

## Second Questionnaire on Review of Salvage Convention 1989

This Second Questionnaire is directed to those countries that have given effect to the Salvage Convention 1989 and in order to answer the questions it is envisaged that NMLAs will need to consult with Salvors who operate in their jurisdiction.

- 1(a) Are you aware of any examples of cases in your jurisdiction in which a salvor has been unable to obtain an award under Article 13 of the Salvage Convention by reason of its being unable to complete a salvage operation because of the refusal by authorities to permit the vessel into a port and thus necessitating its scuttling?
- 1(b) If so, did the salvor benefit from an Article 14 (or equivalent, such as SCOPIC) payment (whether by way of an award from a court or tribunal or negotiated agreement between the parties)?
- 2 Do courts or tribunals in your jurisdiction apply a rule of thumb principle to the calculation of Article 13 awards such that a salvor cannot expect to recover more than a moiety, ie about half, of the salvaged value, except in rare cases and then 70% would be considered exceptional?
- 3 Are you aware of any cases where the salvor considers that its efforts have not been sufficiently rewarded by reason of the low value of the salvaged vessel, whether or not that arose as a result of an award by a court or tribunal or a negotiated settlement between the parties?
- 4(a) Are you aware of any awards under Article 14 in your jurisdiction (whether by way of court or tribunal award or negotiation between the parties) whereby an element of profit was permitted in the calculations under Article 14 (ie contrary to the House of Lords decision in the "Nagasaki Spirit")?
- 4(b) In respect of any such Article 14 payment, was any uplift applied under Article 14 paragraph 2?
- 4(c) If so, what percentage uplift was applied?
- 5(a) Could you indicate, approximately, what percentage of salvage operations in your jurisdiction are conducted pursuant to Lloyds Open Form?
- 5(b) What contractual terms are used in your jurisdiction apart from Lloyds Open Form?
- 6(a) Do salvors in your jurisdiction have emergency towage vessels on standby?
- 6(b) Does the State own or operate ETV's in your jurisdiction?
- 6(c) If so, are they financed by:
  - (a) State Revenue
  - (b) A levy on shipowners
  - (c) Some other means
- 7 What percentage of salvage cases in your jurisdiction (whether in court or by way of tribunal decision or negotiation between the parties) results in salvors recovering only an award under Article 14 (or an equivalent such as SCOPIC)?

- 8 Are you aware of any situations which have occurred in your jurisdiction in which a salvor has declined to offer its services because of the low estimated value of the property to be salvaged and pollution has then resulted?
  
- 9 **Attached** is a copy of the Brice Protocol which was discussed at the Singapore conference of the CMI. Do you consider that as part of the Review of the Salvage Convention 1989 the International Working Group should give consideration to recommending that the Brice Protocol be considered in any review which is to take place of the Salvage Convention by the IMO Legal Committee?

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**Review of Salvage Convention**

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