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TITLE:

ANALYSING THE DECLINE OF THE USAGE OF THE LLOYD'S OPEN FORM
AGREEMENT (LOF) FOR A VESSEL IN DISTRESS AT SEA.

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ABSTRACT

The Lloyd's Open Form (LOF) standard form salvage contract emerged in the late 19th century and for about a century has, through its various revisions, been the most widely used international salvage contract worldwide. The latter part of the 20th century has seen a steady decline in its usage raising the question of whether there remains any role and place for it going into the future.

A factor that has undoubtedly contributed to the decline in its usage is the enhanced safety of shipping during the course of the 20th century which has reduced the number of salvage opportunities. A further contributing factor to this decline has been the increasing number of instances of vessels being refused permission to seek refuge in coastal states' waters or harbours or being ordered out of those coastal waters, in either instance preventing any salvage of such vessels being successfully completed by bringing the vessel to safety, and the salvor from earning a salvage award.

These instances have seen the increasing reliance on other forms of services contracts, such as towage contracts and wreck removal contracts, with fixed remuneration that is not earned on a no-cure, no-pay basis as is the case with LOF as with salvage contract generally, and this too has reduced the usage of LOF. These contracts also reduced the uncertainty with regard to the amount of the service providers remuneration that exists in the determination of salvage awards. The emergence of a range of standard form contracts in other parts of the world has provided competition for LOF within the international salvage contract marketplace, further contributing to the decline in its usage.

Despite these developments, the LOF has survived through its ability to adapt to changing circumstances and maintain a place for itself, albeit reduced, going into the further, and its primary role and place in the marketplace going forward would seem to be in large-scale emergency salvage operations.

The study also acknowledges the risks involved when salvors are entering perilous conditions where other mariners seek refuge, such as inclement weather or in waterways that other mariners are trained to avoid. Conditions such as the nature and size of the ship, its location, number of passengers, type of cargo, and political ramifications make each casualty operation unique and distinctive.

It is acknowledged that the development of ship designs and the implementation of operating safety requirements has reduced prospects for salvage, which have been steadily declining, however the continuous usage of LOF is still important since it continues to be the salvage contract of choice in situations of time-sensitive emergencies at sea.

Despite technological advancements, the LOF has evolved and responded to the new environment admirably. Additionally, the LOF has been able to allow for ongoing revisions because of difficulties brought on by international events, environmental issues, and arbitrator difficulties. Most significantly, it has demonstrated the ability to adapt to change as it occurs.

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LIST OF ABBREVIATIONS

BIMCO	Baltic and International Maritime Council
CMI	Comite Maritime International
H&M	Hull & Machinery
ICS	International Convention on Salvage
ISU	International Salvage Union
IMO	International Maritime Organisation
LOF	Lloyd's Open Form of Salvage Agreement
LSCA	Lloyd's Salvage Arbitration Clauses
LSSA	Lloyd's Standard Salvage and Arbitration clauses

CHAPTER 1 INTRODUCTION

I. Aim of The Dissertation

The aim of this dissertation is to provide an analysis of the usage of the Lloyd's Open Form's decline, which serves as a standard for determining the amount of compensation to be awarded to salvors for their services in saving property at sea and minimising or preventing environmental damage for their services in saving property at sea.¹

According to Johnson Chiu, the use of the LOF has decreased as a result of better real-time communication systems that support salvaging with higher shipping safety standards. He contends that the development of ship designs and the implementation of operating safety requirements has reduced prospects for salvage, which have been steadily declining. Additionally, according to the International Salvage Union (ISU), the introduction of the “no-cure- no pay” concept increased industry confusion regarding payment terms and the amount to be paid to salvage businesses, which made vessel owners less likely to use the LOF. There wasn't, practically, any real-time contact between ships, ship owners, and insurance firms in the 1970s. The ship's master would have been inexperienced in handling fatalities and unable to quickly consult others. When salvage was provided, even for a minor engine malfunction, the Master frequently ended up signing a LOF contract with the salvor. Thanks to modern technology, the shoreside may quickly—and occasionally even in real-time—receive updated notifications from the vessel. In the current world, masters are no longer required to act solely on their own judgment in trying circumstances. Shipowners and salvor can decide on and sign the right kind of salvage agreement, and the LOF may not be necessary used for minor casualties.²

The phenomenon of LOF usage declining has led to concerns about the future use of the LOF standard salvage agreement. Salvors face intense competition as a result of the industry's significant changes. The market is currently dominated by five to six international salvage companies. Salvors also benefit from advances in technology and communication speed. The major players in the market will get tender notices practically simultaneously when a casualty is reported from the vessel's side. To a lesser extent, salvors are more inclined to give flexible contract conditions since they find it harder to insist on the LOF.³

¹ International Salvage Union Annual Review 2020, available at https://www.marine-salvage.com/wp-content/uploads/2021/07/ISU_Annual_Review_2020.pdf accessed on 21 December 2021.

² Johnson Chiu 'The Challenges to Lloyd's Open Form Salvage Contract' Gard Insight 4 February 2020 available at <https://www.gard.no/web/updates/content/29246093/the-challenges-to-lloyds-open-form-salvage-contract-from-a-shipowners-perspective>, accessed 20 December 2021

³ *ibid*

It is submitted, in this study, that the advantages of the continued use of the LOF through the study of its developments and inadequacies take into account the alternatives for salvaging on the basis of the numerous studies and case law relating to its utilisation in the modern shipping sector. The analysis's findings provide projections for what would be necessary to maintain the LOF salvage agreement's position in the worldwide market, as alternatives like the Japanese Form, Beijing Form, Moscow Form, and Turkish Form have severely hurt the market in their particular regions. The International Salvage Union recognises that the LOF continues to be a preferred contract in the worldwide landscape, despite the development of the aforementioned alternative forms.

The above-mentioned alternative forms will also be compared in this study, with an analysis of why the conventional forms of contract are replacing the LOF and why they have an advantage over the LOF. In doing so, the study examines the causes of the fall in LOF usage, taking into account the importance of the LOF in fostering fairness for all salvage parties and incorporating the idea of minimizing losses to the interests of the vessels, bunkers, and cargo.

II. Background

The "no cure- no pay" salvage contract is based on the Lloyd's Open Form (LOF), commonly known as the Lloyd's Standard Form of Salvage Agreement. The Lloyds Standard Form of Salvage Contracts have been used for more than a century, having been introduced in 1890 and first published in 1908 with few alterations. In 1892, the Committee of Lloyds adopted the first standard form. Between Lloyd's of London and the neighbourhood tug owners in the Dardanelles, the first Lloyd's salvage agreement was signed. Over time, this contract was developed and enhanced, which led to its adoption on a global scale. Since 1908, the LOF has had 11 changes, with the most recent being implemented in 2020.⁴

Although the LOF is governed by English law, it has occasionally been modified by the Lloyd's Salvage Group to serve as a precedent for salvage and wreck removal contracts from the established support among the worldwide community and the maritime industry. The London Insurance market has utilised the LOF all over the world. It is made to be the best solution for emergency situations, saving valuable time on negotiations. It aids in preserving the environment, property, and crew members' safety while at sea. The LOF is a suitable and appropriate contract of choice when a vessel or her cargo is in immediate danger, such as from fire, explosion, sinking, grounding on rocky shore, or if it poses a significant hazard to the environment.⁵

⁴ Hare Shipping Law & Admiralty Jurisdiction 2 ed 437

⁵ Ibid

It has been designed to accomplish the following goals: The establishment of an administrative system under which the assessment of a salvage award and all disputes could safely be left to be resolved after a successful operation had been completed; a standard form of contract easily understood and known to be fair to salvors, ship-owners, cargo owners, and underwriters alike; a contract that could be agreed upon without hesitation or negotiation, enabling necessary salvage work to start without any delay; the establishment of a mechanism to ensure security was provided promptly after the salvage service was completed in order to prevent the arrest of ships and the subsequent detention of such ships.⁶

These goals were met, and the initial idea proved to be a success. Over the years, there have been a number of adjustments, the most noteworthy of which was the publishing of Lloyd's Open Form in 1980. (LOF 80). The LOF 80 marked the beginning of a shift away from the "no cure, no pay" premise and toward the idea that compensation should be determined exclusively by the worth of the property saved. If the services were offered to an oil tanker that was loaded and posing a hazard to the environment, for example, the salvor could still be compensated even if there was no cure. Additionally, the LOF has made sure that the number of maritime accidents has decreased in recent years, which has led to a decrease in the number of salvage cases.⁷

A special edition, LOF 1990, was created to commemorate LOF's 100th birthday in September 1990. The International Convention on Salvage adopted by the International Maritime Organization in April 1989 London Convention had a significant impact on the timing and content of LOF 1990. In fact, the London Convention's incorporation into the new form, which gave it contractual substance, was its most notable aspect. It's interesting to note that LOF 1980 served as a major inspiration for the Convention as well.⁸

The International Convention and the LOF 90 have a mutually beneficial connection that is essential for determining the advantages and contractual implications of employing the LOF. As a result, it seems likely that salvage is important for maritime insurance and will always be a crucial component of the shipping sector. Concerns have been raised about the possibility of LOF system misuse and the fact that LOF contracts are occasionally utilised inappropriately. The LOF contract's Clause L is intended to stop inducements from being provided to facilitate a LOF, but it is questionable whether this clause goes far enough to offer a recourse for individuals who believe an enticement has occurred. It seems fair to lower the burden of proof needed to demonstrate an

⁶ Eghosa Ekhatior 'Protection of the Environment and the International Salvage Convention, 1989' (2016) 10 *Mizan Law Review* 1 at 73.

⁷ *ibid*

⁸ *Hare Shipping Law & Admiralty Jurisdiction* 2 ed

inducement occurred in the context of a LOF contract, especially in light of recent regulatory tightening in the banking and financial services sectors. Even if this is accomplished, it will be challenging to demonstrate that an inducement actually occurred or was promised.⁹

The issues with LOF are mostly related to the idea that it is pricey in comparison to other options and is therefore only appropriate in very special cases. Professional salvagers are supported by a component of public policy recognition, which leads to greater salvage awards than with fixed price tenders. In the absence of agreement, the parties are forced to use arbitration, which takes time and costs money on both sides. This results in significant delay and expenditure.¹⁰

The International Salvage Convention's guiding principles and the worth of the salvaged property will be evaluated subjectively during an arbitration. While skilled salvage practitioners may frequently recommend what might be a fair price, there is frequently a wide variety of viewpoints, which causes a significant amount of doubt, delay, and ambiguity. Contrarily, as there are fewer published LOF awards, the unknown compensation factor grows, affecting maritime insurers and salvors alike. All of this contributes to the widespread belief that LOF is more expensive than a fixed price or hybrid contract, where subjective considerations are eliminated from the calculation and the potential for disagreement is much diminished.¹¹

Last but not least, there is worry that by agreeing to a LOF, the parties' rights may be curtailed. As it stands, the LOF can only be cancelled without consent when there is no longer a credible chance that a useful outcome will result in a salvage reward. This extremely subjective evaluation is based on the likelihood of success and the potential worth of the salvaged property, both of which are frequently contested at the time. Accepting a LOF may limit the ability of the shipowners and their insurers to pursue an alternative contract type in the absence of the salvors' consent. Furthermore, if SCOPIC is included in the LOF and activated with P&I security, SCOPIC termination may not be possible later on if the local government forbids the salvor from demobilizing. When switching to a caretaking arrangement or wreck removal contract may seem like a better choice, this could tie the P&I insurer into a position where they are responsible for SCOPIC.¹²

III. Significance of The LOF In Salvage Operations

An essential component of our economy's international trade is shipping. For many major participants in the industry, the logistics value chain facilitation of goods from the production site

⁹ *ibid*

¹⁰ Martin Davies 'Whatever Happened to the Salvage Convention 1989' (2009) 39 *Journal of Maritime Law and Commerce*

¹¹ *Ibid*

¹² Mandaraka-Sheppard, A.] *Modern Maritime Law* 3 ed

to the client around the world can be a challenging challenge. Ships play a critical role in international trade due to practicality, safety and cost efficiency. In the past, ships were managed and contracted in a different fashion than they are today.¹³

Modern ships are equipped with navigational technology that not only enhance the ship's performance in terms of commerce and the environment but also increase safety in maritime traffic. Despite all of these technological advances, ships will still experience problems and accidents at sea. Since nobody can control unfavourable weather conditions, for example, assistance such as salvage operations will still be needed. The help might be limited to towing of the vessel in distress. When the ship is in danger, when a casualty has occurred, or when the ship is unable to operate safely, ship owners must rely on the expertise of salvors, who offer their services to ships in distress.¹⁴

Salvaging involves taking risks and entering perilous conditions where other mariners seek refuge, such as inclement weather or in waterways that other mariners are trained to avoid. Regarding the nature and size of the ship, its location, the number of passengers, cargo, and political ramifications, each casualty and the ensuing recovery operation are distinctive. Salvor's primary focus is on preserving property, ship, and people in need while minimizing environmental harm that can be caused by fatalities. So, in order to ensure a successful salvage operation in a time-sensitive undertaking, technical knowledge is required.¹⁵

A growing variety of other issues, such as the interests of other stakeholders and environmental considerations, must also be considered by modern salvors. The potential damages to ship-owners, seafarers, consignees, insurers, ports, governments, and other rightful parties without the competence of the salvors might be significant, which would result in costs that would impede the shipping of commodities by sea. Salvors are compensated for their work by salvage awards, which are determined by the standards that were salvaged as well as other factors like their competence, labour, and the worth of the salvaged property.¹⁶

IV. The Decline of LOF Usage

The improvement in ship structural designs, the rapid development of safety pillar technology, and the expanded role of coastal states form have all contributed to the basis decline that. Prior to the 1970s, there was hardly any real-time communication that existed among ships, ship owners, and

¹³ Ibid

¹⁴ Johnson Chiu 'The Challenges to Lloyd's Open Form Salvage Contract' Gard Insight 4 February 2020,

¹⁵ Ibid

¹⁶ Ibid

insurance companies. As a result, the ship's captain was unable to confer with others in time and had little to no expertise handling fatalities. When salvage was provided, even for minor engine problems, the Master would sign a LOF contract with the salvor. With an average of 6 salvage operators dominating the scene, more salvage form possibilities are currently available.¹⁷

Additionally, salvors benefit from advances in technology and communication speed. However, the LOF's updates and modern provisions, which are equally competitive, cannot be overlooked. It should be noted that salvaging is important for both the preservation of the maritime environment and ship owners.

V. Research Methodology

This is a desktop based qualitative research. Both Primary and secondary legal resources were used- primary data was in the form of international treaties and conventions, legislation and case law. Furthermore, secondary sources included textbooks, journal articles and reports in relation to the framework of salvage operations and the use of the LOF by salvors.

VI. Dissertation Outline

In achieving the overall research aim of the dissertation, the dissertation will be present its argument in five chapters as follows:

Chapter one provides an outline, the aim and the significance of the dissertation. The second chapter presents a historical background of the emergence of salvage as an industry. Chapter three analyses the contractual performance of LOF and the factors that have caused the decline in use of salvage contracts generally over the course of the 20th century and into the 21st century. Chapter four is a comparative analysis between LOF, and similar forms used for salvage which have emerged as competitors. The purpose of the chapter is to outline through comparison, how or why they have threatened the LOF forms dominance in market position and an overview of what are these forms and why they are competitive. Chapter five provides a summary of the dissertation and conclusion. The chapter will draw predictions on all the arguments presented on the significance of the role played by the LOF in the industry. The next chapter explores literature with respects to the significance of the LOF.

¹⁷ Mark Lloyd and Craig Boyle-Smith 'Is Lloyd's Open Form on Borrowed Time?' *Kennedys Law*, 7 May 2021, available at <https://kennedyslaw.com/thought-leadership/article/is-lloyds-open-form-on-borrowed-time/>, accessed 15 December 2021.

CHAPTER 2 LITERATURE REVIEW

I. Introduction

The historical context that helped shape the Lloyds Open Form agreement is presented in this chapter. This chapter's goal is to give the reader a grounding in analysis of the LOF's adoption and changes that reflect its application in salvage operations. Using this method, the dissertation will be able to describe the advantages and disadvantages of the LOF agreement in relation to global salvage standards with the aim to explore if it still has a significant role to play in the industry.

The International Convention on Salvage (ICS) 1989 regulations shall be used as the basis for the analysis of the LOF. The Lloyd's Standard Salvage and Arbitration clauses (LSSA), which pertain to the Lloyds Open Form and detailed provisions, are among the contractual terms submitted. The parts that follow will give background information on the LOF's developments.

The most popular contract for emergency salvage services has historically been the Lloyd's Open Form, which is recognised worldwide. According to the Lloyd's Open Form, "a system for evaluating the amount of compensation to be granted to salvors for their assistance in preserving property at sea and limiting or preventing damage to the environment" is provided. One of the key features of the Lloyd's Open Form, which will be covered in greater detail below, is the no-cure, no-pay idea. According to the principle, no matter how much effort the salvor puts forth, there is no foundation for giving a salvage reward if there has been no successful salvage or no property has been salvaged.¹⁸

The Committee of Lloyds adopted and accepted the LOF agreement's first modern text in 1892. It received the name LOF as we currently know it thanks to the amendments that were passed in 1908. Over the years after then, numerous other adjustments have been made. The most recent revision, LOF 2020, was accepted in 2020 after eleven changes.

Regardless of where the salvage operation took place, the initial LOF's goal in 1908—as it is today—was to guarantee that salvors received enough but not disproportionate compensation for their efforts. Prior to 1980, the LOF salvors' compensation was strictly based on the 'No Cure-No Pay' tenet.¹⁹

However, as the shipping sector developed technologically and marine pollution increased, worries about the salvors' compensation for environmental casualties emerged from a number of sources. Even if a salvor made great efforts to safeguard the environment by reducing pollution, it might not be rewarded if it was unsuccessful in salvaging the ship or its cargo. It was feared that

¹⁸ Lloyd's Open Form Agreement of 2020

¹⁹ Lloyd's Open Form Agreement of 2020

if the chances of salvaging the ship and obtaining a payment seemed distant, salvors would lack the motivation to make an effort to avoid or minimise pollution.²⁰

A new type of salvage agreement called as LOF 1980 was established in an effort to address this issue. This had a safety net provision that deviated from the no cure, no pay approach. The LOF 1980 provided as an illustration of how LOF had advanced beyond the legislation at the time and was the most significant alteration in its historical growth. Protecting the environment from oil pollution and other dangerous compounds became a growing issue for the international society during the 1980s, not just for the salvage industry. As a result, the 1989 Salvage Convention was announced.²¹

Article 14 of the Convention serves as the primary important reference since it calls for the payment of "additional compensation" to salvors when the environment is threatened by pollution. The convention, however, did not go into effect right away since it needed to be ratified by a certain minimum number of contracting states. However, some of its provisions were included in a later version of LOF, specifically LOF 1990, and have since continued in LOF2020, the most recent version. As a result of the new convention law, this was another divergence from the "No Cure, No Pay" maxim.²²

The new agreement's major provision was to replace the "safety net" with the "special compensation" regime for salvage operations involving a vessel that, by itself or through its cargo, posed a risk of environmental damage. Additionally, the Lloyd's Standard Salvage and Arbitration Clauses of the most recent 2020 find legislative validity for the majority of the LOF's defined requirements (hereafter referred to as LSSA). The LSSA clauses include provisions referring to salvage operations and processes under Lloyd's agreement.²³

II. Why the Lloyd's Open Form

The main benefit of Lloyd's Open Form is that it enables salvors to offer their services quickly without having to negotiate prices with potential rivals. The salvor also agrees to use its best efforts, with the settlement of the agreement frequently taking place after the conclusion of the services. The quantity of issued Lloyd's Open Forms has, however, significantly decreased over the past few decades. The 'Award' data given only represents those cases that did proceed to arbitration and in which an Award was made. It should be emphasised that about 78% of the lawsuits against the LOF were handled amicably between the parties without recourse to

²⁰ Enuke, O. 'Critical analysis of the Lloyd's Open Form 1980 and the twin concepts of the 'enhanced award' and the 'safety net' in Maritime Salvage'

²¹ Ibid

²² Lloyd's Open Form Agreement of 2020

²³ Ibid

arbitration.²⁴ The fundamental obligations and rights that the agreement provides for the parties, which are covered in the section below, are the basis for the reasons why the LOF has become increasingly popular around the world.

III. Fundamental Obligations and Rights Within LOF

The International Convention of Salvage of 1989's successor document, the LOF, gives property owners and salvagers rights and obligations. This indicates that, just like in any contract, there are rights and obligations for both the salvor and the property owners. Consequently, a contractual obligation is. In the LOF, the fundamental rights and duties are listed with regard to the International Convention of Salvage of 1989, and these are further examined in detail.

IV. 'No Cure – No Pay' Principle

First off, the fundamental tenet of salvage is No cure, No money. On the surface, it appears to be absolute, yet numerous maritime events have provided for the contrary. Nevertheless, the payment from the salvaged property, not the successful salvaging of the item, is what supports the No cure, No pay notion. The ICS 1989 accepted the premise that no payment will be given if the vessel in distress is lost or destroyed during the salvage operation. The salvage reward is given out of the salvaged property, which is the basis for the principle. There would be no justification for paying the salvor anything if the vessel were to be destroyed.²⁵

A salvor who seeks a salvage reward must demonstrate that he or she made a significant contribution to the vessel's rescue or salvaging, even if the endangered vessel was saved from danger at sea. In *SS Melanie v. SS San Onofre*, Lord Phillimore emphasised this idea by stating that "victory is necessary for a salvage payment." contributions to that achievement, or occasionally, what happens. In the, *NV Wijsmuller v Owners of Motor Tanker Tojo Maru* case, Lord Diplock ruled that the first distinguishing characteristic of a Lloyd's Form Agreement is that the person providing salvage services is not entitled to any compensation until he rescues the property in whole or in part. In salvage circumstances, this is what is meant by success.²⁶

The no-cure, no-pay rule, fortunately, has an exemption. A vessel that responds to a distress call from a distressed vessel, even if it does not ultimately help to save the vessel, is nevertheless entitled to a salvage payment. The basis for this can be found in Lushington's dicta from *The Undaunted*, which stated that "expressed meritorious contributions to that success, give title to salvage reward" and that "engagement to render assistance to a vessel in distress, and the

²⁴ Ekhtor, E. 'Protection of the Environment and the International Salvage Convention, 1989' (2016) 10' (1). *Mizan Law Review*

²⁵ Ibid

²⁶ Ibid

performance of that agreement so far as necessary or far as possible, establish a title to salvage reward."²⁷

Professional salvagers have faced many challenges as a result of the no cure, no pay premise in the salvage sector. Salvors were understandably opposed to it, especially since they received no compensation while investing money and energy in the salvage efforts, which failed. Additionally, there is no compensation for salvors who respond to a mid-ocean casualty that poses no environmental risk in nearby or coastal waters.²⁸

V. Conditions of Reward

Salvors are entitled to compensation as one of the conditions of salvage. Payment is defined as a price, remuneration, or compensation owed under the International Salvage Convention in article Researchers go on to say that salvage activities that have produced a beneficial result are entitled to a reward. This implies that the owner of the vessel is entitled to compensation from the salvee if a salvor successfully saves a maritime property while also assisting in minimizing the harm that would have been done to a third party.²⁹

As a result, the reward issue arises as a crucial component of the salvage deal. Therefore, the Convention expressly stipulates as follows the Article 12 reward requirements;

1. Salvage activities that have produced a beneficial outcome are entitled to compensation.
2. Unless otherwise specified, no payment under this Convention is required if the salvage efforts failed to provide any useful results.
3. This chapter is applicable even if the vessel being salvaged and the vessel performing the salvage operations are owned by the same person.

To clarify instances of reward or extra remuneration based on the circumstances, further requirements, as enshrined in Articles 13 and 14 of the Convention, were included. However, the drafter noticed that the simple mention of reward was restrictive.³⁰

VI. Article 13: Reward Calculation Criteria

Taking into account the following factors without respect to the order in which they are listed below and with the goal of increasing salvage operations; the salvaged value of the vessel and other property; the skill and efforts of the salvors in preventing or minimizing environmental damage; the degree of success attained by the salvor; The nature and degree of the danger; the skill

²⁷ International Convention on Salvage 1989, Article 1.

²⁸ International Convention on Salvage 1989, Article 12(1) 58

²⁹ E. Ekhaton, Protection of the Environment and the International Salvage Convention, 1989. (2016) 10 (1). Mizan Law Review

³⁰ *ibid*

and efforts of the salvors in salving the vessel, other property, and life; the time used, expenses, and losses incurred by the salvors; and the risk of liability and the promptness of the services provided; the availability and utilization of vessels or other equipment suited for salvage operations; and the readiness and effectiveness of the salvor's equipment and its value.³¹

The International Convention on Salvage 1989's Article 13.1 essentially stipulates that "the [salvors'] reward shall be determined with a view to stimulating salvage operations... ". In the Industry (1835), a former Admiralty Judge named Sir John Nichol offered advice that the salvors' compensation should "encourage enterprise, reward exertion, and be liberal in all that is due to the general interest of commerce, and to the general benefit of underwriters, even though the reward may fall upon an individual owner with some severity." While keeping the aforementioned in mind, it's also crucial that the Award doesn't completely outweigh the services that were really provided.³²

The LOF1980 established the "increased award" and the "safety net" principles in 1980. Both ideas are only valid in actual or attempted oil tanker salvage operations, oil-laden ship salvage operations, and oil tanker salvage operations. Salvors may additionally receive an additional 15% of their expenses if they are successful in reducing or preventing environmental pollution. The safety net ensured the reimbursement of salvors' fees in the event that the value of the salvaged property was insufficient to balance the salvage incentive.

Whereas "an interim or temporary Award" is the definition of "award," and "Appeal Award" refers to any award, including any interim or provisional Award rendered by the Appeal Arbitrator appointed according to article 11.2 of the Lloyds Salvage Agreement, 2020.³³

This implies that when a maritime property is protected in addition to preventing pollution, a salvor's compensation is "increased." However, this price is taken into account because the safety net was only employed to recover oil from the loaded ship. These terms, which require the contractor (salvor) to make his best efforts to prevent oil leaks from the vessel while executing the services of salvaging the vessel, cargo, bunkers, and stores, are added to Article 1 of the Lloyd's Form. With regard to maritime environmental protection, the environment has been a crucial concern for the past few years, and the provisions made for this are discussed next.

³¹ *ibid*

³² E. Ekhaton, Protection of the Environment and the International Salvage Convention, 1989. (2016) 10 (1). *Mizan Law Review*. pg. 85

Definition according

³³ *ibid*

It should be noted, however, that the LOF form also specifies that the salvor's rights may be terminated under specific conditions. The rights of termination are outlined in Section G of the contract, which reads as follows: "Either the owners of the vessel or the Contractors shall be entitled to terminate the services hereunder by giving reasonable prior written notice to the other when there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Convention Articles 12 and/or 13."

Together with Articles 12 and 13, the aforementioned clause in Section G of the LOF establishes an equal undertaking between the parties to the agreement and positions a just exercise of operations and limitations for the award and/or safety net. With some exceptions, the LOF requirements on award and reward do, however, go beyond the 'No cure-No pay' provision and also make reference to the addition of Article 14, which takes extra recompense into account in certain salvage circumstances.

VII. Special Compensation Payment

Around the 1980s, when the environmental aspect of the salvage sector was hotly debated as a result of numerous oil pollution accidents, special compensation in salvage began to arise. Article 14 of the Constitution states that;

- a) The salvor is entitled to special compensation from the owner of the vessel in the amount of his expenses as herein defined if he performed salvage operations on a vessel that by itself or its cargo threatened environmental damage and failed to receive a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article.
- b) 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 if, in the circumstances described in paragraph 1, the salvor by his salvage operations has prevented or minimised damage to the environment. However, the tribunal may increase such extraordinary compensation further if it thinks it is fair and right to do so while also taking into account the pertinent factors outlined in article 13, paragraph 1. In no case, though, may the entire increase exceed 100% of the costs incurred by the salvor.
- c) For the purposes of paragraphs 1 and 2, "salvor's expenses" refers to the salvor's actual out-of-pocket costs incurred in the salvage operation as well as a fair rate for personnel and equipment actually and reasonably used in the salvage operation, taking into account the requirements outlined in article 13, paragraph 1(h), I and (j).

- d) Only if and to the extent that the total special compensation under this article exceeds any price that the salvor may be entitled to under article 13 will the total special compensation under this article be provided.
- e) The salvor may lose all or part of any extra compensation required under this article if they were careless and failed to prevent or mitigate environmental damage.³⁴

According to a particular provision in Article 14 of the Convention, the environmental component of salvage operations consists of measures taken by the salvagers to avoid or reduce environmental damage. Preventing an oil spill from an oil tanker or removing dangerous cargo from a ship that could endanger the environment are two examples of this kind of action. Additionally, it expanded the definition of the "safety net" to encompass any ship carrying bunkers or other polluting goods in addition to fully loaded tankers. While LOF 80 allowed for the payment of this compensation regardless of where the incident took place, LOF 90, which included a number of provisions from the 1989 Convention, limited the payment of special compensation to "coastal or inland waters or areas close thereto."³⁵

Salvors who were not accustomed to salvage operations with an environmental focus and who were less eager to participate in these types of salvage operations than in traditional salvage operations because they would not be compensated in the same way formed the basis of the special compensation clause. It was then necessary to encourage salvagers to accept high-risk salvage contracts with the primary goal of preventing or limiting environmental damage.

However, it quickly became apparent that Article 14 was not adequately addressing the needs of shipowners, salvors, interested insurers, or even the interests of maritime and port authorities after only a few years of its implementation. The SCOPIC provision was a result of the unhappiness. It has been designed to be adaptive in addition to resolving the alleged major issues with using Article 14. Salvors were given an alternative kind of compensation under the SCOPIC clause (Special Compensation P&I Club Clause), which is calculated differently from the rewards specified in Articles 13 and 14 of the International Convention on Salvage

(1989).³⁶

In essence, SCOPIC offers negotiated tariff rates in the form of compensation as insurance for the services provided by the salvager and their investments in the project. Despite being a modification of the Article 14 Special Compensation, the award provided by SCOPIC is founded

³⁴ G. Daines, 'The Lloyds Open Form and Special Compensation P&I Clause (SCOPIC)'. available at: <https://comitemaritime.org/wp-content/uploads/2018/05/Graham-Daines-Scopic-Paper.pdf> Accessed on 20 December 2021

³⁵ Ibid

³⁶ I. Djadjev, The SCOPIC clause as a major development in salvage law. 2015. Research Gate Journal

on different grounds than those supporting the relevant Convention provision. The inclusion of the SCOPIC clause is provided for in the LOF agreement in box 7. The LOF is important because it established precedent that the Convention will use to treat certain articles as law. This indicates that, as demonstrated in this chapter, LOF agreements are crucial to the formation of both common law and public law. The relationship between the LOF agreement and the Convention as a global legal framework illustrates how crucial it is for both to endure and be used going forward in order to guarantee that changes in the industry are consistently acknowledged and taken into account by public policy.³⁷

VIII. Protection of The Environment

Further research into the problem of environmental protection has attracted a lot of interest globally in positioning the advantages of the LOF. This implies that industry has a duty to ensure the protection of the marine environment under LOF and the Convention of 1989. With regard to the efforts of salvors to stop environmental damage from oil-laden ships, article 14 provides an exception to the strict rule of "No Cure, No Pay." Salvaging oil-laden ships presents a variety of challenges. For instance, during salvage operations, oil may leak, and the salvagers may be held responsible for the ensuing environmental contamination.

Similar to this, LOF has highlighted in the second part (B) of the contract that salvors have a responsibility to safeguard the environment. Since the inception of this clause, there have been more salvage initiatives, most of which have made use of the LOF. As stated in section B of the LOF, "While providing the salvage services, the Contractors shall also use their best endeavours to prevent or minimise damage to the environment." However, more specialised study is needed to address environmental challenges. The LOF, therefore, contains provisions on environmental risks and protection in salvage operations and these provisions were added to the 1989 Convention. In essence, the LOF protects salvors from the hazards or risks inherent in salvage operations by providing them with incentives (such as financial incentives) to balance their losses.³⁸

IX. Duties of The Master of The Vessel

The LOF parties have an obligation to uphold the rights that are the basis of the agreement. The following are some of the responsibilities of the vessel's master or the owner of any object that poses a threat to the Salvor; Cooperate extensively with the salvor throughout the operation in order to minimise environmental harm and to accept delivery of the vessel when the salvor requests

³⁷ *ibid*

³⁸ Eghosa Osa Ekhatior, Protection of the Environment and the International Salvage Convention, 1989: An Assessment

it after the property or vessel has been transferred to a safe location. The responsibilities are significant and are among the few clauses in the LOF agreement.³⁹

The following provisions are listed in the LOF: obligations of property owners, Section F of the LOF: All of the property's owners are required to work closely with the contractors. The Contractors are entitled to all information they may reasonably require regarding the vessel or the remaining property, provided that such information is pertinent to the performance of the services and is capable of being provided without incurring additional costs; the contractors may use the vessel's machinery, gear, and equipment in a reasonable manner without incurring additional costs, provided that the contractors do not needlessly damage, sacrifice, or abandon any property on board.⁴⁰

X. Conclusion

In conclusion, the Lloyd's Standard Form of Salvage Agreement, often known as the Lloyd's Open Form or LOF, is a global standard in use today. One of the better uses of the Lloyd's name, it features prominently in the maritime industry without necessarily having any insurance connotations directly related to the Lloyd's market. It continually attempts to represent best practice in light of changing conditions. It does, after all, exist to help the entire marine industry. The International Convention on Salvage of 1989 and the LOF agreement were correlated in this chapter since they are not mutually exclusive and have endured to assist one another. The next chapter discusses other factors that are said to contribute to the declined usage of the LOF.

³⁹ Lloyd's Open Form Agreement 2020

⁴⁰ Lloyd's Open Form Agreement 2020

CHAPTER 3 FACTORS CONTRIBUTING TO THE DECLINE IN THE USE OF LOF IN TODAY'S WORLD

I. Introduction

This chapter examines the causes of a fall in its use globally, including intense competition among salvors, abuse of the LOF, technical developments in the maritime sector, enhanced safety practices, and limited compensation for environmental protection.

II. The Fierce Competition Amongst Salvors

Over time, the salvage industry has grown significantly, increasing rivalry among salvagers. The sector is currently dominated by five or six worldwide salvage operating companies. This expansion can also be attributed to navigational and technological developments, which have made it safer for sailors to frequently travel out to sea. These key salvage business players get tender letters nearly immediately after a casualty at sea is reported. This competition gives salvors the chance to stray from the LOF and provide better terms, particularly when the casualties are modest.⁴¹

III. The LOF Misuse

Unreliable salvagers will occasionally use the LOF improperly to drive up expenses in non-salvage situations. Because of this, there is a broad mistrust of the LOF, which discourages the maritime sector from using it. To help seafarers who might find it difficult to grasp what the LOF should be used for, it is advised that the objective of the LOF be stated at the beginning of the contract.

Furthermore, there is a widespread misconception among ship and cargo owners that the LOF is excessively lenient toward salvors. Between ship/cargo owners and salvors, this has given rise to several disputes. For instance, in the Nagasaki Spirit Case, the vessel owners disputed the salvor's assertion that their demand for extra compensation included profit.

In addition to their claim under article 13, the salvagers in the Nagasaki Spirit Case sought compensation under article 14 of the Salvage Convention, which stipulated that they should receive "profit as part of a 'fair rate' for personnel and equipment used in the oil pollution prevention operation." The arbitrator made a decision in the salvors' favour. The appellate arbitrator, however, did not view the additional compensation as a different kind of payment for the salvage, but rather as a safety net. The Commercial Court and the Court of Appeal, omitting the profit, supported this position.⁴²

⁴¹ Chiu Challenges to Lloyd's Open Form 1.

⁴² Chiu Challenges to Lloyd's Open Form 1.

This decision was later upheld by the House of Lords, which determined that providing salvage services under the previous administration was a risky proposition. No treatment, no pay. This is no longer the case since, even if traditional salvage produces little to nothing, under Article 13, the salvor will be rewarded a multiple of both his direct costs and his direct standby costs, providing a profit, in the event that he is successful in safeguarding the environment. Furthermore, he is guaranteed an indemnification against his outlays and receives at least a small contribution to his standing costs even if there is no environmental benefit. Failure no longer equates to "no pay," and the availability of this safety net is sufficient... to achieve the goal of the new plan.⁴³

Ship/cargo owners are generally hesitant to select the LOF as the salvage contract due to ongoing conflicts over inflated salvor prices. It is advised that the LOF be changed to inform the parties up front that the contract's terms can be modified to meet their particular requirements. The notion of "no cure, no compensation," which raises the risk for salvors by disincentivizing unsuccessful operations, is one of the LOF's distinguishing features. Therefore, the salvors expect adequate compensation to entice them to accept these high risk and frequently hazardous activities. However, it is recommended that the LOF be changed to include fine fees for salvors who attempt to abuse the LOF by inflating costs. Such a clause could be quite effective in discouraging dishonest salvors and encouraging ship/cargo owners to use the LOF.⁴⁴

IV. Developments in Technology for The Maritime Sector

Communication between the ship's master, the owners of the cargo, the shipowners, and the insurance companies was difficult in the 1970s. Even for small concerns like an engine malfunction, the ship's master frequently ended up signing the LOF with a salvor. This frequently led to disagreements over payments. For instance, in the *Choko Star Case*, which included *Industrie Chimiche Italia Centrale and Cerealfin S.A. v. Alexander Tsavlis & Sons Maritime Co.*, the ship carrying sun seeds and soya beans ran into difficulties in the River Parano soon after leaving for Italy. On behalf of the shipowners as well as the owners of the cargo, the master signed a LOF agreement with salvors.⁴⁵

The salvors' lawsuit against the shipowners was successful. The cargo owners, however, refuted the assertion and asserted that they would have been held accountable under standard maritime law if the ship's master had only requested that the salvors refloat the ship. Sheen J concluded that the issue was whether the master had the right to sign the LOF on behalf of the cargo owners when two parties couldn't communicate. According to Sheen J, the master had

⁴³ Article 13 of the Salvage Convention, 1989

⁴⁴ See Xu Assessment of salvage award under Lloyd's Open Form 17

⁴⁵ Chiu, J "The challenges to Lloyd's Open Form salvage contract – from a shipowner's perspective" 2020.

implied actual authority and, as a result, apparent authority to make "acceptable contracts" with salvors on behalf of owners.⁴⁶

However, because of developments in communication technology, cargo and ship owners on land are now able to receive messages from the ship in real time. Therefore, unlike the master in *The Choko Star Case*, modern ship captains do not have to make snap judgments about their ships and crew while they are at sea. The LOF is no longer utilised for minor casualties as a result, which has significantly decreased its utilization.⁴⁷

It has been argued that improved navigational technology has also lessened the likelihood of maritime mishaps, which has diminished the demand for salvage workers. Additionally, the introduction of better-designed vessels reduces the likelihood of shipwrecks. For instance, "smart ships" have been created as a result of the application of artificial intelligence and the Internet of Things (IoT) to the marine sector. These intelligent ships are outfitted with intelligent defence technologies, integrated control systems, smart manoeuvring control, and digital route management software. This reduces the possibility of frequent human errors leading to mishaps or other unfortunate events at sea that cause misery. Although smart vessels are not yet commonly employed, their use is expected to decrease the number of ships that are in distress at sea and require immediate assistance. Even less use of the LOF as a salvage contract may arise from the elimination of urgency in such circumstances.⁴⁸

V. Improved Safety Culture

While technical developments are mostly to blame for this, other elements also increase maritime safety, which has reduced the need for the LOF. Regulations requiring required safety training for seafarers, for instance, are crucial in ensuring that seafarers are better prepared to operate and live at sea. Global standards for the training, certification, and watchkeeping of seafarers are, for instance, provided by the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1979 (STCW).⁴⁹

According to the STCW, candidates who, in the administration's opinion, satisfy the conditions for service, age, medical fitness, training, qualification, and examinations in accordance with the relevant rules of the Convention will be awarded certificates for masters, officers, or ratings. Fishermen's training, certification, and watchkeeping are governed by the 1995 International Convention on Standards for Training, Certification, and Watchkeeping for Fishing

⁴⁶ *ibid*

⁴⁷ *ibid*

⁴⁸ Menon, A "10 Smart Ship Technologies For The Maritime Industry" *Marine Insight* 2021.

⁴⁹ See art 10.1 of STCW.

Vessel Personnel. Additionally, routine reviews of safety training certifications discourage ship owners from hiring inexperienced personnel who might be at fault for mishaps or become combative in the event of an accident. For instance, the STCW mandates that port officers confirm that all crew members serving on a vessel who are needed to be qualified by the STCW are in fact certified.⁵⁰

Leading to the formulation of the new evacuation and safety techniques, were the casualties of the Nagasaki Spirit Case. During this incident, the entire crew of the vessel 'The Ocean Blessing', perished, save for the two that survived. Although there have been fewer maritime accidents as a result of the rise in safety culture, it is contended that there will always be significant maritime casualties. Therefore, ship/cargo owners and salvors will continue to use salvage agreements, particularly the LOF.⁵¹

Since almost every ship in existence today has the potential to contaminate the environment, environmental preservation is becoming a crucial component of salvage. The only thing more important than preventing and reducing environmental damage is saving a human life. Salvors frequently risk their lives in salvage operations because, as was previously said, they are extremely risky. Additionally, high-quality equipment and personnel with experience are needed for salvage operations. The reward for environmental protection during a salvage operation is still small unless parties agree otherwise.⁵²

This issue can be succinctly stated as follows, the actual incentive for the conservationists is that they will be compensated for their costs in a broad and generous manner whenever there was a risk of environmental harm. Due to the tiny salvaged fund, even in cases where the salvage services are unsuccessful, the return is minimal. Indirect expenses must be taken into consideration when calculating expenses. The salvor is eligible for an increase if the services provided genuinely prevented or minimised environmental damage. The costs so determined constitute special compensation.⁵³

Since almost every ship in existence today has the potential to contaminate the environment, environmental preservation is becoming a crucial component of salvage. The only thing more important than preventing and reducing environmental damage is saving a human life. Salvors frequently risk their lives in salvage operations because, as was previously said, they are extremely risky. Additionally, high-quality equipment and personnel with experience are needed for salvage

⁵⁰ See art 10.1 of STCW.

⁵¹ See Vangsnes *The Modern World of Salvage* 4.

⁵² *ibid*

⁵³ Xu *Assessment of salvage award under Lloyd's Open Form* 52

operations. The reward for environmental protection during a salvage operation is still small, unless parties agree otherwise.⁵⁴

This issue can be succinctly stated as that the true motivation for salvagers is that they will be compensated for their costs on a broad and generous basis when there is a risk of environmental damage. Even in cases when the salvage services are unsuccessful, the compensation will still be small due to the low salvaged fund. Indirect expenses must be taken into consideration when calculating expenses. The salvor is eligible for an increase if the services provided genuinely prevented or minimised environmental damage. The costs so determined constitute special compensation.⁵⁵

Salvors are deterred from considering conducting salvage operations under the LOF by this meagre compensation. To entice salvors to select the LOF, it is suggested that a new reward for environmental protection be instituted. The "estimated breadth and severity of the prospective environmental damage" may be used to compute this additional compensation. With the implementation of such an award, pollution from the maritime sector may decline.⁵⁶

The conventional "No Cure-No Pay" Lloyd's Open Form salvage contract has been less frequently used over time. In 1980, there were 255 LOF contracts awarded, but in 2014, there were just 37, a record low. The average number of LOF contracts during the 1990s was 138.7, and the average award value was 9.56 percent of the property saved (the highest award value was 18.8 percent in 1999). The average reward increased to 12.99% while the annual average decreased to 102.6 in the 2000s (the highest award percentage was 20.4% in 2009). The number was considerably fewer in 2018 at 53 (down from 63 in 2017), and the average award fell to 11.9%.⁵⁷

For its members, the International Salvage Union releases statistics on earnings from "dry" and "wet" activities. Wet salvage is wreck removal, while dry salvage is emergency response. ISU 2018 Statistics show that LOF cases amounted for 24% of all dry salvage cases while producing 58% of all dry salvage revenue. Similar to this, the proportion of LOF cases to all dry salvage cases was 11% in 2016 and 18% in 2017. These figures can point to a pattern where the LOF for dry salvage is being replaced by other commercial contracts and stipulations. The ISU did mention that wreck removal, often known as wet salvage, is a growing source of income for ISU members.⁵⁸

⁵⁴ Article 6.1 of International Convention on Standards of Training Certification and Watchkeeping for Seafarers, 1979 (STCW).

⁵⁵ Xu Assessment of salvage award under Lloyd's Open Form 52.

⁵⁶ See Vangsnes The Modern World of Salvage 65.

⁵⁷ Candidate number: 8021, Salvage contracts: Standard form contracts vs. contracts on negotiated terms and other alternatives. Faculty of law, University of Oslo

⁵⁸ *ibid*

The number of casualties has significantly decreased thanks to technological developments and improvements in safety protocols, making the waters a safer place. Naturally, fewer casualties result in fewer salvage contracts being signed, which is another important element that has decreased the number of LOF cases. Owners of ships do not oppose LOF. When it comes to dealing with urgent and serious casualties, especially when environmental issues are involved, the LOF continues to be the most frequently utilized standard contract form. The shipping sector is constantly worried and skeptical about LOF, although sometimes these are only preconceptions. Even some specialists express concern over the LOF's potential extinction. This won't happen, at least not very soon, in our opinion. In the event that a situation similar to the Maersk Honam fire incident arises, no one will second-guess using LOF. The LOF and casualties will both never totally vanish, it is a fact.⁵⁹

It's beneficial to keep innovating. New ideas for revising and/or altering the parameters of salvage contracts are always welcomed by shipowners. The industry should continue to put out great effort to put an end to the argument over selecting an adequate and proper salvage contract. To change this ingrained conservatism, meanwhile, is not simple. In the end, it's vital to use the appropriate contract for the situation.

VI. Conclusion

The chapter has discussed and analysed the additional causes that, in certain cases, have led to a decrease in the use of the LOF. Among others, factors including fierce rivalry among salvors, abuse of the LOF, technological developments in the maritime sector, improved safety cultures, and low compensation for environmental protection. The next chapter focuses on the comparative analysis of the LOF and alternative salvage agreements.⁶⁰

⁵⁹ Candidate number: 8021, Salvage contracts: Standard form contracts vs. contracts on negotiated terms and other alternatives. Faculty of law, University of Oslo

⁶⁰ Ibid

CHAPTER 4 COMPARATIVE ANALYSIS OF THE LOF AND ALTERNATIVE SALVAGE AGREEMENTS

I. Introduction

This chapter compares the LOF salvage contract to other salvage contracts that are currently on the market. The discussion in this chapter is focused on understanding how the LOF is structured in comparison to other forms accessible and making comparisons on how those other forms have acquired popularity in the market, which has led to a decline in the use of the LOF.

Although marine salvage is subject to the Salvage Convention, it may also be carried out via salvage contracts, for which there are numerous commonly used standard forms. The LOF, through several variations, has been the most widely used standard form of agreement for more than a century. However, this has changed as new forms have entered the market.

The LOF's purpose is to facilitate speedy contract negotiations in emergency situations involving a boat or crew. When a casualty happens, shipowners and salvors anticipate that a "proper and acceptable" contract will be applied. However, what is considered "suitable and appropriate" will vary depending on the circumstances surrounding the casualty, such as the distance at sea, the crew's health, the state of the vessel, and the weather. The LOF has long been regarded as the "proper and appropriate" contract for use in maritime emergencies.⁶¹

The LOF states that the expenses of the salvage operation will be decided after the operation in court with participation from both parties. On March 16, 1978, the Amoco Cadiz oil spill off the coast of France raised doubts about this need (Amoco Cadiz Case). In this instance, a super tanker by the name of Amoco Cadiz broke apart during a storm and ran aground, causing the ship's engine rooms to completely fill with seawater.

As a result, the majority of the 220,000 tons of crude oil the ship was transporting spilled into the water near Brittany. Despite the fact that no crew members died in the catastrophe, the persistent gales and bad weather made an immediate containment of the biggest marine tragedy in history was caused by an oil spill.⁶²

As a result, the majority of the 220,000 tons of crude oil the ship was transporting spilled into the water near Brittany. Although there were no crew members killed in the catastrophe, the ongoing gales and inclement weather made it impossible to immediately contain the oil spill, which resulted in the biggest maritime tragedy in history. The tug ship's captain suggested using a LOF technique to tow and salvage the ship. The captain of the Amoco Cadiz, however, declined to use the LOF in accordance with the owner's instructions because doing so would increase the cost of

⁶¹ Chiu Challenges to Lloyd's Open Form 1.

⁶² 1978, 954 F.2d 1279 (7th Cir. 1992).

salvage. The agreements regarding the LOF salvage expenses caused more time to pass before the vessel could be towed. There was no immediate need to rescue human lives, but the delay greatly infuriated the maritime industry because the marine ecology was still being harmed. In such cases, experts claimed, limiting marine casualties should take precedence over financial considerations.⁶³

Owners of ships and cargo may opt to think about alternatives to the LOF without jeopardizing the security of their ships, their crews, or the environment. For instance, commercial tow contacts will work in "hook and tow" situations like engine failure. The LOF is increasingly being used in conjunction with additional terms or a side agreement. An agreed-upon cap on the potential compensation the salvors can receive for their services may be one of these extra conditions. A pricing formula based on the resources and craft utilised to carry out the salvage service may be agreed upon by some parties.⁶⁴

II. A Comparative Study of The LOF Versus Alternative Forms

4.2.1 National Forms

As an alternative to the LOF, there are numerous national salvage forms available. These agreements are typically utilised by salvors and cargo/shipowners who are in that nation's territorial seas or by parties who are citizens of that nation. Beijing Form, French Form, German Form, Japanese Form, Moscow Form, Scandinavian Form, Turkish Form, Ukraine Form, and United States Form are a few examples of these national forms.⁶⁵

4.2.2 BIMCO Forms

One of the largest international ship-owner, agency, shipbroker, and charterer organizations is BIMCO. On the BIMCO website, standard contracts and provisions developed by BIMCO for use in the shipping sector, such as the TOWNCON 2008 and the Wreck fixed 2010, are available.⁶⁶

4.2.3 ISU Forms

The ISU published a lump-sum salvage agreement known as the SALVCON in order to support one of its fundamental values of fostering value and benefit for its members. This agreement is intended to be used by salvors engaged in work under the LOF or any other contract who need additional help from another salvor on a lump-sum or non-award-sharing basis or on a one-time

⁶³ *ibid*

⁶⁴ Wingrove <https://www.rivieramm.com/opinion/opinion/pros-and-cons-of-the-lof-salvage-form-23134>.

⁶⁵ Chiu Challenges to Lloyd's Open Form 1.

⁶⁶ See BIMCO "About Us and Our Members" (undated) <https://www.bimco.org/about-us-and-our-members> (accessed 22-03-2022).

basis. There are more contracts offered by the ISU, such as the SALVHIRE 2005 and the ISU Award Sharing Sub- Contractors Agreement.⁶⁷

4.2.4 LOF vs National Forms

While many terminologies in the salvage business have been defined by case law and experts, there are still several terms that remain ambiguous in the LOF compared to National forms. For instance, it can be difficult to explain the phrase "danger of environmental damage." What "harm to the environment" and "danger" actually mean can be debated. Contracts that define such phrases help reduce ambiguity surrounding concepts that can be read several different ways. As a result, there is greater meaning clarity and less room for disagreement.⁶⁸

As previously mentioned, under the LOF, the remuneration and/or special compensation of Contractors is decided by arbitration in accordance with the LSAC's rules. Every contract for the performance of salvage services performed under the conditions of the LOF contains the LSAC, which was issued with the Council of Lloyd's permission. The LSAC's goals are to promote the safety of life at sea, preserve property at sea, and prevent or minimise environmental damage during salvage operations; make sure that its provisions are operated in good faith and that they are read and understood to operate in a reasonably business-like manner; and to promote collaboration between the parties and with appropriate government agencies; to ensure that the reasonable expectations of salvors and owners of salvaged property are met; and to make sure that it results in a fair and effective resolution of disputes between the parties, whether amicably, through mediation, or through arbitration, within a reasonable amount of time and at a reasonable cost. The LSAC controls the following crucial elements of the LOF's salvage procedure in order to accomplish these goals: security, maritime lien and right to arrest, appointment of arbitrators and the powers of the arbitrators, interest, currency correction, appeals and cross appeals, payments, awards, special cargo provisions, fixed cost arbitration procedure, and other general provisions. This chapter looks at a few of these clauses.⁶⁹

4.2.5 Salvage Agreement with The Documentary Committee of The Japan Shipping Exchange, Inc. (JSE 91)

The LOF is not the only national salvage form available, as was previously mentioned. However, parties that are either in the State's waters or salvors and ship owners who are citizens of that nation tend to use these alternative salvage contracts. In 1980, the Japan Shipping Exchange adopted the

⁶⁷ Refer to BIMCO "BIMCO Contracts" (undated) <https://www.bimco.org/contracts-and-clauses/bimco-contracts> (accessed 2022-03-22)

⁶⁸ Refer to clause B of LOF.

⁶⁹ Clause 2 of LSAC.

Documentary Committee of The Japan Shipping Exchange, Inc. Salvage Agreement (JSE 91). Japanese legislation is followed when governing the JSE. The LOF and JSE 91 are extremely similar. For instance, the JSE 91's title states unequivocally that, like the LOF, it is based on the "no cure-no pay" concept.⁷⁰

The JSE further requires the salvager to move the vessel to a place of safety or to the location agreed upon by the parties, and to utilise his or her "best endeavours" in the salvage operation. The LOF states that "when providing the salvage services, the Contractors shall also use their best endeavours to prevent or minimise damage to the environment." The JSE 91 specifically addresses the protection of the maritime environment and mandates that [the Salvor] additionally commits to do his best efforts to prevent or minimise environmental damage (which includes considerable physical harm to human health, marine life, or resources in coastal areas or nearby inland waters, as a result of significant accidents involving fire, explosion, pollution, or similar events.⁷¹

The WRECKHIRE revisions prompted later changes to the WRECKFIXED 99 and WRECKSTAGE 99 BIMCO/ISU Wreck Removal and Marine Service Agreements. This made sure that each of the three agreements was consistent. All three agreements' modification processes were finished in 2010.⁷²

As previously said, it is crucial for contracts to define key phrases because doing so helps to reduce uncertainty surrounding terms that can be read several different ways. The LSAC defines words like "days," "Owners of the vessel," and "special compensation," but it does not specify what a vessel is. Any vessel, craft, property, or component thereof, of whatever form, including anything contained therein or thereon, including but not limited to cargo and bunkers, is referred to as a "vessel" in the definition given by WRECKFIXED.⁷³

WRECKFIXED requires the Contractor to use reasonable caution when "rendering the Services which shall include, if applicable, the delivery and/or disposal of the Vessel" in accordance with the Salvage Convention and the LOF. The Contractor must "take appropriate care to prevent and minimise damage to the environment" in accordance with the Salvage Convention and the LOF, according to WRECKFIXED. It is commendable that WRECKFIXED went above and beyond the LOF by requiring Contractors to exercise due caution throughout the salvage operation to prevent and minimise environmental damage and to implement a pollution response plan in accordance with the Company's and the competent authorities' requirements.⁷⁴

⁷⁰ Ibid

⁷¹ Refer to clause 3 of the LSAC for the definitions to these terms

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid

Additionally, WRECKFIXED requires the Contractor to give the Company a copy of the pollution response plan upon the Company's request. This rule, it is argued, is a positive step toward guaranteeing the protection of the marine environment. It is advised that the LOF be amended to include such a condition, as doing so might promote its application in the salvage sector.⁷⁵

According to the aforementioned clause in the LOF, WRECKFIXED declares that the company will make every effort to give the Contractor any plans and drawings of the vessel, cargo manifests, stowage plans, etc., as well as any other details that the Contractor may need in order to carry out the services. In other words, the corporation has a clear duty to provide the Contractor with information they need when they ask for it. But because it might not immediately have the data the Contractor requests, this requirement must be fulfilled to the company's "best efforts." The contractor's demands must also be reasonable.⁷⁶

Unlike the LOF, WRECKFIXED mandates that the Contractor get licenses, authorizations, approvals, and permissions. It also binds the Company to support the Contractor as needed. The LOF may become more popular among salvors who need such help as a result of the inclusion of such a requirement. English law is used to regulate arbitration under the LOF. Similar to the LOF, WRECKFIXED is governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof except to the extent necessary to give effect to the provisions of this Clause.⁷⁷

4.2.6 ISU forms vs LOF

As was already said, one of the ISU's key values is to promote the worth and benefits of its members. To accomplish this, the ISU developed a number of salvage-related agreements, such as the Daily Hire Sub-Contract Agreement and the Salvage Union Sub-contract Lumpsum Agreement (SALVCON) (SALVHIRE 2005). The Daily Hire Sub-Contract Agreement and the Salvage Union Subcontract Lumpsum Agreement (SALVCON) (SALVHIRE 2005) Salvors working under the LOF or any other comparable contract who want to hire additional help but would prefer to do it on a lump sum, non-award sharing basis are targeted users of the SALVCON. As opposed to the SALVHIRE 2005, which enables tug owners to lend out their tugs to salvors on a lump payment basis, this is different.⁷⁸

⁷⁵ See Clause 20 (a) of WRECKFIXED.

⁷⁶ Clause 5 (d) of WRECKFIXED

⁷⁷ Clause 17 (a) of WRECKFIXED

⁷⁸ Brice, G Brice on Maritime Law of Salvage (2011) 884.

The SALVHIRE 2005 is a lump-sum arrangement, not like the LOF. Since there would be no room for disagreements on whether the services given were within the agreed lumpsum price, it is crucial that the SALVHIRE 2005 specify the type of services as precisely as possible. Although this is an agreement between the salvor and tug owner, it is suggested that adding a clause requiring parties to give the LOF as much information as possible may help reduce conflicts that arise after a salvage operation is finished. The LOF may be used as a salvage contract more frequently as a result of this.

III. Conclusion

In the event of a tragedy at sea, both ship/cargo owners and salvors want a "suitable and adequate" contract that will help them avoid wasting time and money. For more than a century, the LOF has been the most often utilised salvage contract. According to the LOF, the remuneration and/or special compensation of Contractors is decided by arbitration in accordance with the LSAC's guidelines. The LOF has lost some of its appeal as alternative salvage contracts have grown more common.

The JSE91, the MARSALV, the Turks 2015, and the CMAC 1994 are a few examples of national forms that are frequently used as substitutes for the LOF. With the exception of the MARSALV, all of these forms adhere to the "no cure- no pay premise," which is typically displayed on the form's face. The LOF is a better salvage document, nevertheless, due to certain significant distinctions. For instance, the MARSALV is often signed upon the completion of the salvage operation. This opens the door to disagreements over the contract's provisions, which can discourage certain parties from choosing it over the LOF that is signed before the operation starts.

In contrast to the LOF's regulations, the JSE pays the salvager his actual costs incurred during the salvage operation rather than the whole worth of the item salvaged. Despite these variations, the LOF's clauses and the LSAC's procedures are largely in line with those of the alternative salvage contracts mentioned above.

The LOF does, however, have flaws that may deter users from using it. For instance, unlike WRECKFIXED, the LOF obligates the Company to support the Contractor as needed but does not mandate that the Contractor obtain licenses, authorizations, approvals, or permits.

The addition of such a mandate in the LOF could increase its popularity among salvors who desire such assistance once more. The JSE 91 further mandates that the salvager sends the vessel owner and master a Daily Salvage Report detailing the vessel's condition and the progress of the salvage operation. It was suggested that the LOF include this extremely useful provision to assist stop unscrupulous salvage companies from taking advantage of ship owners. The addition of such a clause would also benefit the arbitration process because the daily reports might be used as

evidence in arguments. This could motivate salvors and shipowners to utilise the LOF more regularly.

Which type of contract to use depends on a wide range of factors, including the urgency of the situation, the type of damage, the type of vessel and cargo carried, the location of the incident, the availability of nearby tugs, the distance to the closest safe port, the availability of local repair facilities, the weather forecast, etc. As a result, total expenditures for the ship-owner are typically higher than they would be under other types of contracts on marine assistance because the fundamental premise of salvage, "no cure - no pay," was expressly created for circumstances of casualty when chances of recovery are not evident.⁷⁹ This indicates that LOF essentially works in favour of salvors. LOF will undoubtedly be signed in urgent situations, but shipowners "should endeavour to select the most acceptable sort of contract to reduce expenses" whenever it's practical. The insurers frequently prefer fixed rates and stage payments that are determined through a competitive bidding process. Even if daily hiring, lump-sum, or fixed rate salvage contracts are options, alternative aid agreements—rather than salvage—are reached considerably more frequently. It is noticed, for instance, that towage contracts are signed much more frequently than salvage agreements. It is common for an owner to initially sign a letter of intent (LOI) for the salvage operation before moving through with towage agreements with the salvor. This occurs when the hazardous circumstance has been removed, the ship and her cargo are in control, and it is only a matter of transporting her to the closest, safe port.⁸⁰ The following chapter discusses the summary and conclusions of the dissertation.

⁷⁹ Candidate number: 8021, Salvage contracts: Standard form contracts vs. contracts on negotiated terms and other alternatives. Faculty of law, University of Oslo

⁸⁰ *ibid*

CHAPTER 5 CONCLUSION AND RECOMMENDATIONS

I. Introduction

In the first chapter, the dissertation's outline was discussed. The second chapter reviewed the literature, and the third chapter examined additional factors influencing the decline of LOF usage. A comparative analysis was conducted in the chapter that came before this one. Conclusion from the information presented in earlier chapters within the theme of the research objective as mentioned in chapter 1 will be drawn in this chapter.

II. An Analysis of the Decline in The Usage of Lloyd's Standard Form of Salvage Agreement

From the study, the following can be inferred:

- a) It is impossible to overestimate the significance of the salvage industry to international trade and the world economy. When it comes to choosing a salvage contract for time-sensitive incidents at sea, the LOF is the preferred option. The LOF is no longer as frequently used, though. This is a result of advancing technology, which has increased alternative salvage contracts, improved maritime safety, and fierce rivalry among salvagers.
- b) Despite the fact that these considerations have reduced the employment of the LOF, situations still occur where vessels are in distress and require immediate assistance. The LOF is still useful for this reason. Additionally, the LOF keeps evolving thanks to the adoption of new clauses and modifications. The LOF has gradually changed over time to meet industry demands in an effort to become more helpful and relevant, and as a result, it has lasted.
- c) The environmental salvage awards have proven to be beneficial for both pollution protection and cash incentives for the salvagers.
- d) As a salvage agreement, the LOF has benefits. Pre-negotiated terms, for instance, can save crucial time which can mean the difference between a person's and a marine animal's life and death. The established arbitration procedure guarantees parties a transparent procedure for settling awards, and the case law's existence offers solutions for questions regarding the interpretation and application of the LOF.
- e) Where dealing with immediate and serious casualties, especially when environmental concerns are present, the LOF continues to be the most frequently utilized standard contract form. The shipping sector has persistent worries and scepticism about LOF, however sometimes these are merely preconceptions and biases.

III. Summary

The continuous usage of LOF is still highly important as it continues to be the salvage contract of choice in situations of time-sensitive emergencies at sea. Despite obstacles like technological advancements, the LOF evolved and responded to the new danger admirably. Additionally, the LOF has been able to allow for ongoing revisions as a result of difficulties brought on by international events, environmental issues, and arbitrator difficulties. Most significantly, it has demonstrated the ability to adapt to change as it occurs.

IV. Conclusion

The steps to be taken are defined in the dissertation, and the first chapter covered the objectives and background. A thorough assessment of the literature was provided in the second chapter, and in the third chapter, other factors influencing the drop in LOF usage were examined. A comparative analysis was covered in detail in chapter 4. The information covered in the earlier chapters under the theme of the study objective was used to draw conclusions, which are then presented in this chapter.

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