
Co-operation in a Crisis Between Ship Interests and Salvors: The Owners' Perspective

Faz Peermohamed (speaker/co-author), **Matthew Forbes** (co-author), Ince & Co, UK

SYNOPSIS

In the stressful environment of a complex salvage situation, it is hardly surprising that friction tends to creep in between the involved parties albeit, at times, unintentionally. It is undoubtedly preferable, in the aftermath of a casualty, if salvors, shipowners and underwriters are able to co-operate throughout both the initial, and subsequent, stages of a salvage operation.

In this paper we will cover co-operation in situations where salvors and owners/underwriters can, and should, work together towards common goals, despite their often different interests. These common goals comprise, for example, the contractual terms for the salvage, the assessment of the condition of the vessel, attendance on board, the need to formulate a salvage plan and, ultimately, agreement to a place of refuge and safe delivery.

Further topics which will be covered relate to demobilisation, in particular under SCOPIC, and co-operation between the salvors and the shipowners in assisting the authorities and presenting a united, tough front to any unfair criminalisation.

TYPES OF SALVAGE

Salvage by Contract

Traditionally, courts all over the world have required the successful completion of salvage services before a salvor can claim salvage. This 'no-cure, no-pay' principle underpinned the entire international law of salvage and was enshrined both in the Brussels Convention on Salvage 1910 and, commercially, from its inception in the standard form of salvage contract, Lloyds Open Form (LOF).

The LOF is the best known, and most used, form of international salvage contract, (and in the context of an *ITS* conference it requires no further explanation). The last two decades have seen a large drop in the number of LOFs being signed, eg from 178 in 1990 to 83 in 2008. Arguably, the reputation of the LOF has been damaged in recent years by so-called 'rogue awards' from arbitrators, ie significant awards which have far exceeded salvors' own expectations. Although the form remains the contract of choice in large casualties, in recent times, there has been an increased move towards alternative forms of contract, largely driven by underwriters.

Common Law Salvage

While most salvage services today are performed under contract, a formal written contract is not necessary in order to claim a reward. Common Law Salvage is a long-established legal right under English law (and indeed the law of many other countries) and many of the principles have now been consolidated in the *International Convention on Salvage 1989* (the 'Salvage

Convention'). Under English law, there are four elements which must be present before a person can claim a common law salvage reward:

1. The services must be voluntary;
2. The services must be rendered to maritime property;
3. The maritime property must be in danger;
4. The services must be successful.

There are a number of disadvantages, however, to both owners and salvors, should the operation be conducted without a contract. Firstly there is uncertainty. Salvors may arrest the vessel and cargo at the point of redelivery for security purposes, (see the 1952 *International Convention Relating to the Arrest of Sea-Going Ships*) thereby potentially establishing jurisdiction for the salvage claim. Claims brought through the local courts can be time consuming and expensive for both owners and salvors. In some jurisdictions there is a lack of salvage experience and a perceived risk of bias. The perception that a local salvor or owner may have a 'home team advantage', can be hard to shake off. A carefully-drafted contract should provide a degree of certainty and a written contractual agreement should therefore be encouraged before operations commence.

Lump Sum/Daily Rate/No Cure No Pay (NCNP)

These types of contract are typically agreed and drafted on a case-by-case basis, often when semi-professional salvors or tug operators are involved. The salvor

undertakes to save the vessel, her cargo and any other property on board and to take the vessel into a designated port. If useful results are attained, the salvor will receive a fixed remuneration for the performance of the salvage operations. There can be advantages for both parties in this type of contract. For example, a small tug operator may not have the resources to await a potentially lengthy determination of a salvage award and may therefore be reluctant to sign an LOF. A quick deal followed by prompt payment may suit their financial circumstances. Owners and underwriters also benefit by knowing their financial exposure from the outset; further, the contract usually contains an arbitration clause in the case of dispute. This will ensure certainty as to the forum for dispute resolution, should this be necessary, and allows the parties to contract out of being at the mercy of local courts. The disadvantage is that such contracts sometimes take time to negotiate. If assistance is required immediately, the LOF remains the best option.

Ad hoc agreements

Some areas of the world are subject to a salvage monopoly with compulsory salvage contracts. Notable examples include the Turkish Straits (the Bosphorus and Dardanelles) where the compulsory Turkish Open Form (TOF) will apply. In such cases, large professional salvors may be excluded from actively participating in a salvage operation even though they have the required expertise. Salvors and underwriters have sought to circumvent this problem by contracting experienced salvors in an 'advisory' role on a day rate basis using *ad hoc* type agreements. The advantage for salvors is access to work, from which they would otherwise be excluded, while underwriters benefit from expertise and an increased prospect of a successful operation.

Sub-contractors/joint contractors

The purpose of this form of agreement is to avoid disputes arising between co-salvors and to enable them to conclude an agreement without any delay whilst the terms of the contract between them are being negotiated. Owners and insurers of ships also benefit from this form of contract. Instead of being faced with a number of salvage claims from various salvage companies involved in the operation, some under the Lloyds Form and some under common law in court, as well as the prospect of several separate arrests of the ship and cargo and the resultant need to put guarantees in place, the owners and insurers have only to deal with the principal salvor, one set of guarantees and one set of legal costs.

Towage contracts

It is important to distinguish towage from salvage. Salvage is the provision of services to a vessel in distress, while towage has been defined conventionally as the *employment of one vessel to expedite the voyage of another when nothing more is required than the accelerating of her progress*. However we define towage, it invariably arises from a contract concluded between the tug and the tow. A great deal has been

written on the subject of 'rescue tows' in recent times. When a vessel is simply 'immobilised until assisted' (ie in need of a tow), tensions can creep in between underwriters wanting to agree a commercial towing contract, and salvors insisting on an LOF. This particular area can present the most difficult obstacle in terms of future co-operation between the parties. In an ideal world, the best way forward would be for underwriters and salvors to take a logical approach by establishing the reality of the 'dangers' and then agreeing a reasonable contract. However, in reality, this topic is likely to remain contentious for some time and is one area where co-operation needs to be improved.

THE IMPORTANCE OF CAREFULLY MANAGED CASUALTY RESPONSE AND MEDIA STRATEGY

On 5th April 2007, at around 13:00 UTC, the cruise vessel, *Sea Diamond* ran aground on a well-marked volcanic reef east of Nea Kameni, within the caldera of the Greek island of Santorini. She began taking on water and eventually sank. The incident took place directly in front of a web cam located to the roof of a taverna overlooking the cliffs. The owners, underwriters and the authorities were able to watch the efforts to save the vessel in real time. Today it is estimated that 80 per cent of the world's population receive their news by television, with the internet catching up fast, with new developments such as *Twitter* providing global updates almost instantaneously. Dramatic images can be transmitted across the world in seconds, perception is formed in an equally short time, and the reputations of owners, managers, insurers and salvors can be shattered just as quickly. In such circumstances, and as decisions made at an early stage will have long-term implications, the involved parties simply cannot afford to ignore the need for carefully thought-through casualty and media response.

Co-ordinated response – 'all singing from the same song sheet'

Owners and salvors must decide how they deal with a casualty situation. There have been situations where owners have chosen to clam up and say nothing – or where they have chosen to speak in haste but without properly thinking through what is being communicated. Clearly neither of these options is ideal and another route is to take positive steps to manage the media and public perception. No two emergencies are the same and while there is no standard media response, owners and salvors need to think very carefully about the consequences of each option. If they decide to be open with the media, they must decide whether it would serve the case best to put owners' or salvors' 'heads above the parapet' or whether to allow agents or spokesmen to issue combined statements on their behalf. There is now an intelligent understanding of incidents involving maritime casualties, and owners and salvors must be prepared for the intense bright lights of media attention and to work closely in

delivering a co-ordinated response. In a crisis, owners and salvors need to respond very quickly:

- to show care and commitment;
- to be consistent in their messages and not have several people saying different things;
- to express their case logically and with clarity; and
- to bolster, and then safeguard, the public's trust, because if owners and salvors choose to hide the key facts at an early stage it could catch them out at a later stage. This can seriously exacerbate the damage to their reputation and cause additional problems in circumstances where there are already enough to deal with.

Engaging media consultants

Many owners have emergency response plans in place providing for a designated media consultant to be involved at the outset of an incident. The consultants will provide an immediate team to respond to the ever-changing situation and to work with the owner to protect his interests. Many such consultants have sophisticated 24-hour media monitoring in the aftermath of an incident being reported to ascertain media interest prior to any response. When appropriate, the consultants will initiate a media distribution service covering all major broadcast networks, online services, trade titles and local media.

The benefit of salvors and owners liaising closely on the issue is clear. The media consultant can help owners and salvors to formulate effective and consistent answers to areas of interest to journalists, for example pollution, safety and progress, and can ensure both parties are able to effectively communicate a united position in a crisis situation.

Negative publicity, local sensitivity and politics

The high-profile publicity generated by the Greenpeace campaign against deep-sea disposal of the *Brent Spar* by Shell in the mid 1990s demonstrated the power of public opinion to affect corporate image and operational decisions. A NIMBY (Not In My Back Yard) attitude is particularly apparent when owners and salvors are working to seek a port of refuge. Engaging with local groups from the outset is key to managing local sensitivities.

The input of local politicians may often be felt to be meddlesome or even obstructive. For example, a serious grounding occurred off a Mediterranean port in 2008 during local elections. The salvors were allegedly unable to obtain authorisation from the port authorities to commence works before the elections were over and this resulted in a two-week delay. With the prevailing bad weather conditions, the whole operation resulted in failure. Again, a co-ordinated response to these issues is the best approach – pooling local contacts and influence to try and manage the issues proactively.

CONDITION ASSESSMENT OF THE VESSEL—A FACTUAL PROCESS

An assessment of a vessel's structural stability and integrity is crucial to allow for sound decisions to be made in subsequent salvage efforts. Essentially this is a factual process which can be greatly speeded up when salvors and owners work in close cooperation.

Co-operation of ship's staff eg access to compartments/plans

It is perhaps stating the obvious, but the best placed people to advise salvors on the condition of the vessel, whereabouts of plans, quirks unique to the vessel etc are the ship's crew. It is essential that owners make it clear to their crew from the outset that they should co-operate fully with salvors and with any assistance. Salvors too should treat the crew with respect and keep them informed of the operation. Masters have occasionally complained that salvors are not *keeping them fully in the loop*, despite the operation taking place onboard their vessels. However, as one might expect, we have found salvors and owners to co-operate when working together.

Class involvement from the start – doing the same job twice

Many salvage operations will require the use of temporary repairs. For example, the use of doubler plates is routine in many temporary repair operations. Where possible, salvors should co-operate closely with owners on the extent of such repairs as, if owners are able to involve their classification society from the start of a salvage operation, it is easier to secure classification society approval allowing the vessel to sail directly to the repair yard. This may save owners and underwriters considerable expense in having to renew a temporary repair to classification society standards.

In another example, it may be necessary to perform an examination and analysis of the vessel's hull and equipment below the water's surface. It is standard practice for professional salvors to have their own qualified divers in attendance at the casualty. In remote areas of the world it can be both costly and time consuming for owners to arrange local divers to conduct a survey for classification society approval. Where possible, consideration needs to be given to salvors co-operating with owners and allowing their divers to assist in this process.

Class damage response – naval architects

Many classification societies and private naval architect consultancies offer owners access to damage assessment programmes. The response process utilises technical information provided by the vessel in a pre-arranged format. The information is entered for electronic analysis, thereby saving many critical hours of data preparation and testing in the event of an incident. During the initial enrolment process, the owner supplies the drawings and data necessary to create a

computerised salvage model of each vessel. Plans and data provided are maintained on file for the exclusive use of the damage response team. The vessel's master, owner or manager can usually activate the team 24 hours a day, 365 days a year using dedicated emergency telephone numbers.

Many professional salvors have their own specialist naval architects to provide advice on stability-related issues. However, in the early stages of a casualty the owners' own damage response service may provide the quickest assessment of the situation. It is essential that owners and salvors work together to optimise this valuable resource.

FORMULATING A SALVAGE PLAN AND DISCUSSIONS WITH SHIP'S CREW AND OWNERS

Where time allows, before commencing the salvage operation, salvors should devise a salvage plan. The plan should consider (but not be limited to) the scope of work, observed condition, basic method statement, environmental issues, areas of consideration and emergency procedures. It is essential that salvors discuss any salvage plan with the ship's crew and owners before finalisation. For example, a vessel's stability may have been altered by small structural modifications over the years and if an inclination test has not been performed, the actual stability criteria may be somewhat different to the conditions recorded in the stability booklet. Usually such variations are known to the crew and, accordingly, the crew may be able to make a valuable contribution to the salvage plan and operation. Owners and crew are usually happy to pass on their experience of a vessel, they just need to be asked.

Speedy dissemination of salvage master's daily reports from the start

A good flow of information is fundamental if a relationship of co-operation and trust is to be maintained between salvors and owners. The speedy dissemination of the salvage master's daily reports certainly assists in this aim. With modern communications, email access is available in all but the remotest areas of the world. It should be a simple task for the salvage master to copy in the owner and master when emailing his daily report back to his head office.

Nomination of a place of refuge

In November 2002, the *Prestige* tanker was refused access to sheltered waters and broke up at sea after salvors had been directed by the coastal state authorities to tow her out to sea. Oil then came ashore over long stretches of coastline in France and Portugal as well as Spain, causing pollution on a scale which many have contended was far greater than would have been likely if the vessel had been allowed closer inshore. The response by the coastal state

authorities to her distress calls was heavily criticised, and led to a court investigation with a view to possible criminal charges against the director-general of the Spanish Merchant Marine (currently he is accused as an '*imputado*' in the investigative stage of the proceedings). In the face of such extreme resistance from the authorities, it is difficult to see how any degree of co-operation between salvors and owners could have effected a different outcome. Again, this is an illustration of how, despite salvors and owners working in harmony towards a similar goal, they can be thwarted by local politics affecting the decision-making process.

Article 11 of the Salvage Convention, reads:
"A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provisions of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general."

Usually, the only stumbling block when requesting a place of refuge may be the need to convince the local authorities, eg the local harbour master. Our experience is that when salvors and owners co-operate on the issue of finding a place of refuge they are ordinarily able to effect a favourable outcome. For example, if an owner has strong commercial links with a port, the threat of ceasing future visits to the port, combined with technical reassurances from salvors, may be sufficient to convince a local harbour master to grant refuge.

Early identification and application by salvors/owners

At around 11.30 on 18th January 2007, *MSC Napoli* was abandoned by her crew. Following the successful abandonment, she was taken in tow to Portland, Dorset. A towline was connected but, as the disabled vessel approached the south coast of England, concern increased regarding her condition. In order to prevent the vessel from breaking up or sinking at sea, she was beached in Branscombe Bay on 20th January 2007. *Napoli* provides perhaps the best example in recent years, of how quick assessment and reporting, combined with close co-operation between salvors, owners and the authorities, can lessen the environmental impact generated by a vessel in need of salvage and a port of refuge. However, arguably the ability to cooperate so closely with the authorities remains unique to the UK and its SOSREP system.

SOSREP

The role of the Secretary of State's Representative for Maritime Salvage and Intervention (SOSREP) was created in response to Lord Donaldson's recommendations following the grounding of the oil tanker *Sea Empress* in 1996. The UK Government

appointed the first SOSREP in 1999. Since then, SOSREP has responded to over 630 incidents, 13 of which were classed as major. SOSREP gave the order for **MSC Napoli** to be beached; a difficult and politically sensitive decision, which was judged by experts to have been the right call. The SOSREP role has become the international benchmark for response to maritime and offshore emergencies. The International Salvage Union (ISU) has itself recognised the work done by the UK's first SOSREP (Mr Robin Middleton, now retired) with an industry award and its first ever 'life membership'.

MSC Napoli case has shown that co-operation between salvors, owners and the SOSREP can bring major benefits. It is anticipated that, over time, other countries will begin to adopt systems similar to the UK's SOSREP. As this happens, the salvage industry, through organisations such as the ISU, and shipowners through their national and international organisations, need to forge links and develop relationships with these special representatives.

CARGO/BUNKER LIGHTERING – OWNERS' CHARTERING DEPARTMENT

It is often necessary in a salvage operation to lighter cargo or bunkers. The spot charter market is subject to wide fluctuations and sometime salvors struggle to find suitable available tonnage for the lightering operation. In this instance owners may be able to assist. It is common for owners to lend sister ships to assist (for which they are reimbursed). Owners may also be able to assist by utilising their chartering department and contacts to search for tonnage and this is particularly true of specialised trades.

Specialist cargo knowledge, cargo transfer equipment and co-operation with crew

When considering how owners may be able to assist with contacts in specialist trades, a ship-to-ship transfer of LPG, which requires specialist hoses of double-carcass construction, provides a good example. These specially designed hoses are required so as to minimise heat loss during cargo transfer by insulating the LPG in the hose and, in case of primary carcass failure, to prevent escape of a potentially hazardous gas cloud. Whilst even the largest salvage company is unlikely to have this equipment readily available, LPG vessel operators and owners are likely to have the hoses to hand or at least know where they can be quickly sourced.

Continuing with the example of LPG, the transfer of LPG itself requires specialist knowledge. To work as a senior officer on LPG vessels requires specialist certification and experience. The owner's cargo superintendant and vessel's crew will be well placed to assist salvors in planning the cargo transfer operation and ensuring any transfer runs smoothly. Co-operation between salvors and owners in such circumstances is crucial to a successful operation.

SECURITY – FORM AND AMOUNT

For the LOF, security provisions are now contained in Clause 4 of the LSSA Clauses which provides for the contractor to tell the salvage arbitration branch of the Council of Lloyd's (immediately after the services have terminated) what figure he requires by way of security. The branch then advises the owners of salvaged property of the amount demanded. Under Clause 4.4, the security demanded has to be for a reasonable amount. In practice, the sooner that owners, and hence underwriters, can be notified of the security amount required the better. It will take time to agree the form of security, eg a letter of undertaking, bank guarantee etc.

There is a standard form of salvage guarantee acceptable to Lloyd's; that guarantee will usually be lodged with Lloyd's by the shipowners'/cargo owners' London insurance brokers or (in the case of ships or cargoes not insured directly with the London market) by their reinsuring brokers, their London representatives or their London bankers. Clause 4.5 enables the guarantee to be given to Lloyd's by a non-UK guarantor acceptable to the contractor. There are also other wordings accepted by leading salvors – eg the ISU1 wording.

Early discussions on security can help avoid delays at redelivery. Any disputes over security can unnecessarily sour the relationship between owners, underwriters and salvors, making settlement more difficult and aggravating any future disputes.

Cargo security

Clause 4.6 of the LOF constitutes an obligation on the ship owners to do their best to ensure that cargo owners provide security to the contractor before they, the ship owners, release the cargo to consignees at destination. It does not amount to an obligation on ship owners to provide security on behalf of cargo owners, but they must at least try to assist the salvors to obtain security. If salvors permit a vessel to sail before cargo security has been provided, it is essential that owners keep salvors fully updated on the vessel's movements and ETA at her next port, as salvors may need to have arrangements in place ready to arrest the cargo after discharge. It is in the interests of ship-owners to co-operate fully with salvors on this issue as they could potentially be liable for cargo interests' proportion of any salvage award if they have failed in their clause 4.6 duties.

Is a Fixed Cost Arbitration Procedure (FCAP) appropriate?

The FCAP 'documents only' arbitration has been introduced to limit costs of obtaining an award, particularly in cases where the amount of the salvaged fund is small or where no point of law arises and the facts are uncomplicated. In assessing cases which are suitable for FCAP, the arbitrators will take into account the amount of security demanded by salvors. Where the security demand is less than US\$1,000,000 (although there are discussions ongoing now to

increase this to US\$2,000,000), then the case will usually be appropriate for a hearing on documents alone. However, the 'documents only' procedure is not be restricted to such cases.

The advantage to all parties is the saving in legal costs. The fees of the arbitrator, the charges of the salvage arbitration branch of Lloyd's and the party and party costs shall not exceed the fixed amounts as published by Lloyd's. These are:

- Arbitrator £3,000
- Salvage arbitration branch of Lloyd's £1,000
- Party and party costs £10,000

Our experience has shown that salvors can be reluctant to take advantage of the FCAP procedure. However, as the usual outcome of a LOF arbitration is that salvors have their legal fees paid by ship and cargo interests, the benefits of FCAP to salvors are not insignificant. Yet often those benefits are wrongly perceived to be minimal. It is not in any party's interests to incur unnecessary costs and salvors always run the risk of having to pay costs if owners or cargo interests make a successful open offer.

Getting the adjuster involved early on

There has been a tendency in recent years, with the advent of container ship carriage (with sometimes in excess of 1,000 bills of lading), for the contractor to employ average adjusters to collect his salvage security from cargo, rather than for this task to be undertaken by Lloyd's. The advantage is that large adjusters have offices world-wide and are able to make direct contact with foreign insurers and cargo receivers. In such cases, this is to be encouraged and salvors should give the adjuster as much assistance as possible and involve them at an early stage in the process.

Is settlement appropriate?

Lloyds statistics show that around 50 per cent of all LOFs reach settlement. The clear benefit for owners, underwriters and salvors is a quicker finalisation of the quantum payable, combined with substantial costs savings. If all parties are happy with a settlement figure, then they are more likely to do business together in the future. We would always recommend settlement as the best option; however, it requires all parties to approach the negotiations with realistic expectations.

DEALING WITH THE AUTHORITIES

The case of the laden oil tanker *Tasman Spirit* provides a clear example of how some authorities are taking an increasingly hard line with both owners and salvors. The vessel ran aground at Karachi, Pakistan, on 12th August 2003 and initial investigations showed she was hard aground forward. Local and self-assistance was not sufficient to re-float her and owners entered into an LOF 2000 salvage contract with Tsavlis Russ. Unfortunately, despite the best efforts

of the vessel's crew and salvors, the vessel eventually broke in two, causing a large marine pollution incident.

The master, six of the crew and the salvage master (who only arrived in Karachi four days after the vessel had broken in two as a replacement to the original salvage master who had been evacuated after being overcome by fumes) were detained in Karachi to assist the port authorities with their preliminary enquiries. On completion of the preliminary enquiries, the eight men (who came to be known as the 'Karachi Eight') were put on notice of preliminary criminal charges against them. The preliminary report into the grounding issued by the director general of Ports and Shipping made no criticism of the 'Karachi Eight'. As Pakistan was not a party to the CLC, the intention behind the detention of the 'Karachi Eight' may have been to obtain security for compensation for damage caused by the pollution, initially indicated by the Pakistani authorities to be in the region of US\$1 billion.

The Pakistani authorities' security demand was refused and, approximately nine months after being detained, the Karachi Eight were freed. It is suggested that the intervention of both Washington and the EU may have played a big part in securing the release. The *Tasman Spirit* highlights the fact that owners and salvors are increasingly in 'the same boat' and a united approach to the authorities on all fronts is necessary.

What not to do – SCOPIC

Where there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Article 12 and/or 13 of the 1989 Convention, LOF itself gives an express right, exercisable by either the shipowner or the salvor, to terminate the salvage contract by giving reasonable prior written notice. So far as the SCOPIC clause is concerned, the shipowner is entitled to terminate SCOPIC on giving five clear days' written notice. The termination message when relayed to the authorities ought to be done with tact. Consideration must be given as to whether the decision will have any detrimental effect on the delicate relationship with the authorities. In unsophisticated ports, the working of SCOPIC may not be fully understood. The local harbour master may think owners and salvors are abandoning the vessel and as a result the authorities may have a 'knee jerk' reaction, potentially jailing the crew and salvage master or indeed preventing the salvors from demobilising until they have reassurance that the salvage operation will continue. In cases where an LOF/SCOPIC is to be terminated and say a wreck removal contract immediately started, it is particularly important for owners and salvors to keep the authorities reassured and fully briefed as to what is happening. The consequences for failing to do this can be serious.

Identify those in charge, limit numbers at meetings and keep them advised

In some countries, there may be multiple levels of bureaucrats to cut through before reaching the person with the authority to actually make decisions. In such

circumstances, owners' or salvors' previous experience of a country may prove crucial. Past dealings may help identify the persons with power and pooling information on contacts is critical. Once the key persons are identified, a joint approach by the owners and salvors usually brings the best results. It is important not to swamp any meetings with multiple representatives as this tends to delay the decision making-process.

Once the operation is underway, a regular flow of information to the authorities should be encouraged. In our experience, if the authorities feel they are being kept well informed they are less likely to create difficulties. A lack of information can inadvertently create the impression that they are being 'steam rolled' or 'side tracked', usually resulting in adverse consequences for the operation.

ROLE OF THE SCR

Clause 11 of SCOPIC entitles the shipowner to appoint a Special Casualty Representative (SCR) whose duties and responsibilities are set out in Appendix B. The SCR's role includes liaising on site with the salvage master and monitoring what is going on. Whilst the salvage master remains in control of the operation, he has a duty to keep the SCR informed. The SCR's role extends to approving the scope of the men and equipment utilised or to flagging up contemporaneously any disagreements as to the level of the salvors' response.

The SCR performs his functions under the SCOPIC clause on behalf of all parties and their insurers. His role is to monitor the salvage services and liabilities and provide a final salvage report which forms the basis for the settlement of any claim for SCOPIC remuneration which the salvor might have against the shipowner. SCRs are chosen from a panel ('the SCR Panel') the members of which are chosen by a group consisting of representatives of the International Group of P&I Clubs, the ISU, the International Union of Marine Insurers and the International Chamber of Shipping (called the 'SCR Committee').

Many of the SCRs on the panel are highly experienced former salvage masters, while some have more limited salvage experience with only one or two appointments as SCR. The SCOPIC guidelines make it clear that the SCR is obliged to report, observe and consult with the salvage master but not to attempt to direct the salvage operation. However, an experienced SCR will often provide helpful input to the salvage operation and a good working relationship between the salvor and SCR assists in the smooth running of the salvage operation. The benefits that an experienced and respected SCR

can bring to an operation should not be underestimated and owners can assist by choosing the appointment of the SCR wisely.

REDELIVERY

The LOF contains a box for salvors and owners to agree a place of safety for redelivery. In our experience, in many LOFs this box is completed as 'by mutual agreement' or left blank. The rationale being, only after advancement of a salvage operation will the condition of the vessel be known and then a decision can be made as to where redelivery and termination of the LOF should occur. Under the LOF, shipowners are under a duty to co-operate with the salvor and in particular with regard to obtaining entry to the place of safety where the vessel will be '*re delivered*' by the contractor to the owners.

Disagreements can occur between owners and salvors as to where the vessel should actually be redelivered. For example, an owner may know that he will get the best price for his cargo in port A, while the salvors' tug may be stationed at port B. In some cases, Class may refuse to allow the vessel to carry on to a second port after arriving at the first port. The choice of the first port is therefore crucial. A compromise may result in redelivery followed by a commercial agreement for an onward tow. In addition, over the past few years there have been a number of cases where the contractor has sought to redeliver at an anchorage or in the roads because of the difficulties of persuading the port authorities to accept damaged vessels which might cause problems such as pollution or even wreck removal. It has therefore been necessary in such cases to argue the meaning of 'place of safety'. Good communications, a joint approach to authorities and early negotiations are the best way of avoiding an acrimonious dispute over these issues.

CONCLUSION

In any salvage operation, the ultimate goal of the parties should be the successful salvage of the vessel. When salvors, owners and underwriters work together in close co-operation, experience shows the best results are achieved. With the ever-increasing criminalisation of seafarers (and now salvors) the stakes have never been higher. Recent developments in LOF awards has meant the gulf between underwriters and salvors has never been greater; however, only by adopting a united front will the shipping, insurance and salvage industries be able to meet the new challenges which lie ahead. As Aesop rightly said: "*united we stand, divided we fall*".

