



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Vol. 377

CAPE TOWN, 22 NOVEMBER 1996

No. 17604

KAAPSTAD, 22 NOVEMBER 1996

PRESIDENT'S OFFICE

No. 1893. 22 November 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 94 of 1996: Wreck and Salvage Act, 1996.

KANTOOR VAN DIE PRESIDENT

No. 1893. 22 November 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 94 van 1996: Wet op Wrakke en Berging, 1996.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To provide for the salvage of certain vessels and for the application in the Republic of the International Convention of Salvage, 1989; and to provide for the repeal or amendment of certain provisions of the Merchant Shipping Act, 1951, and the amendment of the Admiralty Jurisdiction Regulation Act, 1983; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 12 November 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) "Convention" means the International Convention on Salvage, 1989, 5
contained in the Schedule;
 - (ii) "master", in relation to a ship, means any person, other than a pilot, having
charge or command of such ship;
 - (iii) "Minister" means the Minister of Transport;
 - (iv) "owner of a ship" means any person to whom a ship or a share in a ship 10
belongs;
 - (v) "port" means a place, whether proclaimed a public harbour or not, and
whether natural or artificial, to which ships may resort for shelter or to load or
discharge goods or persons;
 - (vi) "prescribe" means prescribe by regulation under section 21; 15
 - (vii) "Republic" includes the Prince Edward Islands referred to in section 1 of the
Prince Edward Islands Act, 1948 (Act No. 43 of 1948);
 - (viii) "salvage officer" means a salvage officer appointed in terms of section 8;
 - (ix) "seaman" means any person, except a master or a pilot, employed or engaged 20
in any capacity on a ship;
 - (x) "ship" means any vessel used or capable of being used on any waters, and
includes any hovercraft, power boat, yacht, fishing boat, submarine vessel,
barge, crane barge, crane, dock, oil or other rig, mooring installation or similar
installation, whether floating or fixed to the sea-bed and whether self-
propelled or not; 25

- (xi) "South African ship" means a ship registered in the Republic in terms of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), or deemed to be so registered;
- (xii) "wreck" includes any flotsam, jetsam, lagan or derelict, any portion of a ship or aircraft lost, abandoned, stranded or in distress, any portion of the cargo, stores or equipment of any such ship or aircraft and any portion of the personal property on board such ship or aircraft when it was lost, abandoned, stranded or in distress. 5

Application and interpretation of Convention

2. (1) The Convention shall, subject to the provisions of this Act, have the force of law and apply in the Republic. 10
- (2) The provisions of Attachment 1 to the Convention shall have effect in connection with the application and interpretation of the Convention.
- (3) This Act shall not affect any rights or liabilities arising out of any salvage operations or other acts started before the commencement of this Act. 15
- (4) Any reference in the Convention to a State Party shall be construed as, or as including, a reference to the Republic.
- (5) Notwithstanding anything to the contrary in any other law or the common law contained, a court of law or any tribunal may, in the interpretation of the Convention, consider the preparatory texts to the Convention, decisions of foreign courts and any publication. 20
- (6) Notwithstanding anything to the contrary in article 3 or any other article of the Convention, a subject of salvage shall include any fixed or floating platform or any mobile offshore drilling unit whether or not it is engaged in the exploration, exploitation or production of sea-bed mineral resources. 25
- (7) "Damage to the environment" as defined in article 1 of the Convention shall for purposes of this Act, notwithstanding anything to the contrary contained in this Act, not be restricted to coastal or inland waters or to areas adjacent thereto, but shall apply to any place where such damage may occur.
- (8) Notwithstanding the provisions of article 14(3) of the Convention, for the purposes of this Act, the expression "fair rate" means a rate of remuneration which is fair having regard to the scope of the work and to the prevailing market rate, if any, for work of a similar nature. 30
- (9) In the case of any conflict between the Afrikaans and English texts of this Act and the Convention the English text shall be decisive. 35
- (10) Any claimant under this Act shall be entitled to enforce a maritime lien.

Court trying salvage claim may be assisted by assessors

3. The court in which proceedings for a claim relating to salvage have been instituted may, in its discretion, appoint one or more assessors acting only in an advisory capacity, and those assessors shall be impartial persons who are conversant with maritime affairs. 40

Application to aircraft

4. The provisions of this Act relating to wreck and to salvage of life or property and to the duty to render assistance to ships in distress shall apply to aircraft as they apply to ships, and the owner of an aircraft shall be entitled to the award of a sum for salvage services rendered by the aircraft and be liable to pay a sum of salvage in respect of services rendered in saving life from the aircraft or in saving the aircraft or any wreck from the aircraft in any case where the owner of the aircraft would have been so entitled or liable had it been a ship. 45

Obligation to assist ships in distress

5. (1) The master of a South African ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, shall proceed with all speed to the 50

assistance of the persons in distress, informing them if possible that he or she is doing so, unless he or she is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to do so, or unless he or she is released under the provisions of subsection (3) or (4) from the obligation imposed by this subsection.

(2) Where the master of any ship in distress has requisitioned any South African ship that has answered his or her call for assistance, it shall be the duty of the master of the South African ship to comply with the requisition by continuing to proceed with all speed to the assistance of the person in distress unless he or she is released under the provisions of subsection (4) from the obligation imposed by this subsection. 5

(3) A master shall be released from the obligation imposed by subsection (1) as soon as he or she is informed of the requisition of one or more ships other than his or her own and that the requisition is being complied with by the ship or ships requisitioned. 10

(4) A master shall be released from the obligation imposed by subsection (1), and if his or her ship has been requisitioned, from the obligation imposed by subsection (2), if he or she is informed by the person in distress, or by the master of any ship that has reached the person in distress, that assistance is no longer required. 15

(5) If the master of a South African ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to go to the assistance of the person in distress, he or she shall forthwith cause a statement to be entered in the official logbook, of his or her reasons for not going to the assistance of that person. 20

(6) Compliance by the master of a ship with the provisions of this section shall not affect his or her right, or the right of any other person, to salvage.

(7) In the application of this section every reference to a ship in distress shall be interpreted so as to include a reference to an aircraft or a survival craft from a vessel or an aircraft in distress. 25

Duty to render assistance to persons in danger at sea

6. (1) The master of a ship shall, so far as he or she can do so without serious danger to his or her ship or to any person on the ship, render assistance to every person who is found at sea in danger of being lost, even if that person is a citizen of a country at war with the Republic or with the country in which the ship is registered. 30

(2) Compliance by the master of a ship with the provisions of subsection (1) shall not affect his or her right, or the right of any other person, to salvage.

(3) This section shall apply to all ships, wherever they may be registered. 35

Duty of masters of ships in collision to render assistance

7. (1) In every case of collision between two or more ships, it shall be the duty of the master of each ship, if and in so far as he or she can do so without danger to any person on the ship—

(a) to render to the other ship and every person thereon such assistance as may be practicable and necessary to save them from any danger caused by the collision and to stay by the other ship until he or she has ascertained that there is no need for further assistance; and 40

(b) to give to the master of the other ship, the name of his or her ship and of its port of registry and the name of the port from which it has come and to which it is bound. 45

(2) Compliance by the master of a ship with the provisions of subsection (1) shall not affect his or her right, or the right of any other person, to salvage.

(3) This section shall apply to all ships, wherever they may be registered.

Salvage officers

8. (1) The Minister may appoint suitably qualified persons to be salvage officers at ports or other places in the Republic in respect of any defined area.

(2) Such officers shall be appointed for the period and under the conditions as the Minister may deem fit. 5

(3) The powers, duties and functions of salvage officers appointed under this section shall be as prescribed.

Payment of allowances to salvage officers

9. Any person appointed under this Act as a salvage officer and who is not in the employ of the Government shall be paid such remuneration and allowances towards subsistence and transport as the Minister with the concurrence of the Minister of Finance may determine. 10

Exercise of powers in absence of salvage officer

10. (1) If a salvage officer or his or her authorised representative is not present—
 (a) a suitable qualified officer in the South African Police Service; or 15
 (b) in the absence of an officer referred to in paragraph (a), a suitably qualified commissioned officer in the South African National Defence Force,
 may do anything he or she is authorised to do by the salvage officer.

(2) Any person acting for a salvage officer in terms of subsection (1) shall in respect of any wreck be considered to be the agent of the salvage officer and shall comply with the provisions of section 112(2) of the Custom and Excise Act, 1964 (Act No. 91 of 1964), but shall not be deprived, by reason of his or her so acting, of any right to salvage to which he or she would otherwise be entitled. 20

(3) Any salvage officer or any person acting for a salvage officer shall not interfere with the lawful performance of a salvage service by a salvor. 25

Investigation concerning ships wrecked, stranded or in distress

11. If a ship is wrecked, stranded or in distress, a salvage officer or person authorised by him or her, may conduct an investigation into any or all of the following matters:

- (a) The name and description of the ship;
- (b) the names of the master and of the owners; 30
- (c) the names of the owners of the cargo;
- (d) the port from and to which the ship was bound;
- (e) the cause of the wrecking, stranding or distress of the ship;
- (f) the services rendered; and
- (g) such other relevant matters or circumstances as he or she deems fit. 35

Powers to pass over adjoining lands

12. (1) Whenever a ship is wrecked, stranded or in distress all persons may, for the purpose of rendering assistance to the ship or of saving the lives of any shipwrecked persons or of saving any wreck, unless there is some public road or camping site equally convenient, pass and repass either with or without vehicles or animals over any lands and camp on such lands, without being subject to interruption by the owner or occupier, if they do so with as little damage as possible, and may also, on the same condition, deposit on such lands any goods required for the construction of a camp and their stay thereat, and any wreck recovered from the ship. 40

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights granted by this section shall be a charge on the ship or wreck in respect of or by which the damage is caused. 45

(3) The amount payable in respect of the damage referred to in subsection (2) shall, in the event of a dispute, be determined in the same manner as salvage is determined in

terms of this Act, and shall, in default of payment, be recoverable in the same manner as salvage is recoverable under this Act.

Power of salvage officer to suppress plunder and disorder

13. No person shall, when a ship is wrecked, stranded or in distress, plunder, create disorder or obstruct the preservation of the ship or shipwrecked persons or the wreck, and the salvage officer or his or her authorised representative may cause any person contravening the provisions of this section to be detained. 5

Interfering with wrecked ship or aircraft

14. (1) No unauthorised person shall board any ship or aircraft wrecked, stranded or in distress without the leave of the person in charge of such ship or aircraft, and any person boarding such ship or aircraft without permission may be repelled by reasonable force. 10

(2) No person shall—

- (a) impede or hinder the saving of any ship stranded or in danger of being stranded, or otherwise in distress, or of any life from any such ship, or of any wreck; 15
- (b) secrete any wreck, or deface or obliterate any marks thereon; or
- (c) wrongfully carry away or remove any wreck.

Salvage payable for saving life

15. (1) Salvage shall be payable to the salvor by the owner of the ship or the owner of any wreck, whether or not such ship or wreck has been saved, when services are rendered in saving life from any ship. 20

(2) Notwithstanding anything to the contrary contained in the Convention, the payment of salvage in respect of the preservation of life shall have priority over all other claims for salvage. 25

(3) When the ship or wreck is lost or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Minister may, in his or her discretion, award to the salvor, out of moneys made available by Parliament for the purpose, such sum as he or she thinks fit, in whole or part satisfaction of any amount of salvage so left unpaid. 30

Salvage payable by Commissioner for Customs and Excise

16. When any ship is wrecked, stranded, abandoned or in distress or any wreck is found and services are rendered in saving such ship or wreck, salvage shall, subject to the provisions of section 15(2), be paid to the person who rendered the services by the Commissioner for Customs and Excise if the ship or wreck is disposed of by him or her in terms of section 112(3) of the Customs and Excise Act, 1964. 35

Detention of wreck until salvage is paid

17. (1) If the salvage officer is satisfied that salvage is due to any person under this Act, he or she shall detain the ship or wreck saved or assisted or from which life was saved until payment is made for the salvage due, or until process for the arrest or detention of such ship or wreck by a competent court is served. 40

(2) The salvage officer may release any ship or wreck detained by him or her under subsection (1) if security to his or her satisfaction is given for the payment of the salvage due.

Powers of Minister in respect of certain wrecks and ships

18. (1) (a) When a ship is wrecked, stranded or in distress, the Minister may direct the 45

master or owner of such ship, or both such master and such owner, either orally or in writing to move such ship to a place specified by the Minister or to perform such acts in respect of such ship as may be specified by the Minister.

(b) If the master or owner of a ship referred to in paragraph (a) fails to perform within the time specified by the Minister any act which he or she has in terms of that paragraph been required to perform, the Minister may cause such act to be performed. 5

(2) The Minister may, notwithstanding the provisions of subsection (1), cause any wreck or any wrecked, stranded or abandoned ship or any part thereof to be raised, removed or destroyed or dealt with in such a manner as he or she may deem fit, if he or she has not been able to contact the master or the owner of the said wreck, ship or part thereof. 10

(3) If the Minister incurs any expenses in connection with the exercise of any power in terms of subsection (1)(b) or (2), he or she may recover such expenses from the owner of the wreck or ship in question or, in the case of an abandoned wreck or ship, from the person who was the owner thereof at the time of the abandonment.

(4) If the Minister incurred or will incur any expenses in connection with the exercise of any power in terms of subsection (1)(b) or (2) in respect of any wreck or ship, he or she may cause any goods to be removed from such wreck or ship. 15

(5) The Minister may—

(a) sell any wreck or ship in respect of which any power has been exercised in terms of subsection (1)(b) or (2), any part of such wreck or ship and any goods removed therefrom in terms of subsection (4) and apply the proceeds of the sale towards the defrayal of any expenses incurred in connection with the exercise of such power; or 20

(b) cause any such wreck, ship or goods to be detained until security to the satisfaction of the Minister has been given for the payment of such expenses. 25

(6) If any wreck, ship or goods are sold in terms of subsection (5) and the proceeds of the sale exceed the amount of the expenses referred to in that subsection, the surplus shall be paid to the owner of the wreck, ship or goods in question after deducting therefrom the amount of any duty payable in respect of such wreck, ship or goods in terms of the Customs and Excise Act, 1964. 30

(7) The Minister, or any person acting under the authority of the Minister, shall not be liable in respect of anything done in good faith in terms of the provisions of this section.

Agreement to forfeit right to salvage is void

19. (1) A seaman of a South African ship shall not by agreement abandon any right that he or she may have or obtain in the nature of salvage, and any provision in any agreement with him or her inconsistent with the provisions of this section shall be void. 35

(2) The provisions of subsection (1) shall not apply to any provision made by a seaman belonging to a ship engaged in salvage service regarding the remuneration to be paid to him or her for salvage services to be rendered by that ship to any other ship.

Restrictions on assignment of salvage

20. The following provisions shall apply to salvage due or to become due to a seaman of a South African ship: 40

(a) Such salvage shall not be liable to attachment or subject to any form of execution under a judgment or order of any court;

(b) an assignment or hypothecation thereof shall not bind the person making the same; 45

(c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and

- (d) a payment of salvage to a seaman shall be valid in law, notwithstanding any previous assignment or hypothecation of salvage, or any attachment of or execution upon that salvage.

Regulations

21. (1) The Minister may make regulations to prescribe any matter which in terms of this Act may be prescribed or which may be necessary or expedient to prescribe in order to achieve or promote the objects of this Act. 5

(2) Any regulation contemplated in subsection (1) may for any contravention of or failure to comply with its provisions, provide for penalties of a fine or imprisonment for a period not exceeding three months. 10

Offences and penalties

22. Any person who contravenes or fails to comply with the provisions of section 5(1) or (2), 6(1), 7(1), 13 or 14(1) or (2) shall be guilty of an offence, and shall on conviction be liable—

- (a) in the case of an offence mentioned in section 13 or 14(1) or (2) to a fine or imprisonment for a period not exceeding two years; and 15
 (b) in the case of an offence mentioned in section 5(1) or (2), 6(1) or 7(1) to a fine or to imprisonment for a period not exceeding one year.

Declaration of wreck to be a monument

23. This Act shall not derogate from the operation of the National Monuments Act, 1969 (Act No. 28 of 1969). 20

Act to bind State

24. This Act shall bind the State.

Amendment of section 1 of Act 105 of 1983, as amended by section 1 of Act 87 of 1992 25

25. Section 1 of the Admiralty Jurisdiction Regulation Act, 1983, is hereby amended by the substitution for paragraph (k) of subsection (1) of the definition of "maritime claim" of the following paragraph:

- "(k) salvage, including salvage relating to any aircraft and the sharing or apportionment of salvage and any right in respect of property salvaged or which would, but for the negligence or default of the salvor or a person who attempted to salvage it, have been salvaged, and any claim arising out of the Wreck and Salvage Act, 1996;" 30

Amendment of section 134 of Act 57 of 1951

26. Section 134 of the Merchant Shipping Act, 1951, is hereby amended— 35

- (a) by the substitution for subsection (1) of the following subsection:

"(1) A seaman of a South African ship shall not by agreement forfeit his or her lien on the ship for his or her wages, or be deprived of any remedy for the recovery of wages to which in the absence of the agreement he or she would be entitled, or abandon his or her right to wages in the case of the loss of the ship [or abandon any right that he may have or obtain in the nature of salvage] and every stipulation in any agreement with the crew inconsistent with the provisions of this section shall be void."; and 40

- (b) by the deletion of subsection (2). 45

Amendment of section 135 of Act No. 57 of 1951, as amended by section 6 of Act No. 18 of 1992

27. Section 135 of the Merchant Shipping Act, 1951, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The following provisions shall apply to wages [and salvage] due to or to become due to a seaman or apprentice-officer of a South African ship: 5
- (a) They shall not be liable to attachment or subjected to any form of execution under a judgment or order of any court;
- (b) an assignment or hypothecation thereof shall not bind the person making the same; 10
- (c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and
- (d) [a] the payment of wages [or salvage] to a seaman or apprentice-officer shall be valid in law, notwithstanding any previous assignment or hypothecation of those wages [or salvage], or any attachment of or execution upon those wages [or salvage].” 15

Repeal of sections 234, 258, 293 to 306, 330 and 331 of Act No. 57 of 1951

28. Sections 234, 258, 293 to 306, 330 and 331 of the Merchant Shipping Act, 1951, are hereby repealed.

Amendment of section 344 of Act No. 57 of 1951 20

29. Section 344 of the Merchant Shipping Act, 1951, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The period of extinctive prescription in respect of legal proceedings to enforce any claim or lien against a ship or [her] its owners in respect of any damage to or loss of another ship, [her] its cargo or freight, or any goods on board [her] such other ship, or damage for loss of life or personal injury suffered by any person on board [her] such other ship, caused by the fault of the former ship, whether such ship be wholly or partly at fault, [or in respect of any salvage services] shall be two years and shall begin to run on the date when the damage or loss or injury was caused [or the salvage services were rendered].” 25 30

Substitution of section 345 of Act No. 57 of 1951, as amended by section 57 of Act No. 40 of 1963

30. The following section is hereby substituted for section 345 of the Merchant Shipping Act, 1951:

“Payment of allowances to persons appointed to make preliminary inquiries into shipping casualties, to members of courts of marine enquiry, maritime courts or courts of survey and assessors 35

345. Any person appointed under section *two hundred and sixty four*, any member of a court of marine enquiry, maritime court or court of survey, any expert to whom an appeal has been referred under section *two hundred and eighty two* or any assessors summoned under subsection (2) of section *two hundred and ninety two* [or section *three hundred and thirty one* and any salvage officer] shall, if he or she is in the employ of the Government of the Republic, be paid such allowances towards subsistence and transport as may be prescribed (otherwise than under this Act) for Government employees of his or her class, and if he or she is not in the employ of the Government of the Republic, or if no such allowances have been prescribed for Government employees of his or her class, he or she shall be paid such allowances towards subsistence and transport as may be prescribed by the regulations made under this Act.” 40 45 50

Short title and commencement

31. This Act shall be called the Wreck and Salvage Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE**PART 1****INTERNATIONAL CONVENTION ON SALVAGE, 1989****THE STATES PARTIES TO THE PRESENT CONVENTION,**

RECOGNIZING the desirability of determining by agreement uniform international rules regarding salvage operations,

NOTING that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,

CONSCIOUS of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,

CONVINCED of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger,

HAVE AGREED as follows:

CHAPTER 1—GENERAL PROVISIONS**ARTICLE 1***Definitions*

For the purpose of this Convention:

- (a) *Salvage operation* means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) *Vessel* means any ship or craft, or any structure capable of navigation.
- (c) *Property* means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) *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.
- (e) *Payment* means any reward, remuneration or compensation due under this Convention.
- (f) *Organization* means the International Maritime Organization.
- (g) *Secretary-General* means the Secretary-General of the Organization.

ARTICLE 2*Application of the Convention*

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

ARTICLE 3*Platforms and drilling units*

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

ARTICLE 4*State-owned vessels*

- (1) Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.
- (2) Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph (1), it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

ARTICLE 5*Salvage operations controlled by public authorities*

- (1) This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.
- (2) Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.
- (3) The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

ARTICLE 6*Salvage contracts*

- (1) This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.
- (2) The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.
- (3) Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment.

ARTICLE 7*Annulment and modification of contracts*

A contract or any terms thereof may be annulled or modified if:

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

CHAPTER II**PERFORMANCE OF SALVAGE OPERATIONS****ARTICLE 8***Duties of the salvor and of the owner and master*

- (1) The salvor shall owe a duty to the owner of the vessel or other property in danger—

- (a) to carry out the salvage operations with due care;
 - (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;
 - (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
 - (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.
- (2) The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:
- (a) to co-operate fully with him during the course of the salvage operations;
 - (b) in so doing, to exercise due care to prevent or minimize damage to the environment; and
 - (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

ARTICLE 9

Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

ARTICLE 10

Duty to render assistance

- (1) Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
- (2) The State Parties shall adopt the measures necessary to enforce the duty set out in paragraph (1).
- (3) The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph (1).

ARTICLE 11

Co-operation

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

CHAPTER III**RIGHTS OF SALVORS****ARTICLE 12***Conditions for reward*

- (1) Salvage operations which have had a useful result give right to a reward.
- (2) Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
- (3) This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

ARTICLE 13*Criteria for fixing the reward*

- (1) The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:
 - (a) the salvaged value of the vessel and other property;
 - (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
 - (c) the measure of success obtained by the salvor;
 - (d) the nature and degree of the danger;
 - (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
 - (f) the time used and expenses and losses incurred by the salvors;
 - (g) the risk of liability and other risks run by the salvors or their equipment;
 - (h) the promptness of the services rendered;
 - (i) the availability and use of vessels or other equipment intended for salvage operations;
 - (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.
- (2) Payment of a reward fixed according to paragraph (1) shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.
- (3) The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged values of the vessel and other property.

ARTICLE 14*Special compensation*

- (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 effect any right of recourse on the part of the owner of the vessel.

ARTICLE 15

Apportionment between salvors

- (1) The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.
- (2) The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

ARTICLE 16

Salvage of persons

- (1) No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.
- (2) A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

ARTICLE 17

Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

ARTICLE 18

The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

ARTICLE 19***Prohibition of salvage operations***

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

CHAPTER IV**CLAIMS AND ACTIONS****ARTICLE 20*****Maritime lien***

- (1) Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.
- (2) The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

ARTICLE 21***Duty to provide security***

- (1) Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
- (2) Without prejudice to paragraph (1), the owner of the salvaged vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.
- (3) The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

ARTICLE 22***Interim payment***

- (1) The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.
- (2) In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

ARTICLE 23***Limitation of actions***

- (1) Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.
- (2) The person against whom a claim is made may at any time during the running

of the limitation period extend that period by a declaration to the claimant. The period may in the like manner be further extended.

- (3) An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

ARTICLE 24

Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

ARTICLE 25

State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings *in rem* against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognized principles of international law.

ARTICLE 26

Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

ATTACHMENT 1

COMMON UNDERSTANDING CONCERNING ARTICLES 13 AND 14 OF THE INTERNATIONAL CONVENTION ON SALVAGE 1989

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salvaged value of the vessel and other property before assessing the special compensation to be paid under article 14.