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# Wreck removal and the Nairobi Convention

**High-profile major casualties such as *Costa Concordia* have brought the rising costs of wreck removal into sharp focus. Sam Kendall-Marsden, syndicate director at The Standard Club, discusses the likely impact of the Nairobi Convention on offshore wreck removal and what insurers are doing to mitigate rising costs**

► *Sam Kendall-Marsden*

**The Nairobi International Convention on the Removal of Wrecks is due to come into force on 14 April 2015, having now been ratified by 17 states[1].**

In summary, the convention provides for a strict liability, compensation and compulsory insurance regime for states affected by a maritime casualty. It makes the registered owner of a ship liable for locating, marking and removing a wreck deemed to be a hazard, defined as a threat to navigation, the environment or the coastline or related interests of one or more states.

It also empowers states to take action if shipowners do not respond to wreck removal orders appropriately.

The convention was born of a desire to promulgate uniform rules and procedures to facilitate the prompt and effective removal of wrecks. Its legal framework should promote consistency between signatory states in the treatment of wreck removal operations. It applies to states' exclusive economic zones, an area extending 200nm from a state's coastal baseline. However, the convention does not apply to a state's territorial sea unless voluntarily so-extended, and states are encouraged to do so as that is where most wrecks occur[2].

The convention applies to the wrecks of 'seagoing vessel(s) of any type whatsoever' but not to 'floating…platforms…on location engaged in the exploration, exploitation or production of seabed mineral resource'. OSVs and drilling and production units when navigating, either under their own power or under tow are, therefore, included.

The definition of what constitutes a 'wreck' is equally broad and includes not just 'a sunken or stranded ship' (or a ship that is about to sink or strand) but also 'any object that is or has been on board such a ship'. This might include an anchor or other equipment carried by an OSV.

Also of particular significance to the offshore industry is that one of the criteria to be considered in determining whether a wreck poses is a hazard is the 'proximity of offshore installations, pipelines, telecommunications cables and similar structures'.

The convention preserves a shipowner's right to limit their liability with reference to the tonnage-based formula in the 1976 Limitation Convention. However, while at first glance it might appear that this could be advantageous to smaller offshore vessels, in many countries the right to limit does not apply to wreck removal obligations. Shipowners are required to provide proof of insurance or other financial security to cover their liabilities under the convention and The Standard Club will issue members with blue cards enabling them to do so (subject to sufficient limits being purchased by operators for units which are not poolable).

The convention provides states with a right of direct action against those providing insurance or other financial security for convention liabilities, subject to defences.

A theme of reasonableness and proportionality runs throughout the convention. It explicitly states measures taken by a state in relation to the removal of a wreck that constitutes a hazard must be 'proportionate' to the hazard.

The convention goes on to emphasise that '…such measures shall not go beyond what is reasonably necessary (and) shall not unnecessarily interfere with the rights and interests of…any person, physical or corporate…'. The deadline for removal must also be 'reasonable', taking account of the nature of the hazard.

If a shipowner does not remove a wreck within an imposed deadline (or if immediate action is required) then a state may take action, although it must be '…by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment'.

The convention also makes clear that although a state may lay down conditions for wreck removal, that can only be '…to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment'. Further, a state may only intervene in removal operations on the same basis.

These are welcome developments in the light of recent instances where states have made unreasonable and disproportionate demands of shipowners and their insurers. These were situations where either the perceived benefits (usually environmental) of demands made did not justify the expense involved, or where national economic interests were given primacy over operational efficacy and proper cost control.

There may be future cases where it is appropriate to challenge unreasonable or disproportionate orders made, through the courts if necessary.

Whatever is necessary must be done to preserve the insurance structure in place, which is of immense value not just to shipowners but also to states which rightly look to insurers to fund reasonable and proportionate wreck removal operations.

The recent conviction of Capt Francesco Schettino (see page 16) for his part in the 2012 grounding of the cruise ship ***Costa Concordia*** returned the tragedy to the public eye. ***Costa Concordia*** was the largest, most complex and most expensive wreck removal operation in history. However, the incident is set against wider concern amongst insurers about the rising costs of wreck removal generally, and what can be done to mitigate this.

The International Group of P&I Clubs responded to these concerns by establishing a large casualty working group which produced a review of recent major casualties. The review identified key cost drivers and proposed steps that Clubs could take to mitigate rising wreck removal costs.

The most significant cost driver was found to be the involvement of states in wreck removal operations.

The Clubs' response to this was to develop an outreach programme which seeks to educate and inform authorities about the considerable expertise and experience the clubs have in managing major casualties. A key part of the programme is a memorandum of understanding (MoU) which sets out a non-binding framework for casualty preparedness and response.

The MoU has already been signed by the South African Maritime Safety Authority and the Australian Maritime Safety Authority, and discussions with New Zealand and other states are at an advanced stage.

The overriding purpose of the MoU is to 'provide a collaborative framework for the prompt and efficient handling of maritime casualties' which will take account of the interests of all stakeholders, including shipowners and their insurers.

The MoU dovetails neatly with the convention, and it is hoped states will embrace both in working with shipowners and their insurers for the benefit of all parties.

*[1] Antigua & Barbuda, Bulgaria, Congo, Cook Islands, Denmark, Germany, India, Iran, Liberia, Malaysia, Malta, Marshall Islands, Morocco, Nigeria, Palau, Tuvalu and the UK.*

*[2] Antigua & Barbuda, Bulgaria, Congo, Cook Islands, Denmark, Liberia, Malta, Marshall Islands, Palau and the United Kingdom have all opted to extend the application of the Convention to their territorial seas.*