

Nairobi Wreck Removal Convention from an offshore perspective



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To date, eight countries (including more recently the UK) have ratified the Convention, while five others have signed up to it. We therefore anticipate that the Convention will soon have the force of law and therefore propose in this article to look more closely at its provisions from an offshore point of view.

Background

As a starting point, the Convention applies to all seagoing vessels of any type whatsoever, including "submersible, floating craft and floating platforms except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources". It therefore appears that the Convention will apply to FPSOs or drilling units when they are in port or being towed to the field but not to FPSOs or drilling units otherwise engaged in drilling or producing activities in the field. However, in the absence of a clear definition of 'floating platform', there are some uncertainties with regards to the ambit of this exclusion. For example, it is debatable whether drilling ships qualify as 'floating platforms' since these two terms have been distinguished in other IMO conventions (see Article 15 of the LLMC76).

The Convention only applies to wrecks within a State's Exclusive Economic Zone (12nm – 200nm) unless State Parties elect to extend the application of the provisions of the Convention to wrecks located within their territory, including their territorial waters. The Convention therefore has the potential to apply to ships that have sunk in deep or even ultra deep water. In addition, Article 6 provides that when determining whether a wreck poses a hazard, the affected state can take into account various criteria, including the proximity of offshore

In the Standard Bulletin dated 31 July 2007, the club reported on the adoption of the Nairobi International Convention on the Removal of Wrecks 2007 (the Convention), which requires ratification by 10 states in order to come into force.

installations, pipelines, telecommunications cables and similar structures. Therefore, nothing in principle would prevent the State of Nigeria, which is party to the Convention, from issuing a lawful wreck removal order against the owner of an anchor handling tug that is lying on the seabed at a depth of 500m in close proximity to a pipeline. In many ways, the Convention improves the position of our shipowner members, who often contractually assume liability for the wreck removal of the entered ship if it simply interferes with the charterers' operations. Such liability traditionally goes beyond poolable P&I cover either because the relevant authorities may not be competent to issue a legal wreck removal order or simply because the wreck is not a danger to navigation. In such cases, the members may be forced to rely upon their Contractual Extension cover purchased from the club. Under the Convention, the same incident may well prove to be poolable simply because the authorities now have a wider power to determine that the ship is a hazard.

Compulsory insurance and direct right of action

The Convention provides that the owner of a ship of 300gt or more that is registered in a State Party has to maintain insurance or financial security to cover liability under the Convention. The amount of insurance that the shipowner is required to maintain is determined by the shipowner's limit of liability under the LLMC, as amended. This provision is similar to the compulsory insurance provisions of other international maritime conventions on liability and compensation (i.e. CLC, Bunkers and HNS Conventions).

Upon determination that such insurance or financial security is in place, each State Party shall issue certificates of insurance or

financial security to all ships that are included in their ship registry. The State Party is to ensure that no ships included in their registry operate without such a certificate. Ships registered in a state that is not party to the Convention may acquire certificates from any other State Party.

In addition, any claim for costs arising under this Convention may be brought directly against the insurer, i.e. against the club. In such a case, the club will be able to invoke all defences available to the member (other than the bankruptcy or winding-up of the registered owner), including limitation of liability. Furthermore, the club will be able to limit liability to an amount equal to the amount of insurance or other financial security required under the Convention even if the registered owner is not entitled to limit liability.

In other words, the Affected State and any other party that may have a claim under this Convention could recover, at least some of their costs, from the insurers, even if the shipowner becomes insolvent following a shipwreck.

Conclusion

The broad definition of ship, together with the wide-ranging criteria taken into account to determine whether a wreck is a hazard, will significantly increase the power of State Parties to the Convention to intervene following a maritime casualty. As a result, it is expected that there will be an increase in exposure for wreck removal both in terms of the number and value of claims. Only the future will tell whether this increased risk is a cause for concern and to regret the absence of recognition of an express right to limit liability for wreck removal.