

# 1989 年海難救助國際公約

1989 年 4 月 28 日 訂於倫敦，1996 年 7 月 14 日生效

## **The International Convention on Salvage, 1989**

London 28 April 1989; Entered into Force July, 14, 1996

### **Salvage 1989**

生效門檻：15 國+1 年

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簡介：本公約係為取代 1910 年救助及撈救公約而制訂，本公約一方面重申傳統海難救助法「不成功、無報酬」之基本原則外，另外建立「環保救助」體制(亦即「特別補償金 special compensation」)，除藉此鼓勵救助人在無後顧之憂的情況下為環境救助外(環保救助至少可取回其環保救助所耗費之成本)，另一方面課以救助及被救助雙方在環境保護方面之各項義務。

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**THE STATES PARTIES TO THE PRESENT CONVENTION** 本公約各締約國，

**RECOGNIZING** the desirability of determining by agreement uniform international rules regarding salvage operations,

**NOTING** that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,

**CONSCIOUS** of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,

**CONVINCED** of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger,

**HAVE AGREED** as follows:

**體認**以協議方式訂定一項有關統一海難救助及國際化作業規則之必須性，注意到許多實質上的發展，尤其是促進環境保護方面，顯示 1910 年 9 月 23 日於布魯塞爾所簽訂之「統一海上救助及撈救某些規則國際公約」之國際規範已有加以檢討之必要，

**瞭解**有效率且及時之海難救助作業，對陷入海難危險之船舶及其他財物之安全及對環境之保護之重要貢獻，

**深信**有必要對陷入海上危難之船舶或其他財物之海難救助從事人員，給予適當之鼓勵，

**爰經協議**如次：

#### Chapter I - General provisions

#### 第一章 總 則

##### Article 1 - Definitions

##### 第 1 條 定義

For the purpose of this Convention:

就本公約之目的而言：

- (a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) Vessel means any ship or craft, or any structure capable of navigation.
- (c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
- (e) Payment means any reward, remuneration or compensation due under this Convention.

- (a) 海難救助作業係指為協助於可航行水域或其他任何水域中陷入危難之船舶或其他任何財物，所從事之任何行為或活動。
- (b) 船舶係指任何船或艇或可供航行之任何構造物。
- (c) 財物係指任何非永久性及其故意附著於海岸之財物，包括風險運費。
- (d) 對環境造成損害係指因污染、污損、火災、爆炸或類似重大事故，肇致沿海或內水或其鄰近地區人體健康、海洋生物或資源重大實質損害。
- (e) 給付係指依本公約應支付之任何報酬、酬金或補償。

- (f) Organization means the International Maritime Organization. (f) 本組織係指國際海事組織。  
(g) Secretary-General means the Secretary-General of the Organization. (g) 秘書長係指國際海事組織秘書長。

## Article 2 - Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

## 第 2 條 公約之適用

本公約適用於本公約締約國因涉及公約有關事項之訴訟或仲裁程序。

## Article 3 - Platforms and drilling units

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.

## 第 3 條 平台及鑽探設施

本公約不適用於從事海床礦物資源之探勘、開採或生產之固定或漂浮之平台或機動之近海鑽探設施。

## Article 4 - State - owned vessels

- (1) Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.
- (2) Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

## 第 4 條 國有船舶

- (1) 於不損及第 5 條規定之情況下，本公約不適用於軍艦或由國家所擁有或營運，及在海難救助作業時，依據一般公認之國際法原則，享有主權之其他非商用船舶。然經該國另有其他決定者，不在此限。
- (2) 本公約締約國，若決定本公約可適用前項所述之軍艦或其他船舶時，應將其適用條件及情況，通知秘書長。

## Article 5 - Salvage operations controlled by public authorities

- (1) This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.
- (2) Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.
- (3) The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

## 第 5 條 由公務機關控管之海難救助作業

- (1) 本公約不應影響任何國內法或國際公約中有關由公務機關所控管之海難救助作業之規定。
- (2) 然從事此等海難救助作業之救助者，仍應享有本公約所規定之有關救助作業之權益。
- (3) 公務機關基於其權責，施行海難救助作業所可享有本公約所規定之權益範圍，應由該公務機關所在國之法律定之。

## Article 6 - Salvage contracts

- (1) This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.
- (2) The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to

## 第 6 條 海難救助契約

- (1) 本公約適用於任何海難救助作業。然契約另有明文或默示約定者，不在此限。
- (2) 船長有權代表該船舶之所有人訂立海難救助契約。船長或船舶所有人有權代表該船舶所載財物之所有人訂立此契約。

conclude such contracts on behalf of the owner of the property on board the vessel.

- (3) Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment.

- (3) 本條規定不影響本公約第 7 條之適用，亦不影響任何為防止或減少環境損害之義務。

#### Article 7 - Annulment and modification of contracts

#### 第 7 條 海難救助契約之無效及修正

A contract or any terms thereof may be annulled or modified if:

海難救助契約或其中之任何條件，有下列情況者，得予以無效或修正：

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or  
(b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

- (a) 契約之訂立，受有不當之影響或受危難之影響，且其約定有失公平者；或  
(b) 契約之給付，較實際所提供之服務過多或過少者。

### Chapter II - Performance of salvage operations

### 第二章 海難救助作業之施行

#### Article 8 - Duties of the salvor and of the owner and master

#### 第 8 條 救助入、船舶所有人及船員之義務

- (1) The salvor shall owe a duty to the owner of the vessel or other property in danger:
- (a) to carry out the salvage operations with due care;  
(b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;  
(c) whenever circumstances reasonably require, to seek assistance from other salvors; and  
(d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.
- (2) The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:
- (a) to co-operate fully with him during the course of the salvage operations;  
(b) in so doing, to exercise due care to prevent or minimize damage to the environment; and  
(c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

- (1) 救助入對陷於危難之船舶或其他財物之所有人，負有下列義務：
- (a) 謹慎進行海難救助作業；  
(b) 進行(a)款海難救助作業時，應注意防止或減少對環境之損害；  
(c) 於狀況合理所需時，尋求其他救助入之協助；及  
(d) 一經陷於危難之船舶或其他財物所有人或船長之合理請求，應容許其他救助入之介入。如經發現該請求為不合理時，其應得之報酬金額，不應受影響。
- (2) 陷於危難之船舶所有人及船長或其他財物之所有人，對救助入負有下列義務：
- (a) 於海難救助作業進行過程中，提供充分之合作；  
(b) 於提供前款合作時，應注意防止或減少對環境之損害；及  
(c) 當船舶或其財物已移置於安全處所時，應接受救助入交船之合理請求。

#### Article 9 - Rights of coastal States

#### 第 9 條 沿海國之權利

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

本公約規定不應影響相關沿海國依據公認之國際法原則採取措施，以保護其海岸或其他相關利益，免於遭受因海難事故或與該事故有關並可合理預期將導致重大有害影響之行為所可能產生之污染或污染威脅之權利，包括沿海國對海難救助作業加以指導監督之權利。

## Article 10 - Duty to render assistance

- (1) Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
- (2) The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.
- (3) The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

## Article 11 - Co - operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

## Chapter III - Rights of salvors

### Article 12 - Conditions for reward

- (1) Salvage operations which have had a useful result give right to a reward.
- (2) Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
- (3) This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

### Article 13 - Criteria for fixing the reward

- (1) The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:
  - (a) the salvaged value of the vessel and other property;
  - (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
  - (c) the measure of success obtained by the salvor;
  - (d) the nature and degree of the danger;
  - (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
  - (f) the time used and expenses and losses incurred by the salvors;
  - (g) the risk of liability and other risks run by the salvors or their equipment;
  - (h) the promptness of the services rendered;
  - (i) the availability and use of vessels or other equipment

## 第 10 條 提供救助之義務

- (1) 船長在不甚危害其船舶與船上人員範圍內，應對在海上行將淹沒之任何人盡力提供救助。
- (2) 締約國應採必要措施，以實施第 1 項之義務。
- (3) 船舶所有人對船長違反第 1 項規定者，不應負責。

## 第 11 條 合作

締約國於規定或決定有關海難救助作業事項，例如允許遇險船舶入港或對救助人提供各項設施時，應考量救助人與其他相關當事人及公務機關間合作之必要性，以確保海難救助作業得以有效達成拯救遇險之生命或財物，及防止對環境造成損害之目的。

## 第三章 救助人之權利

### 第 12 條 報酬條件

- (1) 海難救助作業具有效果者有權獲得報酬。
- (2) 除另有明文規定外，海難救助作業如無效果，不得依本公約為給付。
- (3) 從事海難救助之施救船舶與被救助之船舶，縱屬同一所有人，本章規定仍應適用之。

### 第 13 條 裁定報酬之標準

- (1) 報酬應著重於鼓勵海難救助作業為，並斟酌下列各項情況定之，不計其先後順序：
  - (a) 獲救船舶或其他財物之價值；
  - (b) 救助人對防止或減少環境損害之技術及努力；
  - (c) 救助人所獲成效之程度；
  - (d) 危險之性質及程度；
  - (e) 救助人救助船舶、其他財物及人命之技術及努力；
  - (f) 救助人所耗費之時間、費用及其所蒙受之損失；
  - (g) 救助人或其設備所負之責任危險及其他危險；
  - (h) 提供服務之迅捷性；
  - (i) 供海難救助作業之船舶或其他設備之取