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Legal Evaluation of the Doctrine of General Average Loss: the Purpose in Modern Day Maritime Transaction

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ABSTRACT

The paper unravels the purpose of the doctrine of general average loss in modern day maritime transactions through a critical examination of relevant literature on the subject area. In the bid to achieve this objective, resort is made to adopting a theoretical and doctrinal methodology wherein relevant primary and secondary source materials were utilized. This includes a critical examination of relevant statutory provisions, case law and scholarly literature. The information obtained through these sources was subjected to a contextual and descriptive analysis. The paper finally reaches its findings by revealing that this age long concept has not lost its usefulness and is still relevant in modern day's maritime transaction. It therefore recommends the protection of lives at sea and of maritime property is of paramount importance and must be encouraged by courts without such encouragements the maritime industry could be one so fraught with dangers and risk that few, if any, would reasonable engage in such day-to-day commercial transactions.

Keywords: Average loss, marine insurance, cargo, ship, perils.

INTRODUCTION

Specifically, the paper undertakes: definition and conceptual clarification of the term "General Average Loss"; conditions to be fulfilled before a general average contribution is claimed; ways in which general average loss may arise; relationship between general average and salvage; general average claims and securities; general average under the New Merchant Shipping Act, 2007 and controversies over general average; finally, it draws the conclusion from issues already discussed and makes recommendations.

DEFINITIONS AND CONCEPTUAL CLARIFICATION OF THE TERM "GENERAL AVERAGE LOSS"

The word "Average" is an insurance term meaning loss and in this context a distinction between "Particular Average" and "General Average" is drawn (Smith & Katz 2013). Three interests are at risk during the course of a sea voyage namely: the ship; the cargo; and the freight. As a general rule any loss which any of these interests sustains must be borne by that interest alone. This is known as particular average i.e. loss to be borne by the particular interest incurring it. For example, if one of the ships or boat is carried away in a storm this is particular average loss and must be borne by the ship owner alone.

Section 65(1) of the Marine Insurance Act defines a particular average loss as a partial loss of the subject-matter insured, caused by a peril insured against and which is not a general average loss (Onwuegbuchunam *et al*., 2017). A particular average loss gives no right of contribution from the other parties interested in the adventure. Such a loss and be recovered from the insurers if it is caused in connection with a peril insured against. Expenses incurred by or on behalf of the assured for the safety or preservation of the subject matter insured, other than general average and salvage charges are called particular charges and are not included in particular average (Umezuruike 2014).

Where extraordinary sacrifices are made or expenditure is incurred for the benefit of the whole adventure, the loss is borne by all in proportion and is known as a general average loss. In such a case the particular interest which has suffered the loss is entitled to contribution, called a general average contribution from the other interest. *Section 67(1) of the Marine Insurance Act* defines a general average loss as a loss caused by or directly consequential on a general average act and includes a general average expenditure as well as a general average sacrifice. There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure. Where there is a general average loss, the party on whom it falls shall be entitled, subject to the condition imposed by maritime law to a rateable contribution called a general average contribution, from the other parties interested (Wilhelmsen 2019).

Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him and in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute (Muhammad 2016). In other words, if a general average loss has been incurred in connection with a peril insured against, the assured may recover the whole amount from the insurer without having recourse to the other parties liable to contribute. The insurer can recover this amount from the others.

The concept of general average is probably the oldest maritime law concept. As was observed as early as the beginning of the 19th century, *Lord Stowell* in *The Neptune Case* described salvor as:

> One who, without any particular relation to the ship in distress proffer useful service and gives it as a volunteer adventurer without any pre-existing covenant that connected him with the duty of employing himself for the preservation of that ship (Williams, S. K. (1911, p. 872).

The concept of general average is both ancient and simple namely that, losses sustained or expenditure incurred in time of peril and for the common good should be shared between those interested in the adventure in proportion according to their shares in the adventure. Consequently, a loss caused by directly consequential on a general average act, whether in the form of expenditure or conditions imposed by law, the party on whom such a loss falls is entitled to "general average contribution" from all other parties in the adventure.

The rule of general average emerged from old merchant shipping customs. In ancient times, shippers usually accompany their cargo in the voyage. Where the vessel runs into inclement weather and the only way to save her was to jettison some cargo to lighten the vessel,

the cargo owners would agree on a loss sharing formula. The jettisoned cargo would be valued and the ship owner and the cargo owner including owners of jettisoned goods would make contributions in proportion to the value of their cargo at risk in the voyage (Fisher 1870). The oldest law dealing with general average in the law of *Rhodians*, thus the *Rhodians* statute on jettison provides that if goods are thrown overboard in order to keep the ship afloat, the loss incurred for the benefit of all concerned shall be made good by a contribution of all co-adventures.

General average is unique in that it is only recognized in Admiralty Law which is that body of legal principle which governs, in particular, marine commerce and navigation business transacted at sea or relating to navigation, to ships and shipping, to sea men, to transportation of persons and property at sea and to marine affairs generally. In the *Star of Hope* case the United States Supreme Court defined General Average as:

> "A contribution by all parties in the sea adventure to make good the loss sustained by one of their members on account of sacrifice made on the part of the ship or cargo to save the residue and lives or those on board from an impending peril or for extraordinary expenses necessarily incurred by one or more of the parties for the general benefit of all the interest embarked in the enterprise" (Strauss 1966, p. 60). Loses which give a claim to average are usually divided into two great classes:
>
> i. Those which arise from sacrifices of part of the ship or part of the cargo (jettison), purposely made in order to save the whole adventure from perishing;
> ii. Those which arise out of extraordinary expenses incurred for the joint benefit of ship and cargo" (Ukkola 2014).

Also in *Birkely v Presgrave*, all losses which arises in consequence of extraordinary sacrifices made on expenses incurred for the preservation of the ship and cargo comes within general average and must be borne proportionately by all who are interested (Kownacki 2014). The principle of general average dates back almost four thousand years and is believed to have been used first by *Rhodians* in the 8th century BC and was first written down in Justinian's code in the early sixth century A.D (Tetley 1994).

The concept developed over the centuries in different legal system, different rules and custom grew up (Aloamaka *et al*., 2021). In 1860 an international conference was held in Glasgow in an attempt to bring international conformity and uniformity to the law of General Average. A further conference was held in York in 1864 which produced the York Rules of 1864. The York rules was revised in Antwerp in 1877 which version produced the York Antwerp Rules (Hudson & Harvey 2017). The York – Antwerp Rules had been revised in 1890, 1924, 1950, 1974 and recently in 1994. As was noted by Nick William, it must be appreciated that the York – Antwerp Rules as established as they are, do not have the status of an international convention (Horowitz 2004). In effect, for them to be binding, they must be incorporated into each individual contract of 'affreightment', principally bill of lading. Although General Average is often discussed within the context of marine insurance, it is important to stress the fact that General Average exist and must be considered quite independently of marine insurance while it is true that in modern commercial policies, insurers on ship and cargo losses and contribution under their policies, yet their interest in general average cannot properly be understood unless consideration of insurance are in the first instance left out of account.

During the performance of a contract of carriage by sea, there are in general three separate interestswhich are exposed to the risks incidental to a marine adventure namely: the interest in the ship; the interest in the freight; and the interest in the cargo (Connell 2004). In the ordinary course, any loss which may be sustained by any of these interest fall upon the particular interest affected, in which case, the loss, if not total, is called a particular average loss. Where however, the loss arises in consequence of extraordinary sacrifice made or expenditure incurred for the preservation of the several interest involved, it no longer falls on the particular interest exclusively, but might be born in due proportion by all (Carter 2013). The loss is then called a "General Average Loss", the sacrifice or expenditure which give rise to it are known as "general average sacrifice" and "general average expenditure" which the amount to be contributed towards the loss by the respective interest is called a "general average contribution." From the foregoing the essential elements for general average are as follows:

i. The sacrifice or expenditure must be extra-ordinary (Dowdall 1895);
ii. The Act must be intentional and/or voluntary and not inevitable;
iii. There must be a peril;
iv. The action must be for the common safety and not merely for the safety of part of the property involved (Willmott et al., 2021);
v. The act must be reasonable;
vi. It must be an act at the time of loss; and
vii. The loss incurred must be a direct consequence of the act (Willmott *et al*., 2021).

CONDITIONS TO BE FULFILLED BEFORE A GENERAL AVERAGE CONTRIBUTION IS CLAIMED

Before a general average contribution is claimed, certain conditions must be fulfilled:

a. There must have been a common danger; it follows, therefore, that an interest which was never in peril cannot be compared to contribute;
b. The danger must not be due to the default of the interest claiming contribution. For example, if goods are known overboard because they are dangerous, their owner cannot claim for general average contribution (Walgrave 2012);
c. The danger must be a real one. Thus in Joseph Watson and Sons Ltd v Fireman's Fund Insurance Co, the master of a ship believed that the ship was on fire and in order to extinguish it, he caused steam to be turned into the hole. In fact, the ship was never on fire (Noussia 2007). It was held that, the resulting damage to the cargo was not a general loss;
d. There must have been a voluntary and reasonable sacrifice of the property in respect of which contribution is claimed. This occurs when cargo is thrown overboard to lighten the ship in heavy weather;
e. The interest called upon for contribution must have been served.

WAYS IN WHICH GENERAL AVERAGE LOSS MAY ARISE

a. General Average Loss of Cargo: A portion of cargo may be jettison for the purpose of saving the rest of the adventure. There is equally a general average loss where in consequence of a fire on board the cargo is damaged by water being poured upon kit to extinguish the fire or through the ship being scuttled with the same object, or where through stress of circumstances, it becomes necessary to burn of the cargo to enable the engines to keep going.

b. General Average Loss of Freight: It may arise for instance where in taking steps to avert that danger to the whole adventure, the ship owner so damages a portion of the cargo as to render it unfit to be carried to its destination and thus sacrifices his opportunity of earning freight upon that portion.

c. General Average Loss of Ship: It occurs where there is an intentional abnormal use of the ship or her equipment for instance to run ashore, to avoid the danger of a storm or capture.

The York Antwerp rules make the following provisions under *Rule II* to the effect that both the sacrifice made and the consequence of the sacrifice are recoverable. The rule allows cargo damaged by water or otherwise in extinguishing a fire on board to recover general average contribution (Hudson & Harvey 2017). *Rule VII* renders cost associated with the removal of cargo and other property from a grounded ship for lighting purposes recoverable as general average provided the lightening is a general average act. *Rule XII* provides that Damage to or loss of cargo, fuel or stores sustained in consequent of their handling, discharging, storing, reloading and stowing shall be made good as general average when only and only the cost of those measure respectively is admitted as general average. *Rule XVI* provides for the amount to be made good for cargo loss or damaged by sacrifice and states that the amount shall be the loss sustained thereby based on the value at the time of discharge (Hudson & Harvey 2017). *Rule XVIL* provides that all persons whose interest in the adventure in benefitted by a general average sacrifice or by a general average expenditure are liable to make a general average contribution. They include:

i. The ship owner;
ii. The chatterer;
iii. The owner of the cargo; and
iv. Any other person who may be liable under some express terms in the contract for carriage (Felde 1952).

The York Antwerp Rules provide a universally accepted means of sharing extraordinary sacrifice or expenditure, thus avoiding protected and costly augmented as to their correct allocation. The Rules consist of letter rules (A – G) and numbered rule 1 – 22. While the lettered rules set out various broad principles as to what constitutes general average, the number rules deal with specific instance of sacrifice and expenditure and set out detailed guidelines concerning allowances. There is generally a rule paramount in the York Antwerp Rule to the effect that: "In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred" The burden of proving that the general average allowance are reasonable lies on the party claiming in general average as has been suggested by Nick Williams

(Dorling 2019). These rules has to be applied with flexibility as there can be no absolute standard of reasonableness and each situation must be judged on the particular facts.

RELATIONSHIP BETWEEN GENERAL AVERAGE AND SALVAGE

Three interests are at risk during the course of a sea voyage. Namely:

i. The ship;
ii. The cargo;
iii. The freight.

As a general rule any loss which any of these interest sustains must be borne by that interest alone, this is known as particular average, which is loss to be borne by the particular interest incurring it. For example if one of the ship's boat is carried away in a storm, this is a particular average loss and must be borne by the ship owner alone. *Section 65(1) of the Marine Insurance Act* defines a particular average loss as a partial loss of the subject matter insured caused by a peril insured against, and which is not a general average loss. A particular average loss gives no right of contribution from the other parties interested in the adventure. Such a loss can be recovered from the insurer if it is caused in connection with a peril insured against.

Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges are called particular charge and are not included in particular average. Where extra-ordinary sacrifices are made or expenditure is incurred for the benefit of the whole adventure, the loss is borne by all in proportion and is known as a general average loss. In such a case the particular interest which has suffered the loss is entitled to contribution called a general average contribution from the other interest (Gauci 2019). Both general average and salvage represent right arising out of a response to a maritime emergency and with the accrual of the rights dependent on success. The difference however lies in the following instance:

1. In general average, success is defined in terms of safe arrival of the vessel at the port of destination. Thus in law, port of destination plays a key role and arrival there as to the measure of the success of the general average act;
2. The whole maritime adventure must be in danger before general average can arise. In salvage however, it is only necessary for the particular property saved to be in a state of danger;
3. A general average act is performed by a party to common maritime adventure. In salvage, salvers are generally outsiders, unconnected with the maritime adventure. Though it is possible for an insider to be a savor, such a claimant has the onerous burden of establishing himself as a volunteer in that he acted free from any pre-existing obligation to assist;
4. As noted earlier, both concepts represent different ways of responding to a maritime peril. They however differ as also noted, yet this distinctiveness is modelled by the York Antwerp Rules, which declare salvage incurred for the benefit of the common maritime adventure also to be a general average expenditure. The provision has the effect of re-working salvage expenditure in a general average adjustment. According to William Tetley, the rule is perplexing and it is hard to see its justification (Agyebeng, 2006).

GENERAL AVERAGE CLAIMS AND SECURITIES

A claim for general average contribution may be made by the ship against cargo interest or by a cargo interest against the ship and/or other cargo interest. In practice, there will frequently exist cross claims and set off. A ship can be defined as any structure, whether completed or in the course of completion, launched and intended for use in navigation and not propelled by Oars. It can be said therefore, that a ship includes every description of vessel used in navigation provided it is not propelled by Oars such as a canoe and includes a hopper or dump barge, a lighter, hovercraft and an oil drilling rig. As such anything designed or adapted for use at sea or in navigable waters would qualify as a vessel or ship.

The definition of a ship is fundamental to the principles of maritime liens and ship mortgages as only "ships" strictly so called, parts thereof or things on board can be the subject of maritime liens or mortgages and by necessary implication maritime claims arising therefrom. Ships are commonly used as a means of transportation of goods and passengers from one point to another. Every such exercise carries along with it or acquires in its course various completing legal interest of owners, characters, suppliers, builders, repairers, other trade creditors and even employees of the ship. These interests sometimes become the subject of litigation in foreign jurisdictions under laws different from those applicable in the ship's "home" or state of registration (Von Mehren & Trautman1966). As a general rule in maritime law all claims may be pursued by an action in personal, but where the claim is against the carrying ship, it may be possible to arrest the ship under an action in rem. The protection or enforcement of any form of proprietory right in a ship under due process of law necessitates the commencement and prosecution of an action in the appropriate court within a given jurisdiction. This jurisdiction often turns out not to be that of the state of registry of the vessel concerned and may introduce conflict of laws problems. In most common law and some civil law jurisdiction two types of legal action are possible namely an action against the vessel itself known as an *action in rem* and/or an action against the owner known as an *action in personam.*

There are conflicting schools of thought as to whether the action in rem is procedural or substantive in nature (Aloamaka & AdaezeIbekwe 2021). The "procedural" thought prevalent in the U.K is predicated on commencement of legal action and arrest or seizure of the vessel whilst the "substantive" (or personification) (prevalent in U.S.A and Canada) is based on the legal principle that the right of action is enforceable against the "res" or person of the vessel.

In practice, it is usual to commence an action in rem against the res in a jurisdiction where the vessel can be located since any order or judgment of the applicable court is to be directed at the res itself. On the other hand an action in personam being directed at the person of the owner, charterer, or operator of the vessel should be commenced where he can be found, either personally or in relation to the business. In most common law jurisdictions, *Writs in rem or in Personam* can be taken out and served on the vessel and persons concerned respectively through the master of the vessel to enforce maritime liens and mortgages claims. In most civil law countries "in rem actions" strictly so called are unknown, the maritime claims, are enforced by applying for "suizae conservatoire" or Conservatory Attachment Respectively. This process prevents assets of the Defendant from being removed from jurisdiction or dissipated upon

commencement of the "in rem" action, an application for *arrest of the vessel* may be taken out. An arrest order serves three possible functions, namely:

a. As a form of interim relief or provisional remedy;
b. As a ground of jurisdiction on the matter;
c. As a way of obtaining "security" for the claim on the merit.

The right to grant an Arrest order is indeed discretionary and may be refused on various grounds such as fraud or non-disclosure and can be discharged, for example where there is inadequate security. The right of detention which is similar to a lien is usually exercised by port, labour and related authorities in most jurisdictions to enforce payment of accrued charges and dues. The sale of arrested, detailed or attached vessel may be ordered by the court or statutorily to satisfy a maritime lien or mortgage claim. This type of sale is often referred to as a judicial or forced sale and is the ultimate or "last resort" right of the holder of a proprietary right in most jurisdictions where the owner of the vessel fails to come forward to put up security for release of the vessel from arrest.

The procedure for judicial sale may vary from one jurisdiction to another but the end result is that all right in rem are extinguished and only lodged claims are transferred to the proceeds of sale. Claims in respect of general average come within the category of heads of claims classified as general maritime claim. It forms part of maritime claims which give rise to statutory liens. It is doubtful however whether cargo can be arrested. This is in contrast with what is obtained in the United States where a claim to general average is in the nature of a maritime lien and this is so with regard to both ship and cargo. In the result, both the ship and cargo may be arrested with the right to arrest following the property into the hands of third parties. Most claims for general average contribution are made by ship owners who also possess a valuable security interest in the nature of a possessory lien. This type of proprietary interest as the name suggest, arises essentially from a party being in possession of the property chattel or "res" at the time of its accrual and, in most jurisdiction at the time of enforcement. Once the party claiming damages by asserting the right loses "possession" of the property then the lien is lost. This feature of actual possession distinguishes the possessory lien from the maritime lien which lien "travels" with the property or "res" and does not depend on possession. This type of right is usually exercised by ship builders, ship repairers or vehicle dealers who seek to retain the vessel or vehicle, as the case may be, until the cost of construction, repair, charges or purchase price have been paid – what amounts to actual possession must be closely determined in each case.

The possessory lien is also dependent on continuing possession and the demand of payment of a specific sum that may be accurately ascertained from particular circumstances. In practice the claimant will rarely be in a position to demand specified sum for his precise general average entitlement, which almost always will have to wait the carrying out of an adjustment which may take some time to complete. This being the case, in contemporary practice, the possessory lien is exercised as a right to demand a security guaranteeing the payment of such sum as may be adjusted as due. The usual form of security is an average bond given by the cargo receiver, under which the obligation assumed is to pay proportion of general average as may be ascertained as due. It also established an obligation to furnish particulars of value and if demanded, to make a payment on account. The cargo receiver who usually will also be required

to provide a collateral security in the form of guarantee and/or cash deposited made into a special account which stand as security for the discharge of general average entitlement. A bank guarantee may also be accepted in lieu of general deposits. But when a security is given, whatever its nature it represents a distinct and separate agreement.

GENERAL AVERAGE UNDER THE NEW MERCHANT SHIPPING ACT, 2007 AND CONTROVERSIES OVER GENERAL AVERAGE

In Nigeria today, maritime law is governed essentially by both the provisions of the *Merchant Shipping Act (MSA) and the Admiralty Jurisdiction Act*. To be able to assess the relevance of the principle of general average in the present day maritime law in Nigeria, it is instructive to see the most recent law on substantive maritime law in Nigeria which is the *Merchant Shipping Act* which became operative in May 2007 (Babatunde & Abdulsalam 2021). Of particular relevance here is the issue of priority which only arises where a res has or is to be sold by the order of a court or competent jurisdiction or other authorized body, in other to satisfy the monetary claim of a holder of a proprietary right enforceable against the res. This usually happens where the defendant ship owner fails to appear to the action and put up security. This issue involves the ranking of all known or declared proprietary rights pertaining to the vessel for purposes of sharing the proceeds of sale which becomes constituted into a fund (Dore 2000). Also of particular relevance here is the issue of priority which the statute gives to claims for contribution in general average. Under *Section 67 of the Act*, claims for contributions in general average forms part of claims classified as maritime lien. All maritime liens listed in the section rank in priority in the order in which they appear in the section save that claims for general average in so far as operations giving rise to them occurred prior to the time when other listed before it in the section were registered.

The Act also stressed the overriding nature of the maritime liens listed as aforesaid regardless of whether the claimant is the owner of the ship or against the character by demise or otherwise, manager or operator of the ship and remains attached to the ship notwithstanding change of ownership or of registration of the ship.

The far reaching of the above provisions is appreciated by the fact that maritime liens of which claims in general average forms part of can give rise to arrest of the ship and its forced sale provided it is done within one year from the time when the claims secured by the lien arose. Several consequences flow from the circumstances attracting or bringing into being "a maritime lien" claim. These features can be enumerated as follows:

a. The lien confers a right and a remedy in addition to any available rights against a defendant liable "in *personam*" ("liability in *personam*" meaning simply liability of the defendant for the claim);
b. The lien is enforceable through an action in rem and is inherent in that action;
c. The ship, cargo or freight subject to it is liable to arrest prior to hearing on the merits;
d. Jurisdiction on the merits is founded on service of a writ in rem and an arrest;
e. The lien arises on the event creating it (such as collision or wages becoming payable);
f. In respect of the ship, cargo or freight, the target for the action, the "lien" is enforceable against other creditors (whether secured or unsecured) and, subject to existing possessory liens, takes priority over all others creditors whether the claims of those creditors arose before or after the creation of the lien;

g. Once created, the "lien" is enforceable even though the ship is sold whether or not the purchaser has notice of it;
h. Where the person liable in *personam* is a charterer of the ship in respect of which a lien arises in certain circumstances the "lien" may be enforced against the ship;
i. Property arrested as part of an action in rem in the High Court enforcing the lien is subject to judicial (or "forced") sale and the proceed are then available to a lien holder and other claimants in rem;
j. Judicial sale as a step in enforcement of the lien extinguishes it and transfer the "lien" to the proceeds;
k. The lien is extinguished by the destruction of the ship, cargo or freight to which it attaches;
l. The lien may be extinguished by laches, waiver or satisfaction of the debt and possibly, by lodging of bail or provision of a guarantee and the claims attracting the lien may be extinguished by rules relating to effluxion of time (Huang 2016).

As observed by Tetley, notwithstanding the longevity of general average, the concept is in current times a subject of discussion and criticism (Kruit 2017). The equity of the concept and the fairness of the attendant adjustment process are questioned by many practitioners and commentators (Andrew 2014; Ikegbu & Bassey 2018). The critics see general average as a way of subsidizing inefficient and incompetent ship owners, a point which can take support from the fact that the great majority of general average adjustment follow ship breakdowns: This is a mere assertion that has no legal backing whatsoever. It has been argued that ship owners not only claims when peril of the sea and the forces of nature justify the General Average Act, but also when the act is caused by their own negligence or that of their employees, as long as they are not responsible for that negligence under the applicable law.

Emergence of marine insurance has also been argued against the general average that it has made the principle of general average redundant and that because of risk involved, all parties now insure against responsibility for General Average contribution, and examples of Institute Time Clauses Cl.8, Institute Cargo Clauses Cl.2, Institute War Clauses Cl.2,etc were cited. It is opined that general average is a principle of law which is different from taking an insurance policy (Ikegbu 2018). Criticism have also been made of the way demands for security and advance deposits are made in practice, with some arguing that such demands are often unnecessary, whilst others alleging discrimination. There is yet another criticism to the effect that with the sophistication in the modern regime of marine insurance, there is need for a discard of the age long principle of general average and allowing maritime losses to lie where they fall.

CONCLUSION

The call for the scrap of General Average law in some quarters with their attendant reasoning has been discussed. The principle of general average has come of age and its established rules as tested by the courts and universalized by the York-Antwerp rules may be seen as an example of a modern international and commercial transactions, founded upon ancient sources but still in operative today. For this reason, the abolition, of General Average could not be effected by the mere repeal of the York-Antwerp Rules, but will in fact require an international convention supplemented by mandatory national statutes.

It must be noted that the whole criticism as noted were all against the background of marine insurance and the need to let the underwriters bear the loss they undertook to insure. However, as noted earlier the concept of general average is older and is independent of insurance. It is our considered view that the concept is as fair and equitable today as it was at its inception. Its usefulness in modern day maritime law in Nigeria has even further been strengthened by the new Merchant Shipping Acts, and it is hereby submitted that the protection of lives at sea and of maritime property is of paramount importance and must be encouraged by courts, without such encouragements the maritime industry could be one so fraught with such dangers and risk that few, if any, would reasonably engage in such day-to-day commercial transactions.

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