

# SALVAGE CONVENTION 1989

## QUESTIONNAIRE

**Responses received from the following countries,\*  
arranged under each question:**

*Australia, Belgium, Canada, China, Croatia, Denmark, France, Germany, Greece, Italy, Latvia, Lithuania, Marshall Islands, Mexico, Netherlands, New Zealand, Nigeria, Norway, Poland, Romania, Russian Federation, Sweden, United Arab Emirates, United Kingdom, United States*

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### *General comments*

#### ***Marshall Islands***

The Republic of the Marshall Islands was a United Nations Trusteeship from 1947 until 1986, administered by the United States. In that year, it attained its independence. The legal system of the Marshall Islands is, therefore, derived almost entirely from that of the United States; the High Court, the court of first instance, has the same jurisdiction and powers as a U.S. federal district court, including those of a court sitting in admiralty. The Maritime Act 1990 is the basic law governing vessels of the Republic, and to some extent its ports and harbors. The Marshall Islands acceded to the Salvage convention on October 16, 1995; its date of entry into force for the Republic was therefore October 16, 1996.

As far as Marshall Islands law goes, the 1989 Salvage Convention is deemed to be a "self-executing" treaty under a constitutional provision somewhat similar to the Supremacy Clause of the United States Constitution, see Senate Treaty Doc. No.12, 102<sup>nd</sup> Congress, 1<sup>st</sup> Sess. 1991), reprinted in 14040 U.S. Cong. Serial Set(1991); Trico Marine Operators, Inc. v. Dow Chemical Co., 809 F. Supp. 440, 193 AMC 1042 (E.D. Va. 1997). We consider that, under the Marshall Islands Constitution, its courts would interpret the 1989 Convention in a manner similar to the courts of the United States.

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\* The responses have been received from the following Authorities, Organizations and persons:

- **Belgium:** Wim Fransen
- **Canada:** Transport Canada, Legal Services
- **Latvia:** Latvian Government
- **Lithuania:** Ministry of Transport and Communication
- **Marshall Islands:** Office of the Maritime Administration
- **New Zealand:** Maritime Safety Authority
- **Norway:** Ministry of Justice
- **Romania:** Ms. Fabiola Meister, a partner of the law firm S.C.P.A. Popescu & Asociatii
- **United Arab Emirates:** Dr. Nadir Mohamed Ibrahim, Technical Advisor of the Abu Dhabi Port Authority
- **United States:** U.S. Coast Guard
- **Australia, China, Croatia, Denmark, France, Germany, Greece, Italy, Mexico, Netherlands, Nigeria, Poland, Russian Federation, Sweden, United Kingdom:** National Maritime Law Associations.

The Marshall Islands, both during its period as a United Nations Trusteeship and since its independence, has enacted a fairly broad range of laws and regulations protecting its marine environment and ecosystems. Because of the overriding importance of the surrounding seas, for food and livelihood, to so many of the Republic's inhabitants, these laws and the work of the administrative bodies having responsibility for its territorial sea, are under frequent review by the nation's parliament (the Nitijela), which is a bicameral legislature modelled closely upon that of New Zealand. It therefore should be understood that the present response to the Comité Maritime International might well be revised in light of subsequent legislation.

Section 155 of the Marshall Islands Maritime Act provides as follows:

"PART V – INTERNATIONAL CONVENTIONS AND AGREEMENTS

Implementation and Compliance.

The International Conventions and Agreements to which the Republic of Marshall Islands is or may become a State Party, shall be complied with by all vessels documented under the laws of the Republic which are engaged in foreign trade and, to the extent determined applicable, to domestic watercraft as defined in Chapter 9 of this Title, fishing vessels and yachts. The foregoing International Convention and Agreements, as may be amended, shall have effect as if specifically enacted by statute and fully set forth therein."

As a result, the Salvage convention has the force of law within the Republic. With regard to court decisions with regard to salvage, Section 113 of the Marshall Islands Maritime Act should be noted:

"Adoption of American general maritime law.

Insofar as it does not conflict with any other provisions of this Title or any other law of the Republic, the non-statutory general maritime law of the United States of America is hereby declared to be and is hereby adopted as the general maritime law of the Republic." [P.L. 1990-92 §14.]

Sections 705-708 of the Marshall Islands Maritime Act, enacted in 1990, provide as follows:

"§ 705. Right to salvage not affected by ownership of vessel.

The right to remuneration for assistance or salvage services shall not be affected by common ownership of the vessels rendering and receiving such assistance or salvage services. [P.L. 1990-92, § 144.]

§ 706. Salvage remuneration.

Salvors of human life or cargo who have taken part in the services rendered in connection with the incident giving rise to salvage are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo and accessories. [P.L. 1990-92, § 145.]

§ 707. Time limit for salvage suits.

A suit for the recovery of remuneration for rendering assistance or salvage services shall not be maintainable if brought later than two (2) years from the date when such assistance or salvage was rendered, unless during that period there has not been reasonable opportunity for securing jurisdiction of the vessel, person or corporation to be charged, in which case the right of action shall not lapse until ninety (90) days after there has been a reasonable opportunity to secure jurisdiction. [P.L. 1990-92, § 146.]

§ 708. Recovery for salvage services rendered by government vessels.

The Maritime Administrator or its agent and the crew of any vessels owned or operated by the Republic or its representatives, may collect and sue for salvage services rendered by such vessel and crew. Any salvage monies recovered by

the Maritime Administrator, or its agent and not for the benefit of the crew, shall be held for the credit of the government agency having possession or control of the vessel rendering such service." [P.L. 1990-92, § 147.]

### ***Nigeria***

The Convention has not been implemented yet by Nigeria. A Maritime Law Reform Committee was established in 1999 by the Federal Minister of Transport with the task to update the entire corpus of Nigerian maritime legislation, including a new Merchant Shipping Act which incorporates the Salvage Convention. The draft prepared by such Committee is being considered by the National Assembly. Until the enactment of the new Merchant Shipping Act, salvage will remain governed, in Nigeria, by the 1910 Convention.

1. *What type of national instrument has authorized the ratification of or accession to the Salvage Convention 1989?*

### ***Australia***

Accession to the Convention was undertaken on 8 January 1997, by deposit of an instrument of accession with the Secretary-General of the International Maritime Organization.

### ***Belgium***

Ratification of the Salvage Convention of 28<sup>th</sup> April 1989 has in Belgium been authorized by law of 13<sup>th</sup> may 2003<sup>1</sup>. As the Convention relates to affairs for which the federal Belgian authorities as well as the Flemish, Walloon and Brussels regions are competent, the ratification of all 4 of them was needed. The Brussels region has ratified the Convention by Ordinance of 5<sup>th</sup> December 2003<sup>2</sup>. The Walloon region has ratified the Convention by Decree of 29<sup>th</sup> January 2004<sup>3</sup>. The Flemish region has ratified the Convention by Decree of 7<sup>th</sup> May 2004<sup>4</sup>.

### ***Canada***

The Department of Foreign Affairs and International Trade deposited Articles of Ratification with the Secretary General of IMO on November 14, 1994.

### ***China***

Accession to the Convention, which had been authorized in the Fifth Session of the Standing Committee of the Eighth National People's Congress of the People's Republic of China, was undertaken on 3 March 1994, by deposit of an instrument of accession with the Secretary-General of the International Maritime Organization.

### ***Croatia***

The Law on Confirmation of the International Convention on Salvage, 1989, passed by the House of Representatives of the Croatian Parliament on 5 June 1998 (People's Gazette, International Treaties, No. 9/1998). Instrument of accession deposited on 10 September 1998.

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<sup>1</sup> Published in the State Journal of 18<sup>th</sup> August 2004.

<sup>2</sup> Published in the State Journal of 22<sup>nd</sup> January 2004.

<sup>3</sup> Published in the State Journal of 1<sup>st</sup> March 2004.

<sup>4</sup> Published in the State Journal of 14<sup>th</sup> July 2004.

***Denmark***

Denmark ratified the 1989 Convention on 30 May 1995. The Salvage Convention 1989 was then incorporated into the Danish Maritime Act in chapter 16, by Statute no. 205 of 1995. The statute changing the rules on salvage entered into force on 30 May 1996 based on a legal notice (bekendtgørelse) no. 258 of 10 April 1996.

***France***

Ratification was authorized by law of 30 January 2001 (n° 2001-74).

***Germany***

The German Bundestag adopted the Salvage Convention on May 16<sup>th</sup> 2001. It came into force by law (Gesetz zur Neuregelung des Bergungsrechts in der See – und Binnenschifffahrt) on 8<sup>th</sup> October 2001.

***Greece***

Greece has signed the Convention and then proceeded to its ratification by a specific law, Law. 2391/1966, which ratified the Greek translation of the actual text of the Convention.

***Italy***

Ratification was authorized by law 12 April 1995, No. 129.

***Latvia***

The Salvage Convention 1989 has been accepted by Ordinance No.42 of the Cabinet of Ministers on February 3, 1999.

***Lithuania***

The 1989 Salvage Convention was ratified by law of the parliament on 22<sup>nd</sup> June 1999.

***Marshall Islands***

An Instrument of Accession, dated October 16, 1995, pursuant to Act of Parliament.

***Mexico***

Mexico signed at referendum the Convention on September 20<sup>th</sup>, 1989. The Senate approved the Convention and on July 8<sup>th</sup>, 1991 issued the Legislative Order to adopt the 1989 Salvage Convention through the deposit of the accession instrument on October 10<sup>th</sup>, 1991 before IMO. The Mexican Navigation Law in article 125 incorporates this Convention to our internal law.

***Netherlands***

The International Convention on Salvage, 1989, was brought into force in the Kingdom of The Netherlands on 10 December 1998 by means of Act.

***New Zealand***

New Zealand deposited its instrument of accession to the Salvage Convention 1989 on 16 October 2002. The date of entry into force was 16 October 2003. Prior to this the Maritime Transport Act 1994 was enacted by the New Zealand House of Representatives which made provision for the Convention to be incorporated into New

Zealand law. The Act provided for the relevant provisions to be brought into force by Order in Council. This was done on 16 October 2003.

#### *Norway*

The ratification of the Convention was authorised by the Norwegian Parliament (Storting).

#### *Poland*

Poland has incorporated most of the articles from the Salvage Convention 1989 to the Polish Maritime Code 2001. Poland did not ratify the Salvage Convention 1989, but Polish maritime administration takes efforts to ratify this Convention.

#### *Romania*

In accordance with the provisions of art. 107 of the Romanian Constitution and art. 1 letter A paragraph 2 of Law no. 125/2000, Romania adhered to the Salvage Convention (the "Convention") by Government Ordinance no. 110/2000 which was subsequently approved by Law no. 135/2001.

#### *Russian Federation*

The Russian Federation ratified the said Convention in compliance with the federal law dated December 17, 1998, No. 186-FZ "On the Ratification of the International Convention on Salvage, 1989"<sup>5</sup>

#### *Sweden*

In 1995, the Swedish parliament authorized the government to implement the 1989 Salvage Convention (riksdagsskrivelse (rskr.) 1995/96:77). As regards authorization of international conventions, the dualist approach has been adopted in Sweden, i.e. an international treaty has to be transformed or incorporated by national law to become vertically binding. The implementation was accomplished by means of two Acts due to the fact that parts of the Convention conflicted with the 1910 Salvage Convention. Therefore Sweden – in line with Norway's approach – first implemented the new and therefore non-conflicting regulations concerning environmental salvage, becoming effective on 1 January 1996. After cancellation of the 1910 Salvage Convention, the remaining regulations became effective on 19 December 1996.

#### *United Arab Emirates*

Ratification of international conventions in United Arab Emirates, hereinafter the UAE, is made by the same instrument of promulgation, the Mar'soom Itahadi, i.e. the Federal Decree, signed by the UAE President. This happened with the ratification of the International Convention on Salvage 1989 (London, 28 April 1989), hereinafter the 1989 Convention, and which was given the force of law in UAE by the Federal Decree No. 44 of 1993 signed by the UAE President on August 21, 1993 (Federal Official Gazette, Year No. 21, Issue No. 254, p. 141).

In fact the UAE is a Federation established in 1971 between seven Emirates namely Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaima, Sharjah and Umm Al Quwain. In application of its Constitution (a provisional Constitution adopted on December 2, 1971 and made permanent in 1996), ratification of international conventions by the UAE must be made by the Federal Supreme Council, hereinafter the FSC, through the

<sup>5</sup> The law dated December 17, 1998, No. 186-FZ is available on request.

instrument of a Decree (article 47(4)). The Decree is to be signed by the UAE President (article 54(4)). The FSC is the federal executive authority and which is composed of the Rulers of the member Emirates. International conventions belong to matters of external affairs and these affairs are the prerogatives of the Federal Government (UAE Constitution, article 120(1)). This will require approval by 5 Emirates and must always include the Emirates of Abu Dhabi and Dubai (UAE Constitution, article (49)). Though the UAE Constitution provides that the FSC will report before ratification to the Federal National Council, hereinafter the FNC (article 91), this is merely for consultation since the FNC, though is the federal legislative authority, cannot object. Due the fact that ratification and promulgation are both made by the same authority (the FSC), signed by the same person (UAE President) and using the same type of instrument (Decree), then they are made in the same instrument.

### ***United Kingdom***

The Merchant Shipping Act 1995, section 224 and Schedule 11.

The Merchant Shipping (Salvage and Pollution) Act 1994 (Commencement No.2) Order SI 1994/2971 brought the Convention into force on 1<sup>st</sup> January 1995.

### ***United States***

Resolution of advice and consent by the Senate of the United States agreed to on October 29, 1991. Instrument of ratification deposited March 27, 1992.

2. *Has your country made any of the reservations permitted by article 30(1) of the Convention?*

### ***Australia***

Article 30 provides for a State, at the time of signature, ratification, acceptance, approval or accession, to reserve the right not to apply the provisions of the Convention under certain defined circumstances:

- (a) where vessels are on inland waters;
- (b) on inland waters where no vessel is involved;
- (c) when all interested parties are nationals of the State; and
- (d) where maritime cultural property is involved.

When acceding, Australia made reservations on items (a), (b) and (d), so that State and Territory Governments might address these issues legislatively if they wish.

### ***Belgium***

Belgium has incorporated the Convention in its national law without any reservation/restriction.

### ***Canada***

Yes, the Government of Canada deposited a reservation at the time of ratification regarding article 30.1(d) on maritime cultural property of prehistoric, archaeological or historic interest and situated on the sea-bed.

### ***China***

China has made reservations on items (a), (b) and (d) of Article 30 when depositing her instrument of accession with the IMO.

***Croatia***

Croatia has made reservations under Article 30(1), paragraphs (b) and (d) of the Convention.

***Denmark***

Denmark has not made any of the reservations permitted by article 30 (1) a, b, c or d of the Convention.

***France***

Yes. France made two reservations when depositing her instrument of ratification with the IMO. The reservation were:

“When ratifying the international convention on salvage at sea (sic) made at London on April 28 1989, the Government of the French Republic reserves the right, in accordance with the provisions of article 30, paragraph 1(a), (b) and (d) of the Convention, not to apply the provisions of the Convention when the salvage operations take place in inland waters and all vessels are of inland navigation and when the salvage operations take place in inland waters and no vessel is involved.

In accordance with the provisions of article 30, paragraph 1(a), (b) and (d) of the Convention, the French Government also reserves the right not to apply the provisions of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”

However, the very impact of such reservations is somewhat doubtful. For, in a decision of September 5 1987, the Court of Appeal of Bordeaux held that an exactly similar reservation (“the French Government reserves the right no to apply ...”) made by France, when ratifying the 1976 International Convention on limitation of liability in maritime claims, was wholly ineffective, as only meaning that France reserved its right to decide at some moment, in the future, not to apply the provisions involved (Droit Maritime Français 1998.591). And the same view has recently been expressed, on the same 1976 Convention, by the Court of Appeal of Rouen (5 September 2002, Droit Maritime Français 2003.55).

***Germany***

No.

***Greece***

Greece, in accordance with art. 30 (1) (d) of the Convention, stated, in art. 2 of L. 2391/1966, stated that the rules of the said Convention shall not be applicable when the property involved in the Salvage forms part of the maritime cultural heritage and is of prehistoric, archaeological or historical interest and rests on the sea bed. Greece did not make any other reservation permitted by article 30 (1) of the Convention.

***Italy***

No.

***Latvia***

No.

***Lithuania***

Yes. Reservations of article 30(1)(a) and (b) regarding salvage in inland waters.

***Marshall Islands***

No.

***Mexico***

Mexico made a reservation for salvages made within National waters in 1991, however the Navigation Law of January 4<sup>th</sup> 1994 incorporates the full Convention also for salvages within Mexican waters in article 125.

***Netherlands***

Yes. In accordance with article 30, sub - paragraph 1(d) of the Convention, the Kingdom of The Netherlands reserved the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the seabed.

***New Zealand***

No reservation was made.

***Norway***

Norway made reservation with respect to cultural property etc. pursuant to article 30 (1) (d).

***Poland***

No, Poland did not and will not make any of the reservations permitted by art 30(1) of the Convention.

***Romania***

The Legal Affairs department within the Ministry of Foreign Affairs has informed us that no reservations as permitted by art. 30 (1) of the Convention have been expressed by Romania.

***Russian Federation***

Yes, the Russian Federation made the following reservation:

“Russian Federation in accordance with the provisions of subparagraph “d” of paragraph 1 of Article 30 of the International Convention on Salvage, 1989, reserves the right not to apply the provisions of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.”

***Sweden***

Sweden has made a reservation as to article 30(1)(d) of the Convention, i.e. Sweden reserves the right not to apply the provisions of the Convention with regard to maritime cultural property of prehistoric, archaeological or historic interest situated on the sea bed.

***United Arab Emirates***

No.



**United Kingdom**

Yes. The United Kingdom made three reservations when depositing her instrument of ratification with the IMO. The reservation were:

“In accordance with the provisions of article 30, paragraph 1(a), (b) and (d) of the Convention, the United Kingdom reserves the right not to apply the provisions of the Convention when:

- (i) the salvage operation takes place in inland waters and all vessels are of inland navigation; or
- (ii) the salvage operations take place in inland waters and no vessel is involved; or
- (iii) the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”

However, when introducing the Convention into domestic law the UK government adopted an alternative approach. Schedule 11 Part II of the Merchant Shipping Act 1995 states:

2(1) The provisions of the Convention do not apply :

- (a) to a salvage operation which takes place in inland waters of the United Kingdom and in which all the vessels involved are of inland navigation; and
- (b) to a salvage operation which takes place in inland waters of the United Kingdom and in which no vessel is involved

2(2) In this paragraph ‘inland waters’ does not include any waters within the ebb and flow of the tide at ordinary spring tides, or the waters of any dock which is directly or (by means of one or more other docks) indirectly connected with such waters.

Accordingly, no actual reservation was made under article 30(1)(d).

**United States**

No.

3. *Have the provisions of the Convention as such been given the force of law or have its provisions been incorporated in the law of your country?*

**Australia**

Yes. See section 315 of the Navigation Act 1912.<sup>6</sup>

**Belgium**

The provisions of the Conventions have been given force of law. The Belgian law says that the Salvage Convention 1989 “will have full effect”. Until now the provisions of the Convention have not been incorporated in the existing Belgian statutes, such as the Maritime Code.

**Canada**

The provisions of the Convention have been given force of law into national legislation.

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<sup>6</sup> Relevant extracts from the *Navigation Act 1912* are available on request.

***China***

The provisions of the Convention have been given the force of law. Additionally, it should be noted that article 268 of Chinese Maritime Code provides: "If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those contained in this Code, the provisions of the relevant international treaty shall apply, unless the provisions are these on which the People's Republic of China has announced reservations". In addition, the provisions of this convention have not only been given the force of law in China, its most provisions but also been incorporated in Chapter IX Salvage at Sea of Chinese Maritime Code.

***Croatia***

The provisions of the Convention have been given the force of law.

***Denmark***

The provisions of the Convention have been incorporated into the Danish Maritime Act chapter 16 (Sections 441 to 454). Chapter 16 has the force of law, confer the answer to question 1.

***France***

The provisions of the Convention have been given the force of law.

***Germany***

Yes, they are incorporated in the articles 740 to 753 HGB.

***Greece***

L. 2391/1966 rendered the rules of the Convention part of the internal legislation and gave to the provisions of the Convention as such the force of law.

***Italy***

The provisions of the Convention have been given the force of law.

***Latvia***

Provisions of the Convention as such been given the force by Ordinance No.42 of the Cabinet of Ministers. Some of the provisions of the Convention has been incorporated in the law.

***Lithuania***

Provisions of the Convention as such as been given the force of law.

***Marshall Islands***

They have been given the force of law.

***Mexico***

Yes, they are incorporated in article 125 of the 1994 Navigation Act.

***Netherlands***

Provisions of the Convention have been incorporated and furthermore the material provisions of the Convention have been given the force of law.

***New Zealand***

Sections 215 to 220 of the New Zealand Maritime Transport Act 1994 relate to salvage. In particular, section 216 provides that the International Convention On Salvage 1989 (which is set out in the Sixth Schedule of the Act) has the force of law.

***Norway***

The provisions of the Convention have been the force by incorporation in the law, ref. the response to the next question.

***Poland***

Yes, the provisions of the Convention has been incorporated in the Polish law and are in force.

***Romania***

In Romania the provisions of the Convention have been given the force of law, as per art. 11 of the Romanian Constitution.

***Russian Federation***

On May 1, 1999 the Merchant Shipping Code of the Russian Federation entered into force. The Code includes a separate Chapter "XX. Salvage of Vessels and Other Property", the rules of which are based on the Salvage Convention 1989.

***Sweden***

The Convention has been implemented by transformation, i.e. has been incorporated into existing national law. The Swedish Maritime Code (Sjölagen), more precisely its Chapter 16 on salvage, was subject to changes and supplementary rules.

***United Arab Emirates***

The 1989 Convention has been given the force of law as such in the UAE. Precisely, a photocopy of the authentic Arabic version of this convention, and which has been prepared by the IMO, has been attached to its promulgating Federal Decree (pp. 154-167).

The Federal Decree No. 44 of 1993 contains a preamble and two articles. The preamble made reference to the Council of Ministers Decision No. 507/7 of 1992 permitting the accession of the UAE to the IMO Search and Rescue Convention, the Ministry of Communications report on the 1989 Convention, the assent of the Council of Ministers and the ratification by the FSC. Article 1 contained statement of approval to the accession of UAE to the 1989 Convention. Article 2 contained an order to the Minister of Communications to implement the Decree, and to publish it in the Official Gazette.

The good practice in UAE is to publish the original signed copy of the ratified Convention. Of course, an Arabic translation is made in case the convention is written in foreign language. Another praised aspect of the practice is that in case the international convention exists in an official Arabic version, the published text will be a true photocopy of that version without any further re-editing. Certainly, this distinctive feature eliminates the chance of any typing errors and truly supports the unification objective of international conventions. This happened with the 1989 Convention.

**United Kingdom**

The provisions of the Convention have been given the force of law by Section 224(1) of the Merchant Shipping Act 1995, unless the parties expressly or implicitly exclude the Convention as permitted by Art.6.

**United States**

Yes.

4. *If the provisions of the Convention have been given the force of law, or incorporated in the law of your country*
- 4.1. *by which instrument this has taken place?*
- 4.2. *have the national rules on salvage previously in force been expressly abrogated or have they remained in force in respect of areas, if any, to which the Convention does not apply?*

**Australia**

4.1. The legislation necessary for Australia to implement its obligations under the Convention was contained in the Transport Legislation Amendment Act 1995, which amended Part VII of the Navigation Act 1912 to incorporate the terms and principles of the Convention. The legislation received Royal Assent on 27 July 1995.

4.2. References to the salvage convention in the Navigation Act 1912 are now to the Salvage Convention 1989.

**Belgium**

4.1. In Belgium the force of law has been given to the Convention by the law enacted by the Belgian Parliament of 13<sup>th</sup> May 2003, published in the Belgian State Journal of 18<sup>th</sup> August 2004. As the Convention relates to affairs for which the federal Belgian authorities as well as the Flemish, Walloon and Brussels regions are competent, the ratification of all 5 of them was needed. The Brussels region has ratified the Convention by Ordinance of 5<sup>th</sup> December 2003, published in the Belgian State Journal of 22<sup>nd</sup> January 2004. The Walloon region has ratified the Convention by Decree of 29<sup>th</sup> January 2004, published in the Belgian State Journal of 1<sup>st</sup> March 2004. The Flemish region has ratified the Convention by Decree of 7<sup>th</sup> May 2004, published in the Belgian State Journal of 14<sup>th</sup> July 2004.

4.2. The pre-existing rules have not been expressly abrogated in Belgium. As the law (of 23<sup>rd</sup> May 2003) which ratified the Salvage Convention is more recent than the previous legislation in respect of salvage, in case of conflict the provisions of the Convention shall prevail.

**Canada**

4.1. The provisions of the Convention have been given force of law through the Canada Shipping Act, statutes of Canada, R.S.C. 1993, ch. 36, section 449.1.

4.2. The national rules on salvage previously in force in Canada have not been abrogated.

**China**

4.1. See answer to question 1.

4.2. There is no express abrogation of previous rules on salvage such as Chapter IX Salvage at sea of Chinese Maritime Code that came into force on July 1, 1993. It

should be pointed out that this express abrogation is needless under Chinese law because article 268 of Chinese Maritime Code provides: If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those contained in this Code, the provisions of the relevant international treaty shall apply, unless the provisions are these on which the People's Republic of China has announced reservations.

### ***Croatia***

4.1. By the law mentioned under 1. above, with the effective date 10 September 1999.

4.2. At the time of accession to the 1989 Salvage Convention, the key national rules on salvage in force were these: the Maritime Code of 1994 (covering salvage at sea); the Inland Waters Navigation Act of 1998 (covering salvage in inland waters). They have not been expressly abrogated and have remained in force in respect of areas to which the Convention does not apply.

It is important to note however that the national rules on salvage accept certain important features of the 1989 Salvage Convention.

With effect from 16 March 2001, Croatia denounced the 1910 Salvage Convention.

### ***Denmark***

4.1. By way of a statute see answer to question 1.

4.2. Prior to 30 May 1996, the Maritime Act incorporated the provisions of the 1910 Salvage Convention. Those rules have now been replaced with the provisions of the 1989 Salvage Convention.

### ***France***

4.1. The force of law has been given to the provisions of the Convention by the law of 30 January 2001 that authorized the ratification, and they became effective on December 20, 2002, the instrument of ratification having been deposited on December 20, 2001 with the Depositary, and the Convention published in the Journal Officiel de la République Française dated April 30, 2002, as requested by article 55 of the French Constitution.

4.2. The national rules on salvage previously in force (law of June 7, 1967) have not been expressly abrogated, and remain in force in respect of areas to which the Convention does not apply.

### ***Germany***

4.1. The legislation necessary for Germany to implement its obligations under the Convention was contained in the "Drittes Seerechtsänderungsgesetz", see answer to question 1.

4.2. There is no express abrogation of previous rules, however by law all previous dispositions that oppose the new law are derogated.

### ***Greece***

4.1. See our reply to Questions 1 and 3.

4.2. The International Convention of 1910 which was ratified by Greece has not been denounced. The relevant provisions of the Greek Code of Private Maritime Law, which were formerly in force, have not been abolished; therefore they still remain in force in respect of areas, if any, to which the Convention does not apply.

***Italy***

The force of law has been given by the law 12 April 1995, No. 129 that authorized the ratification and became effective upon the instrument of ratification having been deposited with the Depository and the Convention becoming effective pursuant to its article 29.

***Latvia***

4.1. Provisions of the Convention have been incorporated in the Maritime Code (adopted on 29 May, 2003) and in the Maritime administration and maritime safety law (adopted on 30 October, 2002).

4.2. No

***Lithuania***

4.1. Parliament of Republic of Lithuania adopted a law, ratifying the Convention.

4.2. Inland Waters Transport Code of Republic of Lithuania has been applied for salvage in inland waters. It is still applicable for salvage in inland waters.

***Marshall Islands***

4.1. The provisions of the Convention have been incorporated into national law by Section 155 of the Maritime Act, (above) but not by an extensive recapitulation of the Convention's provisions. Rather, as in the case of France, they were given force of law by the Act of ratification itself, and in addition by Section 155.

4.2. National rules remain in force, where the Convention does not apply. The latter does, however, supersede national rules where there are, or may be, conflicting provisions.

***Mexico***

4.1. Article 125 of the January 4<sup>th</sup>, 1994 Navigation Act.

4.2. There is no express abrogation of previous rules, however transitory article 3 of the Navigation Act derogates all previous dispositions that oppose the new law.

***Netherlands***

4.1. By way of Act.

4.2. No.

***New Zealand***

4.1. The Maritime Transport Act 1994 gives the Convention force of law.

4.2. Provisions in the Maritime Transport Act 1994 that implemented the 1910 Convention on Salvage law were revoked on 16 October 2003.

***Norway***

4.1. By Act of 2 August 1996 No. 61 amending the Norwegian Maritime Code of 24 June 1994 No. 39.

4.2. Certain national rules have been remained in the new act.

***Poland***

The provision of the Convention have been incorporated in the Polish Maritime Code 2001 and are in the force from the 4<sup>th</sup> of June 2002.

Previously has been in force Polish Maritime Code 1961 and 1910 Salvage. The former Maritime Code and the provisions incorporated to this code from 1910 Convention has been expressly abrogated.

### ***Romania***

4.1 In accordance with the official reply received from the Maritime Transport department within the Romanian Ministry of Transport, Construction and Tourism (the "Ministry of Transport"), the provisions of the Convention have been given the force of law by Government Ordinance no. 110/2000 that was subsequently approved by Law no. 135/2001.

4.2 The Convention did not expressly abrogate any of the national rules on salvage that were previously adopted. As an example we can refer to the Agreement of Cooperation in respect of services of search and salvage signed by the riverside states of the Black Sea in November 1998 which was ratified by Emergency Government Ordinance no. 182/2000. Also, the International Convention of 1910 which was ratified by Decree no. 2291/1913 has not been expressly abrogated.

### ***Russian Federation***

4.1. See points 1 and 3.

4.2. The Merchant Shipping Code of the USSR, 1968 included a separate chapter "V. Remuneration for Salvage at Sea", the rules of which base on the International convention for the unification of certain rules of law relating to assistance and salvage at sea 1910. In conformity with paragraph 3 of Article 428 of the Merchant Shipping Code of the Russian Federation, 1999 from 1 May, 1999, the Decree of the Presidium of the Supreme Soviet of the USSR of 17 September 1968, 3095-VII "On Approval of the Merchant Shipping Code of the USSR" shall not apply on the territory of the Russian Federation.

### ***Sweden***

4.1. As mentioned, the transformation has been accomplished by two Acts [Lag (1995:1312) om ändring in sjölagen (1994:1009) and Lag (1995:1314) om ändring in sjölagen (1994:1009)], by which the relevant provisions of the Swedish Maritime Code were amended, in particular Chapter 16 on salvage, to comply with the Convention.

4.2. If and to the extent that amendments had to comply with the Convention, previous regulations were abrogated.

In other respects national law regarding salvage persists.

As to Sweden's reservation under article 30(1)(d) of the Convention, salvage is subject to national regulations on cultural property, for instance Lagen (1988:950) om kulturminnen m.m., which are paramount.

### ***United Arab Emirates***

4.1 By a Federal Decree (See supra, response to question No. 1).

4.2. Though the UAE did not use the reservation not to apply the 1989 Convention when all interested parties are nationals of the UAE (article 30(1)(c)), the UAE national rules on salvage, in force previously to the 1989 Convention, have not been expressly abrogated. And, consequently they will remain in force in respect of areas to which the 1989 Convention does not apply.

Though each Emirate enjoys some legislative independence, since the UAE is a Federal state (See supra, response to question No. 1), allowing an interstate legislative conflict, a general Maritime Act is considered among the category of major statutes and which

by this title fall under the sole competence of the federal authorities (UAE Constitution, article 121). Consequently, UAE enjoys one domestic law on salvage. This is embodied in the Federal Maritime Commercial Act No. 26 of 1981 (Federal Official Gazette, Year No. 11, Issue No. 98, November 21, 1981, pp. 32-147), hereinafter the UAE Maritime Code.

The UAE Maritime Code, in 422 articles, has been promulgated by the UAE President on November 7, 1981, came into force on February 22, 1982 and includes 5 titles and an introductory as follows:

- Introductory Title: articles 1-10;
- Title I: The Ship, articles 11-83;
- Title II: The Arrest of Ships, Liens & Mortgages, articles 84-134;
- Title III: Persons of The Ship, articles 135-215;
- Title IV: Deployment of The Ship, articles 216-317;
- Title V: The Maritime Contingencies, articles 318-365 and
- Title VI: The Marine Insurance, articles 366-420.

Specifically, the UAE national rules on salvage appear under Chapter No. 3 on 'Salvage and Assistance' (articles 327-339) under Title No. 5 on 'Maritime Contingencies' (See for a translation, Annex I)<sup>7</sup>.

It has to be noted that the current UAE Maritime Code is expected to shortly be replaced. It has been reported in the newspapers that the Federal National Council, the FNC, has approved a Maritime Bill on June 22, 2004 and it is pending promulgation by the President. (See the Gulf News at <<http://www.gulf-news.com/Articles/Nation2.asp?ArticleID=124418>>).

Unlike the current Code (article 339), the new salvage law restricts choice of foreign jurisdiction and arbitration for salvage cases taking place in UAE and involving a UAE vessel (article 346), certainly this will activate salvage law in UAE (See for a translation and comment on the new article 346, Annex II)<sup>8</sup>.

Articles 327-339 of the current UAE Maritime Code quote almost identically the Convention for the Unification of Certain Rules of Law Respecting Assistance and Salvage at Sea (Brussels, 23 September 1910), hereinafter the 1910 Convention (Available at <<http://www.admiraltylawguide.com/conven/salvage 1910.html>>). This is though UAE is not a state party (See further comments, Annex I and II)<sup>9</sup>.

Surprisingly, articles 327-339 were not subject to much substantive modification under the new Maritime Bill (articles 334-346). Namely, the new provisions are still in strict adherence to the 1910 Convention text and policy.

It seems that the UAE legislator has missed a chance to update his salvage law along the new development achieved under the 1989 Convention (e.g. increased protection for the marine environment). This situation will lead the domestic law on salvage belonging to a retrogressive legislative policy in comparison with that of the 1989 Convention, to which the UAE is a state party, an aspect that can hardly be defended.

### ***United Kingdom***

4.1. Section 224 of the Merchant Shipping Act 1995.

4.2. The UK denounced the 1910 Salvage Convention, even though it was never formally incorporated into UK law it was always recognised that it reflected many principles of existing English Admiralty Law.

<sup>7</sup> Relevant Annex is available on request.

<sup>8</sup> Relevant Annex is available on request.

<sup>9</sup> Relevant Annexes are available on request.



There has been no express abrogation of pre-existing English law on salvage. However, in matters governed by the Convention, the Convention prevails.

In interpreting the Convention, the English courts will adopt a purposive international approach rather than seek to instinctively apply pre-existing English legal concepts to the Convention. To aid that process, the English courts may have regard to the Parliamentary debates on the Convention and to the travaux préparatoires to the Convention. The travaux préparatoires includes the proceedings of the 1989 diplomatic conference, the proceedings of the IMO Legal Committee 1983-88, the CMI proceedings 1978-81, and the travaux préparatoires to the 1910 Convention.

It is unclear to what extent the pre-existing English law may be used to interpret the Convention. The English court must start with the Convention text, but may refer to the general principles of English salvage law to aid the interpretation and application of the Convention. To give but one example, Art.1(a) refers to 'danger' but does not define it. Accordingly, the English case law on the meaning of danger may be consulted.

The pre-existing English law will continue to apply in respect of salvage operations started before 1 January 1995 by virtue of MSA 1995 s.224(4).

### ***United States***

4.1. Section 40, Amendments to Implement International Salvage Convention, 1989, of Public Law 102-241, Dec. 19, 1991, amending 46 App. USC 729 and 731.

4.2. They remain in force with respect to those substantive areas to which the Convention may not apply.

5. *If the reservation under Article 30(1)(a) and/or (b) has not been made, is it accepted in your country that the provisions of the Convention apply also when the salvage operation takes place in inland waters and all vessels involved are vessels of inland navigation and/or when the salvage operations take place in inland waters and no vessel is involved?*

### ***Australia***

The reservations were made.

### ***Belgium***

In the parliamentary documents no comments or specific amendments can be found in respect of the ratification of the Convention. therefore the application to inland waters with or without vessels has been accepted by the full text incorporation of the text of the Salvage Convention.

### ***Canada***

No reservation under article 30(1)(a) or (b) has been made and it is therefore accepted that the provisions of the Convention apply also when the salvage operation takes place in inland waters.

### ***China***

The reservations were made. And article 171, Chapter IX Salvage at Sea of Chinese Maritime Code provides: The provisions of this Chapter shall apply to salvage operations rendered at sea or any other navigable waters adjacent thereto to ships and other property in distress. Article 172 (1) of Chinese Maritime Code has explicit

provision of the scopes of the ships involved, i.e. one of them must be sea-going ship or other mobile unit, but does not include ships or craft to be used for military or public service purposes, nor small ships of less than 20 tons gross tonnage. So, as a conclude, if the reservation under article 30(1)(a) and/or (b) has not been made, the provisions of the Convention shall not apply to the salvage operation takes place in inland waters and all vessels involved are vessels of inland navigation and/or when the salvage operations take place in inland waters and no vessel is involved.

### ***Croatia***

As the reservation under Article 30(1)(a) has not been made, the Convention presumably applies when the salvage operation takes place in inland waters and all vessels involved are vessels of inland navigation. No known case law on this matter. Croatia made the reservation under Article 30(1)(b). However, certain Convention principles should apply through the national law (please see a note under 4.2. above).

### ***Denmark***

The answer to the question is YES. According to section 441-litra a, which is the definitions section (equal to Article 1 of the Convention), the provisions of the Act apply also where property is in danger in inland waters. It is not a condition that a vessel is involved as a salvor either, and chapter 16 of the Maritime Act will apply even if a salvage took place from e.g. a helicopter. The translation into Danish of the word "waters" in the Convention has however had the effect, that only in waters where it is possible to navigate can there be a question of salvage. This means that if dangerous situation occurs in a waterhole/small pond the provisions will not apply.

### ***France***

The reservations were made, although their impact remains doubtful (see supra, at point 2).

### ***Germany***

Yes, the Convention applies in inland waters with or without vessels as well.

### ***Greece***

As mentioned above, the right of reservation allowed under article 30 (1) (a) and (b) has not been exercised. The issued posed by Question 5 have not arisen, in view of the fact that Greece has very limited internal navigation. Internal law didn't exclude the rules of maritime salvage in cases of endangerment of a floating craft. It did exclude them as regards other kinds of property.

### ***Italy***

The question whether the provisions of the Convention apply in the circumstances described in this question has never been the subject of any decision. However we are of the view that that should be the case.

### ***Latvia***

The reservation under article 30(1)(a) and/or (b) has not been made.

### ***Lithuania***

Not applicable – reservation under article 30(1)(a) and (b) have been made.

***Marshall Islands***

The answer is yes, bearing in mind that as the Marshall Islands is an archipelagic state made up of atolls, with virtually no rivers; there are no lakes or rivers within the Republic that can be characterized as "inland," at least in the sense used in Europe or elsewhere. The atolls of Marshall Islands do have many lagoons, which are navigable. The provisions of the Salvage Convention do apply there, as in the other territorial waters of the Republic.

***Mexico***

Originally, the reservation was made, however the 1994 Navigation Act incorporates the Convention for all salvages.

***Netherlands***

Yes

***New Zealand***

Application to inland waters with or without vessels has been accepted by full text incorporation of the text of the Convention and by virtue of the definition of "Coastal or inland waters" in section 215 of the Maritime Transport Act 1994.

***Norway***

Norway has made no reservation in respect of article 30 (1) (a) and/or (b).

***Poland***

Poland did not make the reservation under art 30(1)(a) and (b). The provisions of the Convention apply to the operation placed in inland waters only when sea-going vessel is involved. This provision do not apply when inland vessel is involved.

***Romania***

In Romania the reservations under art. 30 (1) have not been expressed which leads to the conclusion that the provisions of the Convention apply also to the situations mentioned above. Nevertheless, we contacted the Ministry of Foreign Affairs for an official confirmation of this position. We are still awaiting their reply in this respect.

***Russian Federation***

In conformity with paragraph 1 of Article 3 of the Merchant Shipping Code of the Russian Federation, 1999 the regulations set out in the Code shall apply to vessels of inland navigation, as well as those of mixed navigation (river-sea) when sailing on sea routes, as well as on inland waterways and carrying cargoes, passengers and their luggage with a call at a foreign seaport, during a salvage operation or a collision with a sea-going vessel.

In conformity with Article 337 of the Merchant Shipping Code of the Russian Federation, 1999 the regulations set out in the Chapter "XX. Salvage of Vessels and Other Property" shall apply to any salvage operation unless a contract of salvage provides otherwise expressly or by implication. The parties shall not be entitled to preclude by their contract the application of Article 339 of the Code and recede from the duty to prevent or minimize damage to the environment stipulated by Article 340 of the Code. For the purposes of this Chapter salvage operation means any act or

activity undertaken to assist a vessel or other property in danger in navigable or in any other waters whatsoever.

### ***Sweden***

Sweden has not made any reservations under Article 30(1)(a) and (b) of the Convention. According to the definition of salvage, as laid down in the Maritime Code, Chapter 16, Section 1(1) salvage means "any measure undertaken to assist a vessel or any other property which is foundered or in danger in navigable waters". The term "navigable waters" is assumed to have a wide meaning. It includes any minor waters as long as navigation by any form of watercraft is possible. Hence, the provisions on salvage as amended in accordance with the Convention apply also to inland waters as long as they are navigable, including rivers, lakes and harbours.

The Swedish regulations on salvage are not restricted to vessels. According to Chapter 16, Section 1(2) property that may be subject to salvage can be "any property which is not permanently attached to the shoreline". The property subject to salvage does not need to have any connection to navigation. Also an airplane which is emergency landing on navigable waters would be considered as property under Chapter 16. However, property which is permanently fastened to the coastline, i.e. a loading platform, is not subject to salvage under Chapter 16. Even if such a platform would break away from the coastline, it would still not be considered as property under Chapter 16.

The salvage operation does not need to be undertaken by a vessel. It might also be accomplished by help of, for instance, a helicopter or a lifting arrangement on shore. Hence, salvage operations may take place on the sea or in navigable inland waters and without any vessel involved.

### ***United Arab Emirates***

UAE has not made reservations under article 30(1)(a) and/or (b). Geographically speaking the UAE does not have neither rivers nor lakes. However, if the concept of inland waters is extended to include places in the sea where navigation is not subject to its perils, then there will be room for the question whether the 1989 Convention shall be applied in the UAE regardless the fact that all involved vessels are not sea-going? There is evidently nothing in the current legal system that indicates why UAE courts should not accept application. Actually, foreign vessels of coastal navigation regularly visit UAE (e.g., Free Port in Abu Dhabi). Many of these visiting vessels can hardly be qualified sea-going. Then, in case these vessels are salvaged by similar vessels or by a port tug, for example, the 1989 Convention will certainly be a very useful tool for regulation. It is true that the UAE Maritime Code requires that at least a sea-going vessel is involved (article 327), however this is when the 1989 Convention is not applicable. The principle is that international maritime conventions supersede the provision of the UAE Maritime Code (article 8(1)).

### ***United Kingdom***

Not applicable as reservation is in place.

### ***United States***

Presumably, the provisions of the Convention do apply when salvage operations take place in inland "navigable waters of the United States" (as defined for determining admiralty jurisdiction), whether all the vessels involved are vessels of inland navigation or even when no vessel is involved. In the past there has been little or no

litigation/adjudication on these issues in U.S. However, it must be noted that the situation is changing. Litigants are now using the Convention to bolster their arguments. In both the *Sea Hunt*<sup>10</sup> case and the just settled *Maine Corsair*<sup>11</sup> litigation, the parties and the courts addressed "Convention" issues.

6. *If the reservation under article 30(1)(d) has not been made:*
- 6.1. *is it accepted in your country that the provisions of the Convention apply even when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea bed?*
  - 6.2. *Has your country ratified the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage or is it your country's intention to ratify it?*

### ***Australia***

The reservations were made.

### ***Belgium***

6.1. In the parliamentary documents no comments or specific amendments can be found in respect of the ratification of the Convention. Therefore the provisions of the Salvage Convention are applicable to maritime cultural property.

6.2. Belgium has not ratified the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage. (This Convention has only been ratified by Bulgaria, Croatia, Libyan Arab Jamahiriya, Nigeria, Panama and Spain).

### ***Canada***

6.1. A reservation under article 30(1)(d) has been made by Canada and consequently the provisions of the Convention do not apply when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and situated on the sea-bed.

6.2. Canada has not ratified the UNESCO 2001 Convention on the Protocol of Underwater Cultural Heritage and it is too early to say whether Canada intends to ratify it or not.

### ***China***

6.1. The reservation has been made.

6.2. No.

### ***Croatia***

6.1. No.

6.2. No, it has not been ratified the UNESO2001 Convention on the Protection of Underwater Cultural Heritage.

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<sup>10</sup> *Sea Hunt v. The United Shipwrecked Vessel or Vessels*, 221 F.3d 634 (4<sup>th</sup> Cir. 2000), cert. denied, 531 U.S. 1141 (2001).

<sup>11</sup> *Historic Aircraft Recovery Corp. v. Wrecked and Abandoned Voight F4U-1 Corsair Aircraft*, 294 F. Supp.2d 132 (D. ME. 2003).

***Denmark***

Having been in contact with the Danish Government Department they have advised that Denmark generally has a positive view on the UNESCO 2001 Convention on the protection of underwater cultural heritage. It is not however at this stage possible to give a firm statement as to whether Denmark will ratify the Convention.

***France***

6.1. The reservations were made, with, here also, a doubt concerning their very impact.

6.2. It seems France also has a positive view on the UNESCO 2001 Convention on the protection of underwater cultural heritage. It is not however at this stage possible to give a firm statement as to whether, and when France will ratify the Convention, which would require enactment of an ad hoc law.

***Germany***

6.1. Yes it is accepted.

6.2. No, it has not been ratified.

***Greece***

As already mentioned, Greece made use of the reservation of article 30 (1) (d) of the Convention. There exist special provisions in relation to salvage of ancient shipwrecks or cargo wrecks, lying either within or outside a shipwreck.

***Italy***

6.1. To our knowledge this question has not yet been considered. It is thought, however, that to the extent that such maritime cultural property is the property of the State, the State can oppose to salvage operations on the basis of article 19 of the Salvage Convention. Recourse could perhaps be made by a Government to article 5(1) of the Salvage Convention.

6.2. Italy has not ratified yet the UNESCO Convention. In any event ratification would require enactment of an ad hoc law and it does not appear that a bill for such purpose has been submitted yet to Parliament by the Government. As regards the potential conflict between the Salvage Convention and the UNESCO Convention, see our response to question 6.1.

***Latvia***

6.1. Yes

6.2. Latvia has not ratified the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage.

***Lithuania***

6.1. Yes

6.2. No

***Marshall Islands***

6.1. The recovery of maritime cultural property will be governed by Marshall Islands national legislation; the general maritime law of salvage will, in general, not apply to the recovery of prehistoric or historic artifacts, or archaeologically significant objects.

6.2. The Republic of the Marshall Islands has not ratified the UNESCO/2001 Convention on the Protection of Underwater Cultural Heritage, and we are advised that parliament has no present intention to do so.

### *Mexico*

6.1. In Mexico, cultural, prehistoric, archaeological or historical objects can not be private property and belong to the Country, however the salvager has the right to receive a monetary reward for objects salvaged, provided they have obtained previous Government permission.

6.2. Mexico has not ratified the UNESCO 2001 Convention, however it is under study to ratify it or not.

### *Netherlands*

6.1. The reservation was made. See answer to question 2.

6.2. No. The Netherlands abstained from voting. The State has expressed a political commitment to the Annex of this Convention.

### *New Zealand*

6.1. New Zealand has reservations as to whether the salvage convention is applicable to wrecks that have been on the seabed for many years, given the reference to "assist a vessel or any other property in danger in navigable waters" in the definition of salvage operations. However New Zealand does not rule out this possibility.

6.2. New Zealand has not ratified the UNESCO 2001 Convention.

### *Norway*

6.1. Norway has made reservation in respect of article 30 (1) (d), see the response to question 2.

6.2. Norway has not ratified the UNESCO 2001 Convention, and does not have the intention to do so.

### *Poland*

The provisions of the Convention do not apply when the property involved is of maritime cultural property of prehistoric, archeological or historic interest and is situated on the sea bed, because there is no "danger" or "peril" in the meaning of "salvage of property in peril". According Polish law *conditio sine qua non* of application provisions on salvage is "existing danger".

Poland has not ratified the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage.

### *Romania*

6.1. Given the fact that the Romanian Ministry of Foreign Affairs has officially informed us that the reservations permitted by art. 30 (1)(d) have not been expressed, we can conclude that the provisions of the Convention apply even when the property involved is maritime cultural property of prehistoric, archaeological or historic interest. In order to be certain, we contacted the Ministry of Culture and we are waiting for their reply.

6.2. Romania has not ratified or adhered to the UNESCO 2001 Convention. The Ministry of Foreign Affairs informed us that they have approached the Ministry of Culture with an official request to confirm whether or not Romania has any intention in ratifying it in the near future. We are still waiting for their reply.

***Sweden***

Sweden has made the reservation under article 30(1)(d) of the Convention. With regard to maritime cultural property of prehistoric, archaeological or historic interest Swedish national rules, in particular the Act on cultural property (Lagen (1988:950) om kulturminnen m.m.) and the Act on found marine objects (Lagen (1918:163) med vissa bestämmelser om sjöfynd), are applicable.

Pursuant to Chapter 2, Section 2(8) of the Act on cultural property, a shipwreck is considered to be a prehistoric site when 100 years have gone since the ship became a wreck.

Pursuant to the Act on found marine objects, abandoned ships or shipwrecks and property belonging to them have to be registered with the Swedish authorities.

It has been assumed that the application of the Convention to maritime cultural property which is situated on the sea bed would hardly have relevance in practice, since it was found unlikely that it could be in danger as required by the Convention. Due to the fact that the Swedish Maritime Code, Chapter 16 does not only apply in the event of danger but even in case "a vessel or any other property [...] is foundered [...] in navigable waters" Section 1(1), it was, nevertheless, considered advisable to make the reservation. However, it should be noted that the salvage remuneration might be relatively low, if the vessel or other property is not, or no longer, in danger.

***Russian Federation***

6.1. The reservation was made, see point 2.

6.2. The Russian Federation does not participate in the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage.

***United Arab Emirates***

UAE has not made reservation under article 30(1)(d).

6.1 Such property, which by definition is not a ship in danger, does not fit into the narrow concept of salvage adopted under the UAE maritime legal system (See for details *infra*, response to question No. 7).

Nevertheless, if the concept of property under the 1989 Convention is internationally given a wide scope so to include such property then the new concept would most probably be admitted, taking into consideration that international maritime conventions supersede provisions of the UAE Maritime Code (UAE Maritime Code, article 8 (1)).

However, some obstacles might prevent such application, *inter alia*:

- It is true that the 1989 Convention permits any state party to reserve the right not to apply the convention to maritime cultural property of prehistoric, archaeological or historic interests that is situated on the sea-bed. Nevertheless, some commentators conclude that it is not settled whether the 1989 Convention applies *ipso facto* to historic shipwrecks in absence of such choice of opting out (See J. Ashley Roach, *Shipwrecks: Reconciling Salvage and Underwater Archaeology* available at <[http://www.prosea.org/articles-news/exploration/SHIPWRECKS\\_RECONCILING\\_SALVAGE.html](http://www.prosea.org/articles-news/exploration/SHIPWRECKS_RECONCILING_SALVAGE.html)>). If this opinion prevails among international scholars, or comparative case law, this will most probably encourage the UAE courts to follow its own domestic concept of property not giving the chance of application (See *infra*, response to question No. 7).
- This property will most likely be an Underwater Cultural Heritage (UCH). The UCH is a type of property not permitted to be subject to disposition, this is because it



is nobody's property, *res nullius*. It is a privileged public property, *res publica*. And, then the issue of selling some or all of the salvaged UCP in order to fund its protection will be prohibited. This does not accord to the law of salvage, an aspect which has already been highlighted in a Report of the CMI Working Group. (See, Consideration of the UNESCO Convention on the Protection of Underwater Cultural Heritage, Comité Maritime International Yearbook 2002, p. 155. Also available at <[www.comitemaritime.org/year/pdfiles/cons\\_unesco.pdf](http://www.comitemaritime.org/year/pdfiles/cons_unesco.pdf)>).

- The 1989 Convention does not require the use of proper archaeological techniques to historic shipwrecks, or the preservation of the scientific, historic, and archaeological integrity and provenance of the wreck (neither does the 1910 Convention. See Roach, *op. cit.*)

6.2. UAE has not ratified the UCH Convention 2001 and there is no official announcement regarding its intention. The author of this report made an unofficial inquiry (July, 2005) with the concerned UAE authority (Maritime Affairs Department of the Ministry of Communications) and the answer was that such convention is not under any consideration by the maritime authorities.

### ***United Kingdom***

6.1. Yes.

6.2. No.

### ***United States***

6.1. The answer to this question may be either yes or no depending upon a number of factors such as the identity of the owner, the kind and location of the property, and whether the general federal maritime law of salvage applies.

6.2. No, and the United States has no intention of ratifying this instrument at this time.

7. *Does the term "property", as defined in article 1(c) cover sunken ships and other property, whether or not inside a sunken ship?*

### ***Australia***

Property is defined in section 294 of the Navigation Act 1912, in the same terms as in the Salvage Convention 1989.

### ***Belgium***

I think that it does but that the Convention will only apply when the sunken ship or its contents are in danger. Almost always they will constitute a danger without being in danger themselves. The domestic provisions on the salvage of wrecks will apply if the sunken ship is not in danger (Belgian law of 11<sup>th</sup> April 1989).

### ***Canada***

Yes. Moreover Canada has a domestic definition of wreck which is sufficiently broad to include such elements<sup>12</sup>.

### ***China***

Yes.

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<sup>12</sup> Relevant extracts from the *Canada Shipping Act* are available on request.

***Croatia***

Under national rules, removal of sunken objects is expressly distinguished from salvage and is subject to a special set of rules. Sunken objects (whether or not inside a sunken ship) are covered by the rules on salvage only if they sank during the salvage operations or during the period of danger that existed immediately prior to the commencement of the salvage operations.

***Denmark***

The term "property" as defined in article 1(c) and section 441-litre c, of the Danish Maritime Act does cover for instance pipelines.

With regard to sunken ships, the Scandinavian courts have traditionally used the salvage rules where the removal of wrecks were concerned, even though a sunken ship would rarely be "in danger" as defined in article 1A of the Convention and section 441-litre a of the Maritime Act. It is not believed that this practice will change.

If, however, the situation is that something is salvaged which does not have any relation to shipping, it is possible that the Danish courts would apply other than salvage rules when evaluating a case. This could involve for instance rules concerning negotiorum gestio (conduct of business) and reward for lost property.

An example of such a situation could be where somebody salvaged a car or valuable jewellery from the bottom of a port.

***France***

There is no reason to think that French courts, when applying the 1989 Convention, will not apply the provisions of article 1 (c) as they are written, i.e. as including sunken ships, or other property inside a sunken ship. However they may be reluctant to apply the Convention to a sunken ship, or other property, which is not "in danger". In such case, they will apply the former law of wrecks (rules dealing with the "sauvetage des épaves").

***Germany***

Yes.

***Greece***

In theory it has been argued that the term "property" (1(c)) includes sunken ships, shipwrecks or cargo wrecks, lying either within or outside a shipwreck.

***Italy***

From the travaux préparatoires it clearly appears that it was intended that the term "property" should cover sunken ships and other property, whether or not inside a sunken ship.

***Latvia***

Maritime Code provides in:

Article 267: A ship which is fully or partially sunk or run aground, losing the capacity for navigation, or which is abandoned and therefore endangers navigation safety and the environment, as well as any part of such ship and all that was or is on such ship is a wreck.

Article 268: If the wreck is not claimed within a period of six months from the day of publication of the notice, the wreck shall pass to the ownership of the State.

***Lithuania***

Yes.

***Marshall Islands***

Under Marshall Islands law, which, as indicated above, permits its courts to follow the decisional law of the United States courts, the answer is "yes." The Government is aware that Article 1(c) makes no reference to sunken vessels and their cargoes, and acknowledges Prof. Berlingieri's very comprehensive discussion of this matter, in the context of the 1910 Convention, in the IMO Legal Committee's Document Leg.58/Inf.2, August 5, 1987. The subject is, in part, dealt with under the heading of "submerged resources", including maritime artifacts located in the intertidal or subtidal zone within the internal, archipelagic or territorial waters of the Republic, as defined in Section 5, 6, 7, 10 and 12 of the Marine Zones (Declaration) Act 1984 (33 Marshall Islands Revised Code, Chapter 2). The Marshall Islands shares the views of those delegations at the 1989 Diplomatic Conference, such as France, that cultural or historic wrecks (which are, after all, sunken vessels) should be subject to the right of a state to make its own rules for the preservation of such property, and for its recovery.

***Mexico***

There has been no interpretation of our Court regarding this point.

***Netherlands***

Yes. See article 555 Book 8 of The Netherlands Civil Code.

***New Zealand***

As the Act incorporates the language of the Convention into NZ law, the definition of property appears to be sufficiently broad to include sunken ships and other property.

***Norway***

Yes.

***Poland***

Yes, the term "property" covers sunken ships and other property.

***Romania***

In accordance with the definition given by the Convention and ratified by Romania, property means any property not permanently and intentionally attached to the shoreline and includes freight at risk. We are unable to review all the regulations adopted by the Ministry of Transport and in this respects we contacted the Ministry of Transport and await their reply. But from our independent search we can assess that the term "property" does cover the sunken ships and other property, whether or not inside a sunken ship.

***Russian Federation***

Yes, it does. The national regulations about sunken property are included in the Chapter "VII. Sunken Property" of the Merchant Shipping Code of the Russian Federation, 1999. In conformity with Article 107 of this Code the regulations set out in the Chapter VII shall apply to the raising, removal and destruction of property sunken within the internal sea waters or the territorial sea of the Russian Federation. Sunken

property shall cover wrecked vessels, their wreckage, equipment, cargoes and other articles, regardless of whether they are afloat or under water, sunken to the sea bed or cast up on shoals or onto the coast. The regulations set out by the Chapter VII shall not apply to:

- raising, removal and destruction of military property;
- raising of sunken marine property of a cultural nature, having prehistoric, archeological or historical value, if such property is found on the sea bed.

Where the raising, removal and destruction of sunken property is considered as a salvage operation in accordance with the regulations set out in Chapter XX of the Merchant Shipping Code of the Russian Federation, 1999, these regulations shall apply to the reward and special compensation of salvors, regardless of the regulations set out in the Chapter VII.

### ***Sweden***

The term property as it is referred to in the Swedish Maritime Code, Chapter 16, means "any property which is not permanently attached to the shoreline". Hence, a sunken ship and other property, whether or not inside a sunken ship, may be subject to salvage.

It has to be observed that, if the sunken ship or property belonging to the sunken ship has been abandoned, the Act on found marine objects (Lag (1918:163) med vissa bestämmelser om sjöfynd), provides for a duty of registration.

### ***United Arab Emirates***

The term "property" as defined in article 1(c) under the 1989 Convention is flexible enough to include sunken ships and other property, whether or not inside a sunken ship. And, any UAE court, as has been highlighted above (See supra response to question No. 6.1), is logically expected to interpret the 1989 Convention in light of its international unification objective giving the term "property" its extended meaning. However, scholar comments on the UAE Maritime Code follow the French doctrine in restricting salvage to vessels in danger, this is called in French assistance (Fayiz Radwan, *Al Ka'noon Al Ba'hri*, Dubai Police Academy, Dubai 1990, p. 407). An already sunken vessel and related property is not a vessel in danger, it is simply an *épave*, i.e., a ship-wreckage. Rescuing a ship-wreckage is not salvage though it is *sauvetage* in French language. Both words do not correspond in terminology. While salvage means assisting a vessel in danger, *sauvetage* is picking up the ship-wreckage and which is already lost in sea. This strict interpretation is expected under the new Maritime Bill and which is almost identical to the current law (See *infra*, Annexes I and II)<sup>13</sup>.

### ***United Kingdom***

The meaning of property within article 1(c) covers virtually all property on board a ship, such as cargo, equipment, stores and personal belongings.

Under English law a wreck may be a subject of salvage. The definition of wreck includes flotsam, jetsam, and lagan, which are all descriptions of cargo and other items that are no longer inside a vessel.

The UK delegation to the 1989 Diplomatic Conference were of the view that sunken vessels were included in 'property' within 1(c).

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<sup>13</sup> Relevant Annexes are available on request.

The pre-Convention English case law reveals that English law faced little difficulty in applying the law of salvage to sunken ships and other property. If such property has come from a ship it is "wreck", even if it is found outside the sunken ship.

***United States***

Yes.

8. *Has your country extended the scope of application of the provisions of the Convention to:*
- (a) *platforms and drilling units;*
  - (b) *warships and other non-commercial vessels, owned or operated by the State?*

***Australia***

No.

***Belgium***

- (a) According to article 3, the Convention is not applicable to fixed or floating platforms or to mobile offshore drilling units when such platform or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources. Belgian law makes the Convention well applicable to platforms or drilling units which are not mentioned in article 3 of the Convention. In the Belgian "Travaux Préparatoires" the term "vessel" is defined very broadly.
- (b) The Convention is not applicable to warships and other non-commercial vessels, owned or operated by the State. Belgium has not made use of article 4.2 of the Convention.

***Canada***

- (a) In accordance with the Convention, it does not apply to platforms and drilling units.
- (b) In accordance with the Convention, it does not apply to warships and other non-commercial vessels owned or operated by the State.

***China***

- (a) In this point, article 173 of Chinese Maritime Code has the same provision as article 3 of the Convention.
- (b) No.

***Croatia***

- (a) No. Under the national law, the issue seems to depend on whether a platform or a drilling unit is capable of navigation (in which case it is considered as "technical vessel" and is covered by the rules on salvage) or not (in which case it is considered as "floating object" and is not covered by the rules on salvage).
- (b) No. Under the national law, the rules on salvage apply to all vessels irrespective of type and purpose (including warships and state-owned vessels), with certain exceptions: (i) the rules dealing with the rights of the crew to participate in the salvage reward do not apply to warships; (ii) salvage of a Croatian warship shall not be performed if expressly prohibited by the master of that ship; (iii) the Minister of

defence shall regulate in which circumstances the master of a Croatian warship is exempted from a duty to render salvage services.

***France***

No. Here, former French municipal law will apply (law of July 7, 1967).

***Germany***

- (a) No, article 3 of the Convention has been incorporated in § 740 III HGB.
- (b) Yes, by court decision.

***Greece***

No, It didn't extend the scope of the Convention's provisions to platforms and drilling units, or to warships and other non-commercial vessels, owned or operated by the State. In internal law the application of the legislation of salvage at sea on platforms and drilling units is not excluded. As regards warships etc. the dominant opinion is that they do not apply.

***Denmark***

- (a) No, Article 3 of the Convention has been incorporated in section 442, subsection 4.
- (b) In section 454 of the Danish Maritime Act, it is decided that if a Danish state vessel used by the state for non-commercial purposes is performing salvage, then the rules of section 451, dealing with the apportionment of a reward between salvors, similarly apply. There is also a provision regarding state-owned vessels in section 453 equal to article 4(1) of the Convention.

***Italy***

Italy has merely given the force of law to the Convention. It follows that any property to which the Convention does not apply is not subject to the uniform rules. The consequence should be that if such property was subject to the domestic rules it would still be subject to them since such rules have not been expressly abrogated. This, however, would probably not be the case in respect of platforms and drilling units because they would not be qualified as ships under the Italian Navigation Code while the domestic provisions on assistance and salvage, based on the 1910 Convention, apply only to ships and to property on board a ship. The domestic rules would instead apply to warships and other non-commercial vessels owned or operated by a State pursuant to article 3(1) of the 1926 Brussels Convention on Immunity of State-owned ships, to which Italy is a party.

***Latvia***

- (a) No.
- (b) Maritime Code provides in:  
Section 253. Applicability of Salvage Provisions

(2) The provisions of this Part shall also be applied if the owner of the ship to be salvaged and of the ship taking salvage measures (operations) are one and the same person or if the ship taking salvage measures (operations) is owned by the State of Latvia.

***Lithuania***

No.

***Marshall Islands***

(a) No, it has not. The Marshall Islands favors the result achieved at the Diplomatic Conference, i.e., the Article 3 exclusion, as it prefers to deal with the matter by means of national law, and the precedents furnished by court decisions.

(b) No.

***Mexico***

There is no express provision to extend the scope of application for platforms and drilling units nor warships and other non-commercial vessels.

***Netherlands***

(a) No. See article 553 Book 8 of The Netherlands Civil Code.

(b) The Kingdom of The Netherlands decided to apply the International Conventional Salvage, 1989, to its war ships and other vessels as described in paragraph 1 of article 4 of the Convention under the following terms and conditions:

according to article 554 of Book 8, Means of Traffic and Transport, of The Netherlands Civil Code, as amended by Act of 2 July 1997, amending Book 8 of the Civil Code with regard to salvage and several other acts, section 2, Assistance, of title 6 of said Book 8 also applies to salvage by or / of a war ship or other non-commercial vessels belonging to, operated or chartered by the State of The Netherlands, or any other State that has declared the Convention applicable to those ships or vessels.

***New Zealand***

(a) The Convention has not been extended to platforms and drilling units.

(b) The Convention has been extended under section 217 of the Maritime Transport Act 1994 to salvage operations which assist any New Zealand warship or any other New Zealand state-owned ship or other property. Section 218 provides where salvage operations are rendered by any New Zealand warship, or any other new Zealand state-owned ship, the Crown shall be entitled to claim salvage in respect of those operations to the same extent as any other salvor, and shall have the same rights as any other salvor.

***Norway***

(a) Yes.

(b) Yes.

***Poland***

According art 247 Polish Maritime Code platforms and drilling units are excluded from the scope of application of the provisions of the Code (and the Convention).

Art 249 Polish Maritime Code provides the provisions on salvage are mutatis mutandis applicable to naval, coast guard and police.

***Romania***

(a) The situation of whether or not the scope of the Convention can be extended also to platforms and drilling units has not been clarified by the Romanian legislation, this issue being under discussion. Nevertheless, the doctrine considers that as long as the platforms and the drilling units are not operational although they are fixed, or are

moving to/from the shore or from one working point to another, they fall under the scope of the Convention.

(b) The Romanian doctrine considers that the warships and other non-commercial vessels owned or operated by the State fall under the scope of the Convention.

### ***Russian Federation***

(a) In conformity with Article 337 of the Merchant Shipping Code of the Russian Federation, 1999 the regulations set out in the Chapter «XX. SALVAGE OF VESSELS AND OTHER PROPERTY» shall not apply to:

- fixed or floating platforms or mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources;
- maritime property of a cultural nature, having prehistoric, archaeological or historical value, if such property is located on the sea-bed.

(b) In conformity with Article 337 of the Merchant Shipping Code of the Russian Federation, 1999 the regulations set out in the Chapter "XX. Salvage of Vessels and Other Property" with the exception of the rule set out in paragraph 1 of Article 345 of the Code (about apportionment of the reward between the shipowner and crew of the vessel), shall extend to:

- warships, naval auxiliary vessels and other vessels owned or operated by the Russian Federation or by the Subjects of the Russian Federation and used at the time of salvage operations being carried out only for governmental non-commercial service;
- non-commercial cargoes owned by the state.

### ***Sweden***

(a) No. The Swedish Maritime Code, Chapter 16, Section 2 para. 3 has adopted the wording of Article 3 of the Convention, i.e. Chapter 16 does not apply to fixed or floating platforms or to mobile offshore drilling units that are used for exploration, exploiting or production of sea-bed mineral resources.

(b) The Swedish Maritime code does not contain particular provisions on this matter. However, the Swedish Act on vessels owned or operated by foreign states (Lagen (1938:470) med vissa bestämmelser om främmande statsfartyg) prohibits legal actions against foreign warships and foreign vessels that are operated for governmental and not commercial purposes. With regard to Swedish warships and Swedish state vessels, which are operated for governmental purposes only, Sweden relies on its sovereignty according to generally recognized principles of international law.

### ***United Arab Emirates***

UAE did not extend the scope of application of the provisions of the 1989 Convention to either platforms & drilling units nor to warships and other non-commercial vessels, owned or operated by the state.

It seems that it was a missed fortunate chance for platforms and drilling units, that exist in great number in the UAE waters. These units are not subject to the UAE Maritime Code since they are not qualified as vessels (See, Cassation Petition No. 331 of 1992, Dubai Court of Cassation on February 20, 1993, No. 4, p. 195). This is in contrast with the domestic rules on collision and which do apply to such units when they fit to the description of «floatings tied up to a fixed anchorage». This has been allowed by exception upon an express provision (Article 318(1)), such provision does not exist under domestic salvage law.



On the other hand, both the Maritime Code (article 338(1)) and Bill (article 345(1)) provide for their application to salvage involving warships and state ships. This is made under the influence of the 1967 Protocol to the 1910 Convention and which adopts such extended application (See, The 1967 Protocol available at <<http://www.admiraltylawguide.com/conven/protosalvage1967.html>>).

However, since the public navigation vessels (warships and non-commercial state ships) will most probably be the salvor, then it will be in less advantageous legal status than foreign salvors and who will enjoy more extended rights of remuneration under the 1989 Convention. Though, this will be a correct application of the domestic maritime law, it is not logically motivated and certainly to be regretted.

### ***United Kingdom***

(a) No, under article 3 "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.

(b) Yes, by virtue of section 230 of the Merchant Shipping Act 1995 (subject to section 29 of the Crown Proceedings Act 1947) the law relating to civil salvage, whether of life or property applies in relation to salvage services in assisting any of Her Majesty's ships, or in saving life therefrom, or in saving any cargo or equipment belonging to Her Majesty in right of Her Government in the United Kingdom, in the same manner as if the ship, aircraft, cargo or apparel belonged to a private person.

Under section 29 of the Crown Proceedings Act 1947 no proceedings in rem are permissible in respect of any claim against the Crown nor is the arrest, detention, and sale of any of Her Majesty's ships or cargo or any other property nor can anybody give a lien over such things.

Thus no distinction is drawn between war ship and non-commercial vessels of the state, and any other vessel of the state.

### ***United States***

No to both (a) and (b). As to (b), see Department of State Public Notice 4614, entitled "Office of Ocean Affairs; Protection of Sunken Warships, Military Aircraft and Other Sunken Government Property" [Federal Register: February 5, 2004 (Volume 69, Number 24, pages 5647-5648)].

9. *Have provisions been enacted in order to entitle public authorities that perform salvage operations to avail themselves of the rights and remedies provided for in the Convention?*

### ***Australia***

Yes. See section 329C of the Navigation Act 1912.

### ***Belgium***

No special legislation has been made dealing with this issue.

### ***Canada***

No. Public authorities that perform salvage operations are not entitled to the rights and remedies provided for in the Convention unless they receive consent from the Governor in Council, as per section 466(2) of the Canada Shipping Act.<sup>14</sup>

<sup>14</sup> Relevant extracts from the *Canada Shipping Act* are available on request.

***China***

Article 192 of Chinese Maritime Code provides: With respect to the salvage operations performed or controlled by the relevant competent authorities of the State, the salvors shall be entitled to avail themselves of the rights and remedies provided for in this Chapter in respect of salvage operations. But there are many controversies whether the salvors referred to in this article comprise the relevant competent authorities themselves.

***Croatia***

No specific provisions on the subject. Consequently, public authorities should enjoy the rights and remedies provided for in the Convention to the full extent (except as provided under 8(b)(i) above).

***Denmark***

See answer to ad 8(b). In addition article 5(2) of the Convention has been incorporated in section 442, subsection 3. No specific provisions have been adopted but in section 445, subsection 2, of the Maritime Act, there is a rule corresponding to article 16 of the Convention. In addition the salvaging of lives is one of the criteria's for fixing the reward.

***France***

No.

***Germany***

The law applies to any salvage.

***Greece***

No there have not been put to force any special provisions of that nature. In internal law there exists a dispute as to whether the State is entitled to a reward for salvaging in accordance to the rules of maritime legislation. The negative opinion is prevalent.

***Italy***

Article 60 of the Navigation Code provides that the Maritime Authority that is informed that there is a ship in danger must take the necessary action in order to assist that ship. Article 70 then provides that for the purposes of article 69 the Maritime Authority may order to any ship in the area to place itself at the disposal of such Authority for the purpose of rendering salvage services and that the reward is established pursuant to the provisions on assistance and salvage. Whether a reward may be claimed if such services are rendered by a vessel owned by such Authority (i.e. by the State) is not expressly stated, but it is thought that this would be the case, since a reward may be granted also to a warship.

***Latvia***

Maritime Code provides in:

**Section 253. Applicability of Salvage Provisions**

(3) The provisions of this Part shall not affect the application of those regulatory enactments which regulate salvage measures (operations) performed by State institutions. Salvors who have participated in such salvage measures (operations) have

the right to salvage reward or special compensation in accordance with the provisions of this Part.

***Lithuania***

Yes. Article 40 of Law on Safe Navigation of the Republic of Lithuania (29 Aug. 2000, No. VIII-1897).

***Marshall Islands***

As in the case of the United States, the Marshall Islands has no legislation, at present, that specifically applies the provisions of the 1989 Salvage Convention to public authorities. However, as quoted above, Section 708 of the Marshall Islands Maritime Act, "Recovery For Salvage Services Rendered by Government Vessels", may be helpful. Moreover, Marshall Islands common law recognizes the rights of public authorities as salvors.

***Mexico***

Article 125 of the Navigation Law, which states that the Convention applies to any salvage is also applicable to public authorities.

***Netherlands***

Yes. See answer questions 8 (b) and article 554 of Book 8 of The Netherlands Civil Code.

***New Zealand***

No specific legislation has been made dealing with this issue. Our view is that the effect of incorporating article 5 directly in legislation is to permit public authorities to avail themselves of the rights and remedies under the Convention.

***Norway***

Yes.

***Poland***

Yes, the provisions on salvage are applicable to public authorities. Public authorities have the rights and remedies provided for in the Convention.

***Romania***

In Romania no specific legislation has been adopted in this respect. Further, due to the fact that art. 5 of the Convention has been directly incorporated in the Romanian legislation, we can conclude that the public authorities are not precluded from availing themselves of the rights and remedies stipulated by the Convention.

Nevertheless, we contacted the Romanian Ministry of Foreign Affairs for their confirmation and await their reply.

***Russian Federation***

In conformity with Article 353 (Salvage operations controlled by public authorities) of the Merchant Shipping Code of the Russian Federation, 1999 where salvage operations are exercised by public authorities or under their control, the salvors carrying out such operations may avail themselves of the rights and remedies provided for in the Chapter "XX. Salvage of Vessels and Other Property" of the Code. Public authorities under a duty to perform salvage operations may avail themselves of the rights and remedies

provided for in this Chapter, if carrying out salvage operations is not within the compass of their standard duties.

### ***Sweden***

The Swedish Maritime Code, including its Chapter 16, applies to salvage operations which are controlled by public authorities or entirely performed by public authorities. Chapter 16, Section 11 para. 5, however, includes an exception in the event that a salvage operation is performed by a Swedish State vessel used exclusively for governmental and non commercial purposes. In such a case, the State may waive its right to the salvage reward and then the persons on board the vessel shall not be entitled to compensation from the State.

In other respects, Chapter 16 does not contain provisions on the State's right to control a salvage operation or to render directions. Instead, Sweden refers to its right to protect its coastline or related interests from pollution as a generally recognized principle of international law as referred to in Article 9 of the Convention.

When accomplishing such salvage operations, the Swedish Act on protection against casualties (Lag (2003:778) om skydd mot olyckor) which, inter alia, contains rules on authority competence, has to be applied.

### ***United Arab Emirates***

This question cannot receive a simple yes or no answer. As has been explained before (See *supra*, response to question No. 8), public authorities are subject to the law of salvage. However, this does not entitle them the same level of rights and remedies provided in the 1989 Convention.

So, YES there are such provisions, but NO, the public authorities cannot avail themselves of the rights and remedies provided for in the 1989 Convention. They are entitled to the rights and remedies at a lesser level, that of the 1910 Convention!

### ***United Kingdom***

Yes, under section 230(2) of the Merchant Shipping Act 1995 where salvage services are rendered by or on behalf of Her Majesty, whether in right of Her Government in the United Kingdom or otherwise, Her Majesty shall be entitled to claim salvage in respect of those services to the same extent as any other salvor.

Employees of public authorities cannot claim salvage if they are acting within their normal duties (BRICE, *Maritime Law of Salvage*, 4th Ed.).

Where the public authority is not acting in pursuance of its normal duties, it appears that it may bring a claim for salvage.

### ***United States***

No provisions have been enacted that would specifically extend the rights and remedies of the Convention to public authorities performing salvage operations (e.g., Coast Guard, Navy). However, such public authorities have had, and still retain, analogous rights and remedies as salvors under the common maritime law of salvage. In addition, as a matter of internal U.S. government fiscal law, the provisions of 10 USC Sections 7363 & 7364 (which pre-date the Convention) recognize the right of the U.S. Navy to independently assert, receive and utilize salvage awards for salvage operations it has performed.

10. *Have measures been adopted in your country to enforce the duty of the master to render assistance to any person in danger of being lost at sea?*

***Australia***

Yes. See section 317A of the Navigation Act 1912.

***Belgium***

This has not yet been done in spite of article 10.2 of the Convention.

***Canada***

Yes, measures have been adopted to enforce the duty of the master to render assistance to any person in danger, for example, section 384 in Part V of the Canada Shipping Act related to the code of obligations<sup>15</sup>.

***China***

Yes. The relevant provisions of Chinese Penal Code and the administrative regulations will apply in case that the master doesn't render assistance to persons in danger of being lost at sea.

***Croatia***

Failure to do so is considered a criminal offence punishable by imprisonment.

***Denmark***

In cases where the ship is involved in an incident the master has a duty to render anyone in need of it "all assistance possible and necessary to rescue it from the danger that has arisen". By not doing so the master "shall be punishable by fine or imprisonment for a term not exceeding four (4) months", confer section 30 of the attached Danish Act on Safety at Sea<sup>16</sup>. In other cases where the ship encounters other in distress, Denmark has enacted SOLAS chapter V, rule 33, in our national legislation. Also in these cases there are criminal sanctions including imprisonment up to two (2) years, confer Technical Regulation, Notice from the Danish Maritime Authority B, section 4.

***France***

No, as such duty is already strictly enforced by French law. As a matter of fact, on that point, French law goes back, if not to the 1682 "Ordonnance de la Marine" (although imposing on anyone a general duty to rescue persons in danger at sea : article 1<sup>st</sup>, titre 9, livre IV), at least to a famous revolutionary statute of August 21, 1790, concerning the duty for any captain of the French navy to bring help to any ship in danger, "friend or foe" (ami ou ennemi). The old rule nowadays may be found in the provisions of a statute of December 17, 1926, punishing any captain guilty of not having rendered assistance to any person, "even enemy", of sanctions including imprisonment up to two years.

***Germany***

German Penal Code considers a criminal offence not to assist any person in danger.

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<sup>15</sup> Relevant extracts from the *Canada Shipping Act* are available on request.

<sup>16</sup> The *Danish Act on Safety at Sea* is available on request.

***Greece***

Yes. There do exist special provisions which on the master the duty to save a human live which is in danger at sea. Omission of said duty entails civil, penal and disciplinary consequences for the master.

***Italy***

Yes. Article 490 of the Navigation Code generally provides that ships are bound to render salvage services to ships in danger that are incapable of manoeuvring or, when this is not possible, to attempt to save the persons on board or at sea. Article 1113 then provides that whoever does not render salvage services to ships or persons in danger at sea when requested by the competent Authority pursuant to Article 7 (see our response to Question 9) is punished with imprisonment from one to three years. There is no express provision, however, for situations where there is no order of a Maritime Authority and a ship fails to assist a vessel in danger on the high seas. The only provision that could possibly apply is article 450 of the Penal Code pursuant to which any person who by his faulty action or omission creates or causes the continuation of a danger of shipwreck is punished with imprisonment up to two years.

***Latvia***

Maritime Code provides in:

**Section 63. Duty to Render Assistance**

(1) Following collision of ships, the master of each ship, as far as possible without subjecting his or her ship, crew and passengers to serious danger, shall:

- 1) prepare to provide assistance to the other ship for so long as he or she is not convinced that it does not require assistance;
- 2) do all that is possible in order to rescue human lives in danger; and
- 3) notify the master of the other ship of the name and homeport of his or her ship, as well as its port of departure and the port of destination of the ship.

(2) If the master of a ship without justified reason fails to fulfil the duties referred to in Paragraph one of this Section, he or she shall be liable in accordance with regulatory enactments.

***Lithuania***

Yes. Article 41 of Law on Safe Navigation of the Republic of Lithuania (29 Aug. 2000, No. VIII-1897).

***Marshall Islands***

Yes; the Criminal Code treats knowing and unreasonable failure to assist to be a criminal offense, in all cases where a person is in danger; Section 811 (j) of the Maritime Act requires the master to render assistance in the saving of life, as well as property, at sea.

***Mexico***

Federal Criminal Code considers a criminal offence not to assist any person in danger. Also, article 121 of the Navigation Law establishes the obligation to Master and their crew to assist persons in danger and only permits not to do so when that constitute a serious risk to her vessel, or the life of the crew, passengers and Master's own life.

***Netherlands***

The Kingdom of The Netherlands is a party to the International Convention for the unification of certain rules of law with respect to collision between vessels, 1910.

Article 8 of that Convention stipulates: "After a collision, the master of each of the vessels in collision is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to the other vessel, her crew and passengers. He is likewise bound so far as possible to make known to the other vessel the name of his vessel and the port to which he belongs, and also the names of the ports from which she comes and to which she is bound. A breach of the above provisions does not of itself impose any liability on the owner of a vessel".

His duties as a master to render assistance are laid down in article 358 (a) of the Commercial Code and for a skipper of an inland vessel in article 785 of the Commercial Code of The Netherlands.

The duty of the master is to render assistance to any person in danger or being lost of sea is repeated in the (Public law) Dutch Shipping Act of 1909 (article 9 (e, f)).

***New Zealand***

Yes. Section 32 of the Maritime Transport Act 1994 requires the master to render assistance. Failure to do so is an offence against the Act.

***Norway***

Yes.

***Poland***

Polish law provides that the master of the ship is bound to render, so far as he can do so without exposing his vessel and persons on board thereof to a serious danger, every assistance to persons in distress at sea (art. 60 Polish Maritime Code).

***Romania***

There is existing legislation which deals with this point. Art. 87 of the Government Ordinance no. 42/1997 stipulates the obligation of the master of any ship to render assistance to persons in danger of being lost at sea and to any ships in distress. The only situations when the master is exonerated of this obligation is when the assistance operation would result in him endangering his own ship or when the master of the other ship refuses the help. The legislation stipulates that the orders for the salvage of a ship given by the harbour masters are compulsory for all the masters irrespective of the nationality of the ship. But the legislation is silent on the disciplinary measures that can be taken if the masters do not obey the orders. Moreover, Romania adopted Government Ordinance no. 33/2004 and Government Decision no. 1022/2004 that deal with the establishment of the Romanian Agency for Interventions and Salvage at Sea (the "Agency"). The main attributions of the Agency as per art. 4 of the Government Ordinance are the followings: (i) to carry out the obligations stipulated in the international conventions regarding the protection of human life and the salvage at sea to which the Romanian state is a party; (ii) operations of search, intervention and salvage at sea; (iii) interventions in case of pollution.

***Russian Federation***

Yes, in conformity with Article 62 (Obligation to render assistance to any person in distress at sea) of the Merchant Shipping Code of the Russian Federation, 1999 the master shall be obliged, insofar as he can do this without serious peril to his vessel and

people on board, to render assistance to any person in distress at sea. Breach of the duty shall render the master responsible under the criminal legislation of the Russian Federation.

### ***Sweden***

Pursuant to the Swedish Maritime Code, Chapter 6, Section 6, para. 1, the master of a vessel in distress is among other duties obliged to do all in his power to save those on board of his vessel. Section 6, para. 2, stipulates a duty of the master to give anybody in distress all assistance possible and necessary to save individuals, as far as it can be done without seriously endangering his own ship or those on board. Chapter 20 of the Swedish Maritime Code contains penalty provisions. In case the master neglects his duties under Section 6 para. 1 and 2, he may be sentenced to fines or imprisonment not exceeding two years, Chapter 20, Sections 6 and 7.

### ***United Arab Emirates***

In line with the customary and conventional international law, and namely under the influence of the 1910 Convention (article 11), the UAE Maritime Code (and the Maritime Bill) place on the master the duty to render assistance to any person in danger at sea even when he is an enemy (article 336(1)). The duty is more extended under the current UAE Maritime Code (article 336(1)), it includes vessels in distress and does not require that the person in danger will be exposed to loss at sea. Regrettably express reference to vessels in distress has been omitted under the Maritime Bill, article 343(1) (See the author's footnote comments on both article 336(1) Annex I, and article 343(1) Annex II)<sup>17</sup>.

Also, the duty to assist is applicable with less prerequisites (i.e., non-requirement that lives are in danger) when the operation of assistance is due to a collision involving the vessel of which the master is in command (article 299(1)).

Non observance of the duty to assist will entail both civil and criminal liabilities. Particularly, the criminal liability is preventative enough since the punishment for such a crime is imprisonment for a duration not exceeding two years and/or fine not exceeding Dh 10.000 (US 2632). The new Maritime Bill adopts the same penalty (article 343(2)) and the author wished if the fine could have been reconsidered taking into consideration inflation and effectiveness.

It has to be noted that UAE is a member of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (See Federal Decree No. 38 of 1983, signed by the UAE President on June 6, 1983, Federal Official Gazette, Year No. 13, Issue No. 127, pp. 78-90).

### ***United Kingdom***

Yes, section 93 of the Merchant Shipping Act 1995 imposes a duty on the master of a ship to assist ships etc. in distress and provides a sanction for failing in that duty.

### ***United States***

46 USC 2304 (not applicable to public vessels, 46 USC 2109). Applied to U.S. Navy ships by article 0925, U.S. Navy Regulations, 1990, and to U.S. Coast Guard ships by article 4.2.5, U.S. Coast Guard Regulations.

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<sup>17</sup> Relevant Annexes are available on request.



11. *Have provisions been enacted in your country for the protection of its coastline or related interest from pollution or the threat of pollution following upon a maritime casualty that may to any extent adversely affect the performance of salvage operations?*

***Australia***

The Protection of the Sea (Powers of Intervention) Act 1981<sup>18</sup> gives effect to the Intervention Convention which, in some circumstances, may have an adverse effect on the performance of salvage operations.

***Belgium***

No.

***Canada***

Yes, provisions have been enacted for the protection of Canada's coastline from pollution or the threat of pollution following upon a maritime casualty that may adversely affect the performance of salvage operations. Namely, Part XVI of the Canada Shipping Act (section 678)<sup>19</sup>.

***China***

Yes. For example, Art.71 of China Marine Environment Protection Law provides: If a vessel is involved in a maritime casualty which has caused, or is likely to cause, substantial pollution damage to the marine environment, the competent authorities of maritime administration shall have the power to take compulsory measures to prevent or minimize the pollution damage. If a vessel or installation is involved in a maritime casualty on the high seas, which has caused or threatened substantial pollution damage to the sea area over which the People's Republic of China has jurisdiction, the competent authorities of maritime administration shall have the power to take necessary measures proportionate to the actual or possible damage.

***Croatia***

Amongst numerous anti-pollution laws and regulations in force in Croatia, some of them may to a certain extent adversely affect the performance of salvage operations.

***Denmark***

In accordance with the Danish Marine Pollution Act, section 43, the appropriate Danish Authorities can give instructions as to the performance of the salvage operation. Section 43 states as follows:

"Act on the Protection of the Marine Environment

43.-(1) The Minister for the Environment may order the ship not to continue its voyage or carry out other activities or order that the voyage or other activities shall take place on specific terms, if discharge or release from the ship has taken place or is likely to take place in contravention of this Act or of rules issued under the Act, or covered by section 58, and the prohibition or order it necessary to prevent or combat marine pollution.

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<sup>18</sup> Relevant extracts from the *Protection of the Sea (Powers of Intervention) Act 1981* are available on request.

<sup>19</sup> Relevant extracts from the *Canada Shipping Act* are available on request.

(2) Against platforms, the Minister may take measures similar to those referred to in subsection (1).

(3) The Minister may take further measures than those referred to in subsections (1-2) above, if necessary to prevent or combat pollution which may cause serious damage to the marine environment.

(4) As regards contraventions specified in subsection (1) taking place in the exclusive economic zones, the powers under subsection (1) can only be exercised, provided discharge has taken place and it is beyond doubt that the violation was committed by that ship.

(5) The decision to issue an order or prohibition under subsections (1-3) shall be notified immediately in writing or by telegraph to the master of the ship or the person in charge of the platform, or to the owner or user of the ship or platform, stating the reasons for the order or prohibition, and in the case of retention, stating the terms of release of the ship or platform.

(6) The Minister for Environment and Energy may publish information on the retention of a ship, stating the name of the classification society and the cause of retention."

### *France*

Numerous regulations have been enacted in France in the last twenty years – many of them consistent with European regulations – in order to prevent maritime pollution. None of these regulations seems likely to affect the performance of salvage operations.

### *Germany*

Yes there are several provisions for the protection of the coastline but they all are harmonized with Convention.

### *Greece*

There have not been enacted any special provision in relation to salvage. As regards the protection of the environment there apply the general provisions which permit the Authorities' intervention particularly when there exists a state of common danger or common need.

### *Italy*

Art. 12 of Law 31 December 1982, No. 979 provides as follows:

"The master, the operator or the owner of a ship or the person responsible for an installation located on the continental platform or ashore, in case of damage or accident to such ship or installation, liable to cause, through the escape of oil or other noxious and polluting substances, damage to the marine environment, to the shore or to interest connected therewith, shall promptly report to the maritime authority nearer to the place of the accident and take all measures that may at the time appear possible in order to avoid further damage and to eliminate the damage that has already occurred.

The Maritime Authority shall immediately intimate to the persons mentioned in the preceding paragraph to take all measures that are deemed to be necessary to prevent the danger of pollution or eliminate the effects already resulting therefrom. If such intimation will result to be ineffective, or does not produce the effects that would have been expected within the allocated period of time, the Maritime Authority shall cause the measures deemed to be necessary to be taken

for the account of the operator or of the owner and then recover from them the disbursements that will have been incurred.”

### ***Latvia***

Law on Maritime administration and maritime safety provides in:

#### Section 54. Action in Case of Marine Pollution

(1) If a marine casualty has occurred, which has caused pollution or threat of pollution to Latvian waters or the seacoast of Latvia or caused a threat to any other State interest related to Latvian waters or seacoast, the Coast Guard in co-operation with other competent institutions shall take such measures as it considers necessary to prevent, reduce or eliminate the pollution, as well as any measures in relation to the ship involved and the cargo thereof. These measures may include the following with regard to the ship and the cargo thereof:

- 1) relocation;
- 2) rescue;
- 3) sinking or destruction; and
- 4) taking over control of the ship

(2) The Coast Guard after co-ordination with a ship-owner may issue an order to the master of a Latvian ship to proceed to the place of an accident and perform necessary activities for the prevention, reduction or elimination of marine pollution.

(3) In implementing the orders referred to in this Section each person shall make every effort to eliminate or reduce the danger, which threatens human life.

(4) In taking the measures referred to in this Section the Coast Guard, the Marine Environment Board and other competent institutions shall comply with the requirements of the 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, its 1973 Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil and Annexes thereof.

### ***Lithuania***

No.

### ***Marshall Islands***

No; none that, in our opinion would adversely affect the performance of salvage operations. While we have observed that Marshall Islands law is silent on the specific subject of performance of salvage operations that might constitute a threat to the coastline, related interests, or the marine environment, particularly as regards potential risk of pollution arising therefrom, the decisions of American courts (which the Marshall Islands courts generally follow) have in general followed the principle that a rescuer is, at least to some extent, to be protected from the consequences of his negligence. A rescuer, in such cases, is responsible for physical harm resulting from his failure to exercise reasonable care, if that failure to exercise such care (a) actually increased the risk of such harm; or (b) the harm is inflicted because of the salvee's reliance upon the undertaking of the rescuer to render salvage services. American courts have put forward, as a principle, the concept of liability restricted to what is sometimes termed "distinguishable and independent damage." Pollution damage, caused by the negligent actions of a salvor, might, depending upon the circumstances of a given case, fall within this category of fault. For example, the U.S. Court of Appeals, in *Noah's Ark v. Bentley & Felton Corp.*, 292 F.2d 437 (5<sup>th</sup> Cir. 1961) observed:

“The key to the correct legal principle is the character of the injury inflicted—i.e., distinguishable or, as sometimes called, independent . The requirement for willful or gross negligence as an element of salvor liability relates to injuries of a non-distinguishable, non-independent kind. In a very broad sense the latter covers errors that made the salvage ineffectual. A distinguishable injury, on the other hand, is some type of damage sustained by the salvaged vessel other than that which she would have suffered had not [the] salvage efforts been undertaken to extricate her from the perils to which she was exposed. In other words it is a harm distinct from that from which the vessel is being saved.”

The Marshall Islands has noted Article 8 (2) (b), of the 1989 convention, requiring due care, on the salvor’s part, to prevent damage to the environment. It is noted that this duty is not specific to the salvor, but is merely a general requirement, imposed upon the beneficiary, i.e., the vessel in distress. Inasmuch as the 1989 convention deals primarily with private law, it has been felt that any specific provision imposing, even in part, such a duty upon the salvor, might prove to be a “cure worse than the disease.”

### *Mexico*

Mexican Ecological Legislation contains provisions of this nature. Also, article 123 of the Navigation Law, which states that any salvage within the jurisdiction of the Harbour Master must be coordinated by him, who has faculties to stop salvage operations in case of pollution or threat of pollution (article 8 of the Navigation Law).

### *Netherlands*

Yes. Law Controlling Accidents Northsea of 12 March 1992 (Wet Bestrijding Ongevallen Noordzee, 12 maart 1992, Stb. 1992, 211).

### *New Zealand*

Yes. Part 20 of the Maritime Transport Act 1994 deals with the protection of marine environment from hazardous ships, structures, and offshore marine operations. The Director of Maritime Safety is empowered to give directions to a hazardous ship, structure or offshore marine operation to avoid, reduce or remedy pollution or a significant risk of pollution from ship sourced harmful substances in New Zealand continental waters.

### *Norway*

No.

### *Poland*

According art 13 (b) and 14 of the Convention – Polish Maritime Code provides a compensation for the salvor who has carried out salvage operation in respect of a vessel which by itself or its cargo threatened damage to the environment at the same conditions as the Convention.

### *Romania*

The provisions of the Romanian legislation that deal with the protection against pollution are contained in the Regulation for the organization and functioning of the Centre for Maritime De-pollution and also in Government Ordinance no. 42/1997 and Government Ordinance no. 33/2004. The Romanian Maritime Authority has the obligation to coordinate all the activities in relation to prevention of pollution. All the above mentioned documents do not contain provisions that may adversely affect the

performance of the salvage operations. For a confirmation of this position we are also awaiting the official reply of the Ministry of Transport.

***Russian Federation***

No.

***Sweden***

No. Sweden has not enacted provisions for the protection of Sweden's coastline or related interests that directly affect the performance of salvage operations.

***United Arab Emirates***

Yes, but not directly.

First, salvage operations in the territorial waters of UAE should observe the Federal Act No. 24 of 1999 on the Protection and Development of the Environment and which has been promulgated on October 17, 1999 and came into force on January 18, 2000 (Federal Official Gazette, Year No. 29, Issue No. 340, October 31, 1999, pp. 97-116). This Act does not include express rules on salvage operations. However any discharging or disposing of harmful substances into the marine environment (article 27) will be severely punished (imprisonment for a period not less than three years and payment of fine: Dh 150.00 (US\$ 40.760) to Dh 1.000.000 (US\$ 271.739) (article 73); this is in addition to full payment of damages (articles 71 and 72). This is unless the infringement is committed in the attempt to secure the safety of the salvaged vessel or the safety of lives on board (article 89(1)).

Secondly, it has to be noted that the UAE authorities are cautious with the vessels belonging to countries of flag of convenience. A list of these countries is always updated and its vessels are subject to strict classification compliance failing which they are not permitted to enter seaports, anchorage outside seaports, sailing in the territorial waters, its adjacent area and free economic zone. This has been clearly stated by the Council of Ministers Decision No. 23 of 2001 on Protection of the Coastline, Seaports and Territorial Sea of the State Against Accidents of Marine Pollution by Oil issued on June 24, 2001 (Federal Official Gazette, Year N. 31, Issue No. 366, July 14, 2001, pp. 39-40).

***United Kingdom***

Under Schedule 3A of the Merchant Shipping Act 1995 the Secretary of State has wide powers to give directions to owners, masters and salvors in possession (amongst others) where there has been an accident and there is a risk of pollution. The powers can be exercised in relative any shape in UK territorial waters and under certain areas outside territorial waters.

Also section 156(2)(d) of the Merchant Shipping Act 1995 excludes liability for pollution damage caused by 'any person performing salvage operations with the consent of the owner of the ship or on the instruction of a competent authority'. Any person providing salvage operations without the consent of the owner or instruction of a competent authority would not be immune from liability.

***United States***

Making the assumption that this question means, "Are there certain provisions of domestic environmental protection law that could adversely affect the performance of salvage operations?" – the answer is yes. There are aspects of civil and criminal law, at both the federal and individual state levels, that can, under certain circumstances,

serve to preclude, constrain, or delay the most effective salvage operations. In short, there is no blanket salvor immunity under domestic federal or state law.

12. *Have provisions been enacted in your country in respect of the admittance to ports or places of safety in your country's territorial waters of vessels in distress?*

***Australia***

No. Decisions on access to ports in such circumstances are made on a case-by case basis in accordance with National Guidelines based on recent work within IMO.

***Belgium***

No.

***Canada***

Yes, provisions exist in respect of the admittance to ports or places of safety. See, for example, section 662 CSA<sup>20</sup>.

***China***

Yes. Article 11 of China Maritime Traffic Safety Law provide: No-military vessel of foreign nationality may not enter the internal waters and harbours of the People's Republic of China without the approval of its competent authorities. However, under unexpected circumstances such as critical illness of personnel, engine breakdown or vessel being in distress or seeking shelter from weather when they do not have time to obtain approval, they may, while entering China's internal waters or harbours, make an emergency report to the competent authority and shall obey its directions. Military vessels of foreign nationality may not enter the territorial waters of the People's Republic of China without the permission of the Government of the People's Republic of China.

***Croatia***

There is no special regime specifying which locations may be used as places of refuge, and generally no restrictions to the admittance of vessels in distress to ports or other places of safety. Moreover, such vessels should be given priority in admittance to ports and berths. On the other hand, maritime authorities are under a general duty to deny access to a port or berth if a vessel constitutes a threat to the navigation or to the safety of life or to the marine environment. In some instances the above two rules may be in conflict, with the possible result that a vessel in distress is denied access to a port or a berth because it constitutes environmental hazard.

***Denmark***

Article 20 of Directive 2002/59/EC of 27 June 2002 establishing a Community vessel traffic monitoring and information system etc. requires European Member States to draw up places of refuge in accordance with the relevant IMO Guidelines. These guidelines have not yet been finally adopted by the IMO Assembly and therefore have no references number yet. I am sure that the CMI will know in due time. The implementation of this Directive must be carried out before 5 February 2004, and Denmark intends to meet this requirement. However the necessary national legislation is not yet in place.

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<sup>20</sup> Relevant extracts from the *Canada Shipping Act* are available on request.

***France***

No.

***Germany***

Yes, there are many ports and places of safety named. The list is confidential and only known to the authorities affected.

***Greece***

No specific provisions have been enacted in our country in respect of the admittance to ports or places of safety in our country's territorial waters of vessels in distress.

***Italy***

A Ministerial Decree of 18 April 2003 prohibits to single hull tankers or tankers not having technologies equivalent to double hull as defined by Regulation 13F of Annex I to MARPOL 73/78 and not conforming with the requirements of Regulation 136 of such Annex of more than 15 years of age and having a deadweight of more than 5,000 tons, carrying heavy oils access to ports, off-shore terminals and anchorage areas. A definition of heavy oil follows. This Decree will remain in force until the entry into force of EU provisions having similar purpose.

***Latvia***

1) Law on Maritime administration and maritime safety provides in:

**Section 46. Search and Rescue of Persons**

(6) In the case of a maritime or aeronautic accident, the Co-ordination Centre (MRCC) has the right to permit foreign ships and warships to enter Latvian territorial waters, as well as aircraft and military aircraft to enter Latvian air space above the territorial waters thereof notifying operationally thereof the Ministry of Defence and the Ministry of Foreign Affairs.

2) Law On Ports provides in:

**Section 17. Harbour-Masters**

(2) Orders of the harbour-master, that are related to measures of shipping safety, shall be mandatory for all ships, organisations, undertakings (companies), and for other legal persons and natural persons.

***Lithuania***

No.

***Marshall Islands***

No such provisions have been enacted in the Marshall Islands, but requests from vessels, to obtain refuge in its ports, in order to protect life and property aboard such a vessel, have in the past been granted as a matter of national custom.

***Mexico***

Article 38 of the Navigation Law establishes that at Harbour Master's discretion, he may or may not admit vessels in distress to ports or places of safety.

***Netherlands***

Yes. See the Law Controlling Accidents Northsea of 12 March 1992 (Wet Bestrijding Ongevallen Noordzee, 12 maart 1992, Stb. 1992, 211) and The Wrecks Law, Act of 19th July 1934 as amended to 1991 (Wrakkenwet, 19 juli 1934, Stb. 01).

***New Zealand***

Specific provisions have not been enacted. It is expected that the Director's powers under Part 20 of the Maritime Transport Act 1994 would be used to regulate admittance of vessels in distress to ports or places of safety in the territorial sea.

***Norway***

Provisions are under development and will be in place before the end of 2003.

***Poland***

Poland do not have "places of refuge" yet (the time is until 2009) but have a guard for ships in distress (SAR). When a ship is in distress we are bound to render an assistance and to direct such ship to place of safety, according the SAR and Salvage Convention.

***Romania***

In Romania there are no express restrictions to the admittance of ships in distress to ports or any other places of safety. The provisions of Government Ordinance no. 42/1997 stipulate that the master of the ship rendering assistance to the vessel in distress has the obligation to disclose the name of its own ship, the registration harbour and the closest harbour where it can go.

***Russian Federation***

Yes, the said provisions are enacted by the Federal law dated 31.07.98 No. 155-ÔÇ "On the Internal Sea Waters, Territorial Sea and Contiguous Zone of the Russian Federation" (Article 9 "Distress entry of foreign ships, foreign warships and other state-owned vessels to the territorial sea, internal sea waters and sea ports").

Also the Russian Federation Government by its Decree dated 2.10.1999 No. 1102 are adopted the Rules guiding navigation and stay of foreign warships and other state-owned vessels operated for non-commercial purposes, to the territorial sea, internal sea waters, at naval bases, warships deployment areas, and sea ports of the Russian Federation, which contain Part "IV. Distress entry".

***Sweden***

Sweden has not enacted provisions which directly refer to places of refuge.

Sweden has implemented the Directive EC 2002/59 on establishment of a system of monitoring and information on vessel traffic. Article 20 requires the member States of the European Union to draw up plans to accommodate ships in distress.

In this context it can be noted that Sweden, if accepting a ship in distress, applies the IMO guidelines as laid down in the resolutions A.949 (23) (Guidelines on Places of refuge for ships in need of assistance) and A.950 (23) (Guidelines on Maritime Assistance Services (MAS)).

The State authorities or municipalities have authority to take measures according to the Act on Protection against Casualties (Lag (2003:778) om skydd mot olyckor) and according to the Act on Measures against Pollution from Ships (Lag (1980:424) om åtgärder mot förorening från fartyg).



The Act on Protection against Casualties authorizes the State or the concerned municipality to interfere in third parties rights when a vessel is directed to a place of refuge.

It has been discussed whether plans in accordance with Article 20 of the Directive EC 2002/59 need to include a list of places of refuge. Sweden however, similar to other Member States, has decided not to provide such a list. The choice of place of refuge shall instead be made in each individual case considering the present circumstances, such as the vessel's size, the goods onboard and the weather conditions.

#### ***United Arab Emirates***

No. However, the UAE Federal Environmental Agency, hereinafter the FEA, has already elaborated a National Contingency Plan Against Maritime Environment Pollution by Oil and Other Harmful Substances. This plan seems facing difficulty in becoming active; it has been proposed by the Board of Directors of the FEA in 1999 and has not been yet approved by the Council of Ministers (See, 'The Efforts of Protecting the Maritime Environment in the UAE', The Emirates and the Environment Journal, Year No. 3, Issue No. 10, June 2004, p. 21).

The FEA has kindly provided the author with a copy of the contingency plan. Certainly much has been developed since 1999 and normally the first comment on the plan will be its need of update particularly by embracing further preventive actions. In this context the issue of ships in distress and places of refuge, which does not exist in the plan, should be rightfully situated. Hopefully, the EFA would avail itself of the IMO Resolutions, adopted on December 5, 2003 on 'Maritime Assistance Services' (MAS) and 'Guidelines on Places of Refuge for Ships in Need of Assistance'(See, IMO documents A 23/Res.949 and A 23/Res.950).

#### ***United Kingdom***

Schedule 3A to the Merchant Shipping Act, mentioned above gives the Secretary of State powers to intervene in a situation and direct a ship to be moved or not moved from/to a specified place. He can direct a person in charge of a harbour to make facilities available to a ship to allow (for example) repairs to be made or cargo landed.

#### ***United States***

No, but the United States, through the United States Coast Guard, has a long and successful record of ensuring the safety of life and property at sea, including careful consideration of requests from vessels in distress to enter United States ports.

13. *Are there rules in force in your country in respect of the apportionment of the salvage reward between the owners, master and other persons in the service of a salvaging vessel?*

#### ***Australia***

No, it is a matter for the Courts.

#### ***Belgium***

Apart from the Convention there are no specific rules.

***Canada***

The Convention applies to apportionment. However, there is a rule for dispute resolution; for example, see section 464 of the CSA<sup>21</sup>.

***China***

No.

***Croatia***

Yes. The amount of the salvage reward, remaining after the deduction of salvor's expenses incurred or caused by salvage operation, is considered as a net reward. According to the Maritime Code (Article 796), 'a certain part of the net reward belongs to the crew of the salvor's ship' (same in Article 181 of the Inland Waters Navigation Act). The expression 'certain part' was neither defined nor quantified in the Maritime Code, and it must be determined by the court in each particular case. The salvor may not waive the crew's portion in the salvage reward without the crew's consent (Article 797 of the Maritime Code; Article 182 of the Inland Waters Navigation Act).

***Denmark***

The answer is YES, according to section 451 of the Danish Maritime Act, which deals with apportionment of the award on the salving vessel. Paragraph 2 of section 451 deals specifically with the apportionment of the reward between owners, masters and crew.

***France***

No.

***Germany***

Yes, according to section 747 HGB which deals with apportionment of the award on the salving vessel. The owner receives two thirds, the master and the crew each one sixth.

***Greece***

Yes. The relevant regulation provides for the shipowner to be entitled to 50% of the reward, the master to 25% and the crewmembers to 25 %. There exists a special procedure as regards the apportionment of the said 25% between the crewmembers.

***Italy***

Article 496 of the Navigation Code provides that the salvage reward, except where the salving ship is specially equipped for salvage operations, is apportioned as follows: one third to the operator of the ship and two thirds to the crew to be allocated in proportion of the wages, account also being taken of the services rendered by each crew member. It further provides that the share of the crew may not be fixed by agreement below the moiety of the total reward. Expenses, however, are not included in the reward and, therefore, the apportionment is made after deduction of all expenses. Article 499 then provides that where the operator of the salving ship has no right of action for the payment of the salvage reward (e.g. in case of the salvaged ship being in the same ownership) or neglects to seek payment, the crew of the salving ship has a direct right of action against the owner of the salvaged ship.

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<sup>21</sup> Relevant extracts from the *Canada Shipping Act* are available on request.

***Latvia***

Maritime Code provides in:

**Section 257. Determination of Salvage Reward**

The purpose of the determination of salvage reward is to encourage salvage. In determining salvage reward the following criteria shall be taken into account:

- 1) value of the salvaged property;
- 2) skill and effort which the salvor has applied in salvaging the ship, other objects and human life;
- 3) skill and effort which the salvor has applied in preventing or limiting harm to the environment;
- 4) the degree to which the work of the salvor was successful;
- 5) the nature and degree of the sea danger;
- 6) the time utilised by the salvor, costs and losses;
- 7) the speed of the performance of the salvage measure (operation);
- 8) the risk of the salvor's liability for losses and other risks the salvor and his or her equipment were subject to;
- 9) the accessibility and readiness of ship's equipment and equipment intended for the performance of other salvage measures (operations); and
- 10) the readiness of the salvor's equipment and its effectiveness, as well as the value of the equipment.

**Section 258. Duty of Payment of Salvage Reward**

Salvage reward shall be paid by the ship-owner and the owners of other objects in proportion to the value of the salvaged property."

***Lithuania***

No.

***Marshall Islands***

It is our view that the courts of the Marshall Islands would tend to follow the decisions of United States and United Kingdom admiralty courts governing apportionment of the salvage reward, which are reasonably clear (as well as being fairly numerous). Read together with Articles 12 and 13 of the Convention, the decisions of American and British Courts, in our opinion, give reasonably clear guidance, particularly in view of the special compensation "uplift" now possible under article 14 (1) and (2), in cases where the salvor has prevented or minimized damage to the environment.

***Mexico***

There are no rules in force in Mexico regarding the apportionment of the salvage rewards and articles 13 and 14 of the Convention do apply. It is customary in the labour contracts with the crew members of Mexican flag ships to establish percentages for the crew.

***Netherlands***

The law only provides for rules answering the question who is entitled to claim the salvage award. The apportionment is, in the end, a matter for the judge to decide.

***New Zealand***

Yes. Section 219 of the Maritime Transport Act 1994 deals with apportionment between salvors: "A payment in respect of a salvage operation that is due to more

than one person shall, in the absence of agreement between those persons, be apportioned among those persons in such manner as the Court thinks fit, having regard to the terms of the Convention.”

***Norway***

Yes.

***Poland***

According art. 244 Polish Maritime Code the remuneration due to a vessel in respect of salvage is divided equally between the ship’s operator and the crew, after deduction of damages suffered by the vessel as well as of expenses and losses of the ship’s operator and of the crew as caused by salvage. The master of the ship has a right to at least 30% of remuneration.

***Romania***

The rules in force in Romania in respect of the salvage reward are contained in the Government Ordinance no. 42/1997, as subsequently modified by Law no. 412/2002 and Government Decision no. 245/2003. In accordance with the provisions of art. 90 of the Government Ordinance no. 42/1997, all legal persons that are involved in the salvage operation are entitled to a reward. The harbour master has the obligation to draft a document stipulating the persons involved in the rescue operations and the costs incurred by each participant. The document will constitute an enforceable title in respect of the apportionment of the reward once the authority coordinating the entire activity i.e. the Romanian Maritime Authority approves it. In any event, the Romanian Maritime Authority is entitled to 5% of the net value of the reward.

***Russian Federation***

In conformity with Article 345 (Apportionment of the reward between the shipowner and crew of the vessel) of the Merchant Shipping Code of the Russian Federation, 1999 apportionment between the shipowner and crew members of the vessel of any reward earned as by a salvage operation in accordance with the regulations set out in the Chapter “XX. Salvage of Vessels and Other Property” of the Code shall be made after the deduction of expenses incurred by the shipowner and crew members in connection with carrying out the salvage operation, as follows:

- three fifths net reward shall be due to the shipowner, while two fifths net reward shall be apportioned between the crew members of the vessel;
- the share due to the crew members in accordance with the second subparagraph of this paragraph shall be apportioned between them regarding the efforts exercised in carrying out the salvage operation and the wages of each.

Exceptions to the regulations of the apportionment of the reward may be allowed only in view of special circumstances.

But the above regulations shall not apply to the apportionment of the reward earned by carrying out of a salvage operation by vessels executing such operations as their professional activities.

***Sweden***

Yes. The Swedish Maritime Code Chapter 16, Section 11, includes rules on the apportionment between owner, master and crew as far as vessels registered in Sweden are concerned.

According to Section 11, para. 2, the net salvage reward shall be apportioned as follows.

The operator shall receive three fifths. Thereafter, the master shall receive one third. The other two thirds shall be earned by the crew in proportion to their respective wages. However, the master's share shall always be at least twice as high as the highest paid member of the crew. A pilot on board shall be treated like a crew member. Unless he is employed by the shipowner, it shall be assumed that he would have the same level of salary as that of the first mate.

With respect to foreign vessels, reference should be made to the law of the State where the vessel is registered, Section 11 para. 6.

### ***United Arab Emirates***

The same rules of the 1910 Convention are applicable. In principle, the choice of law rule is that the law of the vessel's flag will determine the apportionment of the reward (article 332(2)). Therefore, the UAE law, i.e. the UAE Maritime Code, will not be applicable unless the salvaging vessel carries the UAE flag.

According to the UAE Maritime Code, the amount and apportionment will be left to the agreement of the parties concerned, subject to review by the court in cases of unjust or invalid agreement (article 334) or fault by the salvor (article 335(3)). Absent such agreement, the court will determine the amount and/or the apportionment (article 331).

The UAE Maritime Code did not restrict the court to a mathematical equation for the apportionment, it only provided for directives identical to those of 1910 Convention (article 8). The same wording exists under the new Maritime Bill (article 342), with a new reference to freight as a value saved. Regrettably the environment-related remuneration issues are not considered under both the current and future UAE Maritime Codes.

Also, both the current Code (article 333(1)) and Bill (article 340) follow the 1910 and 1989 Conventions in not making the persons whose lives are saved to remunerate the salvor. This has been possible by the opting out mechanism permitted under both the 1910 and 1989 Conventions (article 9 and 16(1) respectively). And, expectedly, salvors of human life are entitled by both laws (Code and Bill) to a fair share in the remuneration awarded to the salvors of the vessel and her cargo (Code: article 333(2) and Bill: article 340).

It has to be noted that the current Maritime Code validates recourse by agreement to a foreign jurisdiction, including arbitration outside UAE. This can indirectly be concluded from the express provision on the invalidity of such agreement only in cases of pure domestic salvage, i.e. taking place in waters subject to the UAE jurisdiction and not involving any foreign vessel (article 339). However, this will no longer be applicable under the Maritime Bill which invalidates such agreements in case the salvaged or salvaging vessel flies the flag of the UAE (article 346). Of course this will adversely affect the use of the Lloyd's Standard Form of Salvage Agreement which provides for the arbitration in London.

### ***United Kingdom***

English law has no compulsory or automatic divisions between owner, master and crew.

Owner generally receives by far the greater proportion of an award. Extent of master's responsibilities and manner of his discharging them will be significant. Regard may be had to any individual effort worthy of particular attention.

Often under English law it is not uncommon to find that crew share inter se in accordance with their monthly rates of pay if no special award called for.

*United States*

Yes. These rules have been developed as a matter of General Maritime Law by cognizant U.S. Federal Courts. The allocation is based on the relative contributions of the parties to the salvage effort and on the relative risks incurred by them.