

Agenda item [..]

CONSIDERATION OF A DRAFT CONVENTION ON THE REMOVAL OF WRECKS

**Submitted by the International Group of P&I Clubs and
the International Chamber of Shipping**

SUMMARY

Executive summary: This document reiterates concerns about various provisions of the draft Convention.

Action to be taken: Paragraph 7

Related documents: LEG/CONF.16/3

Background

1. The International Group of P&I Clubs (International Group) and the International Chamber of Shipping (ICS) have participated actively in the work of the Legal Committee of the Organization on a draft International Convention on the Removal of Wrecks. A number of papers have been submitted by the two associations over the years together with oral submissions made in plenary with the intention of contributing to the development of an instrument which will be workable in practice, and of benefit to both governments and other affected parties. Without wishing to reopen issues at this late stage of the negotiations, the International Group and ICS would like to remind the Conference of the following concerns arising from the present draft text of the Convention and to invite delegations to bear them in mind during the deliberations.

Scope of application

2. An important reason for concluding international treaties is to promote uniformity and certainty of law. To further these aims, internationally agreed provisions should be applicable to the greatest extent possible. Should States decide to include an “opt-in” clause, enabling States Parties to extend the provisions of the Convention to wrecks in their internal and territorial waters, the International Group and ICS would advocate that as many provisions of the Convention as possible should be applicable when States elect to “opt-in”. The International Group indicated at LEG 92 and in the intersessional correspondence that if the Clubs agreed to issue certificates (“Blue Cards”) in respect of the Convention and subject themselves to direct action (see paragraph 3 below), they would only be able to do so in respect of liabilities arising under the Convention. They would not therefore be in a position to issue “blue cards” to the extent the legislative regime operating in a State’s territorial waters differed from the Convention regime. The International Group, ICS and BIMCO have co-sponsored a separate submission regarding the liability of the registered owner should the Conference decide to include an “opt-in” clause (see LEG/CONF.16/13).

Compulsory Insurance and Direct Action

3. In previous submissions, the International Group and ICS have advised against the inclusion of CLC type compulsory insurance and direct action provisions, and remain of the view that such provisions are not necessary in the context of wreck removal. Instead the International

Group and ICS have advocated that the registered owner should be required to evidence financial security by way of a ship's certificate of entry with a P&I Club. Reasons for the alternative approach together with draft text for an appropriate provision are contained in the paper submitted by the International Group to LEG 86 (LEG86/4/3). International Group Clubs have only ever provided certificates of financial security, and subjected themselves to direct action, in respect of liabilities established under international conventions. As delegates that have been involved in the negotiations of previous international maritime liability and compensation regimes will be aware, the question of International Group Clubs issuing so called "Blue Cards" is one that can only be determined by Club Boards once the Convention has been adopted and the liabilities are known. States should also bear in mind the administrative burden on both States in terms of issuing State certificates and insurers in terms of issuing "blue cards", when considering the tonnage figure to be included in the compulsory insurance provision. The 2001 Bunkers Convention does of course contain a tonnage figure of 1000 GT.

Limitation of Liability

4. CLC type compulsory insurance and direct action provisions are also considered to be inappropriate in the absence of other essential elements of the liability and compensation regimes previously adopted by the Organization. Delegates will be aware that the liability provisions of the other regimes comprise carefully balanced packages, consisting of strict liability on the part of the owner, a right to limit liability, an obligation to maintain insurance in an amount equal to the limits of liability, and rights for claimants to bring their claims directly against the insurer. However, while the draft Convention will not affect the right of the registered owner to limit liability under any applicable national or international regime, the Convention itself will not establish a right to limit. The International Group and ICS remain opposed to the creation of strict liabilities without corresponding rights to limitation that are certain in law, and would urge States to ratify the 1996 Convention on Limitation of Liability for Maritime Claims and ensure that their domestic legislation permits the registered owner to limit liability for wreck removal.

Liability for acts of terrorism

5. The International Group and ICS remain concerned that the draft Convention imposes strict liability on the registered owner and insurer for acts of terrorism. The joint paper submitted to LEG 92 (LEG92/4/4) contains the views of the two associations on this issue.

Cargo contribution to the costs of wreck removal measures

6. The International Group and ICS remain convinced that provisions requiring cargo to contribute to the costs of wreck removal should be included in the draft Convention, particularly in circumstances where a State has determined that a hazard exists by virtue of draft Article 6(h).

Action requested of the Conference

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