GLOBAL REVIEW OF PAST SALVAGE ACTIONS

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Over the past two decades, member salvors of the International Salvage Union have performed over 4,000 salvage operations, some 60 per cent of which were conducted under Lloyd's Form. The property recovery is impressive – ships and cargoes worth around USD 23 billion. The services were rendered at a cost to insurers of less than six per cent of this huge sum. Marine salvage is a "value for money" service, but the priorities, of course, have changed dramatically over the past 20 years. The emphasis today is on pollution defence - as opposed to property recovery – although, in most cases, the two functions go hand in hand.

The ISU's membership is responsible for over 90 per cent of all salvage activities worldwide. It follows that we are in an excellent position to confirm ITOPF's statistics of improvement in the incidence of large spills from tanker casualties. Sadly, these statistics have little influence on public perceptions. Over the past decade, intense and highly negative media coverage of tanker casualties, such as the Braer, Sea Empress and, more recently, the Erika, has hardened public and political opinion.

The loss of the Erika is a stark reminder of the tanker industry's risk exposure. At the same time, we should not forget that the environmental imperative also applies to all ship types, not just tankers! Today, most salvage operations commence with immediate action to retrieve bunkers. Our members recover over 50,000 tonnes of bunkers from ship casualties every year.

The objective of this paper is to review the Braer, Sea Empress and Erika casualties from the salvor's perspective. These casualties are rare events, in that little or nothing could be done to prevent a serious spill. Yet, they are also significant in that each has triggered measures which have (or may be expected to have) positive influences on maritime safety and environmental protection. In addition, this paper will review operations which ended in complete success, with the salvage of the casualty and the total containment of pollutants.

The loss of the Braer

In January 1993 the tanker Braer lost power in a violent storm off the Shetlands. Seawater had contaminated her bunker and diesel tanks. The vessel eventually grounded under high cliffs at Garths Ness. Her tanks contained 85,000 tonnes of crude oil.

It was obvious, from the first, that there was little or no chance of a successful refloating. The weather was appalling and the rocky nature of the grounding site would have made salvage without pollution virtually impossible. An ISU salvor responded - despite the poor outlook - and the salvage team focused on the possibility of offloading the Braer's cargo and bunkers. A recovery plan provided for two options, both viable given a break in the weather! One possibility was discharge to a receiving barge. The nature of the grounding site ruled out a conventional ship-to-ship transfer, but use of a shallow draft barge would have been feasible. The second option was an "over-the-cliff" pump-out of the Braer's crude oil. The salvage equipment mobilised allowed for both possibilities, with the decision on the preferred option left in the hands of the Salvage Master.

Unfortunately, even a Salvage Master cannot mobilise good weather! The all-important weather window for the oil removal never materialised. The Braer was a strong ship but, within a few days, her hull broke up and the entire cargo was lost.

I have no doubt that a pump-out could have prevented the Braer spill, had the weather relented. Cases such as this serve to highlight the significance of the salvor's pollution defence role. This case is also a reminder that no salvor can *guarantee* success! It is impossible to save *every* casualty and prevent *every* spill. A fast response and all the salvage expertise and resources in the world will not produce results if hostile weather stops the salvage team getting on with the job.

At this point, it is important to demonstrate that these disappointments are few and far between. Salvors *are* successful in the vast majority of cases. Even when the initial accident event – perhaps a grounding or collision - produces severe damage and pollution does result, salvage teams have the expertise to prevent a bad situation getting worse. The challenge, of course, is to keep the pollutant in the ship. Containment is better than clean up, which is the last resort should a spill occur.

I have no doubt that, without the efforts of salvors, the tanker industry's environmental record would look rather bleaker today. Who can say what additional damage to the

tanker industry's reputation might have resulted? Almost certainly, the tanker industry would be more regulated!

The salvage industry's own statistics make the point. In the six years to end – 1999, ISU salvors responded to over 1,000 casualties with the potential to cause environmental harm. In doing so, they recovered over 8.3 million tonnes of oils, chemicals and bunkers. Yet a trend of improvement is visible. When the ISU's annual Pollution Prevention Survey began in 1994, members were recovering two million tonnes of pollutants annually from shipping casualties. In 1999, however, the tonnage recovered fell below one million tonnes for the first time. In fact, the total last year was just over 434,000 tonnes, as against 1.18 million tonnes in 1998.

The most important factor behind this improvement is the marked reduction in the number of salvage assistances involving laden tankers. In 1998, ISU salvors recovered nearly one million tonnes of cargo oil, but the figure last year was 295,000 tonnes. The largest single oil cargo amounted to 60,000 tonnes, as against a 1998 case involving a ULCC with 300,000 tonnes of crude oil.

Looking back to the Braer, it might seem strange to talk about a positive outcome. Yet the government of the day acted on important lessons from this casualty. Following the disaster, an inquiry led by Lord Donaldson produced the report "Safer Ships, Cleaner Seas". This called for standby tugs to be stationed to protect busy shipping areas. A contract was placed for tugs to cover the Dover Strait and Minches. Earlier on, similar arrangements were put in place by the French, following the Amoco Cadiz catastrophe in the late 1970s. Today, of course, many governments benefit from "partnering" arrangements with ISU salvors. In the European Union, for example, special salvage schemes also protect the Dutch, German and Spanish coastlines. In the Netherlands, a large salvage tug is based at Den Helder. It is held at 15 minutes' readiness and puts to sea whenever the weather deteriorates.

The Sea Empress spill

The UK authorities decided to contract a third ETV (Emergency Towing Vessel) following the Sea Empress spill at Milford Haven in early 1996. This ETV is based at Falmouth and protects the Western Approaches.

The Sea Empress was one of the most difficult salvage tasks faced in recent times. The vessel was laden with 139,000 tonnes of crude oil and she had suffered severe bottom damage during the initial grounding. The tanker was marooned in a rocky "hole". An STS was out of the question, due to the bad weather. In any event, it soon became apparent that an STS would not be effective in reducing the draft. The removal of one tonne of oil would merely permit the entry of one tonne of seawater - so doing nothing to reduce the casualty's draft in preparation for a tow out of the hole. The only viable solution was to close up all deck vents and openings and pump in inert gas – which eventually reduced the draught. In effect, the Sea Empress was floated out on a giant gas bubble. Against all odds, the salvage team brought the crippled ship to safety, together with 70,000 tonnes of oil.

This was a remarkable feat of salvage, but public perceptions were very different - thanks to hostile media coverage. An important lesson from this case is the importance of communicating simple, powerful messages which paint a realistic picture of the true situation. Another important lesson is the need for improved command and control. Effective decision-making is always difficult in a high-profile case. It is made more difficult by the sheer number of parties involved, with their specific agendas and differing priorities.

Lord Donaldson looked into the wider implications of the Sea Empress spill, especially the command and control challenge. His report offered a pragmatic solution: a system which focuses decision-making on just two individuals: the Salvage Master (who has operational command of the salvage) and the "Secretary of State's Representative". The SOSREP represents the public interest. This approach leaves the Salvage Master's command status intact. It also makes an important distinction between *invoking* intervention powers and *applying* them in an operational context. In short, a lack of intervention by the SOSREP implies acceptance of the salvage plan and the progress made by the salvage team.

The Sea Empress affair, however, also did much to raise fresh concern over the issue of "responder immunity". Following this spill, an obscure law was used to prosecute Milford Haven Port Authority. The Water Pollution Act is based on strict liability. Accordingly, the Port Authority was fined £4 million, a sum which was eventually reduced on appeal. The ISU was alarmed at this aggressive use of strict liability laws. Naturally, a salvor responding to a pollution threat in UK waters could be prosecuted under this law, should a spill occur during the salvage (regardless of fault).

The salvor, in such situations, responds to problems which are not of his making. The operation may well be hazardous. There is unlikely to be enough time to gauge the full extent of the risks. Some limited pollution could be unavoidable, if the salvage team is to prevent catastrophic pollution. Strict liability presents the salvor with a Catch-22. He may be prosecuted if he stands back from a casualty and pollution occurs. Equally, he may prosecuted if, for whatever reason, pollution then occurs during a salvage.

The ISU responded to the Milford Haven fine by urging the UK government to clarify the salvor's position. Happily, Ministers responded positively and moves are now under way to revise the Water Pollution Act. This should ensure that a salvor attempting to prevent environmental damage is not deterred by potential exposure to draconian civil or criminal penalties.

This is a problem which is not confined to the UK. The ISU has called for international recognition of the salvor's special status. We also believe that any future revision of The Salvage Convention 1989 should call on member governments of the International Maritime Organization to ensure domestic laws provide the salvor with "responder immunity".

Loss of the Erika

The tanker Erika belonged to the small proportion of casualties found to be beyond help. French salvors did respond, but the tanker broke in two in stormy weather and, subsequently, little could be achieved. Nevertheless, a French tug made a courageous attempt to recover the stern section, but it could not be saved.

This casualty produced a ferocious public reaction. The Erika's Master was arrested and held in custody for some days. The aggressive media coverage focused on obvious negatives, including vessel age and flag. The chartering policies of the oil companies were called into question and the classification societies took yet another battering.

The importance of SCOPIC

Some casualties present major commercial risks. Occasionally, these risks are too great to accept within the "all-or-nothing" no cure-no pay gamble. An elderly, crippled vessel in ballast and calling for help in a violent storm combines low property value with high risk.

Nevertheless, governments now need to be sure that salvors will respond in all cases which could end in pollution. An atmosphere of "zero tolerance" has developed in north west Europe and in many other parts of the world. When a coastal community is threatened, those responsible for protecting that community have little interest in the many commercial and legal complexities of salvage. But they do expect the salvor to solve the problem!

The new SCOPIC Special Compensation arrangements represent a convincing industry response to a genuine public interest concern. SCOPIC is a contractual formula encouraging salvors to respond to ALL pollution threats. In effect, it protects the salvor against loss when he responds in high risk/low value situations.

SCOPIC, introduced last August, is based on pre-agreed rates for vessels, equipment and personnel. While this clause may be invoked by the salvor at any time, there are significant financial penalties for its inappropriate use. In fundamental terms, SCOPIC is a financial "safety net" designed for use in those few cases (perhaps five per cent, or less, of all cases) where the no cure-no pay gamble could prove unacceptable.

One early SCOPIC case saw a salvor despatch a tug to search for a vessel reported missing in mid-ocean. The search was unsuccessful and the tug returned empty-handed. Its mission had been high risk in commercial terms but the salvor received SCOPIC remuneration. No payment would have been received under Article 14, as this Special Compensation system is confined to pollution prevention activities in coastal waters.

Successful LOF/SCOPIC operations last year included the salvage of the 24,000 dwt bulk carrier Marimar, which grounded in the approaches to Massawa, Eritrea, during May 1999. The salvage team offloaded 2,000 tonnes of the cargo of urea, before successfully refloating the casualty. Other early cases included the refloating of the bulk carrier Weser Ore, which grounded in October 1999 just outside Tubarao, Brazil, having just completed loading more than a quarter of million tonnes of iron ore. Once again, lightering was necessary; around 100,000 tonnes of ore was discharged to a fleet of receiving barges.

SCOPIC's benefits include the significant "added value" of full financial transparency. Pre-agreed rates allow salvage costs to be monitored with ease, on a daily basis. It is encouraging to note that this has already promoted early settlement in a number of cases.

This year also saw the introduction of LOF 2000, the latest edition of Lloyd's Form. Past reviews of LOF have kept the contract fresh and fit for purpose, but have also increased its complexity. LOF 2000 has confronted the problem. The less important provisions have been removed and are now published in a separate document known as "Lloyd's Standard Salvage and Arbitration Clauses". As a result, LOF 2000 is a single sheet contract, printed both sides - replacing the six closely-typed pages of LOF 95.

LOF 2000 introduces some useful changes to the contract. Salvors now have reciprocal rights of termination, for use in situations where a salvage operation can no longer achieve useful results. LOF 2000 also offers, for the first time, a definition of "safe condition". A casualty is in a "safe condition" when skilled salvage services are no longer required to maintain that condition. This should do much to help avoid disputes over the exact timing of redelivery.

The benefits of cooperation

Over the past decade, the most important lesson from casualty response by the salvor is the need for even closer cooperation between the parties. In this context, SCOPIC has a value extending far beyond its introduction of a new Special Compensation system. SCOPIC is the product of two years' vigorous negotiation between P&I Clubs, underwriters, shipowners and salvors. Inevitably, this process served to bring the parties closer together. Agreement on SCOPIC would have been impossible to achieve without tolerance on all sides - a willingness to put aside pre-conceived ideas and appreciate the views of others.

The ISU regards SCOPIC as the most important step yet taken in placing a true value on the salvor's pollution defence role. Certainly, our members now have a much better appreciation of the concerns of clients - shipowners and their insurers. This is of crucial importance, as the future of marine salvage depends on its successful development as a service-driven industry.

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