example, ISU salvors recovered or saved a fraction more than 1m tonnes of pollutants during the provision of services to 244 casualties. We do not say that all of that material was imminently going to go into the sea, but it is interesting to pose the question: "What would have happened in those cases if there were no global salvage industry?"

COMMUNICATIONS

Today, no master or salvage officer can operate in isolation because modern communications ensure that there is a regular contact between vessel personnel and management offices ashore. As a result, when a casualty does occur, the master can very often obtain guidance and advice from his owners and their advisers. This may or may not be helpful... it may solve the problem; or it may provide a false sense of security; or it may be a major inconvenience, further complicating things, to someone struggling desperately to keep things together in very challenging conditions.

I would argue that the most dangerous element of this 'self-help', facilitated by better communications, is the potential for delay. I believe this cannot be over-emphasised. Anyone who is at sea, or has served at sea, will have encountered engine breakdowns which will 'only take 20 minutes to fix'. The reality is that, in some circumstances, they can end up taking many hours or days. This is not a criticism of the engineers, it is a plain fact that most people in such a situation start out by being optimistic. In the vast majority of cases the extra time is an irritation. On occasions, however, the consequences are far more serious: *Braer* off the UK's Shetland Islands and *Selandang Ayu* off Alaska's Aleutian Islands being good examples.

What also needs to be kept in mind, particularly by ships' masters, is that when things have gone wrong it will not normally be the marine superintendents, surveyors, insurers, club managers, or the lawyers who get detained as 'security' in some distant place. A place where, perhaps, there is a less than friendly

legal regime and where detention is uncomfortable while discussions take place on how best to deal with demands for substantial guarantees and admissions of liability. This situation takes place around the world, including in the United States.

The question really is to what extent should a master and crew be expected to resolve problems themselves by self helping when it may be that, by so doing, the risks to the vessel, its cargo, the environment and, more importantly, the crew, might be increased.

Put most simply, a decision has to be made as to whether assistance, including salvage assistance, is needed. Again, this is where good co-operation between the responders and ships' interests is critical.

In making this decision, many things must be considered, including the safety of personnel; proximity to the coast or shallow water; weather and sea conditions, including current and tide; the nature of the sea bed and coastline and the possibility of safe anchoring; the availability of additional assistance and the time it will take to reach the vessel; the nature and extent of damage suffered by the vessel and the risk of further damage to the vessel. Then there is consideration of the prospects for maintaining good communications; the vital question of the threat of pollution; and the manpower and material requirements.

It is a good deal to consider in a short period of time and the answers to these questions should enable a plan of action to be developed. The plan will need to take into account the nature, circumstances and urgency of the situation; the extent to which the vessel's systems remain operative, and how they can be applied to relieve the situation; the ability of the vessel's crew to minimise the effects of the casualty and to restore the vessel's capability and finally, what measures will be possible to avoid injury or loss of life if the vessel is in imminent peril.

A competent master will, in most cases, be best placed to assess these considerations and will be able to do so quickly. Considering these questions second-hand from a warm office many hundreds or thousands of miles away is often not helpful and, as noted earlier, likely to lead to delay.

I would argue therefore that in the early stages of a casualty situation the best co-operation can be achieved if those actually at the scene are trusted to make decisions with guidance and co-operation from the shore side interests. The common objective of a successful salvage will be better achieved with transparency between the involved parties.

SHORE-BASED AUTHORITIES AND PLACES OF REFUGE

Of course salvors do not achieve their successes in isolation. The outcome of many operations will depend on effective and efficient co-operation with many parties,

including the authorities ashore. This co-operation can help minimise further third-party interference.

There is a multitude of conventions, guidelines, national response plans, rules and regulations which become relevant in any casualty. And there are practical issues such as equipment being delayed by customs or access to the ship being blocked or impeded; sometimes seemingly unreasonable financial demands may be made – all of which can prevent or hamper a successful outcome, often adding to the time needed to complete the salvage and adding to the costs of ships' interests.

In most cases the aim is to help the coastal state and all other parties to identify swiftly the best environmental mitigation option. The threat or reality of pollution will almost certainly generate acute political problems and sensitivities – at regional, national and, sometimes, international level, and almost certainly there will be tension between central and local governments. These pressures are obviously more acute in the coastal communities which bear the brunt of the problem when the regulations, legislation, planning and training fail for one reason or another, and pollution occurs or threatens.

But with all of the ship's interests working in alignment with the salvors, these issues can be greatly minimised, which will ultimately provide the greatest benefit to the ship's interests, including the most cost-effective response. The value of the response can also be measured in future regulation, or lack thereof.

In many cases, the salvor is far advanced in the learning curve of response requirements and expectations in different geographical areas, and this knowledge can greatly assist in advancing the appropriate response – having experience responding in the given geographical area, where shoreside staff might just be learning their way around an established system. And it is trust that will enable the ship's interests to benefit on the front end from the salvors experience.

Response efficiency is increased by detailed contingency planning and joint training. The idea is to ensure that, if ever a response is required, prior training and familiarisation will facilitate the immediate entry for salvage teams and their equipment, with no delays at the place of entry due, for example, to customs' requirements and regulations.

For facilitating quick and effective response, the ISU regards the UK's model as the outstanding example of best practice in terms of command, control and co-operation. In the UK, a senior civil servant is appointed as the Secretary of State's Representative for Maritime Salvage and Intervention – shortened to SOSREP – who combines an understanding of salvage with an extraordinary degree of delegated political authority. In fact, under the UK system, politicians may not intervene while a salvage operation is still in progress. All the key decision-making is focused on just two individuals: SOSREP and the salvage master. This model is

enhanced even further when the ship's interests are aligned and supportive.

Salvors need freedom of action if they are to use their best endeavours. They need to be confident that their plan, personnel and equipment will be supported by the ship's interests, and that when adaption to the plan is needed, all parties are on board.

PLACES OF REFUGE

In some cases co-operation between responders and authorities will lead to permission to enter a place of refuge. Following the loss of *Prestige* and the severe consequences for Spain, the International Maritime Organisation (IMO) accelerated its work on the Place of Refuge Guidelines.

These were adopted at the November 2003 Assembly. The ISU welcomed the introduction of those guidelines, but we believe they are too narrowly focused. They concentrate on the 'refuge' issue, but do not address many other important aspects of casualty management. Today, there is still no IMO instrument providing a comprehensive best practice model for the complete casualty response process.

The Comité Maritime International (CMI) has also drafted an international convention on places of refuge, which is a very welcome development. At the same time, however, the ISU believes that consideration should be given to expanding the existing place of refuge guidelines into broader-based casualty management guidelines. A draft of such guidelines has been produced by the ISU and is currently being discussed with stakeholders. Such guidelines could, in due course, be developed into an international convention on marine casualty management.

THE ROLE OF SPECIAL CASUALTY REPRESENTATIVES

I should now like to address the role of the Special Casualty Representative or 'SCR'. It is a role which can greatly improve co-operation.

The SCR is appointed by the ship owner, or by the ship owner's P&I club, to attend the salvage operation during SCOPIC cases. He will be picked from a pool of salvage experts agreed upon by the SCR Committee of the Lloyd's Salvage Group. The SCR's role is to use his best endeavours to assist in the salvage of the vessel and to minimise damage to the environment.

The salvage master remains in overall charge of the operation, but he must consider the views of the SCR and satisfy his requirements if they are reasonable. The salvage master will present his plan to the SCR, who should formally approve the plan if satisfied or, if he disapproves, advise the salvage master in writing. If the SCR approves of the salvage master's daily reports, he should endorse the reports or prepare a dissenting report setting out his objections.

The SCR reviews a daily cost schedule and then a final report at the end of the services. His prime role is to provide support to all parties and to assist in consideration of equipment, personnel and procedures being utilised. If he disagrees, he is to give written notice to all parties, including the salvage master. Any payments on account for special compensation are made on the basis of the SCR's views as to the appropriate equipment or procedure. Once the ship owner appoints an SCR, the salvor may refuse access to any other surveyors and experts, in respect of the salvage services, appointed on behalf of the owner.

The salvage master and the owners of the vessel must co-operate with the SCRs, permitting them to have full access to the vessel to observe the salvage operation and to inspect such of the ship's documents as are relevant to the salvage operation

The success of the SCOPIC system depends on the impartiality which SCRs are able to bring to the casualty response, working with the salvors, ship's interests and other third parties for the common cause. Transparency is important and SCRs must be careful to ensure that information is made available to all parties and that they are equally represented – inclusive of the salvor.

Clearly a good and co-operative relationship between the salvage master and the SCR is paramount to the success of the operation, both politically and commercially. This partnership should be carried out with full transparency.

CONCLUSION

Anyone who has been involved in marine casualty response knows that the potential for disagreement, delay and confrontation is all too apparent. Circumstances are usually challenging, the environment is often difficult and ever-changing, time is critical, the authorities are demanding, and the sums of money at stake are enormous.

But it is essential that salvors and ships' interests are aligned and work co-operatively together to prevent loss of life or injury to personnel, further damage to the vessel or cargo and to minimise damage to the marine environment. Speed of response is key, any delay brought on by interference from those who are not at the scene and who do not have the full picture is to be discouraged. It is testament to the willingness of all parties who work together that in the majority of cases there is real co-operation and a successful outcome for all.