

Research on the Special Compensation System for the Rescue of Maritime Casualties

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Abstract

Special compensation for salvage at sea refers to the right of the salvor to obtain a certain amount of compensation from the owner of the ship if the ship or the cargo on board poses a threat of pollution to the environment. However, in the long-term practice of the special compensation system, some problems have been exposed, such as vague concept of application, uncertain time calculation standard and complicated calculation method. Aiming at these problems, this paper studies the development status of the special compensation system in maritime salvage, and analyzes the relevant contents and defects of the special compensation system in the International Salvage Convention 1989, SCOPIC Clauses and China's maritime Law, so as to make some suggestions for perfecting and developing China's special compensation system.

Keywords

Shipwreck Rescue; Special Compensation; Salvage Convention; SCOPIC Terms.

1. Introduction

The 1910 International Salvage Convention was once considered to be one of the more successful conventions in the field of maritime law, and the principle of "no effect, no remuneration" embodied in the Convention has long been the criterion for salvage of maritime disasters. However, with the rapid development of shipping and navigation today, new situations of maritime rescue have emerged one after another, especially after the large-scale use of oil tankers and the occurrence of major oil pollution, making it difficult for the old convention to adapt to the new shipping environment. This new change has greatly contributed to the process of revising the international convention, which has added a special provision, namely, a special compensation clause. The establishment of this provision fundamentally changed the above basic principles and also played a decisive role in improving the environment for maritime disaster relief. However, all the inherent flaws of the Convention have also been slowly exposed in long-term practice.[1] The following is to analyze the shortcomings and problems of the Convention and related cases, and to explore and study the system related to special compensation in China's maritime law and make suggestions for its development prospects.

2. The Development and Content of the Special Compensation System

2.1. Development of the Special Compensation System

In order to harmonize the law on salvage at sea, and on the basis of that Convention, the International Maritime Commission adopted the 1910 Convention on International Salvage (hereinafter referred to as the 1910 Convention) in Brussels in 1910, and article 2 of the 1910 Convention stipulates that "if the salvage is effective, fair remuneration may be obtained." The rescue was ineffective and had no right to claim any remuneration. In any case, the amount paid shall not exceed the value of the salvaged property. "[2] In short, what we usually call "ineffective, unpaid" has been observed for a long time by the states parties to the Convention.

But the rapid change in the shipping environment has led to the fact that this principle has ceased to apply to the new maritime environment, and this stable situation has continued for a long time, until the emergence of the "Amoco Cadiz" case, which broke the old principle and opened up a new path. On 16 March 1987, the Belgian tanker Amoco Cadiz was grounded shallow on a reef off the west coast of France, but delays in salvaging the nearby tugboats caused the ship to split into two parts, resulting in a total of 230,000 tons of crude oil spills, resulting in the largest oil spill from the tanker. In the aftermath of this massive oil spill, IMO understood that the traditional "no effect, no pay" principle of the 1910 Convention could not continue to apply to new maritime situations. Especially such a giant tanker, the more dangerous the tanker, the lower the value of the tanker, and vice versa, the higher the degree of pollution. For rescuers, the possibility of effective results of their rescue behavior is small, the possibility of obtaining compensation will be reduced, and it will be easier to produce many problems such as the rescuer standing idly by, the rescued person cannot be rescued, and the safety of the marine environment is damaged. Therefore, from 17 to 28 April 1989, the International Maritime Organization formulated the 1989 International Salvage Convention at the London Diplomatic Conference, and established the principle of "no effect, also compensation", and thus the special compensation system was initially established.[3].

The emergence of the 1989 Convention on International Salvage (hereinafter referred to as the 1989 Convention) initially established a special compensation system. However, the establishment of the 1989 Convention itself has always been accompanied by controversy, and it can be said that there are various problems in itself, which have gradually emerged with the practice of the Convention. For example, the complexity of compensation calculation methods, coupled with the problem of high-value and high-value freight such as shipping, the calculation cycle is often particularly long, which can reach several years, making it more difficult for rescuers to obtain compensation. Another example is the lack of a start and end time provision for the calculation of compensation in the Convention, which has led to endless debates on this issue, further revealing the loopholes in the special compensation system under the Convention system. Based on this, the SCOPIC clause (Special Compensation P&I Clause) was born. The greatest achievement of the SCOPIC section is to determine the scope of compensation including the compensation of ships, personnel, equipment, actual expenditure and bonuses, while the calculation of rates will be stipulated, the establishment of relevant committees for demonstration and modification, and the simplification of the cumbersome and complex calculation of the original rate. There is also a great innovation in the calculation time of special compensation, no longer imposing will on the rescuer and the rescued, but instead allowing the rescuer to decide jointly. It has to be said that the provisions of SCOPIC make up for the inherent shortcomings of the 1989 Convention to a certain extent, solve some problems in practice, and are based on the repair and innovation of the 1989 Convention. However, there are still many aspects of the foundation that are not perfect and need to be improved.[4].

2.2. The Content of the Special Compensation System

The special compensation regime in the 1989 Convention is embodied in article 14 of the Convention, where special compensation is applied on the premise that the amount of compensation is higher than the salvage remuneration under article 13. The bailout payout is borne by the insurance company, while the cost of special compensation is borne by the P&I Society. The project is divided into four situations, such as successful rescue to protect the environment, successful rescue but not to protect the environment, rescue unsuccessful to protect the environment, and rescue unsuccessful and unprotected environment, etc., and combined with relevant regulations, a cumbersome calculation cost standard has been established, and according to different payment results, it is determined whether it is borne by the insurance company or by the insurance association or both, from here it can be seen that

the payment arrangement of the convention is the result of mutual consultation and compromise between the two. In addition, the convention has also made changes in the safe harbor, changing the traditional payment for rescue at the safe port to be regarded as a rescue success as long as it reaches a safe place, which is also a big step forward.[5].

In addition to the premise of the above-mentioned compensation being higher than the salvage remuneration, there are two established elements: first, the restriction is made on the salvaged ship, which must be a vessel that poses a threat of fouling to the environment; on the contrary, it is not included in the scope of the special compensation system, and it does not apply to the principle of "no result, no compensation", but instead applies the principle of "no result, no compensation", that is, no corresponding compensation can be obtained without actual salvage effect. Second, the rescuer cannot be negligent, this negligence is mainly aimed at the problem of marine environmental pollution, let alone at the cost of destroying the environment, once the negligence, its right to compensation will have a certain impact. Thus, the Convention imposes strict restrictions on the application of the special compensation system. In addition, the special compensation system is also reflected in the maritime law of the country, "for the rescue of the ship or the cargo on board that poses a risk of environmental pollution damage, the rescuer may obtain a special supplement equivalent to the salvage cost from the owner of the ship".

3. Defects and Inadequacies of the Existing Special Compensation System

With the establishment of the special compensation system for the rescue of maritime casualties established by the 1989 Convention, the establishment of this system fundamentally changed the old basic principles established by the 1910 Convention, and played a great role in promoting the reduction of environmental pollution, protecting the interests of rescued persons and encouraging the rescue of maritime casualties, and also played an important role in the establishment of the structure of the entire maritime disaster rescue system.[6] However, since the Convention itself was controversial when it was adopted, its special compensation system was formulated in a situation where interests were compromised, and it was inevitable that there would be much-criticized defects in practice. The birth of the SCOPIC clause can be said to be a progress and modification on the basis of the 1989 Convention, but due to the "birth" limitation of the clause, there are natural deficiencies while improving the special compensation system.

3.1. The Defects of the 1989 Convention on International Salvage

3.1.1. The Terminology of the Convention is Vague

The compensation clause in the 1989 Convention has always been controversial at the beginning of its establishment, and it is difficult for the two parties to form a unified opinion between the position of the rescuer and the rescued, and the contradiction of interests is difficult to resolve in a short period of time. In order to avoid the dispute between the parties on special compensation, and in order to allow the convention to be adopted at the meeting as soon as possible, the formulators can be said to have deliberately used some vague and unclear terms in the provisions of the convention when formulating the relevant provisions of the convention. For example, concepts such as "Threat of damage to the environment", "Reasonable", "Fair rate" and so on. The 1989 Convention has circumvented disputes over the content of the provisions through the use of such vague terms, but for reasons of not clearly interpreting and defining the meaning of the terms and limiting their scope of application, it has caused great controversy in the course of practice over a long period of time, which has made the application of the special compensation system more difficult.[7].

Among these ambiguous terms, the term "fair rate" in Article 11 (1) of the 1989 Convention is the most widely known and criticized one. The most famous case is "Nagasaki Spirit case", the

case has a strong research value, can be said to be the convention in the practice of "number one" case, September 19, 1991, oil tanker in the strait of malacca in Malaysia and another full container ship, after both sides the blazing fire. The waters where the two ships collided were in Malaysian waters, and the tanker was loaded with 40,000 tons of crude oil, which was likely to cause the pollution of the crude oil that might be leaked in the surrounding waters. The Malaysian government urgently ordered domestic companies to assist the tanker at sea. But this case in the application of the international convention on compensation provisions, in the meaning of the "fair rate" and the application of the dispute, the focus of the dispute is whether the scope of the "fair rate" should include the profit factor. After five years of litigation, the case was concluded, and the issue of "fair rate" was explained by the House of Lords. The British House of Lords supported the "fair rate" arbitration award, that is, not including the profit factor, this award is relatively favorable to the rescued people, but also relatively close to the requirements of fairness, has certain reference value, and has been relatively widely recognized. Although this trial made a preliminary result on the dispute of "fair rate", the Convention still has not been clearly modified and supplemented. The dilemma encountered in the trial of the case fully shows the defects of the ambiguity of the concept of the convention.[8].

3.1.2. The Time Calculation Standard is Not Clear

The special compensation system necessarily involves the calculation of the amount of the relevant expenses, and the calculation of the amount and cost must be clear about the time period, from when it starts to when it ends, that is, the time standard for the calculation of special compensation. Without a clear time standard, it is difficult to obtain accurate compensation results, and it will also cause a relatively large contradiction between the rescued party and the rescued party. However, the 1989 Convention also circumvented this important issue by failing to define a clear start and end time, and similarly creating contradictions in practice. The Nagasaki Spirit case also involved a dispute over the calculation of time, and the arbitration also gave an award confirming that the calculation time range was from the beginning of the threat to the completion of the rescue. However, the judgment on the calculation of time, which differs from the "fair rate", has not produced the same influence and recognition as the "fair rate", and the controversy has always been relatively large. The uncertainty of the 1989 Convention is further exacerbated by the lack of clarity in the timing of special compensation and is a glaring flaw in the Convention.

3.1.3. The Calculation Method of Compensation is Complicated

The special system of special compensation is aimed at maritime vessels, and once a shipwreck has caused marine environmental pollution, especially the oil spill of oil from an oil tanker, the amount of property involved and the cost of compensation are often relatively large. The 1989 Convention is the product of compromises and concessions between the parties, refining the amount of money for the rescue of shipwrecks. In addition, the rescue projects are divided into four situations: successful rescue to protect the environment, successful rescue without environmental protection, unsuccessful rescue to protect the environment, and unsuccessful rescue without environmental protection. The convention even established a multi-element calculation formula, which made the calculation and trial of cases extremely difficult and costly, even reaching about one million pounds. The longest case took six years and attorneys' fees and accounting costs amounted to a million pounds. The absence of a simple and clear way of calculating compensation not only takes time and effort, but also makes it more difficult to apply the special compensation system in the Convention.[9].

3.2. Deficiencies of the SCOPIC Provisions

First of all, the scope of application of the provisions is limited. The SCOPIC Clauses were revised by the SCOPIC International Salvage Union, International Shippers Mutual Insurance Association Group, Property Insurers and the International Conference of Shipping, etc.

Although 2SCOPIC clauses make up for and improve some defects mentioned above on the basis of the 1989 Convention and bring forth new ideas, the scope of application of these clauses is small, even limited. The main reason for its limitation is that it is neither a legal document in the traditional sense nor a national convention, and its scope of application cannot be extended to all signatory countries like a national law covering the whole country, nor the convention. The scope of application of the SCOPIC Clauses is only the selection of the parties to which they apply. If any of the parties refuse to make the SCOPIC clauses, they can no longer be applied in terms of special compensation. So although this clause has many advantages of progress and innovation, its scope of application greatly limits its function and status in practice.

Secondly, the provision of protection is insufficient. The SCOPIC clauses 'insufficient guarantee mainly shows in two aspects: The SCOPIC clauses 'insufficient guarantee exists for both the salvaged and the salvor. For salvaged persons, the SCOPIC Clause determines the standard for calculating rates, and relevant committees are specially set up to prove and modify the SCOPIC clause, in order to simplify the original tedious and complicated formulas. In this way, the purpose is indeed achieved, speeding up the calculation of special compensation and the implementation of the system to some extent. But the SCOPIC clause also hasn't changed the payment conditions and scope of special compensation. What it has done in terms of calculation is to simplify the calculation method, which can't better guarantee the interests of salvors after performing the salvage act. For rescued people, because of the SCOPIC clause allows the salvor guarantee to replace preservation before an action, but in practice often formed without considering the actual situation and requirements provided by the salvor rescue people assistance guarantees to prompt assistance to relief work, it is likely to rescue people rescue them hesitate, missed the best rescue time, While the interests of the salvaged cannot be guaranteed, it also increases the possibility of Marine environment being polluted.

Finally, the provisions still have validity. But this shortcoming and the limited scope of its application are inherent flaws in themselves. As mentioned above, it is not a mandatory law, nor is it an international convention to be discussed, formulated and signed by States, and obviously has a lower rank of force than national laws and conventions. One of the most obvious manifestations of its ineffectiveness is that it can also be suspended from application in the process of application. For example, after the terms come into force between the parties, the salvaged can make another choice after the terms come into force, that is, abandon the application of the terms and apply the special compensation system in the Convention instead. The reason for this in the final analysis is the ineffectiveness of the SCOPIC terms. The scope and depth of its effectiveness are not enough to compete with national laws or international conventions. The insufficient effects of the SCOPIC clauses also produce contradictions and disputes in practice, which are detrimental to the resolution of problems and the implementation of special compensation systems.[10].

It can be seen that these two clauses mentioned above have various drawbacks, and our special compensation system still needs to be improved and innovated constantly.

4. Suggestions on Improving the Special Compensation System

Although there are also relevant provisions in the provisions of China's maritime law, the provisions on this system in China's legal provisions are not perfect, and China's marine economic development has also reached a certain scale, and the respective problems encountered in application are endless, which requires China to further improve the special compensation system in maritime law. This article puts forward some of the following views on the existing special compensation system in China:

4.1. Harmonizing the Relationship between the Convention and China's Maritime Law

In the process of formulating relevant provisions, China's maritime law largely refers to the ideas and relevant provisions of international conventions. However, the 1989 Convention itself has some defects and deficiencies mentioned above, and even some defects directly and seriously affect the application of the Convention in practice. This means that the special compensation system embodied in our legal provisions must have all kinds of disadvantages inherent in the convention. However, we cannot unilaterally affirm or negate the contents of the 1989 Convention, and we should make clear the relationship between the two.

The People's Government of the People's Republic of China ratified and acceded to the Convention in March 1994, and it remained in force until 1996. Although it is said that the Government of the People's Republic of China did not accede to the Convention at the first time, the application of this Convention to our country is just beneficial now. Due to the so-called first-mod-first system, when China joined the Convention, the Convention had been partially modified, and China also insisted on giving priority to the application of international treaties. There are relatively few contradictions and conflicts in the application of the two. It has to be said that it is indeed a good way for China to solve many contradictions and conflicts by giving priority to the application of international conventions over the application of maritime law in China. However, based on the existing defects of the provisions on special compensation in the Convention mentioned above, we can clearly find that special compensation alone is the only aspect of special compensation. The 1989 Convention is not worthy of applying the principle of "international treaty priority" to it. It can even be said that some provisions on the special compensation system in our laws are more detailed and reasonable than those in the Convention, and are more consistent with our national conditions in practice. If our maritime law still gives priority to the application of the Convention on the special compensation system, it is not in line with the requirements of practice. Therefore, some scholars put forward to reverse the relationship between the Convention and the special compensation system in maritime law, incorporate it into the substantive provisions of the Convention, and give priority to the application of the modified relevant provisions of maritime law. The author believes that this view is worth adopting to coordinate the relationship between the Convention and maritime law at the level of special compensation system.

4.2. Clarify the Scope of Salvage Fees and "Fair Rates"

The calculation of special compensation should pay attention to a problem, that is to determine the scope of the relevant salvage expenses. Although China's maritime Law has clear and specific provisions on the scope of salvage expenses, there is an obvious omission in the provisions, which leads to the unclear scope of salvage expenses. According to the provisions of article one hundred and eighty-two of the maritime law in our country, salvage charges refers to "the salvor in expenses reasonably incurred in the salvage operation" and "the actual use of rescue equipment and personnel of the reasonable cost", but in article 182 of the maritime law also requires to consider an important project, that is "rescue equipment standby condition". We know that the stand or fall of salvor equipment for rescue success is really very important, but "rescue equipment standby condition" clear neither belongs to direct payment of money and not to the actual use of rescue equipment, can't will be incorporated into the project to the two cases, caused the confusion of logic, in practice will be unable to categorize and calculation. Therefore, the author thinks that the relevant provisions of equipment standby status should be listed separately in the law as a special category, which not only eliminates the logic of the law, but also can play a certain role in encouraging salvage at sea.[11].

The 1989 Convention does not clearly explain whether the "fair rate" includes the profit factor. For a long time, China's maritime law has not made a statement on whether the "fair rate"

includes the profit factor, which is not conducive to the practical application or the incorporation into the substantive provisions of the Convention. As early as when the Nagasaki Spirit case was tried in accordance with the relevant provisions of special compensation in the Convention, there was a dispute on the interpretation of "fair rate". However, after five years of trial, the case was concluded and the British House of Lords gave a clear explanation on the scope of "fair rate": It supports the arbitration award that "fair rate does not include the profit factor". The house of lords decision is known as a typical case, the general recognition of the parties in the international scope, even for a long time as to the explanation of the "fair" rate scope of general measure for international society ruled the case as a result of recognition, so the author suggest that China's maritime law should also be clear complement the provisions of the "fair" rate does not include profit factors.

4.3. Flexible Reference to the SCOPIC Clauses

The SCOPIC Provisions were developed in the 1989 Convention, taking the SCOPIC good and discarding the SCOPIC bits. The author thinks that the SCOPIC clause has some reference significance for improving China's Maritime Law mainly in the following two aspects: First, the SCOPIC clause has flexibly solved the problem of calculating the starting and ending time of special compensation, making the salvaged and salvaged parties decide together instead of imposing their wills on them. From the perspective of maritime law in our country, allowing aid and rescued the two sides agreed on the time of beginning and ending special compensation and the time constraints, can reflect respect for the will of the parties to reduce the conflicts, and can avoid conventions and maritime code of the definition of "pollution damage to the environment threat" to avoid the salvor the burden of this complicated problem. Second, a special committee for SCOPIC articles has been set up to review and revise them, encouraging simplification of the original calculation methods. Although the Maritime Law as a law can't set up a special committee dedicated to simplifying the calculation method like this article, the spirit and idea of encouraging simplification in this article are worthy of reference for our country. Does not necessarily need to be clarified in the maritime law of our country only complete the requirements of the simplified calculation and methods of doing so is unnecessary or impossible, I think the best way is in the terms of the principle of added in the maritime law provisions to encourage simplified, shows that to encourage parties to develop practical simplified calculation standard attitude, give full play to the legal guidance role.

5. Conclusion

The special compensation system plays an important role in encouraging salvage at sea, protecting Marine environment and building a harmonious maritime transportation environment. Now there have been more and more people realize the importance of special compensation system and countries have also established corresponding compensation system, but whether the existing 1989 convention or reflected in the maritime law system in our country are more or less some shortcomings and deficiencies, the longer it is difficult to adapt to the rapid development of modern ocean shipping. This requires that we should not be satisfied with the status quo, and continue to combine theoretical knowledge and practical experience to constantly improve the provisions and systems, so as to prevent the existing system from disconnecting with practice, causing problems and intensifying conflicts, and hindering the protection of the Marine environment and the development of the maritime environment.

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