



Wreck Removal Convention will enter into force on 14 April 2015

On 14 April 2014, Denmark became the 10th country to ratify the Nairobi International Convention on the Removal of Wrecks (the Nairobi Convention), which consequently will enter into force 12 months later, on 14 April 2015.

Published 07 May 2014

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The ten states that so far have ratified the Convention are: Bulgaria, Denmark, Germany, India, Iran, Malaysia, Morocco, Nigeria, Palau and United Kingdom. The text of the Convention can be found [here](#).

Articles in Gard News, issues [186](#) and [187](#), described the main features of the Convention and the possible implications for shipowners and their P&I clubs, who provide cover for owners' wreck removal liabilities.

In recent years, the increased complexity and cost of wreck removals has become a major concern for shipowners and operators, their insurers and their reinsurers. Much of this can be attributed to the widely publicised COSTA CONCORDIA grounding/wreck removal in January 2012, but this is not the only wreck removal case which has given rise to such concern. For several reasons, the COSTA CONCORDIA is an exceptional case. The more 'normal' wreck removal cases involve different types of cargo vessels (e.g. bulk carriers, container ships) and are more representative of the challenges which owners and insurers may expect to face.

So far, states have had their own legal framework in place for dealing with wreck removals within their territorial waters. This has led to a patchwork of different legislation, which in turn has created legal uncertainty and lack of transparency for all parties involved.

States have been, and still are, empowered to order the removal of wrecks from their Exclusive Economic Zone (EEZ) if this is supported by applicable public international law, i.e. the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969, as amended in 1973, or the Protocol relating to Intervention on the High Seas in Cases of pollution by Substances other than Oil (the Intervention Conventions). These conventions empower a coastal state to intervene on the high seas, i.e. outside its territorial waters, in order to prevent and mitigate threats of marine pollution that would affect the state concerned. However, depending on local legislation, many states have had limited rights to claim compensation for their costs related to the removal of wrecks within their EEZ.

The Convention, which was adopted in 2007, intends to provide a set of uniform international rules for the prompt and effective removal of wrecks located outside the territorial sea of the States party to the Convention. The application of the Convention can be extended to the territorial sea of a state. Of the ten states that have ratified the Convention so far, only three states: Bulgaria, Denmark and the United Kingdom, have extended the Convention to also apply to their territorial waters.

Most accidents resulting in shipwrecks occur in territorial waters, often due to groundings. The states which have ratified the Convention, but chosen not to apply it to their territorial waters, are prevented from obtaining the benefits of the Convention in the circumstances arguably most necessary and relevant. Examples of such benefits are compulsory insurance cover for shipowners and the right of direct action against the insurers. This also works against the idea of international uniformity of law which is a key ambition of international conventions.

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The Convention also covers issues addressed in the Intervention Conventions, but it follows from Article 4 (1) that the rules of the Intervention Conventions shall prevail

in such circumstances. Hence, situations may arise where the Intervention Conventions work in conjunction with the Nairobi Convention.

In conclusion, it is believed that the Nairobi Convention, which enters into force on 14 April 2015, will be a step in the right direction to achieve greater harmonisation of the laws on wreck removal internationally, as well as more legal certainty and transparency in this regard. Arguably this would have been even more effective had more of the states that have ratified or acceded to the Convention also extended its application to their territorial waters.

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