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# THE NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS 2007: THE IMPACT ON SHIPOWNERS

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# INTRODUCTION

The Nairobi International Convention on the Removal of Wrecks 2007 will enter into force on 14 April 2015. It is designed to extend a coastal state's powers to take action against shipwrecks located beyond its territorial waters. The Convention will apply to hazardous wrecks that lie within a coastal state's Exclusive Economic Zone (EEZ), the limit of which is normally 200 nautical miles from its shore's baseline. The Convention also includes an optional clause enabling a signatory state to apply the international regime to its territorial waters, the limit of which is normally 12 miles from its shore's baseline and represents the maritime boundary of application for its national laws.

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## Countries that have ratified:

Bulgaria\*  
Denmark\*  
Germany  
India  
Iran  
Malaysia  
Morocco  
Nigeria  
Palau  
United Kingdom\*

\* State parties that have extended the Nairobi Convention's scope to their territorial sea.

The perceived need to expand coastal states' legal powers for wreck removal can be traced back to casualties such as the *Torrey Canyon*, which had 115,000 tons of crude oil on board when she struck a rock off the southwest coast of England in 1967. The wreck lay outside British territorial waters which, at that time, extended only three nautical miles off the coastline; this created a degree of uncertainty over the government's legal jurisdiction to deal with the resulting pollution.

The International Maritime Organization (IMO) views the adoption of the Nairobi Convention as "filling a gap in the existing international legal framework" by providing a basis for signatory states to remove, or have removed, hazardous shipwrecks that may have the potential to affect adversely the safety of lives, goods, and property at sea, as well as the marine and coastal environment within their EEZ.

## WHO IS AFFECTED?

Shipowners directly affected will be those who have ships of 300 gross tonnage (GT) or more; and/or any ships registered in a signatory state; and/or any ships entering or leaving the EEZ of a signatory state (and/or the territorial waters of a signatory state where such state has decided to "opt in" to extend the application of the Convention).

Owners will be required to maintain insurance or other financial security that meets the requirements of the Convention and to obtain a certificate issued or certified by a signatory state confirming that insurance for wreck removal has been arranged. The process of certification is not dissimilar to that already in place under the Bunkers Convention or Civil Liability Convention.

## KEY LEGAL IMPLICATIONS

An “affected state” may require removal of wrecks by the registered owner which are deemed a hazard, that is, wrecks that are a danger either to navigation or to the marine environment. However, measures taken by such a state must be proportionate to the hazard and not go beyond what is reasonable.

The definition of “ship” in the convention is wide enough to include nearly all sea-going craft and floating platforms, “except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources”.<sup>1</sup>

The Nairobi Convention provides for the strict liability of the shipowner for the costs of locating, marking, and removing the wreck, but subject to limitation of liability law. In most cases, this may not exceed an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims 1976, as amended by the 1996 Protocol.<sup>2</sup> It should be additionally noted that, in some national jurisdictions such as the UK, the right to limit liability in respect of shipwrecks is specifically excluded.

“...The definition of “ship” in the convention is wide enough to include nearly all sea-going craft and floating platforms.”

1976 Limits				
		Tonnage	Personal Injury & Death SDR	Property Claims SDR
	Tonnage not exceeding	500	333,000 in full	167,000 in full
AND	for each ton from	501- 3,000	500 per ton	167 per ton
AND	for each ton from	3,001-30,000	333 per ton	125 per ton
AND	for each ton from	30,001-70,000	250 per ton	
AND	for each ton from	70,001 and above	167 per ton	83 per ton
1996 Limits				
		Tonnage	Personal Injury & Death SDR	Property claims SDR
	Tonnage not exceeding	2,000	2,000,000 in full	1,000,000 in full
AND	for each ton from	2,001 - 30,000	800 per ton	400 per ton
AND	for each ton from	30,001-70,000	600 per ton	300 per ton
AND	for each ton from	70,001 and above	4000 per ton	200 per ton

SDR = Special Drawing Rights

Shipowners are obliged to maintain insurance or other financial security in respect of wreck removal.<sup>3</sup> Such cover will normally be included within a ship’s Protection and Indemnity (P&I) insurance. Any claim for compensation for wreck removal under the Nairobi Convention may be brought directly against the registered owners’ insurer.<sup>4</sup> However, under the same clause, insurers as defendants in claims brought directly against them may limit their liabilities even if the shipowner has lost his right to do so.

The registered owners (and their insurers) shall be strictly liable for the associated costs unless the damage results from an act of war, or was wholly caused by the act or the omission of a third party with the intent to cause damage or was due to the negligence of any government or other authority responsible for the maintenance of navigational aids.<sup>5</sup>

<sup>1</sup> Article 1(2) — The Nairobi International Convention on the Removal of Wrecks 2007.

<sup>2</sup> Article 10(2) — The Nairobi International Convention on the Removal of Wrecks 2007.

<sup>3</sup> Article 12(1) — The Nairobi International Convention on the Removal of Wrecks 2007.

<sup>4</sup> Article 12(10) — The Nairobi International Convention on the Removal of Wrecks 2007.

<sup>5</sup> Article 10(1) — The Nairobi International Convention on the Removal of Wrecks 2007.

# CERTIFICATION REQUIREMENTS AND PROCEDURES

The International Group of P&I Clubs has agreed to issue Nairobi Convention “Blue Cards”, enabling signatory states to issue certificates, and will start to issue Blue Cards for those vessels that are registered in signatory states from April 2015. The authorities in signatory states will therefore be under pressure to issue substantial numbers of certificates before the Nairobi Convention comes into force on 14 April 2015.

The Blue Cards issued by P&I underwriters are expected to be valid for the period of the entry, which in most cases will be until the following 20th February. It is expected that certificates will be valid until the expiry of the Blue Card. P&I Clubs cannot issue Blue Cards beyond the end of the policy year in the absence of any commitment to extend the entry beyond the current terms. Therefore, shipowners, their P&I Clubs, and signatory states will be obliged to re-certify annually.

For those ships that are registered in states that are not signatories to the Nairobi Convention, but are expected to visit the EEZ of a signatory state, provisional arrangements will be necessary. The P&I Clubs have said that they are ready to issue their Blue Cards when the identity of those signatory states who are prepared to issue certificates on behalf of non-signatory states is known. Marsh is confident that the Clubs will be in a position to issue Blue Cards promptly upon demand, but until signatory states decide who will “sponsor” who and who will accept whose certificates, there is little that shipowners can do to prepare, beyond ensuring their P&I insurer’s records are accurate.

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## THE PROBLEM OF INTERNATIONAL LAW

Despite the Nairobi Convention’s official entry into force next year, most flag and coastal states will not become signatory to it for some time to come. Therefore, pending a more wide-spread uptake, conflicts under international law can be expected regarding its application, especially since the United Nations’ Law of the Sea Convention (1982) does not recognise such rights to coastal states in their EEZs.

# CERTIFICATION

As far as we can establish, various national authorities have indicated they are willing (upon payment of the requisite fees) to consider issuing the certificates. The following list is submitted for guidance but cannot be relied upon as definitive because, unbeknownst to Marsh, these authorities might impose numerical or flag restrictions.

- UK.
- Denmark.
- Germany (but only for vessels with demonstrable German interests).

## SIGNATORY STATE CONTACTS

### **UK**

Maritime and Coastguard Agency  
Spring Place  
105 Commercial Road  
Southampton  
SO15 1EG

Email: [infoline@mcga.gov.uk](mailto:infoline@mcga.gov.uk)  
Tel: +44 (0)23 80329110  
Fax: +44 (0) 23 8032 9447  
[www.ukshipregister.co.uk](http://www.ukshipregister.co.uk)

### **Denmark**

Danish Maritime Authority  
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DK-2500 Valby

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Tel: +45 (0)91 37 60 00  
Fax: +45 (0)91 37 60 01

### **Germany**

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20359 Hamburg

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