

ENVIRONMENTAL SALVAGE AWARD: A NEW CHALLENGE FOR THE TRADITIONAL SALVAGE SYSTEM

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ABSTRACT

In the salvage industry, salvage reward is a core concern relating to the interests of both the saved and salvors, which requires an efficient legal system for salvage reward to keep a balance between the parties. In the traditional salvage system, there was a completed and relatively effective standard of salvage reward. The principle of “no-cure no-pay” has dominated the salvage reward criteria and plays an important role in balancing the interests between the saved and salvors, especially in property salvage. With the development of science and technology, environmental pollution has been a serious problem in the shipping industry because the increasing shipping capacity brings variety of goods and cargoes. And, the necessity of environmental protection challenges the traditional salvage system either. In the background of large numbers of oil pollution cases occurred, environmental salvage is strongly required by international organizations relating to the maritime industry (including inter-governmental ones and non-governmental ones) and national countries, which is to minimize the damages to marine environment. However, the welcome does not include the environmental salvage reward. In the traditional salvage system, according to the principle of “no-cure no pay”, the salvors that do environmental salvage operation can’t get an equal remuneration. What’s worse, the salvors pay much more effort to do environmental salvage operation but get less or even no paybacks. This unfair result discourages environmental salvage. Therefore, a fair environmental salvage reward needs a strong support by legal regulations. Lately, The International Salvage Union (ISU) calls for a new, separate award for environmental salvage, which is to award the salvors’ service to avoid or minimize the marine environmental damages. This article is to examine the international legal instruments relating to traditional salvage system and the relevant regulations to environmental salvage, and to analyze the problems existing between traditional salvage reward and environmental salvage award. Suggestions are provided to establish a proper assessment for environmental salvage award.

Key words: Environmental salvage award, traditional salvage system, The International Salvage Union

Introduction

This article is to examine the current salvage reward system and the future developing demand from the modern salvage industry, in order to figure out the contradiction between the traditional salvage system and the new challenge--environmental salvage. Subsequently, the environmental salvage award, as remuneration for whom preventing or minimizing the environmental pollution, should be considered whether to set up independently or not.

In the English Law, the salvage,¹ arises when a person, acting a volunteer preserves or contributes to preserving any vessel, cargo, freight or other recognized subject of salvage from danger.² Assistance and sauvetage are two types of the salvage in the civil law system. There is no substantive difference but a little distinction of forms and levels existed in the assistance and sauvetage. Therefore, in the common law system countries, they use the word “salvage” to describe the action which voluntarily assists a ship at sea or her cargo, instead of defining it as the assistance or sauvetage. When the word “salvage” appears in the Salvage Convention 1910, it contains assistance and sauvetage both two meanings.

In the broad sense, the salvage operations can be divided into the salvage *in personam* and the salvage *in rem*. Strictly speaking, the salvage at sea only means to rescue the cargo or anything without life, which is called thing. Under the international conventions, the salvage *in personam* has been regulated in other areas independently. The maritime laws and regulations in national countries have set down the salvage *in rem* remunerations explicitly, but not including the part of salvage *in personam*. The sole exception is, when the people’s lives and the cargo ship are rescued at the same time, the salvors *in personam* can achieve the apportionment in appropriate. As a result, in a traditional way, if the salvors save the ship or property successfully, they can get the payment. Otherwise, the salvors will get nothing.³ Also, the principle of “no-cure no-pay”,⁴ which is a strong

¹ The word “salvage” is sometimes used to mean the remuneration and sometimes to mean the salvage service or the cause of action of “salvage”: it is usually obvious from the context which meaning is intended. A distinction is also made between “civil salvage” and “military salvage”. See John Reeder, *Brice on Maritime Law of Salvage*, Sweet & Maxwell: London, 2012 5th edition, p.1, note 1.

² See John Reeder, *Brice on Maritime Law of Salvage*, Sweet & Maxwell: London, 2012 5th edition, p.1.

³ *Ibid.*

support to the traditional salvage reward system, has been the big obstacle against the environmental salvage award.

The appearance of environmental salvage award was not an accident. Before the ISU provides a suggestion about a new, separate award for environmental salvage, the Lloyd's Open Form (LOF) and the Special Compensation of P&I Club (SCOPIC) Clause have recognized the environmental salvage reward.⁵ However, the results make the salvors who contribute to prevent or minimize the environmental pollution disappointed, because most of them can't get equal remunerations under the traditional salvage reward system.

A separate environmental salvage award gets a lot of voices from the skeptics.⁶ In fact, this is a campaign between the traditional salvage tangible property reward system and the environmental salvage award, which is more like an award for saving the intangible property. This campaign leads us to reexamine the traditional salvage system.

The traditional salvage system and contemporary development

In the traditional salvage system, there exist three types of salvage forms relating to the salvage remunerations directly. First form is called pure salvage, which means that there is no contract between the owners of the goods and the salvor, but the relationship between them is implied by law. If the salvage is successful, the salvor will get the right to achieve the reward. This kind of salvage was popular during the Roman times, but it is adopted less and less now. The second form is contract salvage. In the form of contract salvage, the owner of the property and salvor enter into a salvage contract prior to the commencement of salvage operations and the amount of which the salvor would be paid is determined by the contract. The contract may also state that payment is only due if the salvage operation is successful, or that payment is due even if the operation is not successful. This is according to the principle of "*no-cure no-pay*", which is the most famous one in the salvage legal system. And, contract salvage is the most popular form used in the salvage system. The third form named of employed salvage service is also a form of the contract salvage in the traditional maritime law. This salvage service's award is calculated by the labors and equipments per hour. The parties can make an agreement that, if the salvage successes within the period, the salvage fee will be added in proportion. This third form is different from contract salvage that, whatever the salvage is successful or not, the salvee should pay the salvage fee. Moreover, the salvage of this kind service undertakes less risk than contract salvage that it gets less salvage fee. Nowadays the employed salvage service is concluded as a maritime service rather than a form of salvage.

In traditional salvage system, the salvage remuneration is a commercial salvage reward but not includes special compensation generally. According to Article 1(e) of International Convention on Salvage 1989, "Payment means any reward, remuneration or compensation due under this Convention."⁷ The International Convention on Salvage 1989 has given "payment" a definition that exceeds the remuneration, which contains the salvage commercial reward and the special compensation. Obviously, the traditional definition of payment is excluded by the contemporary maritime salvage conception. The payment of traditional salvage system can be divided into two parts, salvage cost and the bonus. The concept of bonus encourages the salvor to save the wreck property at sea.

Formal salvage agreements came to be used in the nineteenth century. The first recorded use of what may be thought of as the earliest Lloyd's Form of Salvage agreement of any sort is the late nineteenth century.⁸ The Form is called of "Lloyd's Standard Form of Salvage Agreement---No Cure-No Pay."⁹

The principle of "*no-cure no-pay*" is used to calculate the economical payment depending on the fulfillment, which is regulated by the law, agreed by the parties or formed by the custom. Under LOF and SCOPIC, according to this principle, the salvor's award was based on the value of the property salvaged and could never exceed it. If at the end of the day the salvor failed, or the ship and the cargo had no value, or the ship and cargo has no value, then he received nothing for his efforts, regardless of the expense he had expended. Consequently, there was no incentive for a salvor to embark on a lengthy and costly salvage operation if the chances of success were poor and the salvaged value would be low, even if posed a significant threat to the environment. As so often happens, it took a major disaster to produce a change, and following the grounding of the Amoco Cadis and subsequent pollution off France in 1978. It was quickly realized that action had to be taken.¹⁰

⁴ See B. Soyer and A. Tettenborn, *Pollution at Sea: Law and Liability*, London, 2012, p. 175.

⁵ Article 13 and article 14 of International Convention on Salvage 1989.

⁶ The International Chamber of Shipping (ICS), one of the skeptics, points out that "ICS remains deeply skeptical about the proposal for a separate environmental salvage award, especially as salvage services are already generously rewarded under the present system." See the Position Paper by the ICS. June 2012. <http://www.comitemaritime.org/Salvage-Convention-1989/0,2746,14632,00.html>. p.5.

⁷ Article 1(e) of International Convention on Salvage 1989 (London, 28 April 1989), *hereinafter* the London Salvage Convention 1989.

⁸ See also D.R Thomas, "Lloyd's Standard Form of Salvage Agreement---a descriptive and analytical scrutiny"[1978] L1.M.C.L.Q.276 in regard to the earlier (1972) edition; and A.F. Bessemer Clark, "The role of Lloyd's Open Form"[1980] L1.M.C.L.Q.297. In *The City of Calcutta* (1898) 8 Asp.M.L.C. 442 at 444 where the Form provided that the arbitrators were to be the Committee of Lloyd's themselves, the court upheld the Agreement.

⁹ See *supra note* 1, p.1.

¹⁰ Hugh Brown of Holman Fenwick & Willan, *Salvage and the environment are LOF 2000 and SCOPIC the solution?*, Pp2, p.11.

It should note that it is always possible to contract on the basis that remuneration will be paid on an alternative basis in the event of the unsuccessful salvage. Such a provision was found in a towage contract considered by the House of the Lords in *Admiralty Commissioners v m/v Valverda*.¹¹ Their Lordships held that the agreement was nonetheless a salvage agreement. Lord Roche said:¹²

It is true enough that "No cure, no pay" is the essence of salvage. Unless the res is saved and a claimant to salvage brings about or contributes to its safety he is not ordinarily entitled to claim salvage remuneration or a laborer worthy of some fire. The alternative position may arise by reason of any agreement antecedent to any salvage services, as in the familiar case of a towage agreement...In such a case salvage remuneration may be earned if the circumstances warrant it, but if it is not, the towage money will be payable...

After providing in cl.A of LOF 2011 that the contractors agree to use their best endeavors to salvage,¹³ etc. it is provided in cl. D that "the service" are rendered on a "no cure-no pay" basis. There are two exceptions to the "no cure-no pay" rule under cl. D. The first relates to the "special compensation" provisions of Art.14 of the London Salvage Convention 1989,¹⁴ whilst the second concerns remuneration pursuant to the SCOPIC Clause. This clause thus reiterates the principle of "no cure-no pay" as regards awards of salvage, but it recognizes that payments, i) of "special compensation" under Art.14 of the Convention, or ii) under SCOPIC are not rewarded on a "no cure-no pay" basis. However and importantly, it asserts in substance that these exceptions to the "no cure-no pay" principle shall not lead to a reduction in salvage remuneration. The commercial reason behind these provisions arises because Art.14 and SCOPIC Clause are adjuncts to the law of salvage funded only by the shipowner (or his insurers) so as to be an incentive to salvors to tackle those casualties where the salvaged fund is likely to produce only a comparatively modest award at considerable expense to the contractor.¹⁵

Diminution of the salvage reward on their account as a matter of principle would not be encouraging.¹⁶ It is to be noted that there is nothing in Art.13 of the London Salvage Convention 1989,¹⁷ which states the reward should be diminished generally because of this existence of a remedy under Art.14. This provision in cl. D was to be found in substance in the second sentence of cl.8 of LOF 1995 as far as "special compensation" is concerned: SCOPIC Clause did not exist until 1999. SCOPIC clause provides in cl.6;ii) that the award under Art.13 shall not be diminished by reason of the exception to the principle of "no cure-no pay" provided in the form of SCOPIC remuneration. Under SCOPIC Clause there is, however, a discount in the Art.13 remuneration where the Art.13 award is greater than the SCOPIC remuneration.¹⁸

The principle of "no cure-no pay" is the fundamental principle determining the salvage remunerations, which puts the double negative form as a premise. What's its real meaning? If there was a recovery, there was a payment; if there was no recovery, there was no payment; if there was partial recovery, there was partial recovery. The salvage operation should have results, which is the most important condition and the salvage ultimate aim. Art.2 of International Convention on Salvage 1910,¹⁹ and Art.12 of

¹¹ Simon Baughen, *Shipping Law*, 3rd Edition, Routledge Cavendish, 2004, pp.2, p.304.

¹² [1938] AC 173, 202.

¹³ See *supra* note 1, p. 543.

¹⁴ The London Salvage Convention 1989, Article 14:

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.
2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.
3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).
4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.
5. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.
6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

¹⁵ See *supra* note 1, pp.4, p. 543.

¹⁶ It has been suggested that with modern communications systems a salvor can quickly assess whether to invoke SCOPIC and this militates against weight being given to the performance of uneconomic services when the fund is high as part of the encouragement process. This suggestion has been rejected by Lloyd's arbitrators. LOF Digest Update Issue 7, p.2.

¹⁷ See *supra* note 7, Article 13.

¹⁸ See *supra* note 1, pp.1, p. 544.

¹⁹ International Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea (Brussels, 23 September 1910), *hereinafter* International Convention on Salvage 1910, Article 2.

the London Salvage Convention 1989,²⁰ which regulate the right to reward and conditions of reward, show that the traditional salvage system has admitted the principle of “no cure-no pay”.

“Gain the salvage cure”, one of the conditions for the reward, means that the salvor should put the partial or all the salvaged value to the salvaged party. “Gain the salvage cure” is often interpreted as the salvaged thing staying in the safety environment. We can see the salvaged things from different views. First of all, from the time, the salvaged thing is rescued eventually that the salvage is established. Secondly, from the quantity, “cure” doesn’t mean that all the wrecked property should be rescued. It can be all, or just part of ones. Finally, from the salvage forms, the cure can reflect directly or indirectly.

On one hand, the principle of “no cure-no pay” encourages the salvor not only to provide the salvage service, but also to gain the best cure by the hardest work. It protects the interest of the salvaged party, which reflects the aleatory of the salvage’s useful result. And it was the unshakably principle in the salvage law that is the custom traditionally. On the other hand, this principle brings some disadvantages. The certainty of traditional principles limits the legal practice of the salvage operation. First, the principle of “no cure-no pay” applies within a certain scope, only for the property of the salvage. In order to adapt the modern salvage, the principle needs the modification and the appropriate interpretation. Second, the principle becomes the negative factor in the environment salvage. It can’t consider the salvage remunerations in a fair environment so that it reduces the enthusiasm to salvage. Oppositely, it didn’t play a role on the encouragement.

With the development of the salvage, the principle of “no cure-no pay” has to do some modifications in order to adapt the new circumstances as the following reasons. First, when the cargo ship loss expands, the oil spill and the pollution increased, the cargo ship value decreased, the possibility of the rescue and the opportunity of obtaining the salvage remunerations are reducing. Second, the oil spill affairs bring the obstacles to the salvage operation; otherwise, the coastal countries will intervene or prohibit the wrecked ship to the port/ the safety water space. In the case of *Amoco Cadiz*,²¹ tons of oil spills brought awful pollution to marine environment. The environmental salvage had become an important part during the salvage operation. However, it reveals several legal problems. According to the traditional salvage system, the environmental salvage reward could not be reasonable fixing. When the salvor met with oil spilled wrecked ship, the salvage remuneration needed other criteria to determine the reward more or less. Therefore, this case was the direct reason to push the principle of “no cure-no pay” forward.²²

Environmental salvage award and the ISU’s proposal

The environmental salvage reward was first concerned in the traditional salvage system in the late 1960’s. In order to protect the marine environment and encourage the environmental salvage, the London Salvage Convention 1989 has made some changes. According to Art.13.1 (b) of the London Salvage Convention 1989, “the skill and efforts of the salvors in preventing or minimizing damage to the environment”,²³ we can see the efforts to prevent or minimize the environmental damage is one of the criteria for fixing the salvage reward. And also, Article 14.1 of the London Salvage Convention 1989, which states that “If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.”,²⁴ has set up a special compensation from the shipowners for environmental salvage salvors. This is a provision so called “the safety net” provision. Although environmental salvage reward is an exception for the principle of “no cure-no pay”, the amount of environmental salvage reward should not exceed the salvaged property’s value.²⁵ Moreover, the special compensation requests salvors take greater efforts to the salvaged property’s value.²⁶ In fact, the environmental salvage reward here is a compromised result between the traditional salvage system and the demand of protecting the marine environment, but it still should be fixed under the principle of “no cure-no pay”.

²⁰ See *supra* note 7, Article 12.

²¹ “*Amoco Cadiz* (IMO 7336422): Summary for Casualty ID 19780316_001”. Casualty Database . Center for Tankship Excellence. Retrieved 16 June 2010. The case brief: *Amoco Cadiz* was a Liberia-flagged, very large crude carrier (VLCC), owned by Amoco, that ran aground on Portsall Rocks, 5 km (3.1 mi) from the coast of Brittany, France, on 16 March 1978, and ultimately split in three and sank, all together resulting in the largest oil spill of its kind in history to that date. See Auke Visser (Thursday, 26 August 2010). “*Amoco Cadiz*”. International Super Tankers. Retrieved 9 September 2010. And the *Amoco Cadiz* contained 219,797 tons of light crude oil from Ras Tanura, Saudi Arabia and Kharg Island, Iran. Severe weather resulted in the complete breakup of the ship before any oil could be pumped out of the wreck, resulting in its entire cargo of crude oil (belonging to Shell) and 4,000 tons of fuel oil being spilled into the sea. See Hartog, C. den; Jacobs, R. P. W. M. (March 1980). “Effects of the *Amoco Cadiz* Oil Spill on an Eelgrass Community at Roscoff (France) with special reference to the mobile benthic fauna”. *Helgoland Marine Research* (Springer Berlin / Heidelberg) 33 (1-4): 182–191. doi:10.1007/BF02414745. Retrieved 11 June 2010.

²² Environmental concerns have significantly shaped the modern law of salvage, particularly after the disasters of the *Atlantic Empress*, *Christos Bitas*, *Amoco Cadiz* and *Erika*. See Gary Beale, “Environmental Salvage and the 1989 Salvage Convention: Proposed Amendments to the Convention and Difficulties in Quantifying and Environmental Salvage Award”, *Environmental Law Review* December 2014 vol. 16 no. 4 (248-261), p.248. doi: 10. 1350 /enIr .2014.16.4.224. Also see A.Bishop, “The Development of Environmental Salvage and Review of the Salvage Convention 1989”, *Tulane Maritime Law Journal* 37(2012-2013), p.66.

²³ See *supra* note 7, Article 13.1(b).

²⁴ See *supra* note 7, Article 14.1.

²⁵ See *supra* note 7, Article 13.3.

²⁶ See *supra* note 7, Article 13.4.

After the case of *Nagasaki Spirit*,²⁷ the safety net has been an unwelcomed provision because of its uncertainty and ambiguity and the difficulty of implement.²⁸ Therefore, another legal regime came. The ISU launched an initiative called “Salvage 2000”,²⁹ which suggested a fairer regime and voluntary basis for the environmental salvage reward. And the SCOPIC Clause was provided. The SCOPIC Clause was an agreement among the ISU, P&I Clubs and some underwriters, which came into use to LOF Since 2000, and was revised in 2005, 2007, 2011 and 2014.³⁰ The SCOPIC clause is supplementary to any Lloyd’s Form Salvage Agreement “No Cure - No Pay” (“Main Agreement”) which incorporates the provisions of Article 14 of the London Salvage Convention 1989.³¹ In other words, when the provisions of Main Agreement are inconsistent with the SCOPIC clause, once invoking the SCOPIC clause, the SCOPIC clause is prior. According to the SCOPIC clause, the salvors can invoke this clause at any time, no matter “a threat to damage to the environment” exists or not.³² As a result, the environmental salvage reward can be paid for the salvors no matter the actual property saved or not.³³ However, the environmental salvage reward under the SCOPIC clause is different from a separate environmental salvage award because it doesn’t include the remuneration for preventing or minimizing the potential damage to the environment.³⁴

The concept of “*Environmental Salvage Award*” was proposed by the ISU at the 2011 Committee Maritime International (CMI) colloquium in Buenos Aires.³⁵ The environmental salvage award, in nature, is the liability salvage,³⁶ which means “*The potential pollution liability becomes an object of salvage itself*”.³⁷ Therefore, the ISU strongly suggests an environmental salvage award because the remuneration of avoiding or minimizing the potential damage to environment should be considered. However, this proposal has gotten a lot of doubts for reasons below. First of all, the potential damage to environment is difficult to be quantified, which means that the amount of damage is hard to be assess, therefore, the liability for environmental salvage can’t be defined. Second, if a separate environmental salvage award is recognized, the traditional salvage system like the special compensation or the SCOPIC clause will be strongly shaken. Third, who should pay for the prevention fees of the potential environmental damages, which means there is no an actual property beneficiary.

Therefore, if a separate environmental salvage award is set up, a rational and valid assessment should be provided. Firstly, the potential damage to marine environment in the salvage system should be defined.³⁸ According to Article 1(d) of the London Salvage Convention 1989,³⁹ “Damage to the environment” means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.” It shows that the damage to environment only restricts to substantial physical damage. If the potential damage to environment is to be recognized, it means that an expected interest or the intangible property will be protected. Therefore, the boundary between recovery and no recovery should be defined. Second, the relationship between the special compensation/SCOPIC clause and the separate environmental salvage award is hard to define. Obviously, the SCOPIC clause and the separate environmental salvage award is contradictory to the extent, it’s difficult to balance the interests between them.

Conclusion

With the development of science and high-technology, the environmental problem has become an avoidable concern in the salvage industry and even in the shipping industry. As a result, a separate environmental salvage award is a necessary and imperative change in the salvage industry. In the traditional salvage system, the liability for preventing the potential damage to environment is not considered. This is a core factor discouraging the salvors to do the environmental salvage operation. Although the assessment for fixing the environmental salvage award is difficult to establish, the quantification of the amount of potential damage is possible. The rational example is the recovery of pure economic loss in the International Oil Pollution Compensation Fund (IOPC Fund), which has recognized the exceptions to recover the indirect losses or intangible property by a case-by-case means.

As an unavoidable trend in the salvage industry, the environmental salvage award involves of the interests of shipowners, the salvors and the property underwriters, which requires a fair and rational legal regime to balance the conflicts of interests among them.

²⁷ *The Nagasaki Spirit* [1997]1 Lloyd’s Rep 323(HL)

²⁸ See J. Hare, *Shipping Law and Admiralty Jurisdiction in South Africa*, 2nd ed. (Juta: Kenwyn, 2012), p. 447.

²⁹ *Ibid*, p.444.

³⁰ *Ibid*.

³¹ See SCOPIC Clause 2014, Article 1-General term. Website:

<http://www.lloyds.com/~media/files/the%20market/tools%20and%20resources/agency/salvage%20arbitration%20branch/scopic%202014.pdf>

³² See A.Bishop, *supra note 22*, p.76.

³³ See Gary Beale, *supra note 22*, p.253.

³⁴ *Ibid*.

³⁵ See International Salvage Union Position Paper on the 1989 Salvage Convention, p. 10.

Available at: www.marine-salvage.com. Last accessed 28 January 2013.

³⁶ See M. Mudrić, “Liability Salvage – Environmental Award: A New Name for an Old Concept”, *Comparative Maritime Law*, Vol. 49, No.164 (2010), str. (471 – 492), p. 483.

³⁷ See Makins, B., McQueen P., White B., “*Salvage and the Environment*”, (1987) 4 *MLAANZ Journal*, p.6.

³⁸ See *supra note 36*, p.484.

³⁹ See *supra note 7*, Article 1(d).

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