

REPORT TO MARITIME LAW ASSOCIATION OF AUSTRALIA & NEW
ZEALAND ANNUAL CONFERENCE, AUCKLAND

AMENDMENT OF THE YORK ANTWERP RULES MADE AT THE
CMI CONFERENCE, PARIS, 24-29 JUNE 1990

By: Peter E King

1. It was a pleasure and privilege to be the representative of the Maritime Law Association of Australia & New Zealand at the session of the 34th Conference which considered possible amendments to the York Antwerp Rules. I report that the session was well attended by representatives of all countries at the Conference including salvors, adjusters, users and lawyers, and was ably chaired by David Taylor. Interestingly, the group reached general agreement that the York Antwerp Rules should be amended, although there were disagreements as to the actual wording amongst various delegations resolved by vote. The final recommendation was carried at the Conference's concluding session with 34 countries in favour, none against and 4 abstentions. On behalf of MLAANZ I supported the proposal.

2. BACKGROUND - OIL SPILLS AND SALVAGE

The York Antwerp Rules were first promulgated by the CMI in 1890. As such they represent a unique body of rules adopted not by legislation but consensually by maritime users throughout the world. The latest proposals for amendment arose from a Diplomatic Conference convened in London which adopted the International Convention on Salvage 1989. It will come into force one

year following its adoption by fifteen States. As such it will then supersede the international Convention for the Unification of Certain Rules of law relating to Assistance and Salvage at Sea 1910. The 1989 Salvage Convention contains a number of new elements, but specifically introduces the concept of "special compensation" which is available in certain circumstances where a salvor has carried out salvage operations in respect of a vessel which has by itself or its cargo threatened damage to the environment (Articles 13 and 14). As an attachment to the Convention, the Secretary-General of the International Maritime Organisation ("IMO") was asked to take appropriate steps to bring about speedy amendment to the York Antwerp Rules 1974 to ensure that this special compensation was not subject to general average. In furtherance of this request, the Secretary-General of IMO requested the President of CMI to place the matter on the Conference Agenda at Paris.

3. SALVAGE CONVENTION 1989

Article 13 of the new Convention provides, inter alia, "the (salvage) reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria ... (b) the skill and efforts of the salvors in preventing or minimising damage to the environment". Article 14 provides in somewhat awkward language for a safety net where a salvor has carried out salvage operations in respect of a vessel which by itself or its cargo has threatened damage to the environment and has failed to earn a reward. In such a case Article 14 entitles the salvor to claim its expenses notwithstanding it has failed to prevent or

minimise damage to the environment. This important exception to the no cure no pay principle permits recovery of expenses of up to 30% of those incurred by the salvor (except where by negligence the salvor has worsened the environmental damage), and, where the Tribunal "deems it fair and just to do bearing in mind the relevant criteria set out in Article 13" it may increase this to 100% of the expenses.

4. AMENDMENTS TO THE YORK ANTWERP RULES

Rule VI of the York Antwerp Rules 1974 provides:-

"Expenditure incurred by the parties to the adventure on account of salvage, whether under contract or otherwise shall be allowed in general average to the extent that the salvage operations were undertaken for the purpose of preserving from peril the property involved in the common maritime adventure".

Whilst it might be considered surprising that the CMI was prepared to consider amendments to the York Antwerp Rules before the 1989 London Salvage Convention had come into effect, nonetheless the consensus was that Rule 6 should be amended. There were interesting conflicts between the American and the British delegations as to the way in which the new rule should be expressed. Also at the Council meeting at the final session the Argentine delegation moved an amendment to the proposal of the session chairman to the effect that innocent cargo not be required to contribute to general average if that cargo has not caused any pollution at all. This amendment was not supported.

The amendment as adopted is as follows:-

- "(a) Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the

common maritime adventure.

Expenditure allowed in general average shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimizing damage to the environment such as is referred to in Art. 13 paragraph 1(b) of the International Convention on Salvage 1989 have been taken into account.

- (b) Special compensation payable to a salvor by the shipowner under Art. 14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance shall not be allowed in general average."

Finally, it should be noted that the new text is to be described as the "York Antwerp Rules 1974 as amended 1990". The Conference further recommended that the amended Rules should be applied in the adjustment of claims in general average as soon as practicable after 1 October 1990.

PETER KING.

PARIS, 30 JUNE 1990.