

IMPLEMENTATION OF THE SALVAGE CONVENTION 1989

States Parties to the Salvage Convention*

*Australia	Lithuania
*Belgium	Marshall Islands
*Canada	Mauritius
*China (Hong Kong)	*Mexico
*Croatia	*Netherlands
*Denmark	*New Zealand
Dominica	*Nigeria
Egypt	*Norway
Estonia	Oman
*France	Romania
Georgia	*Russian Federation
*Germany	Saudi Arabia
*Greece	Sierra Leone
Guinea	St. Kitts and Nevis
Guyana	*Sweden
Iceland	*Switzerland
India	Syrian Arab Republic
Iran (Islamic Republic of)	Tonga
*Ireland	Tunisia
*Italy	United Arab Emirates
Jordan	*United Kingdom
Kenya	*United States
Latvia	Vanuatu

Synopsis of the responses to the Questionnaire

received as at May 2007

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

Ratification or accession has been authorized by a law in **Belgium, Croatia, France, Germany, Greece, Italy, Lithuania, Mexico, Netherlands** and **Russian Federation**.

In **Australia** ratification of or accession to a convention does not, in itself, require the authority of the Parliament. An Act of Parliament is, however, required in order that

* Responses to the Questionnaire have been received in respect of the States appearing in bold type. Those where there exists a Maritime Law Association member of the CMI are marked by an asterisk.

the provisions of a convention become binding on individuals and it has been the practice of Australian governments to ensure that any necessary legislation is in place before ratification or accession.

In **Canada** the Department of Foreign Affairs and International Trade deposited Articles of Ratification.

In **China** accession to the Convention has been authorized in the Fifth Session of the Standing Committee of the Eighth National People's Congress of the People's Republic of China.

In **Latvia** ratification has been authorized by an Ordinance of the Cabinet of Ministers.

In **New Zealand** the provisions of the Convention were incorporated into national law by the Maritime Transport Act 1994 which provided for such provisions to be brought into force by Order in Council. This was done on 16 October 2003, the date of entry into force of the Convention for New Zealand, the instrument of accession having been deposited on 16 October 2002.

In **Norway** ratification has been authorized by a Royal Decree; prior to the governmental authorization, the Parliament had approved ratification by Act of 2 August 1996, No. 61 amending the Norwegian Maritime Code of 24 June 1994.

In **Romania** it has been authorized by a Government Ordinance, subsequently approved by a law.

In **Sweden** the dualist approach has been adopted and the implementation of the Convention has been accomplished by means of two Acts, due to the fact that parts of the Convention were in conflict with the 1910 Salvage Convention. Therefore Sweden, in line with the Norwegian approach, first implemented the new and therefore non conflicting rules concerning environmental salvage and then, after cancellation of the 1910 Salvage Convention, the remaining rules became effective on 19th December 1996.

In the **United Arab Emirates** the Convention was given force of law by the Federal Decree No. 21 of 1993 signed by the UAE President on 21 August 1993.

The **United Kingdom** government acceded to the Convention on 29th September 1994. In the United Kingdom the power to make or ratify such international conventions belongs to the Crown and for that reason the acts of accession and ratification did not require authorisation. Legislation was, however, required subsequently to ensure that the Convention was enforceable in the English courts, and the effect of an order made pursuant to section 1 of the Merchant Shipping (Salvage and Pollution) Act 1994 (now section 224 of the Merchant Shipping Act 1995) was that the Convention became part of English law on 1st January 1995, prior to the Convention coming into force internationally.

In the **United States** ratification has been authorized by resolution of advice and consent by the Senate agreed to on 29 October 1991.

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

The following States have reserved not to apply the Convention in one or more of the circumstances mentioned in article 30:

- Article 30(1)(a): **Australia, China, France, Lithuania, Mexico, United Kingdom. Mexico** impliedly withdrew its reservation by

incorporating the Convention in its national law without any restriction.

- Article 30(1)(b): **Australia, China, Croatia, France, Lithuania, Mexico, United Kingdom**
- Article 30(1)(c): none
- Article 30(1)(d): **Australia, Canada, China, Croatia, France, Greece, Iran, Netherlands, Norway, Russian Federation, Saudi Arabia, Spain, Sweden and United Kingdom**

No reservation was made by **Belgium, New Zealand, Romania** and the **United Arab Emirates**.

It is questionable that the formula "reserve the right not to apply ..." entails the automatic exclusion of the relevant provision in respect of the State that has made the reservation.

In **France** it has been held that this is not so in respect of the LLMC Convention 1976 by the Cour d'Appel of Bordeaux with judgment of 5 September 1997 (1998 DMF 591) and by the Cour d'Appel of Rouen with judgment 5 September 2002 (2003 DMF 55).

In **Australia** the decision not to apply the provisions of the Salvage Convention in the cases mentioned in article 30(1) is the responsibility of the State and Territory governments. The reservations have been made to ensure that, in the event of a State or Territory governments electing not to apply the Convention in these circumstances, Australia would not be in breach of its Convention obligations.

In the **United Kingdom** the right not to apply the provision of the Convention has actually been exercised only in respect of article 30(1)(a) and (b) while it has not been exercised (at least so far) in respect of article 30(1)(d).

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?*

The incorporation technique entails of course certain changes in the wording of the national rules, so that such rules differ to some extent from those of the Convention, and this in turn may entail a greater difficulty of ensuring a uniform interpretation. It is not possible in this synopsis to compare for each Contracting State that has followed this technique the text of the national provisions with those of the Convention. As an example, however, such comparison is made for **Australia**. From section 315 of the Navigation Act it appears that Australia has given the force of law only to some (albeit the more important) provisions of the Convention but that articles 1 to 5, 9 to 11, 20, 24, 25 and 27 have not been given the force of law. In respect of some of such provisions it must be considered that since the ratification of or accession to a convention is regarded as binding Australia under international law, the obligations of the government itself do not require legislation. This is the case for article 11 of the Convention. From the review of the Navigation Act 1912 it further appears that:

- the definitions in art. 1 from (a) to (e) are reproduced verbatim (except a minor change relating to "payment") in section 294(1);
- art. 2 is reproduced in section 316(1) save the exclusions set out in section 316(2) and (3);
- art. 3 is reproduced, albeit with a slightly different language, in section 316(2);
- art. 4 is replaced by section 329(B) of the Act;
- art. 5 is replaced by section 329(C) of the Act;

- art. 9 consists in a clarification relating to the rights of Coastal States and therefore its enforcement does not seem to be necessary;
- art. 10(1) is replaced, with not significant changes in the wording, by section 317(A)(1) of the Act;
- art. 10(2) is complied with by section 317(A)(2) of the Act and art. 10(3) is given effect to by art. 317(A)(3);
- art. 23 is given effect by section 396 of the Navigation Act which provides in its paragraph (1), that: "No action shall be maintainable to enforce any claim or lien against a ship or its owner in respect of ... any salvage services, unless proceedings therein are commenced within 2 years from the date when ... the salvage services rendered were terminated".

The provisions of the Convention have been given the force of law in **Belgium, Canada, Croatia, France, Greece** (law 2391/1966), **Italy, Lithuania, Netherlands, New Zealand, Romania, United Arab Emirates, United Kingdom** and **United States**.

They have been incorporated, in whole or in part, in an existing Code or Act in **Australia** (section 315-329 of the Navigation Act 1912, as amended), **China** (articles 171-192 of the Maritime Code), **Denmark** (Chapter 16, Sections 441 to 454 of the Danish Maritime Act; the incorporation was made pursuant to statute no. 205 of 29 March 1995), **Germany** (articles 740 to 753 HGB as amended by Gesetz zur Neuregelung des Bergungsrechts in der See-und Binnenschiffahrt (Drittes Seerechtsänderungsgesetz) of 16 May 2001), **Latvia** (Maritime Code adopted on 29.05.2003 and Maritime Administration and Safety Law adopted on 30.10.2002), **Mexico** (art. 125 of the 1994 Navigation Act so provides: "All salvage operations and the rights and responsibilities of the parties shall be governed by the International Convention on Salvage"), **Norway** (Chapter 16 of the Norwegian Maritime Code of 24 June 1994, as amended by Act of 2 August 1996, No. 64), the **Russian Federation** (Chapter XX of the Merchant Shipping Code) and **Sweden**, where the Convention has been implemented by transformation, by means of changes in Chapter 16 of the Maritime Code. **Poland**, whose ratification is still pending, has already incorporated in its Maritime Code most of the provisions of the Convention.

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.

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?*

In all States where the provisions of the Convention have been incorporated into an existing Code or Act, this has been done by an act.

In **Australia** the legislation necessary 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.

In **Belgium** the force of law has been given to the Convention by the law enacted by the Belgian Parliament of 13th May 2003, published in the Belgian State Journal of 18th 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 5th December 2003, published in the Belgian State Journal of 22nd January 2004. The Walloon region has ratified the Convention by Decree of 29th January 2004, published in the Belgian State Journal of 1st March 2004. The Flemish region has ratified the Convention by Decree of 7th May 2004, published in the Belgian State Journal of 14th July 2004.

In **Canada** 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.

In **China** accession to the Convention has been authorized in the Fifth Session of the Standing Committee of the Eighth National People's Congress of the People's Republic of China.

In **Croatia** the force of law has been given by the law enacted by the House of Representatives of the Croatian Parliament of 5 June 1998, published in the People's Gazette, International Treaties, No. 9/1998.

In **France** 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.

In **Germany** the legislation necessary to implement its obligations under the Convention was contained in the "Drittes Seerechtsänderungsgesetz".

In **Greece** force of law has been given by law no. 2391/1966.

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

In **Lithuania** the force of law has been given by the Act by which the Parliament authorized the ratification of the Convention.

In **New Zealand** section 216 of the Maritime Transport Act 1994 provides that the Convention (which is set out in the Sixth Schedule to the Act) has the force of law.

In **Norway** the amendments to the Maritime Code required in order to give effect to the Convention were made by Act of 2 August 1996, No. 61.

In **Sweden** 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.

In the **United Arab Emirates** Federal Decree No. 44 of 1993.

In the **United Kingdom** section 224 of the Merchant Shipping Act 1995.

In the **United States** 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. *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?*

The pre-existing rules have not been expressly abrogated in **Belgium, Canada, France, Germany, Italy, Mexico, New Zealand, Romania, Russian Federation, United Arab Emirates** and the **United Kingdom** but the general rule seems to be that in case of conflict the provisions of the Convention shall prevail.

They have been replaced by those of the Convention in **Australia**, where reference to the Salvage Convention in the Navigation Act 1912 have been replaced by references to the Salvage Convention 1989, in **China** (article 268 of the Maritime Code so 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 **Denmark** and in **Poland**.

In **Croatia** the provisions on salvage existing at the time the Convention was given the force of law (contained in the Maritime Code of 1994 in respect of salvage at sea and in the Inland Waters Navigation Act of 1998 in respect of salvage in inland water have not been expressly abrogated and are still 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.

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

In **Lithuania** salvage in inland waters continues to be governed by the Inland Waters Transport Code.

In **Norway** some provisions are still in force, for instance Act of 20 July 1893 No. 2 on Stranded Ships and Wrecks and Act of 3 of June 1983 No. 40 Articles 29-32 on Salt Water Fisheries. These provisions partly deal with the same issues as the Convention. However, all provisions on salvage in the Maritime Code that previously regulated this field have been amended after the ratification. In case of conflict between the different set of rules, the provisions in the Maritime Code would probably prevail.

In **Sweden** to the extent that new provisions have been enacted in order to comply with the Convention, the provisions previously existing have been abrogated.

In the **United States** the pre-existing rules 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?*

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 salvage operations take place in inland waters and no vessel is involved in **Belgium, Canada, Denmark** (provided the operations take place in navigable waters), **Germany, Italy, Latvia, Netherlands** and the **Russian Federation**.

In **Croatia** the reservation under Article 30(1)(a) has not been made, and therefore the Convention presumably applies when the salvage operation takes place in inland waters and all vessels involved are vessels of inland navigation. Croatia made instead the reservation under Article 30(1)(b). However, certain Convention principles should apply through the national law.

In **Greece** this question has never been considered because the country has very limited inland navigation.

In **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 "Coast or inland waters" in section 215 of the Maritime Transport Act 1994.

In **Norway** no reservation has been made in respect of these articles. The Maritime Code Section 441 a) defines salvage as "any act the purpose of which is to render assistance to a ship or other object which has been wrecked or is in danger in any waters". According to the wording, the provisions apply to in any waters. Letter d) of the same section includes inland waters in the scope of potential environmental damage. Consequently, the provisions in the Maritime Code seem to apply to inland waters. This question has not yet been considered in Norwegian case law.

In **Poland** the provisions of the Convention, as incorporated in the Maritime Code, apply to salvage operations performed in inland waters only if a seagoing vessel is involved.

In **Romania** the provisions of the Convention very likely apply in this case since no reservation has been made.

In **Sweden** 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. 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.

In the **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.

Reservation has been made by **China** and article 171 of the Maritime Code so 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".

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?*

As regards the question whether the States that have not made the reservation permitted by article 30(1)(d) would apply the provision of the Salvage Convention to maritime cultural property, this seems to be the case for **Belgium, Germany, Latvia, Lithuania, Mexico, Romania, United Kingdom**.

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

In **Greece** (by which a reservation has been made in respect of article 30(1)(d)) there are special provisions in respect of salvage of ancient ships and their cargo both inside or outside the ship.

The position is not settled in **Italy**.

In **New Zealand** reservations exist 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 this possibility is not ruled out.

In **Norway** pursuant to section 442 of the Maritime Code the provisions of the Convention, as enacted in the Maritime Code, do not apply to ships or objects covered by section 14 of Act 9 June 1978, No. 50 concerning Cultural Heritage.

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.

In the **United Arab Emirates** the provisions of the Convention would not probably apply, if the prevailing narrow concept of salvage is applied. See response to Question 7.

In the **United States** 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.

In **Poland**, the provisions of the Convention, as incorporated in the Maritime Code, do not apply to maritime cultural property situated on the sea bed because a requisite of salvage is an existing danger.

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?*

None of the States in respect of which responses to the Questionnaire have been given has ratified the UNESCO 2001 Convention. While **Denmark** and **France** have a "positive view" on that Convention, **Norway** and the **United States** seem to have no intention to ratify the UNESCO Convention. As regards **Canada**, it is too early to say whether the Convention will be ratified or not.

The convention has not been ratified by **Norway**. Norway has previously expressed concerns regarding the relationship between the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage and UNCLOS Convention. At present, Norway has no intention to ratify the UNESCO Convention.

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

The answer is affirmative in respect of **Australia, Canada, Denmark** (except perhaps property that has no relation with shipping), **Germany, Italy, Latvia, Lithuania, Netherlands, New Zealand, Norway, Poland, Romania, Sweden, United Kingdom** and **United States**.

In **Belgium** 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 11th April 1989).

In **Canada** there is a domestic definition of wreck which is sufficiently broad to include such elements.

In **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.

In **France** the Convention would apply if the sunken property is in danger. If it is not in danger, the domestic provisions on salvage of wrecks would apply.

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

In **Russia** there are special provisions on raising, removal and destruction of sunken property in Chapter VII of the Merchant Shipping Code. If, however, the raising, removal or destruction is considered to be a salvage operation, the rules that implemented the Convention would apply.

In the **United Arab Emirates** the restricted notion of assistance adopted in France prevails. But since the Convention prevails over national law, the position may change should it appear that the term "property" used in the Convention is wide enough to include sunken ships and other property.

8. *Has your country extended the scope of application of the provisions of the Convention to:*

(a) *platforms and drilling units;*

In **Belgium** the Convention applies to platforms and drilling rigs since the definition of "vessel" is very broad and would cover both platform and drilling rigs.

The scope of application of the Convention has been extended to platforms and drilling rigs by **Norway**. The Norwegian Maritime Code Section 442 paragraph 4 states that the provisions do not apply to permanent platforms and pipelines for the petroleum industry. However, the scope of application includes movable installations for the petroleum industry.

In **China** article 173 of the Maritime Code so provides: "The provisions of this Chapter 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".

In **Croatia** 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).

The position is the same in **Greece** and **Lithuania**.

In **Canada, New Zealand, Sweden** and **United Arab Emirates** the Convention has not been extended to platforms and drilling units. This is probably the case also in **Romania**.

In **Poland** the provisions of the Convention, as incorporated in the Maritime Code, do not apply to platforms and drilling units. They instead apply, pursuant to article 249 of the Maritime Code, to ships of the Navy, Coast Guard and Police.

In **Romania** the authors are of view 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) *warships and other non-commercial vessels, owned or operated by the State?*

The scope of application of the Convention has been extended to warships and other non-commercial vessels, owned or operated by the State, by **Denmark** (s. 454 of the Maritime Act), **Latvia** (art. 253 Maritime Code), **Netherlands** (in accordance with the provisions of article 554, Book 8, Civil Code), **New Zealand** (section 217 of the Maritime Transport Act 1994), **Norway**, **Russian Federation** (except for the provision on apportionment of the salvage reward) the **United Arab Emirates** and the **United Kingdom** (pursuant to section 230 of the Merchant Shipping Act 1995, but subject to section 29 of the Crown Proceedings Act 1947). They have not been so extended in **Belgium, Canada, China, Greece, Lithuania** and in the **United States**. See for **China** the definition of ship in article 172(1) (" 'Ship' means any ship referred to in Article 3 of this Code and any other non-military, public service ship or craft that has been involved in a salvage operation therewith") and for the **United States** 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)].

In **Croatia**, 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.

In **Romania** the authors are of the view that the Convention applies to warships and other non-commercial vessels owned or operated by the State.

In **Sweden** the 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.

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?*

Public Authorities that perform salvage operations may avail themselves of the rights and remedies provided for in the Convention in **Australia, China** (article 192 of the Maritime Code), **Denmark, Germany, Italy, Lithuania** (article 40 of the Law on Safe Navigation, 29 August 2000), **Mexico, Norway** (subject to the rules otherwise applicable; such rules being those contained in the Act of 13 March 1981, No. 6 relating to protection against pollution and relating to waste¹), **Netherlands, Poland, Russian Federation** and **United Kingdom**.

In **Canada** 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 s. 466(2) of the Canada Shipping Act. The position is similar in the **United Arab Emirates**, where Public Authorities are subject to the law of salvage, but are not entitled to the level of remuneration set out in the Convention.

In **New Zealand** no specific legislation has been made dealing with this issue. The view has been expressed, however, that the effect of incorporating article 5 directly in

¹ Pursuant to s. 74, if the Pollution Control Authority has issued orders pursuant to Section 7 fourth paragraph or pursuant to Section 37 first or second paragraph, which are not complied with by the party responsible, the Pollution Control Authority may itself provide for the implementation of the measures. The pollution control authority may also provide for implementation of measures without prior instructions if such instructions may mean that implementation of the measures will be delayed or if it is not clear who is responsible. When implementing measures in accordance with the first paragraph the pollution control authority may make use of, and if necessary cause damage to, the property of the person responsible. The Pollution Control Authority may issue specific regulations concerning the implementation of measures in accordance with the first and second paragraphs. Intervention against acute pollution or danger of acute pollution on the open sea and in outer Norwegian sea territory shall take place in accordance with international agreements to which Norway has acceded. The pollution control authority may issue regulations concerning such intervention and concerning the implementation of such agreements in Norwegian law. The Pollution act is available in English full text at the following site: http://www.npd.no/regelverk/r2002/Forurensingsloven_e.htm

legislation is to permit public authorities to avail themselves of the rights and remedies under the Convention. The position is very likely similar in **Romania**.

In **Sweden** the 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 the **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.

In **Belgium** no provision exists in this respect.

In **Croatia** since there are no specific provisions in this respect, public authorities should enjoy to the full extent the rights and remedies provided for in the Convention (except as stated in the response to question under 8(b) under (i)).

Also in **Greece** there are no specific provision, but it is unsettled whether the State is entitled to a reward for salvage, the prevailing view being negative.

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?*

Provisions to that effect exist in **Australia** (section 317A of the Navigation Act 1912), **Canada** (s. 384 in Part V of the Canada Shipping Act), **China**, **Croatia** (where breach of this duty is considered a criminal offence punishable by imprisonment), **Denmark** (section 30 of the Act on Safety at Sea), **France** (law of 17 December 1926), **Germany** (the Penal Code considers a criminal offence not to assist any person in danger), **Greece** (the breach of this duty entails civil, penal and disciplinary consequences for the master), **Italy** (articles 490 and 1113 Code of Navigation and 450 Penal Code), **Latvia** (article 63 of the Maritime Code), **Lithuania** (article 41 of the Law on Safe Navigation), **Mexico** (the Federal Criminal Code considers a criminal offence not to assist any person in danger and article 121 of the Navigation Law requires Master and crew to assist persons in danger), **Netherlands** (pursuant to the 1910 Collision Convention and article 9-e and 9-f of the Dutch Shipping Act of 1909), **New Zealand** (section 32 of the Maritime Transport Act 1994: failure to do so is an offence against the Act), **Norway** (sections 314 and 387 of the General Civil Penal Code), **Poland** (article 60 of the Maritime Code), **Romania** (Article 87 of Government Ordinance no. 42/1997), **Russian Federation** (Article 62 of the Merchant Shipping Code), **Spain** (Spain has not ratified the 1989 Salvage Convention, but the failure to assist a person in danger is a crime under its penal code as well as under law 27/1992 of 24 November 1992), **Sweden** (sections 6 paragraphs 1 and 2 of chapter 6 and section 6 and 7 of chapter 20 of the Maritime Code), the **United Arab Emirates** (article 343 of the UAE Maritime Code), the **United Kingdom** (section 93 of the

Merchant Shipping Act 1995) and the **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). No provision has been enacted in **Belgium**.

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?*

No provisions affecting performance of salvage operations exist in **Belgium, France, Germany, Greece** (where, as regards the protection of the environment the general provisions which permit the Authorities' intervention particularly when there exists a state of common danger or common need, would apply), **Lithuania, Norway, Poland, Sweden** and the **Russian Federation**.

There are instead provisions that may have an adverse effect on the performance of the salvage operations in **Australia** (under the Protection of the Sea (Powers of Intervention) Act 1981), **Canada** (Part XVI of the Canada Shipping Act), **China** (article 71 of the China Marine Environment Law so 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** (where amongst numerous anti-pollution laws and regulations in force, some of them may to a certain extent adversely affect the performance of salvage operations), **Denmark** (Marine Pollution Act, Section 43), **Italy** (Law 31 December 1982, No. 979, article 12), **Latvia** (article 54 of the Law on Maritime Administration and Safety), **Mexico** (Mexican Ecological Legislation and article 123 of the Navigation Law), **Netherlands** (Law Controlling Accidents Northsea of 12 March 1992), **New Zealand** (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), **Romania** (Regulation for the organization of the Maritime De-pollution Centre and Government Ordinance no. 33/2004), **United Arab Emirates**, where salvage operations in the territorial waters are subject to the Federal Act No. 24 of 1999 on the Protection and Development of the Environment, even though the sanctions set out in the Act for the discharge of harmful substances are not applicable if the discharge occurs in the attempt to secure the safety of a vessel in danger, **United Kingdom** (Schedule 3A of the Merchant Shipping Act 1995; see also section 156(2)(d) of the Merchant Shipping Act 1995) and the **United States**, where 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 **Poland** where if a ship is in distress it is obligatory pursuant to the SAR, to render assistance to her and direct it to a place of safety.

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?*

Provisions to this effect exist in **Canada** (s. 662 of the Canada Shipping Act gives wide powers to pollution prevention officers, including directions to any ship to proceed to such place as he may select, or to proceed out of waters to which the relevant Part of the Act applies or to remain outside of such waters); **Italy** (Decree 18 April 2003 prohibiting access to ports of single hull tankers of over 15 years of age carrying heavy oil), **Latvia** (article 46 of the Law on Maritime Administration and Safety), **Mexico** (article 38 of the Navigation Act enumerates the types of arrivals and defines the forced arrivals as those that take place for order of law, fortuitous event or force majeure and that such arrivals must be justified with the maritime authority), **Russian Federation** (Article 9 of Federal Law 31 July 1998 on distress entry of foreign ships, foreign warships and other state-owned vessels to the territorial sea, internal seawaters and sea ports; Part IV on distress entry of Decree 2 October 1999, No. 1102).

In **China** article 11 of China Maritime Traffic Safety Law so provides: "Non-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 Government of the Government of the People's Republic of China".

In **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.

In **Greece** no specific provisions have been enacted.

In the **Netherlands**, pursuant to their competence based on the Law Controlling Accidents Northsea of 12 March 1992 and the Wrecks Law of 29 July 1934 as amended, the Dutch authorities made a contingency plan ("Rampenplan 2000") under which it is provided that vessels in distress may be admitted to a place of refuge; such admission in principle is permitted only upon consent (or even order) of the authorities; when deciding to such admission the authorities have to take a couple of factors into account, such as fairness and reasonableness, proportionality, provision of financial security and the like.

In **New Zealand** no specific provisions have been enacted. It is expected, however, 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.

In **Norway**, according to Directive EC 2002/59 Article 20, the Government is obliged to draw up plans to accommodate, in the water under Norwegian jurisdiction, ships in distress. Regulation of 23 December 1994 No. 1130 on traffic of foreign non-military ships in Norwegian waters Section 12 grants a general entry into Norwegian internal waters.

In **Spain** article 20 and subsequent articles of Royal Decree 210/2004 of 6 February 2004 have implemented Directive 2002/159 of the European Parliament and of the Council and have established a system of control and information on maritime trade.

In **Sweden** no provisions which directly refer to places of refuge have been enacted. 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).

In the **United Arab Emirates** a National Contingency Plan against Maritime Environment Pollution has been prepared by the UAE Federal Environmental Agency in 1999 but has not been approved yet by the Council of Ministers. It is likely, however, that the IMO Guidelines on Places of Refuge would be followed.

No provisions exist in the **United States** but, through the United States Coast Guard, the United States 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.

Generally in the **European Union** action should be taken in order to implement article 20 of Directive 2002/59/EC of 27 June 2002 that requires Member States to select places of refuge in accordance with the IMO Guidelines (such Guidelines are published in CMI Yearbook 2003-Vancouver I, p. 344).

In some countries places of refuge have been selected, but the list is confidential. This is the case in **Germany**. In other countries (e.g. **Australia** and **United Kingdom**) places may be selected in any specific case.

No provisions have been enacted in **Belgium, Lithuania** and **Romania**.

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 salving vessel?*

Such rules exist in **Canada** (s. 464 of the Merchant Shipping Act), **Croatia** (pursuant to article 796 of the Maritime Code "certain part of the net reward is payable to the crew, the assessment of such part being made by the Court; the same rule applies to salvage in inland waters), **Denmark** (article 451 of the Maritime Act), **Germany** (pursuant to section 747 HGB the owner receives two thirds, the master and the crew each one sixth), **Greece** (the shipowner is 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** (pursuant to article 496 of the Code of Navigation the owner receives one third and the crew two thirds), **New Zealand** 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** (pursuant to section 451 of the Maritime Code the "reder" receives three fifths, the master one third of the residual two fifths and the crew two thirds, such latter share being apportioned in proportion of the wages), **Poland** (pursuant to article 244 of the Maritime Code the reward, after deduction of costs and damages, is divided equally between the owner and the crew, the master receiving at least 30% of such reward), **Romania** (Government Ordinance no. 42/1997 as amended by law no. 412/2002 and Government Decision no. 245/2003), **Russian Federation** (pursuant to article 345 of the Merchant Shipping Code the owner receives three fifths and the crew two fifths) **Spain** (pursuant to article 7 of law 60/1962 of 24 December 1962 the owner receives one third, while the other two thirds are allocated amongst the crew of the salving vessel, other persons who cooperate to the salvage operations and the salvors of persons) and **Sweden** (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 and 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.

In **Australia, Lithuania, Netherlands, the United Arab Emirates** and the **United Kingdom** the apportionment, if not agreed, is a matter for the Court.

In the **United States** 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.

No rules have been enacted in **Belgium**.