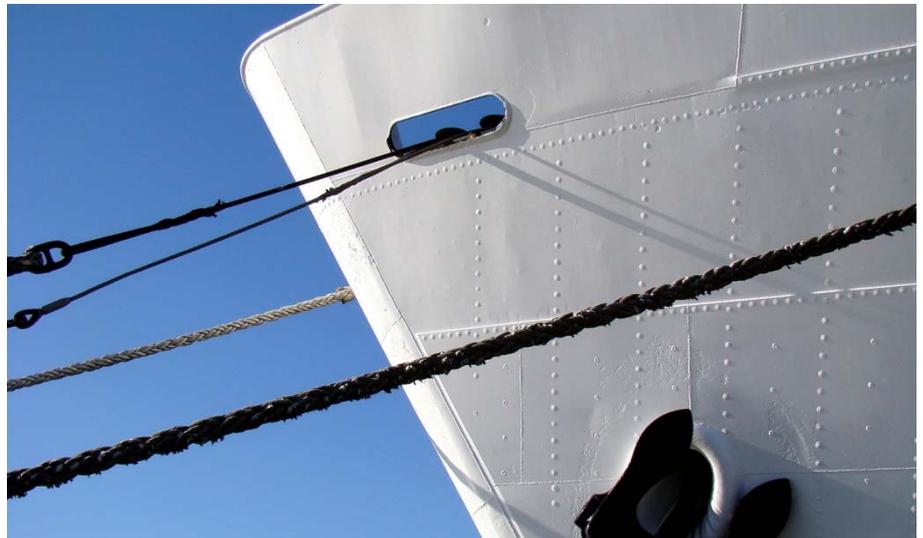


MARITIME: BRIEFING

THE INTERNATIONAL CONVENTION ON THE  
REMOVAL OF WRECKS  
MAY 2015

- PRIOR TO 14 APRIL 2015 THERE WERE NO INTERNATIONALLY ACCEPTED RULES OR PROCEDURES IN PLACE TO DEAL WITH WRECK REMOVAL
- THE ONUS IS NOW ON THE SHIP OWNERS AND OPERATORS TO REPORT WRECKS
- THE REGISTERED OWNER IS REQUIRED TO KEEP ON BOARD EVIDENCE THAT IT HAS INSURANCES IN PLACE COVERING ITS LIABILITIES UNDER THE CONVENTION
- WHILST WRECK REMOVAL IS TYPICALLY INCLUDED IN P&I COVER, IT WOULD BE PRUDENT TO REVIEW SUCH POLICIES TO CHECK THE EXTENT OF COVER PROVIDED.



The International Convention on the Removal of Wrecks (the "Convention") was adopted by the International Maritime Organisation on 18 May 2007 at a conference held in Nairobi, Kenya. The Convention entered into force on 14 April 2015.

As of 10 March 2015 the following countries had ratified the Convention:

- Antigua & Barbuda
- Bulgaria
- Congo
- Cook Islands
- Denmark
- Germany
- India
- Iran
- Liberia
- Malaysia
- Malta
- Marshall Islands
- Morocco
- Nigeria
- Palau
- Tonga
- Tuvalu
- United Kingdom.

**Purpose of the Convention**

Prior to 14 April 2015, there were no internationally accepted rules or procedures in place to deal with wreck removal. Not only can wrecks impact on the safe navigation of shipping but the wrecking itself along with the pollution created by such an incident can have a devastating impact on the marine environment and the communities that rely on it to make a living. In acknowledgement of this, the

“THE CONVENTION HAS INTRODUCED A LEGAL REGIME WITH TWO SPECIFIC AIMS. NAMELY, TO ENSURE THAT PROPORTIONATE ACTION IS TAKEN FOR THE PROMPT AND EFFECTIVE REMOVAL OF WRECKS ... AND THE PAYMENT OF COMPENSATION FOR THE REMOVAL AND ASSOCIATED COSTS.”

Convention has introduced a legal regime with two specific aims. Namely, to ensure that proportionate action is taken for the prompt and effective removal of wrecks (i.e. to prevent, mitigate or eliminate a hazard created by a wreck) and the payment of compensation for the removal and associated costs incurred by the affected State.

**Geographical application.** The Convention applies to wrecks constituting a hazard (for the purposes of the Convention) and which lie within a signatory State’s exclusive economic zone (“**EEZ**”), established in accordance with the United Nations Convention on the Law of the Sea 1982 (“**UNCLOS**”). Where a signatory State has not established an EEZ, the Convention applies to the area beyond and adjacent to the territorial sea (“**TS**”) of that signatory State, established in accordance with UNCLOS, which is to extend not more than 200 nautical miles from the baseline of its TS. According to Article 3 of the Convention, a signatory State may elect to extend the provisions of the Convention to its TS, thereby extending its application not only to those ships transiting through its EEZ but also those trading to and from ports located within its TS.

**What is a "Ship" for the purposes of the Convention?** Article 1(2) of the Convention defines a "Ship" as "a seagoing vessel of any type whatsoever and includes...floating craft...and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources". The definition seeks to capture the widest possible categories of tonnage for the purposes of falling within the meaning of "Wreck" (see below) so that, in the event of such tonnage being involved in an incident within the jurisdiction of a signatory State (the "**Affected State**"), the Affected State will be able to act within the scope of the Convention to minimise the hazard posed by such wreck to other shipping and the marine environment.

**What constitutes a "Wreck" for the purposes of the Convention?** A wide definition of "Wreck" is provided for under the Convention, again presumably with the intention to give the Affected State a good deal of latitude in which to be able to act – not just in respect of a Ship but also parts thereof or objects that have come from a Ship as well as being able to act where a Ship is about to sink. Article 1(4) provides the following definition:

"Wreck", following upon a maritime casualty, means:

- a. a sunken or stranded ship; or
- b. any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or
- c. any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
- d. a ship that is about, or may reasonably be expected, to sink or to strand, where effective measure to assist the ship or any property in danger are not already being taken.

### **Procedure**

The Convention puts the onus on shipowners and operators to report wrecks and give all relevant information enabling the Affected State to determine whether the wreck poses a hazard and, while making such a determination, to locate the

“...THE REGISTERED OWNER IS REQUIRED TO REMOVE THE WRECK BY A REASONABLE DEADLINE STIPULATED BY THE AFFECTED STATE.”

wreck and, in the event that the Affected State determines that the wreck constitutes a hazard, mark the wreck.

In the event of the Affected State determining that the wreck is a hazard, it is then under an obligation to inform the relevant flag state and the registered owner of that determination. The Affected State will also consult with that flag state and other States affected by the wreck in respect of any measures to be taken concerning the wreck.

Under Article 9, the registered owner is required to remove the wreck within a reasonable deadline stipulated by the Affected State. In the event that the registered owner fails to act (or cannot be contacted), the Affected State "may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment". Where immediate action is required and provided that the Affected State has informed the relevant flag state and registered owner, it may proceed to remove the wreck charging the registered owner for the costs incurred.

### **Liability**

Article 10 sets out the liability of the registered owner making it clear that such owner shall be liable for the costs of locating, marking and removing the wreck unless it can prove that the wreck:

- a. resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
- b. was wholly caused by an act or omission done with intent to cause damage to a third party; or
- c. was wholly caused by the negligence or other wrongful act of any Government or authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

Whilst the registered owner is entitled to limit its liability under any applicable national or international regime available to it, the value of such right is itself likely to be limited.

Article 11 provides an exception to the registered owner's liability under the Convention but this applies only to the extent where such liability would be in conflict with any of the following:

- Convention on Third Party Liability in the Field of Nuclear Energy, 1960 (as amended)
- Vienna Convention on Civil Liability for Nuclear Damage 1963 (or national law governing or prohibiting limitation of liability for nuclear damage)-
- International Convention on Civil Liability for Oil Pollution Damage 1969 (as amended)
- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (as amended)
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (as amended).

### Insurance

Article 12 is one of the most important sections of the Convention, not least because it requires registered owners of a ship of 300 gross tons or more to maintain insurance or other financial security to cover its liability under the Convention (i.e. the cost of locating, marking and removing wreck). P&I cover typically includes wreck removal but this is something that should be checked and verified.

Whilst claims for any costs under the Convention may be brought against the registered owner, the Convention provides that any such claims can instead be made directly against the insurer (or other person providing financial security). It should be noted however that the liability of such insurers or those providing financial security will be limited to the value of the cover specified in the relevant policy (or value of the security provided).

“THE REGISTERED OWNER IS REQUIRED TO KEEP ON BOARD EVIDENCE IN THE FORM OF A CERTIFICATE ISSUED BY A SIGNATORY STATE THAT IT HAS INSURANCES IN PLACE COVERING ITS LIABILITIES UNDER THE CONVENTION.”

### Wreck removal certificates

The registered owner is required to keep on board evidence in the form of a certificate issued by a signatory State that it has insurances in place covering its liabilities under the Convention (“**Wreck Removal Certificate**”). Prior to issuing a Wreck Removal Certificate, the signatory State will require, as a minimum, written confirmation from the registered owner’s P&I club that such cover is in place. The written confirmation is typically in the form of a “wreck removal blue card”. The duration of the Wreck Removal Certificate will be linked with the duration of the P&I insurances and so will in most instances need to be renewed on an annual basis. Compliance with this aspect of the Convention is likely to be policed during port state control inspections.

Where a ship is flagged with a signatory State (and provided that the P&I insurers have issued a wreck removal blue card for that ship), the registered owner will, for a fee, be able to apply direct to its flag authorities for a Wreck Removal Certificate.

For ships not flagged with a signatory State, some flag authorities (e.g. Liberia) have indicated their willingness to issue Wreck Removal Certificates upon presentation of specified documentation (which will include a wreck removal blue card for the ship) and payment of the required fee. This is likely to be higher than that payable by an owner registered on that flag so as to cover, for example, additional administration costs that a flag state will incur in processing information concerning a ship flagged elsewhere.

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### Conclusion

Owners / operators of tonnage calling at ports within a signatory State (or merely transiting such a State’s EEZ or TS) should ensure that they have obtained Wreck Removal Certificates for each of their ships and that such certificates are kept on board with the usual suite of documents to be made available for inspection by the relevant port state control authorities. Whilst wreck removal is typically included in P&I cover, it would be prudent to review such policies to check the extent of cover provided and that it is sufficient to cover the liability imposed under the Convention.

## CONTACTS

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Should you like to discuss any of the matters raised in this Briefing, please speak with one of the authors, Toby Royal or Philip Arcoumanis, a member of our team below or your regular contact at Watson Farley & Williams.

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