



ANNEX 1

Draft wreck removal convention (DWRC)

(Mailing October 2005)

Text approved by the Committee as was reflected in document LEG 90/5 appears in normal print.

The *amendments* discussed and approved by the Committee at LEG 90 are *italicised*.

New proposals developed by the Netherlands are marked in **bold**.

Proposals that require further study intersessionally following the discussions at LEG 90 are marked in bold and are **underlined**.

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I. Preamble

II. Definitions

ARTICLE 1

For the purposes of this Convention:

1. "Convention area" means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.
2. "Ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, and floating platforms except when such platforms are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.
3. "Maritime casualty" means a collision of ships, stranding or other incident of navigation or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or its cargo.
4. "Wreck" means following upon a maritime casualty:
 - (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 an act or activity to *effectively* assist *the ship* or any property in danger is not already underway.
5. "Hazard" means any condition or threat that:
 - (a) poses a danger or impediment to navigation; or
 - (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States;

6. "Related interests" means the interests of a coastal State that is directly affected or threatened by a wreck, such as:
- (a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
 - (b) tourist attractions and other economic interests of the area concerned;
 - (c) the health of the coastal population and the well being of the area concerned, including conservation of marine living resources and of wildlife;
 - (d) offshore and underwater infrastructure.
7. "Removal" means any form of prevention, mitigation or elimination of the hazard created by a wreck. *The words "remove", "removed" and "removing" shall be construed accordingly.*
8. "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, at the time of the maritime casualty. However in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, "registered owner" shall mean such company.
9. "Operator of the ship" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all duties and responsibilities imposed by the International Safety Management Code.
10. *"Affected State" means the State in whose Convention area the wreck is located.*
11. "State of the ship's registry" means in relation to a registered ship, the State of registration of the ship and in relation to an unregistered ship, the State whose flag the ship is entitled to fly.
12. "Warship" means a warship as defined in article 29 of the United Nations Convention on the Law of the Sea, 1982.
13. "Organization" means the International Maritime Organization.
14. "Secretary-General" means the Secretary-General of the Organization.

III. Objective and general principles

ARTICLE 2

1. States Parties may take measures established under this Convention in relation to the removal of wrecks posing a hazard in the Convention area.
2. Measures taken in accordance with paragraph 1 by the Affected State shall be proportionate to the hazard.
3. Such measures shall not go beyond what is reasonably necessary to remove a wreck posing a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of *other States including the State of the ship's registry*, and of any persons, physical or corporate, concerned.
4. The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.
5. *States Parties shall endeavour to cooperate when the effects of a maritime casualty resulting in a wreck affect a State other than the Affected State.*

IV. Scope of application

ARTICLE 3

Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.

ARTICLE 4

1. This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.
2. Where a State Party decides to apply this Convention to its warships or other ships as described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of its application.

ARTICLE 5

This Convention shall not apply to measures *taken under* the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

V. General Obligations

ARTICLE 6 Reporting wrecks

1. A State Party shall require the master and the operator of the ship flying its flag to report to the Affected State without delay, when a maritime casualty involving that ship has resulted in a wreck. To the extent that the reporting obligation under this article has been fulfilled by the master or the operator of the ship, the other of them shall not be obliged to report accordingly.
2. Such reports shall include *the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with the factors in article 7, including, inter alia:*
 - (a) the precise location of the wreck;
 - (b) the size, type and construction of the wreck;
 - (c) the nature of the damage to, and the condition of, the wreck;
 - (d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and
 - (e) the amount and types of oil, including bunker oil and lubricating oil, on board.

ARTICLE 7 Determination of hazard

When determining whether a wreck poses a hazard, the following *factors*, as appropriate, and without regard to the order in which they are presented, *should be taken into account* by the Affected State:

- (a) size, type and construction of the wreck;
- (b) depth of the water *in the area*;
- (c) tidal range and currents in the area;

- (d) particularly sensitive sea areas identified and, as appropriate, designated according to guidelines adopted by the Organization, or a clearly defined area of the exclusive economic zone where special mandatory measures were adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea 1982;
- (e) proximity of shipping routes or established traffic lanes;
- (f) traffic density and frequency;
- (g) type of traffic;
- (h) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
- (i) vulnerability of port facilities;
- (j) prevailing meteorological and hydrographical conditions;
- (k) submarine topography of the area;
- (l) height of the wreck above or below the surface of the water at lowest astronomical tide;
- (m) acoustic and magnetic profiles of the wreck;
- (n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- (o) any other circumstances that might necessitate the removal of a wreck.

ARTICLE 8

Locating wrecks

1. Upon **becoming aware** of a wreck the Affected State shall use all practicable means, including the good offices of States and organizations, to urgently warn mariners and the coastal States concerned of the nature and location of the wreck.

2. If the Affected State has reasonable cause to believe that a wreck poses a hazard, it shall ensure that all reasonable steps are taken to establish the precise location of the wreck.

ARTICLE 9
Marking of wrecks

1. If a wreck is determined by the Affected State to constitute a hazard, that State shall ensure that all reasonable steps are taken to mark the wreck.
2. In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.
3. The Affected State shall promulgate the particulars **of the marking of the wreck** by use of all appropriate means, including the appropriate nautical publications.

ARTICLE 10
Measures to facilitate the removal of wrecks

1. If the Affected State determines that the wreck constitutes a hazard, it shall immediately:
 - (a) so inform the State of the ship's registry and the registered owner; and
 - (b) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.
2. The registered owner shall remove a wreck determined to constitute a hazard.
3. The registered owner, or another interested party, shall provide the competent authority of the Affected State, when the wreck has been determined to be a hazard, with evidence of insurance or other financial security as required by article 13.
4. The registered owner may contract with any salvor or other person to perform the removal of the wreck determined to constitute a hazard on the owner's behalf. *Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with safety and environmental considerations.*
5. *When such removal has commenced, the Affected State may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with safety and environmental considerations.*
6. The Affected State shall:
 - (a) set a reasonable deadline within which the registered owner must undertake the removal of the wreck taking into account the nature of the hazard determined under article 7;

- (b) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not undertake the removal of the wreck within that deadline, the State *may* undertake the removal at the registered owner's expense; and
 - (c) inform the registered owner that it intends to intervene immediately where the hazard becomes particularly severe.
7. If the registered owner does not remove the wreck within the deadline set under paragraph 6 or the registered owner *cannot* be contacted by the Affected State, *that* State may undertake the removal of the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.
 8. If, *however, immediate action is required* and the Affected State has informed the State of the ship's registry and the registered owner accordingly, *it* may undertake the removal of the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.
 9. States Parties shall *take any appropriate measures under their national law to ensure that* their registered owners comply with paragraphs 2 and 3.
 10. States Parties give their consent to the Affected State to act under paragraphs 4 to 8 where required.

VI. Financial Liability and Insurance Provisions

ARTICLE 11

Financial liability for locating, marking and removing wrecks

1. Subject to article 12, the registered owner shall *be liable for* the costs of locating, marking and removing the wreck under articles 8, 9 and 10, *respectively*, unless the registered owner proves that the maritime casualty that caused 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 by a third party; or
 - (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.
2. **Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international**

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regime, such as the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

3. Nothing in this article shall prejudice any right of recourse against third parties.

ARTICLE 12

1. The registered owner shall not be liable under this Convention for the costs mentioned in article 11, paragraph 1 if, and to the extent that, liability for such costs would be in conflict with:
 - (a) the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;
 - (b) the International Convention on Liability and Compensation for Damage in Connection with the Carriage by Sea of Hazardous and Noxious Substances, 1996, as amended;
 - (c) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or in the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or under national law governing or prohibiting limitation of liability for nuclear damage; or
 - (d) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;

provided that the relevant convention is applicable and in force.

2. To the extent that measures under this Convention are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Convention.

ARTICLE 13

Compulsory insurance or evidence of financial security

1. The registered owner of a ship of over [...] metres in length and flying the flag of a State Party shall be required to maintain insurance, or other financial security such as a guarantee of a bank or similar institution, to cover liability under this Convention in an amount **at least** equal to the limits of liability for the ship calculated in accordance with article 6(1)(b) of the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended.
2. ~~Without prejudice to the application of article 3, paragraph 2,~~ States Parties may apply the relevant provisions of the present article to waters subject to their jurisdiction.
3. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship of over [...] metres in length by the appropriate authority of the State of the ship's registry after determining that the requirements of paragraph 1 of

this article have been complied with. With respect to a ship registered in a State Party such certificate shall be issued **or certified** by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued **or certified** by the appropriate authority of any State Party. This certificate shall be in the form of the annexed model and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the registered owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- (f) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

4. (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 3. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

- (i) the specific responsibilities and conditions of the authority delegated to an institution *or organization* recognized by it;
- (ii) the withdrawal of such authority; and
- (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

5. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language of the State may be omitted.

6. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.
7. An insurance or other financial security shall not satisfy the requirements of this article if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 3 of this article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 6 of this article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this article.
8. The State of the ship's registry shall, subject to the provisions of this article and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine the conditions of issue and validity of the certificate.
9. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 3.
10. Certificates issued and certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.
11. Any claim for compensation arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation **of liability under any applicable national or international regime, pursuant to article 11, paragraph 2**. Furthermore, even if the registered owner is not entitled to limit liability ~~according to article 11 paragraph 2~~, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the owner himself, but the defendant shall not invoke any other defence, which the defendant might have been entitled to invoke in proceedings brought by

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the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

12. A State Party shall not permit any ship entitled to fly its flag to which this article applies to operate at any time unless a certificate has been issued under paragraphs 3 or 15 of this article.
13. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship of over [../..] metres in length, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.
14. Notwithstanding the provisions of paragraph 6, a State Party may notify the Secretary-General that, for the purposes of paragraph 13, ships are not required to carry on board or to produce the certificate required by paragraph 3, when entering or leaving ports or arriving at or leaving from offshore facilities in its territory, provided that the State Party which issues the certificate required by paragraph 3 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 13.
15. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of registry stating that it is owned by that State and that the ship's liability is covered within the limits prescribed in, paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 3.

ARTICLE 14

Time-bar

Rights of compensation under this Convention shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with article 7. However, in no case shall action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where this maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

VII. Amendment Provisions

ARTICLE 15

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The *Organization* shall convene a Conference of States Parties for revising or amending this Convention, at the request of *not less than* one-third of States Parties.
3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to this Convention as amended.

VIII. Final Provisions

ARTICLE 16 Settlement of disputes

States Parties shall settle any dispute between them concerning the interpretation or application of *this* Convention by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.

ARTICLE 17 Relationship to other conventions and international agreements

Nothing in this Convention shall prejudice the rights and obligations of any state under customary international law as reflected in the United Nations Convention on the Law of the Sea.

ARTICLE 18 Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature at the Headquarters of the Organization from [.....] until [.....] and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 19 Entry into force

1. This Convention shall enter into force [.....] months following the date on which [.....] States have either signed it without reservation as to ratification,

acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2. For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force [.....] months after the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in *accordance* with paragraph 1.

ARTICLE 20

Denunciation

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention comes into force for that State.
2. Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General.

ARTICLE 21

Depositary

1. This Convention shall be deposited with the Secretary General.
2. The Secretary-General shall:
 - (a) inform all States which have signed or acceded to this Convention of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit and the date on which the denunciation takes effect; and
 - (iv) other declarations and notifications made under this Convention; and
 - (b) transmit certified true copies of this Convention to all States that have signed or acceded to this Convention.
3. As soon as this Convention enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22
Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

Done at London this [.....] day of [.....] two thousand and [.....].

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.

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