



The Nairobi International Convention on the Removal of Wrecks

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History behind the Convention

- *The Torrey Canyon* incident of 1967
- This wreck demonstrated the inadequacies of the then existing international marine law, especially questions of responsibility and liability. The international aspects of the *Torrey Canyon* case were complex. This American-owned vessel was registered in Liberia, sailed with a crew of mixed nationals, and grounded in United Kingdom waters, also contaminating the Brittany coast of France. The British government set precedent by ordering the bombing of the wreck in a futile effort to torch the remaining oil.

The Convention was needed for 2 principal reasons

1. (Apart from the need to obtain a unified framework) To broaden the Power of States so as to enable them to take action and regulate wrecks which occur beyond their territorial waters.
2. The power given to an affected State to force an owner to pay for the expenses of a wreck removal and/or to take action in the absence of the owner doing so

- The Convention was finalised in Kenya in 2007
- It came into force in 2015, when Denmark ratified it
- It currently has 27 State Parties, including Malta.
- Malta ratified the Convention on the 17th March 2015 through the introduction of The Merchant Shipping Wreck Removal Convention) Regulations, 2015 (SL 234.53)

Scope of Application

- The Convention applies to **wrecks** within the **Convention Area**:
 - The EEZ
 - Or if state has not declared EEZ 200 nm from baseline
- Opt-in Clause (for territorial seas) – Only 14 out of 27 have currently opted in, Malta being one of them

Definition of a Wreck

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

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.

Maritime Hazard

- The Convention distinguishes between hazards that are a danger to
- 1. **Navigation** and
- 2. Those which are a danger to the **marine environment**.
- **Hazard** is “any condition or threat that: (a) poses a danger or impediment to navigation (b) may reasonably be expected to result in a major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.”

3 Issues following an incident resulting in a Wreck

- 1. Who is responsible for reporting?
- 2. What measures can be taken?
- 3. How do you enforce the Convention?

Necessary Steps under the Convention

1. Reporting – By Operator or Master to Affected State
2. Locating – Found in report – By Affected State
3. Marking – By Affected State
4. Removing – Expense of Owner but can be undertaken by Affected State

Reporting

- By master or ship owner

Report to include:

- Precise Location of the Wreck
- The type, size and construction of Wreck
- The nature of the damage, quantity of cargo, in particular hazardous and noxious substances and lubricants
- The report must be addressed to the affected State

Locating

- The Affected State must be aware of the location in order to inform mariners and States concerned of the **nature and location** of the wreck as a matter of **urgency**
- At this point, the Affected State does not need to know whether the wreck causes a hazard or not

Removal Procedure

- **Removal** is defined as “...any form of prevention, mitigation or elimination of the hazard created by a wreck”
- Affected State must inform wrecks registry and registered owner
- Registered owner shall remove the wreck

Removal Procedure Continued

- Affected State may set a reasonable deadline and conditions for removal, and inform the owner in writing
- If registered owner does not remove the wreck within the deadline, Affected State must inform the Registered Owner that it intends to intervene at the registered owner's expense

Removal Procedure Continued

- If immediate action is required, Affected State may remove wreck in the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment

Liability for Costs

- The Ship Owner shall bear the brunt of the expenses for the removal of a wreck.
- Strict Liability (no need to prove negligence) vs. Absolute Liability

Exceptions to Liability

1. A wreck resulting from an act of war
2. Wrecks caused by an act or omission with the intent to cause damage of third parties
3. Wrecks caused by the negligence or wrongful acts of Governments or other Authorities responsible for navigational aids

Compulsory Financial Security

1. A vessel of 300GT or over
2. Compulsory Insurance Policies or other Financial Securities (eg: Bank Guarantee)
3. Ship Registry of State Parties will issue certificates that must be kept on board confirming that the vessel is compliant with the Convention

Reach of convention/ rules

- Regulation 8 of the Merchant Shipping (Wreck Removal Convention)

“A ship of a gross tonnage of 300 or more shall not enter or leave a port in Malta, and neither shall any Maltese ship enter any port State unless such ship is in possession of an insurance cover evidenced by [a] certificate”

Blue Cards

- Certificate provided by the Malta flag certifying that there is a policy for insurance in place
- Must be renewed on expiry

Time Limits

- Action to recover costs cannot be brought after the end of 3 years from the date on which the wreck removal notice is issued

OR

- After the end of 6 years from the date of the accident which resulted in the wreck
- The above depends on whichever period ends earlier

Practical Inefficiencies

- A State cannot take action against the vessel of a non party State
- Discretion on State in respect to taking action “May”
- Caps on insurance (Variations between states)

THANK YOU

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