



INTERNATIONAL CONFERENCE ON THE
REMOVAL OF WRECKS, 2007
Agenda item 6

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CONSIDERATION OF A DRAFT CONVENTION ON THE REMOVAL OF WRECKS

Liability of the registered owner

Submitted by the International Group of P & I Associations (P & I Clubs), the
International Chamber of Shipping (ICS) and BIMCO

SUMMARY

Executive summary: This document proposes the addition of a new paragraph to Article 10 of the draft convention along the lines of similar provisions contained in those international liability and compensation instruments already adopted by the Organization. The proposed wording would address the concerns arising from the possibility of claims being made against the registered owner for measures taken by a State Party to locate, mark or remove a wreck other than in accordance with the provisions of the convention.

Action to be taken: Paragraph 10

Related document: LEG/CONF.16/3

Background

1 The co-sponsors of this document recognize that the draft convention on the removal of wrecks (DWRC) has been discussed and developed over a considerable number of years, with the aim to adopt uniform international rules and procedures to ensure the prompt and effective removal of hazardous wrecks and payment of compensation for the costs involved.

2 The liability and financial security provisions contained in the draft text of the convention prepared by the Legal Committee of the Organization and submitted to the Diplomatic Conference (document LEG/CONF.16/3) are modelled on the corresponding provisions in those international liability and compensation instruments already adopted by the Organization, namely the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92), the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention) and the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention).

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3 Each of these instruments provides for the owner's (however termed or defined) liability to be strict (i.e. not based on fault) subject to limited specified defences, direct action against the insurer or other person providing financial security for the owner's liabilities, and State certification, as is the case of course with the DWRC.

4 Each of the instruments mentioned in paragraph 2 above also includes a provision that no claim for compensation may be made against the owner otherwise than in accordance with that instrument. See article III(4) of CLC 92, Article 7(4) of the HNS Convention, and Article 3(5) of the Bunkers Convention.

5 However, for reasons unknown to the co-sponsors, no corresponding provision is included in the DWRC (as contained in document LEG/CONF.16/3).

Proposal

6 The co-sponsors therefore propose that the following wording, which is modelled on and consistent with the articles of the relevant international instruments mentioned in paragraph 4 above, be included as a new paragraph 3 to article 10 of the DWRC, with existing article 10 paragraph 3 being re-numbered as a new paragraph 4:

"No claim for the costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of this article".

7 The inclusion of this new wording will ensure consistency with the above-mentioned international instruments already adopted by the Organization, and on which the liability and financial security provisions of the DWRC are largely based.

8 Under the current text of the DWRC, the registered owner and his insurer/provider of financial security have strict liability with limited exceptions for the costs of locating, marking and removing a wreck which constitutes a hazard in accordance with articles 7, 8 and 9 of the convention, and they alone are entitled, under the convention, to limit liability (under any applicable national or international limitation regime). The concepts of strict but limited liability of the registered owner and the claimants' right to proceed directly against the insurer/provider of financial security were developed by the Organization to facilitate the prompt compensation of claimants without the need for potentially lengthy and costly legal disputes. However, this tried and tested system would be undermined if it were open to claimants to seek to recover from the registered owner/his insurer, under the provisions of the convention (articles 10, 11 and 12), the costs of any additional or alternative measures taken in relation to wrecks other than the measures provided under articles 7, 8 and 9 of the convention.

9 The proposed wording would, therefore, ensure consistency with the international liability and compensation regimes already adopted by the Organization and provide the necessary legal certainty and uniformity that is the intention of the adoption of an international wreck removal convention.

Action requested of the Conference

10 The Conference is invited to consider the contents of this document and decide as appropriate.